

Confidential filing

The implications of the Streeting judgement and the review of the Homeless Persons Act.

HOUSING

July 1980

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
<del>16.2.82</del>							
<del>2.3.82</del>							
<del>5.3.82</del>							
<u>25.3.82</u>							
<del>14.4.82</del>							
<del>5.4.82</del>							
7.4.82							

PREM 19/795

CONFIDENTIAL

WM 7/4

Housing



QUEEN ANNE'S GATE LONDON SW1H 9AT

7 April 1982

Dear Michael

REVIEW OF THE HOUSING (HOMELESS PERSONS) ACT 1977

You copied to me your letter of 25 March to Nicholas Edwards about the conclusions of the review of the Housing (Homeless Persons) Act 1977 which you set out in the memorandum attached to your letter to me of 8 February.

Subject to any comments our colleagues may have on the text attached to your letter of 25 March, you may take it that you have H Committee approval for the proposed Question and Written Answer.

I understand, however, that Francis Pym takes the view that the Question ought not to be answered until after the Easter Adjournment. You will no doubt be discussing with him what day after the Adjournment might be suitable.

I am copying this letter to the Prime Minister and to members of H Committee and the Attorney General, together with a copy of your letter of 25 March to those members of H Committee to whom it was not sent.

*John*  
*Letter*

The Rt. Hon. Michael Heseltine, M.P.

- a
- Miss Kipper
- Mr. Hyde
- Ms Lutter
- Ms R652
- Mr. Soden
- Mr. Scoble
- Mr. Wainwright
- Mr. Baxendale

CONFIDENTIAL

7 APR 1982





*Answer wh*  
*SLH*

NEW ST. ANDREWS HOUSE  
ST. JAMES CENTRE  
EDINBURGH EH1 3SX

The Rt Hon Michael Heseltine MP  
Secretary of State for the  
Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

5. April 1982

*Dear Michael,*

Thank you for letting me have with your letter of 25 March a copy of the statement your propose to make about the Review of the Housing (Homeless Persons) Act 1977.

I think it is important that your statement should make clear that it relates to England and Wales only. I suggest the addition to the proposed question of some words to that effect.

It would then seem best that at Item (b) the figure for the number of tenants in receipt of supplementary benefit should also be on an England and Wales basis.

Copies of this letter go to recipients of yours.

*Yours sincerely,*

*George.*

---

5 APR 1964

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4 5 6

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DEPARTMENT OF HEALTH AND SOCIAL SECURITY  
ALEXANDER FLEMING HOUSE  
ELEPHANT AND CASTLE LONDON SE1 6BY  
TELEPHONE 01-407 5522 EXT

*Norm*

The Rt Hon Michael Heseltine MP  
Secretary of State for the Environment  
Department of the Environment  
2 Marsham Street  
LONDON SW1

*Wh  
5/4*

*Aug 1st 1982*

*Dear Michael*

PROPOSED STATEMENT OF GOVERNMENT CONCLUSIONS ON THE REVIEW OF THE HOUSING  
(HOMELESS PERSONS) ACT 1977

I have only one comment on the draft answer you circulated on 25 March. That relates to sub-paragraph (b) of the answer, on rent arrears. I do not think it is helpful to refer to the benefit officer's discretion to pay the rent element of supplementary benefit direct since that is of very longstanding. I suggest instead we should place the emphasis on the housing benefit arrangements and make a reference to the continuation of benefit officers' powers to continue to make deductions for arrears. The redraft I would suggest is as follows:-

"The problems associated with authorities' responsibilities towards council tenants who become homeless through rent arrears will be alleviated by the proposed new housing benefit scheme which will in most cases cover the full rent and rate liability in respect of the 1½ million or so tenants in Great Britain in receipt of supplementary benefit. The present powers of benefit officers to make a deduction from supplementary benefit towards past arrears will continue under the new arrangements."

I am copying this letter to recipients of yours.

*Norm Fowler*

NORMAN FOWLER

- 2 APR 1982





*1 Draft - Prime Minister 1* *of Mr Ingham*

*You agreed reluctantly that Mr Heseltine could announce these conclusions to the House.*

*Housing*

2 MARSHAM STREET  
LONDON SW1P 3EB

COVERING CONFIDENTIAL

*Have you any comments on this draft Statement?*  
*No.*

My ref:

Your ref:

*WH*  
*25/3*

25 March 1982

*Dear Secretary of State*

In the memorandum I circulated to H Committee colleagues under cover of my letter of 8 February to the Home Secretary, seeking their agreement to our conclusions of the review of the Housing (Homeless Persons) Act, I undertook to clear with those who have a direct interest the text of the statement to be made to the House announcing the completion of the review. The Prime Minister has indicated that she would be content for the conclusions set out in the memorandum to be announced.

I should be grateful for any comments on the attached draft, which I propose should take the form of a reply to an inspired written question. I should like to give the reply before the Easter Recess and should be grateful therefore for your response by Thursday April 1st.

I am copying this letter and its enclosure to Willie Whitelaw, George Younger and Norman Fowler for their comments also. I am also sending a copy to the Prime Minister and the Chief Whip, and to Sir Robert Armstrong.

*John King*

*MH*

MICHAEL HESELTINE

*(Draft approved by the  
Secy of State and signed  
in his absence)*

The Rt Hon Nicholas Edwards  
Secretary of State for Wales



PROPOSED STATEMENT OF GOVERNMENT CONCLUSIONS ON THE REVIEW OF THE HOUSING (HOMELESS PERSONS) ACT 1977

Suggested Question

To ask the Secretary of State for the Environment when he will be announcing the outcome of his review of the Homeless Persons Act.

