LACORS

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REGULATION OF 'CROWDING AND SPACE' IN RESIDENTIAL PREMISES

part of the **LGA group**

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In preparing this guidance, LACORS wish to make it clear that:

(i) Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information;

(ii) Only the Courts, the Residential Property Tribunal or Lands Tribunal can interpret statutory legislation with any authority; and

(iii) This advice is not intended to be a definitive guide to, nor a substitute for the relevant law and independent legal advice should be sought where appropriate.

Part 1: Introduction

1.1 Intended readership

This guidance applies to England and has been written primarily for housing practitioners working in local housing authorities. The guidance will also assist managers of regulatory services who wish to develop a local strategic response to crowding and space regulation.

There is an assumption that the reader will have background knowledge of the Housing Health and Safety Rating System (HHSRS) and Housing Act 2004 (HA2004) and this guidance does not therefore duplicate the assessment and enforcement concepts. The related legislation and references are included in the bibliography which provides pointers to further reading for those seeking more information.

The guidance will be kept under review and further guidance may be issued. Any comments or enquiries should be mailed to housing@lacors.gov.uk. Please note that LACORS will be unable to respond to queries from individual landlords and managing agents. Landlords with queries about regulation should contact their local council.

1.2 Reasons for Guidance

This guidance has been produced to help local authority practitioners to understand crowding and space more clearly and implement HHSRS effectively. It supports a workable but realistic approach to assessment and enforcement of crowding and space across all housing tenures. The guidance should help to resolve areas of uncertainty and lead to more consistent enforcement.

Crowding and space enforcement under the HA2004 is a means of contributing towards the national objective of tackling overcrowding and improving health outcomes.

1.3 Scope of Guidance

The guidance supports and underpins the assessment for crowding and space using the HHSRS Operating Guidance. It includes reference to acceptable room and bedroom sizes in dwellings and the 'Bedroom Standard', a copy of which is provided in Appendix 1. Further HHSRS worked examples have been provided to aid consistency and these have been compared to help practitioners to benchmark their crowding and space assessments.

Councils' duties and powers for category 1 and 2 hazards have been clarified, and the different enforcement choices and their suitability in certain situations appraised. The guidance helps practitioners through the enforcement options for crowding and space, assisting with the decision on the most appropriate action for particular housing sectors.

Some councils have particular pressures in their districts arising from high levels of overcrowding. This is often created by a high demand for housing, especially in the social housing sector. A strategic approach to crowding and space in these areas, which meets legal requirements and can make an achievable difference through regulation, is suggested in Part 7. It involves targeting and prioritising enforcement towards households which are most seriously affected by crowding and space. This can help councils tailor solutions to the particular problems which they are experiencing with overcrowding in their districts.

The use of some enforcement powers for crowding and space may give rise to the need to rehouse displaced occupants and have consequences for homelessness duties. The potential implications of enforcement powers are clarified so that practitioners fully understand the outcomes which can stem from their use, including compensation and rehousing obligations. These are discussed in Parts 8 and 9.

1.4 The legislation

According to the Oxford English Dictionary, 'overcrowd' is defined as '*fill beyond what is usual or comfortable*'.

In the Housing Act 1985 (HA1985), a dwelling is overcrowded if the number of persons sleeping in it exceeds a permitted number, based on the room or space standard. The introduction of overcrowding standards for the first time in 1935 reflected key concerns about decency through the separation of the sexes and provision of adequate space. These form the basis of the current statutory overcrowding standard, which is outlined in Appendix 2.

Reports have distinguished between the terms 'overcrowding' and 'crowding', stating that overcrowding relates to the adequacy of personal space in a dwelling and crowding is an objective measure of number of people per room in a dwelling. 'Crowding and space' is described in the HHSRS Operating Guidance as a hazard associated with lack of space within a dwelling for living, sleeping and normal family/household life. The assessment is not just a measure of over-occupation by the existing household. A range of matters are relevant to the likelihood of an occurrence and severity of harm outcomes, including layout, amenities, location and presence of recreational space. In this guidance, 'overcrowding' is used as a general descriptive term and 'crowding and space' is confined to its meaning as one of the 29 hazards within HHSRS.

1.4.1 Enforcing the legislation

HHSRS introduced a new risk-based methodology for assessing hazards, including crowding and space. The HHSRS Operating Guidance describes the relevant matters to be considered during the assessment and an 'ideal', which is the optimum to prevent a crowding and space hazard. These factors and the high average HHSRS scores for crowding and space has led to a significant increase in the number of households which might be subject to enforcement under the HA2004, compared to statutory overcrowding.

Councils can, in theory, choose to enforce under Part 1 of the HA2004 or use alternative powers by continuing to enforce Part 10 of the HA1985. Part 10 of the HA1985 comprises a very low, prescriptive standard which includes living and dining rooms as often being suitable as sleeping rooms. Using Part 10 HA1985 rather than Part 1 HA2004 would maintain the use of an outdated legislative system which does not reflect modern day standards.

The Government's HHSRS Enforcement Guidance states that the statutory overcrowding provisions in Part 10 of the HA1985 remain in force and provide councils with certain powers to act. But councils are advised to use HHSRS rather than Part 10. The Enforcement Guidance states:

'Authorities are advised, as a first step to assess the health and safety implications of overcrowding and to consider the appropriateness of action under Part 1 of the Act. If authorities choose to use their Part 1 powers, it will not normally be appropriate to make parallel use of the Part 10 provisions.'

Councils 'choosing' to continue to use Part 10 HA1985 rather than following the HHSRS Enforcement Guidance could be subject to legal challenge by Judicial Review, for non-performance of statutory duty. LACORS therefore recommends that councils enforce Part 1 of the HA2004 and follow the Enforcement Guidance.

1.4.2 The Implications of enforcing Part 1 HA2004

Councils have a statutory duty to take enforcement action to tackle category 1 crowding and space hazards. However, the use of enforcement action under the HA2004 could lead to occupiers becoming displaced from their homes into temporary accommodation, as there is no settled home immediately available.

It is government policy to halve households in temporary accommodation by 2010 (National Indicator 156) and this is a major target for action by councils. Whilst most temporary accommodation is self-contained, and of a reasonable standard, temporary accommodation can mean that families find it hard to put down roots or settle children in school. Should enforcement action to tackle crowding and space lead to a duty to rehouse displaced households, this might compromise the planned reduction in use of temporary accommodation. Given the mismatch between demand for and supply of social housing in high pressure areas, many families could have a long wait before being allocated a larger home. This will be especially true of larger households waiting for housing with 4 bedrooms or more.

It is therefore essential that councils enforcing the HA2004 carefully work through their enforcement options for crowding and space. Following this guidance will minimise the risk of households being displaced from their homes and being placed in temporary accommodation. It is vital that councils exercise their enforcement powers in a responsible and proportionate manner, taking into account the wider picture on overcrowding. This is especially important in areas where there are high levels of overcrowding and a lack of housing supply, particularly larger family units. There are some excellent examples of innovative use of the existing housing stock to meet demand, including tackling empty properties and under-occupation. These will help to make a difference but major inroads to reducing overcrowding are only likely to be achieved by an effective long term national strategy, where housing need and supply of suitably sized homes are more closely matched.

Part 2: Overcrowding – the picture in England

2.1 Introduction

This Part provides some national information on overcrowding, based on statistics of estimated overcrowding rates. These have been determined from the likely distribution of overcrowding from the Survey of English Housing (SEH), calculated from interview surveys with households, rather than physical inspections. Therefore, there are some limitations to the accuracy of the data, and no account is taken of the additional criteria which will be relevant to the HHSRS assessment for crowding and space, such as bedroom sizes, amenity space and size of living rooms.

It is unclear how the statistics for overcrowding relate to projected hazards under HHSRS for Crowding and Space. The SEH publishes overcrowding statistics based on the Bedroom Standard, but provides no commentary regarding expected HHSRS failures. The Bedroom Standard is an indicator of occupation density and is being used by Communities and Local Government (CLG) to collect baseline data from worst affected 'Pathfinder' councils as part of the Overcrowding Action Plan. CLG will be using data from the Pathfinder authorities to inform its consideration of how best to modernise the statutory overcrowding standards.

The English House Condition Survey provides a predicted rate of category 1 HHSRS failures, including crowding and space. Statistical modelling is used, but this is not based upon the Bedroom Standard.

Owing to these limitations, councils should not attempt to use this data to extrapolate local information on crowding and space under HHSRS. This Part should be used only as a basic overview to the national picture on overcrowding. Locally obtained data on crowding and space should be a starting point to inform local policy.

2.2 Headline statistics – overcrowding in England

Using the Bedroom Standard definition, the average number of overcrowded households in England over the three years to 2007-08 was approximately 565,000. This constitutes less than 3% of households, but varies widely by region, tenure, household size and by ethnicity. The rate of overcrowding is highest in London, with around 200,000 overcrowded households (6.8%) as shown in Figure 1. Over three-quarters of the overcrowded households in London are in the private or social rented sector, with the highest rate of overcrowding being in the latter (12.7%). A further breakdown of the figures by region is included at Appendix 3.

Larger households, not surprisingly, are more likely to be overcrowded, so that for England as a whole, 21% of households with five or more members are overcrowded, whilst in London, 32% of households with 5 or more members are overcrowded.

Figure 1: Households lacking one or more bedrooms under the Bedroom Standard

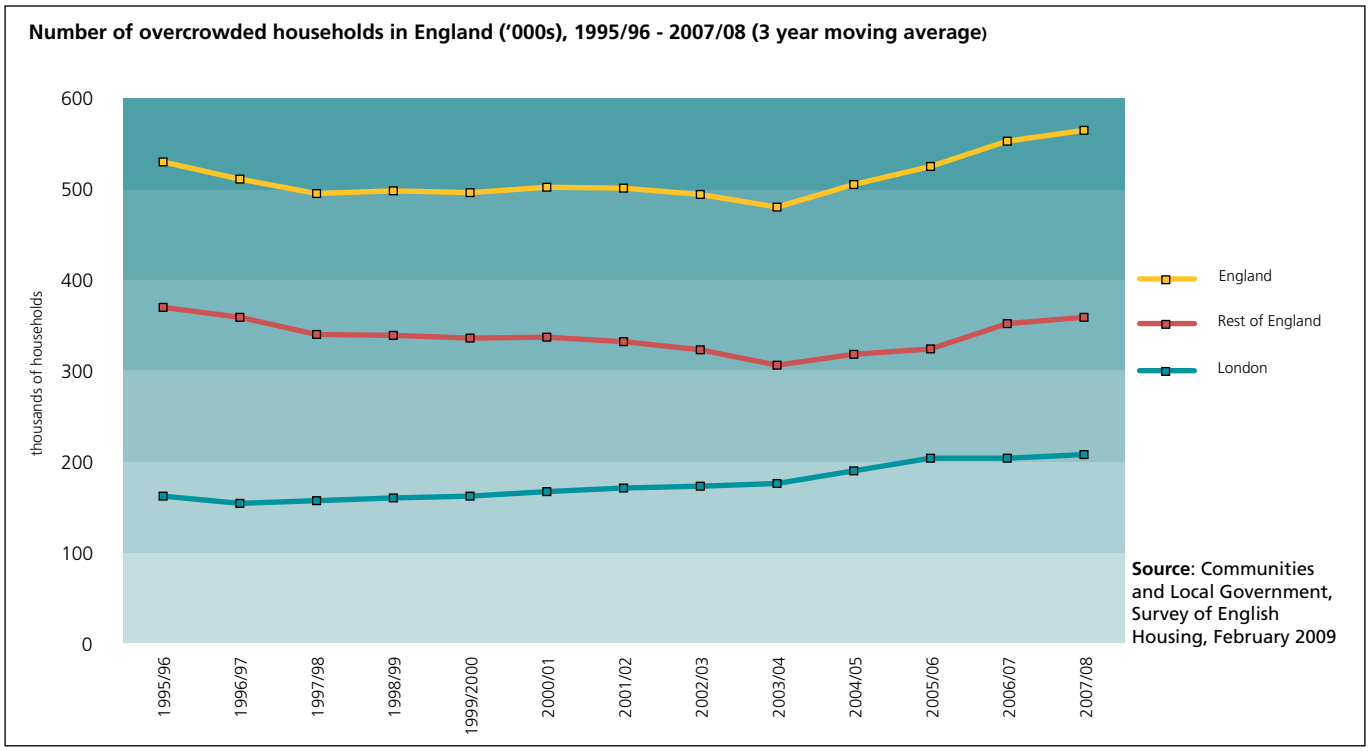
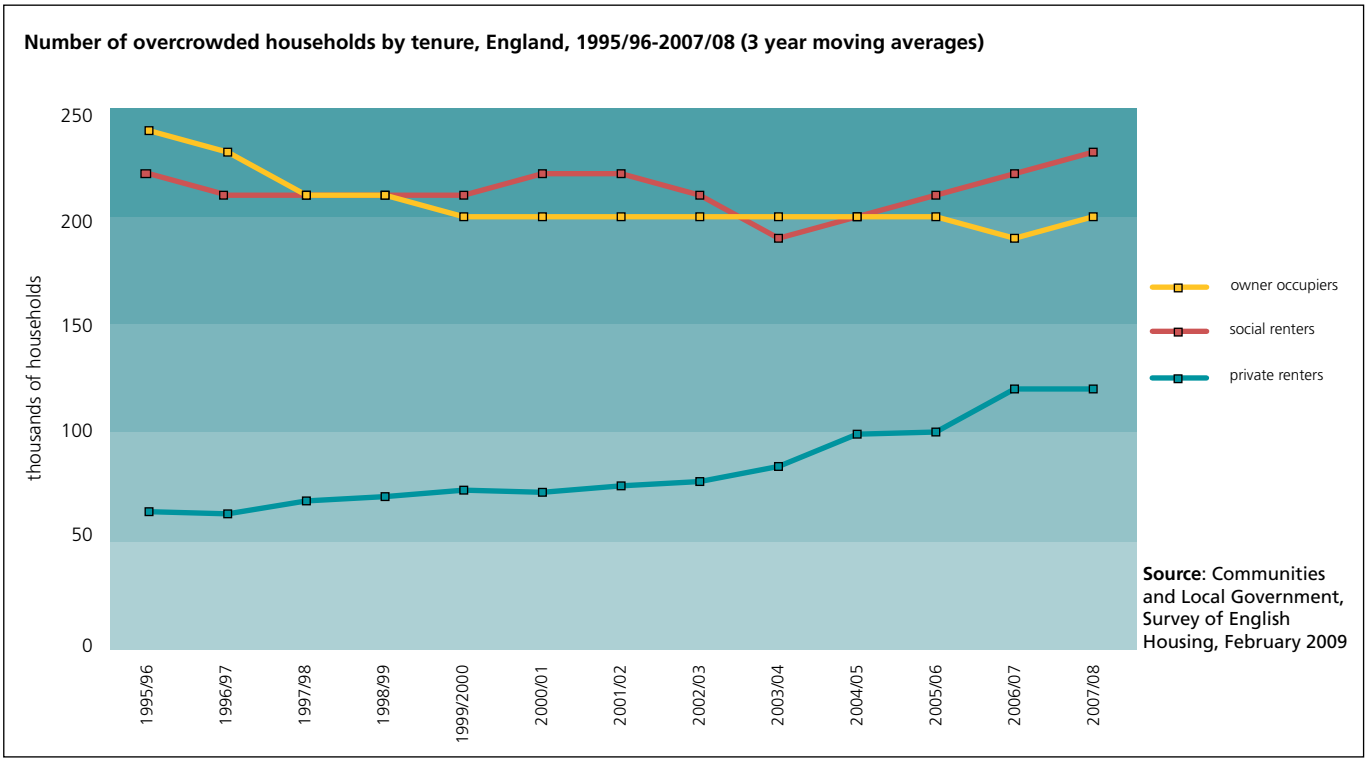


Figure 2: Trends in overcrowding rates by tenure - households lacking one or more bedrooms



2.2.1 Overcrowding by housing tenure

Figure 2 above shows rates of overcrowding by tenure. The highest rates of overcrowding are in the social rented sector (4.9%). Most households which are overcrowded are not waiting for particularly large homes – the majority are waiting for 3 or 4 bedroom units. Overcrowding in the much larger owner occupied sector is proportionately much lower, accounting for only 1.4%.

