

16 WHAT DOES THE LAW SAY ABOUT HOW HOUSING MUST BE ALLOCATED?

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16.1 What legal requirements are there in relation to allocation policies?

The various legal requirements concerning the allocation of social housing by councils are principally contained in Part 6 of the Housing Act 1996.

Councils are required to have an allocations scheme for determining the priorities and procedure to be followed in allocating social housing. The Council can adopt its own policy, provided the scheme complies with certain statutory requirements and basic legal principles of fairness and rationality. The Council must act in accordance with this policy and the accompanying procedures.

The housing association partners are Industrial and Provident Societies with charitable aims. The charitable aims of each association require them to accommodate people who need assistance with housing and accommodation because of financial hardship (because their financial means are so limited they are unable to obtain suitable accommodation on the open market) or because of needs relating to their age or infirmity.

The allocation scheme must state which officers make each type of decision (not by name but by description). This information is included in the procedures and guidance that accompanies this policy and which helps housing officers administer this policy (see **1.5**).

The allocation scheme must ensure that reasonable preference (a 'head start') is given to the following groups:

- (a) People who are homeless within the meaning of Part 2 of the Housing (Wales) Act 2014.
- (b) People who are owed a duty by a local housing authority under sections 66, 73 or 75 of the 2014 Act.
- (c) People occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions.
- (d) People who need to move on medical or welfare grounds.
- (e) People who need to move to a particular locality in the district, where failure to meet that need would cause hardship.

The registering of an application and a priority award is no guarantee that an allocation will be made. There is no legal right to be allocated long term social housing.

This policy ensures reasonable preference is given to the above groups by adopting priority categories based on the statutory preference groups and by excluding people who do not have a housing need. The legislation allows for, and this policy provides, additional preference (or extra weight) for persons with urgent housing needs and people with a local connection. This policy also takes advantage of the legal power to take into account, when defining priority for re-housing, applicants' financial resources and behaviour by an applicant or a household member that affects their suitability to be a tenant. In addition, we have exercised the power to make provision for excluding applicants or demoting an applicant's priority because of serious unacceptable behaviour. More detail about how applicants are prioritised is given in **section 9**.

The Council must have regard to statutory guidance issued by the Welsh Ministers under section 169 of the Housing Act 1996, both when formulating the allocation scheme, and when making decisions on individual housing applications. The Council will have regard to guidance contained in Part 1 of the *Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness* (Welsh Government, 24 March 2016), and any amendments or subsequent statutory guidance.

The Council must, and has, given its partner registered social landlords an opportunity to comment on this allocation scheme. The Council has also taken reasonable steps to bring the policy to the attention of those likely to be affected by it, including people who were registered under the previous policy and tenants of the partner landlords. Partner organisations were consulted, including advice agencies. The Council has also taken into account its local housing strategy, and its homelessness review and strategy when formulating this policy.

16.2 Equality and diversity

We are committed to providing equality of opportunity to everyone who wants to apply for housing. The partners are satisfied this policy does not discriminate against any person on the grounds of race, gender, sexuality, age, disability, class, appearance, religion or religious beliefs, responsibility for dependents, unrelated criminal activity, HIV or AIDS status, or any other matter that might cause a person to suffer injustice. This policy has been subject to an equality impact assessment. The partner landlords are satisfied this policy complies with their respective equality policies.

We will comply with the statutory requirements relating to equality and the relevant codes of practice. The operation of this policy will be monitored to ensure fair and equitable treatment of customers and legal compliance, including the obligation not to discriminate directly or indirectly on grounds related to the protected characteristics listed at section 4 of the Equality Act 2010.

Where we are aware applicants will experience difficulty understanding communications and that this is likely to impact upon their ability to apply for housing or meet procedural requirements we will record this fact and make appropriate arrangements to ensure future communications can be understood. This may, for example, include arranging for

a third party to receive written correspondence on an applicant's behalf, or phoning an applicant to explain the nature and content of letters sent to them.

The Council's Welsh Language Standards and Welsh Language Policy apply to the maintenance of the Housing Register and those functions administered by the Council. The partner housing associations will comply with the relevant Welsh language policies and/or standards applying to them. We will communicate with customers in their preferred language. All materials and advice are available in Welsh and English.

16.3 Confidentiality and the protection of your personal data

If you apply for social housing you have a right to confidentiality. The fact you have applied for housing cannot be divulged to any other member of the public without your consent.

You will be asked to give permission to allow the Council to ask other people or organisations for information if we need to do this to administer your application. You will be told about your statutory rights and how your personal data will be used.