Suggested Answer

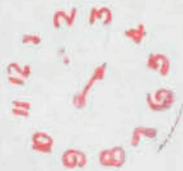
The review has now been completed. After full and careful consideration the Government have decided that there should be no amendment of the primary legislation at this stage. However, they recognise the concern which has been expressed about some aspects of the operation of the Act. They are satisfied that these can largely be met by the following measures which have been, or will be, taken:

- a) To ensure that authorities are clear about the extent of their duties, the ways in which they may fulfil them, and the very wide discretion they have to deal with abuse, the Government intend to tighten the Code of Guidance. We shall consult those principally concerned about the amendments which will cover more fully such matters as intentional homelessness.
- b) The problems associated with authorities' responsibilities towards council tenants who become homeless through rent arrears will be alleviated by the discretion given to benefit officers to pay the rent element of supplementary benefit direct to local authorities and by the proposed new Housing Benefit Scheme which will in most cases cover the full rent and rate liability in respect of the 1½ million or so tenants in Great Britain in receipt of supplementary benefit.

- c) As far as the financial burden on authorities is concerned, housing management costs arising from housing applications from the homeless which may be debited to an authority's Housing Revenue Account are reckonable for housing subsidy. In addition, net expenditure falling outside the HRA is eligible for rate support grant. On capital account because the operation of the Act imposes greater cost burdens on some authorities than on others, and in order to reflect more accurately the demands placed on authorities by the homeless, we have agreed with the local authority associations in England a revised homelessness indicator for the 1982/83 HIP allocations.
- d) A number of measures we have initiated to increase the availability of short-term rented accommodation and of low-cost home-ownership opportunities as well as our substantially increased expenditure on hostel accommodation, will be of benefit to those who are in non-priority groups for the purposes of the Homeless Persons legislation including single homeless people. We do not propose to extend the priority groups.
- e) Recent decisions in the Court of Appeal and the House of Lords have established that there are safeguards in the Act against abuse by those who are intentionally homeless whether they are already in this country or whether they come from abroad. It is therefore important that immigrants should make proper arrangements for their accommodation before they arrive in this country. To stress this we have accordingly revised the texts of leaflets issued by our embassies overseas to prospective immigrants. There have also been changes in the immigration rules since the 1977 Act which have the general effect of making

it necessary for those who wish to obtain admission of their dependents to the UK for settlement to be able to demonstrate that they can accommodate them without recourse to public funds in accommodation that they own or occupy themselves.

15 MAR 1982





2 MARSHAM STREET  
LONDON SW1P 3EB

My ref:

Your ref:

25 March 1982

*Dear Alan*

My Secretary of State wrote to yours earlier today about the review of the Housing (Homeless Persons) Act enclosing a copy of the proposed statement.

Unfortunately the last paragraph was omitted from the draft, it should read as follows "In addition to the measures outlined, we shall continue to monitor the Act's operation."

I am copying this as before.

*Yours  
D A E*

D A EDMONDS  
Private Secretary



WR 19/3 *Spinning*

SCOTTISH OFFICE  
WHITEHALL, LONDON SW1A 2AU

COPY TO  
PS/SDD  
PS/Mr Rifkind  
PS/US of S  
Mr D A Campbell, SDD

The Rt Hon Michael Heseltine MP  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

19 March 1982

*Dear Michael,*

I am writing to let you know that I see no difficulty from my point of view in the conclusions and recommendations of the review of the operation of the Housing (Homeless Persons) Act 1977 in England and Wales, about which you wrote to Willie Whitelaw on 8 February. In particular I share the conclusion that legislative change is not required; for the rest the recommendations are compatible with the guidance which I issued to Scottish local authorities about 18 months ago.

I should be grateful, however, if the terms of the announcement of the outcome of the review covering England and Wales could be circulated in advance to my officials; it will be desirable that it leaves no impression, by omission or otherwise, that the position in Scotland is other than also satisfactory.

I am sending a copy of this letter to the Prime Minister, Nicholas Edwards and Sir Robert Armstrong.

*Yours ever,  
George*

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17 8 MAR 1982



Secretary of State

Wm 8/3 Housing  
Northern Ireland Office  
Stormont Castle  
Belfast BT4 3ST

The Rt Hon Michael Heseltine MP  
Secretary of State  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

5th March 1982

Dear Michael

Thank you for the copies of your letter and enclosures to Willie Whitelaw on the Review of the Housing (Homeless Persons) Act 1977 and the associated Code of Guidance.

The 1977 Act does not apply to Northern Ireland - we have our own legislation. Responsibility for housing homeless persons in Northern Ireland rests with four Health and Social Services Area Boards and with the Northern Ireland Housing Executive which is the Province's sole housing authority. Within this structure few practical difficulties are encountered and there is little pressure for legislation equivalent to the 1977 Act.

I note that the Review largely deals with issues, such as those in relation to local authorities, that do not arise in Northern Ireland. But the Area Boards and the Executive are working on a Code of Practice for Northern Ireland and my officials will continue to keep closely in touch with developments following the Review.

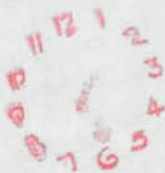
In view of this I have no objection to the conclusions and recommendations of the review.

I am sending copies of this letter to Willie Whitelaw and to the other recipients of yours.

Yours  
Michael Heseltine



8 MAR 1962





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Hansip

10 DOWNING STREET

*From the Private Secretary*

2 March 1982

REVIEW OF THE HOUSING (HOMELESS PERSONS) ACT 1977 AND THE CODE OF  
GUIDANCE

The Prime Minister has seen your Secretary of State's minute of 26 February, explaining why he feels that legislative amendment to this Act is not an option at this stage. In the light of his minute, the Prime Minister is content for him to announce in the House the conclusions of his review of the Act which are set out in his letter to the Home Secretary of 8 February.