2.2.2 Severe Overcrowding

Households lacking two or more bedrooms (Figure 3 below), are described as 'severely overcrowded' using the Bedroom Standard and this represents households which are likely to be worst affected.

A more detailed analysis of overcrowding in the social and privately rented sectors in Figure 4 reveals that there are a relatively small number of households (11%) which are severely overcrowded. CLG is asking councils to give priority to tackle severe overcrowding through its Pathfinder Programme, which is outlined in Part 3.

Figure 3: Households lacking two or more bedrooms under the Bedroom Standard

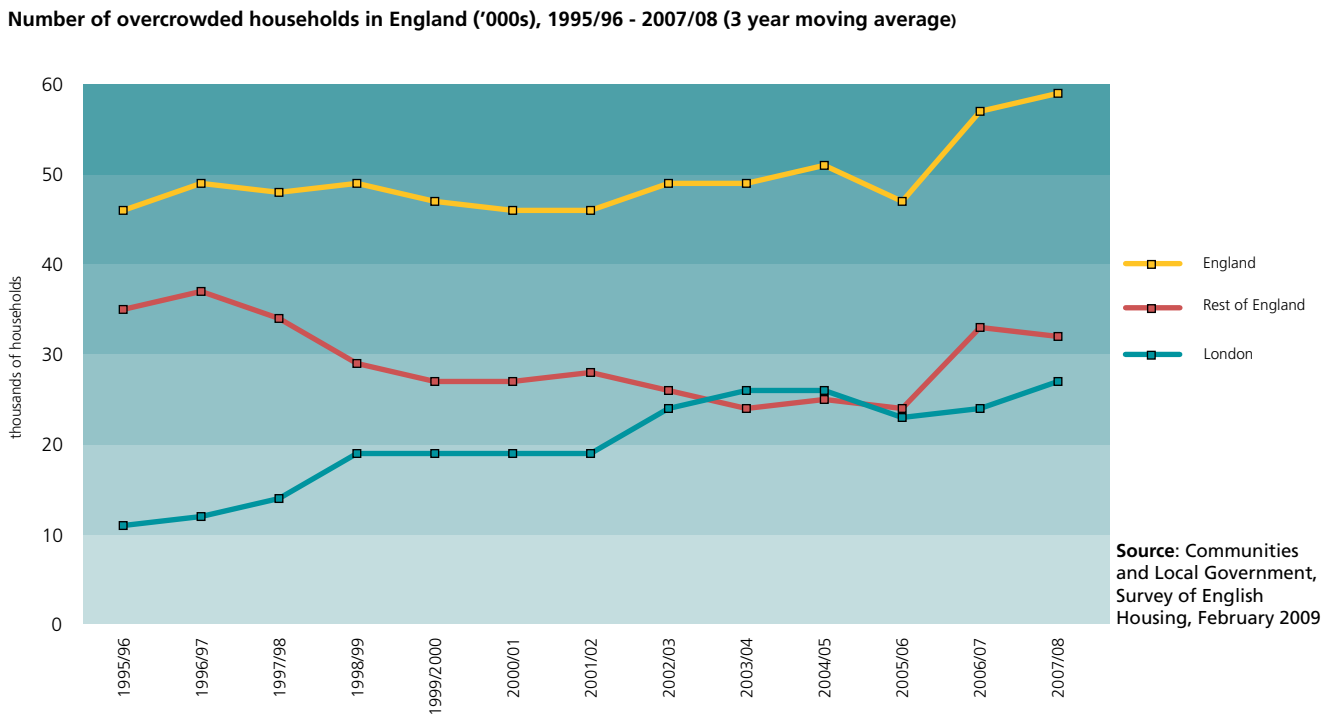


Figure 4: Levels of severe overcrowding in the social rented and private rented sector

Overcrowded households in the social rented sector: comparison of bedrooms needed under the Bedroom Standard and bedrooms available, England, 3year average 2005-06 to 2007-08

	Number of bedrooms needed to meet the Bedroom Standard								Total
	2	3	4	5	6	7	8	9	Severely overcrowded
Current no. of bedrooms									
1	49,200	4,400	1,300						5,600
2		89,700	5,900						5,900
3			68,300	7,400	500				7,400
4				6,100	400	300			800
5					400				0
all	49,200	94,000	75,500	13,500	1,300	300			19,600

Overcrowded households in the private rented sector: comparison of bedrooms needed under the Bedroom Standard and bedrooms available, England, 3year average 2005-06 to 2007-08

	Number of bedrooms needed to meet the Bedroom Standard								Total
	2	3	4	5	6	7	8	9	Severely overcrowded
Current no. of bedrooms									
1	32,800	3,400	1,900	1,900					7,200
2		44,200	6,200	500					6,700
3			22,000	3,400					3,400
4				4,700	1,100	1,100			2,200
5					2,000	0	400	500	900
all	32,800	47,600	30,000	10,600	3,200	1,100	400	500	20,400
Shaded cells = severely overcrowded households									

Source: Communities and Local Government, Survey of English Housing, February 2009

2.3 'Available Space'

The Hills report (2007) found that from 1996 to 2004, the average available space per person in England had risen from 35.8 m^2 to 36.5m^2. However, this improvement was concentrated in the private sector, with a slight overall reduction in average space in the social rented sector. In London, space per person in social housing fell from 30.0 to 28.2 m^2. On average, social tenants have a quarter less space per person than owner occupiers.

Available space is strongly related to people's satisfaction with their home. What is most striking from the report is that for any given level of space, tenants, particularly social tenants are far more likely to be dissatisfied with the amount of space they have than owner occupiers. Nearly 30% of social tenants with the least space are dissatisfied with their homes, compared to fewer than 10% of owners. One reason for this could be that social tenants often have less housing choice. Many social tenants are unlikely to be able to move outside the social housing sector and might face long waits for a larger family home. They are also are less likely to have made trade-offs about, for example, price, location and style of home, as will be the case with owner-occupiers who often choose less space in favour of other characteristics that they value.

2.4 Ethnicity and Overcrowding

Rates of overcrowding also vary based on household ethnicity. This is partly explained by black and ethnic minority groups' greater representation in social and private rented sectors (PRS), where overcrowding rates are highest. The rate of overcrowding for ethnic minority groups is significantly higher than for white households in all tenures, both in London and across the rest of England. For example in London the rate of overcrowding for white households is 3.9% but for ethnic minority households, it is 13.1%.

Part 3: Government policy and direction

3.1 Government's Policy Objectives

Reducing overcrowding is a Government priority and is closely tied to its ambition to eradicate child poverty by 2020. CLG has described overcrowding as the next big housing challenge and wants to do more to tackle it, following its focus on rough sleepers, homelessness prevention, the use of temporary accommodation and the decent homes programme. CLG wants councils to increase their focus on overcrowding. It has stated that it wants to see a substantial reduction in the number of households which are living in overcrowded accommodation. It wants to start with supporting those which are worst off - those households which are severely overcrowded. CLG states that this will provide better circumstances for individual households to achieve their ambitions and improve their life chances.

3.2 National Policy

3.2.1 The Overcrowding Action Plan and Pathfinders

CLG announced an Overcrowding Action Plan in December 2007, investing £15 million over 3 years in council Pathfinder schemes, covering some of the worse affected councils. It estimates that 60% of all overcrowded households in the social rented sector live in the Pathfinder areas, which include all London councils, Birmingham, Bradford, Leicester, Liverpool and Manchester. The programme is being extended to a further 17 councils in 2009.

Councils participating in the Pathfinder Programme are supported to develop a strategic approach, incorporating a range of good practice and making best use of all available stock, including the PRS. Housing benefit now enables low income families in the private sector to be assisted with the higher rents on larger properties through the Local Housing Allowance. This assistance is available to working and non-working households.

The new drive for action to tackle overcrowding is at an early stage. A key first stage is for councils to collect accurate data and understand the nature and scale of the problem in their area. Councils measure overcrowding in different ways when they come to allocate priority within their letting schemes. Therefore, to promote consistency, the Pathfinders have been asked to use the Bedroom Standard as the measure to assess overcrowding. Councils are using a range of measures to tackle overcrowding, which might reduce the need for more immediate enforcement action. These measures include:

- Giving greater priority for social lettings to severely overcrowded households.
- Using the PRS to house overcrowded social tenants.
- Helping under-occupiers move, and release their dwelling for a family.
- Mitigating the impact of overcrowding by dividing large bedrooms and providing additional washing and sanitary facilities, such as washbasins, WCs, or compact furniture.
- Better advice for overcrowded households through the housing options service.
- Joint working with Registered Social Landlords (RSLs).

3.2.2 Emerging issues from the Pathfinder Programme

CLG has summarised the lessons learned so far from the Pathfinder Programme. This work highlights good practice and provides practical support to councils and RSLs to tackle overcrowding where the problems are most acute. Some of the main messages are:

- Understanding the scale and nature of overcrowding locally is a necessary part of developing a strategy to tackle it.
- A case management approach to relocation for overcrowding and under-occupation, with ample personally targeted advice, has proved to be effective.
- Freeing-up under-occupied properties remains an effective way of providing larger properties into which overcrowded households can move.
- Enabling an overcrowded household to stay in the same property by making modifications to the property and engaging family members with relevant support services can reduce the adverse impacts of overcrowding. Enforcement action could be supported by a council providing practical help to lessen the impact of overcrowding until a household becomes a priority for action.
- Given the right encouragements, tenants will take increased responsibility for improving their own housing conditions rather than passive reliance on the council.
- Partnership working with RSLs and, where possible, pursuing joint housing registers and a single set of allocation criteria with RSLs is beneficial.
- Councils should co-operate, rather than compete with other councils and RSLs to avoid increasing the cost of private rented leases.

3.3 A new national Overcrowding Standard?

The Overcrowding Action Plan states the Government's future actions and policy direction on regulation:

'Overcrowding standards:

1. We will underpin the work on overcrowding by updating the overcrowding standards.
2. The statutory standards are the minimum standard against which local authorities assess overcrowding. A household falling below these standards is entitled to seek support from their local authority who is obliged by law to find them alternative, more suitable, accommodation.
3. In July 2006 we issued Tackling Overcrowding in England: A discussion paper to seek views on the best way of addressing overcrowding, not just whether and how standards should be raised but also on the consequences of change and how practical they would be.
4. We received 75 substantive responses to this discussion paper. The overwhelming majority called for an incremental move to the Bedroom Standard.'

The HA2004 enables the Government to introduce, by Order, a new concept for determining and regulating overcrowding, but this has not yet been implemented. CLG has intimated that it will introduce a new national Overcrowding Standard after the baseline data and initiatives from the Pathfinders have been evaluated and any necessary resources have been secured.

This work will enable the timeframe and cost of the implementation of a new statutory standard to be determined. There is also a strong focus on increasing the numbers of new affordable homes being provided including progressive increases in the numbers of new family homes, with three or more bedrooms. However, the current financial downturn will make this more challenging.

It is notable that, based on current estimates from the Survey of English Housing, a move from a statutory Overcrowding Standard in Part 10 of the Housing Act 1985 (HA1985) to the Bedroom Standard could result in an increase in statutory overcrowding from around 20,000 households to 565,000 households, 234,000 of which are in the social housing sector.

3.4 Public Service Agreements and Departmental Strategic Objectives

The Comprehensive Spending Review in October 2007 set out the Government's Departmental Strategic Objectives (DSOs). The main objectives relevant to overcrowding are:

DSO2 Improve the supply, environmental performance and quality of housing - more responsive to individuals, communities and the economy

DSO2 Increase the % of vulnerable households in decent homes in the private sector

DSO Ensure better health and well-being for all

The Government announced 30 Public Service Agreements (PSAs), setting out its top priorities for 2008 to 2011.The PSAs and National Indicators underpin the main themes, which are:

- Stronger and Safer Communities,
- Children and Young People,
- Adult Health and Well-being,
- Local Economy and Environmental Sustainability.

3.5 National Indicators and Local Area Agreements

Detailed information for councils is contained in the Government's *Handbook of Definitions for Local Authorities and Local Authority Partnerships.* National Indicators represent Government's priorities for delivery by councils. The overall number of targets for councils has been reduced by about 80%. Targets are included within the Comprehensive Area Assessment which measures councils overall performance on delivering their objectives.

Councils negotiate local area agreements (LAAs) with government, which set out a maximum of 35 targets which the council will deliver with its partners. The targets are negotiated locally from the overall list of National Indicators. Overcrowding is not a specific indicator in the list, but councils are free to have additional local targets to tackle local priorities if they wish. Some have done this for overcrowding.

The list of National Indicators was designed to flow from the priorities identified across government in PSAs and DSOs. The most relevant PSA for alleviating overcrowding is that on new supply of affordable housing, PSA 20. This is because additional supply will help meet the need of overcrowded households. There are other PSAs which are relevant to overcrowding and HHSRS because they aim to tackle poverty, and improve health and well being. These are also included and are set out in Appendix 4.

Part 4: Assessment of crowding and space

4.1 Introduction

It is imperative that practitioners have some further clear and more detailed guidelines for assessing crowding and space, especially in relation to the number and size of bedrooms within a dwelling. This is a key part of the HHSRS assessment and an area lacking in detail from the Operating Guidance. The purpose of this Part is to provide information which helps the interpretation of the Operating Guidance in these areas. This will provide greater consistency for assessments which are capable of being defended if challenged. Practitioners should have regard to this guidance when carrying out their assessments, but are reminded that they must be flexible in forming their opinions in light of all the circumstances of a particular case. Please note that this is not statutory guidance, that this guidance is not prescriptive and a proper and full assessment must be carried out in accordance with the Operating Guidance, bearing in mind the particular characteristics of the dwelling. Regard must be had to the Preventative Measures, the Ideal and Relevant Matters affecting the Likelihood and Harm Outcomes in the Operating Guidance.

4.2 Average statistics, potential for harm and health effects

The Operating Guidance states that there is a relatively weak evidence base for the production of the average likelihood and harm outcomes for crowding and space. This arises from various complications including multiple deprivation, where it is difficult to separate crowding and space from poverty and socio-economic factors. Therefore, due to the levels of overcrowding in England, the high weighting of the Class 1 spread of health outcomes and the inclusion of only bedrooms as sleeping rooms within the Ideal, HHSRS will produce a relatively high number of households assessed as category 1 hazards compared to levels of statutory overcrowding under Part 10 of the HA1985. This is to be expected, bearing in mind the low standard for statutory overcrowding. Crowding and space may trigger other hazards relating to accidents, fire, hygiene and dampness, which may need to be assessed separately under HHSRS.

