



Welsh Assembly Government

Statutory Guidance

Provision of accommodation for 16 and 17 year old young people who may be homeless

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Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Title: ***Provision of Accommodation for 16 and 17 year old young people who may be homeless.***

Audience: **Local authority children's social services and housing departments, children and young people's organisations in the third and voluntary sector.**

Overview: **Guidance to children's social services authorities and local housing authorities about their duties under Part 3 of the Children Act 1989 and Part 7 of the Housing Act 1996 to secure or provide accommodation for homeless 16 and 17 year old young people.**

Action Required: **To be used when making operational decisions on meeting the needs of young people.**

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This guidance is issued under:

- Section 7 of the Local Authority Social Services Act (LASS) 1970;
- Section 182 of the Housing Act 1996.

Local authorities' children's social services and housing departments must have regard to this guidance when considering arrangements for homeless 16 and 17-year-old young people.

For the purposes of this guidance the term "homeless" should be taken to mean "homeless and/or requiring accommodation". The term "young people" should be taken to mean 16 and 17 year old children.

*"Statutory Guidance on the Role and Accountabilities of the Director of Social Services"*¹ issued in 2009 identified the importance of Directors of Social Services engaging with a wide range of partnerships between elements of the service, other Council services and with external agencies. In addition, the guidance highlighted the accountabilities of Directors for:

- leading the development of an environment of inter-agency trust and commitment to joint working, and identify and work to remove barriers to cooperation;
- promoting the development of protocols of practice within services to assist understanding of eligibility criteria.

Annex 1 to the Guidance replicates Schedule 1 of LASSA 1970 and sets out the Social Services statutory functions, including the duty of co-operation in relation to homeless persons and persons threatened with homelessness under the Housing Act 1996 (Section 213(1)(b)).

¹ <http://new.wales.gov.uk/topics/health/publications/socialcare/guidance1/3188997/?lang=en>.

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Chapter 1: Introduction

1.1 In recent years a number of judgments have been handed down by the House of Lords in cases concerning the inter-relationship between the duty under section 20 of the *Children Act 1989* (the 1989 Act) and duties under Part 7 of the *Housing Act 1996* (“the 1996 Act”) in the case of young people aged 16 or 17 who require accommodation. The most recent of these has been *R (G) v Southwark [2009] UKHL 26*², but these have also included *R (M) v Hammersmith and Fulham [2008] UKHL 14*³.

1.2 These judgments have restated and clarified the established legal position that the duty under section 20 of the 1989 Act takes precedence over the duties in the 1996 Act in providing for children in need who require accommodation, and that the specific duty owed under section 20 of the 1989 Act takes precedence over the general duty owed to children in need and their families under section 17 of the 1989 Act.

1.3 This guidance is solely concerned with local authorities’ functions (children and housing services) in relation to young people (16 and 17 years old) who are homeless. It replaces in part (i.e. those parts concerned with authorities’ duties in respect of lone young people) Circular NAFWC 29/2003 *Guidance on Accommodating Children in Need and their Families*⁴.

² <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090520/appg-1.htm>.

³ <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080227a/hammer-1.htm>.

⁴ <http://wales.gov.uk/publications/circular/circulars03/NAFWC292003?lang=en>.

Chapter 2: Responding to 16 and 17 year old young people seeking help because of homelessness

Supporting families to stay together and re-unification

2.1. Supporting children and young people to remain with their families is in the best interest of most children. This fundamental principle also applies to 16 or 17 year olds, unless it is not safe or appropriate to do so or where there are other responsible adults in their wider family and friends network that can care for the young person.

2.2 Local authority responses to 16 and 17 year olds seeking help because of homelessness should explicitly recognise this and work pro-actively with young people and their families to identify and resolve the issues which have led to the homelessness crisis. This could involve family support such as family mediation or family group conferences.

