HOMELESSNESS: PRIORITY NEED UNDER THE HOUSING ACT 1996

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A note on the concept of priority need and its application in relation to the homelessness regime under Part VII of the Housing Act 1996.

This note covers the various categories of priority need and how priority need is determined.

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Save in cases where section 195A of the Housing Act 1996 (HA 1996) applies, a local housing authority (LHA) will only owe substantive duties to those eligible for housing assistance under Part VII of the *HA 1996 (www.practicallaw.com/9-505-8213)* who are considered to be in priority need for accommodation (*section 189 (www.practicallaw.com/7-511-4111)*, HA 1996). This note covers the concept of priority need and looks at which categories of applicant will be considered to be in priority need and how priority need is determined.

This note does not cover the homelessness regime in detail, for more information on this, see Practice notes:

- *Homelessness: duties and powers of local authorities under Part VII of the Housing Act 1996 (www.practicallaw.com/1-520-3228).*
- *Homelessness and threatened homelessness (www.practicallaw.com/7-525-1947).*

CONCEPT OF PRIORITY NEED

By introducing the concept of priority need for accommodation, Parliament provided that not all housing applicants who are eligible and unintentionally homeless are to be treated equally. Recognising the shortage of available social housing stock in the UK, the concept of priority need pits housing applicants against each other and only those who fall within certain prescribed categories can access the substantive rights and duties in Part VII. Therefore, for both applicants and LHAs, priority need is often a crucial factor.

The essential legal tools for dealing with questions of priority need are:

- Section 189 of the HA 1996.
- The Homelessness (Priority Need for Accommodation) (England) Order 2002 (*SI 2002/2051*) (PNAE Order 2002).
- The Homeless Persons (Priority Need) (Wales) Order 2001 (*SI 2001/607*) (PNW Order 2001), for Wales.
- Department for Communities and Local Government: Homelessness Code of Guidance for Local Authorities (2006) (Code of Guidance), in particular Chapters 10 and 12.
- Relevant case law (referred to throughout this note).

Inquiries into priority need must be carried out in all cases where a LHA has reason to believe that an applicant is homeless or threatened with homelessness and is eligible for assistance (see ***Practice notes, Homelessness: duties and powers of local authorities under Part VII of the Housing Act 1996 (www.practicallaw.com/1-520-3228)*** and ***Homelessness and threatened homelessness (www.practicallaw.com/7-525-1947)***). Where a LHA believes that an applicant is homeless, eligible for assistance and in priority need, it has a duty to secure interim accommodation pending its final housing assistance decision (*section 188(1), HA 1996*).

CATEGORIES OF PRIORITY NEED

In England, there are ten prescribed categories of persons with a priority need for accommodation. Four of these categories are contained in section 189 of the HA 1996. A further six categories are set out in the PNAE Order 2002. The table below lists all the current categories of persons in priority need for accommodation in England.

Some categories will only allow an applicant to acquire priority need for accommodation if they meet the qualifying criteria, while others allow the applicant to acquire priority need as a result of another person's circumstances.

VULNERABILITY AND PRIORITY NEED

Five of the ten categories of priority need listed in the table above (see ***Categories of priority need*** above) incorporate the additional concept of vulnerability. To be considered in priority need for accommodation in categories 3 and 7 to 10 above, a person must be both vulnerable and vulnerable by reason of one of the prescribed statutory matters.

The Court of Appeal has held that this issue is best approached as a composite question rather than in two separate stages (*R v Kensington and Chelsea RLBC ex p Kihara [1997] 29 HLR 147*).

"Vulnerability" is not defined in the HA 1996 and it has been left to the courts to devise a definition. The Court of Appeal has defined vulnerability as follows:

> "The council must ask itself whether [the applicant] is when homeless less able to fend for himself than the ordinary homeless person so that injury or detriment to him will result when a less vulnerable man would be able to cope without harmful effects" (*R v London Borough of Camden ex p Pereira [1998] EWCA Civ 863*).

The Court of Appeal has also stressed that the above test is a judicial guide not a statutory formulation (*Osmani v London Borough of Camden [2004] EWCA Civ 1706*). The court recognised that applying the test is an imprecise comparison between the applicant and the "ordinary homeless person", and decisions are likely to be judgmental (*Johnson v Solihull [2013] EWCA Civ 752*). However, the courts have acknowledged that LHAs, not judges, are best placed to make these decisions.

