

16 February 2009

The chief housing officers of  
all local housing authorities in England

Our Ref:  
Your Ref:

Dear chief housing officer,

**HOMELESSNESS LEGISLATION : COMMENCEMENT OF SECTION 314 OF,  
AND SCHEDULE 15 TO, THE *HOUSING AND REGENERATION ACT 2008***

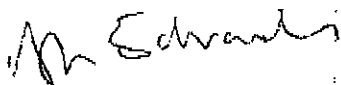
This letter informs local housing authorities in England that the Government intends to commence section 314 of, and Schedule 15 to, the *Housing and Regeneration Act 2008* on 2 March 2009. This will remedy the incompatibility with the *European Convention on Human Rights* of section 185(4) of the *Housing Act 1996*, (a provision of the homelessness legislation).

I write further to my letter of 20 June 2008 (copy attached). Section 185(4) of the *Housing Act 1996* currently requires local housing authorities in England (and Wales) to disregard household members (including dependant children) who are ineligible for housing assistance when considering whether an eligible housing applicant is homeless or has a priority need for accommodation.

The courts declared that section 185(4) is incompatible with Article 14 taken with Article 8 of the *European Convention on Human Rights* to the extent that it requires a dependant child or pregnant spouse of a British citizen, if both are habitually resident in the UK, to be disregarded when determining whether the British citizen has a priority need for accommodation, when the child or spouse is subject to immigration control. The Government has made provision to remedy the incompatibility, see section 314 of, and Schedule 15 to, the *Housing and Regeneration Act 2008*, (which amend Parts 6 and 7 of the *Housing Act 1996*). This letter is to inform local housing authorities that the Government intends to commence these provisions on 2 March 2009.

A guidance note about the new provisions is attached. Please arrange for any queries about this letter or the guidance to be directed to me.

Yours faithfully,



**Alan Edwards**

## Annex

### **PART I OF SCHEDULE 15 TO THE HOUSING AND REGENERATION ACT 2008 : GUIDANCE FOR LOCAL HOUSING AUTHORITIES IN ENGLAND**

*(This guidance is not statutory guidance)*

#### **INTRODUCTION**

1. The Government intends to commence section 314 of, and Schedule 15 to, the *Housing and Regeneration Act 2008*, on 2 March 2009. Part 1 of Schedule 15 to the *Housing and Regeneration Act 2008* ("the 2008 Act") amends Parts 6 and 7 of the *Housing Act 1996* ("the 1996 Act"). The amendments will apply to all applications for accommodation or assistance in obtaining accommodation, within the meaning of section 183 of the 1996 Act, made on or after 2 March 2009.

#### **PRINCIPAL AMENDMENTS TO PART 7 OF THE 1996 ACT (HOMELESSNESS)**

##### **Section 185 (persons from abroad not eligible for housing assistance)**

2. Prior to Schedule 15 to the *Housing and Regeneration Act 2008* ("the 2008 Act") coming into force, section 185(4) of the *Housing Act 1996* ("the 1996 Act") required local housing authorities in England (and Wales) to disregard household members (including dependant children) who were ineligible for housing assistance when considering whether any eligible housing applicant was homeless or had a priority need for accommodation.

*Eligible applicants who are a person subject to immigration control*

3. Schedule 15 to the 2008 Act amends section 185(4) so that it applies only to eligible applicants who are themselves a *person subject to immigration control*, for example, those granted refugee status, indefinite leave to remain, humanitarian protection or discretionary leave.

4. Consequently, the changes introduced by Schedule 15 to the 2008 Act have no effect on the treatment of housing applicants who are eligible for assistance under Part 7 of the 1996 Act and are a *person subject to immigration control*.

5. When considering an application from a *person subject to immigration control* who is eligible for assistance, local authorities should continue to disregard any dependants or other household members who are ineligible for assistance for any reason, when considering whether the applicant is homeless or has a priority need for accommodation.

*All other eligible applicants (those who are not a person subject to immigration control)*

6. The effect of Schedule 15 to the 2008 Act is that section 185(4) no longer applies to eligible applicants who are not themselves a *person subject to immigration control* – that is, those who are a British citizen, a Commonwealth citizen with a right of abode in the UK, or an EEA national with a right to reside in the UK.

7. This group of eligible applicants will therefore be able to rely on ineligible household members to convey homelessness or priority need, and thereby confer an entitlement to be secured suitable accommodation under section 193(2) of the 1996 Act. Typically, ineligible household members who could confer priority need in this way are likely to be dependant children and pregnant women who have immigration leave with a condition of "no recourse to public funds".

**Section 193** (duty to persons with priority need who are not homeless intentionally)

*A restricted case*

8. Section 193 is amended to make provision for a "restricted case". By section 193(3B), a "restricted case" is a case where the local authority would not be satisfied that the applicant had a priority need for accommodation without having had regard to a "restricted person". A "restricted person" (defined by section 184(7)) means a person who is not eligible for assistance under Part 7 of the 1996 Act and is subject to immigration control and either:

- (i) does not have leave to enter or remain in the UK, or
- (ii) does have leave but it is subject to a condition of no recourse to public funds.

