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## CHAPTER 2 ELIGIBILITY CRITERIA

### 2.0 INTRODUCTION

This section of the guidance covers Rules 9-14 relating to eligibility in the Housing Selection Scheme.

### 2.1 GENERAL ELIGIBILITY

There are two elements to be satisfied in order to be eligible to apply under the Housing Selection Scheme.

1. ALL Applicants must comply with the Application Requirements, [\(Rule 10\)](#);

AND

2. An Applicant is eligible if ANY of the following apply:

- a. The Applicant is a Full Duty Applicant under the Homelessness Legislation;

Note: An Applicant who is owed a full housing duty under the Housing (N.I.) Order, 1988 (i.e. a statutory homeless applicant) is automatically eligible to apply under the Housing Selection Scheme, regardless of any other factors such as age or connection with Northern Ireland. These Full Duty Applicants (F.D.A.) must also complete either General Housing Application Form. Or apply by telephone (subject to this service being available by the relevant landlord).

- b. The Applicant has been nominated through the National Mobility (HOMES) Scheme; (see Chapter 9) **NB HOMES Scheme no longer applies**
- c. The Applicant meets BOTH the Age Requirements (Rules 11-13) AND the Connection with Northern Ireland Requirements [\(Rule 14\)](#).

### 2.2 ELIGIBILITY: [RULE 9A](#)

An Applicant is also ineligible to apply (or to continue to apply) under this Scheme if he/she is a person who cannot be allocated accommodation by the Housing Executive because of:

- (a) the terms of Article 22A of the Housing (N.I.) Order 1981 (or any statutory modification or replacement of that Article); or
- (b) because of a decision made by the Housing Executive under paragraph (6) of that Article.

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Article 22A stipulates that the Housing Executive shall not allocate housing accommodation:

- (a) to a person from abroad, if he is a person subject to immigration control who is ineligible for an allocation of housing accommodation by virtue of section 118 of the Immigration and Asylum Act 1999 (c.33) of Article 22A;
- (b) to any other person from abroad, if he is a person who is ineligible for such an allocation by virtue of regulations made under paragraph (3);
- (c) to a person who the Housing Executive has decided is to be treated as ineligible for such an allocation by virtue of paragraph (6) of Article 22A;
- (d) to two or more persons jointly if any of them is a person mentioned in sub-paragraph (a), (b) or (c) above.

Guidance on how to determine the eligibility of a person from abroad is included in Chapter 3 and Chapter 10.9.

Under Article 22A (6), the Housing Executive may decide that an applicant is to be treated as ineligible for an allocation of housing accommodation by it, if it is satisfied that:

- (a) he, or a member of his household, has been guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the Housing Executive; and
- (b) in the circumstances at the time his application is considered, he is unsuitable to be a tenant of the Housing Executive by reason of that behaviour."

The effect of Article 22A(6) accordingly is that the Housing Executive is neither obliged nor entitled to allocate a dwelling to a person who is ineligible for allocations because of a decision made under Article 22A(6). (Refer to new Annex E and F containing DSD guidance extract on the Assessment of Eligibility See Appendix 2.1)

## **2.3 THE APPLICATION REQUIREMENTS: [RULE 10](#)**

All Applicants (including Full Duty Applicants under the Housing (N.I.) Order, 1988) must comply with the Application Requirements. Similarly, all tenants seeking a transfer must comply with the Application Requirements. (See Chapter 7 – Transfers).

### **1. Application Form**

Each person seeking accommodation is required to either submit a properly completed General Housing Application Form or apply by telephone (subject to this service being available by the relevant landlord) before he / she can be considered for accommodation. Applicants and Transfer should be sent an acknowledgement letter, which contains the declaration at the back of the application form for Data Protection purposes, to enable the

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Housing Executive/Landlords to make enquiries with other bodies and share information held on the Housing Management System on-line with other Landlords. No action is required by the applicant if satisfied with the conditions of the declaration. However, if applicant does not agree with any element they should contact the local office

**Procedures for dealing with Applicants / tenants seeking a transfer who do not agree with the declaration are outlined in 10.4.- should this be removed**

## 2. Renewal

The Applicant and Transfer Applicant must renew his / her application each year. This will be prompted by an automatic system-generated letter (see [10.1.14](#)).