I am sending copies of this letter to John Craig (Welsh Office) and David Wright (Cabinet Office).

**W. F. S. RICKETT**

David Edmonds, Esq.,  
Department of the Environment.

SW



10 DOWNING STREET

PRIME MINISTER

Are you content for Mr. Heseltine to announce in the House the conclusions of his review of the Housing (Homeless Persons) Act (at Flag A) now that he has explained why he feels legislative change is not an option (his minute below)? Or would you like a word with him and John Stanley?

Yes - but still think it is very dilemmatic  
Duty Co-ordinator  
Duty Clerk  
PP w.FSR

1 March 1982

CONFIDENTIAL

Prime Minister

*This minute explains why Mr Heseltine feels that we cannot amend or repeal the Housing (Homeless Persons) Act and why tightening the legislation administratively is, in his view, the better way forward.*



Prime Minister

REVIEW OF THE HOUSING (HOMELESS PERSONS) ACT 1977 AND THE CODE OF GUIDANCE

26 February 1982  
*Content that Mr Heseltine should proceed as he suggests? WJ*  
26/2

I understand that you felt that we could have produced a more far-reaching outcome to our review of the Housing (Homeless Persons) Act 1977. My initial reaction was exactly the same. I would like to explain why I concluded that the tightening of the legislation by administrative rather than legislative means was the best way forward.

There are two basic ways of dealing with the housing problems of those who find themselves literally without accommodation, and who Governments throughout the post-war period have accepted cannot be ignored. One can either issue general guidance to local authorities and leave it to their discretion as to how they exercise it. That was the position that existed until the 1977 Act, and was the policy embodied in successive circulars up to and including Circular 18/74 issued by the last Conservative Government, which transferred responsibility to housing authorities but still made it essentially discretionary. Or one can establish a mandatory scheme under which certain categories of homeless people have to be rehoused by law ahead of other people on the waiting list. That was the ambition crossed by the 1977 Act, which of course we did not vote against in opposition.

There is no half-way house or compromise position between the discretionary and mandatory systems I have outlined. This left us with 3 alternative outcomes of the review:

- Option 1 - Keep the mandatory legislation unaltered and tighten it administratively;
- Option 2 - Retain the mandatory system, but amend the legislation to deal with alleged abuses;
- Option 3 - Repeal the legislation and go back to a discretionary system.

The more we went into it - and we have studied it exhaustively - the more it became clear that Option 2 was not a genuine option at all. The various amendments proposed to deal with abuses effectively fell into 2 main categories. The first would have had the effect of denying rights under the Homeless Persons Act to those who had recently entered the country as immigrants, but these amendments were directly in conflict with the Treaty of Rome and/or the Race Relations Act. The second category of amendments represented an emasculation of the mandatory system and a reversion in many respects to a discretionary system. I am quite certain that there are no simple and practical amendments of the 1977 Act that can be made without effectively emasculating the Act. Option 2 had therefore to be discarded.

We were therefore left with Options 1 and 3. I came down against Option 3 (repeal) on the following grounds:

- a. it would involve intensely controversial primary legislation;
- b. it would be a gift to our opponents who want to misrepresent the Government as uncaring etc;

- c. it would seriously damage the excellent case we can already make for having looked after the least well-off - for example John Stanley's hostel initiative, the Tenants' Charter, the extension of rent rebates to low-income people like sharers, and the extension of improvement grants to the less well off;
- d. it would bring out against the Government not only every other political party but also the media and church leaders of all denominations.

I concluded therefore that in present circumstances, the only practical course was Option 1 which avoids the need for highly controversial legislation but enables some tightening to take place.

Finally, I think we want to be very clear about the nature of the alleged abuses. It is easy to assume that abuses are all the fault of the legislation. They are not. The fact is that the 1977 Act is minimalist legislation. The crucial point is how authorities actually operate it, which means in practice how the officers of the Council operate it. We need to bear in mind that under the 1977 Act:

- a. there is no requirement to rehouse permanently if homelessness is intentional - and it is the individual that has to initiate any court proceedings to challenge a Council's decision;
- b. there is no requirement to house someone who enters this country without having made adequate provision for their accommodation - as the Courts have now established;
- c. there is no requirement to house people unless they are in the priority categories - basically those with children;
- d. there is no requirement to provide actual council housing even for those in the priority categories; and
- e. there is no requirement to house someone whose local connection is with another authority.

The best perspective I can put on the issue of abuses is the case of Hillingdon. No authority has been more outspoken about abuses - they have claimed that they are the housing authority of the world. I attach as an Annex the statistics for rehousing under the 1977 Act by all the London Boroughs in the last 12 months for which statistics are available. You will see that Hillingdon is two thirds down the list in numbers of homeless rehoused.

John Stanley and I will be glad to discuss these issues further if that would be helpful.

I am copying this to Nicholas Edwards.