2.3. It may be possible for children's social services to prevent a young person from having to leave home at all. Alternatively, it may take much longer to work through significant family tensions and problems while the young person is accommodated by the local authority. It is therefore important that services are designed to enable this family focus to begin on day one and continue throughout the processes of assessment and, where necessary, the provision of accommodation.

2.4. This preventative work should be undertaken alongside the statutory assessment processes using the *Framework for Assessment of Children in Need and Their Families*⁵ (*the Framework*) and should not delay assessment or the delivery of statutory services to 16 and 17 year olds who may be homeless or at risk of homelessness.

2.5. If key issues affecting the young person's welfare and/or the sustainability of their living at home remain unresolved, post-reunification support should be provided to the family after the young person returns home.

16 and 17 year olds with children and/or partners who may require accommodation

2.6 By the age of 16 or 17 most young people are forming relationships and a few may themselves have children. Assessment, support and accommodation services should take into account young peoples' relationships as well as any dependent children and, where appropriate, support them to build a positive family life.

2.7 A 16 and 17 year old young person's need for accommodation should be assessed in the context of their relationship with any partner. In some cases it may be appropriate for a 16 or 17 year old to be accommodated in a situation where they

⁵<http://wales.gov.uk/topics/childrenyoungpeople/publications/childreninneed/;jessionid=310PLHyfQfQJdfCwt2C9pGy2NZv05f1tBT1yzP2ZvKvXbyJhrNtW!200562741?lang=en>.

can live with their partner. This should not prevent local authorities from accommodating a 16 or 17 year old under section 20 where the young person is owed a duty under this section. Specific consideration should be given to placement options for young people accommodated under section 20 whilst living with a partner. For example, placement in an alternative arrangement, such as a self contained property with visiting support may be appropriate. It will also be important to have contingency plans in place in case relationships break down.

2.8 Where young parents are provided with accommodation under section 20 and become looked after, it does not follow that their child will also be looked after. The status of the child must be considered under a separate assessment using *the Framework* domains and focussed on the needs of that child.

Accessing services

2.9 Where a 16 or 17 year old seeks assistance from a local authority because they are homeless or at risk of homelessness, the initial approach for help may be made to either housing services or children's social services. It is important that local authorities have clear local arrangements for integrated assessment and support of young homeless persons.

2.10 There should be clear protocols and lines of accountability between departments of their responsibilities. Departments must act in unison to ensure they mutually support their corporate duties to young homeless persons through integrated approaches to services assessment and support, taking into account the wishes and feelings of the young person and their needs as well as any dependents they may have, for example a young mother to be or lone parent with a child.

2.11 Similarly children's social services and housing must ensure that they work effectively with others, both within and outside the authority, in fulfilling functions to safeguard and promote the welfare of children and young people.

Referral routes

2.12 There are two principal referral/access routes by which a young person can seek support from the local authority:

- (i) the authority's housing services; or
- (ii) the authority's children's or adult social services.

Referral via the Authority's Housing Services

2.13 Where the initial approach or referral for housing assistance is made to housing services, the authority should treat the approach/referral as an application for assistance under Part 7 of the 1996 Act. The authority will therefore need to decide whether there is reason to believe the young person may be homeless or likely to become homeless within 28 days (section 184 of the 1996 Act) and, if so, the authority will need to make inquiries to determine whether any duty is owed under Part 7 of the 1996 Act. A young person aged 16 or 17 is prescribed as having a

priority need for accommodation under section 189 of the 1996 Act by virtue of the *Homeless Persons (Priority Need) (Wales) Order 2001*.

2.14 If there is reason to believe the young person may be eligible for assistance, may be homeless and is 16 or 17 years of age, the authority will have an immediate duty to secure interim accommodation (section 188(1) of the 1996 Act) pending a decision whether any substantive duty is owed under Part 7. Such accommodation must be suitable for a 16 or 17 year old and, in considering suitability, authorities should bear in mind that 16 and 17 year olds who are homeless and estranged from their family will be particularly vulnerable and in need of support and that Bed and Breakfast accommodation for 16 and 17 year olds is not normally considered to be a suitable option, subject to the provisions in the *Homelessness (Suitability of Accommodation) (Wales) Order 2006*.