## 3. Change in Circumstances

Applicants and Transfer Applicants are advised on the application forms, and this must be reinforced at the visit, that they must inform the Landlord to whom they have submitted their application form at once of any material change in his / her circumstances that might affect his / her place on the Waiting List (see [10.1.15](#)).

## 4. Pending Applications (Duplicate Applications)

It is not permissible for an Applicant to be included on more than one application form. Designated Officers should check this information with the Applicant during the visit (see [10.1.11](#)).

## 2.4 THE AGE REQUIREMENTS: [RULES 11-13](#)

The General Rule is that applicants must be 18 years or over on the date of application.

No applicants under the age of 16 years may appear on the Waiting List.

An Applicant aged at least 16 years and under 18 years of age will not be considered for housing unless:

1. he / she is statutory homeless (a Full Duty Applicant) under the provisions of the Housing (NI) Order, 1988; or
2. he / she meets one of the 'exceptional' conditions outlined below.

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In order to establish whether a 16 / 17 year old is eligible, it will be necessary to register and visit all such cases to determine if homelessness or any of the exceptions apply. (See 2.4.3 for those who don't meet the eligibility rules).

## **2.4.1 EXCEPTIONS: [RULE 12](#)**

### **1. The Applicant is leaving care.**

An exception to the general age rule is where a 16 / 17 year old Applicant is leaving the statutory care of Health and Social Services (i.e. foster care or a care home).

If a young person is leaving care and requires housing, the primary responsibility for such provision lies with Health and Social Services. There may be circumstances however, where Health and Social Services specifically request the Housing Executive's assistance to house a young person aged 16/17. The Housing Executive is required under Article 46(3)(e) of the Children (NI) Order, 1995 to comply with any requests for support. Such Applicants are likely to be referred to the Housing Executive by Health and Social Services.

Written confirmation of the Applicant's circumstances and leaving date is required from Health and Social Services, together with details of when housing will be required.

In such circumstances, close liaison between Health and Social Services and the Housing Executive is essential. For example, an interview could be arranged to include the Applicant and a member of the Health and Social Services Care Team to discuss the Applicant's housing requirements, areas of choice and prospects of being re-housed and to identify any support needs.

Details of the Key Worker involved with the Applicant should be recorded on the notepad comments facility and he / she should be advised of any offers of accommodation being made to the Applicant.

### **2. The Applicant is a person, in relation to whom a duty is owed under Article 46 of the Children (NI) Order, 1995.**

Where 16 /17 years olds approach the Housing Executive for accommodation, it will be necessary to establish if they are owed a duty under the Children Order.

The Housing Executive will not routinely refer applicants to Health and Social Services for assessment under the Children (NI) Order, 1995. Referrals will only be made to the professional head of Family and Child Care services in

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the relevant Trust in instances where the Housing Executive has reason to believe that the individual poses a threat to his / her or someone else's safety and well being (particularly children), or that a child may have been abused.

Where Health and Social Services have determined that they have statutory responsibility for an Applicant aged 16 / 17 years, then the Designated Officers should obtain formal recommendations or reports from Health and Social Services to confirm or explain the client's specific circumstances and needs.

3. The Applicant is over 16 but under 18 years of age and has a dependant child / children.

The Applicant will be considered responsible for any dependent child that normally resides with him or her. Where the child spends equal amounts of time in different households (e.g. between mother and father) or where there is doubt over which household the child is living in, the child will be treated as normally residing with the person who receives the child benefit. If no one receives the child benefit, the child will be deemed the responsibility of:

- the person who has claimed child benefit; or
- the person the Designated Officer considers to have primary responsibility if more than one person has made a claim for child benefit or no claim has been made.

An Applicant aged 16 / 17 years who is expecting a child will also be considered as an exception to the general age rule and will be eligible under the Housing Selection Scheme for re-housing. Designated Officers should obtain medical evidence from the Applicant indicating the expected date of confinement.

4. The Applicant is married or has formed a civil partnership, with no children.

Married Applicants/civil partners aged 16 / 17 years are eligible for housing under the Housing Selection Scheme.

This exception does not apply to 16 / 17 year olds who are co-habitees.

The Applicant must be applying for housing and intending to set up an independent home with his / her spouse/civil partner.

