

# Allocations Policy

## Choice Based Lettings Scheme

May 2021

Version 5

This booklet is as required by Part 6 of the Housing Act 1996 as amended by the Homelessness Act 2002.

*It should be read in conjunction with the current help guides available on the [Search Moves website](#).*



**Elmbridge**

Borough Council

*... bridging the communities ...*

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## **1 Introduction and Aims of this Policy**

### **1.1 Introduction**

This document sets out the Allocations Policy adopted by Elmbridge Borough Council to be followed in determining access to the Council's Housing Register and the assessment of cases on the Housing Register and in the allocation of homes to which the Council has nomination rights with Registered Providers. This is called social housing.

The overall aim of this policy is to ensure that all social housing to which the Council has nomination rights is allocated fairly and objectively, having regard to any legislative requirements, regulations or Codes of Guidance issued by Department of Communities and Local Government, and the Council's Housing and Homelessness Strategy.

Elmbridge Borough Council is one of three partners in the Search Moves Choice Based Lettings Scheme covering Elmbridge and Spelthorne along with PA Housing (formerly Paragon) and Spelthorne Borough Council. Each Search Moves partner has their own Allocations Policy which determines the qualification criteria to be on their respective Housing or Transfer Register and the criteria taken into account within each band and the priority date for an application.

Tenants of PA Housing will need to register on their transfer register if they wish to move. The Council is satisfied that PA Housing has an Allocations Policy which ensures that tenants with a need to move and falling within a category of reasonable preference are given such preference within their policy. Approximately 25% of all vacancies in PA stock within Elmbridge is made available for transferring tenants.

PA tenants occupying keyworker accommodation or assured shorthold tenancies at market rent (but not probationary tenants) will be able to apply to Elmbridge Borough Council's Housing register and will be eligible provided that they fulfil one of the qualifying criteria set out at 2.4 (i) to (vi) and they are not subject to the disqualification criteria set out in 2.5.

A joint tenant of PA Housing may qualify to be on the Housing Register in cases of relationship breakdown and this will be subject to assessment by officers

### **1.2 Aims of Elmbridge Borough Council Allocations Scheme**

The aims and objectives of the Allocations Policy are:

- To operate a lettings policy based on housing need; which is simple, easy to understand, transparent, open and fair.
- To ensure that every application is dealt with fairly and consistently.
- To give adequate priority to people who fall within the Government's "Reasonable Preference" categories.
- To provide timely information, advice and assistance and make the best use of the powers and resources available to assist people to solve their housing problems in a way more suited to their needs.
- To ensure that applicants have access to information on their prospects of housing.
- To give adequate priority to homeless people whilst maintaining a balance between the needs of the homeless and other applicants in housing need.

- To empower applicants by giving them more opportunity to express choice and preferences about where they want to live whilst having regard to the availability of housing resources and the high demand for housing.
- To give adequate priority to residents in housing need who are in low income employment, and who have served in the Armed Forces, whilst maintaining a balance to all other applicants.
- To make best use of the housing stock within Elmbridge to ensure that sustainable and balanced communities are maintained and best use is made of supported housing for those who are suitable for this type of housing and in the greatest need of the support.

### 1.3 The Legislative Framework

Legislation states that when making an allocation a local authority must comply with the provisions of Part 6 Housing Act 1996 (as amended) and the Localism Act 2011. This states that the policy should be set out to ensure that reasonable preference is given to specific groups of people:

- People who are homeless (within the meaning of Part VII of the Housing Act 1996).
- People who are owed duties under s.190(2), 193(2) or 195(2) of the Housing Act 1996 or similar duties under the Housing Act 1985 or who are occupying accommodation secured by the Council under s.192(3) of the Housing Act 1996.
- People occupying unsanitary or overcrowded housing or living in unsatisfactory housing conditions.
- People who need to move on medical or welfare grounds, including grounds relating to disability.
- People who need to move to a particular locality to avoid hardship to themselves or others.

The Council's Allocations Scheme gives reasonable preference to these categories of people. The policy has also considered the obligation to provide reasonable preference to certain categories of applicants and discretion to grant additional preference. Information on the Reasonable Preference categories and other factors that an allocations scheme may take into account as set out in the legislation is set out in **Appendix 1. The Banding Scheme**

## 2 Who can Join the Register

### 2.1 Basic Eligibility

In certain circumstances, applicants may not be eligible for an allocation of social housing and they will be excluded from the housing register. These are people from abroad or those who are not habitually resident and who are ineligible for social housing. A full list of those who are ineligible for an allocation of social housing is contained in **Appendix 4.**

There have been recent changes to eligibility arising from Brexit. The Allocations Policy will need to reflect these and subsequent changes.

- EEA citizens who newly arrive in the UK from 1<sup>st</sup> Jan 2021 will be subject to UK immigration rules and will require leave to remain or enter the UK and will generally have no resource to public funds and will not be eligible for an allocation of social housing unless covered by exemptions in Eligibility Rules or until eligible and granted indefinite leave to remain. See Appendix 4A

- EEA citizens resident in the UK before 31<sup>st</sup> Dec 2020 may apply for UK Immigration status and recourse to public funds through the EU settlement scheme ( EUSS ) normally during the transition period to June 2021. There is also provision in some circumstances for people of Northern Ireland and Stateless Persons. See Appendix 4B

An applicant may complete Part One of the online application form and be advised they are unlikely to be eligible to be on the register but may continue to complete a full online application to be notified in writing of the reasons why this decision has been made and of the statutory right to review or appeal. See Section 7 for further information on the review procedure.

### **2.3 Qualification Criteria**

Under this policy housing will only be allocated to a 'qualifying' person. Housing will not be allocated to a disqualified person. The criteria for qualification or disqualification are set out below.

However, in exceptional circumstances the Housing Options Manager or Head of Service will consider whether to dis-apply the qualification / disqualification criteria.

An applicant may complete Part One of the online application form and be advised that they are unlikely to be eligible to be on the register. They may however continue to complete a full online application. Any applicant who is excluded from the housing register on completion of the full application because they do not meet the qualification criteria will be notified in writing of the reasons why the decision has been made. There is a statutory right to review or appeal this decision. See Section 7 for further information on the review procedure.

### **2.4 Positive Qualification Criteria**

In order to qualify to be included on the housing register applicants should have capacity i.e. they must have mental capacity to understand the implications and responsibilities of being a tenant. If they do not an application may be made to the Court of Protection which may then be considered by the social housing provider whose decision will be final.

Applicants must fulfil the following criteria.

#### **(i) Age**

An applicant must be at least 16 years old. As an applicant under 18 cannot legally hold an independent tenancy a guarantor will normally be required before any 16 / 17 year old is offered a property.

#### **(ii) Local Connection**

Applicants who meet the requirements set out below with regard to local connection will qualify to be included on the housing register.

Current Residence - Applicants who currently live within the borough of Elmbridge and have done so for at least the last three years. Or,

Previous Residence - Applicants who have previous continuous residence within the borough of Elmbridge amounting to five or more continuous years in Elmbridge within the last 10 years (only residence as an adult will be taken into account). Or,

Family - Applicants who have immediate family (mother / father / brother / sister / adult son / adult daughter) who are currently living in the borough of Elmbridge and have done so for at least five years or more. Or,

Work - Applicants who have a permanent job in the borough of Elmbridge (at least 18 hrs. a week and an existing contract of 12 months or more). Zero hours contracts will be considered on a case by case basis but must demonstrate they have worked more than 18 hours a week on average over at least the last 12 months.

Self employed applicants who can demonstrate a high and consistent level of work in Elmbridge may also qualify as having a local connection through employment.

Special Circumstances - Applicants who have a connection with the borough of Elmbridge because of any special circumstances, such as the need to be near specialist medical or support services which are only available in a particular district.

Supported Accommodation - Where an applicant is placed in supported accommodation outside of the borough of Elmbridge and the Council is notified of the placement out of Borough and the placement is with the Council's agreement, a local connection maybe retained on the basis of residence provided the criteria for residence as featured above was met on the date of placement

### **(iii) Homeless Households**

A household who has been accepted as homeless by Elmbridge Borough Council under the main housing duty S193 of the Housing Act 1996 (and has not been referred to another authority on 'local connection' grounds) and duty has yet to be discharged, will be deemed to be a qualifying person with regard to local connection within this policy. Those to whom a relief duty has been accepted by Elmbridge and who are not being referred to another local authority will also be deemed to be a qualifying person.

### **(iv) Homeless Households under a duty from another Local Authority**

Any household living in accommodation provided under any aspect of the Homelessness Legislation (Housing Act 1996, Part 7) by any Council other than by Elmbridge Borough Council may be deemed to be a qualifying person.

### **(v) Special Arrangements for Armed Forces**

Under this policy we will not disqualify the following applicants on the grounds that they do not have a local connection with the authority's district:

- (a) Members of the regular Armed Forces and former personnel of the regular Armed Forces, where the application is made within five years of discharge.
- (b) Bereaved spouses and civil partners of members of the regular Armed Forces leaving Services Family Accommodation following the death of their spouse or partner (where the death is wholly or partly attributable to their service).
- (c) Serving or former members of the Reserve Forces who need to move because of a serious injury, medical condition or disability sustained as a result of their service.



- (d) Divorced or separated spouses or civil partners of Service personnel who need to move out of accommodation provided by the Ministry of Defence will also not be disqualified

**(vi) Relevant social housing tenants - Need to Move for the purpose of work**

Under this policy we will not disqualify relevant social housing applicants on the grounds that they do not have a local connection with the authority's district subject to the following conditions.

They must be a secure or introductory tenant in England or assured tenant of a Registered Provider in England. They must also have a reasonable preference under s.166(3) Housing Act 1996 because of a need to move to the district and where failure to meet that need would cause hardship to themselves or to others

They must have a need to move because they work in the authority's district or have been offered work in the authority's district and the authority is satisfied there is a genuine intention of taking up the offer of work.

This section will not apply if the need to move is associated with work or the offer of work which is short term or marginal in nature, ancillary to work in another district or voluntary work.

**(vii) Care Leavers**

- Care Leavers with Children's Services in Surrey will have a local connection with Elmbridge and with all Surrey Housing Authorities where aged 18 to 21 years old, in housing need, suitable for independent living and have recourse to public funds
- Care leavers with Children's Services in Surrey who are over 21 years of age to 25 years of age will also normally qualify to be on the Elmbridge Housing Register where still requesting support, provided they have recourse to public funds.

