Consultation response

Shelter response to DCLG consultation on allocation of accommodation: guidance for local authorities in England

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Until there's a home for everyone

In our affluent nation, tens of thousands of people wake up every day in housing that is run-down, overcrowded, or dangerous. Many others have lost their home altogether. The desperate lack of decent, affordable housing is robbing us of security, health, and a fair chance in life.

Shelter believes everyone should have a home.

More than one million people a year come to us for advice and support via our website, helplines and national network of services. We help people to find and keep a home in a place where they can thrive, and tackle the root causes of bad housing by campaigning for new laws, policies, and solutions.

During 2011, we advised nearly 2,400 people in England on problems with the allocation of social housing.

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Introduction

The draft guidance will replace all the existing guidance on allocations and choice based lettings, including the existing 2002 Code (60 pages), the 2008 Code on choice based lettings (60 pages) and the further 2009 guidance (30 pages). Consequently, much of the detail, particularly detailed guidance on choice based lettings has been removed. With some exceptions, the draft guidance is little more that than a statement of the statute and provides very little assistance to local authorities on how policy and legislation is to be interpreted.

We agree wholeheartedly with the Minister's view that *'social housing is of enormous importance - for the millions who live in it now, and for the many more who look to social housing to provide the support they need to live safe, healthy and prosperous lives'.* We are therefore disappointed that the majority of the consultation questions are aimed at local housing authorities. We feel it is very important that the views and needs of current, prospective and future social housing tenants are the foremost consideration in any guidance on how to implement the new legislative measures.

We appreciate the Government's commitment to *'get the best out of our four million social homes'*, which it sees as *'a precious resource'*. The 1.8 million households waiting for an allocation of social housing are a clear indicator that social housing is a hugely popular form of housing. We therefore urge both national and local government to, first and foremost, address this need and demand by planning for and delivering many more social rented, and other genuinely affordable, homes. Growing social housing waiting lists, levels of overcrowding, and homelessness cannot be addressed via changes to social housing tenure and allocation alone. Such policies will only create churn between homes and tenures, with the risk of destabilising families and communities.

Until there is a substantial increase in supply, there will always need to be a system of rationing social housing that prioritises those who would benefit most from a healthy, stable and affordable home. We therefore welcomed the Government's previously-stated belief that *'social housing should continue to be prioritised for the most vulnerable and those who need it most'* and that *'the best way to ensure a consistent approach to meeting housing need is to continue to set the priorities for social housing centrally'*[1].

However, it is important that homeless people are in practice, as well as in legislation, given reasonable preference for social housing. We are concerned that the changes made to homeless legislation by the Localism Act 2011 will undermine reasonable preference for homeless people. The link between homelessness and reasonable preference in allocation of social housing, which had already been weakened by the 'housing options' approach to homelessness, will be further weakened by this change.

Instead of being duty-bound to provide temporary accommodation until the household has been given reasonable preference for a social letting, councils will be able to discharge their main homelessness duty with an offer of a minimum 12 month private letting. On becoming private tenants, applicants will no longer, by virtue of their homelessness, be entitled to reasonable preference for a social letting. Consequently, people who have experienced homelessness (and in some cases repeat homelessness, perhaps following a series of shoddy private lettings let by rogue landlords) will have less chance of being allocated a decent, stable and affordable social home.

[1] DCLG (November 2010), Local Decisions: a fairer future for social housing (paragraph 4.15)

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Summary of response

We strongly support the retention of reasonable preference categories, which require local authorities to give preference to people who fall within the categories (such as those with serious medical conditions, living in overcrowded conditions or who have experienced homelessness) over those who do not. A key benefit of the English homelessness legislation, and the rules relating to reasonable preference for social housing, has been that it ensures the poorest and most vulnerable are not excluded from the mainstream social rented sector[2]. When the Government consulted on this measure, the vast majority of respondents were in favour[3] of reasonable preference.

We strongly support the recommendation that authorities should use the bedroom standard as an appropriate measure of overcrowding for assigning reasonable preference in allocations (see page 16). The bedroom standard is regarded as a modern measure of overcrowding and this is correct when compared with the pre-war statutory definition of overcrowding. It is also the commonly used definition to measure overcrowding by the English Housing Survey and, from 2011, the Census. As such it has effectively become the benchmark for assessing overcrowding.

We believe there is value in promoting a consistent approach to both assessing overcrowding and allocating housing. It is confusing and frustrating to tenants to be told that although they may be overcrowded by one definition, they do not satisfy the definition that changes how their circumstances are judged. We are, however, disappointed that overcrowding and under-occupancy are no longer listed as criteria in Annex 2 for reasonable preference. We believe that both should be retained.

The legislative change that allows authorities to set their own criteria under which applicants will, or will not, qualify for an allocation could have the effect of potentially excluding applicants who would otherwise be given reasonable preference for social housing. We do not accept that closed waiting lists *'will make it easier for housing authorities to manage unrealistic expectations'* of being allocated housing: in our view, choice based lettings are a better way to address this. We urge councils and the Government to consider the costs of restricting access to waiting lists rather than just savings and benefits (see page 11).

We are also concerned about the impact on households with reasonable preference on the allocations scheme of removing existing tenants requesting a transfer from the allocation scheme, other than those who would themselves qualify for reasonable preference (see page 21). An increase in the proportion of lettings made to tenants transferring outside the allocations framework clearly creates the potential for people in greatest housing need, who fall within the reasonable preference categories, losing out in allocations.

We therefore believe that the guidance should provide much greater clarity on the stated policy intention of striking *'an appropriate balance between meeting the needs of existing tenants, via a transfer policy, and new applicants for social housing'*[4]. If it is the Government's intention that people with reasonable preference should generally receive priority over transfer applicants the guidance should be more explicit in saying so.

We believe this problem could be solved by retaining the current statutory guidance on allocations in respect of under-occupancy and continuing to suggest that under-occupation might be a criterion for

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[2] Fitzpatrick, S. And Stephens, M. (November 2007) An International Review of Homelessness and Social Housing Policy, DCLG: London
[3] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.31
[4] Office of the Deputy Prime Minister (November 2002) *Allocation of accommodation: code of guidance for local housing authorities, paragraph 2.1*

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admission to the reasonable preference category covering those in 'unsatisfactory housing conditions'[5] (page 9). This is supported by respondents to the Government's consultation on allocations in social housing. When asked about expansion of the existing reasonable preference categories '*where additional categories were suggested, under-occupation was the most frequently mentioned*'[6]. This would put under-occupiers on a more level playing field with other applicants with reasonable preference, such as single people with mobility problems living in the private rented sector, when smaller homes become vacant.

We believe that households caught by the DWP under-occupancy cut, but who would not be considered to be under-occupying by the DCLG/TSA definition of under-occupancy, should not be given priority for a transfer on the basis of their under-occupancy as this may give them priority over applicants with reasonable preference, who may be in greater need. Instead, if the housing benefit shortfall they experience is likely to result in rent arrears, possession proceedings and, ultimately, eviction, they should be considered to have reasonable preference on the allocation scheme on the basis of their current accommodation being unreasonable to occupy (page 8)[7].

We are concerned that reasonable preference could be further undermined by the guidance on giving priority to those in low paid employment or employment-related training (see page 18), or who are deemed to be contributing to the community even where they are not in a reasonable preference category. This creates a further shift towards allocating housing on the basis of whether it is considered deserved rather than needed. There are many reasons that people who fall within the medical or welfare reasonable preference categories will be unable to work, such as serious illness, disability, age-related infirmity or caring for a relative. People may not be undertaking formal voluntary work but may well be contributing to their community in informal ways, such as providing support to neighbours.

There is no guidance on suspensions from allocations schemes, although behaviour is mentioned in paragraph 4.22 and the interaction between under-occupancy and suspensions in paragraph 1.10. Furthermore, the guidance on nomination agreements with private registered providers (paragraphs 6.2 and 6.3) is not strong or detailed enough.