This exception will not apply to married applicants/civil partners under 18 years where their partner does not intend living with them or where their partner is likely to be absent for a period in excess of 52 weeks, unless there are exceptional circumstances where the partner has no control over the length of absence, e.g. hospitalisation. Absence due to imprisonment / placement in a young offenders centre would not be considered an

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exceptional circumstance.

5. The Applicant has an essential need for specific, independent living accommodation, because without that particular accommodation, the Applicant will have to refuse:-

- i. a specific offer of substantial training:

It has been agreed that training in this context should also include education.

The Applicant's inability to take up an offer of training/education or to continue in training / education is considered to be grounds for processing applications from persons aged 16 / 17 years.

Consideration must be given to whether the training or education would not be reasonably accessible to the Applicant if he / she were to remain in his / her current accommodation and whether it is unrealistic for the Applicant to travel to the place of training or education.

Designated Officers should also consider the individual circumstances in which the Applicant is currently residing and the impact on their ability to maintain the training / education place.

The Designated Officer must be satisfied that the Applicant's claims of training or education are bona fide. The Applicant should be asked to provide documentary evidence to confirm the training / education or the offer of training / education.

The Designated Officer must also be satisfied that the training / education is 'substantial' in terms of the number of hours involved and the duration of the course. A course would be deemed to be 'substantial' if it involves 16+ hours per week and is intended to last for 52+ weeks.

Or

- ii. a specific offer of employment.

The Applicant's inability to take up an offer of employment or to continue in employment is considered to be grounds for processing applications from persons aged 16 / 17 years.

Consideration must be given to whether the employment would not be reasonably accessible to the Applicant if he / she were to remain in his / her current accommodation and whether it is unrealistic for the Applicant to travel to the place of employment.

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Designated Officers should also consider the individual circumstances in which the Applicant is currently residing and the impact on their ability to maintain the employment.

Designated Officers must determine that the Applicant has been made a 'bona fide' offer of full time employment or confirm the current employment. Documentary evidence must be provided. The Designated Officer must be satisfied that the offer of employment or the actual employment is full-time in nature and is intended to last for at least 1 year. Employment will be considered as being full time if it constitutes working 16+ hours a week.

## 2.4.2 GUARANTORS

All 16 / 17 year olds who are eligible under the Housing Selection Scheme and placed on the Waiting List should be advised that if they receive an offer of accommodation before their 18<sup>th</sup> birthday they will require a Guarantor. It is recommended that a comment is recorded stating that a Guarantor will be required before the 16 / 17 year old is granted a tenancy.

Details about offers to 16 / 17 year olds and the procedures regarding Guarantors are in 5.7.1.

## 2.4.3 16 – 18 YEAR OLD APPLICANTS WHO DO NOT MEET THE EXCEPTIONS

For Applicants aged 16 / 17 years who are not FDA under the Homelessness Legislation and do not meet any of the exceptional circumstances outlined above (Rule 12), the following arrangements should be adhered to:-

The Applicant should be deleted from **HOUSING MANAGEMENT SYSTEM** on the grounds of ineligibility using Deletion Reason Code 13 - Application Withdrawn cancellation status 22 –under 18 and advised to reapply when he / she reaches the age of 18 or if his / her circumstances change in the interim.

## 2.5 CONNECTION WITH NORTHERN IRELAND REQUIREMENTS

Applicants, other than Full Duty Applicants and HOMES Applicants, must demonstrate that he /she (or a member of the Applicant's household) has a Connection with Northern Ireland. Connection is decided by reference to such matters as the Applicant's normal residence, employment, family associations, or other special circumstances. Detention in prison in Northern Ireland or otherwise, does not confer a local connection.



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Designated Officers must consider carefully the facts of each case and must be satisfied, based on the facts as presented, that the Applicant, or a member of the Applicant's household, has a "substantial" connection with Northern Ireland.

**Designated Officers must be satisfied that an applicant from abroad is eligible for housing or homeless assistance prior to determining whether he or she fulfils the Connection with Northern Ireland requirements.**

The Applicant can be said to meet the Connection with Northern Ireland Requirements if he / she meets **ANY** of the following 3 elements.

## 1. Ordinarily or Habitually or Normally Resident

Applicants currently living in Northern Ireland, and who have lived in Northern Ireland for a reasonable period of time, will be said to be 'Normally Resident'.