**(viii) Households who have a reasonable preference**

Persons who do not meet the qualification criteria set out above but who fall within the statutory reasonable preference categories groups as assessed by the Council including those for whom the Prevention duty is accepted will be deemed to be eligible to join the Housing Register and will normally be placed in band D other than in exceptional of circumstances.

**2.5 Disqualification Criteria**

If an applicant has a reasonable preference at 2.4 (iii) to (vii) above the disqualification criteria at (iii) to (v) below are not normally applied. For other applicants the following categories of persons will be not included on the housing register.

**(i) Applicants with Unacceptable Behaviour**

This applies where the applicant or any member of the household who will move with them has engaged in evidenced anti-social behaviour or criminal activity and where the Council assesses that an applicant is unsuitable to be a tenant due to this behaviour/activity. All applications will dealt with on a case by case basis

Applicants that have been excluded or removed in the past can make a new application if they can demonstrate they have improved their behaviour. When considering a new application, the severity and persistence of any previous anti-social behaviour (ASB) will

be taken into account and the length of time that has elapsed since the previous incidents / anti-social behaviour. If the Council agree inclusion on the Housing Register this does not mean the behaviour will be disregarded by Landlords who may refuse a nomination on this basis but should discuss this with the Council before refusing any nomination. The applicant would have a right to review the decision of the Landlord if they refuse the nomination.

All relevant information, such as health problems, people who are dependent on the applicant and other issues will be considered before a decision on whether to exclude is made. The interests of the applicant and their household will be considered balanced against the interests of the people who live and work in any of the partner organisations housing areas.

#### **(ii) Applicants who have pursued Fraudulent Applications and Tenancy Fraud**

Where an applicant or a member of the household is discovered to have knowingly or recklessly made false statements or knowingly withheld information in respect of his / her application for housing, consideration will be given to excluding the applicant from the housing register. The period of exclusion will be at the discretion of the Head of Service, Housing Options Manager or equivalent and may last for a period of up to five years.

Consideration will also be given to pursuing a criminal prosecution under s.171 of the Housing Act 1996 (or other similar legislation that may be applicable).

If an applicant or member of the household is discovered to have previously committed tenancy fraud they will normally be disqualified for a period of up to five years.

#### **(iii) Applicants Who Own a Property**

Applicants or a member of their household who own or part own a property, either in the UK or abroad will not be eligible

#### **(iv) Applicants with income above an income threshold**

If the joint household income is greater than £60,000 a year gross they will not be eligible. Lower income thresholds may apply for those eligible for one and two bedroom accommodation. The income threshold will be kept under review on at least an annual basis and may be adjusted to reflect the size of accommodation needed and market conditions.

#### **(v) Applicants with savings over a saving threshold**

If the total household savings are greater than £30,000 an applicant will not be eligible. The savings threshold will be kept under review on at least an annual basis and may be adjusted.

#### **(vi) Social Housing Tenants without a need to move**

Where an applicant is a social housing tenant who does not fall within a reasonable preference category and/ or is already suitably housed as assessed by the Council as such - they will not qualify to join the Housing Register unless there are extenuating circumstances as agreed by the Housing Options Manager or Head of Housing Services. This includes social housing tenants on Introductory Tenancies

## **2.6 Joint Applications**

Joint applications may be made by:

- Husband and wife.
- Civil partnership couples.
- Partners.
- Parent and child over 18 years of age.
- Siblings.

By making a joint application this does not necessarily mean an offer of a joint tenancy will be made. Local arrangements may apply and this will be subject to the discretion of the landlord offering the property.

## **2.7 Applicant Consent, Declaration and tackling fraud**

The Council has a duty to protect the public resources it administers. Detailed enquiries about applicants will be made to guard against misrepresentation and fraud. This maybe at the point of application but will also be made in all cases where it appears and applicant may have sufficient priority for an offer of accommodation or at any other time during the application remaining live. Checks may also be made cross referencing information with other databases held by the Council and other public sector information through data matching.

Each applicant will be expected to complete the application form and sign the declaration at the back of the form (electronic signature) confirming that the details they have provided are correct. Where an application is made online the applicant will be required to confirm the details provided are correct. Checks will be made as part of the verification process that the details are correct but the onus is on the applicant to give the correct information on their application.

Legal action can be taken against any applicant or a member of their household who provides false information when applying for housing (including a fine of up to £5,000). Under Section 172 of the Housing Act 1996 it is an offence to:

- Deliberately provide false information. Or,
- Deliberately withhold information that should have been given.

Possession proceedings can be instigated by a Landlord if a tenancy was obtained by giving false information.

Applicants will also be expected to sign to give authorisation to contact other agencies, e.g., social services, current or former landlords, to obtain and share relevant information about them. This includes all the partner organisations in the Search Moves Scheme.

## **2.8 Change of Circumstances**

Applicants who move home or whose circumstances change after they have been accepted onto the housing register, (e.g. someone joining or leaving their household, or a change in income or employment etc) should immediately contact the Council and notify them of the change and in most cases an applicant will have to complete a further housing application form.

If the change of circumstances affects an applicant's banding or priority date they will be informed in writing of the outcome of the reassessment. See Section 2.11 regarding priority date.

It is important that the Council has the most up to date information to assess an application and to ensure this is based upon the current circumstances case. Failure to notify the Council of a change may result in an application being suspended from bidding until a reassessment is made as to eligibility and the appropriate banding on current correct information.

## **2.9 Review of Applications and cancellation of applications**

All applications will be periodically reviewed and applicants may be removed from the housing register if their circumstances have changed or they fail to respond to correspondence.

An application may also be cancelled in other circumstances, including but not limited to an acceptance of social housing accommodation through the Housing Register, an applicant being found to be ineligible or disqualified after being registered, or following a request by an applicant to cancel an application.

## **2.10 Banding**

All applications are assessed and awarded a Band to reflect the level of need of the applicant and local connection. There are four bands:

- **Band A** – Emergency / Priority need to move.
- **Band B** – Urgent need to move.
- **Band C** – Identified need to move.
- **Band D** – Other need.

A detailed list of the factors, taken into account when awarding these Bands, is set out in **Appendix 1**.

All **Band A** cases will be reviewed on a six monthly basis.

## **2.11 Priority Date (Effective Date of Application)**

All applications are given a priority date, which is usually the date they join the register (for Band C and D) and this used to prioritise applicants where applicants are in the same Band.

If a change of circumstances affects an applicant's banding they will be informed in writing of the outcome of the reassessment. Applicants will retain their original registration date as their priority date if their banding changes except if they are placed in **Band A or B**.

For those in Bands A & B the applicant's priority date will be the date their application was moved/went on to **Band A or B** (see **Appendix 1** for information on the Banding Scheme).

If an application has been cancelled, for any reason, any subsequent application will have a new priority date based on the date of the new application or if assessed as a Band A or B the date the application was moved to either Band A or B.

## **2.12 Cumulative Need**

If an applicant (or one or more members of their household who will move with them, as applicable) has more than one identified housing need (cumulative need) within the priority band in which they have been placed, they may in exceptional circumstances be placed in a higher band to recognise their cumulative need.

## **2.13 Applications from Social Housing Tenants – Landlord has a Transfer Register covering Elmbridge**

Where a social housing tenant is deemed to be a qualifying person to be on the Housing Register as they have a reasonable preference or agreed as exceptional circumstances they will have their housing need assessed but may be awarded less preference where their Landlord also has a transfer scheme to assist tenants who need to move.

In addition the expectation is that where a tenant is to be allocated a property to which the Council has nomination rights, then the Council will normally be offered the vacated property in addition to existing nomination arrangements.

## **2.14 Applications from Social Housing Tenants – Landlord does not have a Transfer Register**

Where a social housing tenant is deemed to be a qualifying person to be on the Housing Register as they have a reasonable preference or agreed as exceptional circumstances but they do not have access to a transfer scheme through their landlord that covers the Elmbridge area, they will be assessed as a standard Homeseeker who is not a social housing tenant.

In addition the expectation is that where a tenant is to be allocated a property to which the Council has nomination rights, then the Council will normally be offered the vacated property in addition to existing nomination arrangements.

Lettings of properties that the Council has nomination rights to, to social housing tenants from the Council's Housing Register will be subject to monitoring so they do not dominate lettings overall over and above applicants who are not social housing tenants.

## **2.15 Applicants Who Have Deliberately Worsened Their Housing Circumstances**

If there is evidence that an applicant has deliberately made their housing circumstances worse to get more priority on the housing register their application may be placed in **Band D**.

## **2.16 Medical or Welfare Needs**

Additional priority may be awarded on medical or welfare grounds if the information received indicates a move will benefit the health and wellbeing of the applicant and / or their household following consideration by an officer in some cases with advice of a specialist medical adviser. The medical assessment will reflect the household as a whole and one banding will be awarded per application which will take into account the factors for the applicant and if relevant, any individual household members.

Where an applicant requires a live-in carer and this has been agreed by the Council, the carer will be treated as a member of the household and the bedroom requirement will be assessed accordingly.

Medical awards are as follows:

**Band A** – where the applicant is assessed as having an “emergency” medical or welfare need to move because the applicant’s current property is unsuitable.

This award should be for the most extreme cases where the need to move is seen as an emergency and it is highly probable the applicant’s life might be at risk or there is a risk of severe injury to an applicant or a member of the household included on the application if they continue to occupy the accommodation.

**Band B** – where the applicant is assessed as having an “urgent” medical or welfare need to move because the applicant’s current property is unsuitable

**Band C** – where there is an “identified” medical or welfare need to move because the applicant’s current property is unsuitable

If there is a relevant change in the applicant’s circumstances, e.g. a change of address, a new application and a medical assessment may need to be completed.

Applicants will be notified in writing of the decision about a medical or welfare award. They will be advised they have the right to appeal against the decision. (See Section 7 for further information on the appeals procedure).

## 2.17 Assessing Overcrowding / Bedroom Shortage

An applicant’s level of overcrowding will be carefully assessed in determining their band.

If an applicant is assessed as being statutorily overcrowded as defined in Part 10 of the Housing Act 1985 they will be placed in **Band A**. This will normally be assessed by the department using Environmental Health legislation.