The Operating Guidance states that small children need as much space as an adult and the need for privacy develops at age 8 and is fully developed at puberty. The health effects of living in overcrowded conditions include psychological distress and mental disorders especially linked to childhood development, educational attainment and lack of privacy. Increased heart rate, perspiration, increased hygiene risks, accidents, spread of disease and inability to concentrate are also reported effects.

In their report '*The impact of overcrowding on health and education*', CLG state that under-achievement at school can be caused by lack of space for children to do their homework. Older children may spend more time outside the home, on the streets, simply to find privacy and space. School absence rates might be higher because of illness associated, at least in part, with poor living conditions. Poor housing conditions can cause a range of physical and mental illnesses and children growing up in difficult housing conditions are 25% more likely to suffer severe ill-health and disability during childhood and early adulthood.

4.3 Guidance on provision for sleeping - number of bedrooms

The number of bedrooms is a consideration to determine the number of persons for which the accommodation is suitable. Paragraph 11.16 of the Operating Guidance states:

'There should be sufficient provision for sleeping having regard to the numbers likely to be accommodated in the dwelling. As a guide, and depending on the sex of the household members and their relationship, and the size of the rooms, a dwelling containing one bedroom is suitable for up to 2 persons, irrespective of age. A dwelling containing 2 bedrooms is suitable for up to 4 persons. One containing 3 bedrooms is suitable for up to 6 persons, and one containing 4 bedrooms is suitable for up to 7 persons.'

This statement is a broad reference to the Bedroom Standard (see Appendix 1). It specifies the number of bedrooms which a household needs, based on the assumption that no-one has to share a bedroom unless they are a couple, both aged under ten or both aged under twenty-one and of the same sex. Although the Operating Guidance is silent on any detailed consideration of sex and age, the Bedroom Standard sets out the number of bedrooms which will be required for each household depending on age, sex, composition and relationship.

This Standard was developed by Government social survey activity in the 1960s and has been the basis for estimating overcrowding using English House Condition Survey and Survey of English Housing data since 1993/94. It is widely accepted as a reasonable, but not over generous measure of overcrowding, which is much more appropriate to modern day living than the statutory Overcrowding Standard.

The Bedroom Standard is therefore a relevant consideration as part of the assessment of crowding and space. Households lacking one bedroom will be considered to be overcrowded and those lacking two bedrooms will be 'severely overcrowded'.

Clearly, households which are severely overcrowded are likely to suffer worse health affects from overcrowding as over-occupation of bedrooms is a key part of the assessment of the likelihood of an occurrence. The Bedroom Standard can be used to inform practitioners' decisions and justifications on the likelihood of harm for crowding and space.

4.3.1 Benchmarking the worked examples

An exercise has been carried out to consider eight validated HHSRS worked examples relating to crowding and space in flats and houses. In each example, the level of occupation based on the number of persons which the dwelling could accommodate was compared to the actual household size. This enabled a '% occupancy' figure to be produced. The % occupancy was determined on the following basis:

$$\frac{\text{Total Number of Persons in Occupation}}{\text{Maximum Number for the Dwelling}} \times 100 = \% \text{ Occupancy}$$

As an example, where a dwelling is suitable for occupation by not more than 3 persons and is occupied by 4, the % occupancy would be as follows: 4/3 x 100 = 133%

A person is counted as 1, irrespective of age and the 'maximum number' is derived from an assessment of the dwelling in relation to the Bedroom Standard. The limitations of this approach however must be recognised. It is important to bear in mind that the assessment of likelihood of harm will be influenced by factors other than just the number of persons occupying the dwelling. The number and size of living spaces, the amenities and the needs of the occupying household will also be a relevant part of the assessment, rather than simply the number of bedrooms. In some of the examples these have been significant factors which were taken into account.

Whilst it is possible to identify a trend between the household size and the likelihood of harm in the HHSRS worked examples, this is a small sample size and there are other variables in the particular characteristics of each case. This means that Figure 5 cannot be used as a 'short-cut' predictive model for determining the likelihood of harm in a particular case. It is a crude tool giving only a very rough indication of the likelihood of harm. It is not an alternative to carrying out a full assessment in accordance with the Operating Guidance, but may prove a useful way of comparing the worked examples against each other.

4.4 Guidance on provision for sleeping - room sizes

The Operating Guidance is silent on suitable room sizes for accommodation including bedrooms. Paragraph 11.15 mentions that for larger households, bedrooms 'should be large enough to be useable for sleeping' and paragraph 11.16 states that room sizes are part of the assessment of sufficient provision for sleeping, 'There should be sufficient provision for sleeping having regard to the numbers likely to be accommodated in the dwelling'.

4.4.1 The HHSRS worked examples

The inadequate size of bedrooms in a dwelling is a relevant matter affecting the likelihood of harm and a crucial part of the assessment. A summary of bedroom sizes provided in the HHSRS worked examples for dwellings, verified by Warwick Law School and published on LACORS website is provided in Figure 6, with the source data and worked examples in Appendix 5A.

Figure 5: comparison of % occupancy with likelihood of harm - worked examples

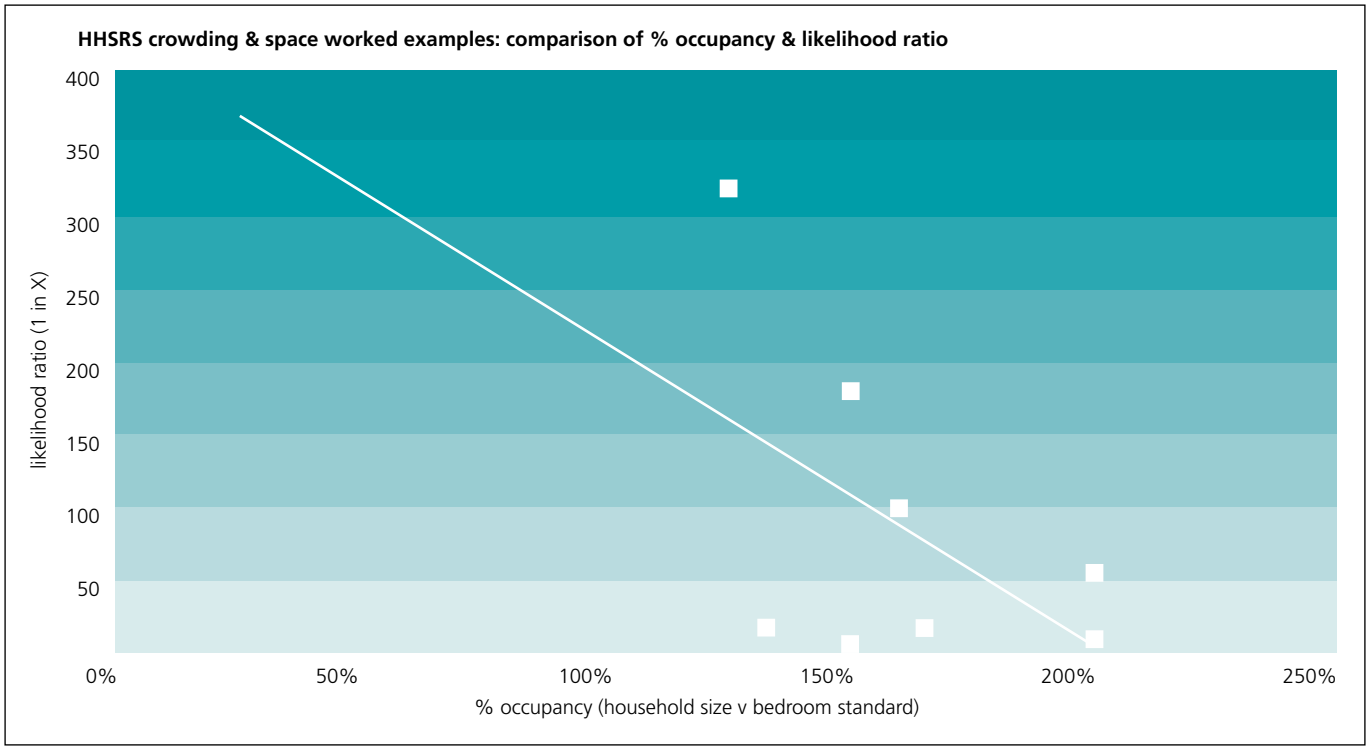


Figure 6 – The worked examples. Bedroom size and suitability for level of sleeping provision, irrespective of age

Property type	Bedrooms sizes (m^2)	Suitable for (no. of persons)
Purpose built self contained flat (1 bedroom)1950s	10.4	2 persons
Non typical older terraced 2 storey house (2 bedrooms)	11.0 4.0	2 persons 0 persons
Purpose built self contained flat (2 bedrooms) 1980s	**9.5** **6.5**	2 persons 1 person } 3 total
Purpose built self contained flat (2 bedrooms) 1970	10.2 **9.1**	2 persons 1 person } 3 total
Flat above shop, 2 storey (1 bedroom) 1920s	10.0	2 persons

Although the number of worked examples for crowding and space is small, the information suggests that, as a rule of thumb and, depending on layout and design, a room of around minimum size **9.5m²** is suitable as a double bedroom for two persons and a bedroom of **6.5m²** or above is suitable as a single bedroom for 1 person. This information is useful to help practitioners decide on whether bedrooms are suitable as single or double bedrooms although it must only be used as an approximate guide. The type of property e.g. flat or house, layout, design, size of living space and overall size of the premises will also be relevant.

4.4.2 The Operating Guidance – Housing Quality Indicator and the Metric Handbook

The Operating Guidance directs practitioners to further information in the '*Housing Quality Indicator System' and 'Metric Handbook – Planning Design Data'*.

The Housing Quality Indicator (HQI) system is a measurement and assessment tool for new social housing schemes (Housing Corporation), together with Scheme Development Standards which use the Bedroom Standard as a baseline. The Metric Handbook provides a guide to space and room sizes. Both these documents relate to new design requirements for residential accommodation, so there is limited relevance to existing housing.

4.4.3 The Housing Quality Indicator

The HQI does not contain definitive room sizes or standards, but is based on functionality requirements for rooms and dwellings. However, it does include information regarding the expected amenities, fittings and furniture which different rooms in a dwelling would be expected to accommodate, together with minimum activity spaces around these items to facilitate safe and proper use by residents. Bedrooms are expected to be large enough to accommodate all the furniture detailed in Appendix 5B. The matrix in Annex 1 of the HQI suggests that a room of $9m^2$ would not be large enough to function as a double room with occasional use of a cot, in a family dwelling, but that a room of $10.5m^2$ would be able to meet this requirement.

Although there are limitations to the HQI, in that it is an aspirational design standard for new social housing, it can provide a useful indicator of the size of a bedroom needed to accommodate essential storage, fixtures and fittings. It lends some support to the view that, for HHSRS, a bedroom of area greater than $9m^2$ but less than $10.5m^2$ would be large enough to be used as a double bedroom without a cot.

4.4.4 The Metric Handbook – Planning and Design Data

This document (see Appendix 5C) does include some recommended room sizes based on the author's experience, the Housing Corporation's list of required furniture and also the National House Builders Council minimum requirements. The figures are now widely used as guidance by architects and developers for residential design. They are also often used as the basis for minimum acceptable design standards by many Local Planning Authorities. The Metric Handbook figures are sometimes wrongly referred to as the 'Parker Morris' standard. Parker Morris in fact made a point of not laying down requirements for room sizes.

A minimum area of $10m^2$ is suggested for double bedrooms (although a larger size is given for a main double bedroom). This is very close to the minimum room size for a double bedroom of $9.5m^2$ used in one of the HHSRS worked examples. The Metric handbook suggests $6.5m^2$ as a minimum bedroom size for single bedrooms.

4.4.5 Summary

When assessing crowding and space, a room of 6.5m^2 or above will normally be suitable as a single bedroom.

As the Metric Handbook and HQI relate to design suggestions for new accommodation, it is suggested that a slightly lower figure of 9.5m^2 is an appropriate guideline for the minimum size for a double bedroom for 2 persons, using the HHSRS assessment for existing dwellings.

The dwelling characteristics which are emphasised in paragraph 4.4.1 are of particular importance. Flexibility will need to be applied, particularly in respect of the useable space in each bedroom, which should be of a design and shape sufficient to accommodate the furniture and circulation space required.

4.5 Identifying rooms as bedrooms

Kitchens and living rooms are not 'bedrooms' for the purposes of the Operating Guidance. The presumption should always be that, where the dwelling has been designed with a separate identifiable living space, this space should be retained as living space and not be counted as a bedroom. The intended function of the room during the initial first step of the assessment should be considered rather than the current use, although, for example, in the case of a dwelling that has two separate reasonably sized living/reception rooms, it may be that one of these spaces could be considered as bedroom accommodation, as long as there remains sufficient living room space available for the household. If the intended function is clearly unknown, then the current use of the room will be relevant, as will its acceptability for the intended use.

4.6 Other relevant factors

In addition to the size of rooms, the shape and usable space in the dwelling must also be considered, including the suitability of bedrooms. Regard should be had to floor space which does not contribute to the spaciousness of a room. This is particularly important for bedrooms where practical use of the room is compromised when occupied by the numbers of persons suggested by floor area alone. The following guidance applies:

- The floor area taken up by a solid chimney breast should not be considered as forming part of the useable space.
- Account should be taken of entrance lobbies/corridors within bedrooms. Large lobby areas or corridors within bedrooms should be taken into account, if they are able to make a contribution to storage capacity and spaciousness.
- Account should be taken of particularly unusual room shapes (such as wedge-shaped or triangular) or other physical characteristics (such as excessive numbers of door openings, piers/projections into rooms) when carrying out the assessment. Areas which make a positive contribution to the amount of useable floor space within a bedroom should be considered.
- Restricted head heights such as floor to ceiling heights will impact on the assessment, especially in bedrooms and living spaces.

The size of living rooms, dining rooms and kitchens are also relevant factors during the assessment. There are no prescribed dimensions for these rooms in the Operating Guidance and the worked examples provide a limited insight into the contribution which the size of these rooms might make to the HHSRS assessment. The Metric Handbook (Appendix 5C) provides some information which might assist practitioners to make judgements on the size of such rooms compared to the number of residents, although clearly design, functionality of the rooms, privacy and circulation space will also influence the assessment, together with the presence of recreational space. Again, caution should be used in applying the figures in the Metric Handbook, owing to the limitations outlined previously.

Part 5: Enforcement of crowding and space

5.1 Introduction

The guidance in this section applies to premises occupied by single households rather than Houses in Multiple Occupation (HMOs) which are discussed in Part 6. The powers in this Part of the guidance may be used to tackle crowding and space in HMOs, but, in many cases, it will be more appropriate and practical to use the HMO licensing or specific overcrowding provisions in section 139 of the HA2004.

5.2 Duties and powers for crowding and space

The HA2004 puts councils under a general duty to take appropriate action in relation to a category 1 hazard. Where they have a duty to act, they must take the most appropriate course of action and should follow the principles of the Enforcement Concordat.

Councils must have regard to the HHSRS Enforcement Guidance when exercising their duties and powers under the Act. They must decide which is the appropriate enforcement action under section 5 of the Act for category 1 crowding and space hazards. Generally, the appropriate enforcement action will be one of the following options:

- Hazard Awareness Notice (HAN)
- Prohibition Order (PO)
- Improvement Notice
- Emergency Remedial Action
- Emergency Prohibition Order (EPO)

If only one course of action is available, councils must take that action, but if more courses of action are available, councils must take the most appropriate course of action.