The *Pereira* test for vulnerability requires a contextual, comparative and composite assessment by a LHA. It is contextual because the LHA must consider the applicant's situation when homeless. It is comparative because the LHA must compare

Category	Description	Origin
1	A pregnant woman or a person with whom she resides or might reasonably be expected to reside.	Section 189(1)(a), HA 1996.
2	A person with whom dependent children reside or might reasonably be expected to reside.	Section 189(1)(b), HA 1996.
3	A person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside.	Section 189(1)(c), HA 1996.
4	A person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or disaster.	Section 189(1)(d), HA 1996.
5	A person aged 16 or 17 years who is neither a "relevant child" nor a child in need who is owed a duty under section 20 of the Children Act 1989 (CA 1989) (see *Practice notes, Local authority duties under the Children Act 1989 (www.practicallaw.com/4-501-3934)* and *Local authority provision of accommodation (www.practicallaw.com/8-536-0371)*).	Article 3, PNAE Order 2002.
6	A person under the age of 21 years who was accommodated, *looked after (www.practicallaw.com/6-386-0367)*, or fostered at any time between the ages of 16 and 18 years (but who is not a "relevant student").	Article 4, PNAE Order 2002.
7	A person of 21 years or over who is vulnerable as a result of being looked after, accommodated or fostered.	Article 5(1), PNAE Order 2002.
8	A person who is vulnerable as a result of having been a member of Her Majesty's regular naval, military or air forces.	Article 5(2), PNAE Order 2002.
9	A person who is vulnerable as a result of having served a custodial sentence, been committed for contempt of court or other kindred offences, or having been remanded in custody.	Article 5(3), PNAE Order 2002.
10	A person who is vulnerable as a result of having ceased to occupy accommodation due to actual violence or threats of violence that are likely to be carried out.	Article 6, PNAE Order 2002.

the applicant's circumstances to that of the ordinary homeless person. It is a composite test because the LHA must consider all of the applicant's circumstances.

An example of a LHA failing to make a composite assessment of an applicant's circumstances occurred in *Islington LBC v Mohammed [2013] EWCA Civ 739*, where the applicant's medical conditions included frequent and irregular episodes of fainting. Although aware of her bouts of fainting, the LHA failed to assess two key aspects, namely the effect of street homelessness on her fainting episodes and the effect of her fainting episodes on her ability to cope when street homeless. The Court of Appeal upheld the county court's order quashing the LHA's review decision.

Inquiries and medical evidence

Inquiries

Where a LHA has reason to believe that an applicant may be homeless or threatened with homelessness, and is eligible for assistance, then it must make such inquiries as are necessary to satisfy itself whether the applicant has a priority need (*section 184(1), HA 1996*).

The burden lies on the LHA to make those necessary inquiries into the issues raised in a caring and sympathetic way; however it is not under a duty to conduct extremely detailed enquiries (*R v Gravesham BC ex p Winchester [1986] 18 HLR 207*).

A LHAs inquiries can only be attacked as being inadequate if they are inquiries that no reasonable LHA could have made. A court should not intervene merely because further inquiries would be sensible or desirable (*R v Kensington and Chelsea RLBC ex p Bayani (1990) 22 HLR 406 and Cramp v Hastings BC [2005] EWCA Civ 1005*).

Medical evidence

In cases relating to priority need, and especially the question of vulnerability, LHAs often need to make inquiries of medical practitioners and consider and assess medical evidence. However, the question of priority need and vulnerability are for the LHA to decide, not a medical adviser.

Some important points that have arisen from case law regarding medical evidence include the following:

- LHA officers are not expected to make their own evaluations of an applicant's medical reports and should have access to medical advice if necessary (*Shala v Birmingham CC [2007] EWCA Civ 624*).
- There is no absolute requirement for a LHA to refer an applicant's medical reports for an assessment by the LHA's medical adviser. The LHA must decide whether or not to do so, depending on the fact of the application (*Simms v Islington LBC [2008] EWCA Civ 1083*).
- Where a LHA does refer an applicant's medical reports to a medical adviser, then it must take care not to appear to be using the adviser simply to provide or shore up its reasons for not finding priority need on medical grounds (*Shala*).
- The function of a medical adviser is to assist the LHA in understanding the medical issues and to evaluate the applicant's medical reports. If a medical adviser has not physically examined an applicant, then his advice could not ordinarily constitute expert evidence, and a LHA should take that into account when reaching its decision (*Shala*).