If an applicant is assessed as overcrowded and requires two or more additional bedrooms they will be placed in **Band B**. If an applicant requires one additional bedroom they will be placed in **Band C**.

For the purposes of assessing their bedroom shortage (or bedroom need) a separate bedroom is allocated to each of the following:

- The main applicant and partner.
- Two children of either sex where they are both under 10 years of age.
- Two children of same sex where there is an age gap of less than 10 years.
- Two children of same sex where there is more than a 10 year age gap but where both are under 16.
- An overnight carer. ( where in principle there is an exemption or DHP would be awarded in principle if applying for HB ) This is to ensure that any property offered would be affordable.

It should be noted that:

- A child will be considered to have a ‘need’ from birth.
- A single adult within the household (who is not the applicant) would only be entitled to a separate room if there is no other person they can share with within the below table. However an adult would not be expected to share with their own child.

For clarification purposes this is further set out as follows:

| Household  | Bedroom Need         |
|--|----------------------|
| Adult person – single  | Bedsit / One Bedroom |
| Adult couple   | One bedroom          |
| An overnight carer   | One bedroom          |
| Two persons / children of the same sex with less than a ten year age gap                           | One bedroom          |
| Two persons / children of different sex both under 10 years of age                                 | One bedroom          |
| Two persons / children of the same sex with more than a ten year age gap where both are under 16   | One bedroom          |
| Two persons / children of different sex, of whom at least one is over 10 years of age              | Two bedrooms         |
| Two persons of the same sex with more than a ten year age gap and where at least one is 16 or over | Two bedrooms         |

In certain circumstances the size of the bedrooms in an applicant's property and the relationship between those sharing a bedroom will be taken into account when carrying out an overcrowding / bedroom shortage assessment.

Houses with two or more bedrooms may be advertised with preference to households with a dependent child under 16. However, this preference would only apply where applicants were in the same band so a **Band C** applicant with dependent children would not be given preference over an applicant with adult children in **Band B** for example.

Overcrowding priority will not be given if the applicant has caused the situation by moving in others who are not part of their household. E.g. an applicant with a child is living in two-bedroom accommodation and they choose to share a bedroom in order to let the second bedroom to a tenant / acquaintance / extended family member.

In exceptional circumstances, such as a medical need, additional bedroom requirements may be considered.

Children who are away from home, for example at University, will still be treated as part of the household as long as there is a clear intention to return.

## 2.18 Assessment of Cases Where Children are Part of an Application

In assessing whether there is a bedroom shortage for the purposes of awarding a Band and in deciding the size of property an applicant is eligible for an assessment will be made on the facts of each case. In reaching a decision regard will be had to what is considered to be the child's **prime residence** i.e. where they stay overnight, where there is financial dependency including who claims child benefit, who the child is dependent upon for daily care as well as social factors such as where the child goes to school.

## 2.19 Assessment of Cases Where Children Stay with More Than One Household

There may be informal agreements between separated parents to share the care of their children and they may stay with each parent on a regular basis. However only in the most exceptional circumstances would a child/children be considered as needing accommodation with more than one parent for the purposes of applications for social housing.

In considering shared custody arrangements the housing authority will take into account any court directives. However, it should be noted that a family court order which refers to residence and accommodation arrangements is not binding upon the housing authority with regard to provision of accommodation. It is for the housing authority to determine whether priority should be given in respect of shared custody.

## **2.20 Assessment of Homeless Applicants to whom the Full Duty to Secure Accommodation is Owed.**

### **(a) The Council's Legal Duty**

All Local Authorities have a legal duty under Part VII of the Housing Act 1996 (as amended by the Homelessness Act 2002) to make sure that homeless applicants owed the "full" duty under s.193(2) are provided with suitable accommodation. There is no requirement that this be permanent. Other duties in relation to accommodation or advice / assistance depend on their priority need. **Appendix 1** shows the priority of homeless households within the Banding Scheme.

Homeless households are one of the categories who must be given a reasonable preference and the Search Moves allocations policy meets this requirement as outlined below:

### **(b) Priority Banding**

Homeless applicants to whom the full duty is owed will normally be placed in **Band B**.

### **(c) Bidding**

An accepted homeless applicant will be expected to bid for all suitable accommodation, Where a bid results in an offer of accommodation, and this property is deemed to be suitable by the local authority, this will normally be deemed to be a final offer of accommodation which will end the homelessness duty under the Housing Act 1996 Part 7. This is subject to right of review.

The local authority also reserves the right to place bids on behalf of an accepted homeless household and may do this routinely but only where the Council considers the property to be suitable to meet the households needs.

The Council may also make Direct lets to households accepted as statutorily homeless and may do this routinely to manage homelessness and but only where the Council consider the property to be suitable to meet the households needs and to discharge its duty to the household under homelessness legislation.

## **2.21 Armed Forces Personnel**

It is recognised that those who have served in the Armed Forces have made significant sacrifices for their country and have often moved many times occupying Armed Forces accommodation that is tied to their service. It is intended that such households should not face discrimination under this policy and should receive special consideration for housing. As part of this commitment it should be noted that under this policy, the local connection requirement does not apply to Armed Forces personnel (as set out in 2.4 (iv)). Regular Armed Forces personnel are therefore given equal treatment under this policy regardless of the area they have been living in.

In addition under this policy certain Armed Forces households will also be awarded special priority as follows:

**Band B Armed Forces Priority** – this will be awarded to serving members of the regular Armed Forces (and their families):



- Whose service is coming to an end within 12 months of their application or has come to an end within the preceding 12 months. AND,
- They are losing / have recently lost their MoD accommodation. AND,
- There is a specific need to move to the borough relating to employment or family issues. AND,
- There are insufficient funds to pursue other options.

(NB. This priority will not be awarded in situations where service is being ended / has ended due to issues relating to misconduct).

Similarly the same **Band B** Armed Forces priority will be awarded to recently bereaved spouses (or civil partners) of members of the regular Armed Forces:

- Where the bereavement is within 12 months. AND,
- They are losing / have recently lost their MoD accommodation. AND, ➤ There is a specific need to move to the borough. AND, ➤ There are insufficient funds to pursue other options.

**Band C Armed Forces Priority** – this will be awarded to serving members of the regular Armed Forces (and their families):

- Whose service is coming to an end within 12 months or has come to an end within the preceding 12 months. AND,
- They are losing their accommodation / have recently lost their MoD accommodation. AND,
- There are insufficient funds to pursue other options.

(NB. This priority will not be awarded in situations where service is being / has ended due to issues relating to misconduct).

Similarly, the same **Band C** Armed Forces priority will also be awarded to recently bereaved spouses (or civil partners) of the regular armed forces:

- Where the bereavement is within 12 months. AND,
- They are losing / have recently lost their MoD accommodation. AND, ➤ There are insufficient fund to pursue other options.

In all other situations, households will be banded according to the banding rules taking into account their current accommodation and any medical or welfare issues. Some Armed Forces households who are losing their MoD accommodation may also need to be dealt with under the Homelessness provisions and may be awarded a priority band relating to their homelessness status.

### 3 Advertising and Letting of Vacant Properties

#### 3.1 Introduction

Properties that become vacant and available for letting to a case nominated by the Council from its Register will be advertised through the Search Moves website [www.searchmoves.org.uk](http://www.searchmoves.org.uk) ( unless identified as a direct let ). Other Search Moves Partners will also advertise properties for applicants on their registers. Homeseekers on the Elmbridge Housing Register can only place bids on PA property which are open to Homeseekers advertised with the H icon or on properties advertised on the Elmbridge

Borough Council TAB on the Search Moves website. Properties available to applicants on the Council's Register will be clearly identified.

Property adverts will clearly set out any restrictions that apply to who may bid as well as any preferential advertising arrangements that may apply. This may be shown as an icon on the advert or text within the advert.

### **3.2 Restrictions**

Property adverts will set out the size and type of the vacant property and only applicants who have been assessed as needing that size or type may apply / bid. For example a one bedroom property would be restricted to single or couples only, a sheltered housing flat would be restricted to elderly applicants only; a property with adaptations suitable for a disabled occupant may be restricted to applicants requiring such adaptations.

Depending on which partner is advertising - some property adverts will also restrict bidding to tenants only, tenants of specific landlords only or to Home seekers only. Where this is done, this is intended to ensure that the needs of tenants needing to move to alternative accommodation can be balanced alongside meeting the needs of new applicants and those who are not currently tenants of social landlords.

### **3.3 Preferential Advertising**

Property adverts will also set out if there are to be any factors, other than band, that may be taken into account in prioritising the applicants who have bid.

Practical details of the scheme are contained in the applicant User Guide available on the Search Moves Website.

Houses with two or more bedrooms may be advertised with preference to households with a dependent child under 16. However this preference would only apply where applicants were in the same band so a **Band C** applicant with dependent children would not be given preference over an applicant with adult children in **Band B** for example.

### **3.4 Preferential Advertising for Working Households**

The Council wishes to give some preference to working households in the allocation of social housing homes. To this end, approximately 10% of all properties advertised by the Council will be set aside specifically for working households only. Households will still then be further prioritised by band. This may be different for properties where a 'local lettings plan or local lettings policy' applies where higher than 10% may be applied. Working households are able to apply / bid for all other vacancies.

The overall % of lettings which are allocated to working households will be monitored and if necessary targets will be set (or the 10% quota amended) to ensure balanced allocations and that non-working households are not significantly disadvantaged. This will also be kept under review so as to ensure that reasonable preference categories in bands A to B who are unable to work are not disproportionately affected.

The definition of work for this purpose is a permanent job or temporary contract of 12 months or more and of 18 hours or more per week.

### **3.5 Local Letting Policies**

Some properties (usually newly built homes) will be advertised with the statement "local lettings policy applies". In order to encourage balanced communities when a whole

development of newly built homes is being let at the same time it will be necessary, from time to time for the Council to agree with the Registered Provider specific criteria to be applied to applicants to be offered homes designed to address local management issues (such as the employment status or age groups of children). The policy will be representative of the needs of the community and promote community cohesion.

Local Lettings Policies will normally apply to any new build scheme or letting of homes following conversion where there are 10 or more units to be let at the same time.