The first three enforcement options are available for both category 1 and 2 hazards, whereas the last two options may only be used in relation to category 1 hazards. Councils cannot take more than one simultaneous action, and certain types of action e.g. Improvement Notices and POs can be suspended.

Councils have discretionary powers to take action for category 2 hazards, and need to decide how to exercise these under section 7 of the HA2004. There will be a general presumption towards a less formal approach for category 2 hazards. Councils should formulate their approach to category 2 hazards by considering adopting an enforcement policy which will outline how they are exercising their discretion in relation to HHSRS hazards, including crowding and space.

5.3 Powers available for category 1 and 2 hazards

5.3.1 Hazard Awareness Notices

This response is an advisory type of action which does not require action by the recipient of the notice. There is no appeal against the service of a HAN, so any challenge to it would need to be via Judicial Review. A tenant, aggrieved by the council's response, and believing the most appropriate response to be a PO, would have no option but to bring a claim by way of Judicial Review.

Councils should avoid a general stance of serving HANs for all category 1 assessments. According to the Enforcement Guidance, a HAN is an appropriate response to a less serious hazard. Councils which adopt this approach for all category 1 hazards might be liable to legal challenge for non performance of duty. The service of HANs is also unlikely to be justifiable for high scoring category 1 crowding and space hazards. A HAN is a suitable response to a category 1 hazard in particular situations, such as owner occupied premises, where formal intervention by the council cannot be justified or where a tenant does not want the council to take action.

A HAN may be a reasonable response to a less serious hazard to bring to an owner's attention to the desirability of remedial action. It is therefore a suitable enforcement response to a category 2 crowding and space hazard.

5.3.2 Prohibition Orders

POs may prohibit the use of part or all of the premises for 'some or all purposes' or prohibit 'occupation by particular numbers or descriptions of people.' Where premises are not suitable for the number of persons occupying it, a PO may be an appropriate option. The Enforcement Guidance states that 'a prohibition order might be appropriate to specify the maximum number of persons who occupy a dwelling where it is too small for the household's needs, in particular the number of bedrooms'.

A PO should specify the maximum number of persons who can reasonably be accommodated, bearing in mind the size, number of bedrooms and other factors referred to in the Preventative Measures and Relevant Matters in the Operating Guidance. Any clauses included should be sufficient to remove the crowding and space hazard, if complied with.

Total prohibition of the use of premises owing to crowding and space is only likely to be appropriate if the physical condition of the premises is completely unsuitable for occupation. There will

normally be serious physical deficiencies and other hazards at the premises rather than the sole presence of a crowding and space hazard.

A PO can be a suitable response where a landlord has **deliberately or wilfully caused the hazard**. These situations could be encountered in the PRS, where premises have been rented to an excessive number of individuals or households, compared to the space available within the dwelling.

POs may be made with or without suspension. In some cases, it might be appropriate to suspend the PO until a specific date or an event occurs.

5.3.3 Suspension of Prohibition Orders

There is no specific enforcement guidance relating to the decision to suspend a PO owing to a crowding and space hazard. The HHSRS Enforcement Guidance does, however, make it clear that 'action to deal with future occupation could be taken through the use of a suspended order.' It goes on to state, 'the turnover of tenants is important. Suspension may not be appropriate where there has been a quick turnover in occupancy and councils should consider the likelihood that a range of occupants will be housed in the property in the coming 12 months'.

Councils may decide to make suspended POs for category 1 crowding and space hazards, particularly where an increase in household size, caused by children being born to the family has created the hazard since the tenancy started. This is a suitably robust and legitimate approach to take. In these circumstances POs should initially be suspended to allow the relevant parties a reasonable opportunity to take action, before the Order comes into force. If the council decides to make a PO which is suspended, the suspension should be time limited and reflect a reasonable period for action to be taken.

In 2007, the Residential Property Tribunal (RPT) heard an appeal by Ms Ali, against a decision by Bristol City Council to serve a suspended PO in respect of crowding and space. After considering the evidence, the RPT took account of various factors including the seriousness of the hazard and how the PO would affect the occupants of the house. The Tribunal found that it was appropriate for Bristol City Council to suspend the PO, but that the suspension should be time limited as well as suspended until there was a change of tenancy. The length of suspension was limited by the RPT to nine months or until there was a change in the number of occupants, whichever occurred first. In addition, a clause was included stating that if a person moved out of the property, then another person shall not be allowed to replace them unless the maximum number of occupants which was specified in the PO was not exceeded. This case is included in the bibliography.

The hearing also considered the question of appeals against suspended POs. The Tribunal decided that a suspended Order could be subject to an appeal to the RPT.

5.3.4 Improvement Notices

This power can be a suitable response where works of mitigation are required. Examples where such action is appropriate is when a landlord has inappropriately made physical changes to the premises which have caused the hazard. This might relate to sub-dividing the premises to create rooms in a property which are being used to accommodate an excessive number of persons. There will be a need for good internal liaison and information sharing between relevant departments such as building control and planning. Any Improvement Notice will include a schedule of remedial works relating to the physical works necessary to remove the crowding and space hazard.

5.3.5 Emergency Prohibition Orders and Emergency Remedial Action

These powers apply to the most serious situations, which can occur where there are significant other hazards and major problems in a premises of which crowding and space is a contributing factor. The powers may only be used if there is an imminent risk of serious harm to the health and safety of the occupiers. This is only likely to occur in situations where there is risk of death or serious injury caused by other hazards such as fire.

In most cases, it might not be possible to resolve a hazard of crowding and space by taking emergency remedial action at the property. In such circumstances, where there is an imminent risk of serious harm, immediate prohibition might need to be considered.

5.4 Option Appraisal

For category 1 and 2 hazards, councils must prepare a statement of reasons, outlining their enforcement decision and the reasons why a particular type of enforcement action has been taken.

Therefore, there is a need for a thorough appraisal of the enforcement options available, before the decision is taken. A variety of factors need to be considered in addition to the HHSRS Enforcement Guidance. The main considerations are included in sections 5.4.1 to 5.4.8 below:

5.4.1 The tenure of the premises and how the hazard has arisen

Only the risk to the current occupiers is considered for crowding and space and therefore occupancy will strongly influence the council's decision to follow a particular course of enforcement action.

Owner-Occupiers

Councils are unlikely to want to intervene and take formal enforcement action against owner-occupiers in respect of crowding and space. If a council identifies a category 1 crowding and space hazard, then a HAN might be considered the most appropriate course of action.

Overcrowding in the owner-occupied sector may be most appropriately tackled by using non-enforcement related strategies, such as those outlined in Appendix 6. Examples of such approaches would be to target specific local issues by initiatives to address high levels of crowding and space hazards in premises occupied by black and minority ethnic groups; addressing overcrowding linked to high levels of deprivation, or through health and well-being strategies to influence positive health outcomes related to child poverty.

Private Rented Sector

In the PRS, the hazard might arise in two main ways:

- Deliberate or wilful overcrowding by a landlord, often related to pecuniary gain in flagrant disregard of the law. This might also result from inappropriate physical changes to the premises to accommodate an excessive number of persons.
- Over-occupation of the premises caused by an increase in the number of occupiers or size of the household, after the tenancy agreement has begun.

Before taking enforcement action, councils must consider how the crowding and space hazard has arisen and the influence of the factors above. Ultimately, these factors and the severity of the hazard will determine the type of action which is taken. Councils will need to carry out a thorough investigation of the circumstances leading to the crowding and space hazard, which will involve discussions with both the landlord and tenants. Matters to consider will be the type and length of tenancy (e.g. Assured Shorthold Tenancy or Rent Act Protected) and the general turnover of tenancies at the premises; how long the premises has been occupied by the current tenants and how established and settled they are in the local community. This might include consideration of whether children are settled in local schools, any family support networks and vulnerability of the occupiers.

Landlords operating in the PRS should not let accommodation to a group of people where it will result in the property becoming overcrowded. They should take reasonable steps to assess this before a tenancy commences. It is suggested that, as part of good practice, landlords should gain details of everyone who will occupy the property and their relationship to the tenant. The landlord should clearly explain to the tenant the maximum number of people able to reside in the property.

Registered Social Landlords

Part 1 of the HA2004 applies to RSLs. The predominant cause of crowding and space hazards in this sector is an increase in household size from growth within a family, following occupation of the premises. The limited supply of affordable housing and the severe lack of larger family units are some of the major factors which have given rise to a lack of housing supply in the most overcrowded areas in England. Enforcement in RSLs is discussed in more detail in paragraph 5.5.

Council owned or managed stock

A council cannot take statutory enforcement action against itself for non-compliance with Part 1 of the HA2004 in relation to its own stock. This is clearly reflected in the Enforcement Guidance. Councils are, nevertheless, expected to use HHSRS to assess the condition of their own stock and to ensure it meets the decent homes standard by 2010. A council cannot take action against an Arms Length Management Organisation (ALMO) either, as for most purposes, acts of an ALMO are deemed to be acts of the council itself.

Councils should consider implementing an in-house assessment and referral system to assess the need for action to tackle crowding and space in their own stock though their housing management team or ALMO. This will enable a consistent approach across the social housing sector. Effective monitoring of progress for crowding and space is important for decent homes reporting through National Indicator 158 – '% of decent council homes', which measures progress towards making all council housing decent.

5.4.2 The owner/occupier's views

Councils should use a pre-enforcement consultation to seek views from owners and occupiers to inform and support their decision before enforcement action is taken. This approach may be used to state a council's intention to take formal action, allow representations and the views of relevant persons to be obtained. The consultation period may also be used as a means of verifying occupancy levels and of obtaining relevant documentation, such as tenancy agreements. During this period, councils should consider all representations received, including any request by a tenant not to take formal action, to suspend action or to vary the action which is proposed by the council.

5.4.3 Landlord's history of compliance

Specific guidance is provided in paragraphs 2.18-2.20 of the HHSRS Enforcement Guidance. In addition, the Enforcement Guidance at paragraph 2.2 states that 'The decision to take enforcement action will require a judgement as to the necessity for intervention, given their knowledge of a landlord and his or her compliance history'.

Councils should consider whether a landlord has a good record of compliance with legislation, whether they belong to any local landlord accreditation scheme and whether they have been deemed a 'fit and proper person' for the purposes of

HMO licensing. There should be a tendency towards strong enforcement action for landlords who blatantly flout or disregard legislation or are repeat offenders.

There should be a tendency towards a more informal approach to landlords who demonstrate a good history of compliance, are 'fit and proper' persons, have licensed premises which generally comply with legislation, or are members of a recognised local authority landlord accreditation scheme.

5.4.4 Severity of situation

The hazard score, general condition of the premises and presence of other related hazards under HHSRS will also influence the enforcement decision. The individual characteristics of the particular case are relevant and councils should avoid blanket, arbitrary decisions purely based on the hazard score alone.

5.4.5 Presence of any vulnerable occupiers

Regard should be had to any occupiers who are considered to be vulnerable persons, as vulnerability will influence housing need, eligibility and prospects for rehousing to more suitably sized accommodation. Any medical needs of occupiers will also be relevant and consultation might be necessary with support agencies such as social services. The risk of the exclusion of vulnerable people from the dwelling is an important consideration, particularly when a PO is being considered.

5.4.6 The Implications for rehousing obligations and homelessness

These are major considerations which are discussed in Part 8.

5.4.7 The purpose of intervention

It is important that residents' expectations are not raised unrealistically and that they are made aware of the limitations of regulation, particularly where there are high levels of overcrowding in the local area and there is a limited supply of appropriately sized accommodation to meet need. It is important that practitioners explain to residents the reality of their housing prospects in the context of the local demand for affordable housing and the possible outcome of enforcement action.

5.4.8 Local Enforcement Policies

The HHSRS Enforcement Guidance provides information on the use of discretionary powers in paragraph 2.2, and the use of formal and informal action at paragraphs 2.15-2.16.

It is vital that each council has adopted a local enforcement policy which complies with the principles of the enforcement concordat and the Regulators' Compliance Code. The policy must be well understood by council officers engaged in enforcement work. The policy should also be publicised to landlords, local businesses, and anyone else who might be affected by it.

Councils will need to decide how they will discharge their duty to take action for category 1 crowding and space hazards and this may need to be enshrined in their enforcement policy. If crowding and space is a local priority for action, the wider local strategies and cross-cutting themes will need to be identified (Appendix 6).

A local enforcement policy should set down a framework within which officers will use their discretion in relation to category 2 hazards. However, the policy should not be so rigid that it fetters the council's discretion and becomes open to legal challenge.

5.5 Enforcement in Premises managed by Residential Social Landlords

5.5.1 Suggested enforcement approach for RSLs

Councils should decide on their proposed general enforcement stance to premises operated by RSLs. In most cases the crowding and space hazard will have been caused by an increase in household size, arising from children being born after the tenancy agreement has begun. Councils might decide to adopt a general enforcement policy of making suspended POs for category 1 crowding and space hazards, setting a limit on the numbers of occupiers. This does not mean that suspension would be appropriate in all cases. The greater and more immediate the risk, the less appropriate might it be to suspend. In all cases, the council would be required to establish if there were any factors which might cause it to depart from this general approach.

RSLs support councils, often as key partners, working to achieve the aims of their Housing Strategies, including the provision of affordable housing. The Enforcement Guidance states that for RSLs, informal action is preferable to formal action where there is a decent homes programme in place. According to paragraph 2.3 of the Enforcement Guidance, councils should 'take account of informal working with RSLs, which is seen as preferable to resorting to formal enforcement action where they have a timetable for making the stock decent. However, occupiers should not be left for long periods in unsafe housing'. Therefore, there might be a presumption towards more informally based action for HHSRS hazards, including crowding and space in particular circumstances.

In some cases, taking a less formal and more lenient approach towards RSLs fits well with the principle of informal partnership working. Where the following criteria are met, there should be a tendency towards such an approach:

- The RSL has a decent homes programme which includes action to address category 1 crowding and space hazards, and the council believes that the RSL is making progress to reduce overcrowding within their stock.
- An RSL Agreement or Protocol is in place (see 5.5.2 below) and the RSL has an effective mechanism for taking action to deal with crowding and space cases and complaints referred to it.
- The council has general confidence in the performance of the RSL. The RSL is responsive and co-operative towards the council, and has a good track record of regulatory compliance.
- The circumstances of the particular case, when compared to others (e.g. high-scoring category 1 hazards) do not warrant the need for formal action.

RSLs should be expected to have thoroughly evaluated each case and investigated the options available to the household to remove the crowding and space hazard in line with its key policies and housing options available. Where this has not been carried out, or the RSL has done so unsatisfactorily, the council should consider taking stronger enforcement action e.g. removing the suspension of a PO.

5.5.2 RSL Agreements

The Enforcement Guidance states that 'Where RSLs have a programme of works to make their stock decent, it would also be appropriate to liaise with the landlord over any works necessary to deal with category 1 and 2 hazards in advance of the planned improvements'. Councils could consider setting up informal liaison arrangements with RSLs as a precursor to formal enforcement action. Establishing such arrangements would ensure that RSLs have an opportunity to respond to and resolve any complaint without having to resort to immediate enforcement action. Councils should also consider any programmes of action to estate-based overcrowding problems, before initiating formal action.