PREGNANT WOMEN

A pregnant woman, and anyone with whom she lives or might reasonably be expected to live, has a priority need for accommodation (*section 189(1)(a), HA 1996*).

LHAs should seek the usual confirmation of pregnancy, for example, a letter from a medical professional such as a midwife (*paragraph 10.5, Code of Guidance*).

Priority need is given to a pregnant woman regardless of the length of time that she has been pregnant. If the pregnant woman suffers a miscarriage or terminates her pregnancy during the LHA's assessment process, then the LHA should consider whether she continues to have a priority need as a result of some other factor, for example, she may be vulnerable as a result of another special reason (see *section 189(1)(c) of the HA 1996*).

APPLICANT WITH DEPENDENT CHILDREN

Section 189(2) of the HA 1996 contains two alternate tests. Priority need for accommodation will exist for either of the following:

- A person with whom dependent children reside.
- A person with whom dependent children might reasonably be expected to reside.

(*Re Islam [1983] 1 AC 688*.)

Dependence

The concept of a dependent child means there must be some form of parent-child relationship. Dependent children need not necessarily be the applicant's own children but may, for example, be related to the applicant or his partner, or be fostered or adopted by the applicant (*paragraph 10.8, Code of Guidance*).

Actual dependence on applicant

For each of the alternate tests (see *Applicant with dependent children* above) there must be actual dependence on the applicant, although the child need not be wholly and exclusively dependent on him (*R v Lambeth LBC ex p Vagliviello (1990) 22 HLR 392*).

"Dependent" is not defined in the HA 1996 but the Code of Guidance advises that LHAs may wish to treat the following individuals as dependent:

- All children aged under 16 years.
- All children aged 16 to 18 years who are in, or are about to begin, full-time education or training or who, for other reasons, are unable to support themselves and live at home.

(*Paragraph 10.7, Code of Guidance*.)

Dependency is not confined to financial dependency. Therefore, while children over the age of 16 years who are in full-time employment and are financially independent of their parents would not normally be considered to be dependent, an LHA should bear in mind that those children may not be sufficiently mature to live independently of their parents, and there may be good reason to consider them to be dependent (*paragraph 10.7*).

Residence with the applicant

The question of whether a dependent child is residing with the applicant must be determined at the date of the LHA's decision (*Mohammed v Hammersmith and Fulham LBC [2001] UKHL 57*).

There must be actual residence with some degree of permanence or regularity, rather than a temporary arrangement whereby a child merely stays with an applicant for a limited period (*R v Port Talbot BC ex p McCarthy (1991) 23 HLR 207*). Residence does not have to be full time but there must be some regularity to the arrangement. Therefore, a child may be considered to reside with either of his separated parents where he divides his time between both of them. This issue was considered by the Court of Appeal where the LHA alleged that the applicant had made himself intentionally homeless by moving his children into his single-room accommodation (*Oxford City Council v Bull [2011] EWCA Civ 609*; see also ***Legal update, Claimant found to be "intentionally homeless" after moving his children into single room in a shared house (Court of Appeal) (www.practicallaw.com/4-506-2062)***).

Reasonably be expected to reside with the applicant

In determining whether a child might reasonably be expected to reside with an applicant, the key question for a LHA is whether it is reasonably to be expected, in the context of a scheme for housing the homeless, that the child should be able to reside with the applicant (*Holmes-Moorhouse v Richmond upon Thames LBC [2009] UKHL 7*).

In Holmes-Moorhouse, the separated parents of four children agreed to a ***shared residence order (www.practicallaw.com/0-538-0207)***. The order provided that three of the children would spend alternate weeks and half of each school holiday with their father. The LHA already provided accommodation to the children's mother. Their father then applied to it as homeless, relying on the shared residence order to prove priority need. The House of Lords held, in addition to the above test, that this issue is a question for the LHA and should not be determined by the provision of a shared residence order made, or agreed to, in family proceedings.