9. In a restricted case, by section 193(7AD) the local authority must, so far as reasonably practical, bring the section 193(2) duty to an end by arranging for an offer of an assured shorthold tenancy to be made to the applicant by a private landlord (a private accommodation offer).

*Identifying restricted persons*

10. Where a local authority considers a household member of an applicant may be a restricted person who does not have leave to enter or remain in the UK, or if there is uncertainty about the immigration status of any household member, it is recommended that the authority contact the UK Border Agency at the Home Office, using the procedures set out in Annex 8 to the *Homelessness Code of Guidance for Local Authorities*, published by the Department for Communities and Local Government, July 2006.

*A private accommodation offer*

11. Section 193 (7AC) defines a "private accommodation offer" as an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant's occupation, and which:

- is made with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority's duty under section 193(2) to an end, and
- the tenancy being offered is a fixed term tenancy (within the meaning of Part 1 of the Housing Act 1988) for a period of at least 12 months

### *Ending the section 193 duty in a restricted case*

12. In a restricted case, by section 193(7AA), the section 192(3) duty ends if the applicant, having been informed of certain matters specified in section 193(7AB), accepts or refuses a private accommodation offer. The matters in section 192(7AB) are:

(a) the possible consequence of refusal of the offer, and

(b) that the applicant has the right to request a review of the suitability of the accommodation.

13. **Section 202(1)(g)** of the 1996 Act provides that applicants have a right to request a review of any decision of a local authority as to the suitability of accommodation offered to him by way of a private accommodation offer (within the meaning of section 193).

14. In a restricted case, where it is not reasonably practical to bring the section 193(2) duty to an end with a private accommodation offer, the local authority may discharge the duty in accordance with the provisions of section 193 that are not specific to a restricted case. In practical terms this may require the provision of "temporary accommodation", that is, accommodation which is not capable of bringing the section 193(2) duty to an end. In such a case, the effect of section 193(7AD) is that the authority should continue to try to bring the duty to an end with a private accommodation offer, so far as reasonably practicable.

### **AMENDMENTS TO PART 6 (ALLOCATION OF HOUSING ACCOMMODATION)**

#### **Section 167**

15. In a restricted case, where it has not been reasonably practical to bring the section 193(2) duty to an end with a private accommodation offer, it would be open to the local authority to bring the section 193(2) duty to end with a final offer of accommodation under Part 6 of the 1996 Act, in accordance with section 193(7), (7F) and (8).

16. However, authorities should note that, in a restricted case, an applicant owed the section 193(2) duty will not be entitled to reasonable preference for an allocation of housing under Part 6 by virtue of section 167(2)(a) or (b). Section 167(2ZA) provides that people are to be disregarded for the purposes of subsection (2) if they would not have fallen within paragraph (a) or (b) of that subsection without the local housing authority having had regard to a restricted person (within the meaning of Part 7).

17. Consequently, if an authority is considering making an offer of Part 6 accommodation to an applicant in a restricted case, they will need to take particular care to ensure that such an allocation would be in accordance with the priorities of their published allocation scheme.

## **OTHER AMENDMENTS TO PART 7 (HOMELESSNESS)**

### **Section 195 (duties in the case of threatened homelessness)**

18. Section 195(4B) provides that a "restricted threatened homelessness case" means a case where the local housing authority would not be satisfied that the applicant had a priority need for accommodation without having had regard to a "restricted person".

19. Section 195(4A) provides that where, in a "restricted threatened homelessness case", the authority secure that accommodation other than the accommodation occupied by the applicant when he made his application is available for occupation by the applicant, the provisions of section 193(3) to (9) apply, with any necessary modifications, to the duty under section 195 as they apply to the duty under section 193 in a restricted case.

### **Section 184 (*inquiry into cases of homelessness or threatened homelessness*)**

20. Section 184(3A) provides that if the authority decide that a duty is owed to the applicant under section 193(2) or 195(2) but would not have done so without having had regard to a restricted person, the notice they are required to give the applicant under section 184(3) (on completing their inquiries) must also:

- (a) inform the applicant that their decision was reached on that basis,
- (b) include the name of the restricted person,
- (c) explain why the person is a restricted person, and
- (d) explain the effect of section 193(7AD) or (as the case may be) section 195(4A) (requirement to bring the duty to an end with a private accommodation offer, so far as reasonably practical).

21. As mentioned above, section 184(7) provides that a "restricted person" means a person who is not eligible for assistance under Part 7 of the 1996 Act and is subject to immigration control and either:

- (i) does not have leave to enter or remain in the UK, or
- (ii) does have leave but it is subject to a condition of no recourse to public funds.