The partner landlords will share relevant information about housing applicants for the purpose of administering applications, making allocations and managing tenancies. It is therefore a condition of applying for housing that you must be willing to consent to the sharing of your personal data with the partner landlords.

Each partner will ensure they have appropriate policies and arrangements in place to ensure customers' personal data is held securely and lawfully processed.

The partner landlords will agree a protocol governing the sharing of information about housing applicants, which complies with the Wales Accord on the Sharing of Personal Information (WASPI) standard.

16.4 What role do elected members (councillors) have in the allocation process?

The Council's elected members can advise and represent you if you have applied for housing. They have an important role in ensuring this policy is followed and operates in a fair and consistent way. You can contact your local councillor if you want them to make representations or make enquiries on your behalf.

Councillors aren't legally allowed to be involved in an allocation decision if the accommodation or your sole or main residence is located in their ward. It is important that landlords are not placed under (or give an appearance of) undue influence.

Councillors making enquiries on your behalf about the status of your housing application or a related matter must provide your written consent. We may ask for written clarification from you if it's unclear if the consent remains effective. For example, we may ask for evidence to demonstrate the consent is contemporaneous or covers the matter about which information is being sought.

An elected member may ask about the status of a property. We will tell them if it is currently held under a tenancy or 'void' (not subject to a tenancy), and if void if it has been allocated to another applicant. However, to comply with the Data Protection Act

1998 personal information (whether relating to an existing tenant, a prospective tenant or a new tenant) cannot be disclosed.

16.5 What information do I have a legal right to ask for?

The partner landlords provide general advice and information to members of the public about the right to apply for social housing. If you want to apply for housing you will be advised to contact the Council's Housing Customer Services Team (see **2.2**).

This policy and a summary of the allocation scheme is available on the Council's website. You are entitled to be given a free copy of the summary.

You can also ask for a copy of the housing allocation scheme. This is a full copy of all the rules, covering all aspects of the allocation process, including the procedures and guidance we provide for staff. A fee of £10 is payable. A copy of the housing allocation scheme is also available for you to inspect at the Council's Housing Services department at [...].

If you apply for social housing you have a legal right to ask for certain information. You are entitled to ask for and be given:

- (a) such general information as will help you assess:
 - (i) how your application is likely to be treated under this policy, including if you're likely to be treated as a member of a group given priority
 - (ii) if appropriate accommodation is likely to be made available to you, and if so how long it is likely to be before accommodation becomes available for allocation to you
- (b) information about any decision about the facts of your case which has been, or is likely to be, taken into account when considering whether to allocate accommodation
- (c) details of the information you have previously provided about yourself or your family that we have recorded as being relevant to your application.

We will tell you the information at (a)(i) during your housing options interview. This will help you evaluate your chances of being offered social housing. We will provide you the information at (a)(ii), (b) and (c) if you ask for it.

The information at (a)(ii) will be given by telling you about the number of vacancies in a previous period (or periods) for the relevant size and type of property in the letting areas for which you are registered (or for the letting area where you're likely to have to wait the shortest time for accommodation), and by confirming the number of other applicants with greater priority than you (see **4.4** and **4.5**).

If you ask for it we'll provide information about specific aspects of the housing allocation process if we're legally obliged to.

The above rights are in addition to your right to access your personal information under section 7 of the Data Protection Act 1988. Further information about the partner landlords' data protection policies and how to access your personal information are available on each partner's website.

16.6 Displaced agricultural workers

The Rent (Agriculture) Act 1976 requires the Council to use its best endeavours to provide accommodation for qualifying displaced agricultural workers. Section 27 of the 1976 Act requires the Council to be satisfied that:

- (a) the dwelling-house from which the worker is displaced is needed to accommodate another agricultural worker;
- (b) the farmer cannot provide suitable alternative accommodation for the displaced worker; and
- (c) the Council should provide suitable accommodation in the interests of efficient agriculture.

In reaching a decision, the Council may have regard to the advice of the Agricultural Dwelling-House Advisory Committee (ADHAC). The ADHAC's role is to advise on whether the interests of efficient agriculture are served by the re-housing of the worker, and on the applicant's urgency. If the Council is satisfied that the applicant's case is substantiated, they have a duty under section 28 of the 1976 Act to use their best endeavours to provide suitable alternative accommodation for the displaced worker. In assessing the application's priority the Council is required to consider:

- (d) the case's urgency;
- (e) the competing claims on the accommodation; and
- (f) their resources.

This policy aims to ensure the requirements of the 1976 Act are met by affording priority to qualifying agricultural workers (see Band 3, housing need **category 29**).

If it is considered that awarding Band 3 priority would not afford sufficient priority, approval must be sought to award a higher band (see housing need categories **8, 16 and 21**).