For Applicants who have recently moved to Northern Ireland, or are applying from outside Northern Ireland, the issue of ordinary and habitual residence should be considered.

In most circumstances there will be no real distinction between habitual residence and ordinary residence. The concept of ordinary and habitual implies an association between the individual and the country and relies substantially on fact and the individual circumstances of each case.

It is possible to be ordinarily or habitually resident both in Northern Ireland and elsewhere. Ordinary residence is residence adopted voluntarily as part of the regular order of life as opposed to residence which is casual or temporary. Habitual residence has been defined as a regular physical presence for an appreciable period of time and may continue during periods of temporary absence.

The Designated Officer must consider the facts of each case individually when determining whether or not an Applicant, or a member of the Applicant's household, is, or in the past was, "ordinarily, or habitually resident". In deciding this question, consideration should be given to the following factors:

- length and continuity of residence;
- future intentions;
- employment prospects;
- reasons for coming to NI;

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Notes:

- residence implies a more settled state than mere physical presence, thereby excluding short stay visitors;
- to be a resident, the person must be intending to make a home in Northern Ireland;
- the length, continuity and general nature of a person's actual residence is more important than his or her intentions as to the future;
- an appreciable period of time, as well as a settled intention, is necessary to enable the person to become habitually resident;
- what counts as an 'appreciable period of time' must depend on the facts in each case - it must, however, be the kind of period which demonstrates a settled and stable pattern of living as a resident.

## 2. Employed or Seeking Employment

An Applicant will be considered to have a Connection with Northern Ireland if he / she, or a member of the Applicant's household, is employed in Northern Ireland **or** if he /she, or a member of the Applicant's household, is making bona fide attempts to seek employment in Northern Ireland. It is necessary to consider the facts of each individual case.

### Employed

While casual employment should not be regarded as establishing local connection, temporary employment for a substantial period should be considered. Part-time employment should be considered on the same basis as full-time employment, and brief breaks in employment in Northern Ireland, for example between temporary contracts, may be ignored. Where an Applicant works in Northern Ireland and elsewhere regard should be had to the location of their principal place of work.

### Seeking Employment

A Connection with Northern Ireland can be shown if the Applicant, or a member of the Applicant's household, can prove that he /she is making bona fide attempts to seek employment in Northern Ireland.

The Applicant should be asked to provide information, which illustrates how he / she, or a member of his / her household, is seeking employment, for example job applications; letters of interview etc.

## 3. Other Circumstances

This clause provides a flexible basis for recognising any other substantial connection with Northern Ireland, regardless of the nature of that connection. Designated Officers must consider each case on the basis of its own individual facts.

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Examples of Other Circumstances may include:

- Family associations in Northern Ireland, namely that the Applicant, or member of the Applicant's household, has adult family members who have been resident in Northern Ireland for at least 5 years. Family in this context has been based on the definition used in Article 24(3) of the Housing (N.I.) Order, 1983.

Article 24(3) - "A person is a member of another's family within the meaning of this Chapter if he is his spouse, civil partner, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece; treating -

any relationship by marriage/civil partnership as a relationship by blood, any relationship of the half blood as a relationship of the whole blood and the stepchild of any person as his child; and

an illegitimate person as the legitimate child of his mother and reputed father; or if they live together as husband and wife/civil partners."

- The Applicant, or member of the Applicant's household, may be the spouse, civil partner or partner of an individual who would have qualified and is now deceased, divorced, (for the purpose of this guidance this includes dissolution of a civil partnership) separated, leaving the Applicant unqualified.
- The need for continuing provision of education / training or health treatment for the Applicant, or a member of the Applicant's household in Northern Ireland.
- Where the Applicant was brought up in Northern Ireland or had lived in Northern Ireland for a considerable time in the past but has no current local connection. This may be particularly relevant to Applicants who have lived abroad for some time, or have been serving with the armed forces. It is recognised that there is a need for former members of the armed forces to be treated sympathetically where they have no real connection outside Northern Ireland.

