

## Summary: Intervention & Options

<b>Department /Agency:</b>	<b>Title:</b> Impact Assessment of amendment to homelessness legislation to remedy an incompatibility with ECHR	
<b>Stage:</b> Final	<b>Version:</b> 1	<b>Date:</b> August 2008
<b>Related Publications:</b>		

**Available to view or download at:**

<http://www.communities.gov.uk>

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**What is the problem under consideration? Why is government intervention necessary?**

Section 185(4) of the Housing Act 1996 requires local housing authorities to disregard ineligible household members when determining whether applicants are homeless or have a priority need for accommodation (and would therefore be owed a duty to secure accommodation). The UK courts have declared that section 185(4) is incompatible with the European Convention on Human Rights to the extent that it requires authorities to disregard ineligible household members of applicants who are a British citizen. Primary legislation is necessary to remedy the incompatibility.

**What are the policy objectives and the intended effects?**

The policy aim is to remedy the incompatibility while ensuring that a person who requires leave to enter or remain in the UK but does not have it, or has leave to enter or remain on condition of 'no recourse to public funds', cannot convey priority for, or entitlement to, social housing on another person.

**What policy options have been considered? Please justify any preferred option.**

The policy options considered are (1) do nothing and (2) remedy the incompatibility. The preferred option is to remedy the incompatibility because the Government is committed to ensuring that all UK legislation is compatible with the European Convention on Human Rights.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The policy will be reviewed within 3 years as part of the post-legislative scrutiny of the Housing and Regeneration Act.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible Minister:

..... Date:

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description: Homelessness legislation : incompatibility with ECHR</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' The estimated net cost to local authorities of securing offers of accommodation in the private rented sector for approximately 400 households in England and proportionate numbers in the devolved administrations.		
	<b>One-off</b> (Transition) <span style="float: right;"><b>Yrs</b></span>			
	<b>£ 0</b>			
	<b>Average Annual Cost</b> (excluding one-off)			
	<b>£ 413.8k</b>	<b>Total Cost (PV)</b>	<b>£ 413.8k</b>	
Other <b>key non-monetised costs</b> by 'main affected groups' None				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' None		
	<b>One-off</b> <span style="float: right;"><b>Yrs</b></span>			
	<b>£ 0</b>			
	<b>Average Annual Benefit</b> (excluding one-off)			
	<b>£ 0</b>	<b>Total Benefit (PV)</b>	<b>£ 0</b>	
Other <b>key non-monetised benefits</b> by 'main affected groups' Will avoid litigation for failing to remedy the incompatibility.				

**Key Assumptions/Sensitivities/Risks** It is assumed that, given the small number of households affected, local authorities will be able to arrange an offer of accommodation in the private rented sector in all cases.

Price Base Year 2008	Time Period Years 0	<b>Net Benefit Range (NPV)</b> <b>£ 0</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 0</b>
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	To be agreed			
Which organisation(s) will enforce the policy?	N/a			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		<b>Net Impact</b>	<b>£ 0</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Background

Under the homelessness legislation, local authorities must secure accommodation for applicants who are eligible for assistance, unintentionally homeless and fall within a priority need group. In England and Wales the duty to secure accommodation continues until a settled home can be offered and those owed the duty must be given reasonable preference for an allocation of social housing. In most cases, the homelessness duty is finally discharged with an offer of social housing. In Scotland, the main homelessness duty conveys an entitlement to social housing and in Northern Ireland the main homelessness duty is discharged in practice by making an offer of social housing.

Section 185(4) of the Housing Act 1996 is a provision of the homelessness legislation that applies to England and Wales. It requires local authorities to disregard any ineligible household members when determining whether an eligible applicant is homeless or has a priority need for accommodation (and would therefore be owed the main duty to secure accommodation under section 193(2) of the 1996 Act). The Court of Appeal declared that section 185(4) was incompatible with the ECHR to the extent that it requires authorities to disregard an ineligible dependant child when considering whether an eligible British citizen is homeless or has a priority need for accommodation. The High Court subsequently made a declaration that section 185(4) was also incompatible with the ECHR to the extent that it required authorities to disregard an ineligible pregnant partner of an eligible British citizen in similar circumstances.

The courts considered that section 185(4) discriminated, effectively, on the basis of nationality. In the Court's view, denying a person from abroad the right to be secured accommodation by a local authority would put pressure on that person to leave the country, and that this was unjustified where the person was a British citizen with a right of abode in the UK.

Section 119(1) of the Immigration and Asylum Act 1999 makes provision similar to 185(4) of the 1996 Act in respect of the homelessness legislation that applies in Scotland and in Northern Ireland. The Government has therefore taken the view that section 119(1) of the 1999 Act will also be incompatible with the ECHR and require remedying.

### Options

Two options were considered: (1) do nothing and (2) amend the incompatible legislation. Two sub-options were considered under Option 2: (i) *repeal* the incompatible legislation, and (ii) *amend* the incompatible legislation.

#### Option 1

This option was not pursued because the Government has a general policy of ensuring that all UK legislation is compatible with the European Convention on Human Rights.