Local Lettings Policies may be considered or in existence for the following reasons:

- Planning Restrictions.
- Section 106 agreements.
- The proportion of homeless households on estates.
- Properties may be unsuitable for young children.
- Restriction on the family size on estates to reduce child density.
- Specific housing management reasons. E.g. anti-social behaviour
- People who are in employment.
- Changes to eligibility criteria for difficult to let schemes e.g. lowering the age of applicants to sheltered developments.

All adverts will specify if a local lettings plan is relevant and if so they will be available on the Council or Registered Providers website.

### **3.6 When Properties Will Not Be Advertised – Allocation by Direct Offers**

Some properties that become vacant will not be advertised and made available for bidding on the SEARCH Moves website. Instead the vacancy will offered directly to an applicant. Information will be published each year on the number of direct lets made in this way. The circumstances under which direct offers may be made include:

#### **(a) Surrey Mobility Scheme**

Where a request for assistance is made through the Surrey Domestic Violence mobility scheme for the re-housing of victims of violence in accordance with the current procedure agreed by the Surrey District Housing Authorities.

#### **(b) National Witness Mobility Service**

In certain circumstances a Search Moves partner organisation may need to offer accommodation to an applicant who is giving evidence in a criminal or civil case and they are suffering from intimidation or harassment which means they cannot remain in their current home. These applicants will be given **Band A** priority but if it is unlikely they will receive an offer within a reasonable timeframe, the case may be considered as a general exception to the Banding Scheme and, if appropriate, offers of accommodation will be made before other applicants.

#### **(c) MAPPA / PPO Clients**

These lets will be managed in liaison with MAPPA and relevant agencies. Each case will be assessed on its individual circumstances.

#### **(d) Exceptional Housing Need**

In certain circumstances a case may be recognised as having an exceptional housing need. If it is deemed that an applicant is suffering severe hardship on welfare or medical grounds and it is unlikely they will receive an offer of accommodation within a reasonable time frame, at the discretion of the Housing Options Manager or equivalent (job titles may differ between partner organisations), they may be considered for a direct offer of accommodation.

### **(e) Exceptional Circumstances / Homeless Households**

Direct offers may be made to homeless households (or others in exceptional circumstances) in order to ensure that the council can manage its homelessness duties and ensure that adequate temporary accommodation is available for newly homeless applicants. The Council may need to limit choice to homeless households (or others in exceptional circumstances) by arranging direct offers to be made to them or the Council may place bids on behalf of applicants. Such applicants will be offered a property that is considered suitable for an applicant's needs (as opposed to meeting the applicant's preference for their preferred areas and type of accommodation) to discharge the homeless duty. This will also include where a household has a need for a specific type of housing or has not actively bid for accommodation.

If the direct offer is to be the final offer to discharge the homeless duty the applicant will be notified of this in writing.

### **(f) Bypass – review upheld**

Where an applicant has been unfairly 'bypassed' by the Council or relevant Landlord when shortlisting applicants for a property potentially after review. This will not be an offer of the property they were bypassed for but an alternative property that is deemed to be suitable based on the households needs.

## **4 Applicant Bidding**

### **4.1 Bidding Process**

The bidding process is explained in the User Guide. Applicants need to place bids in order to be considered for an allocation. Bidding is, effectively, making an expression of interest a property that is advertised. Adverts are normally open for bidding for a period of 5 days, but this can be sometimes be shorter or longer. Individual property adverts can begin and end on any day of the week, so applicants need to check the website regularly to view all available properties unless auto bidding has been set up for their application.

### **4.2 Expressions of Interest/placing bids**

Applicants can express an interest in up to 3 properties open to advert at any one time. If an applicant's bid has been selected by the Council or relevant Landlord as being someone they may be considering offering the property to, then their application will be marked as 'set to offer'. Any other bids placed by them are discounted and they cannot then be considered for any alternative property until the outcome of that property is known.

Applicants who refuse two or more offers or do not attend two viewings without good and evidenced reason in any one year may have their application demoted to band D or their application may be suspended so they cannot place bids. Applicants in Band D who refuse a second offer or viewing unreasonably will normally be suspended unless there are exceptional circumstances.

### **4.3 Size Of Property Applicants Can Bid For**

Applicants can only bid for properties that are of the correct size for their household. This is to ensure that best use is made of the stock and minimises under occupation or overcrowding of homes. Section 2.15 sets out the way that bedroom need is assessed and the size of property applicants are eligible for.

Due to the shortage of larger properties, applicants who are eligible for four and five bedroom properties may also be considered for larger three bedroom properties, for example, a three bedroom property with two separate living areas. Where properties have two living rooms ('parlour' houses) it will be expected that one living room is used as a bedroom as long as this is suitable in relation to the property layout and wider household composition.

## **5 Shortlisting, Offering And Letting Of Properties**

### **5.1 Shortlisting**

Once the deadline has passed for bidding for a property, the Council will consider those who have bid and will select applicants for viewing and offering. This is also called shortlisting. As a general rule, applicants who have bid for a property will be prioritised in band order (and within each band by date order) subject to any other preferences or restrictions set out in the advert. PA Housing carry out shortlisting for all their independent living accommodation advertised through Search Moves which applicants on the Elmbridge Housing Register are able to place bids on as Homeseekers. The property will be set to be offered to the applicant who has the highest priority band and priority date on the housing register and meets the property criteria. A nomination will then be completed and forwarded to the Landlord of the property for their consideration.

### **5.2 Bypassing of Applicants**

In some situations, a property will not be offered to the highest banded applicant who has bid on a property. Shortlisted applicants can be bypassed for a number of reasons and these are set out below:

#### **(a) Applicant is Ineligible or Unsuitable for the Property**

Applicants may be bypassed where their household does not meet the criteria for the property set out in the advert e.g. due to age restriction requirement, due to the household size not matching the property size, due to ages of household members or because any property adaptations in the vacant property are either not required or not matched to the household who has bid.

#### **(b) Applicant is Not Ready to Move and / or to Live Independently**

Applicants may be bypassed where, even though they have bid for a property; they themselves decide they are not ready to move. Applicants may also be bypassed if they are considered not to be ready to move or to live independently due to social or medical reasons. In determining this, regard will be had to any support available.

#### **(c) Change in Applicant's Circumstances**

Applicants may be bypassed where there has been a change in their circumstances which makes them unsuitable or ineligible e.g. change in medical requirements, change in financial situation

#### **(d) History of Anti-Social Behaviour**

Applicants may be bypassed where they or their family members have a recent history of significant antisocial behaviour which would make them unsuitable for the property.

#### **(e) Rent Arrears / Debt**

Applicants may be bypassed where they have current or recoverable former rent arrears with any landlord or other debts with the Council which are not being satisfactory repaid.

Statutory homeless applicants will generally not be bypassed for this reason but individual circumstances will be assessed both by the landlord who owns or manages the property and by the Council.

**(f) Community Safety Concerns**

Applicants may be bypassed where there are community safety concerns / risks which relate to the applicant being placed in a particular property or area.

**(g) Fraudulent Application Has Been Made**

An applicant will be bypassed where there are reasonable grounds for believing that false information has been given.

**(h) Circumstances Not Confirmed**

Applicants may be bypassed where the required verification process has not been completed.

**(i) No Response from Applicant**

Applicants may be bypassed where they have been contacted for information relating to their application and / or a potential offer of accommodation and the applicant has not responded to that contact within a reasonable period of time.

**(j) Local Letting Plans**

Applicants may be bypassed where they do not match specific criteria set out in Local Lettings Plans. Local Lettings plans will be adopted for specific areas / schemes to ensure communities are as balanced as possible. Properties subject to local letting plans will be clearly advertised and priority will be given to those that meet the criteria set out within the plan.

**(k) Sensitive Letting**

In exceptional circumstances, an applicant may be bypassed for a property where they are not considered suitable due to housing management reasons. For example an applicant who has a history of drug dependency may be bypassed for a property in an area where the landlord is aware there are a number of other residents with drug problems.

**(l) Property Not Suitable For Adaptation**

Applicants requiring property adaptations to meet their mobility needs may need to be bypassed if the property they have bid for cannot be adapted to meet their needs.

**(m) Property Advert Withdrawn**

Some properties advertised for letting may need to be withdrawn for example because it is urgently needed for a direct letting or being advertised before the previous tenant had left and they have rescinded their notice. This could result in those who have bid on the property needing to be treated as having been 'bypassed'. There will be no right of appeal if an applicant has placed a bid on a property that is then taken as withdrawn from bidding.

**(n) Special Requirement of Landlord**

Some housing association landlords have very specific applicant criteria built into their allocation policies or charitable rules relating to ages of applicants or area of residence for example. These requirements will usually be set out in the adverts but applicants who bid may need to bypass if the requirements are not met.

**(o) Applicant Has Alternative Property Offer Outstanding**

An applicant will be bypassed if there is an outstanding offer of accommodation available to them which has not been resolved.

### **5.3 Appeals Against Bypassing**

Where an applicant believes they have been bypassed for a vacancy that they have bid for where they should not have been bypassed (in other words where they otherwise believe they were the highest placed applicant but have not been offered the property for one of the above reasons) then they can appeal against this decision to the organisation that made the bypass decision. This applies even if the property is classed as one where the local authority has the nomination right. (See Section 7 for further information on the review procedure).

A successful appeal will not result in the applicant being made an offer of that vacancy, owing to the short timescales within which properties have to be let. It will, however, enable the applicant to bid in the future and not be bypassed unless there is a change of circumstances.

### **5.4 Council Nomination Rights**

The Council retains 'nomination rights' to a proportion of vacancies owned by Housing Associations including PA Housing Group. Where any Registered Provider/ Social Landlord undertakes the selection of an applicant for a property subject to nomination rights they will consult the council over the bypassing of any applicant where required to do so by the Council. A review / appeal process must be followed in the event of a disagreement between the two organisations.

### **5.5 Viewings And Offers**

Once the bids have been received and selection of applicants finalised (excluding any bypassed cases) viewings will be arranged by the relevant Landlord.

If the household with the highest banding and priority date does not want to accept the property, it will be offered to the household with the next highest priority subject to the application of any bypass reasons as set out in this policy.

### **5.6 Introductory Tenancies**

Offers of Registered Provider / Social Landlord accommodation will usually be for an introductory tenancy for the first twelve months.

## **6 Assistance For Vulnerable Applicants**

It is recognised that some households may need additional help with the Search Moves Scheme.