We urge the Government to issue guidance to clarify these issues. The unfair exclusion of applicants on grounds of unacceptable behaviour is something which Shelter has been concerned about for many years and highlighted in some detail in our response to the consultation on the 2008 Code on Choice Based Lettings[8] and our response to the 2009 draft guidance[9]. We have consistently called on housing authorities and housing associations to urgently review their practices, and stop excluding tenants for minor past faults. Research published by Shelter in 2006 found widespread poor practice in the North East of England with a significant number of vulnerable people and families being unfairly excluded from social rented housing, often because of low levels of rent arrears, even though exclusions were often overturned on appeal[10].

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[5] Office of the Deputy Prime Minister (November 2002) *Allocation of accommodation: code of guidance for local housing authorities*, Annex 3: Indicators of the criteria in the reasonable preference categories (s.167(2) (c) and (d))
[6] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.39
[7] Housing Act 1996, Section 166A(3) - reasonable preference should be given to (a) people who are homeless (within the meaning of Part 7 of the 1996 Act).
[8] Shelter (April 2007) *Shelter's response to the CLG consultation on the Allocation of Accommodation: Choice Based Lettings Code of Guidance for Local Housing Authorities*(http://england.shelter.org.uk/__data/assets/pdf_file/0003/39207/Response-Choice_Based_Lettings_Code_of_Guidance_for_Local_Authorities.pdf*)*
[9] Shelter (October 2009) *Shelter's response to Fair and flexible - draft statutory guidance on social housing allocation for local authorities in England*, pages 17-18 (http://england.shelter.org.uk/__data/assets/pdf_file/0005/224294/10-09_Fair_and_Flexible.pdf)
[10] http://england.shelter.org.uk/professional_resources/policy_library/policy_library_folder/exclusions_in_tyne_and_wear

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Consultation Questions

1. Does your allocation scheme/transfer policy already provide for social tenants who are under-occupying to be given priority?

2. Do you intend to revise your allocation scheme in order to make it easier for under-occupying social tenants to downsize to more appropriately sized accommodation?

3. If so, what changes to your allocation scheme will you be considering – to make it easier for under-occupying tenants to downsize?

As an organisation working with people in housing need, we believe that it is important that under-occupation is seen within the context of all tenures in England. While the debate about under-occupation is focused on social housing, it should be noted that this tenure already makes the most efficient use of its stock. In 2010/11 there were 8 million under-occupied homes in England[11], however only 390,000 (5 per cent) of these were social rented homes. The vast majority of under-occupied homes were owner occupied (88 per cent or 7.08 million). Overall 10% of social rented homes were under-occupied, compared to 17% of private rented homes, and 49% of owner-occupied homes. Overcrowding is a greater problem for the social rented sector as 42% of over-crowded households are in the social rented sector - which accounts for only 17.5% of households.

It is also important to investigate to what extent a nationwide policy of encouraging moves by under-occupiers will help to tackle overcrowding. In fact, the areas where under-occupation is most prevalent have the lowest levels of overcrowding[12]. In addition, the areas where under-occupancy is most prolific tend to have a low supply of smaller properties, so it will be very difficult to re-house tenants.

However, given the extent of overcrowding and the shortage of homes in the social rented sector, we agree it is vital that genuine under-occupancy is sensitively tackled and that the best use be made of existing housing through proportionate and targeted measures.

We therefore support allocation guidance and policy that gives people who are under-occupying their homes, and who would like to down-size to a smaller home, appropriate priority to secure a transfer within an authority's allocations scheme. We also support a policy where people are given priority in allocations to vacate scarce accessible and adapted accommodation that they no longer need. Giving priority to under-occupying tenants should help to create vacant family-sized homes that can be offered to families in need of a suitable home, including those who are overcrowded. Similar benefits can occur with specialist accessible and adapted homes.

We are aware that many local housing authorities already take this approach. When the Government consulted on allocations policy, and specifically changes to the reasonable preference categories, in late 2010. The responses highlighted the extent to which authorities already addressed under-occupation:

> *'When additional categories were suggested, under-occupation was the most frequently mentioned, although many authorities commented that their allocation scheme already specifically addressed this issue."*[13]

Definition of under-occupation

The guidance should be clearer on the definition of under-occupancy. The way that authorities define under-occupation will be very important in the light of changes to housing benefit contained within the Welfare Reform Act 2012, which allows the Government to reduce the amount of housing benefit for

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[11] 2008-09 EHS-LFS combined dataset

[12] Hughes, N. And Lindsay, D. (April 2011) *Taking stock: Making the most from housing – an assessment of under utilisation of the housing stock in England*

[13] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.39

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which working age tenants in the social rented sector are eligible if they are deemed to be under-occupying their property. This will affect about 32% of all housing benefit claimants living in the social rented sector.

However, the DCLG and DWP use different definitions of under-occupation.

- The TSA's regulatory guidance for social housing[14], endorsed by the DCLG, defines under-occupation as:

  …two or more bedrooms above the Bedroom Standard. Eg – a household living in a three bedroom property who would only require one bedroom if assessed against the Bedroom Standard.

- However, the DWP uses a tighter definition of occupancy for housing benefit purposes. For the purposes of the social housing benefit cut, anyone with just one spare room as measured by this scale will be judged to be under-occupying.

The use of different definitions gives very different results in levels of under-occupation. All homes under-occupied by the TSA/DCLG measure will be family sized homes (of at least three bedrooms) so would be beneficial to let to people most in need if there were vacated. However if the tighter DWP definition is used, these rates increase dramatically.

We argue that the under-occupancy measure contained in the Welfare Reform Act 2012 will undermine a localised approach to allocations by imposing centralised measures on local policies designed in response to specific local conditions, such as the balance of stock. However, more importantly it will create a serious dilemma in how to define under-occupation for the purposes of prioritising households for an allocation of social housing. It would make most sense to give the most priority to all households who are under-occupied by the DCLG/TSA definition because they will have higher levels of under-occupation and, likely, larger homes.

However, there will be a more immediate driver for prioritising households who are caught by the under-occupancy housing benefit cuts, because they may not be able to afford the shortfall between benefit and actual rent and will therefore fall into increasing rent arrears. This is suggested by the guidance, which states (paragraph 1.10) that giving existing under-occupiers priority *'will be important in the light of measures in the Welfare Reform [Bill 2011]'*. But the majority of these households will have lower rates of under-occupation, and possibly smaller homes, so prioritising these households will do less to tackle under-occupation. It would also be perverse and confusing for households to be told that they are losing housing benefit because they are 'under-occupying' but cannot be given priority to move because they are not 'under-occupying' by another definition.

This will have implications for local authorities. If large numbers of households in two bed homes wish to move to avoid the under-occupancy cut this may divert resources away from encouraging and supporting genuine under-occupiers to down-size and free up family sized properties. It would also reduce the availability of one bedroom properties for downsizers to move into.

It is difficult to predict how households will respond to the under-occupancy cut and how many will seek to move. Research into private tenants in receipt of LHA suggests that it is not uncommon for households to manage a small shortfall[15]. At this stage we would not anticipate that every household affected by the measure will seek to move and dominate an allocations scheme. For many the shortfalls may be temporary or short-term because they:

- obtain paid employment
- reach retirement age (at which point they are no longer caught by the cut)

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[14] Tenant Services Authority (October 2009) *Overcrowding and under- occupation: self-assessment for social landlords*, Annex A: Bedroom Standard Definition
[15] DWP (2011) *Two year review of LHA*

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- have additional members join the household, such as additional children (at which point they would no longer be under-occupying
- have changing needs within the household (such as children reaching age thresholds) which would no longer deem them to be under-occupied

We believe that households caught by the DWP under-occupancy cut, but who would not be considered to be under-occupying by the DCLG/TSA definition, should not be given priority for a transfer on the basis of their under-occupancy. Instead, if the housing benefit shortfall they experience is likely to result in rent arrears, possession proceedings and, ultimately, eviction, they should be considered for reasonable preference on the allocation scheme on the basis of their current accommodation being unreasonable to occupy[16].