*WMS*

MH

TABLE A : HOMELESS HOUSEHOLDS ACCEPTED : LOCAL AUTHORITIES IN ENGLAND

COUNTY / DISTRICT	ACCEPTANCES 1980		1971 CENSUS HOUSEHOLDS (IN 000's)	ACCEPTANCES PER THOUSAND HOUSEHOLDS		NO. IN BED & BREAKFAST AT END OF MONTH		NO. IN HOSTEL ACCOMMODATION AT END OF MONTH	
	First Half	Second Half		First Half	Second Half	JUN	DEC	JUN	DEC
CITY	25	56	1	#	#	-	..	-	..
CAMDEN	642	365	82	7.8	4.5	84	68	180	191
GREENWICH	236	208	74	3.2	2.8	-	-	5	21
HACKNEY	471	384	80	5.9	4.8	195	139	96	36
HAMMERSMITH	570	382	74	7.7	5.2	135	145	13	50
ISLINGTON	441	385	77	5.7	5.0	32	63	22	28
KENSINGTON & CHELSEA	260	206	78	3.3	2.6	60	9	72	44
LAMBETH	500 <sup>1</sup>	349	112	4.5	3.1	93	-	183	212
LEWISHAM	421	453	94	4.5	4.8	-	-	73	51
SOUTHWARK	369	..	93	4.0	..	-	-	48	52
TOWER HAMLETS	179	155	58	3.1	2.7	31	51	17	17
WANDSWORTH	640	441	110	5.8	4.0	154	25	74	61
WESTMINSTER	..	..	93	..	..	125	..	6	..
INNER LONDON TOTAL	4754	3384	1026	5.1	4.0	909	500	789	763
BARKING	110	91	55	2.0	1.7	-	-	13	17
BARNET	61	70	106	0.6	0.7	4	-	42	40
BEXLEY	92	74	74	1.2	1.0	..	11	..	-
BRENT	526	625	98	5.4	6.4	218	194	36	35
BROMLEY	107	149	105	1.0	1.4	-	-	50	51
CROYDON	260	236	113	2.3	2.1	-	-	68	79
EALING	350	414	105	3.3	3.9	34	59	77	94
ENFIELD	170	142	94	1.8	1.5	1	-	25	26
HARINGEY	261	482	87	3.0	5.5	23	4	31	25
HARROW	89	128	70	1.3	1.8	14	10	36	5
HAVERING	84	92	81	1.0	1.1	-	-	23	31
HILLINGDON	140	166	78	1.8	2.1	..	43	..	27
HOUNSLOW	171	143	72	2.4	2.0	84	42	-	25
KINGSTON-UPON-THAMES	85	110	51	1.7	2.2	38	33	-	-
MERTON	108	120	64	1.7	1.9	-	-	7	7
NEWHAM	341	265	81	4.2	3.3	6	2	6	-
REDBRIDGE	166	154	83	2.0	1.9	-	-	31	34
RICHMOND-UPON-THAMES	102	110	66	1.5	1.7	-	-	-	1
SUTTON	71	100	59	1.2	1.7	14	12	30	42
WALTHAM FOREST	251	261	84	3.0	3.1	-	-	21	19
OUTER LONDON TOTAL	3545	3932	1626	2.2	2.4	436	410	496	558
LONDON	8299	7316	2652	3.2	2.9	1345	910	1285	1321

Notes: # indicates that figures are too small for the ratio to be meaningful.

1 represents an estimate based on results for part of the period.

County totals do not include estimates for non-respondents - see paragraph 4 of NOTES ON TABLES.

26 FEB 1992

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BF 19/2



Plassey

10 DOWNING STREET

Note for the file

I have passed on the Prime Minister's comment to David Edmonds, and have agreed with him

(a) that his Secretary of State will let the Prime Minister have a short note setting out why this memorandum "runs away from the problems it identifies"; and

(b) we will then consider whether a meeting between Mr Herdson and the Prime Minister is necessary.

WM  
6/2





R10/2  
Received in CF 11/2

2 MARSHAM STREET  
LONDON SW1P 3EB

My ref:

Your ref:

Prime Minister 4

The recommendations of  
this review are  
summarised at A.  
Mr Heseltine would like  
to announce these to the House  
in due course.

8 February 1982

De larkin

WR 11/2

A review of the Housing (Homeless Persons) Act 1977 has been in train since December 1978, in fulfilment of an undertaking given by the previous Administration during the passage of the Bill through Parliament.

The attached memorandum sets out the issues we have considered and the conclusions we have reached. With the agreement of Nicholas Edwards, who shares with me joint responsibility for the memorandum, I am seeking colleagues' endorsement of its conclusions and recommendations for the announcement of a non-legislative package as the outcome of the review.

I am sending a copy of this letter to the Prime Minister, who has asked to be kept informed of developments, to the other members of H, and to Sir Robert Armstrong.

This is the most  
disappointing housing  
document I have read during  
the lifetime of this government. If you can  
read away from any member  
of the Joint Commission either  
and to liaison with the  
Crew-jug. under whom  
he really is  
the credit  
without. any effort  
or then put, I believe  
left. I should be  
considered  
not

MICHAEL HESELTINE

DRAFT

REVIEW OF THE HOUSING (HOMELESS PERSONS) ACT 1977 AND THE ASSOCIATED CODE OF GUIDANCE

Memorandum by the Secretary of State for the Environment and the Secretary of State for Wales.

1. A review of the Housing (Homeless Persons) Act 1977 has been in train since December 1978, in fulfilment of an undertaking given by the previous administration during the passage of the Bill through Parliament.
2. The local authority associations directly affected (GLC, LBA, AMA and ADC) were consulted and contributions were also invited from the Joint Charities Group on homelessness, representing the main pressure groups active in this area. Comments were received from individual MPs, local authorities, voluntary organisations and members of the public; we have drawn on evidence available from statistical reports and research.
3. Until the early part of last year all local authority associations except the LBA had indicated that they were prepared to continue operating the Act as it stood, although all had asked for additional public expenditure. The Joint Charities Group were also broadly content to accept the status quo. The Conservative majority on the LBA wanted changes to the legislation.
4. More recently we have taken account of a fresh exchange of views with the ADC, who consulted their member authorities on the effects of the Act. The results of the consultation showed that although some

authorities reported having difficulties in meeting their obligations under the Act most authorities had no criticism to offer. The Association made a number of suggestions for detailed amendments to the Act.