Examples may include but are not exclusive to:

- Care Leavers.
- People with a physical or mental disability.
- Domestic violence and serious harassment victims.
- People with Learning disabilities.
- Offenders or ex-offenders.
- Older applicants.
- People with drug or alcohol issues.
- Rough Sleepers.

- Teenage parents.
- People with low literacy skills.
- Applicants whose first language is not English.

The Council may place bids for applicants in some circumstances as assisted bidding or through Automatic Bidding where normally with the applicants consent bids are placed automatically on the Search Moves properties available for letting. This is based upon the authority of the applicant except in some circumstances in dealing with accepted statutorily homeless applicants.

### **6.1 Identification of applicants Who Require Additional Assistance**

The Council will undertake a range of actions to identify applicants who may be vulnerable or otherwise may require additional assistance in placing bids including:

- Ask applicants or their advocate to indicate whether they consider themselves in need of support by completing the relevant documentation or speaking to one of the staff in the partner organisations.
- Close liaison and information sharing with statutory and voluntary agencies.
- Ask all staff completing interviews and visits to identify potential vulnerable applicants so additional assistance can be given.
- Ensure any medical information submitted is evaluated and any support needs are identified.
- Close monitoring by the partners as to who is bidding or not and the suitability of the offers being bid for, so proactive action can be taken to assist.

### **6.2 Assistance to Vulnerable Applicants**

The Council will assist vulnerable applicants in a number of ways including:

- Online translation of Search Moves website content
- Translation of relevant documentation on request.
- Advertisements will be labelled with clear information and symbols to ensure simplicity.
- A link to an online video to introduce the Search Scheme and how to use it will be available on the website.
- Applicants will be able to bid for properties by telephone, text or online.
- Extensive communication will take place with agencies and special needs referral panels that represent and advocate on behalf of vulnerable clients.
- A periodic review of all aspects and procedures of the Allocations Policy will take place to ensure access and engagement for all vulnerable clients.

## **7 Right of Review of Decisions Relating to Applications and Allocations**

Applicants have the right to request a review of the following decisions:

- A decision that an applicant is ineligible for a housing allocation and therefore unable to be included on the housing register.
- A decision that the application is not a qualifying person within the terms of the qualification / disqualification criteria set out in Section 2.5.
- Any decision relating to the facts of their case which have been taken into account in considering whether to make an allocation to them e.g. a decision about banding or priority date of an application.
- A decision to bypass an application\*.



(\*Applicants will not be advised their case has been bypassed but can establish this by specific enquiry if they have bid for a property but find out in the lettings outcome list that the property was offered to someone with a lower banding or later registration than the applicants within the same banding. Appeals against bypassing are to be submitted to the organisation which made the bypass decision.)

The applicant's review request should be made in writing within 21 days of the original decision being made. Details of why they are appealing against the decision and any information they wish to be considered should be provided.

An independent senior officer who was not involved in the original decision will consider the appeal and they will decide whether to overturn or support the original decision. The applicant will be informed in writing of the decision within 21 days of receipt of the review request. The reply will contain the decision made, the reasons for the decision and the facts taken into account when making the decision.

If an applicant is still not satisfied with the decision that has been made they have a right to make a formal complaint

## **7.1 Complaints**

Applicants can use the complaints procedure of the Council or relevant Landlord in respect of an allocation as appropriate to the matter of complaint if they believe:

- Something has been done badly or wrong.
- If something has not been done that should have been done.
- If the service has not been delivered in accordance with policies and procedures.
- If they have been treated in an impolite or discourteous manner.

All applicants who make a complaint to the Council will be treated fairly and objectively. A written reply to any complaint received will be sent out within the timescales set out in within the Council's complaints policy.

If the applicant has gone through the Council or relevant Landlords' complaint procedure and remains dissatisfied, they can write to the Housing Ombudsman (housing association tenants) or the Local Government Ombudsman or apply for a judicial review (council tenants and other applicants).

## **8 Monitoring And Review of This Policy**

This policy and the operation of it will be reviewed regularly by the Council. Complaints and feedback from applicants will be considered as part of this review alongside reports on lettings that have taken place.

## **9 Personal Information and Data Protection**

### **9.1 Applicants Accessing Own Personal Data**

Applicants on the Housing Register have the right to see any entry relating to them that is held on computerised systems. Applicants can also obtain copies of their paper file subject to any relevant charges. Where there is third party information held on file, the Council will seek their permission before disclosing documents to the applicant.

Personal information provided to the Council as part of an application for housing will be processed in accordance with the Data Protection Act 1998. Information provided will be used to process the application and may be passed to third parties involved in assessing the application and offering accommodation.

## **10 Requirement to Consult Registered Social Landlords On The Allocations Scheme**

### **10.1 Before adopting an Allocations Scheme for housing, or altering its existing scheme, Elmbridge Borough Council is required to:**

- Send a copy of the draft scheme, or a new proposal, to all Registered Social Landlords within which the Council has Nomination Agreements. AND,
- Ensure that all such Registered Social Landlords have the opportunity to comment on the proposals.

## **11 Equal Opportunities**

The Council will comply with the requirements of the Equality Act 2010 and all related legislation.

The Council is fully committed to equality in housing allocations and will oppose any form of discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

## **Appendix 1**

### **The Banding Scheme**

#### **Emergency / Priority (Band A)**

Applicants will fall into this banding where:

- An applicant is assessed as having an “emergency” medical or welfare need to move, including grounds relating to a disability, and this is seriously affected by their current housing
- An applicant’s life would be in immediate danger if they continued to live in their current accommodation and this has been substantiated
- An applicant needs to move because their home in Elmbridge is to be demolished or redeveloped within the next six months and, if the applicants are social housing tenants, the demolition and / or redevelopment of the site has been approved by the relevant Head of Housing (or equivalent)
- An applicant is a social housing tenant in Elmbridge and is residing in a property with major adaptations in Elmbridge and the adaptations are no longer required.
- An applicant is occupying a property that is subject to a compulsory purchase order and there is a statutory duty upon Elmbridge Borough Council to secure accommodation for them
- An applicant is assessed as statutorily overcrowded within the meaning of Part 10 of the Housing Act 1985 (but only where the applicant has not worsened their housing situation without good reason).
- An applicant has been nominated via the National Witness Mobility Service
- An applicant is an eligible social housing tenant in Elmbridge and is under occupying a high demand property based on demand at the point of the award (and the nature of the under occupation is not related to any special letting criteria for that unit or part of a wider lettings plans for that scheme / development) AND the applicant is moving to a lower demand / smaller property with Elmbridge receiving a resultant void

### **Urgent Need to Move (Band B)**

Applicants will fall into this banding where:

- An applicant is assessed as having an “urgent” medical or welfare need to move, including grounds relating to a disability, and this is seriously affected by their current housing
- An applicant needs to move because of harassment or threat of violence but this is not judged as serious as **Band A**
- An applicant has been accepted as homeless and the full duty to secure accommodation has been accepted by Elmbridge but not discharged
- An applicant is overcrowded and requires two or more additional bedrooms
- An applicant is an eligible social housing tenant in Elmbridge other than PA Housing and is under occupying a lower demand property at the point of the award and the nature of the under occupation is not related to any special letting criteria for that unit or part of a wider lettings plans for that scheme / development.
- An applicant’s accommodation lacks basic facilities, i.e. kitchen, bathroom or toilet and this cannot be provided by the landlord / owner within a reasonable timescale
- An applicant’s accommodation has been assessed under the Housing Health & Safety Rating System as not reasonably suitable for occupation and cannot be rectified by the owner / landlord at a reasonable cost or timescale
- An applicant is in supported housing and has been assessed as no longer requiring the support and has a local connection with Elmbridge and is suitable for independent living and the accommodation is needed by other applicants
- An applicant is pregnant or has at least one dependent child and is living in accommodation where the facilities are shared with others and they are lacking at least one bedroom
- An applicant needs to move because their home in the Borough of Elmbridge is to be demolished or redeveloped within the next twelve months and, if the applicants are social housing tenants, the demolition and / or redevelopment of the site has been approved by the Head of Housing Services
- Care Leavers with Children’s Services in Surrey will have a local connection with Elmbridge and with all Surrey Housing Authorities where aged 18 to 21 years old, in housing need, suitable for independent living and have recourse to public funds
- Care leavers with Children’s Services in Surrey who are over 21 years of age to 25 years of age where still requesting support and where occupying insecure accommodation
- An applicant is unintentionally threatened with homelessness and has a priority need and local connection to Elmbridge (within the meaning of Part VII of the Housing Act 1996, as amended by the Homelessness Act 2002) and Homelessness Reduction Act 2017. A Prevention Duty has been accepted and this has been validated and acted upon by the Housing Options Team and there are no other prevention options available.

- Relief duty accepted under the Homelessness Reduction Act 2017, main housing duty will be owed unintentionally homeless and the applicant is in priority need and has a local connection to Elmbridge
- Armed Forces Urgent Need - this will be awarded to serving members of the regular Armed Forces (and their families):
  - Whose service is coming to an end within 12 months of their application or has come to an end within the preceding 12 months. AND,
  - They are losing / have recently lost their MoD accommodation. AND,
  - There is a specific need to move to the borough relating to employment or family issues. AND,
  - There are insufficient funds to pursue other options.

(NB. This priority will not be awarded in situations where service is being ended / has ended due to issues relating to misconduct).

Similarly the same **Band B** Armed Forces priority will be awarded to recently bereaved spouses (or civil partners) of members of the regular Armed Forces:

- Where the bereavement is within 12 months. AND,
  - They are losing / have recently lost their MoD accommodation. AND,
  - There is a specific need to move to the Borough. AND,
  - There are insufficient funds to pursue other options.
- A tenant of a social housing landlord who would otherwise be awarded Band A but awarded band B as their Landlord has a transfer register.