2.15 If the young person may be homeless or may be likely to become homeless within 28 days, housing services should make an immediate referral to children's social services for an assessment under "*the Framework*". This applies to all 16 and 17 year old applicants without exception, and includes, for example, those who are pregnant and/or a parent. The question whether any substantive duty is owed under Part 7 of the 1996 Act will depend in part on the outcome of the assessment by children's social services, and whether any duty is owed under section 20 of the Children Act 1989.

Housing services should therefore continue to secure accommodation under section 188 (1) until they have notified the young person whether any substantive duty is owed under Part 7 of the 1996 Act. Children's social services should undertake and complete an initial assessment within the statutory timescales. Where the authority's assessment concludes that the young person is in need of accommodation under section 20, no further duty will be owed under Part 7 of the 1996 Act, and the authority has a duty to ensure the young persons is accommodated in a suitable placement.

Young people who seek assistance from housing services in an area outside their normal/last place of residence

2.16 Housing services are reminded that they must consider all applications for accommodation or assistance in obtaining accommodation. Authorities cannot refuse to assist an applicant on the basis that the applicant may not (or does not) have a local connection with the local authority. Authorities can refer an applicant to another authority only if they have accepted that the applicant is eligible for assistance, unintentionally homeless and in priority need but consider that the applicant does not have a local connection with their authority area and does have one elsewhere in Great Britain. For further guidance about local connection and referrals, authorities should refer to Chapter 20 of the *Code of Guidance on Allocation of Accommodation and Homelessness 2003*, which is currently under review⁶.

⁶ <http://wales.gov.uk/docs/desh/publications/030401housinghomelesscodeen.pdf>.

Referrals to children's social services for assessment as a child in need

2.17 Where a 16 or 17 year old is referred to a local authority as appearing to be homeless or at risk of homelessness, or they are an unaccompanied asylum seeker without a parent or guardian with responsibility for their care, then the authority must assess whether the young person is a child in need, and is entitled to services (provision of accommodation) under section 20 of the 1989 Act.

2.18 The authority must consider the need for and provide emergency accommodation (this excludes bed and breakfast accommodation) to ensure the young person is safe (temporarily accommodated under section 20(1)) whilst their needs, including their need for continuing accommodation and support, are further assessed. **Where a young person is accommodated under section 20 they will not be eligible for welfare benefits, including housing benefit⁷.**

2.19 Identifying the needs of the young person and the best response to these needs will be the purpose of each assessment. The critical factors to be taken into account in assessing whether a young person is in need under section 17(10) of the 1989 Act are:

- what will happen to the young person's health and development without services being provided or secured by children's social services;
- the likely effect the provision of services will have on the young person's health and development; or
- the young person is disabled.

Where a young person is excluded from home, is sofa surfing among friends, or is sleeping in a car, it is extremely likely that they will be a child in need. Similarly, where a 16 and 17 year old teenage parent is homeless they are also likely to have significant needs and require accommodation and support as a child in need. Determining who is in need and the extent of any needs requires professional judgment by children's social services staff, informed by consultation with other professionals familiar with the circumstances of the individual young person and their family. The wishes and feelings of the young person and their family must be taken into account.

This assessment plan will make clear from the outset who is doing what, within what timescales, and what the possible outcomes of the assessment might be. These could range from the young person becoming, or continuing to be accommodated by children's social services to no services being provided.

2.20 Young people seeking help because of actual or threatened homelessness are likely to have a range of concurrent needs⁸ and these should be assessed fully

⁷ There are exceptions for lone parents and for disabled young people who may have established entitlement to non-means tested benefits.