Under-occupation as a criterion for reasonable preference

Under-occupation and overcrowding have been removed from the list of indicators of the criteria in the reasonable preference categories in Annex 2, when compared to Annex 3 of the 2002 Code. Therefore, authorities are no longer guided to confer reasonable preference to transferring under-occupiers by virtue of their under-occupancy alone. In addition, transfers at the tenant's request, where the authority is satisfied that the tenant does not have reasonable preference will not fall within the authority's allocation scheme. Authorities may set their own transfer policies in relation to these tenants. This will create a further dilemma in determining priority for under-occupiers. Should transferring under-occupiers who do not fall within the allocation scheme be prioritised over transferring under-occupiers who have reasonable preference on the waiting list? If too much priority is given to transferring under-occupiers, then this would mean that under-occupiers with a reasonable preference on the allocation scheme in greater need of such properties (because of unsatisfactory housing conditions or medical or welfare needs) will have longer to wait.

There will be a further dilemma for authorities in prioritising between transferring under-occupiers who do not fall within the allocation scheme and households who are not under-occupying but have reasonable preference on the waiting list and are in need of a smaller home. In many cases, transferring under-occupiers will need or want ground floor properties or bungalows, which are easily accessible to people as they age and are more likely to have private gardens (which under-occupying households may already have and be reluctant to give up). However, such properties may also be needed for people waiting for an allocation of social housing because of a long-term illness or disability. If too much priority is given to transferring under-occupiers, then this could mean that others with reasonable preference on the waiting list, perhaps in greater need of such properties, will have longer to wait.

We think this problem could be solved by retaining the current statutory guidance on allocations in respect of under-occupancy and continuing to suggest that under-occupation might be a criterion for admission to the reasonable preference category covering those in 'unsatisfactory housing conditions'[17]. This is supported by respondents to the Government's consultation on allocations in social housing. When asked about expansion of the existing reasonable preference categories '*where additional categories were suggested, under-occupation was the most frequently mentioned*'[18]. This would put under-occupiers on a more level playing field with other applicants with reasonable preference, such as single people with mobility problems living in the private rented sector, when smaller homes become vacant.

We also believe that the guidance should be much clearer on striking a balance between allocations to transfer and waiting list applicants to ensure the clearly stated legislative intention that, overall, those

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[16] Housing Act 1996, Section 166A(3) - reasonable preference should be given to (a) people who are homeless (within the meaning of Part 7 of the 1996 Act).
[17] Office of the Deputy Prime Minister (November 2002) *Allocation of accommodation: code of guidance for local housing authorities*, Annex 3: Indicators of the criteria in the reasonable preference categories (s.167(2) (c) and (d))
[18] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.39

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with reasonable preference on the allocation scheme are given priority over transferring tenants who fall outside the scheme. Our response to question 15 below addresses this issue.

Encouragement of under-occupiers to apply for a transfer

While we support under-occupiers being prioritised in allocation schemes where they have requested a transfer, including via being given reasonable preference, we are opposed to people being coerced into leaving their homes, particularly homes where they may have lived for many years, either as a result of:

- the housing benefit changes on under-occupancy,
- fixed term tenancies in the social sector or
- because they are pressurised into vacating their home by regular letters, reviews or visits.

We believe that it is far better to encourage under-occupiers to down-size via positive offers to meet their needs and preferences, additional financial incentives, offers of support, and practical assistance.

To encourage under-occupiers to request a transfer in areas without a choice-based lettings scheme in operation, we would like to see the guidance on allocations require that accommodation offered to people wishing to down-size should be **suitable** to their needs in terms of its accessibility, standard, size and location. For example, many older people require a spare bedroom in order to be able to maintain a family life by accommodating relatives, such as grandchildren. Some older people, particularly those who have retired, benefit from having a garden or other private outside space. Older people may also prefer to remain in the same neighbourhood, where they are familiar with local facilities and services and where they are able to give support to, or receive support from, relatives, friends and neighbours. Location of accommodation offered should not be considered suitable if it would cause serious disruption or detriment, such as isolation from support. If no such suitability criteria are applied to offers made via the allocation scheme, under-occupiers may be disincentivised to apply for a transfer.

The guidance should set out that under-occupiers should be encouraged to down-size by the offer of support. In areas with a choice-based lettings scheme, people may need support in bidding for a suitable home. They may also be daunted by the thought of moving home, and would be encouraged by the offer of financial and practical support to enable a move to go smoothly, such as assistance with packing and moving their belongings, decorating the new home, arranging utilities and gaining access to services in a new neighbourhood.

Dealing sensitively with under-occupancy can be time-consuming and requires delicate negotiation. Housing management and allocations staff should have the resources to liaise with people who might be willing to move and be encouraged to be flexible with re-letting timescales ('void turnaround') if this would facilitate a move. We support previous government guidance[19] on managing under-occupation, which states that:

'Staff who specialise in dealing with under-occupiers can play a very important role by spelling out the options, encouraging people to consider different areas or property types, giving confidence, overcoming all the obstacles to a move, and helping to find the right property. They can also take a pro-active role in identifying suitable voids for under-occupiers and in approaching people who have not yet registered an interest in moving. The interviews for this guide showed that tenants appreciate having a single point of contact – someone they can trust who understands their circumstances and aspirations. Landlords with a smaller stock and tenant base might not be able to sustain a full time post, but the job does combine well with other responsibilities – e.g. advising elderly people or dealing with pre-notified voids. In three of the London borough case study areas, each specialist post was facilitating about 50 – 100 moves a year. As with incentive schemes, it is difficult to say how many of these moves would have taken place anyway, or by how much they have been accelerated. However, the cost does compare favourably with new build or renovation schemes, and with the more generous incentive schemes.'

[19] Department of Environment, Transport and the Regions (April 2001) *Managing underoccupation: a guide to good practice in social housing* (paragraphs 1.7.6 to 1.7.7)

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We would like the guidance on prioritising under-occupancy to include reference to this previous guidance on dealing with under-occupancy.

4. Do you agree that members of the armed forces and former service personnel should not be disqualified on residency grounds? Is 5 years from the date of discharge an appropriate time limit for this restriction? If not, what would be a more appropriate period?

We oppose the use of residency criteria in allocations. However, we think it is inequitable that, where they are applied, the Government is seeking to ensure that current or former members of the armed forces should not be disqualified on these grounds.

The argument for this policy is that it *'recognises the special position of members of the armed forces whose employment requires them to be mobile and who are likely to be particularly disadvantaged by residency requirements'*. While we appreciate that former members of the armed forces can be disproportionately represented among street homeless people[20]. We believe that it is unfair to single out people of one occupation above another. There are many other occupations whose employment requires them to be mobile (such as members of the clergy, people who work in the construction or entertainment industries and people who are required to relocate by their employer). Other people in housing need, such as ex-offenders and people who have been hospitalised long-term, would be similarly disadvantaged by residency requirements.

More importantly, people often need social rented housing in an area where they are not currently resident, for example to escape domestic violence, move as part of a witness protection scheme, or take up an offer of employment, training or education. We would not wish to see people unable to start to rebuild their lives because they fail to qualify for social housing in the area they need to move to.

We suggest that it would be more consistent to apply a test similar to the `local connection' criteria in the Joint Local Authority Agreement to ex-service personnel. This would exclude from residency qualifying criteria ex-service personnel who have been in service for six out of the last 12 months or three out of the last five years.

5. Does the draft guidance provide sufficient clarity on how to implement the new power for housing authorities to set their own allocations qualification criteria? If not, in what areas would more guidance be useful?

No, in our view the draft guidance is inadequate and provides no further clarity than the primary and secondary legislation. We would like to see the guidance significantly improved.

The Localism Act has amended the Housing Act 1996 Part 6 in two ways:

- To restore to local authorities the power they had from 1997 to 2003 to exclude classes of applicants it has designated as non-qualifying. New regulations[21] on allocations will provide that authorities cannot disqualify members (or former members) of the armed forces on residency grounds.
- To provide a new power to authorities to include only certain classes of applicants it has designated as qualifying. The authority cannot classify as 'qualifying' people who will remain statutorily ineligible because of their immigration status.

Therefore, authorities will be able to decide the classes of people who are, or who are not, qualifying persons. Consequently, they may only allocate social housing to people who are deemed to qualify. It is likely that authorities will make use of the new powers to set qualification criteria. When the Government consulted on introducing such criteria, around two thirds of local authorities responding to

[20] Research by the Centre for Housing Policy at York University in 2008 found that an estimated six per cent of London's non-statutory homeless population had served in the Armed Forces.