The court also observed that only in exceptional circumstances would it be reasonable to expect a child who has a home with one parent to be provided under Part VII of the HA 1996 with another so that the child can reside with both parents. However, this was simply an observation, rather than an alternative test or a gloss on the statutory provision (*El Goure v Kensington and Chelsea RLBC [2012] EWCA Civ 670*).

Children in social services care

Under the CA 1989, LHAs must liaise with social services in cases where the latter are looking after the applicant's children, for example by way of a ***care order (www.practicallaw.com/4-524-0696)*** or under a voluntary arrangement. The Code of Guidance further advises that "joint consideration with social services will ensure that the best interests of the applicant and the children are served" (*paragraph 10.11, Code of Guidance*).

OLD AGE, MENTAL OR PHYSICAL DISABILITY OR OTHER SPECIAL REASON

A significant number of the reported cases on priority need concern section 189(1)(c) of the HA 1996 and the issue of vulnerability. Medical evidence often plays an important part of the LHA's assessment (see ***Medical evidence*** above).

Old age

Old age in itself is not sufficient for an applicant to be deemed to be vulnerable. However, it may be that as a result of old age the applicant would be less able to fend for himself if homeless. LHAs should carefully consider applications from those aged over 60 years, especially where the applicant is leaving tied accommodation. However, LHAs should not use the age of an applicant to automatically determine if an applicant is vulnerable (a policy that does this may fall foul of the Equality Act 2010 regime (see ***Practice note, Equality Act 2010: local government (www.practicallaw.com/3-503-6610)***)). The circumstances of each application will need to be considered (*paragraph 10.15, Code of Guidance*).

Mental illness or handicap or physical disability

When considering whether an applicant is vulnerable as a result of mental illness or handicap or physical

disability, LHAs should take into account all relevant factors and circumstances including:

- The nature and extent of the illness and/or disability that may render the applicant vulnerable.
- The relationship between the illness and/or disability and the individual's housing difficulties.
- The relationship between the illness and/or disability and other factors such as drug or alcohol misuse, offending behaviour, challenging behaviours, age and personality disorder.

(*Paragraph 10.16, Code of Guidance*.)

Where an applicant presents with mental illness, LHAs should co-operate with social services and mental health agencies and also be prepared for a direct approach from former patients who may, on discharge from hospital, have become homeless. LHAs should consider carrying out a joint assessment or using a trained mental health practitioner as part of the assessment team. Those discharged from psychiatric hospitals and local authority hostels for people with mental health problems are likely to be vulnerable (*paragraph 10.17, Code of Guidance*).

Other special reason

A person has a priority need for accommodation if he is vulnerable for any "other special reason" (*section 189(1)(c), HA 1996*). The statute envisages that vulnerability may arise due to circumstances that are not expressly provided for in the legislation.

Each application must be assessed on its individual circumstances. "Special reasons" are not restricted to any mental or physical disabilities that the applicant has (*R v Kensington and Chelsea RLBC ex p Kihara (1997) 29 HLR 147*). For example, an applicant may have a priority need as a result of vulnerability because they have a need for support but no family or friends to supply that support (see *Hotak v London Borough of Southwark [2013] EWCA Civ 515*, where the Court of Appeal held that an LHA was entitled to have regard to personal support and assistance when considering priority need (see ***Legal update, Local housing authority entitled to have regard to personal support and assistance when considering "priority need" (Court of Appeal) (www.practicallaw.com/0-529-7897)***)).

Moreover, an applicant might have a priority need for accommodation for a special reason because of a combination of circumstances that when each is taken individually may not lead to a finding of vulnerability (*R v Waveney DC ex p Bowers [1983] QB 238*).