5. The large number of points raised during the course of the review can be summarised under main headings:

- A. 'Queue Jumping' of Council waiting lists.
- B. Rent arrears and the Homeless Persons Act.
- C. The costs of operating the Act falling upon a number of metropolitan authorities.
- D. The problems of the homeless people excluded from the priority need categories.
- E. Treatment of homeless immigrants and EEC citizens.

A 'Queue Jumping'

6. The Act incorporates the main policy principles set out in the circular on homelessness issued in February 1974 by the then Conservative Government. That circular identified a number of 'priority groups' of homeless people for whom it said:

"the issue is not whether, but by what means local authorities should provide accommodation themselves, or help those concerned to obtain accommodation in the private sector".

3 It was thus implicit from the outset that there would be some effect on local authority waiting lists. The duties imposed by the Act reflect

the view of Parliament that meeting the needs of those who are genuinely and literally homeless must have priority. That inescapably involves a measure of queue-jumping in some degree.

7. However, certain authorities complain that some of the homeless people that they are obliged to accept and accommodate have little or no local connection with their area and thus "jump the queue" of local residents. Litigation has established that where people voluntarily give up accommodation, whether abroad or in this country, without making adequate long-term arrangements for their future accommodation needs, they may be treated as intentionally homeless, whereupon any obligation on the authority to secure accommodation is for a limited period - in practice about one month. If homelessness is not intentional, <sup>which happens when</sup> but the applicants have no local connection with the area of the authority to whom they apply, there is provision in the Act to transfer responsibility to another authority with whom they do have a connection.

8. The local authority associations have drawn up a Referral Agreement to help eliminate disputes between authorities in effecting transfers. The agreement was reviewed two years ago and a number of amendments were made. The Referral Agreement remains in our view the best means of resolving disputes between authorities as to where local connection lies. Any other course would mean reverting to the unsatisfactory situation that existed before the Act when authorities could, and did, shuttle homeless people between their respective areas while they disputed responsibility for them.

9. Another aspect of the queue-jumping issue is the allegation that People are indulging in collusion to get rehoused under the Homeless Persons Act. Rather more than 40 percent of households accepted as homeless had, immediately prior to becoming homeless, been staying with parents, relatives or friends. Typical cases are <sup>young</sup> newly formed families and girls who have become pregnant. Housing authorities suspect collusion in feigning disputes in a proportion of such cases. Legal advice is that authorities are not required to "prove" suspicions of collusion to decide that a person is either not homeless or is homeless intentionally, but simply that they should take a reasonable decision in the light of their enquiries.

10. We see no means of completely eliminating queue-jumping as a source of grievance, short of repealing the entire Act. Repeal would be highly controversial and would be very strongly opposed not only in Parliament but by many outside bodies, including the churches. Moreover repeal would still leave the problem of housing the homeless to be resolved administratively. Repeal of the 1977 Act is not recommended. Instead we recommend that:

- a. authorities should be reminded that the Act does not require council accommodation to be provided in every case;
- b. the local authority associations should keep the operation of the Referral Agreement under review to achieve equitable arrangements as between authorities in dealing with cases where the main local connection is disputed;
- c. to deal with collusion authorities should be reminded of the very wide discretion they have under the Act by means of clarifying the advice in the Code of Guidance, which is issued jointly by DOE, the Welsh Office and DHSS and to which

authorities are required by the Act to have regard.

B. Rent Arrears

11. Individual authorities have represented that the Act makes it difficult to deal with hard core deliberate rent arrears cases. Even if such people are evicted for arrears and declared intentionally homeless, the authority still has the duty to secure accommodation for a limited period. This can be costly. But the alternative step of breaking up the family and taking the children into care is even more unsatisfactory, resulting in some cases in considerable hardship and suffering for the children and sometimes in parents abrogating responsibility altogether; it is also extremely expensive.

12. One solution authorities have proposed is that where a family is in receipt of supplementary benefit, the rent element should be paid direct to the housing authority. The proposed Unified Housing Benefit scheme now before Parliament would have this effect; local authorities would receive a subsidy of 100% on rent and rate rebates paid to tenants in receipt of supplementary benefit and would gain both from a reduction in arrears and from a reduction in rent collection and accounting. Meanwhile, the publication last year, in Regulations made by the Secretary of State for Health and Social Services, of criteria for benefit officers for instituting direct payment of rent should have helped to reduce the burden on housing authorities.

13. It is proposed to draw attention to these developments in announcing the conclusions of the review.

C. Costs falling on a number of Metropolitan Authorities

14. The local authority associations, especially those representing metropolitan authorities, claim that operating the Act is giving rise to significant extra expenditure, mainly on making enquiries and providing bed and breakfast accommodation. Authorities may charge for accommodation secured, but many homeless people may be effectively destitute; and the supplementary benefit allowances do not generally meet the full cost.

15. Under the Housing Act, the Secretary of State has power to determine what expenditure debited to the Housing Revenue Account will be reckonable for subsidy. We are satisfied that nothing in the subsidy rules would prevent much of the cost of work involved in the consideration and investigation of applications from homeless people to be provided with accommodation by an authority being regarded as housing management costs properly falling to be debited to the authority's HRA, and thus being included in the calculation for subsidy entitlement in the same way as other management costs in the account.

16. Net expenditure by local authorities falling outside the HRA, including expenditure of bed and breakfast, is eligible for rate support grant, and rate-borne expenditure on the relief of housing stress will continue to be taken into account in the calculation of block grant entitlements.