## 2.5.2 APPLICANTS WHO DO NOT MEET THE CONNECTION WITH NORTHERN IRELAND REQUIREMENTS OR ARE FOUND TO BE INELIGIBLE

Where the Applicant does not meet the Connection with Northern Ireland requirements, or are found to be ineligible due to ASB or PFA, their application should be cancelled from the **HOUSING MANAGEMENT SYSTEM** using the appropriate cancellation status Reason Code:

Code **18** – NO CONNECTION WITH NI RESIDENCE

Code **19** - NO CONNECTION WITH NI EMPLOYMENT

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Code **20** - NO CONNECTION WITH NI - OTHER

Code **23**- ASYLUM/IMMIGRATION

Code **25**- INELIGIBLE-UNACCEPTABLE BEHAVIOUR

Cancellation Letter should be selected and issued to the Applicant informing him / her of this action.

See HMS Step by Step Guide – Exercise 7

**NB Letter must be created and printed before application is cancelled**

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## ANNEX E

## APPENDIX 2.1

### HOUSING (NORTHERN IRELAND) ORDER 2003

#### ELIGIBILITY TO BE ALLOCATED HOUSING ACCOMMODATION VIA THE COMMON SELECTION SCHEME

1. Chapter II of Part IV of the Housing (Northern Ireland) Order 2003 (“the 2003 Order”) amended the Housing (Northern Ireland) Order 1981 (“the 1981 Order”) and in particular, Article 124 of the 2003 Order inserted a new Article 22A in the 1981 Order which requires that the Housing Executive shall not allocate housing accommodation (i.e. select a person to be a secure or introductory tenant) except to an “eligible person”.

#### **Persons guilty of unacceptable behaviour**

2. Article 22A (6) of the 1981 Order allows the Housing Executive to treat an applicant for accommodation via the Common Selection Scheme as ineligible for such accommodation if the applicant, or a member of his/her household, has been guilty of unacceptable behaviour serious enough to make him/her unsuitable to be a tenant of the Housing Executive and, in the circumstances at the time his/her application is considered, he is unsuitable to be a tenant by reason of that behaviour. **It is not necessary for the tenant to have actually been a tenant of the Housing Executive when the behaviour in question occurred.**
3. Given that the Housing Executive has the power to treat applicants as ineligible for housing accommodation on the basis of unacceptable behaviour, the Executive should not apply blanket exclusions against particular classes of applicant, such as ex-prisoners, where individual cases could be considered on their own merits under Article 22A(6).
4. It must be emphasised that an applicant’s suitability to be a tenant should not be assessed on the basis of past conduct alone. **The Executive must have regard to the circumstances at the time the application is considered.** For example, it would not be appropriate to treat an applicant as ineligible because of a past conviction if he/she has subsequently led a blameless existence. Generally speaking, eligibility would be in question where there is reason to suppose that an individual is likely to behave in an unacceptable way.

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5. Where the Executive receives an application and has reason to believe that either the applicant or a member of his/her household has been guilty of behaviour that may make him/her unsuitable to be a tenant, the Housing Executive must take the following steps:
  - i. **It must satisfy itself that behaviour has occurred which falls within the definition of “unacceptable behaviour”** i.e. the applicant or a member of his/her household has behaved in a manner that would, if the applicant were a secure tenant, entitle the Housing Executive to possession order under Article 29 of the Housing (Northern Ireland) Order 1983 in relation to Ground 2 or Ground 3 in Schedule 3 to that Order. These are fault grounds and include behaviour that is likely to cause nuisance or annoyance and use of the premises for illegal or immoral purposes. **In considering whether a possession order would be granted in the circumstances of a particular case, the Executive will have to consider whether, having established the grounds, the court would consider that it was reasonable to grant a possession order.** In England, case law has established that, when the court is deliberating “reasonable” means having regard to the interests of the public and the interests of the parties. Therefore, in deciding whether it would be entitled to a possession order, the Executive should consider those interests, including all the circumstances of the applicant and his household. The Executive should also bear in mind that the court would not grant a possession order without a good standard of evidence.
  - ii. Having concluded that the individual’s behaviour would have resulted in an order for possession being granted, **the Executive must satisfy itself that the behaviour was serious enough to make the person unsuitable to be a tenant of the Executive.** For example, the Executive will need to be satisfied that, if a possession order had been granted, it would not have been suspended by the court.
  - iii. **The Executive will need to satisfy itself that, in the circumstances at the time of the application, the applicant is unsuitable to be a tenant by reason of the behaviour in question.**
6. **Only if the Housing Executive is satisfied in all aspects of steps i-iii above should it consider using its discretion to decide that an applicant is ineligible for an allocation.** In reaching such a decision, the Housing Executive will have to act reasonably. That means it will have to consider all the relevant matters. These will include all the circumstances relevant to the applicant, including health, dependants and other factors. In practice, the matters before the Housing Executive will include the information provided on the application form. **All cases must be thoroughly investigated and all decisions based on established facts.**