[21] *The Allocation of Housing (Qualification Criteria for Armed Forces Personnel) (England) Regulations 2012*

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the consultation welcomed the proposed flexibility or indicated that they would consider setting restrictive qualification criteria. The remaining third supported the retention of an open waiting list[22].

We support open waiting lists (as introduced by the Homelessness Act 2002) as a means to ensure the widest possible access to social housing. Social housing should be a sector of choice rather than simply a safety net for the most needy. We disagree with a number of the arguments for the move away from open waiting lists.

Costs of administering closed waiting lists

In its impact assessment of the abolition of open waiting lists, the Government has argued that *'there are likely to be administrative savings to local authorities that adopt closed waiting lists owing to it being simpler and less onerous to manage smaller waiting lists'*[23]. It assumes that authorities currently undertake regular, two-yearly, reviews of their waiting lists, which, based on the cost of four weeks' clerical and management time, could cost around £11,000 to conduct. It is therefore estimated that smaller waiting lists could result in savings of between 10-50 per cent, bringing savings (in the central scenario of 50 per cent of authorities revising their waiting list policies) of £6m over a thirty year period.

The Government also argues[24] that more local authorities are likely to adopt a 'housing options' approach as standard if they move to more restricted waiting lists. It is claimed that *'local authorities that decide to adopt closed waiting lists and are able to process housing applicants more efficiently (e.g. by dispensing Housing Options advice rather than registering them) could benefit from cost reductions. It estimates that 'if a quarter of an hour's time was saved in each case and 60 per cent (50% - 70%) of approaches were dealt with in this way then the saving could amount to £4,500 per local authority (£3,800 - £5,400) per year, assuming the average number of households approaching local authorities is 1,300'*. It is therefore estimated that there could be total efficiency savings (in the central scenario) of £17m over a thirty year period.

The impact assessment concludes[25] that there could be (central scenario) savings of £23m over thirty years in the management of waiting lists and processing of applications. We dispute these figures:

- While we accept that smaller lists could reduce the costs of conducting regular reviews, there is little evidence of how authorities are currently managing waiting lists. The impact assessment cites[26] a small-scale study carried out in two regions, which shows that most authorities carried out a review on an annual basis. However, the impact assessment admits that *'the findings are indicative and not necessarily nationally representative'*.

- More importantly, we believe that the introduction of qualification criteria will require a more thorough assessment of applicants, resulting in an increase in the resources required for processing applications, to determine whether an applicant meets the qualifying criteria. Examples would include proof of residency, employment status or tenancy conduct.

- There would also be further costs incurred in the statutory requirement to provide a written notification of disqualification; the right of applicants to request to be informed of any decision about the facts of the case; the right of applicants to request a review of decisions, which should be conducted by a senior officer, and be informed of the outcome; dealing with complaints about decisions; and defence of possible legal challenge.

- We also argue that the provision of adequate housing options advice, backed by written confirmation of advice, for those denied the opportunity to make an application is likely to be far more resource-intensive than the processing of an application for an open waiting list.

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[22] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.3
[23] Communities and Local Government (January 2011) *Localism Bill: a fairer future for social housing: impact assessment*, p.23
[24] Communities and Local Government (January 2011) *Localism Bill: a fairer future for social housing: impact assessment*, p.23
[25] Communities and Local Government (January 2011) *Localism Bill: a fairer future for social housing: impact assessment*, p.12
[26] Communities and Local Government (January 2011) *Localism Bill: a fairer future for social housing: impact assessment*, p.16

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Our analysis is supported by the summary of responses to the 2010 consultation[27] on the abolition of open waiting lists:

- *'Among local authorities, opinion was roughly split between those who considered that there would be some administrative savings in moving to a closed waiting list, and those who thought costs might be neutral or could increase.'*
- *'Around a quarter of local authority respondents expressed concerns that any savings might be offset by an increase in challenges and reviews of decisions about qualification for the waiting list.'*
- *'In addition, a number of local authorities and housing associations who commented felt that, where the list was restricted to those in need, there could be increased costs arising from the need to devote more resources to allocating hard to let properties.'*
- *'Many local authorities in areas where choice based lettings was established felt that administrative costs might increase, as applicants would need to be considered against qualification criteria at the application stage, which would require an additional layer of processing and scrutiny.'*

We are concerned that, in order to reduce costs of processing applications and maintaining waiting lists, housing options staff might discourage applications from people who are likely to qualify and, instead, provide them with minimal housing options advice, such as a list of private landlords in the area. There is evidence[28] that this has been a feature of housing options advice to applicants who are likely to be statutorily homeless. A recent article in Legal Action states: *'it is to be hoped that there will be no return to the practices, adopted in some areas from 1997 to 2003, of deflecting genuine applicants to local authorities at their first point of contact by telling them (in person or over the telephone) that they do not meet the local qualifying conditions or they fall within a class which does not qualify and, therefore, should not apply'*[29].

Closed waiting lists and scope to challenge poor practice

A worry for us is that restrictive waiting lists could lead to more people being excluded from lists because of incorrect decisions by councils. We already assist people who seek our advice on challenging councils' decisions on waiting list points/banding, unlawful waiting list policy and exclusions from lists. Currently such challenges are within the scope of legal aid. However, the Government's current review of legal aid[30] proposes to remove challenges of waiting list decisions from the scope of the scheme. We are opposed to this proposal. If it goes ahead and councils are able to restrict access to waiting lists, we are concerned about the ability of poorer applicants to hold their councils to account by challenging incorrect decisions.

Open waiting lists as an indicator of demand and need

Open waiting lists are a good indicator of need and demand for social rented housing that should be used as evidence to inform local development plans and housing strategies. For example, DCLG planning guidance lists local housing registers as a data source in estimating the number of households in housing need in Strategic Market Housing Assessments for planning purposes[31]. Authorities responding to the 2010 consultation[32] *'believed that open waiting lists were useful in gauging the level of demand (and need) locally, and that this assisted housing providers with their planning and marketing strategies, either for social renting or low cost home ownership schemes'*.

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[27] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraphs 4.17 to 4.22
[28] [Add]
[29] Baldwin, T. and Luba, J. (January 2012) *The Localism Act 2011: allocation of social housing accommodation*, Legal Action, page 25
[30] Ministry of Justice (November 2010) *Proposals for the Reform of Legal Aid in England and Wales* (paragraphs 4.74 - 4.81)
[31] DCLG (August 2007) *Strategic Housing Market Assessments: Practice Guidance: Version 2* (page 43, table 5.2)
[32] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.8

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Low income households who would benefit from genuinely affordable housing are in many cases not able to access it due to a lack of supply, with the result that the number of HB claimants living in the private rented sector has increased by more than 870,000 households since 2003[33]. The rise has not just been caused by overall growth in the sector; the proportion of private rented sector tenants requiring housing benefit has increased from 19.5% in 2008-09 to 24.6% in 2010-11[34].

Open waiting lists and increasing number of applicants

The Government has previously argued[35] that the reason waiting list numbers started to rise steeply from 2003 was because open waiting lists encouraged people with 'no real need of social housing' to put their names down. This is difficult to substantiate. Councils were not required to collect data on the number of applications from people in reasonable preferences categories, as against people with lesser need, until 2007. The increase from 2003 could be related to a rise in people in housing need or the expansion of priority need groups. Increases in numbers could also be because councils have not reviewed and updated their waiting lists. We suggest that DCLG should undertake research into waiting lists to ascertain the levels of need of applicants, their motivation to making an application and their perception of how long they may have to wait for an offer. However, we fail to see why open waiting lists with large numbers of applicants are a problem for councils or applicants, provided those most in need get priority.