17. To the extent that homelessness requires housing investment by local authorities, it is one of the factors taken into account in

determining Housing Investment Programme allocations. In England for 1982/83 allocations the homelessness indicator has been revised, after discussions with the local authority associations, to reflect more accurately than in the past both the demands placed on local authorities by the homeless and authorities' resources, in terms of relets etc., available to meet that demand.

18. We propose therefore to draw attention in the announcement of our conclusions to the provision made under the subsidy rules, rate support grant and HIP allocations.

D. The problems of homeless people excluded  
~~Non-priority categories~~  
from the priority need categories

19. The priority categories (effectively those homeless people for whom accommodation must be secured by local authorities) exclude most homeless single people and childless couples. This exclusion was deliberate, because in 1977 local authorities' housing resources were insufficient to deal with a more wide-ranging duty. The very substantial reduction in the provision for local authority housing capital expenditure makes this consideration still more relevant today.

20. There is no short term solution. Any addition, however small, to the duties of local authorities would be strongly resisted by them as being inconsistent with the economic situation which points to reduced rather than extended responsibility.

21. We propose no change in the legislation but intend to emphasise that the Government's recent initiatives to increase the availability of short term rented accommodation and of low-cost home ownership



opportunities all represent useful steps for the benefit of these groups.

E. Homeless Immigrants

22. The housing of homeless immigrants ahead of local people on waiting lists is a focus of controversy. In numerical terms the problem is small (only about 2% of households accepted as homeless have been abroad one month before becoming homeless). But it receives much publicity.

23. Litigation has established that immigrants who apply for assistance under the Act are to be treated in the same way as indigenous applicants. Though the Appeal Court has commented that any duty to secure accommodation for an (unintentionally) homeless immigrant could be discharged by "finding accommodation for him in the country whence he came", this is a safeguard which could be both very difficult and very costly to operate.

24. Demands on the housing stock of local authorities in this country by immigrants is already limited, by immigration controls restricting the entry of homeless foreigners. The exceptions are EEC immigrants who have a free right of access to seek employment. But, on the limited evidence available, the number of EEC nationals who have been helped under the Act is tiny, and there are no indications that this situation is about to change radically. Nevertheless the LBA argue that a limited number of authorities are being expected to undertake responsibilities

and burdens which are national rather than local. Their proposed solution, supported recently by the ADC, is to deny 'entitlement' to people without a local connection in Great Britain.

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25. This solution is rendered impossible by two pieces of legislation. First, differential treatment of immigrants is unlawful under the provisions of the Race Relations Act 1976. Second, in the case of migrant workers from EEC Member States, it is prohibited by EEC Regulation 1612/68 dealing with free movement of labour, which requires that workers from Member States should enjoy the same rights and benefits as national workers in matters of housing. The requirement of the Race Relations Act can be overridden if the differential treatment is sanctioned by primary or secondary legislation, <sup>but</sup> apart from the question of merits, this would not seem the moment for <sup>differential race relations</sup> ~~such~~ legislation. The EEC Regulation could only be set aside by seeking fundamental changes in EEC legislation which would be seen as an attack on one of the founding principles of the Community. While the Regulation stands, it is, by virtue of Article 189 of the Treaty of Rome, "binding in its entirety and directly applicable to all Member States"; it overrides inconsistent national statutes.

26. Measures to relieve the pressure on local housing authorities must, therefore, depend upon steps designed to reduce the flow of potentially homeless immigrants. We have revised the text of the leaflets issued by British High Commission offices to intending immigrants, so as to leave no doubt that access to public housing is not to be easily secured by those who fail to make adequate arrangements for their accommodation.

27. We propose to refer in the announcement to the tightening up of the immigration rules and advice to immigrants and to the recent litigation which establishes that the Act contains safeguards against ~~exploitation~~ <sup>abuse</sup> by those who are intentionally homeless, whether from the UK or abroad.

#### CONCLUSION

28. Repeal of the Act is not advocated for the reasons set out in paragraph 10 above. We have considered a variety of amending legislative options, including those put forward by the ADC and others, but have concluded that none of these can achieve any material change without effectively emasculating local authority obligations. Any legislative change would be highly controversial and time-consuming. The Government would be caught in a cross-fire between those who wanted to repeal or emasculate the Act on one side and those who wanted to strengthen it on the other. Two highly controversial non-housing issues would also get drawn into the parliamentary debate on any amending legislation - the Common Market (in the context of the relationship between the homeless legislation and our EEC Treaty obligations) and abortion (the anti-abortion lobby want no weakening, such as the ADC have proposed, of the existing priority given to pregnant <sup>young women</sup> ~~girls~~).

29. While legislative options will be kept under review, we consider that the best way forward is to announce the non-legislative package outlined in this memorandum. This deals with the most conspicuous difficulties and is most likely to find the maximum amount of common

ground both in and out of the House. It will provide some reassurance on our side and avoid the hornet's nest of legislation.

30. 'We would be grateful for colleagues' agreement that the recommendations, as summarised in Annex A to this memorandum, should form the conclusions of our review of the Homeless Persons Act. We would propose to announce these by a Statement to the House, to be cleared in the normal way by those colleagues who have a direct interest.

REVIEW OF THE HOUSING (HOMELESS PERSONS) ACT

SUMMARY OF RECOMMENDATIONS

We do not propose any amendment of the primary legislation at the present time though we will continue to keep the legislation under review. Instead we propose the following non-legislative package.