Written agreements between a council and an RSL could be developed which set out the extent to which the RSL would be subject to general enforcement action. Such agreements can help to stimulate good working relationships between RSLs and councils, and enable monitoring of progress on individual cases and on overcrowding generally. They might be further developed into a formal protocol, where both parties agree responsibilities, service agreements and standards of performance, including the procedures to be followed when the council receives service requests from RSL tenants. The aim of this approach is to achieve improvements which will benefit residents in a measured way, rather than dealing with complaints purely in isolation. For example, West of England Local Authorities has a protocol with local RSLs, which is included in the bibliography.

5.6 Reviews and alternative courses of action

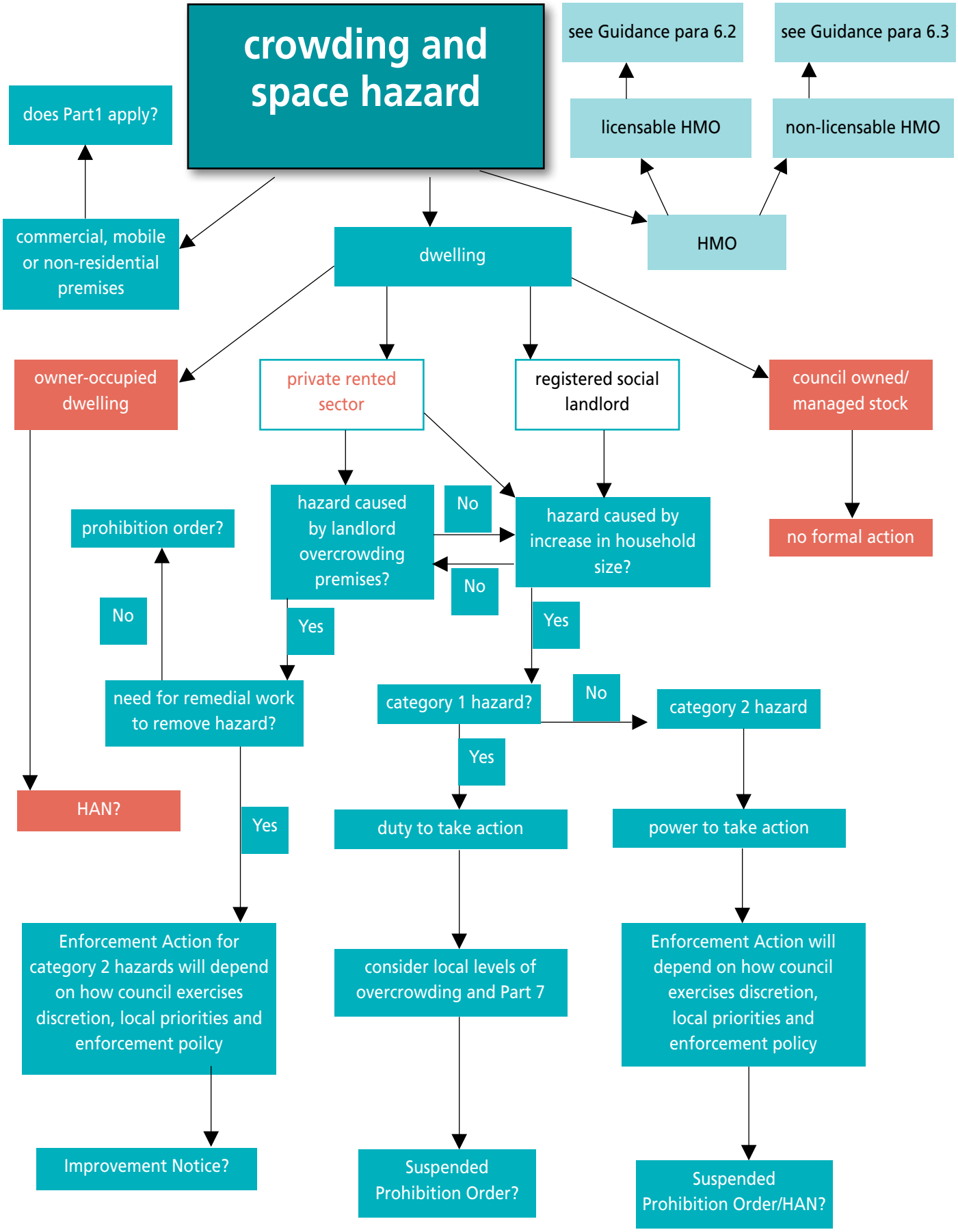
Enforcement action must be regularly reviewed, especially in respect of suspended action. Each case should be reviewed in good time before the suspension ends, to check whether action has been taken to remove the hazard. A review should determine whether previous assurances have been adhered to and whether the occupancy arrangements have changed. If a crowding and space hazard remains, the case officer should liaise with the landlord and tenant and their housing allocations team, to establish what steps have been taken to resolve the situation. Based on all the evidence, the case officer should then decide whether to extend the period of suspension, or consider a different enforcement option.

Councils must have an effective system of case management and procedures in place, including regular reviews of enforcement action, especially for suspended action.

5.7 Flow chart

A summary of the main steps to be taken during the option appraisal are illustrated in Figure 7 overleaf.

Figure 7: Crowding and space enforcement flow chart



Part 6: Enforcement in houses in multiple occupation

6.1 Introduction

Part 1 of the HA2004 is intended to deal with health and safety matters. There are separate provisions available to limit the number of occupants in relation to the inadequacy of the amenities in HMOs. It is not appropriate to use enforcement of the crowding and space hazard to address the provision of facilities in non-licensable HMOs which do not give rise to health and safety issues. Councils should use the specific provisions for regulating overcrowding in non–licensable HMOs and HMOs subject to mandatory licensing.

6.2 Licensable HMOs

Part 2 of the HA2004 covers the mandatory and additional licensing of HMOs and associated licensing conditions.

Where HMOs are licensed, overcrowding is controlled by specifying in the licence the maximum number of occupiers or households who are authorised to occupy the HMO (HA2004, Section 64). In most cases the licence should specify both the maximum number of persons and households, which are set according to councils' space standards for HMOs (see paragraph 6.4).

6.3 Enforcement in non-licensable HMOs

Powers to deal with overcrowding in HMOs which do not need to be licensed are contained in section 139 of HA2004 (Part 4), as amended by Statutory Instrument 1904/2007. Overcrowding notices may be served on HMOs which do not need to be licensed. The council's HMO space standards will be used in deciding whether an HMO is overcrowded. However sections 141 and 142 of the HA2004 state that no persons who are not living together as husband and wife (and aged 10 or over) of the opposite sex are to share a room.

An Overcrowding Notice may be served not only where an HMO is overcrowded, but also where it is 'likely to be' overcrowded. Firm evidence would be needed of the likelihood of overcrowding. The notice must specify the maximum number of occupiers permitted in each room. It may apply to existing residents, if served under section 141 or, only to new residents, under section 142.

6.4 Local room standards for HMOs

There are no national standards for room sizes in HMOs. Councils should set their own room standards for all HMOs, whether licensable or not. Standards should be set for kitchens, bathrooms and WC compartments, as well as bedrooms and bed-sitting rooms.

Any local standard would be expected to be a reasonable standard; it should be one for current living standards and should take into account the type of housing in the area.

Councils might consider agreeing similar standards for room sizes in their sub-region, to assist landlords with property portfolios in adjoining areas and aid consistency. Landlords and tenants should be consulted on the standards, following which they should be formally adopted. The standards should be reviewed at regular intervals. Where a council is still using standards which were adopted under previous legislation which was more prescriptive in nature, these might no longer be relevant and should be reviewed, revised and updated to take account of the more risk based criteria in the HA2004.

Local Planning Authorities will have adopted relevant space and amenity standards for new developments of residential accommodation through local development frameworks. These will often be of a higher, aspirational standard than a minimum space standard which may be applied to existing premises subject to regulation under the HA2004. Councils must ensure that local consultation takes place with planning colleagues before agreeing space standards for HMOs.

Part 7: Adopting a strategic area-based approach to high levels of overcrowding

7.1 Introduction

This Part will be particularly relevant to councils which have high levels of overcrowding in the local housing stock, where a more strategic approach might be required. Overcrowding in these areas might be characterised by families 'outgrowing' their accommodation combined with a high demand for larger family housing and an associated shortage of supply, particularly in the social housing sector. Similar problems might also be apparent in the PRS where there might be tensions between supply and demand for housing.

Areas with high levels of category 1 crowding and space hazards might present difficulties to councils in meeting their statutory duties for enforcement, especially in relation to premises owned by RSLs. The Enforcement Guidance states, in paragraph 2.2 that *'Authorities will need to take a view of the spread of hazards in the local housing stock that have come to their attention, and prioritise action on those with the most serious impact on health or safety. It might be an inappropriate diversion of resources and effort to deal with modest hazards when there is evidence of more serious hazards elsewhere. The decision to take enforcement action will require a judgement as to the necessity for intervention, given the authority's priorities and wider renewal policies'*.

7.2 Identifying the local issues

7.2.1 Use of local statistics and data to identify overcrowding levels

A key part of adopting a successful local approach to tackle overcrowding will be to support the council's stance with statistics which demonstrate the level of overcrowding in the housing stock; for example, the number of category 1 hazards, levels of statutory overcrowding and numbers of households which are severely overcrowded. In areas of high demand for housing, councils need a detailed 'picture' of overcrowding across the housing stock in their districts.

Councils may use data collected from their common housing register, housing needs and stock condition surveys to map out the extent of the problem within their district. This will enable particular shortages of types of accommodation and demand to be identified. Councils might also consider regional approaches where similar problems exist across council boundaries and might wish to involve their Government Office.

7.3 Targeting and prioritising enforcement action on crowding and space

Some councils might be completely overwhelmed by the high number of category one crowding and space hazards which have been identified, especially where the demand for housing outstrips supply. In these circumstances, relying solely on a reactive response to complaints and enquiries will not prove fruitful. Using regulation in this way will not distinguish between need and priority for action, nor will there be fair or consistent solutions to crowding and space or a strategic direction to tackle it. This may be overcome by tailoring a specific solution to the difficulties which a council might face in meeting its statutory obligations.

Once councils have collected detailed data on overcrowding in their district, they may use it to develop a focused enforcement response to crowding and space. Councils may target the worst affected households and make incremental improvements to tackle overcrowding by prioritisation. This will resonate with current government policy, particularly where there are high levels of category one crowding and space hazards. Suggestions on how enforcement action might be prioritised due to severity are as follows:

- Prioritising category 1 hazards by Hazard Band

  High scoring category 1 assessments such as Band A and B can be a higher priority for action rather than Band C. The higher scoring Bands will reflect those households living in the worst conditions for crowding and space, where adverse health affects will be most pronounced.

- Cases can be assessed according to the Bedroom Standard

  Premises which have been assessed as category 1 hazards might be further categorised according to whether households are lacking two or more bedrooms and are 'severely overcrowded' based on the Bedroom Standard. These will be a higher priority for action than households which are lacking only one bedroom, especially where they fall within the higher scoring hazard Bands of category 1.

- Consider statutory overcrowding under Part 10 of the Housing Act 1985

  The highest scoring cases under HHSRS might also be statutory overcrowded under the Overcrowding Standard in the HA1985. These cases will be a high priority for action.

- Using a more informal approach for RSLs

Councils might decide that there will be a presumption towards serving HANs for lower scoring category 1 hazards in RSL properties, where the criteria in paragraphs 5.5.1 and 5.5.2 are being met. This approach will allow RSLs to concentrate their efforts on tackling the most severely overcrowded households first. For example, a prioritised approach could be for a HAN to be generally considered for Band C hazards, especially where the household lack one bedroom under the Bedroom Standard and are not statutorily overcrowded under Part 10 of the HA1985.

Councils might, in the case of RSLs, follow an approach which seeks both to avoid formal enforcement action and encourage joint, co-operative working. Targeting higher scoring category 1 hazards and using the service of HANs for Band C hazards might be an appropriate policy to adopt, especially where there is a high number of category 1 crowding and space hazards, arising from a dearth of affordable accommodation in a council's district. Councils should consider formalising this stance in an enforcement policy, which will need to be reviewed to monitor progress and determine future action on overcrowding.

This approach may be used as an incentive to encourage RSLs to take measures to address category one hazards on an incremental basis, to support the council's strategy of making the optimum use of affordable housing and to stimulate housing supply.

7.3.1 Underpinning a prioritised approach

Where councils decide to adopt a prioritised approach to crowding and space, to sustain a defensible legal position, it is recommended that:-

- councils obtain detailed statistical evidence which demonstrates the extent of overcrowding in their stock and therefore the need to prioritise action on crowding and space.
- councils conduct annual reviews to establish what steps have been taken by landlords and are intended to be taken in the future on overcrowding generally. This is to determine whether previous assurances have not been adhered to and therefore whether more formal enforcement action is now appropriate.
- councils adopt an enforcement policy to address crowding and space as outlined below.

7.4 Use of enforcement policies

Enforcement duties and powers for crowding and space should be enshrined in councils' enforcement policies. Councils might consider adopting a crowding and space enforcement policy in districts with high levels of overcrowding. An enforcement policy should set out a council's proposed framework for enforcement action which will help avoid legal challenge. Enforcement policies might be used to recognise the difficulties of crowding and space and the lack of larger accommodation which needs to be dealt with in a structured way. Each individual case must be reviewed against any adopted policy. The particular circumstances of the occupiers in question should be assessed to decide whether they are so acute or pressing as to warrant more immediate action.

When implementing an enforcement policy, it is vital that there is liaison with Housing Allocations, Housing Options, Homelessness and Temporary Accommodation teams to explore the implications of the enforcement policy and ensure that it is workable and consistent with the council's Housing Allocation Scheme. Consultation and engagement with landlords and other housing providers such as RSLs is critical to the development of a robust crowding and space enforcement policy.

Any enforcement policy must be regularly reviewed to take account of the need for any changes to it. These might result from progress made and improvements in the supply of housing in the council's district.

7.5 Joint working

Some councils have formed joint, inter-disciplinary groups comprising practitioners, solicitors, homelessness and housing options staff, to evaluate particular overcrowding cases. Such an integrated approach may enable suitable options to be considered for households and provide a practical solution for high priority cases, where enforcement action is considered necessary. A consideration of duties to secure accommodation and housing solutions available may prove invaluable to resolve a case, or at least provide some respite until a family's housing situation can be improved.

7.6 Working strategically

Part 2 of the Enforcement Guidance relates to taking a strategic approach to HHSRS enforcement, including crowding and space. For action to be successful locally, a political commitment and strong support from Heads of Service will be needed to raise the local importance and profile of overcrowding. Councils should take a strategic approach to overcrowding in high housing demand areas and regulation should form an important part of the wider Housing Strategy, which will be the council's blueprint to address overcrowding

across all tenures. Corporately the council must work in a joined up way, with inter-disciplinary working between regulatory services and the strategic housing function, to include the following areas:

- Housing Enabling - supply and delivery of affordable housing through RSLs
- Homelessness and Housing Needs
- Allocations and Lettings
- PRS - enforcement and the Private Sector Renewal Strategy
- Empty Homes and Strategies to bring them back into use

A successful Housing Strategy will incorporate cross-cutting issues which relate to overcrowding. These could include the issues outlined in Appendix 6. The specific local issues must be identified in order that key targets for realistic achievements may be determined.