## Identified Housing Need (Band C)

The following applicants will fall into this banding:

- An applicant is assessed as having an “identified” medical or welfare need to move, including grounds relating to a disability, and this is seriously affected by their current housing
- An applicant has been assessed as homeless but is not in priority need within the meaning of Part VII of the Housing Act 1996, as amended by the Homelessness Act 2002
- An applicant has been assessed as intentionally homeless but is in priority need within the meaning of Part VII of the Housing Act 1996, as amended by the Homelessness Act 2002 (and there has been no relevant change in their circumstances to warrant a reassessment)
- Households considered to be homeless and it has been determined are owed a homeless relief duty by Elmbridge and are not subject to referral to another local authority.
- An applicant is overcrowded and requires one additional bedroom
- Singles who are 35 years of age and over and are without children, and who share facilities with others
- Couples, who are without children, and who share facilities with others
- Families with dependent children who share facilities with others
- Other household compositions as agreed by the Housing Options Manager or Team Leader who share facilities with others
- An applicant has some other compelling need to live in the borough of Elmbridge which, if not met, will cause hardship
- **Band C** Armed Forces Priority - this will be awarded to serving members of the regular Armed Forces (and their families):
  - Whose service is coming to an end within 12 months or is due to come to an end within the preceding 12 months. AND,
  - They are losing their accommodation / have recently lost their MoD accommodation. AND,
  - There are insufficient funds to pursue other options.

(NB. This priority will not be awarded in situations where service is being / has ended due to issues relating to misconduct).

Similarly the same **Band C** Armed Forces priority will also be awarded to recently bereaved spouses (or civil partners) of members of the regular Armed Forces:

- Where the bereavement is within 12 months. AND,
- They are losing / have recently lost their MoD accommodation. AND,
- There are insufficient funds to pursue other options.

- A tenant of a social housing landlord who would otherwise be awarded Band B but awarded band C as their Landlord has a transfer register.
- Care leavers with Children's Services in Surrey who are over 21 years of age to 25 years of age who have recourse to public funds
- A person who has been confirmed as a rough sleeper by the Council and has a local connection with Elmbridge and is currently rough sleeping and has recourse to public funds

## Other Housing Need (Band D)

The following applicants will fall into this banding:

- An applicant does not fit into any of the categories in **Band A, B, or C**
- An applicant has deliberately worsened their housing circumstances within the last three years to get more priority on the housing register
- An applicant has given up accommodation within the last three years that was suitable for their needs and by doing so, has knowingly worsened their housing circumstances
- An applicant can afford to buy or part-buy a property in the private sector that is suitable for their needs
- Can afford to rent a privately rented property without recourse to means tested benefits
- An applicant has an asset that could be used to obtain accommodation suitable for their needs
- An applicant owned a property that was suitable for their current needs but transferred or sold the property within the last three years when it was reasonable for them to continue living there
- Any applicant who has bid on and been offered two or more properties within a 12- month period and refused for no good and evidenced reason unless suspended. (this band will apply for a period of 12 months.)
- Any applicant where there is a reasonable preference need identified and assessed by the Council but the applicant does not meet the positive qualification criteria including those to whom the Council has accepted a prevention duty as determined by the Homelessness Prevention and Advice team.
- Any applicant who has been invited to view two or more properties but does not attend the viewing without good and evidenced reason (unless suspended). This band will normally apply for a period of 12 months
- Any household living in temporary accommodation which has been provided by another Council other than Elmbridge under the Homelessness Legislation (Housing Act 1996 Part 7 )
- A tenant of a social housing landlord who would otherwise be awarded Band C but awarded band D as their landlord has a transfer register.



## Appendix 2

### CONTACT INFORMATION



Social and Supported Housing Team  
Elmbridge Borough Council  
Civic Centre  
High Street  
Esher  
Surrey KT10 9SD  
Email: [socialhousing@elmbridge.gov.uk](mailto:socialhousing@elmbridge.gov.uk)  
Web: [www.elmbridge.gov.uk/housing](http://www.elmbridge.gov.uk/housing)  
Tel: 01372 474 590

## **Appendix 3**

### **Officer Roles and Responsibilities**

This appendix explains which officers are responsible for taking decisions under the Allocations policy.

Whenever an officer role is named, the decision can be taken by a more senior officer in their management line.

### **Eligibility**

The housing officer has the authority to decide whether an applicant is eligible to apply to join the housing register in line with the criteria contained in the Allocations Policy. Any review will be carried out by a more senior officer

### **Assessing Priority**

The housing officer is responsible for assessing an applicant's housing need in line with the Allocations policy and placing them in a specific banding. Some applications may be banded automatically by computer.

### **Special or exceptional circumstances**

A senior officer within the Housing Options Unit has the authority to put an applicant in a higher banding where their needs, after being assessed, are considered to warrant it.

### **Removing an Application from the Housing Register**

A senior officer within the Housing Options Unit will decide whether it is appropriate to remove an applicant from the register in line with the Allocations Policy.

### **Reviews**

If an applicant submits an appeal requesting a review of a decision made, a senior officer who was not involved in the original decision will make the decision / consider the request.

### **Direct Lets**

#### **a) Supported Housing**

The Housing Options Manager or Team Leader or Senior Officer has the authority to make a direct let to an applicant that requires supported accommodation where supported housing for a particular scheme is allocated through the housing register and this arrangement exists with the supported housing provider.

#### **b) Reciprocals**

The Housing Options Manager has the authority to accept a reciprocal subject to consultation with the intended housing provider.

c) **Decants / Major Works**

The Housing Options Manager has the authority to make a direct let

d) **Homeless Applicants**

The Housing Options Manager or Team Leader has the authority to select a homeless applicant and authorise a nomination for a direct let but may give a Senior / named officer express permission to do this.

e) **Exceptional Housing Need**

The Housing Options Manager or equivalent has the authority to:

- Agree a priority offer of accommodation if there is evidence of immediate and exceptional need.
- Agree to offer an applicant rented accommodation if their income is of a level where they can afford to part-buy, but they cannot secure a mortgage and there is evidence of immediate and exceptional need.

f) **Significant Adaptations**

A senior officer within the Housing Options Unit can make this decision where the applicant has a requirement for significant adaptations and a suitable property matching these requirements becomes available.

## Appendix 4

### Eligibility and qualification (from Section 3 of Allocation of Accommodation, Code of Guidance, DCLG 2012)

3.1 Housing authorities must consider all applications made in accordance with the procedural requirements of the authority's allocation scheme (s.166 (3)). In considering applications, authorities must ascertain:

- If an applicant is eligible for an allocation of accommodation,

#### *Eligibility*

3.2 An applicant may be ineligible for an allocation of accommodation under s.160ZA (2) or (4). Authorities are advised to consider applicants' eligibility at the time of the initial application and again when considering making an allocation to them, particularly where a substantial amount of time has elapsed since the original application.

#### *Joint Tenancies*

3.3 Under s.160ZA (1) (b), a housing authority must not grant a joint tenancy to two or more people if any one of them is a person from abroad who is ineligible. However, where two or more people apply and one of them is eligible, the authority may grant a tenancy to the person who is eligible. In addition, while ineligible family members must not be granted a tenancy, they may be taken into account in determining the size of accommodation which is to be allocated.

#### *Existing Tenants*

3.4 The eligibility provisions do not apply to applicants who are already secure or introductory tenants or assured tenants of a Private Registered Provider. Most transferring tenants fall outside the scope of the allocation legislation (s.159(4A)); while those who are considered to have reasonable preference for an allocation are specifically exempted from the eligibility provisions by virtue of s.160ZA(5).

#### *Persons from abroad*

3.5 A person may not be allocated accommodation under Part 6 if he or she is a person from abroad who is ineligible for an allocation under s.160ZA of the 1996 Act. There are two categories for the purposes of s.160ZA:

- (i) *a person subject to immigration control* - such a person is not eligible for an allocation of accommodation unless he or she comes within a class prescribed in regulations made by the Secretary of State (s.160ZA (2)), and 11 5 European Economic Area nationals are nationals of any EU member state (except the UK), and nationals of Iceland, Norway, Liechtenstein and Switzerland.
- (ii) *a person from abroad other than a person subject to immigration control* - regulations may provide for other descriptions of persons from abroad who, although not subject to immigration control, are to be treated as ineligible for an allocation of accommodation (s.160ZA(4)).

3.6 The regulations setting out which classes of persons from abroad are eligible or ineligible for an allocation are the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006 No.1294) ('the Eligibility Regulations').

#### *Persons subject to immigration control*

3.7 The term 'person subject to immigration control' is defined in s.13(2) of the Asylum and Immigration Act 1996 as a person who under the Immigration Act 1971 requires leave to enter or remain in the United Kingdom (whether or not such leave has been given).

**3.8** The following categories of persons do not require leave to enter or remain in the UK:

- (i) British Citizens
- (ii) Certain Commonwealth citizens with a right of abode in the UK
- (iii) Irish citizens, who are not subject to immigration control in the UK because the Republic of Ireland forms part of the Common Travel Area (see paragraph 3.11 (iii) below) with the UK which allows free movement.
- (iv) EEA nationals, and their family members, who have a right to reside in the UK that derives from EU law. Whether an EEA national (or family member) has a particular right to reside in the UK (or another Member State) will depend on the circumstances, particularly their economic status (e.g. whether he or she is a worker, self-employed, a student, or economically inactive)
- (v) Persons who are exempt from immigration control under the Immigration Acts, including diplomats and their family members based in the UK, and some military personnel.

**3.9** Any person who does not fall within one of the four categories in paragraph 3.11 will be a person subject to immigration control and will be ineligible for an allocation of accommodation unless they fall within a class of persons prescribed by regulation 3 of the Eligibility Regulations (see further below).

**3.10** If there is any uncertainty about an applicant's immigration status, housing authorities are recommended to contact the UK Border Agency (UKBA). UKBA provides a service to housing authorities to confirm the immigration status of an applicant from abroad (non asylum seekers) by email at LA@UKBA.gsi.gov.uk. Where UKBA indicates 12 6 Inserted by the Allocation of Housing and Homelessness (Miscellaneous Provisions) (England) Regulations 2006 the applicant may be an asylum seeker, enquiries of their status can be made to the Immigration Enquiry Bureau helpline on 0870 606 7766.