The Code of Guidance contains a non-exhaustive list of those persons who may fall within this category of priority need, including:

- Chronically sick people, including people with AIDS and HIV-related illnesses. Those people may be vulnerable not only because the extent of their medical conditions but also because the effects of their illnesses, or common attitudes towards it, make it difficult for them to find and maintain stable accommodation.
- Young people. While there are specific categories for certain groups of young homeless people (see *Articles 3, 4 and 5(1), PNAE Order 2002*), LHAs should carefully consider applications from those aged under 25 years. Some may lack the necessary support to enable them to find and maintain stable accommodation. Young street homeless persons may be at risk of abuse or prostitution and, while drug addiction alone does not amount to a special reason, a likelihood of relapse into addiction may do so (*Crossley v Westminster CC [2006] EWCA Civ 140*).
- Persons fleeing harassment. Article 6 of the PNAE Order 2002 provides a specific category of priority need for those who are vulnerable as a result of ceasing to occupy accommodation because of violence or threats of violence likely to be carried out. However, there may be some cases where harassment falls short of violence or threats of violence likely to be carried out, for example, verbal abuse or damage to property.
- Former asylum seekers. Those who have been permitted to remain in the UK will be eligible for housing assistance and may be at risk of losing their National Asylum Support Service (NASS) accommodation. LHAs should carefully consider applications from those people and should be alive to the possibility that those who have been tortured, raped or seen members of their family being killed may be reluctant or have difficulty discussing their vulnerability.

(*Paragraphs 10.32-10.35, Code of Guidance*.)

LHAs should keep an open mind and avoid blanket policies that state that a certain group will or will not be vulnerable for any other special reason (*paragraph 10.31, Code of Guidance*).

EMERGENCY

Applicants have a priority need for accommodation if they are homeless (or threatened with homelessness) as a result of an emergency such as fire, flood or other disaster (*section 189(1)(d), HA 1996*).

"Other disaster" is not defined in the HA 1996 but the Code of Guidance advises LHAs and applicants that to qualify, the disaster must be in the nature of a flood or fire and involve some form of physical damage or threat of damage (*paragraph 10.42, Code of Guidance and R v Bristol CC ex p Bradic (1995) 27 HLR 584*). This is regardless of whether the applicant has dependent children or is vulnerable for some other reason (*paragraph 10.42, Code of Guidance*).

Some applicants are statutorily deemed to have become homeless (or threatened with homelessness) as a result of emergency such as flood, fire or other disaster, namely:

- A person who resides in a building in outer London for which an order has been made by a magistrates' court that the occupiers are to be removed because of its dangerous state (*section 37, Greater London Council (General Powers) Act 1984*).

- A person who resides in a building in inner or outer London whose occupants are in danger by reason of its proximity to a dangerous structure or building (section 38(1), Greater London Council (General Powers) Act 1984), for which an order has been made by the magistrates' court under section 38(2).

(*Section 39, Greater London Council (General Powers) Act 1984*.)

CHILDREN AGED 16 OR 17 YEARS

Priority need for accommodation is given to all children aged 16 or 17 years except for those who are:

- Relevant children (for the purposes of section 23A of the CA 1989).

- Children in need who are owed a duty under section 20 of the CA 1989.

(*Article 3, PNAE Order 2002*.)

If a LHA is uncertain as to whether the child is a relevant child, or one to whom a section 20 duty is owed, then it should make inquiries of the children's services authority. The question of whether a child is owed a duty under section 20 is one of mixed fact and law for the local authority to decide. If necessary, the LHA may provide interim accommodation while the children's services authority makes its decision (*R (M) v Hammersmith and Fulham LBC [2008] UKHL 14*).

If a LHA's normal inquiry time would mean that an applicant will reach the age of 18 years by the time of its decision, the LHA cannot simply find that the applicant will not be in priority need and refuse to provide assistance, or simply accommodate him until his 18th birthday. Additionally, a LHA cannot simply postpone making a decision until the applicant turns 18 years of age (*Robinson v Hammersmith and Fulham LBC [2006] EWCA Civ 1122*).

Relevant child

A relevant child is a child:

- Aged 16 or 17 years who has been looked after by a local authority for a period of at least 13 weeks since the age of 14 years and has been looked after at some time while aged 16 or 17 years and who is not currently being looked after (that is, an "eligible child" (paragraph 19B, Schedule 2, CA 1989)).

- Who would have been looked after by the local authority as an eligible child but for the fact that on his 16th birthday he was detained through the criminal justice system, or in hospital, or if he has returned home on family placement and that has broken down.

(*Section 23A, CA 1989 and regulation 4, Children (Leaving Care) Regulations 2001 (SI 2001/2874)*.)