7.6.1 CLG overcrowding self assessment

CLG's *'Tackling Overcrowding in England: Self-Assessment for Local Authorities'* is a self-assessment toolkit intended to support housing providers by offering practical tips on how to develop their own strategy and action plan to assist those households worst affected by overcrowding. Although the toolkit contains no direct references to crowding and space or regulation, and is aimed at housing providers, it provides some very useful suggestions on how overcrowding might be tackled locally and regionally. It is important that councils which are developing an approach to enforcement engage with their strategic housing team to ensure that regulation is included as part of any overcrowding strategy which is being developed. Opportunities for funding are also outlined in the toolkit.

7.6.2 Housing Allocation Schemes

Council's Housing Allocation Schemes (HAS) are the frameworks for the fair allocation of social housing, and councils which are serious about tackling overcrowding should ensure that their HAS reflects this. The HAS is often based on a points or banding system which can be used as a way of providing some priority for housing overcrowded households. For example, some priority could be given to those households which are statutorily overcrowded, experiencing category 1 hazards or severely overcrowded. Severely overcrowded households, which lack two or more bedrooms could be prioritised for housing and allocated some preference over occupiers lacking only one bedroom. Councils will of course need to decide what degree of priority is appropriate to overcrowding compared to the other 'reasonable preference' categories, such as those who are homeless, persons with medical/welfare needs or those living in insanitary or otherwise unsatisfactory housing.

Part 8: Duties to rehouse or secure accommodation

8.1 Introduction

This Part identifies the types of enforcement action for crowding and space under Part 1 of the HA2004 which could lead to occupants being displaced or becoming statutorily homeless. It provides an overview and summary of councils' duties to secure alternative accommodation. Councils need to be aware of the impact of using enforcement powers, as some may have serious implications for occupiers, particularly where prohibition powers are used. By prohibiting the use of premises or imposing restrictions on levels of occupation, councils might cause occupants to be displaced which could result in a statutory duty to arrange alternative accommodation.

This is a very complex area. Decisions as to whether a person is homeless and, if so, whether there is a statutory obligation to secure alternative accommodation will depend on the circumstances. Councils are advised to involve their homelessness team, and seek specific legal advice as necessary.

8.2 Relevant legislation

- Land Compensation Act 1973 (LCA1973) section 39
- Housing Act 1996 (HA1996) Part 7 Homelessness
- Statutory guidance: Homelessness Code of Guidance for Local Authorities, 2006

8.3 Duties to rehouse and duties to secure accommodation

The HHSRS Enforcement Guidance states that councils should 'consider the availability of local accommodation for rehousing any displaced occupants. Rehousing in such cases is for the authority to consider, particularly where they may have a duty to provide accommodation. It is unrealistic to expect a landlord owning a small number of properties to rehouse a tenant. Landlords have no legal responsibility to rehouse their tenants as a result of action by the authority'.

Where occupants may be displaced by the effect of a PO made under section 20 or 21 of the HA2004 councils have an obligation to re-house under section 39 of the LCA1973. Where occupants may be displaced by the effect of an Emergency Prohibition Order made under section 43 of the HA2004, or in other circumstances where it would not be reasonable to expect the occupants to continue to occupy premises, the council might have a duty to secure suitable alternative accommodation under Part 7 HA1996.

8.3.1 Duty to rehouse under section 39 of the Land Compensation Act 1973

Section 39 of the LCA1973 will apply in any case where a person is displaced from residential accommodation on any land in consequence of a PO made under section 20 or section 21 of the HA2004, and suitable alternative residential accommodation is not otherwise available to that person on reasonable terms. In such a case, the council will have a duty to secure that all displaced persons are provided with suitable alternative residential accommodation on reasonable terms. Unlike duties to secure accommodation under Part 7 HA1996 ('the homelessness legislation'), the duty to rehouse under section 39 of the LCA1973 applies to all displaced persons, not just those who the council consider to have a priority need for accommodation (and their household members).

8.3.2 Homelessness assistance

For detailed guidance on Part 7 of the HA1996, practitioners should refer to the *Homelessness Code of Guidance for Local Authorities*. This is statutory guidance, but also provides an excellent reference for more detailed understanding of the legislation. Some of the basic terms used in this Part are included in the glossary.

By law, councils must have a strategy for preventing homelessness and ensuring that accommodation and support are available to anyone in their district who is homeless or at risk of homelessness. They must also ensure that advice and information about homelessness and the prevention of homelessness is available to everyone in their district, free of charge. Government guidance also states that councils should not wait until homelessness is a likelihood or is imminent before providing advice and assistance.

Under Part 7 of the HA1996, if a council is satisfied that a housing applicant is eligible for assistance, homeless through no fault of their own and falls within a priority need group, it will have a duty to secure suitable accommodation for the applicant and everyone who normally resides (or might reasonably be expected to reside) with them until a settled home becomes available ('the main homelessness duty'). A more limited duty is owed where the applicant is eligible for assistance, homeless through no fault of their own but does not fall within a priority need group. In such cases, the authority has a duty to ensure that advice and assistance is provided to help the applicant secure accommodation. If the applicant is eligible and has priority need but has brought homelessness on themselves ('intentional homelessness') the

council must ensure the provision of advice and assistance and also secure suitable accommodation for long enough to give the applicant a reasonable opportunity of securing accommodation.

Under section 184 of the HA1996, if a council has reason to believe that a person applying to them for accommodation, or assistance in obtaining accommodation may be homeless or threatened with homelessness, it must make inquiries to satisfy itself whether the applicant is eligible for assistance and, if so, whether a duty is owed to that person under Part 7 of the HA1996.

Part 7 of the HA1996 applies only where a person applies to a council for assistance. However, where a person does make a request, the council must consider whether it has reason to believe there is homelessness or likely homelessness. 'Reason to believe' is a fairly low threshold and there are very few formalities in play before the authority must start making inquiries. No particular form of application is prescribed or required, and there is no need for an applicant to make a 'formal' Part 7 application.

Inquiries as to whether an applicant has a priority need must be carried out in all cases where the housing authority has reason to believe that an applicant may be homeless or threatened with homelessness. If a council has reason to believe that an applicant may be homeless, eligible for assistance and fall within a priority need group, the council will have an immediate duty to secure interim accommodation, pending a decision on the case.

8.3.3 Homeless or reasonable to continue to occupy?

Under Part 7 of the HA1996, a person is homeless if they have accommodation available but it would not be reasonable to continue to occupy it. In determining whether it is reasonable for a person to continue to occupy accommodation, housing authorities may have regard to the general housing circumstances prevailing in their district. An occupier who has been assessed for crowding and space might claim that it is unreasonable for them to remain in the premises due to the overcrowded conditions and might seek assistance as a homeless person, whether or not enforcement action under Part 1 of the HA2004 has taken place. As mentioned above, the provisions of Part 7 of the HA1996 will not come into play unless there is an application for assistance, in which case the council must consider whether it has reason to believe the applicant may be homeless or threatened with homelessness. In the absence of an application for assistance, the duty to consider whether an occupant may be homeless would not be triggered by an HHSRS assessment. However, assessment or enforcement could prompt the occupier to apply to the authority for assistance. Accordingly, councils are advised to consider the implications carefully.

Where an assessment has identified a crowding and space hazard, the council should consider whether, in the circumstances, it would be reasonable for the occupants to continue to occupy the accommodation. Under Part 7 of the HA1996, there is no simple test of 'reasonableness'. It is for the housing authority to make a judgement on the facts of each case, taking into account all the circumstances. Under section 177(2) of the HA1996, in determining whether it would be reasonable for someone to continue to occupy their accommodation, it is open to the council to have regard to the general housing circumstances in their district. Where an occupant seeks housing assistance and claims homelessness on the basis of the accommodation being overcrowded, this factor should be considered in relation to the general housing circumstances in the district. The Homelessness Code of Guidance states that 'statutory overcrowding in Part 10 of the HA1985 may not by itself be sufficient to determine reasonableness, but it can be a contributory factor if there are other factors which suggest unreasonableness'.

For example, in a district where high levels of overcrowding were common, the council might reasonably conclude that an applicant seeking assistance and whose household was statutorily overcrowded under Part 10 HA1985 is not homeless. In carrying out this exercise, it would need to compare the particular degree of overcrowding experienced by the household with the prevailing circumstances in its area. A general and brief reference to housing conditions would not be sufficient. The greater the degree of comparable, statutory overcrowding there is in a council's area, the more justifiable it would be to reach such a decision. The leading case law in this respect is Harouki v Royal Borough of Kensington and Chelsea [2007] .

In relation to the HA2004, the occupant of premises in a case where a category 1 or 2 crowding and space hazard has been assessed could decide to claim homelessness and apply for housing assistance. However, it would not necessarily follow that it would be unreasonable for them to continue to occupy their accommodation (i.e. they would be statutorily homeless) simply because the council had decided that a category 1 or 2 hazard existed. A similar approach to that taken in cases of general overcrowding, whether statutory or otherwise, should be adopted. Although the existence of a category 1 hazard would be highly material to whether it would be reasonable for the household to continue to occupy the premises (in the context of section177(2) HA1996), it would not necessarily be a determining factor.

8.4 The implications of specific enforcement powers

8.4.1 Hazard Awareness Notices

The service of a HAN will not trigger the duty to rehouse under section 39 of the LCA1973. This is restricted to cases where a PO has been issued under section 20 or 21 of HA2004.

Where a decision is made to serve a HAN, it is also unlikely that conditions in the property alone would be so bad as to render it unreasonable for the occupants to continue to occupy the property (thus making them statutorily homeless). However, if the occupants applied for housing assistance, the council would have to consider whether there was homelessness and assess the conditions in the premises against the general circumstances prevailing in relation to housing in its district.

Therefore, on the assumption that HANs for crowding and space are likely to be based on less serious and lower scoring situations, the council might determine that the particular circumstances of a case are not severe and no worse than a number of other comparable cases in the council's district, and the household would therefore not be statutorily homeless.

8.4.2 Improvement Notices

If an Improvement Notice was served requiring mitigation works, and the occupant applied for housing assistance, the council would need to consider the application. In considering whether it was reasonable for the occupant to continue to occupy the premises (see section 175(3) HA1996), the council could have regard to the fact that the remedial works would remove the hazard but would need to take into account the likelihood of the remedial works being done and how long they were likely to take.

8.4.3 Emergency Prohibition Orders

An EPO will only be issued where there is a category 1 crowding and space hazard which presents an imminent risk of serious harm to the health and safety of the occupiers. If any occupants were displaced by an EPO, they would become statutorily homeless unless they have alternative accommodation available which it would reasonable for them to continue to occupy. There is no duty under section 39 of the LCA1973 for the council to rehouse persons displaced by an EPO made under section 43 of the HA2004.

Where a person displaced by an EPO requested housing assistance, the council would need to consider whether any duty was owed under Part 7 of the HA1996. Where a displaced person had a priority need for accommodation for the purposes of Part 7 (for example, because their household included dependent children, a pregnant woman or a person who was vulnerable for some reason), the council would have a duty to secure suitable accommodation for the displaced person and everyone who resided with them or might reasonably be expected to reside with them. The duty would continue until an offer of settled accommodation could be made (or some other circumstance brought the duty to an end). For further information, practitioners should refer to the Homelessness Code of Guidance for Local Authorities.

During the process of making an EPO, the council would need to consider whether the occupants might be likely to be made homeless and whether the council would have an obligation to secure accommodation under Part 7 of the HA1996. The council should involve the landlord of the premises and the council's homelessness service in considering what help might be available to ensure that suitable alternative accommodation will be available.

As an EPO comes into force immediately, the council should have arrangements in place to deal effectively with such an emergency. It is good practice for councils to develop local procedures for dealing with the use of emergency powers under Part 1 of the HA2004. This would include liaison arrangements with colleagues responsible for homelessness. It should outline key areas of responsibility, out of hours operation, emergency contact details and protocols with other key agencies.

8.4.4 Prohibition Orders

A PO will commonly impose a restriction on the number of persons or households which may, in the council's opinion, occupy the premises in order to remove the crowding and space hazard. It will become operative after 28 days, unless there is an appeal or if it is suspended.

If a PO is in operation (that is, the Order is not suspended or subject to appeal) and precludes the continued occupation of the premises by a household which was living there, the effect of the Order is likely to be that the household will become homeless unless they have alternative accommodation available. Homelessness could also arise if the effect of a PO was to reduce the number of persons who could continue to occupy the premises so that only some members of a household could remain in occupation.

Under section 39 of the LCA1973, councils have a duty to secure that all persons displaced by a PO made under sections 20 or 21 of HA2004 are provided with suitable alternative residential accommodation on reasonable terms. Unlike duties to secure accommodation under Part 7 of the HA1996, the duty to rehouse under section 39 of the LCA1973 applies to all displaced persons, not just those who the council consider to have a priority need for accommodation (and their household members). The duty to rehouse under the LCA1973 is quite separate from any obligations under Part 7 of the HA1996.

Where the council proposes to offer accommodation in its own housing stock, it is not required to give priority to the displaced person(s) over housing applicants waiting or bidding for an allocation of housing under Part 6 of the HA1996. However, an offer of housing made to discharge a duty to rehouse under section 39 of the LCA1973 falls outside the council's allocation scheme under Part 6, so priority under the Part 6 scheme would not be required before an allocation could be made.

The council's duty is to act reasonably and do its best, as soon as practicable, to provide other accommodation. The

duty can be discharged in stages if suitable alternative on reasonable terms is not immediately available. The duty could be discharged in the interim by providing temporary accommodation or bed and breakfast accommodation pending the provision of accommodation which will fully discharge the duty. The relevant case law is R. v Bristol Corporation Ex parte Hendy [1974].

Section 32 of the HA2004 creates a criminal offence of 'using' the premises in contravention of a PO. Nothing within Part 1 of the HA2004 casts any statutory or contractual obligation on the landlord to secure that suitable alternative accommodation is available for its tenant after a PO is made. In addition, section 33 provides that nothing within the Rent Act 1977 or Part 1 Housing Act 1988 (which cover the main tenancy types) prevents possession being obtained by the owner 'if possession of the premises is necessary for the purpose of complying with the order'. Clearly where a PO has come into force, the tenant will have no legal right to occupy, or continue to occupy the premises.

8.4.5 Suspended Prohibition Orders

If a household seeks housing assistance from the council when a suspended PO is in force, it is unlikely that the household would be statutorily homeless because there would be no legal bar to the household continuing to occupy the premises as one family unit and, subject to the individual circumstances, it is likely to be reasonable for the household to continue to occupy the accommodation.

Part 9: Compensation

9.1 Introduction

Compensation related to powers under the HA2004 and the calculation of payments is based on terminology derived from compulsory purchase law, which involves valuation of land and property. The assessment of compensation is a complex and specialised field, with a substantial body of law related to planning, often governed by extensive case law. Whilst this Part provides a brief summary of the relevant legislation applicable to compensation and the HA2004, LACORS would strongly advise councils to seek specialist legal and property valuation advice when dealing with any such compensation claims.

9.2 Relevant legislation

- Housing Act 2004 section 24(7),43(5)(f) and schedule 15
- Housing Act 1985 sections 584A and 584B
- Land Compensation Act 1973, sections 29-38

9.3 General principles

Section 24(7) and section 43(5)(f) of the HA2004 states that sections 584A and 584B of the HA1985 provide for the payment of compensation to owners of premises where certain POs become operative and for the repayment of compensation in certain circumstances.

Schedule 15 of the HA2004 amends the Land Compensation Act 1973, to include home loss and disturbance payments for POs made under section 20 or 21 of the HA2004.These provisions are included in detail at Appendix 7.