**3.11** Regulation 3 of the Eligibility Regulations provides that the following classes of persons subject to immigration control are eligible for an allocation of accommodation:

- i) *A person granted refugee status: granted 5 years' limited leave to remain in the UK*
- ii) *A person granted exceptional leave to enter or remain in the UK without condition that they and any dependants should make no recourse to public funds: granted for a limited period where there are compelling humanitarian or compassionate circumstances for allowing them to stay. However, if leave is granted on condition that the applicant and any dependants are not a charge on public funds, the applicant will not be eligible for an allocation of accommodation. Exceptional leave to remain (granted at the Secretary of State's discretion outside the Immigration Rules) now takes the form of 'discretionary leave'.*
- iii) *a person with current leave to enter or remain in the UK with no condition or limitation, and who is habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland (the Common Travel Area): such a person will have indefinite leave to enter (ILE) or remain (ILR) and is regarded as having settled status. However, where ILE or ILR status is granted as a result of an undertaking that a sponsor will be responsible for the applicant's maintenance and accommodation, the person must have been resident in the Common Travel Area for five years since the date of entry - or the date of the sponsorship undertaking, whichever is later - to be eligible. Where all sponsors have died within the first five years, the applicant will be eligible for an allocation of accommodation.*

iv) *A person who has humanitarian protection granted under the Immigration Rules 6:*

- a form of leave granted to persons who do not qualify for refugee status but would face a real risk of suffering serious harm if returned to their state of origin (see paragraphs 339C-344C of the Immigration Rules (HC 395))

### **Other persons from abroad who may be ineligible for an allocation**

**3.12** By virtue of regulation 4 of the Eligibility Regulations, a person who is not subject to immigration control and who falls within one of the following descriptions is to be treated as a person from abroad who is ineligible for an allocation of accommodation:

- (i) A person who is not habitually resident in the Common Travel Area (subject to certain exceptions - see paragraph 3.14 below)
- (ii) a person whose only right to reside in the UK is derived from his status as a jobseeker (or his status as the family member of a jobseeker). 'Jobseeker' has 13 7 As of 1 May 2011, nationals of the 8 Eastern European countries (A8 nationals) which acceded to the EU in 2004 are no longer required to register with the Workers Registration Scheme in order to work in the UK. Regulation 4(2) (c) of the Eligibility Regulations no longer applies to applications from A8 workers as of that date. Rather applications from A8 workers should be considered on the same basis as those from other EU workers under regulation 4(2)(a).the same meaning as in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 (SI 2006 / 1003) ('the EEA Regulations').
- (iii) A person whose only right to reside in the UK is an initial right to reside for a period not exceeding three months under regulation 13 of the EEA Regulations
- (iv) A person whose only right to reside in the Common Travel Area is a right equivalent to one of the rights mentioned in (ii) or (iii) above and which is derived from EU Treaty rights

**3.13** See annex 2 for guidance on rights to reside in the UK derived from EU law.

**3.14** The following persons from abroad are eligible for an allocation of accommodation even if they are not habitually resident in the Common Travel Area:

- a) An EEA national who is in the UK as a worker (which has the same meaning as in regulation 6(1) of the EEA Regulations)
- b) An EEA national who is in the UK as a self-employed person (which has the same meaning as in regulation 6(1) of the EEA Regulations)
- c) A person who is treated as a worker for the purposes of regulation 6(1) of the EEA Regulations, pursuant to the Accession (Immigration and Worker Authorisation) Regulations 2006 (i.e. nationals of Bulgaria and Romania required to be authorised by the Home Office to work until they have accrued 12 months uninterrupted authorised work)
- d) A person who is a family member of a person referred to in (a) to (c) above
- e) A person with a right to reside permanently in the UK by virtue of regulation 15(c), (d) or (e) of the EEA Regulations
- f) A person who left Montserrat after 1 November 1995 because of the effect of volcanic activity there

- g) A person who is in the UK as a result of his deportation, expulsion or other removal by compulsion of law from another country to the UK. This could include EEA nationals, if the person was settled in the UK and exercising EU Treaty rights prior to deportation from the third country. Where deportation occurs, most countries will signal this in the person's passport.
- 3.15** A person who is no longer working or no longer in self-employment will retain his or her status as a worker or self-employed person in certain circumstances. However, accession state workers requiring authorisation will generally only be treated as a worker when they are actually working as authorised and will not retain 'worker' status between jobs until they have accrued 12 months continuous authorised employment. 'Family member' does not include a person who is an extended family member who is treated as a family member by virtue of regulation 7(3) of the EEA Regulations (see 14 annexes 2 and 3 for further guidance).
- 3.16** The term 'habitual residence' is intended to convey a degree of permanence in the person's residence in the Common Travel Area; it implies an association between the individual and the place of residence and relies substantially on fact.
- 3.17** Applicants who have been resident in the Common Travel Area continuously during the two year period prior to their housing application are likely to be habitually resident (periods of temporary absence, e.g. visits abroad for holidays or to visit relatives may be disregarded). Where two years' continuous residency has not been established, housing authorities will need to conduct further enquiries to determine whether the applicant is habitually resident (see annex 4 for further guidance).

## **Amendment of the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 - into effect from 30<sup>th</sup> October 2017**

2.—(1) The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006(1) are amended as follows.

(2) In regulation 2(1) (interpretation) at the appropriate place insert—

““the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom;”.

(3) In regulation 3 (persons subject to immigration control who are eligible for an allocation of housing accommodation)—

(a) in paragraph (d) at the end omit “and”;

(b) in paragraph (e)—

(i) at the beginning insert “Class E -”;

(ii) at the end for “.” substitute “; and”; and

(c) after paragraph (e) insert—

“(f) Class F – a person who has limited leave to enter or remain in the United Kingdom on family or private life grounds under Article 8 of the Human Rights Convention, such leave granted—

(i) under paragraph 276BE(1), paragraph 276DG or Appendix FM of the Immigration Rules(2), and

(ii) who is not subject to a condition requiring that person to maintain and accommodate himself, and any person dependent upon him, without recourse to public funds.”.

(4) In regulation 5 (persons subject to immigration control who are eligible for housing assistance)—

(a) omit paragraph (1)(e);

(b) in paragraph (1)(f) at the end for “.” substitute “; and”;

(c) after paragraph (1)(f) insert—

“(g) Class G – a person who has limited leave to enter or remain in the United Kingdom on family or private life grounds under Article 8 of the Human Rights Convention, such leave granted—

(i) under paragraph 276BE(1), paragraph 276DG or Appendix FM of the Immigration Rules, and

(ii) who is not subject to a condition requiring that person to maintain and accommodate himself, and any person dependent upon him, without recourse to public funds.”; and

(d) omit paragraphs (2) and (3).

**(1)**



S.I. 2006/1294, amended by S.I. 2006/2007, 2006/2527, 2006/3340, 2013/1467, 2014/435, 2016/965 and S1 2018/730.

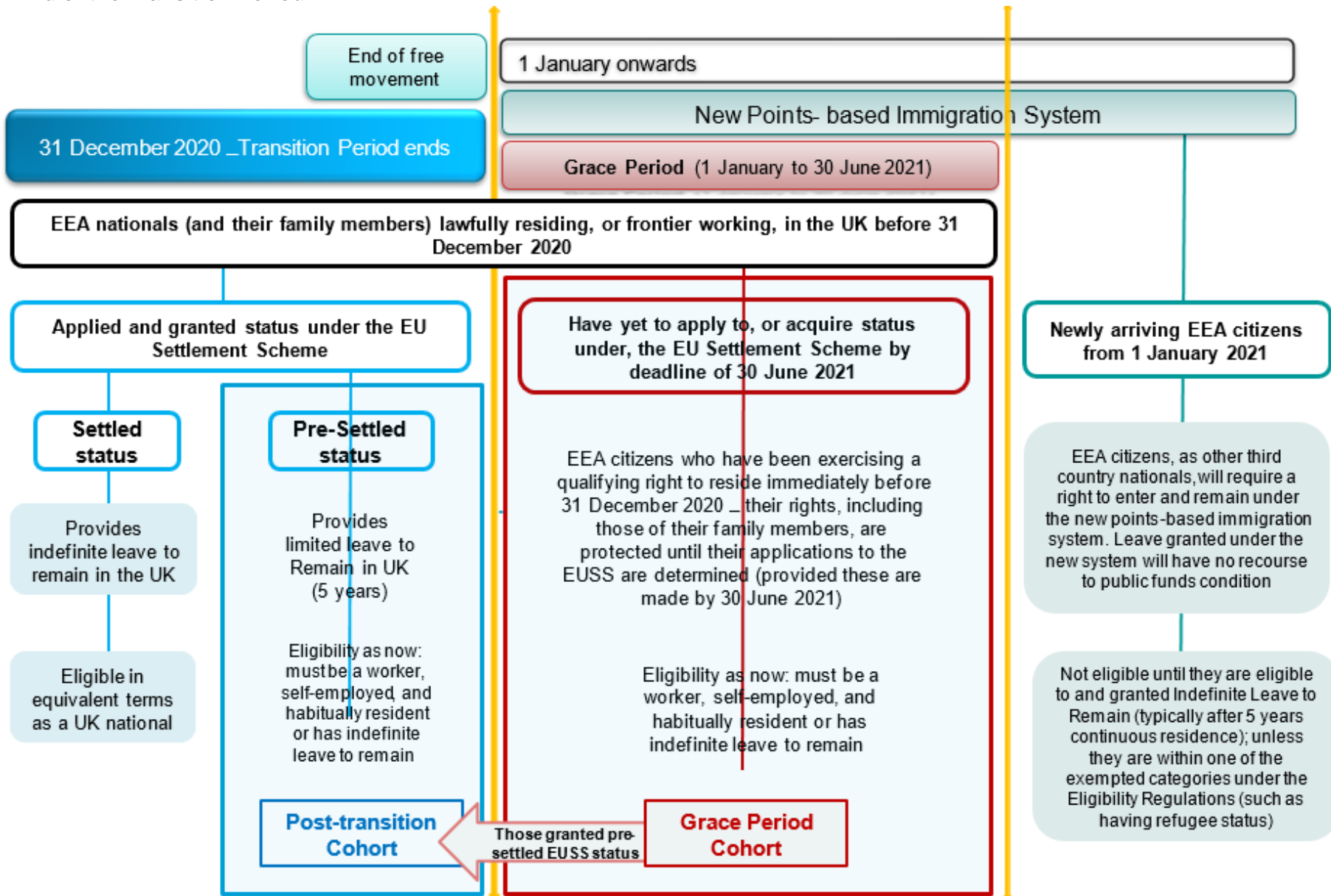
**(2)**

Rules laid down as mentioned in section 3(2) of the Immigration Act 1971.