A Queue-jumping of Council house waiting lists

- (i) Authorities should be reminded that council accommodation is not required in every case and that there is scope for more co-operation between authorities and with other bodies to share the burden of homelessness more evenly;
- (ii) The local authority associations should keep under review the operation of their Referral Agreement to achieve more equitable arrangements between authorities in dealing with cases where local connection is disputed;
- (iii) The Code of Guidance should be amended to make clear to authorities the very wide discretion they have in cases where they suspect abuse of the Act through collusion;

B Rent Arrears

No further action is required on the question of rent arrears cases but attention should be drawn to the effects of the Unified Housing Benefits scheme and to the fact that supplementary benefit officers have discretion to make direct payment of rent to housing authorities.

C Costs to authorities of operating the Act

- (i) We should advise authorities that housing management costs, relating to applications from the homeless and properly falling to be debited to the Housing Revenue Account, can be included in the calculation for subsidy entitlement; and remind them that -

(ii) Remaining net local authority expenditure is eligible for rate support grant, and rate-borne expenditure on the relief of housing stress will continue to be taken into account in the calculation of block grant entitlements;

(iii) In England for 1982/83 HIP allocations we have agreed with the local authority associations a revised homelessness indicator to reflect more accurately both the demands placed on authorities by the homeless and the resources available to authorities to meet that demand.

#### D. Non-priority categories

(i) There should be no extension of the priority categories given the current restraints on local authorities' resources;

(ii) The Government's initiatives to increase overall availability of accommodation should be emphasised as representing useful steps which will be of benefit to the non-priority groups.

#### E. Homeless immigrants

(i) There will be no discriminatory legislative change to exclude homeless immigrants from the benefits of the Act;

(ii) The measures taken to reduce the flow of potentially homeless immigrants - namely the stricter wording of leaflets issued to prospective immigrants and the revised Immigration Rules - should be emphasised;

(iii) We should re-affirm that there are already safeguards in the Act against exploitation by those who are intentionally homeless, whether at home or from abroad.

RESTRICTED



*Handing JS*

10 DOWNING STREET

*From the Private Secretary*

21 July 1980

Thank you for your letter of 16 July, with which you enclosed a note for the Prime Minister on the implications of the Streeting judgement and on the state of play on the Homeless Persons Act Review.

The Prime Minister has noted this, and the covering letter from Mr. Stanley. She would be grateful to be kept informed as discussions progress.

**M. A. PATTISON**

Ms. Pam Alexander,  
Department of the Environment.

*JS*



10 DOWNING STREET

Prime Minister

Homeless Persons Act-

This note from Mr Stanley sets out possible options in the annex. At this stage, this is simply internal D.O.F. thinking.

MS.

MPD  
18/11  
VII



DEPARTMENT OF THE ENVIRONMENT



MINISTER FOR HOUSING AND  
CONSTRUCTION

July 16

Dear Prime Minister

You will want  
to know that there has  
as yet been no  
discussions with Ministers  
in other Departments  
of the sensitive issues  
raised in the Annex  
to the Note

I hope this is helpful.  
Yours etc, John.



DEPARTMENT OF THE ENVIRONMENT

2 MARSHAM STREET

LONDON SW1P 3EB

01-212 7601

MINISTER FOR HOUSING AND CONSTRUCTION

16 July 1980

Mike Pattison Esq  
Private Secretary  
10 Downing Street  
London SW1

Dear Mike,

Following your request last Friday the Minister has asked me to send you the attached note for the Prime Minister on the implications of the Streeting judgement and state of play on the Homeless Persons Act Review.

Yours sincerely

Pam Alexander

PAM ALEXANDER  
Private Secretary

HOMELESS IMMIGRANTS: LORD DENNING'S DECISION ON AN ETHIOPIAN WOMAN AND HER DEPENDENT CHILD

NOTE BY THE DEPARTMENT OF THE ENVIRONMENT

1. The Housing (Homeless Persons) Act, 1977, lays a duty on housing authorities to secure accommodation for people who are homeless and in priority need, and who have not become homeless intentionally. Broadly speaking "priority need" means families with dependent children, the elderly and the disabled.

Implications of Lord Denning's latest judgment

2. The implication of Lord Denning's recently published decision in the case of Hillingdon London Borough, an Ethiopian woman (Mrs Streeting) and her dependent child, is that housing authorities cannot refuse to provide housing under the Act to any lawfully admitted refugee on the grounds that the refugee is intentionally homeless. NB The judgment has implications only for those who could be considered refugees.

3. It does not mean that Mrs Streeting, or any other refugee who is both homeless and in priority need, is now entitled to a council house, since under the Act the authority is only required to secure accommodation, not to provide it. Thus those accepted as homeless under the Act can be offered bed and breakfast accommodation for example (though ultimately in the absence of any other arrangements being made a permanent housing obligation falls on the authority).

4. The Hillingdon decision must also be considered in the context of an earlier decision by Lord Denning, involving Crawley District Council and two Italian families, that foreigners who become homeless in this country because they have failed to make appropriate advance arrangements for their long-term accommodation needs, may be treated as intentionally homeless and therefore not entitled to permanent rehousing. The Ethiopian refugee and her son were "exempted" from this ruling essentially because of their refugee status which precluded them making advance arrangements to obtain housing in this country.

#### Review of the Housing (Homeless Persons) Act

5. As part of the Government's review of the Act all the local authority associations have now made submissions. As recently as March the associations were unanimous in advocating no change to the legislation. The ADC have subsequently reiterated this view, though adding a somewhat contradictory expression of support for Michael Shersby's Bill (which he withdrew) which would have the effect of excluding from the provisions of the Act those people with no local connection in the UK. The AMA still stand by their views of March. However the LBA will probably decide on 23 July (with Labour representatives dissenting) to endorse proposals for extensive amendment to the Act. This reflects the fact that the additional rehousing obligations that have resulted from the Act have fallen particularly on London boroughs, especially on those near the main airport and rail termini.