Open waiting lists and management of expectations

We also question the Government's assertion that *'open waiting lists, coupled with the introduction of choice-based lettings may also have encouraged a commonly held - but mistaken - perception that anyone will be able to get into social housing if they wait long enough'*[36] and that restrictive lists will make it easier for local housing authorities to *'manage unrealistic expectations by excluding people who have little or no prospect of being allocated accommodation'*. We are not aware of any evidence to support this, and the Government's previous consultation[37] on this issue showed that respondents were divided:

> *'A substantial number of authorities commented on the benefits of closed waiting lists in terms of giving applicants a more realistic picture of their chances of accessing social housing and identifying those whose needs could be met in the private rented sector. However, a roughly equal number felt that the same objective could be achieved with an open list through the adoption of choice based lettings. The latter group believed that choice based lettings had the effect of filtering out people who had a low need for social housing and also delivered a realistic idea of people's housing options, with associated advice and support to hand'.*

From our work advising people in housing need, we know that people are typically well aware of the time they are likely to have to wait for social housing in their area. For example, Shelter Housing Watch website enables local people to readily look up the social housing waiting list times in their area. We support their right to choose whether to apply. We question the suggestion that 'where local authorities restrict access to their waiting list, people who do not qualify for social housing may look for advice and support to help them secure appropriate alternative accommodation' and 'a strong housing options approach will help meet this need'. People on waiting lists can already avail themselves of advice and support from housing options services to find suitable alternative accommodation. Such services should be in addition to, rather than an alternative to access to the waiting list for social housing.

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[33] DWP HB and CTB caseload tables November 2011 and Wilcox S and Pawson H, UK Housing Review 2010/2011, Table 116a, CIH 2011
[34] English Housing Survey Headline Report 2010-11, supplementary table 4. 2012.
[35] Communities and Local Government (November 2010) *Local decisions: a fairer future for social housing: consultation*, paragraph 4.5
[36] Communities and Local Government (November 2010) *Local decisions: a fairer future for social housing: consultation*, paragraph 4.6
[37] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.10

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Qualification criteria and transparency

The Government has previously argued[38] that *'the allocation of social housing is not well understood; there are widespread perceptions of unfairness and, in many communities, this can be a source of real tension'*. The current consultation[39] claims that restrictive waiting lists *'can be understood more readily by local people'*. However, the power for authorities to set their own qualification criteria is likely to lead to considerable local variation in who can receive an allocation of social housing. We believe that this has the potential to create confusion, as well as a potential 'postcode lottery' for applicants. This will be particularly true in metropolitan areas, where different neighbouring local authorities may have very different qualification criteria or retain open lists. It could also undermine sub-regional cooperation in housing and planning policy. In their response to the 2010 consultation[40] on this issue *'some local authorities and housing associations were also concerned that, if one or two local authorities in a region or sub-region chose to restrict their waiting lists, this would have the effect of swelling the waiting lists of neighbouring authorities with open lists. They thought that closed lists might undermine partnership working'.*

Improved guidance on qualification criteria and reasonable preference

It will be important that qualification criteria are clear, fair and transparent so that it is easy for potential applicants to understand whether they might qualify and for officers to know how to apply the criteria with certainty over its intention.

Where authorities choose to set qualification criteria, the draft guidance provides no direction on how this should be done. However, it does remind local authorities of the requirement to give overall priority to people in the reasonable preference categories. Our greatest concern is that it will be possible for local authorities to effectively exclude from qualification applicants in high housing need, who would otherwise be entitled to reasonable preference in allocations, for example because they fail to meet residency criteria.

This is an issue has been previously acknowledged by Government:

> *'We believe that the statutory duty on local authorities to frame their allocation scheme to give 'reasonable preference' to certain groups, together with local authorities' wider equalities duties, should serve to ensure that local authorities put in place allocation systems that are fair and that those who are vulnerable and in housing need are properly protected. However, to provide a safeguard, we intend to reserve a power to prescribe by way of regulations, that certain classes of people are (or are not) qualifying persons, if there is evidence that people in housing need are being excluded from social housing without good cause'.*

When the legislation was in its Commons Committee stage, Minister Andrew Stunnell said:

> *'It is still appropriate for the Secretary of State to have a backstop power to ensure that local authorities' allocation schemes do not result in a completely unreasonable exercise'.*

The Localism Act provides the Government with regulation-making powers to prescribe either the classes of people who are (or are not) to be designated as qualifying and to prescribe the criteria which cannot be used to decide which classes of people are non-qualifying. We urge the Government to bring forward regulations or, at the very least, improve the guidance to ensure that authorities cannot disqualify people who would otherwise have a reasonable preference.

Need for further guidance on qualification criteria

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[38] Communities and Local Government (November 2010) *Local decisions: a fairer future for social housing: consultation*, paragraph 1.4

[39] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 2.1

[40] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.12

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The summary of responses to the Government's 2010 consultation states[41]:

'Around three-quarters of local authorities who were considering a restricted list indicated that, subject to their own local consultation, they would place a strong focus on those in housing need. Most indicated that this would be linked to some form of local residency criteria. Other qualification criteria that many local authorities said they would consider were: financial circumstances; tenancy history; and supporting those in low paid employment locally'.

As we have already indicated in our response to question 5 above, we oppose the use of residency criteria in allocations. People often need social rented housing in an area where they are not currently resident, for example to escape domestic violence, enter into drug or alcohol rehabilitation or take up an offer of employment, training or education.

We also oppose the suggestion that councils could exclude all applicants with a 'poor tenancy record'. This would disqualify applicants who may have rent arrears as a result of housing benefit problems. Nineteen per cent of tenants in the private rented sector and 24 per cent in the social rented sector who are in rent arrears cite housing benefit delays as the reason. Among housing association tenants it is the most common reason for rent arrears, cited by 32%[42].

However, because it is clear that authorities will use such criteria, we urge the Government, in the interests of equity, consistency and transparency, to provide guidance on such matters. For example, it should set out what would constitute a 'poor tenancy record', in relation to unsubstantiated neighbour nuisance, unmet support needs, or rent arrears caused by housing benefit problems and how long substantiated behaviour would continue to bar application.

Guidance should require that behaviour criteria should be tightly defined, so that people should only be excluded in serious cases of rent arrears or anti-social; behaviour, and each case should be considered on its own merits. Where financial resources are to be a criterion, the guidance should require that there are no blanket exclusions (such as owner-occupiers) without attention to people's individual circumstances.

Equality impact assessments and local consultation

Some respondents to the 2010 consultation[43] on the abolition of open waiting lists *'expressed concern that closed lists might lead to "cherry picking" of applicants, and that marginalised groups would be excluded.'*

We, too, are concerned that restrictive waiting lists could disproportionately affect already marginalised groups, such as people with disabilities and BME households. We therefore welcome paragraph 3.21 of the draft guidance, which sets out that:

'In developing their qualification criteria, housing authorities are strongly encouraged to consult with their tenants and residents, partner Private Registered Providers and relevant statutory agencies and voluntary and community organisations. In framing their qualification criteria, authorities will need to have regard to their duties under the equalities legislation, as well as the requirement in s.166A(3) to give overall priority for an allocation to people in the reasonable preference categories.'

This addresses the concerns of respondents to the 2010 consultation[44] on allocations that *'it would be important to conduct an equality impact assessment locally'* and that *'local authorities would need to be*

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[41] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.4
[42] LG figures S441: Reasons for rent arrears
[43] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraphs 4.5
[44] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraphs 4.15 and 4.29

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mindful of their equality duties and diversity objectives in setting qualification criteria, and that they should take care that consultation includes representatives of equality and specific interest groups'.

We suggest the wording of paragraph 3.21 should be strengthened to provide a direct reference to local authorities' public sector equality duties under section 149 of the Equality Act 2010, in particular requiring public bodies to take steps to take account of the needs of disabled persons.

We strongly support the guidance strongly encouraging housing authorities to consult with their local communities in developing their qualification criteria. This came through strongly in the responses to the 2010 consultation[45], where authorities, social landlords and tenants and residents groups all stressed the importance of consulting with tenants, residents and potential applicants (as well as other stakeholders through a variety of means. In particular, it was noted[46] that:

> *'some groups were more effective at lobbying than others, and that a thorough appraisal of local needs and circumstances, with input from local scrutiny panels and local councillors, would be required'.*

We believe that authorities should work with voluntary and community groups, particularly if they represent hard to reach groups, such as homeless, private renting or BME households. Shelter is often consulted by local housing authorities about their allocation schemes and we greatly welcome this approach.