#### *Costs & benefits*

The principal costs of doing nothing would be the costs of litigation incurred by local authorities and possibly, central Government, as a result of legal challenges mounted by individuals denied homelessness assistance as a consequence of the effect of section 185(4) of the Housing Act

1996 (the incompatible provision) and section 119(1) of the Immigration & Asylum Act 1999 (which makes similar provision in respect of Scotland and Northern Ireland). No estimate has been made of these potential costs..

No benefits of doing nothing have been identified.

#### Option 2 (i) – repeal the legislation

This option has not been pursued because it would significantly undermine the Government's general policy of ensuring that persons from abroad who are ineligible for publicly funded housing assistance themselves cannot convey entitlement to assistance on another person. A particular concern was that in most cases entitlement to homelessness assistance leads to entitlement to an allocation of long term social housing, a scarce and valuable publicly-funded resource.

#### *Costs & benefits*

The costs of option 2(i) (repealing the incompatible legislation) have not been estimated but they would exceed the costs of option 2(ii) (amending the legislation). This is because repeal would result in a greater number of applicants being owed a duty to secure accommodation than the amendments proposed under option 2(ii) – which extends only to those applicants who are a British citizen or EEA national.

Option 2(i) would benefit eligible applicants who were themselves subject to immigration control and who were relying on an ineligible household member in order to be owed a homelessness duty to secure accommodation. They would benefit from being provided with suitable accommodation under the homelessness legislation and given reasonable preference for an allocation of social housing. This group will not receive this benefit under option 2(ii).

#### Option 2 (ii) - amend the legislation

In adopting this option the Government's aim is to remedy the incompatibility while maintaining a policy that, so far as possible, persons who are subject to immigration control (broadly, non-EEA nationals and EEA nationals not exercising an EU Treaty right to reside in the UK) and not eligible for publicly funded housing assistance cannot confer entitlement to housing assistance on another person who is eligible but not entitled to assistance in his own right (e.g. because he would have a 'priority need' for accommodation only if he can rely on the presence in his household of a dependant child or pregnant spouse).

#### **The Proposal** - Option 2 (ii)

Under this option, the proposed amendments to the legislation will remedy the ECHR incompatibility by ensuring that eligible applicants for housing assistance who have a right of abode in the UK (including British citizens) or a right to reside in the UK under EC law will have their ineligible household members taken into account when a local authority (or the Housing Executive in Northern Ireland) decides whether they are owed a homelessness duty.

However, in order to deliver the policy aim of ensuring that a person who requires immigration leave but does not have it, or has leave on condition of 'no recourse to public funds' (a 'restricted person'), cannot convey entitlement to, or priority for, social housing, the amendments will require that where a duty to secure accommodation is owed only as a result of the applicant being able to rely on such a restricted person, then local authorities (and the Housing Executive) must, so far as practicable, discharge that duty by arranging an offer of accommodation in the private rented sector.

The amendments will also ensure that acceptance of the main homelessness duty (to secure

accommodation) will not of itself convey any priority for, or entitlement to, an allocation of social housing.

The amendments will not alter the position of eligible housing applicants who are themselves a person subject to immigration control. Sections 185(4) of the 1996 Act and section 119(1) will continue to require local authorities (and the Housing Executive) to disregard any ineligible household members when determining whether the applicant is homeless or has a priority need for accommodation.

## **Costs**

There are no firm data on the number of people whose application for housing assistance has been affected by section 185(4) of the 1996 Act or section 119(1) of the 1999 Act. Informal returns from local housing authorities in England suggest around 400 applicants may have been affected over a 12 month period (equivalent to around 0.3% of total decisions made by local authorities in England under the homelessness legislation during 2007/08 – 130,840). No data are available for Wales, Scotland and Northern Ireland, and there is no evidence of any cases within these administrative areas.

The estimated cost in respect of England is £342,000 per annum additional net expenditure falling to local housing authorities. This represents the estimated cost of securing offers of accommodation from private landlords for 400 applicants and their households who would not previously have been owed a duty to secure accommodation (80 in London, 320 in the rest of England). The costs are based on estimated average rates of local housing allowance (housing benefit) of £290 per week in London and £150 per week in the rest of England.

The principal assumptions are that, in order to secure offers that applicants can take up, local authorities will need to provide (1) a financial inducement to the private landlord to offer a tenancy, equivalent to 4 weeks rent, (2) 4 weeks rent in advance on behalf of the applicant, and (3) a security bond (against damage) up to the equivalent of 4 weeks rent. However, it is also assumed that 90% of the advance rent at (2) will be recoverable from the applicant, and that only 10% of the security guarantees will be drawn down at a cost to the authority.

It is assumed there will be no overall increase in housing benefit costs, since finding accommodation in the private rented sector for themselves would have been the main housing option available to this group of applicants as a consequence of not being entitled to accommodation under the homelessness legislation. In fact, the limited duty owed by the authority would have been to provide advice and assistance to help applicants secure accommodation for themselves. And some local authorities have indicated that the assistance they have been providing to these applicants has included help with rent deposits and guarantees to facilitate access to privately rented accommodation.