6. Ministers are still considering their recommendations arising from the review and a considerable number of recent court cases. It is clear

however that to amend the Act in such a way that it would exclude those arriving in this country from overseas is highly problematical and raises potential conflicts with both EEC and Race Relations legislation. (A Note on the Options is attached as an Annex).

Ministers aim to reach decisions on the review during the Recess and to announce their conclusions in the Autumn.

EXTRACT FROM DOE NOTE ON OPTIONS FOR ACTION UNDER THE  
HOUSING (HOMELESS PERSONS) ACT 1977 TO DEAL WITH  
HOMELESS IMMIGRANTS

Alternative approaches to removing the burden of securing accommodation, must all depend upon more or less radical methods of relieving housing authorities from their duties under the Homeless Persons Act towards those arriving from overseas. These range from measures involving discrimination (direct or indirect) in the operation of domestic legislation, to measures designed to shut off pressure at source by denying or discouraging travel to Great Britain.

Citizens of Ireland have free access under the Ireland Act 1949. Also on accession to the EEC, the UK came within the ambit of EEC Regulation 1612/68 which is legally binding on all member States. The regulation gives all nationals of member States (and their families) the right to take up employment in another member State with the same priority as citizens of that State. They are entitled to travel in search of work and, having obtained a job, to enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the houses they need and the right to be put down on the housing lists in the region where they are employed. Article 189 of the Treaty of Rome makes every regulation "binding in its entirety and directly applicable to all member States". For practical purposes, therefore, a regulation has direct effect and becomes an integral part of the law of each member State, over-riding any inconsistent statute, and capable of being invoked by an aggrieved individual either in the national courts or in the European Court of Justice.

If the Homeless Persons Act was amended in such a way as to conflict with the 1968 EEC Regulation, the community law would be held to prevail and over-ride the statute. Amendment of the Act of 1977 to remove all duties towards EEC nationals could certainly be seen as involving such a conflict.

Race Relations

The Race Relations Act 1976 is binding on local authorities and prohibits both direct and indirect discrimination on the grounds of colour, race, nationality or ethnic or national origins, unless provided for by primary or secondary legislation. Amendment of the 1977 Act to sanction such discrimination would be very controversial.

Limiting entitlements other than by national origin

An approach which sought to limit the entitlement of applicants by reference to characteristics other than their national origins might avoid some of these difficulties, but in doing so, it would be extremely difficult to avoid penalising groups of British nationals sharing the chosen characteristics.

For example, the Act might be amended to require residence in the UK for the previous year, as a pre-condition of claiming help under the Homeless Persons Act. This would diminish the extent of discrimination on the grounds of racial origin since it would catch not only foreigners but also British people such as contract workers and emigrants and ex-servicemen returning from abroad. If, in an attempt to avoid penalising British subjects, the qualifying year was defined to include any continuous 12 month period of UK residence during the applicant's lifetime - a criterion which almost any British applicant could satisfy - this would result effectively in discrimination on grounds of national origin.

Alternatively an applicant might be excluded from help under the Homeless Persons legislation if he is unable to establish a local connection within the area of the authority to whom he applies, (the idea behind Mr Michael Shersby's Private Member's Bill). This would need major changes to the Act, altering the sequence of enquiries and duties, and elaborating the definition of local connection. Though in practice nearly all British residents must have a local connection somewhere, and would therefore

probably be able, though with difficulty, to gain access to the benefits of the homelessness legislation, this device would be less clearly discriminatory since it could be presented as protecting authorities from people moving around Great Britain. However British subjects who had been highly mobile in the previous five years could find themselves excluded and real hardship could be caused to some British people through being passed from one authority to another. Any attempt to avoid these problems by defining the local connection criterion in such a way as to disqualify only people with no local connection anywhere in Britain would again involve discrimination on grounds of national origin.

The problem is essentially that once foreigners gain legitimate admission to this country, attempts to treat them differently from the indigenous population would involve fundamental conflict with both domestic race relations and community legislation. If it is accepted that the prospect of securing major changes in that legislation is unpromising, it follows that further reductions in the responsibilities to foreign nationals alone under the homelessness legislation must depend upon securing reductions in the number of foreign nationals admitted.

Warnings to immigrants and denial of entry

At present, prospective immigrants from territories with a British High Commission are given a leaflet which warns of housing difficulties in the UK. This could be strengthened to say that immigrants must make their own arrangements for housing and cannot expect help from public authorities. A more specific warning that anyone who does not make adequate arrangements in advance may be declared intentionally homeless would be doubled edged: it might help local authorities in specific cases, but it would also draw attention to the existence of the "benefits" available under the 1977 Act. Consultation would be needed with the FCO.

The immigration rules on conditions of entry, which apply to most permit holders, specify that they should not have "recourse to public funds" and stipulate, for a majority of those seeking entry, that they should "be able to maintain and accommodate (themselves) and any dependents". At present, "public funds" is taking to include supplementary benefit but not, generally,



housing - because the occupant is assumed to pay for this. It would appear possible for immigration officials to tighten up the operation of these rules to deny entry (or refuse extension of stay) where an application as homeless seems likely to arise on entry or shortly thereafter. This would be controversial and could lead to difficult legal arguments. Consultations would be needed with the Home Office.

Neither device would have any impact upon the volume of arrivals from the Republic of Ireland or EEC member States, who have virtual freedom of entry. But most of these may be assumed to be caught by the Crawley decision.

Scale of the "homeless immigrant" problem

It should be remembered that in each of the last two years, 1978 and 1979, only 2% of those accepted as homeless had been living abroad a month before becoming homeless.