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7. Where an applicant has been guilty of unacceptable behaviour but is working with a helping agency (for example, PBNI or a CAT team) in an attempt to address that behaviour, the Executive should take account of that agency's views in considering whether the applicant is unsuitable to be a tenant.
8. Rule 9A of the Housing selection Scheme provides that an applicant is ineligible to apply under the scheme if he is a person who cannot be allocated accommodation by the Housing Executive because of the terms of Article 22A of the 1981 Order. This means that, where the Housing Executive has decided that an applicant is an ineligible person, the applicant's name will not appear on the Waiting List. **However, applicants who are treated as "ineligible persons" are entitled to be given reasons, in writing for the decision.**
9. The Housing Executive should not take a decision on eligibility without first considering whether any unacceptable behaviour is due to a physical, mental or learning disability, and, if this appears to be the case, the Housing Executive should consider whether the applicant would be able to maintain a tenancy with appropriate care and support. In considering such cases, the Housing Executive will need to consult with relevant agencies, including social services, health professionals and providers of suitable housing, care and housing-related support services.

## Homelessness

10. As mentioned in paragraph 76, the Housing Executive must carry out an assessment of an applicant's circumstances before deciding that the applicant is ineligible to be allocated housing accommodation by reason of his unacceptable behaviour. **If the assessment indicates that the applicant is homeless, the Housing Executive should proceed in accordance with Annex F (Eligibility for Homelessness Assistance).**

## Further applications by ineligible persons

11. An applicant who has been treated as ineligible to be allocated housing accommodation is entitled to make a fresh application at any time. However, unless there has been a considerable lapse of time since the previous application, it will be for the applicant to show that his circumstances or behaviour have changed. This means that the Housing Executive is not obliged to entertain successive applications from individuals who have been informed that they are ineligible to be allocated housing accommodation by reason of their unacceptable behaviour unless:
  - a) the applicant can provide clear evidence that his circumstances or behaviour have changed, or
  - b) there has been a "considerable lapse of time" since the previous application (6 months to a year may be reasonable, depending on the circumstances).

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- 12.** If the Executive decides that an applicant is ineligible to be allocated housing accommodation via the waiting list, or is to be treated as ineligible the applicant should be given:
- a) Written notice of the decision and the grounds for the decision. The notice should be available for collection by the applicants for a reasonable period where delivery is not possible.
  - b) The option of an internal review of the decision that is fair and compatible with the European Convention on Human Rights;
  - c) Information about the ways in which ineligibility decisions may be reversed (e.g. evidence that the applicant has modified their behaviour or engaged with appropriate support etc.).

## **Transfers**

- 13.** Rule 72 of the Housing Selection Scheme provides that transfers should be made as fairly and impartially as allocations to waiting list applicants. However it must be emphasised that housing transfers are not an appropriate method of dealing with anti-social behaviour. An application for transfer should not be accepted from a where due to anti-social behaviour:
- the Executive is actively considering whether it would be appropriate to serve on the tenant, at some time within the next 6 months, a relevant statutory notice seeking possession;
  - the Executive has served on the tenant a relevant statutory notice possession at any time within the previous 3 months; or
  - Proceedings for possession of the tenant's dwelling pursuant to a relevant statutory notice pending.