Children owed a duty under section 20 of the Children Act 1989

Section 20(3) (www.practicallaw.com/8-511-1126) of the *CA 1989 (www.practicallaw.com/0-509-3094)* establishes a duty on children's services authorities to provide accommodation for a child in need aged 16 years or over whose welfare is likely to be seriously prejudiced if they do not provide accommodation. A further duty to provide accommodation in certain other circumstances arises under section 20(1) of the CA 1989.

Children's services authorities are responsible for providing accommodation to relevant children or those owed a duty under section 20. It is unlawful for a children's services authority to attempt to evade its responsibility under section 20 by finding that a child in need can be adequately accommodated as a homeless person (*R (S) v Sutton LBC [2007] EWCA Civ 790*).

For more information, see *Practice notes, Local authority duties under the Children Act 1989 (www.practicallaw.com/4-501-3934)* and *Local authority provision of accommodation (www.practicallaw.com/8-536-0371)*.

YOUNG PEOPLE AGED UNDER 21 YEARS

Priority need for accommodation is given to young people aged between 18 and 20 years if:

- They are not a relevant student.
- At any time between the ages of 16 and 18 years, they were, but are no longer, looked after, accommodated or fostered.

(*Article 4, PNAE Order 2002*.)

Relevant student

A relevant student is a care leaver under the age of 24 years to whom section 24B(3) of the CA 1989 applies, who is in full-time further or higher education and whose term-time accommodation is not available to him during a vacation. Social services authorities are responsible for accommodating relevant students.

Looked after, accommodated or fostered

The terms "looked after, accommodated or fostered" include any person who has been:

- Looked after by a local authority, that is, has been subject to a care order or accommodated under a voluntary agreement.
- Accommodated by or on behalf of a voluntary organisation.
- Accommodated in a private children's home.
- Privately fostered.
- Accommodated for a consecutive period of at least three months either by a health authority, special health authority, primary care trust or local education authority, or in any care home or independent hospital or in any accommodation provided by a National Health Service trust.

(*Section 24, CA 1989*.)

CARE LEAVERS AGED OVER 21 YEARS

A person (other than a relevant student) who is aged 21 years or over and who is vulnerable as a result of having been looked after, accommodated or fostered also has a priority need for accommodation (*Article 5(1), PNAE Order 2002*).

For the terms "relevant student" and "looked after, accommodated or fostered", see Relevant student and Looked after, accommodated or fostered.

A LHA will need to make inquiries into an applicant's childhood history to establish whether he has been looked after, accommodated or fostered and, if so, whether he is vulnerable as a result. In determining whether there is vulnerability, the Code of Guidance advises LHAs to consider:

- The length of time that the applicant was looked after, accommodated or fostered.
- The reasons why the applicant was looked after, accommodated or fostered.
- The length of time since the applicant was looked after, accommodated or fostered, and whether the applicant had been able to obtain and/or maintain accommodation during any of that period.
- Whether the applicant has any existing support networks, particularly including family, friends or mentor.

(*Paragraph 10.20, Code of Guidance*.)

FORMER MEMBERS OF THE ARMED SERVICES

A person who is vulnerable as a result of having been a member of Her Majesty's regular naval, military or air forces has a priority need for accommodation (*Article 5(2), PNAE Order 2002*).

When assessing whether a former member of the armed services is vulnerable, an LHA should take into account factors such as:

- The length of time spent in the armed forces.
- The type of service the applicant engaged in.
- Whether the applicant spent any time in a military hospital.

- Whether the HM Forces' medical and welfare advisers have judged the applicant to be particularly vulnerable and have issued a Medial History Release Form (F Med 133) giving a summary of the circumstances causing that vulnerability.
- The length of time since the applicant left the armed forces, and whether since that time he has been able to obtain and maintain stable accommodation.
- Whether he has any existing support networks.

(*Paragraph 10.23, Code of Guidance.*)

FORMER PRISONERS (ENGLAND ONLY)

A person who is vulnerable as a result of having served a custodial sentence, been committed for contempt of court or remanded in custody has priority need for accommodation (*Article 5(3), PNAE Order 2002*).