### *Wales, Scotland and Northern Ireland*

Given the lack of data about applicants in Wales, Scotland and Northern Ireland who may have been affected by the restrictions imposed by section 185(4) of the 1996 Act and section 119(1) of the 1999 Act, the impact of the changes is estimated to lie between nil and £20.1k (Wales), nil and £40.2k (Scotland), and nil and £11.5k (Northern Ireland). The estimated figures represent a proportion of the estimated cost in England based broadly on the percentages applied under the Barnett formula for the purpose of distributing resources UK-wide.

## **Benefits**

The principal benefit is remedying the ECHR incompatibility of the homelessness legislation and ensuring that eligible applicants who have an absolute right to live in the UK do not suffer unjustifiable discrimination on the basis of the immigration status of their household members.

## **Competition assessment**

Competition will not be affected by these proposed changes.

## **Small Firms Impact Assessment**

Small Firms will not be affected by these proposed changes.

## **Legal Aid**

Given these proposed changes will place these housing applicants in a more favourable position regarding their entitlement to assistance under the homelessness legislation, we do not anticipate any impact on demand for legal aid.

## **Sustainable development**

These proposals will have no impact on sustainable development.

## **Carbon Assessment**

Carbon emissions will not be affected by these proposals.

## **Other Environment**

We do not anticipate any other environmental impacts.

## **Health Impact Assessment**

We do not anticipate any significant impact on health.

## **Race Equality**

We do not anticipate any significant impact on race equality.

## **Disability Equality**

We do not anticipate any impact on disability equality.

## **Gender Equality**

We do not anticipate any impact on gender equality.

## **Human Rights**

In 2005 the Court of Appeal declared that section 185(4) was incompatible with the ECHR to the extent that it requires authorities to disregard an ineligible dependant child when considering whether an eligible British citizen is homeless or has a priority need for accommodation. In a subsequent case the High Court made a declaration that section 185(4) was also incompatible with the ECHR to the extent that it required authorities to disregard an ineligible pregnant partner of an eligible British citizen in similar circumstances.

The Appeal Court held that the homelessness legislation falls within the ambit of article 8 (because one of the principal aims of the legislation is to ensure that homeless families are accommodated together) and that, therefore, by article 14, any rights provided under the legislation cannot be restricted in a discriminatory way, unless the discrimination is justifiable.

In the Court's view, denying a person from abroad the right to be secured accommodation by a local authority would put pressure on that person to leave the country, and that where the person was a British citizen with a right of abode in the UK that was unjustifiable.

The Government acknowledges that British citizens who are habitually resident here and who become unintentionally homeless should be entitled to be provided with accommodation to relieve their homelessness - even where their 'priority need' or 'homelessness' derives from ineligible dependants or other ineligible household members.

However, the Government considers it is justifiable that, so far as possible, a *restricted person* - that is, a person who requires leave to enter or remain in the UK but does not have it or has leave on condition of 'no recourse to public funds' - should not be able to convey entitlement or priority for long term social housing on another person, including an eligible British citizen. Consequently, where a duty to secure accommodation is owed to an eligible British citizen only through reliance on a *restricted person*, local authorities (and the Housing Executive in Northern Ireland) will be required to end the duty so far as practicable, by arranging an offer of accommodation in the private rented sector. The Government acknowledges that this will result in some difference of treatment as between eligible British citizen applicants, depending on the immigration status of their household members, but is satisfied that these differences of treatment are justifiable because of the policy considerations. This is because social housing is a scarce and expensive resource funded by the UK taxpayer which brings other valuable benefits such as the right to buy and right of succession

These proposals will remedy the ECHR incompatibility by ensuring that British citizens and other eligible applicants who have right to live in the UK will now be able to rely on ineligible household members to convey entitlement to homelessness assistance. British citizens will no longer be denied accommodation as a result of the immigration status of their dependants. They will no longer be placed under pressure which could make them consider leaving the UK because they were unable to obtain accommodation when faced with homelessness

The Government agrees with the Court of Appeal that a clear distinction needs to be made in the application of immigration control as between people who have a right to live in the UK and those who do not. People without such a right may be granted leave to enter or remain in the UK, but where leave is granted they continue to be subject to immigration control. The leave granted remains subject to the possibility of withdrawal or loss, for example, if they leave the UK for a period of two years or more. It does not confer an unqualified 'right' to be here.

In the Government's view, *persons subject to immigration control* have a reduced claim to social housing compared to British citizens and others with a right of abode in the UK or a right to equal treatment under EU law. The Government therefore considers it is appropriate and justifiable for section 185(4) and section 119(1) to continue to apply in respect of eligible housing applicants who are themselves *subject to immigration control*.

Since section 185(4) has not been declared incompatible insofar as it applies to eligible applicants who are *subject to immigration control* and who do not have a right to be in the UK, the Government considers these proposals do not need to extend to this group. The Government considers there is strong policy justification why people who only have permission to be in the UK should not be able to rely on ineligible persons to convey entitlement to homelessness assistance or priority for long term social housing.

## **Rural Proofing**

We do not anticipate any impact on rural policy, circumstances or needs.





## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