We would urge DCLG to give added weight to the consultation and equalities recommendations contained in paragraph 3.21 of the guidance, by separating this into two separate paragraphs as follows:

- *In developing their qualification criteria, housing authorities should consult with their tenants and residents, potential applicants, partner Private Registered Providers and relevant statutory agencies and voluntary and community organisations, following a thorough appraisal of local needs and circumstances.*

- *In framing their qualification criteria, authorities should have regard to their duties under section 149 of the Equality Act 2010, as well as the requirement in s.166A(3) to give overall priority for an allocation to people in the reasonable preference categories.*

6. Do you agree that the bedroom standard is an appropriate measure of overcrowding for the purpose of according reasonable preference? If not, what measure do you consider would be more appropriate?

Yes, Shelter supports the bedroom standard as the appropriate measure of overcrowding for the purpose of assigning reasonable preference. We also believe the bedroom standard should be the measure used when assessing the level of overcrowding in a locality, for example via Census data. We do not, however, suggest that it is the appropriate measure of overcrowding when considering whether a household is homeless.

It is estimated that 650,000 households in England are overcrowded when measured against the bedroom standard[47]. However, the vast majority of these are not recognised as statutorily overcrowded, which uses a far stricter definition dating back to 1935. Figures are not routinely collected for the number of statutorily overcrowded households, but a one-off estimate in 2003 suggested just 20,000

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[45] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraphs 4.24 - 4.29
[46] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraphs 4.28
[47] DCLG, English Housing Survey: Headline report 2010-11, 2012.

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households met the definition48. The legal test of overcrowding counts living rooms and some kitchens as bedrooms; only counts children under ten as half a person; and ignores infants entirely when assessing if a household is overcrowded. This can mean that a household is overcrowded by the commonly understood definition of the bedroom standard but is not recognised as such by their local authority and unable to access a more suitably sized home.

The bedroom standard is the commonly used definition to measure overcrowding by the English Housing Survey and, from 2011, the census. As such it has effectively become the benchmark for assessing overcrowding. We believe there is value in promoting a consistent approach to both assessing overcrowding and allocating housing. It is confusing and frustrating to tenants to be told that although they may be overcrowded by one definition, they do not satisfy the definition that prompts action.

Research with families overcrowded by the bedroom standard shows that this level of overcrowding does have a detrimental impact on individuals. 77% of overcrowded families surveyed by Shelter reported that their overcrowding harmed family relationships. Seven in ten households thought overcrowding was negatively impacting their children's education and personal development and the same number reported overcrowding was harming their family's health49.

The bedroom standard is regarded as a "modern" measure of overcrowding and this is correct when compared with the pre-war statutory definition of overcrowding. Although it is itself a product of the 1960s, expectations around living arrangements have not significantly changed and the bedroom standard remains relevant. Benefits include: the way in which it recognises that couples expect to share a bedroom; that children should not share bedrooms with their parents; that whether sharing between children is appropriate should be based on age and gender: and that only bedrooms should normally be considered suitable for sleeping in. In this way it allows the family sufficient space and privacy to carry out normal family life, such as privacy for adults and shared space for family time. However, there may in the future be a case for re-examining the age at which children of different genders are expected to share bedrooms.

The bedroom standard has the advantage of being an easily understood measure and does not require any complicated or subjective assessments. An assessment of overcrowding must align with households' own expectation of what is reasonable; it is better to tell a household that they are overcrowded but may need to wait a considerable length of time to be re-housed, than to maintain that they are not in fact overcrowded. Refusal to confront the scale of the challenge will never incentivise the provision of sufficient family sized homes.

It would be beneficial to augment the bedroom standard with a space standard to ensure that families who are overcrowded by virtue of sharing very small rooms are not over looked because their household formation otherwise satisfies the bedroom standard. For example a mother with two teenage sons in a two bedroom flat would be adequately housed according to the bedroom standard, but if the two bedrooms had been created by originally subdividing a small bedroom there could be grounds for considering them overcrowded due to lack of space.

7. Should this guidance provide advice on how to define 'overcrowding' for the purpose of according additional preference? If so, would an appropriate measure be two bedrooms or more short of the bedroom standard?

Shelter welcomes the suggestion that severely overcrowded households be given additional preference. Overcrowded households do currently qualify for reasonable preference but families can still wait long periods of time for a suitable allocation; both because of a lack of supply but also due to the overall weight given to overcrowding within allocations policies. Assigning additional preference to the most

[48] House of Commons Debate 6 November 2006 c885W
[49] Shelter (2005) *Full House? How overcrowded housing affects families* (http://england.shelter.org.uk/__data/assets/pdf_file/0004/39532/Full_house_overcrowding_effects.pdf)

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severely overcrowded families would ensure they are identified and prioritised for more immediate re-housing.

Generally we consider severe overcrowding to mean that a family is two or more bedrooms short of the bedroom standard and support this as an appropriate measure for guidance. If necessary it would still be possible for local authorities to identify the very most severely overcrowded households within this group. This could be those three bedrooms or more short of the bedroom standard, or a more tailored approach looking at the composition and circumstances of the household. We accept that in some local authorities the degree of overcrowding combined with a lack of supply may justify such further subdivision among severely overcrowded households to prioritise those with the greatest housing need. This approach is acceptable as long as it sits within a strategic aim of reducing all levels of overcrowding.

8. How does your allocation scheme currently define 'overcrowding' for allocation purposes? Does it, for example, use the bedroom standard, the statutory overcrowding standards in Part 10 of the Housing Act 1985, or another definition? If the last of these, please provide brief details.

Shelter does not have an allocations scheme. We are aware that a number of local authorities continue to refer to Part 10 of the Housing Act, at least to identify severely overcrowded families. When advising clients seeking advice on overcrowding and allocations we routinely have to inform families that unless they are statutorily overcrowded their local authority may refuse to prioritise them for re-housing. We are aware that some local authorities do use a more appropriate definition of overcrowding for allocation purposes.

9. The Government proposes to regulate to require housing authorities to frame their allocation scheme to provide for former service personnel with urgent housing needs to be given additional preference for social housing. Do you agree with this proposal?

10. Does your allocation scheme already make use of the flexibilities within the allocation legislation to provide for those who have served in the armed forces to be given greater priority for social housing? If so, how does your scheme provide for this?

11. If not, do you intend to take advantage of the flexibilities in the allocation legislation to provide for former members of the armed forces to be given greater priority for social housing? If so, what changes might you be considering?

Local authorities can already give 'additional preference' to particular descriptions of people who fall into the reasonable preference categories and who have urgent housing needs, such as sudden disability, a life threatening illness, severe overcrowding or people homeless because of violence, fire or flood. The draft guidance requires authorities to ensure that their allocation scheme gives 'additional preference' to members of the armed forces.

We do not agree with this proposal for the same reasons that we disagree with that only current or future members of the armed forces should not be disqualified on residency grounds (question 4 above). There are many other occupations, including other public servants, who may develop urgent housing needs. These include fire-fighters, police officers and paramedics, who - because of the dangerous nature of their work - may have developed a sudden disability or life threatening illness that results in urgent housing need. There are many other private occupations, such as construction workers and miners, who can sustain life threatening illness or sudden disability as a result of occupational hazards. We believe that it is inequitable that members of the armed forces should be singled out for 'additional preference'.

We believe that it is better to allow authorities discretion in the use of 'additional preference' to tailor their allocation scheme to reflect the needs of local occupations or local prevailing circumstances, such as flood risk.

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12. Does your allocation scheme already provide for some priority to be given to people who are in work, seeking work, or otherwise contributing to the community? If so, how does your scheme provide for this?

13. If not, do you intend to revise your allocation scheme to provide for more priority to be given to people who are in work, seeking work, or otherwise contributing to the community? If so, what changes might you be considering?

As an adviser of people in housing need, we firmly believe that the principal aim of local allocations schemes should be to give reasonable preference to people in housing need, particularly those with medical needs, who have suffered the traumatic experience of losing their home, or who are inadequately housed because they are living in overcrowded or poor conditions. Therefore, as stated above, we strongly support the retention of the reasonable preference categories and the statutory requirement that allocation schemes must give reasonable preference to applicants who fall within them over those who do not.