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## ANNEX F

## HOUSING (NORTHERN IRELAND) ORDER 2003

## ELIGIBILITY FOR HOMELESSNESS ASSISTANCE

1. Chapter IV of Part IV of the Housing (Northern Ireland) Order 2003 ("the 2003 Order") amended the Housing (Northern Ireland) Order 1988 ("the 1988 Order") and, in particular, Article 137 of the 2003 Order inserted a new Article 7A in the 1988 Order which provides that certain descriptions of persons are not eligible for assistance under Part II of the 1988 Order (Housing the Homeless).
2. Article 10 of the 1988 Order requires that, where the Housing Executive is satisfied that an applicant is unintentionally homeless and in priority need, the Housing Executive shall secure that accommodation becomes available for that person's occupation. The Housing Executive interprets this as a duty to provide a secure tenancy in its own housing stock ("the full duty").
3. While the Housing Executive normally meets its duty under Part II of the 1988 Order by providing a secure tenancy in its own housing stock, it would not be appropriate to provide this form of assistance to individuals who are unsuitable to hold tenancies and could, by virtue of Article 22A of the Housing (Northern Ireland) Order 1981, be treated as ineligible to be allocated housing accommodation. Article 7A (5) of the 1988 Order therefore allows the Housing Executive to decide that an applicant is ineligible for assistance under Part II of the Order if he, or a member of his household, has been guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the Housing Executive and, *in the circumstances at the time his application is considered*, he is unsuitable to be a tenant by reason of that behaviour.
4. Where the Housing Executive has reason to believe that a homeless applicant or a member of that applicant's household has been guilty of unacceptable behaviour, **the Housing Executive must take the same steps that it would take in relation to a waiting list applicant who appears to be guilty of such behaviour** (see Annex E- Eligibility to be Allocated Housing Accommodation via the Housing Selection Scheme). **Only if the Housing Executive is satisfied in all aspects of those steps should it consider using its discretion to decide that an applicant is ineligible for the full duty.** In reaching such a decision, the Housing Executive will have to act reasonably. That means it will have to consider all the relevant matters before it i.e. all the circumstances relevant to the applicant, including health, dependants and other factors. In practice, the matters before the Housing Executive will include the information provided on the application form. **All cases must be thoroughly investigated and all decisions based on established facts.**

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5. Where the Housing Executive has decided that an applicant is ineligible for the full duty, it must then consider if the applicant is in priority need. If the Housing Executive is satisfied that the applicant has a priority need, **it must treat him in the same way that it would treat an applicant in priority need who became homeless intentionally** i.e. it must-
  - Secure that accommodation is made available for his occupation for such period as it considers will give him a reasonable opportunity of securing accommodation for himself, and
  - Furnish him with advice and such assistance as it considers appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.
6. If the Housing Executive is not satisfied that the applicant has a priority need, **it must treat him in the same way that it would treat an applicant who became homeless intentionally and is not in priority need** i.e. it must furnish him with advice and such assistance as it considers appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.
7. Section 5 of the Housing (Amendment) Act ( Northern Ireland) 2010 ( “ the 2010 Act”) has inserted new Articles 11A-C in the 1988 Order which gives applicants for homelessness assistance a right to review and appeal in respect of certain decisions of the Executive. This means that, where the Executive decides that an applicant is ineligible for assistance under Part 11 of the 1988 Order, or is to be treated as ineligible, the Executive must give the applicant written notice of the decision and the grounds for it. The notice should be available for collection by the applicant for a reasonable period where delivery is not possible. The Executive must also inform that person of:
  - a) Their right to request a review and the timescale in which such a request must be made;
  - b) The Executive’s power under Article 8(3) of the 1988 Order to secure that accommodation is available pending a decision the review, and
  - c) The Executive’s powers under Article 11C (5) of the 1988 Order to secure that accommodation is available during the period for appealing against a decision on a review and until such an appeal is finally determined.
8. Where the Executive gives notice of a decision as to a person’s eligibility, it should also provide information about the ways in which such decisions may be reversed (e.g. evidence that the applicant has modified their behaviour or engaged with appropriate support etc.).

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9. Where the Executive has reached a decision on an application for assistance under the homelessness legislation, it may be argued that the individual concerned ceases to be an “applicant” at that point. Article 7A (5) of the 1988 Order originally provided that in certain circumstances, the Executive could decide that “an applicant” was to be treated as ineligible for assistance. This could be taken to mean that, if the Executive has decided that an individual meets the statutory criteria for assistance under the homelessness legislation, it cannot then decide under Article 7A (5) that the individual is not eligible for such assistance. Section 3 of the 2010 Act has therefore amended Article 7A to refer to a “person” rather than “an applicant”. The aim of this amendment is to enable the Executive to decide that an individual is eligible for homelessness assistance at any stage up to the point where a tenancy is awarded.