### EU EXIT – EEA CITIZENS RIGHT TO ACCESS SOCIAL HOUSING AND HOMELESSNESS ASSISTANCE.

- **The UK left the EU on 31 January 2020** and entered a **transition period**. This ends at **11pm on 31 December 2020**
- The Immigration and Social Security Coordination (EU Withdrawal) Act 2020 achieved Royal Assent on 11 November. The Act will:
  - Repeal the retained EU law relating to freedom movement in the UK – this will end on 31 December 2020
  - Introduce the new points-based immigration system from 1 January 2021
- The **Withdrawal Agreements** protect the rights of EEA citizens and their family members living, and frontier working, in the UK before 31 December 2020.
- The Government has legislated to deliver on these protections so resident EEA citizens, and their family members, can continue to live, work, study, and access benefits and services in the UK on the same basis as they do now, after the end of the transition period and for the duration of the grace period (1 January to 30 June 2021).
- EEA citizens will have to apply to the EU Settlement Scheme before the deadline of 30 June 2021 to remain lawfully in the UK.

# End of the Transition Period



## Changes to MHCLG's housing legislation - access to social housing and homelessness assistance

- Amendments to the Housing Act 1996 and The Allocation of Housing and Homelessness (Eligibility) (England) Regulations (SI 2006/1294), in order to:
  - Ensure EEA citizens, and their family members, covered by the Withdrawal Agreement continue to be treated as 'not subject to immigration control' under the Eligibility Rules
  - Include provisions to protect the rights of EEA nationals, and their family members, within the post-transition cohort and the grace period cohort
  - Make provisions for frontier workers (i.e. working but not residing in the UK) and their family members – to be treated as 'not subject to immigration control' under the Eligibility Rules
  - Clarify that the current restrictions applicable to EEA (i.e. they are ineligible if they are job seeking or in the initial 3 months of residence in the UK) continue to apply as now, regardless of whether they have pre-settled status or a family permit issued under the EUSS
  - Remove direct references to EU law – so EEA citizens do no longer have a right to reside derived directly from EU law.

## Homelessness Assistance – restricted cases

Amendments have also been made to Part VII of the Housing Act, under section 185 (4) and (5)

- Section 185 currently allows EEA citizens who have domestic leave to remain in the UK to rely on an ineligible dependent within their household to make their case for housing assistance.
- 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
- For example, this could apply where an applicant who is an eligible Serbian citizen on the basis of having asylum leave to remain in the UK would not have priority need if they applied alone but does have priority need because of their dependent children who are 'restricted persons'.
- From 1 January 2021 whilst savings will be made to preserve the rights of existing EEA citizens who resided in the UK and had domestic leave prior to 31 December 2020, future EEA citizens will be brought in line with third country nationals.
- This means that in future, even where an EEA citizen is granted domestic leave which would make them eligible for assistance, they cannot rely on a restricted person in their household to make their case for priority need/housing assistance.

## Changes to Home Office legislation- access to support and assistance under the *Nationality, Immigration and Asylum Act 2002*

Amendments have also been made to paragraphs 3, 5 and 8 of Schedule 3 of the Nationality, Immigration and Asylum Act 2002, to reflect the ending of free movement and directly effective Treaty rights

- Schedule 3 currently outlines persons not eligible for support and assistance under wider social welfare legislation, which includes section 1 of the Localism Act 2011 (local authority's General Power of Competence/GPOC), specifying EEA nationals as a specific class of persons who are ineligible for support, unless failure to assist would breach their EU Treaty or human rights.
- The specific reference to EEA Nationals as a class of ineligible persons has been removed.
- This means that from 11pm on 31 December, local authorities:
  - **may** use their GPOC to provide very limited assistance, shelter and support to those EEA citizens who are here lawfully but not eligible for statutory homelessness assistance in circumstances where they deem such support is necessary.
  - **may not** use GPOC to provide support to those EEA citizens who are here unlawfully, **except** where failure to do so would lead to breach of human rights.
- Further guidance on the Nationality, Immigration and Asylum Act 2002 can be found on GOV.UK as published by the Home Office.

## Appendix 4b

### ELIGIBILITY FOR AN ALLOCATION OF SOCIAL HOUSING UNDER PART 6 AND HOMELESSNESS ASSISTANCE UNDER PART 7 OF THE HOUSING ACT 1996:

#### FAMILY MEMBERS OF A PERSON OF NORTHERN IRELAND WITH LEAVE UNDER THE EU SETTLEMENT SCHEME AND PERSONS WITH STATELESS LEAVE

***This letter notifies local authorities that The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2020 (SI 2020/667) will come into force on 24 August 2020.***

#### *Family members of a person of Northern Ireland*

The *New Decade, New Approach* deal to restore the devolved government in Northern Ireland was published on 9 January 2020. As part of the deal, it includes a commitment by the UK Government to change the rules governing how the people of Northern Ireland bring their family members to the UK. This change will mean that eligible family members of the people of Northern Ireland can apply for immigration status on broadly the same terms as family members of Irish citizens in the UK. This change demonstrates the UK Government's commitment to the Belfast (Good Friday) Agreement, which affords the people of Northern Ireland the right to hold both British and Irish citizenship, and to identify as Irish or British or both. These changes reflect the unique history and circumstances of Northern Ireland.

To implement the Government's commitment, [the Home Office introduced changes to Appendix EU to the immigration rules](#) on 14 May 2020 (to come into force on 24 August 2020). Under these changes, eligible family members of a person of Northern Ireland will be able to apply for immigration status under the EU Settlement Scheme (EUSS), on broadly the same terms as family members of an Irish citizen. Where a person is a family member of 'a relevant person of Northern Ireland', as defined in the Appendix EU to the Immigration Rules, and that family member has been resident in the UK, and a family member, for at least five years, the family member will be granted settled status (indefinite leave to remain) under the EU Settlement Scheme. Where a person is a family member of a person of Northern Ireland and that family member has been resident in the UK, or a family member, for less than five years, the family member will generally be granted pre-settled status (limited leave to remain) under the EU Settlement Scheme, but will be able to apply for settled status after

five consecutive years of residence in the UK. The people of Northern Ireland must have been resident in the UK by 31 December 2020 and the family relationship must have existed by that date. These criteria mirror those for family members of EEA (including Irish) citizens.

The Home Office provisions apply to both EEA and non-EEA family members of a person of Northern Ireland. However, EEA nationals residing in the UK by 31 December 2020 are already able to apply to the EU Settlement Scheme in their own right without relying on a family relationship with the person of Northern Ireland.

Having acquired leave under the EU Settlement Scheme, the family member of a person of Northern Ireland will be able to access benefits and services on broadly the same terms as the family members of EEA nationals (including Irish) citizens. This means those granted settled status will be given the same access to benefits and services as UK nationals, while those granted pre-settled status will only have access to benefits and services if the person of Northern Ireland is in an equivalent position to an Irish citizen exercising treaty rights in the UK<sup>1</sup>.

### Stateless Leave

Stateless persons are third country nationals who cannot be admitted to reside permanently in any other country. They derive their status from the 1954 and 1961 UN conventions on statelessness. The 1954 convention – ratified by the UK – requires stateless persons to have access to housing on terms that are ‘not less favourable than that accorded to aliens generally in the same circumstances’.

The main reasons for ‘statelessness’ include, for example, gaps in nationality laws, movement of borders, the creation of new states, and lack of effective administrative systems in the country of origin, such as the lack of a system to formally register a person’s birth. Statelessness is distinct from asylum, in that asylum is granted on the basis of *fear* of returning to one’s place of origin, whereas statelessness is the *inability* to return to and live permanently there as a resident.

A specific category of limited leave, ‘stateless leave’, was created within the Immigration Rules in 2013. The rules are set out in Part 14 of the Immigration

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<sup>1</sup> This means the person of Northern Ireland must be a worker, self-employed, self-sufficient, a student or the equivalent of a person who has acquired the right of permanent residence. A right of permanent residence is usually acquired after five years’ continuous residence as a worker, self-employed person, self-sufficient person, student, or any combination thereof, but in certain circumstances it can be acquired in shorter time.



Rules: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons>. Leave is granted with recourse to public funds, and lasts for 5 years, after which individuals may apply for settlement. There are currently less than 200 people with stateless leave in the UK.

Persons with 'stateless leave' are already eligible for Housing Benefit and Universal Credit subject to passing the habitual residence test.

### Changes to Regulations 3 and 5

In order to take account of the changes to the Immigration Rules in relation to the two categories of people referred to above, the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (S.I. 2006/1294) ("the Eligibility Regulations") are amended by The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2020 ("the Amendment Regulations"). The Amendment Regulations were laid on 2 July and will come into force on 24 August 2020.

The Amendment Regulations are made by the Secretary of State under sections 160ZA(2) and 185(2) of the Housing Act 1996 ("the 1996 Act"). They amend Regulations 2(interpretation) by adding a new defined term, and regulations 3 and 5(1) of the Eligibility Regulations which prescribe the classes of persons subject to immigration control who are to be treated as eligible for an allocation of housing accommodation or for homelessness assistance respectively.

Regulations 4 and 5 of this instrument amend regulations 3 and 5(1) by introducing two additional classes of person who are eligible for an allocation of housing or homelessness assistance under the 1996 Act.

- **People of Northern Ireland:** The first new class introduced under regulation 3 (Class I) and regulation 5 (Class J) makes provision for persons who have limited leave to enter or remain in the United Kingdom as the family member of a person of Northern Ireland by virtue of Appendix EU to the Immigration Rules, and where the sponsor (a relevant person of Northern Ireland) would be considered eligible (as a worker or self-employed) in accordance with regulation 4 and 6 of the eligibility rules. Currently, the family members of an EEA national (including Irish citizens who rely on their rights as an EEA national) are eligible and do not need to demonstrate habitual residence if the EEA national is a worker or self-employed person. Family members of an EEA national (including Irish citizens who rely on their rights as an EEA national) are not eligible if the EEA national is in the initial three months of residence in the UK, or is job seeking.

In applying for an allocation of social housing or housing assistance, the family member will need to identify and evidence that their sponsor family member is a relevant person of Northern Ireland as defined.

- **Stateless persons:** The second class introduced under regulation 3 (Class J) and regulation 5(1) (Class K) makes provision for persons who are habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland and who have been granted leave to remain as a stateless person under the Immigration Act 1971, by virtue of paragraph 405 of the immigration rules.

The Amendment Regulations are published by the Stationery Office and are available at <http://www.legislation.gov.uk/id/uksi/2020/667>.