Shelter has always expressed concern about policies which promote lettings to particular groups that are not in significant housing need in order to achieve other social policy outcomes. Therefore, we disagree with the draft guidance (paragraph 4.36) in respect of prioritising people in work or who are deemed to be contributing to their community in other ways, such as through voluntary work, by:

- Giving preference to households who are in low paid work or employment-related training, even where they are not in a reasonable preference category
- Giving 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
- 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

There are many reasons that people who fall within the medical or welfare reasonable preference categories will be unable to work. These include serious illness (such as cancer or mental ill health), disability, age-related infirmity or caring for a relative. People may not be undertaking formal voluntary work but may well be contributing to their community in informal ways, such as providing support to neighbours.

People who are not currently in paid work and have experienced homelessness, perhaps because of vulnerability (such as mental health problems) or fleeing violence, have the best chance of finding and keeping a job once they have a stable, affordable and secure social home[50]. Given the Government's strong messages about getting people back into work, giving less priority for social housing for those out of work would be counterintuitive and would make this group even less likely to move into employment in the future.

We would not want households who fall within the reasonable preference categories to have to wait longer for an allocation because other households in low paid work, actively seeking work, or undertaking voluntary work receive similar or additional preference solely as a result of their occupational status. People who need to take up a particular employment, education or training opportunity may, in any case, receive reasonable preference on hardship grounds (as set out in paragraph 4.16). Given the current context of massive under-supply of social rented housing, and the poor levels of security of tenure and affordability available in other sectors, the vast majority must be allocated to those in the greatest need. In a situation of very high demand, inevitably many households will be unable to access social rented housing and will end up having to rely on the private rented sector

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[50] Shelter Policy Briefing (October 2008) *Worklessness and social housing* (http://england.shelter.org.uk/__data/assets/pdf_file/0007/138580/Worklessness_and_social_housing_briefing.pdf)

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for accommodation, with the possibility of insecurity and high rent levels. Households who are not in such a high degree of housing need, or who have low levels of vulnerability, will be best placed to deal with this.

People whose skills are in short supply will inevitably be able to demand higher wages and are therefore more likely to afford market rates. Rather than allocating specific properties, or proportions of properties, to such households, it would be more appropriate to assist them via housing options advice. If there is a desire to allocate social housing to certain types of employment or training, regardless of their level of housing need, a more appropriate policy response is to invest over the long term to increase the supply of social rented housing, so that it is not necessary to ration it so severely, and to improve what is available and accessible in other sectors, so that private renting and home ownership can offer the levels of affordability, good management and security which the thousands of applicants on housing registers can currently only hope to secure through an allocation of social rented housing.

Instead, we would like the guidance to encourage the use of 'cumulative preference', whereby the priority afforded to people depends on their cumulative needs. These could include the need to obtain paid employment on hardship grounds. This would allow applicants with reasonable preference who are also in low paid work, or actively seeking work, to receive priority over those with similar needs who are not in, or seeking, paid work.

Allocating housing to those in the greatest need, or who have significant levels of vulnerability, need not be inconsistent with the drive to achieve sustainable communities. Shelter's Inclusion Project in Rochdale has shown clearly that with the correct type of support, even tenants with significant support needs can sustain their tenancies and contribute to their communities. Research shows that a potential advantage of choice based lettings is that fewer vulnerable households may end up in low demand areas. This was highlighted by the Hills Review of the future of social housing.

14. Are there other ways in which housing authorities can frame their allocation scheme to meet the needs of prospective adopters and foster carers?

The guidance states that (paragraph 4.39), 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 under-occupation.

It is also important that authorities are guided on the potential risks of a shortfall in housing benefit for households who have fostered a child. Since 1 November 2010, foster children are not included in calculations for local housing allowance[51]. If this is carried across to the calculation of under-occupancy for social housing, then people of working age who already have a foster child would face a shortfall in their housing benefit.

15. Does the draft guidance provide sufficient clarity on the extent of flexibilities available to housing authorities when framing their allocation scheme?

We believe that the guidance should provide much greater clarity on the stated policy intention of striking *'an appropriate balance between meeting the needs of existing tenants, via a transfer policy, and new applicants for social housing'*[52]. Paragraphs 1.7 to 1.9 confirm that existing social housing tenants applying for a transfer, where the authority is satisfied that the tenant does not have reasonable preference, do not fall within the allocation scheme and will not count as an allocation of social housing. The draft guidance states that *'as a result housing authorities may set their own transfer policies in relation to these tenants'*.

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[51] *The Housing Benefit & Council Tax Benefit (Miscellaneous Amendments) Regulations 2010* and communicated in the *Housing Benefit and Council Tax Benefit Circular A19/2010*, http://www.dwp.gov.uk/docs/a19-2010.pdf
[52] Office of the Deputy Prime Minister (November 2002) *Allocation of accommodation: code of guidance for local housing authorities, paragraph 2.1*

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As an adviser of tenants and people in housing need, we are aware that social tenants are often unable to move to another social letting, and particularly unable to change their housing circumstances because they have insufficient priority under the council's allocation scheme. As we noted in our response to the Government's consultation on a the previous draft Code of Guidance on allocation of social housing[53], we have some sympathy with councils having scope to provide for existing social tenants, who do not have reasonable preference, to transfer to similar sized accommodation where they can demonstrate good reason for seeking a move. For example, they may want to take up an offer of employment.

However, we opposed the return to the position before the 2002 Act came into force by removing from the allocation framework most existing social tenants seeking a move. Given the current context of massive under-supply of social rented housing, and the poor levels of security of tenure and affordability available in other sectors, social housing vacancies must be allocated to those in the greatest need.

In the responses to the Government consultation, there were 'mixed opinions' about the proposal to take social tenants seeking a transfer who are not in housing need out of the allocation framework:

- *'Some thought that it could bring benefits in terms of making better use of stock and increasing tenant satisfaction; some that it would bring no added value; while others thought it would make systems more complicated and less transparent'*[54].

- *'These different views were, to a great extent, attributable to how the proposal was interpreted. Many took it to mean that it would be necessary to set up a separate system to deal with transferring tenants. While some thought it would increase opportunities for tenants, others thought it would add to administrative burdens and costs, and would make procedures more complex and less transparent for tenants and applicants'*[55].

There is a clear worry that the removal of transfer applicants from local allocation schemes may be interpreted differently, leading to complication and a lack of transparency. We believe the guidance on allocations should address this. This is supported by legal opinion. A recent article in Legal Action[56] states:

> *'It is not entirely clear how local housing authorities in England are to work out which tenant-initiated transfer applicants are in the reasonable preference categories, and thus covered by existing allocation scheme, and which are not. Nor is there any guidance in the statute relating to how local housing authorities should set up and administer the lists of those falling into the category of non-priority tenants transfers.'*

It goes on:

> *'Perhaps the even more critical question for the local housing authority will be whether to expose a newly available letting to applicants on the allocation scheme or, instead, offer it first to those on the non-priority transfer list'.*

We agree that the draft guidance is weak in guiding local housing authorities on tenant transfers and, when considered in the context of policy arguments and evidence in the impact assessment, creates confusion and ambiguity. A lack of clarity could seriously undermine the use of reasonable preference to prioritise allocations to people in the most need: a stated Government policy intention.

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[53] [Add]
[54] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.43
[55] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.47
[56] Baldwin, T. and Luba, J. (January 2012) The Localism Act 2011: allocation of social housing accommodation, Legal Action, pages 25-26

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The draft guidance states that[57]:

> *'The scheme must be framed so as to give reasonable preference to applicants who fall within the categories set out in s.166A(3) over those who do not'.*

It goes on:

> *'In particular, a scheme may provide for other factors than those set out in s.166A(3) to be taken into account in determining which applicants are to be given preference under a scheme, provided they do not dominate the scheme at the expense of those in s.166A(3)'.*

However, the impact assessment[58] states:

> *'We consider, though, that further measures are necessary to give local authorities greater flexibility to make better use of their stock, and to make it easier for their existing tenants to move within the social sector, without increasing the risk of legal challenge from applicants in greater need on the waiting list'.*

It says that the measure to remove transfer applicants from the allocation scheme *''will benefit tenants seeking a transfer as they will no longer have to compete with tenants who have a higher priority under a council's allocation scheme'*.