This category applies to those who are vulnerable as a result of having:

- Served a custodial sentence (within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000). This includes sentences of imprisonment for those aged 21 years or over and detention for those aged under 21 years, including children.
- Been committed for contempt of court or any other kindred offence (for example, section 118 of the County Courts Act 1984 and section 12 of the Contempt of Court Act 1981).
- Been remanded in custody within the meaning of section 88(1)(b), (c) or (d) of the Powers of Criminal Courts (Sentencing) Act 2000); remanded or committed to housing authority accommodation under the Children and Young Persons Act 1969 and placed and kept in secure accommodation; or remanded, admitted or removed to hospital under sections 35, 36, 38 or 48 of the Mental Health Act 1983.

When assessing whether a former prisoner is vulnerable, a LHA should take into account factors such as:

- The length of time served in custody or detention.
- Whether the applicant is receiving supervision from a criminal justice agency, for example, the Probation Service.
- The length of time since the applicant was released from custody or detention, and whether since that time he has been able to obtain and maintain stable accommodation.
- Whether he has any existing support networks and how much of a positive influence these networks are likely to be in his life.

(*Paragraph 10.25, Code of Guidance.*)

PERSONS FLEEING VIOLENCE OR THREATS OF VIOLENCE

Priority need for accommodation is given to those who are vulnerable as a result of ceasing to occupy accommodation by reason of:

- Violence from another person.
- Threats of violence from another person that are likely to be carried out.

(*Article 6, PNAE Order 2002.*)

When assessing whether an applicant is vulnerable as a result of ceasing to occupy accommodation by reason of violence from another person or threats of violence from another person that are likely to be carried out, a LHA should take into account:

- The nature and frequency of the violence or threats of violence.
- The impact and likely effects of the violence or threats of violence on the applicant's current and future well-being.
- Whether he has any existing support networks.

(*Paragraph 10.29, Code of Guidance.*)

PRIORITY NEED IN WALES

The PNW Order 2001 specifies the following categories of priority need (in addition to those specified in section 189 of the HA 1996):

- Young people aged 18 to 20 years.
- Children aged 16 or 17 years.
- Persons fleeing domestic violence or threatened domestic violence.

- Members of the armed forces.
- Former prisoners.

Young people aged 18 to 20 years

All persons who are aged 18 to 20 years have a priority need for accommodation if at any time while they were a child they were, but are no longer, looked after, accommodated or fostered, or are at particular risk of sexual or financial exploitation (Article 3, PNW Order 2001).

"Looked after, accommodated, or fostered" means:

- Looked after by a local authority.
- Accommodated by or on behalf of a voluntary organisation.
- Accommodated in a private children's home.
- Accommodated for a consecutive period of at least three months either by a health authority, special health authority, or local authority, or in any residential care home, nursing home or mental nursing home or in any accommodation provided by a National Health Service Trust or NHS foundation trust.
- Privately fostered.

Children aged 16 or 17 years

All children aged 16 or 17 years are considered to be in priority need (*Article 4, PNW Order 2001*).

Persons fleeing domestic violence or threatened domestic violence

Priority need for accommodation is given to those persons without dependent children who have been subject to domestic violence or who are at risk of such violence, or if they return home are at risk of domestic violence (*Article 5, PNW Order 2001*).

Persons homeless after leaving the armed services

A person is in priority need for accommodation if they served in the regular armed forces (as defined by section 199(4) of the HA 1996) and have been homeless since leaving those forces (*Article 6, PNW Order 2001*).

Former prisoners

Priority need for accommodation is given to former prisoners who have been homeless since leaving custody and who have a local connection with the area of the LGA (*Article 7(1), PNW Order 2001*). A "prisoner" means any person for the time being detained in lawful custody as the result of a requirement imposed by a court that he be detained.

However, this position will change when section 70(1)(j) of the Housing (Wales) Act 2014 comes into force. This states that a person who has a local connection and who is vulnerable as a result of having served a custodial sentence, been remanded in or committed to custody (including youth detention) by a court order or a person with whom such a person resides or might reasonably be expected to reside will be considered to be in priority need. This is a change to the priority need status of former prisoners under the PNW Order 2001 that had been given priority need if they had been homeless since leaving prison, provided that they have a local connection with the area. The Act now states that they will only be in priority need if they are **vulnerable** as a result of their period in prison, for example, in the case of those who have been in prison a long time and would have difficulty coping in the community. For more information, see *Legal update, Housing (Wales) Act 2014: social housing implications (www.practicallaw.com/9-582-0985)*.