9.4 Compensation payable to owners

Section 584A of the HA1985 states that when a **relevant prohibition order** comes into operation, the Authority is under a duty to pay compensation to the owner. The amount payable is the 'diminution in the compulsory purchase value of the owner's interest in the premises as a result of the coming into operation of the relevant Prohibition Order'. The amount of compensation must be determined at the date when the order comes into operation or when the Order is made. The amount must be determined, in default of agreement, as if it were compensation payable in respect of the compulsory purchase of the interest in question.

The requirement commonly included in POs for crowding and space will be that levels of occupancy for the premises are reduced, to a level where the hazard is removed. Therefore a smaller number of occupiers will be specified, which is, in the council's opinion the level of occupancy which can reasonably be accommodated there. In most cases where POs are served for crowding and space under sections 20 or 21 HA2004, there will be no requirement imposed on the whole of the premises for all purposes (section 584A(4) of the HA1985). Therefore, a PO, which reduces the levels of occupation, will not be a relevant PO under section 584A and no duty to pay compensation will apply.

The only circumstances where a restriction on the whole of the premises for all purposes will be where a PO is made and the whole premises are considered unsuitable (due to crowding and space) to be occupied and the council completely prohibits its use. In these situations compensation may be payable if there is diminution in the compulsory purchase value of the owner's interest in the property. This will depend on the existing type and use of the premises e.g. whether the premises has established residential use, planning consent and other individual factors which will need to be assessed by a property valuation expert. Unless the dwelling has an existing established and lawful residential use, compensation is unlikely to be payable.

The use of EPOs might lead to claims for compensation under section 584A of the HA1985, although their use and application for crowding and space will be extremely unlikely unless there are other related hazards which give rise to imminent risk to health and safety of the occupants. This area is therefore outside the scope of this guidance.

9.5 Home Loss Payments

These are statutory payments of a specific amount under the LCA1973. A council will have a duty to make a home loss payment when a person is displaced from a dwelling following the making of a Housing Order, which is defined as a PO made under section 20 or 21 of the HA2004. Where EPOs are made, there is no duty to make home loss payments.

For owner-occupiers, a home loss payment is calculated as 10% of the market value of their interest in the dwelling up to a maximum of £47,000 and a minimum of £4,700. However, councils are highly unlikely to make a PO for crowding and space against an owner occupied premises.

Currently home loss payments for anyone other than an owner-occupier are set by regulation at £4,000. The home loss payment is only due where the displacement from the land occurs as a direct result of the requirements of a PO. Displacement may occur where a PO is in force (i.e. not

suspended or subject to appeal under the HA2004) which prevents or restricts the use or occupation of the premises. Where a household or individual is unable to continue to reside in the dwelling owing to a restriction on occupation levels imposed by a PO, they will be entitled to a home loss payment.

To qualify for a home loss payment, a person must have occupied the land as their only or main residence for at least one year up to the date of displacement and have an interest or right to occupy the dwelling, as defined in section 29(4) of the LCA1973. If the person cannot meet these requirements for the full period but only at the date of displacement, the council may make a discretionary payment. Claims must be made in writing.

9.6 Disturbance payments

Under sections 37 and 38 of the LCA1973, disturbance payments are mandatory payments to assist persons displaced from land. The payment is to help with the costs of moving home and will apply if a person is displaced as a consequence of a PO being made. Where EPOs are made, there is no duty to make disturbance payments.

Disturbance payments are for the reasonable costs of moving home, for example paying removal companies, disconnection and reconnection of the fuel supply, redirection of mail and other related expenditure. They are payable where any person is in lawful possession of the land at the time of displacement, as long as they are not entitled to compensation under section 584A of the HA1985, following the service of a PO. Councils can make provision for discretionary payments where the mandatory criteria have not been met.

Appendices

Appendix 1: The Bedroom Standard

The Bedroom Standard is based on the ages and composition of the family. A notional number of bedrooms are allocated to each household in accordance with its composition by age, sex and status and relationships of family members. A separate bedroom is allocated to each:

- married or cohabiting couple;
- adult aged 21 years or more;
- pair of adolescents aged 10-20 years of the same sex;
- pair of children aged under 10 years regardless of sex.

Any unpaired person aged 10-20 years is paired, if possible, with a child aged under 10 years of the same sex or, if that is not possible given a separate bedroom. The same applies to any unpaired child aged under 10 years. This standard is then compared with the number of bedrooms available for the sole use of the household. Bedrooms converted to other uses are not included; bedrooms not in use are included unless they are uninhabitable.

Note: An unpaired young person aged 10-20 cannot share a room with a child of the opposite sex who is under the age of 10.

This can be summarised in the following table:

Table A: household members requiring one bedroom

Age and sex of household members	Number of bedrooms
An adult couple	1 bedroom
A person over 21	1 bedroom
2 young persons 10-20 years of the same sex	1 bedroom
1 child under 10 yrs and 1 young person under 20 of the same sex	1 bedroom
1 or 2 children under 10yrs (not necessary of same sex)	1 bedroom
Any unpaired young persons 10-20 yrs or unpaired children under 10	1 bedroom

Appendix 2: Statutory overcrowding - Housing Act 1985, part 10

Section 328 gives the power to serve a notice where a dwelling is overcrowded according to the standard in section 324.

Definition of overcrowding
Section 324

A dwelling is overcrowded when the number of persons sleeping in the dwelling is such as to contravene –

(a) the standard specified in section 325 (the room standard); or

(b) the standard specified in section 326 (the space standard).

Section 325 - The room standard

(1) The room standard is contravened when the number of persons sleeping in a dwelling and the number of rooms available as sleeping accommodation is such that two persons of opposite sexes who are not living together as husband and wife must sleep in the same room.

(2) For this purpose:

(a) children under the age of ten shall be left out of account; and

(b) a room is available as sleeping accommodation if it is of a type normally used in the locality either as a bedroom or as a living room.

Section 326 - The space standard

(1) The space standard is contravened when the number of persons sleeping in a dwelling is in excess of the permitted number, having regard to the number and floor area of the rooms of the dwelling available as sleeping accommodation.

(2) For this purpose:

(a) No account shall be taken of a child under the age of one and a child aged one or over but under ten shall be reckoned as one-half of a unit; and

(b) A room is available as sleeping accommodation if it is of a type normally used in the locality either as a living room or as a bedroom.

(3) The permitted number of persons in relation to a dwelling is whichever is the less of:

(a) The number specified in Table 1 in relation to the number of rooms in the dwelling available as sleeping accommodation; and

(b) The aggregate for all such rooms in the dwelling of the numbers specified in column 2 of Table 2 in relation to each room of the floor area specified in column 1.

No account shall be taken for the purposes of either Table of a room having a floor area of less than 50 square feet.

Table 1:

Number of rooms	Number of persons
1	2
2	3
3	5
4	7.5
5 or more	2 for each room

Table 2:

Floor area of room	Number of persons
110 sq feet or more	2
90 sq feet or more but less than 110 sq feet	1.5
70 sq feet or more but less than 90 sq feet	1
50 sq feet or more but less than 70 sq feet	0.5

Appendix 3: Overcrowding by region and tenure, using the bedroom standard

Overcrowding by region and tenure, England, 2005/06 to 2007/08 (3 year moving average)

	number of overcrowded households				rate of overcrowding			
	tenure				tenure			
Government Office Region	owner occupiers	social renters	private renters	all tenures	owner occupiers	social renters	private renters	all tenures
	'000 households				*percent*			
North East	5	9	2	16	0.6	3.6	1.7	1.4
North West	33	20	13	66	1.6	3.6	4.7	2.3
Yorkshire and the Humber	22	14	8	44	1.5	3.4	3.6	2.1
North	**60**	**44**	**23**	**126**	**1.4**	**3.5**	**3.8**	**2.1**
East Midlands	8	11	7	26	0.6	3.9	3.9	1.4
West Midlands	28	22	9	58	1.8	4.9	3.9	2.7
Midlands	**36**	**33**	**15**	**84**	**1.2**	**4.5**	**3.9**	**2.1**
East	17	19	10	47	1.1	5.0	3.9	2.0
London	51	102	55	207	3.0	12.7	9.8	6.8
South East	28	25	14	67	1.1	5.2	3.2	2.0
South West	14	11	9	34	0.9	3.6	3.1	1.6
South	**110**	**157**	**88**	**355**	**1.5**	**8.0**	**5.6**	**3.3**
England	**206**	**234**	**126**	**565**	**1.4**	**5.9**	**4.9**	**2.7**

source: Communities and Local Government survery of English housing, January 2009

Appendix 4: The public service agreements and the national indicators

Public Service Agreement (PSA)	National Indicator (NI)
PSA 9: Halve the number of children in poverty by 2010-11, on the way to eradicating child poverty by 2020 This includes reducing the number of children living in non-decent, temporary or overcrowded accommodation (using the Bedroom Standard as a benchmark).	**Children and young people** **NI 116: Proportion of children in poverty** This includes the delivery of the key public services that are critical to improving poor children's life chances; coordination of activities by key players to reduce worklessness and poverty; the tailoring of solutions to meet needs of local people; and ensuring engagement of individuals and groups at risk of being marginalised.
PSA 12: Improve the health and well-being of children and young people Improving the physical, mental and emotional health of all children. The focus will be on prevention, early intervention and enabling children, young people and their families to make healthy choices.	**Children and young people** **NI 50: Emotional health of children** The aim of the indicator is to have a balanced measure that assesses children's emotional health and well being. This measure will be the % of children whose emotional health is good.
PSA 18: Promote better health and well-being for all Increasing life expectancy with an emphasis on ill health prevention and promotion of good health. Reducing inequalities in health, including reducing smoking prevalence, meeting aspirations for independence and wellbeing. Improving the well-being and inclusion of people with depression or anxiety disorders.	**Adult Health and Well being** **NI 120: All-age all cause mortality data** Increasing average life expectancy and reducing health inequalities, measured.
PSA 20: Increase long term housing supply and affordability Increasing new homes to 240,000 per annum and 2 million homes provided by 2016. Increasing the supply of affordable housing by 70,000 by 2010/11. Investment in homelessness prevention, halving numbers in Temporary Accommodation by 2011 compared with 2004.	**Local Economy and Environmental Sustainability** **NI 154: Net additional homes provided** Aim is to encourage a greater supply of new homes in England to address the long term housing affordability issue. This indicator measures the net increase in dwelling stock over one year.

PSA 20: Increase long term housing supply and affordability **Decent Homes in the private sector**	**Local Economy and Environmental Sustainability** **NI 155: Number of affordable homes delivered** Aim to promote an increase in the supply of affordable housing. **NI 156: Number of households living in temporary accommodation** To monitor progress towards halving the number of households in temporary accommodation provided under the homelessness legislation from 101,000 households in 2004 to 50,500 households by 2010. This indicator measures the numbers of households living in temporary accommodation provided under the homelessness legislation. No explicit national indicator for private sector decent homes, but contributes towards the local economy and environmental sustainability theme. **NI 158: % of decent council homes** This will measure the number of non decent council homes and the proportion this represents of the total council housing stock. This is being calculated in order to demonstrate the progress towards making all council housing decent. **NI 159: Supply of ready to develop housing sites** This will assess the degree to which authorities are maintaining a five year supply of deliverable sites for housing through their Local Development Framework. **NI 160: Local Authority tenants' satisfaction with landlord services** This will measure local authority tenants' satisfaction, which may be influenced by overcrowded conditions or lack of available space-see paragraph 2.3 of this guidance.

Appendix 5a: Data used for figure 5, page 12

Example	Source	% Occupancy	Likelihood Ratio	Hazard Score
1	ODPM	125	1 in 320	365
2	ODPM	200	1 in 56	2089
3	Bristol City Council	160	1 in 100	1199
4	Bristol City Council	200	1 in 10	11996
5	West of England Local Authorities	133	1 in 18	6204
6	West of England Local Authorities	150	1 in 6	19994
7	West of England Local Authorities	166	1 in 18	6664
8	West of England Local Authorities	150	1 in 180	666

Appendix 5b: Data derived from housing quality indicator system

	Single bedroom	Double bedroom	Twin Bedroom
Bed(s) Double – 2000 x 1500 Single – 2000 x 900	1 x single	1 x double or 2 x single	2 x single
Bedside table 400 x 400	1	2	2
Chest of drawers – 450 x 750	1	1	1
Wardrobe(s) Double – 600 x 1200 Single – 600 x 600	1 x single	1 x double	1 x double or 2 x single
Table – 500 x 1050 and chair/stool	1	1	1
Bed-making space 400 x length of bed(s)	yes	yes	yes
Space for occasional use of cot – 600 x 1200	no	yes, in larger 'family' dwellings	no

Essential criteria – 'in all bedrooms, beds need to be able to be accommodated in more than one position and all double bedrooms must accommodate twin beds and a cot'.

Appendix 5c: Metric handbook: planning and design data

Number of residents	**1**	**2**	**3**	**4**	**5**	**6**	**7**
Living room in a dwelling with a dining kitchen							
Recommended	11	12	13	14	15	16	17
Minimum	11	12	13	14	15	16	17
Living room in a dwelling with a galley kitchen							
Recommended	13	14	15	16	17.5	18.5	19.5
Minimum	13	14	15	16	17.5	18.5	19.5
Dining Kitchen							
Recommended	8	9	10	11	12	13	14
Minimum	8	9	10	11	12	13	14
Galley Kitchen							
Recommended	5.5	6.5	6.5	7	8	8	9
Minimum	5.5	5.5	5.5	7	7	7	9
Main bedroom (double)							
Recommended	9	12	12	12	12	12	12
Minimum	8	11	11	11	11	11	11
Other double bedrooms							
Recommended	-	-	-	12	12	12	12
Minimum	-	-	-	**10**	**10**	**10**	**10**
Single Bedrooms							
Recommended	-	9*	8	8	8	8	8
Minimum	-	8*	**6.5**	**6.5**	**6.5**	**6.5**	**6.5**

* A flat for two single people should have two single bedrooms of recommended 9 square metres, minimum 8 square metres each. This table is reproduced from *Metric Handbook – Planning and Design Data,* Third Edition, David Littlefield, Copyright Architectural Press, 2008.

Appendix 6: Local considerations and cross-cutting themes

This Appendix provides further information on issues which councils might encounter or find helpful when developing a local approach to tackle overcrowding, such as an overcrowding strategy. The National Indicators in Appendix 4 will also be relevant.

Public Health and Well-being - Improving health inequalities

The Local Government and Public Involvement in Health Act 2007 requires Primary Care Trusts and local authorities to produce a Joint Strategic Needs Assessment (JSNA) of the health and well-being of their local community. The JSNAs will identify areas for priority action through Local Area Agreements. Regional and councils own Strategies have highlighted the importance of these issues and more generally the need to tackle poor conditions in the private sector, including overcrowding. Nationally this work is driven by the Decent Homes programme and the CLG Departmental Strategic Objective to increase the number of vulnerable people living in private sector Decent Homes.

It is important that overcrowding and its effects on individuals and the community are considered as part of the development of a JSNA, especially with the links between overcrowding and poor health. There is a strong association between overcrowding and mortality which may reflect socio-economic factors, rather than the direct effects of crowding. People who live in crowded conditions tend to suffer multiple deprivation and separating the effects of poverty from crowding is difficult. There will often be a need for a proactive approach with an action plan linked to health outcomes and the wider public health and well-being agenda will be a suitable route to deliver this.