Increased mobility of existing tenants versus less choice for those in need

Increasing the number of transfer lettings to address a decline in the number of moves within the sector is a clearly stated policy option[59]. The Government anticipates the removal of transfer applicants from allocation schemes will increase the number of social lettings made to transfer applicants. The impact assessment[60] states that *'if the number of lettings to existing tenants returned to 2003 levels - equivalent to a rise in the share of lettings to existing tenants of 5 percentage points, to 35 per cent of total lettings - then this would deliver an additional 29,000 moves per annum'*. However, it goes on to conclude that *'there is little evidence of the likely impact of taking existing tenants out of the allocation framework'* and *'in practice, any increase in mobility within the sector is likely to take a number of years to manifest itself, beginning from the policy implementation date in 2012'*[61].

An increase in the proportion of lettings made to tenants transferring outside the allocations framework clearly creates the potential for people in greatest housing need, who fall within the reasonable preference categories, losing out in allocations. This is recognised by the impact assessment[62], which states:

> *'This will make it easier for social renters to move within the sector by allowing landlords to prioritise lettings to these households, should they choose. In some cases, this may be to the detriment of particular households on the waiting list that are in a 'reasonable preference' category, since they might have to wait longer to access social housing'.*

The impact assessment justifies this cost by arguing that *'every transfer within the stock ultimately frees-up another social dwelling though, so the amount of social properties for letting to households on the waiting list will not be affected. Only the type of properties available might change. For instance, landlords might seek to increase availability of larger dwellings by prioritising downsize moves by existing tenants that do not require all available bedrooms; this would tend to benefit families at the expense of smaller households on the waiting list'*.

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[57] Office of the Deputy Prime Minister (November 2002) *Allocation of accommodation: code of guidance for local housing authorities, paragraphs 4.7 and 4.8*
[58] Communities and Local Government (January 2011) *Localism Bill: a fairer future for social housing: impact assessment*, p.17
[59] Communities and Local Government (January 2011) *Localism Bill: a fairer future for social housing: impact assessment*, p.26
[60] Communities and Local Government (January 2011) *Localism Bill: a fairer future for social housing: impact assessment*, p.22
[61] Communities and Local Government (January 2011) *Localism Bill: a fairer future for social housing: impact assessment*, p. 22
[62] Communities and Local Government (January 2011) *Localism Bill: a fairer future for social housing: impact assessment*, p.21

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This conclusion echoes our concerns about 'chain lettings'. There could be similar disadvantages for reasonable preference applicants who are overcrowded or in need of a larger home if chain lettings were used to move transfer applicants from smaller to larger homes, leaving only smaller dwellings to offer to people with reasonable preference. This is why we prefer a system whereby all applications for social housing are considered in the round via a single allocation scheme.

We are also concerned about the quality of accommodation that may be offered to applicants in the reasonable preference category as a result. Existing tenants falling outside of reasonable preference may be allowed to transfer to the more popular properties in the more popular areas, thereby vacating the more undesirable property, to be allocated to people in the greatest housing need (households who have experienced homelessness and may have multiple medical and welfare needs). If such households are only able to access inferior accommodation in the least desirable neighbourhoods, it would be much more difficult for the tenancy to be successfully sustained.

Our concerns about the impact on waiting list applicants are shared by respondents to the 2010 consultation[63], who *'expressed concerns about the changes, often centring around fears that waiting list applicants would have to wait longer or would only have access to the less desirable properties; and that existing tenants of smaller landlords would have less opportunities to move than the tenants of larger ones. A particular concern was expressed in relation to local authorities that had transferred their stock, if housing associations gave priority to their own tenants'.*

For these reasons, and to ensure that local allocation policies are transparent and accountable, it is very important that the guidance sets out how authorities are to strike the appropriate balance between allocating available lettings to reasonable preference applicants over and above transfer applicants.

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[63] Communities and Local Government (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 4.46

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Annex A: Under-occupancy housing benefit cut

We argue that the under-occupancy housing benefit cut for social housing is poorly targeted and is not an effective way of tackling overcrowding for the following reasons.

- It will not tackle most under-occupation within the social sector because the housing benefit restriction affects only households of working age. Shelter estimates that, as a result, two-thirds of people under-occupying in the social sector will be entirely unaffected by the measure[64].

- It will not tackle under-occupation as defined by the DCLG because the majority of households facing housing benefit cuts are not under-occupying according to the under-occupation definition used by DCLG. The DWP impact assessment[65] indicates that from 2013, 670,000 working age social housing tenants will face reductions to their benefits as a result of the proposed restriction. Of these, 530,000 households (nearly four-fifths) of those affected only have one bedroom spare (according to Government occupancy measures). This bedroom might not necessarily even be empty. For example, in a household with a nine year old son and eight year old daughter, the two children might each have their own bedroom. Spare bedrooms may also be invaluable for siblings (or couples) who cannot share a bedroom for health reasons, or separated parents who share custody of children.

- It will not affect a policy of encouraging empty nesters to downsize because 220,000 households set to be affected by this measure contain children[66].

- It will do little to tackle overcrowding because the regions where overcrowding is most prevalent will have the fewest properties freed up by this measure[67].

- The areas where under-occupancy is most prolific tend to have a low supply of smaller properties, so it will be very difficult to re-house tenants facing a benefit shortfall and needing a move. There is a very limited supply of one bed properties into which people will be able to move. Modelling by the National Housing Federation[68] found that about 180,000 social tenants in England are 'under-occupying' two-bed homes, but only 68,230 one-bed social homes became available for letting in 2009-10. People will see a cut in their benefit with little prospect of being able to move to a smaller social home. In rural areas people may have to move many miles to find a smaller home.

- Disabled people will be heavily affected by this measure and the Government has not offered any concessions to recognise their additional needs. Of the 670,000 claimants expected to be affected by the under-occupation penalty, 450,000 (66%) are disabled[69]. Many social homes are adapted to be accessible for people with disabilities. The National Housing Federation estimates[70] that 100,000 tenants set to be affected by this measure live in homes specially adapted to their needs. Encouraging these tenants to move would not be cost-effective as new properties would need to be adapted while aids and adaptations would be stripped out of vacated homes.

- The cut carries the risk of generating increased costs for Government and the DWP impact assessment[71] makes clear that projected savings will only be achieved if tenants remain in their

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[64] Unpublished calculation - this is because of the high number of pensioners who are under-occupying
[65] Department for Work and Pensions (February 2011) *Impact Assessment: Under-occupation of social housing*, paragraph 25 (http://www.dwp.gov.uk/docs/social-sector-housing-under-occupation-wr2011-ia.pdf)
[66] Department for Work and Pensions (February 2011) *Impact Assessment: Under-occupation of social housing*, paragraph 35
[67] Department for Work and Pensions (February 2011) *Impact Assessment: Under-occupation of social housing*, paragraph 33
[68] Welfare Reform Bill – Lords Committee: Joint briefing on Clauses 11 and 68 (http://www.housing.org.uk/publications/find_a_publication/legislation/welfare_reform_bill_lords_com.aspx)
[69] Department for Work and Pensions (October 2010) *Equality Impact Assessment: Under-occupation of social housing*, paragraph 42 (http://www.dwp.gov.uk/docs/eia-social-sector-housing-under-occupation-wr2011.pdf)
[70] Welfare Reform Bill – Lords Committee: Joint briefing on Clauses 11 and 68 - research by the National Housing Federation found an estimated 100,000 working-age social housing tenants in the UK claiming housing benefit live in adapted homes with one or more 'spare' bedrooms (http://www.housing.org.uk/publications/find_a_publication/legislation/welfare_reform_bill_lords_com.aspx).
[71] Department for Work and Pensions, February 2011) *Impact Assessment: Under-occupation of social housing*, paragraph 49

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existing homes and make up the shortfall themselves. However, if tenants decide that they would either prefer, or need, to move into the private rented sector, then the cost of providing housing benefit for them could increase. Tenants who seek to move within the social rented sector could also see their rent increase with the introduction of the new ‘Affordable Rent’ tenure set at up to 80% of market levels.

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