Private sector housing - Decent Homes

The Government is committed to increasing the number of vulnerable households living in private sector decent homes and has included this objective within their departmental plans – now referred to as CLG Departmental Strategic Objective (DSO2). However, whilst this remains a central government objective, the decent homes standard is not a regulatory standard which can be enforced by councils and there are no National Indicators which measure councils' performance. Despite the lack of a decent homes indicator, addressing non-decent homes remains an important priority for most councils and the presence of a category 1 hazard for crowding and space will represent a failure of the decent homes standard. The decent homes agenda therefore provides a means of giving priority to housing conditions, especially private sector housing. It could also be a useful way of securing local or regional funding to support work on crowding and space.

Child poverty, Health and Education

This will often be a local as well as a national priority. The health impacts on children's psychological health, physical development and the linkages to poverty are well documented and can be used to emphasise the importance of taking action to tackle overcrowding locally.

Councils might also agree and decide to adopt local targets within their Local Area Agreement framework which can be used to address overcrowding directly. For example, one London Borough has agreed a target related to the number of severely overcrowded households moved to more suitable accommodation through their health and well-being partnership.

Diversity and Black and Minority Ethnic (BME) households

Nationally, the proportion of black and ethnic minority families living in overcrowded conditions is much higher than average. Some ethnic minorities are more likely to be affected by poor housing, unemployment, low educational attainment, ill health and crime. Councils might need to tailor specific strategies for tackling overcrowding among the BME communities where this is seen as a priority for action. Innovative solutions for those in the owner-occupied sector can be considered, reflecting the different household compositions among particular communities and differences in general requirements and preferences. The impact of any policies to tackle overcrowding generally should include an assessment of whether specific intervention or targeting is necessary to assist minority groups and how the policy will affect such groups. A key part of developing an appropriate approach would be to ensure that initial data gathering on overcrowding produces a clear picture on levels of overcrowding amongst BME groups, whether there are particular trends in certain housing sectors and whether targeted intervention is required.

Migrant Workers

The issue of housing for migrant workers has provided a challenge to some councils and they might need to consider addressing overcrowding in this sector through their housing strategies and through local partnership working.

Gangmasters who supply workers to agriculture, horticulture, shellfish gathering, and food/drink processing and packaging factories have to be licensed by the Gangmasters Licensing Authority (GLA). The GLA licensing standards outline the requirements for a licence and the standards for workers' accommodation. They state that the accommodation must be maintained in a good state of repair, must contain adequate kitchen, bathroom and toilet facilities for the number of occupants and must not be overcrowded. Any category 1 hazards as assessed under HHSRS must be properly resolved

and the premises should conform to all relevant legislation.

The licensing standards apply where the gangmaster provides the accommodation directly or through a company which they own or operate, or where rent payments are deducted from workers' pay. Some gangmasters provide accommodation through a close friend or relative to avoid this being a licensing issue, as a Gangmaster's Licence can be refused or revoked if the accommodation is poor.

The GLA wants to develop close links and intelligence sharing with councils. There will be a need for liaison where either party discovers overcrowded housing provided by gangmasters, to ensure that licence standards are met and to consider the need for enforcement action. Good relationships have been established between some councils and their local GLA officer and many migrant workers' accommodation has been improved by joint working.

Councils should contact the GLA if they find a problem with migrant workers' housing. The GLA maintains a public register which can be used to check whether gangmasters are licensed. Details of any local gangmasters suspected of operating without a licence should be referred to the GLA so that they can investigate the case and determine whether enforcement action is required.

Use of Private Sector Housing

Any increased supply of housing to meet the demands caused by overcrowding might have to be achieved by a greater use of private sector accommodation. Private sector renewal strategies should address the need for intervention to stimulate housing supply in the private sector, which might include measures such as:

- making the best use of empty homes by bringing them back into use, using an empty homes strategy
- the conversion of loft and attic spaces
- the conversion of premises into residential use
- extending premises in response to the need for larger family sized accommodation

Private sector housing has a role to play within councils' housing strategies, contributing towards affordable housing and stimulating the supply of accommodation, especially larger units. Other areas for consideration will be the role of private sector schemes such as rent deposit and private sector leasing schemes, which tend to be focused towards reducing the reliance on temporary accommodation and homelessness, but can also be used to stimulate housing supply for overcrowded households.

Appendix 7: Housing Act 1985: sections 584A and B

Section 584A Compensation payable in case of Prohibition and Demolition Orders

(1) Subject to subsection (3), where a relevant prohibition order becomes operative in respect of any premises, the local housing authority shall pay to every owner of the premises an amount determined in accordance with subsection (2).

(2) The amount referred to in subsection (1) is the diminution in the compulsory purchase value of the owner's interest in the premises as a result of the coming into operation of the relevant prohibition order; and that amount –

(a) shall be determined as at the date of the coming into operation or making of the order in question; and

(b) shall be determined (in default of agreement) as if it were compensation payable in respect of the compulsory purchase of the interest in question and shall be dealt with accordingly.

(3) In any case where –

(a) a relevant prohibition order has been made in respect of any premises, and

(b) that order is revoked and a demolition order is made in its place,

the amount payable to the owner under subsection (1) in connection with the demolition order shall be reduced by the amount (if any) paid to the owner or a previous owner under that subsection in connection with the relevant prohibition order.

(4) For the purposes of this section –

- 'compulsory purchase value', in relation to an owner's interest in premises, means the compensation which would be payable in respect of the compulsory purchase of that interest if it fell to be assessed in accordance with the Land Compensation Act 1961;
- 'premises', in relation to a prohibition order, means premises which are specified premises in relation to the order within the meaning of Part 1 of the Housing Act 2004;
- 'relevant prohibition order' means a prohibition order under section 20 or 21 of the Housing Act 2004 which imposes in relation to the whole of any premises a prohibition on their use for all purposes other than any purpose approved by the authority.'

Section 584B Repayment on revocation of Prohibition Order

(1) Where a payment in respect of any premises has been made by a local housing authority under section 584A (1) in connection with a relevant prohibition order and –

(b) the relevant prohibition order is revoked under section 25(1) or (2) of the Housing Act 2004,

then, if at that time the person to whom the payment was made has the same interest in the premises as he had at the time the payment was made, he shall on demand repay to the authority the amount of the payment.

(2) In any case where –

(a) a payment in respect of any premises has been made by a local housing authority under section 584A (1) in connection with a relevant prohibition order, and

(b) by virtue of section 25(3) of the Housing Act 2004, the order is revoked as respects part of the premises and not varied, and

(c) the person to whom the payment was made (in this section referred to as 'the recipient') had at the time the payment was made, an owner's interest in the part of the premises concerned (whether or not he had such an interest in the rest of the premises),

then, if at the time of the revocation of the relevant prohibition order the recipient has the same interest in the premises as he had at the time the payment was made, he shall on demand pay to the authority an amount determined in accordance with subsections (4), (5) and (6).

(3) In any case where –

(a) a payment in respect of any premises has been made by a local housing authority under section 584A (1) in connection with a relevant prohibition order, and

(b) by virtue of section 25(4) of the Housing Act 2004, the order is varied, then, if at the time of the variation of the order the recipient has the same interest in the premises as he had at the time the payment was made, he shall on demand pay to the authority an amount determined in accordance with subsections (4), (5) and (6).

(4) The amount referred to in subsection (2) or (3) is whichever is the less of –

(a) the amount by which the value of the interest of the recipient in the premises increases as a result of the revocation or variation of the relevant prohibition order; and

(b) the amount paid to the recipient under section 584A (1) in respect of his interest in the premises;

and the amount referred to in paragraph (a) shall be determined as at the date of the revocation or variation of the relevant prohibition order.

(5) For the purpose of assessing the amount referred to in subsection (4)(a), the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(6) Any dispute as to the amount referred to in subsection (4)(a) shall be referred to and determined by the Lands Tribunal; and section 2 and subsections (1) (a) and (4) to (6) of section 4 of the Land Compensation Act 1961 shall, subject to any necessary modifications, apply for the purposes of this section as they apply for the purposes of that Act.

(7) In this section 'premises' and 'relevant prohibition order' have the same meaning as in section 584A.'

Glossary

Available for his or her occupation

Section 176 HA1996 provides that accommodation shall be treated as available for a person's occupation only if it is available for occupation by him or her together with:

- any other person who normally resides with him or her as a member of the family; or
- any other person who might reasonably be expected to reside with him or her.

Category 1 hazard

Means a hazard which falls within a prescribed Band under HHSRS as a result of achieving a numerical score. Category 1 hazards are those within Bands A-C.

Category 1 hazards trigger a council's duty under section 5 of the HA2004 to take the appropriate enforcement action.

Category 2 hazard

Means a hazard which falls within a prescribed Band under HHSRS as a result of achieving a numerical score. Category 2 hazards are those in Bands D-J.

Category 2 hazards can be dealt with using a council's discretionary powers, which are set out in section 7 of the HA2004.

Commercial, mobile or non residential premises

Part 1 HA2004 only applies to residential premises. Councils will need to decide whether the premises is 'residential premises' and falls within the definition under section 1(4) of Part 1. If not, then action cannot be taken. Premises are not 'residential premises' unless they are buildings or parts of buildings.

HHSRS may not be enforceable in mobile homes, as they are usually not buildings or parts of buildings. LACORS has produced a FAQ to assist councils:

http://www.lacors.gov.uk/LACORS/ContentDetails.aspx?authCode=5012E13&id=16375

Duty to inquire

Inquiries as to whether an applicant has a priority need must be carried out in all cases where the housing authority has reason to believe that an applicant may be homeless or threatened with homelessness, and is eligible for assistance. Where the housing authority has reason to believe that the applicant is homeless, eligible for assistance and in priority need, they will have an immediate duty to secure interim accommodation, pending a decision on the case.

Duty to applicants not in priority need

Where an applicant is eligible for assistance, unintentionally homeless, and does not have a priority need for accommodation, the housing authority has a duty to ensure that the applicant is provided with advice and assistance in any attempts he or she may make to secure that accommodation becomes available for his or her occupation. The housing authority might, for example, provide assistance with a rent deposit or guarantee to help the applicant to obtain accommodation in the PRS, or advice on applying for an allocation of accommodation through the social housing waiting list or through another social landlord.

Under section192(3) HA1996, housing authorities have a power to secure accommodation for applicants who are eligible for assistance, unintentionally homeless, and do not have a priority need for accommodation.

Duty to secure accommodation and the main homelessness duty

Housing authorities must consider all applications for accommodation or assistance in obtaining accommodation. If they have reason to believe an applicant may be **homeless** or **threatened with homelessness**, they must make inquiries to determine whether any duty and, if so, which duty is owed to the applicant under Part 7 of the HA1996.

Where an applicant is eligible for assistance, unintentionally homeless, and has a **priority need** for accommodation, the housing authority has a duty under section193 (2) HA1996 to secure that suitable accommodation is available for occupation by the applicant. This is commonly known as 'the main homelessness duty'. In all cases, the accommodation secured must be available for occupation by the applicant together with any other person who normally resides with him or her as

a member of his or her family, or any other person who might reasonably be expected to reside with him or her, and must be suitable for their occupation. The main homelessness duty ends in a number of different circumstances, including where the applicant:

- accepts or refuses a final offer of social housing (allocated under Part 6 HA1996)
- accepts an assured tenancy
- accepts a 'qualifying offer' (an assured shorthold tenancy from a private landlord)
- refuses a suitable offer of temporary accommodation
- becomes homeless intentionally from accommodation secured for him or her.
- ceases to be eligible for assistance.

The accommodation secured must be suitable and must be available for occupation by the applicant and any other person who normally resides with the applicant as a member of his or her family, or might reasonably be expected to reside with the applicant.

Duty to secure interim accommodation

Section 188(1) HA1996 imposes an interim duty on a housing authority to secure that suitable accommodation is available for an applicant if they have reason to believe that the applicant may:

- be homeless,
- be eligible for assistance, and
- have a priority need pending their decision as to what duty, if any, is owed to the applicant under Part 7 of the Act.

The accommodation secured must be suitable and must be available for occupation by the applicant together with any other person who normally resides with the applicant as a member of his or her family, or any other person who might reasonably be expected to reside with the applicant. The threshold for the interim duty is low. The council only has to have reason to believe that the applicant may be eligible for assistance, homeless, and have a priority need.

Dwelling

Flats and houses are 'residential premises', and the definition of 'residential premises' for the purposes of Part 1 of the Act includes 'dwellings'. The definition of a 'dwelling' is a building or part of a building occupied or intended to be occupied as a separate dwelling.

Homeless

There are a number of factors which determine whether a person is homeless:

A person is homeless if he or she has no accommodation which is **available for his or her occupation** and which that person has a legal right to occupy. However, a person who has accommodation is to be treated as homeless if it would not be **reasonable for him or her to continue to occupy** that accommodation. A person is also homeless if he or she has accommodation but cannot secure entry to it or has accommodation which is a moveable structure but does not have a place where he or she is entitled to place it and live in it.

House in Multiple Occupation (HMO)

As defined in section 254 of the Housing Act 2004.

Priority need

The main homelessness duty (to secure accommodation) applies only to applicants who have a priority need for accommodation. The priority need groups are specified in legislation (see section 189 HA1996 and the Homelessness (England) (Priority Need for Accommodation) Order 2002 and broadly include families with children, pregnant women and people who are vulnerable for some reason and who would be at greater risk of harm when homeless.

The priority need categories include (among others):

- a pregnant woman or person with whom she resides or might reasonably be expected to reside
- a person with whom dependent children reside or might reasonably be expected to reside
- a person who is vulnerable as a result of old age, mental illness or handicap or physical disability, or with whom such a person resides or might reasonably be expected to reside
- a person who is homeless, or threatened with homelessness, as a result of an emergency such as flood, fire or other disaster.

See the *Homelessness Code of Guidance for Local Authorities* for full list of the priority need groups.

Reasonable to continue to occupy

Section 175(3) HA1996 provides that a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him or her to continue to occupy.

Relevant Prohibition Order

This is defined for the purposes of section 584A and 584B of the Housing Act 1985 (compensation to owners) as:-

'a prohibition order under section 20 (category 1) or 21 (category 2) of the HA2004 which imposes in relation to the whole of any premises a prohibition on their use for all purposes other than any purpose approved by the authority.'

Section 43(5)(f) applies the provisions of section 584A and 584B of the Housing Act 1985 to an Emergency Prohibition Order, as it applies to a Prohibition Order, for the purposes of compensation to owners.

Suitable accommodation

The accommodation provided under section 188(1) must be suitable for the applicant and their household. Housing authorities are advised that they should avoid using Bed and Breakfast accommodation wherever possible. Where Bed and Breakfast accommodation has been used in an emergency situation, applicants should be moved to more suitable accommodation as soon as possible. The Homelessness (Suitability of Accommodation) (England) Order 2003 provides that Bed and Breakfast accommodation is not suitable accommodation for families with children and households which include a pregnant woman unless there is no alternative accommodation available and then only for a maximum of six weeks.

Threatened with homelessness

A person is 'threatened with homelessness' if he or she is likely to become homeless within 28 days.

Vulnerable group

Under Part 1 of the HA2004, the HHSRS Operating Guidance defines a vulnerable group as 'a range of people for whom the risk arising from a hazard is greater than for any other group in the population.' It is restricted to age groups and no other vulnerability is considered. The assessment of likelihood of an occurrence resulting in harm is assessed based on a member of this group living in the property. For the hazard of crowding and space, no specific age group is more vulnerable than others.

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