⁸ Statutory Homelessness in England: The Experiences of Homeless Families and 16 and 17 year olds' – CLG 2008 <http://www.communities.gov.uk/publications/housing/experienceoffamilies>.

in accordance with the assessment process set out in *the Framework*. The most crucial issue to be determined through the assessment process will be whether the young person is actually homeless and therefore requires accommodation. Assessment will also need to take into account every dimension of the young person's needs and, as well as the need for accommodation, it will be necessary to assess what further support the young person needs. Assessment of a homeless young person not participating in education or training may initially identify the need for suitable accommodation. However, this should be arranged in conjunction with plans to re-engage them with education or training.

2.21 The majority of young people seeking help because of homelessness cite the breakdown of relationships with parents or other carers as the reason for their homelessness. The assessment will need to determine whether or not the young person can return home, with support for them and their family if necessary, or whether this is not a possible or safe option.

Undertaking assessments

2.22 An initial assessment should be carried out involving interviews with the young person and family members and making enquiries with other agencies. Where a young person seeks help because of homelessness, it is good practice for an assessment of the young person's needs to be conducted jointly by both children's and housing services. Alternatively, assessment and referral processes should be underpinned by appropriate information sharing so that young people do not have to repeat their stories each time and navigate between offices. The lead agency will be children's social services, given their responsibilities for children in need in their area.

2.23 It will be essential to establish very close contact and rapport with the young person throughout the assessment process, in order to make sure their wishes and feelings are properly understood and to take their views into account. Similarly, it will also be important to maintain contact with the adults who retain parental responsibility for the young person and with any other family members in the young person's network. It will generally be necessary to visit the family home or other accommodation where the young person has been living as part of the assessment process.

2.24 The assessment will need to establish whether the factors set out in sections 20(1), 20(3) or 20(4) of the 1989 Act are applicable to the young person's circumstances.

2.25 Careful account will need to be taken of the factors which will promote the welfare of the young person, including the significance of the young person's relationship with their parents, or other adults in their life responsible for their care up until the point that they seek help, or present, as homeless. The assessment should identify the strengths and difficulties of young people and their family, and should build on strengths to attempt to develop sustainable solutions so that the young person's needs, including the need for suitable accommodation, are met for the future.

2.26 At the conclusion of the initial assessment, staff should have reached a provisional assessment of the young person's needs and the services that they are likely to require in order to support them in making a positive transition into adulthood. Annex 3 to this guidance sets out the factors that should generally be considered during the assessment process. *The Framework* provides comprehensive information about the factors that the assessment must take into account.

2.27 Where a young person seeks help because of homelessness, the assessment must reach a decision as to whether or not the young person is a child in need and requires accommodation as a result of one of the scenarios set out in section 20(1)(a) to (c) or section 20(3).

2.28 In some cases, it may not be necessary for the young person to be accommodated by section 20 because the young person's needs can be met by providing other services – for example, support to enable the young person to return to the care of their family or other responsible adults in the young person's network. If the local authority assessment concludes that the young person does not require accommodation for this reason, they should consider whether they should provide services under section 17 of the 1989 Act, which could include financial support under section 17(6) to sustain any plan for the young person to live with members of their family. Authorities will need to consider putting in place a strategy to try to avoid the young person being threatened with homelessness in the future. Where the young person is a child in need, children's social services should use their powers under section 17 of the 1989 Act to provide these services.

16 and 17 year olds from one local authority area who seek assistance from children's social services in another local authority area

2.29 Where a 16 or 17 year old who was living in one local authority area moves to another local authority area and seeks assistance from children's social services in that local authority, the duty to assess falls on the authority from which they seek assistance. The authority cannot refuse to consider the young person's immediate needs and expect them to return to the authority in the area presumed to be their "home" district.

2.30 An initial interview, perhaps combined with enquiries in the area where the young person came from, should be sufficient to establish their connection with the area where they have sought help and their reasons for seeking help there rather than in their "home" district. These enquiries may be able to establish whether it may be possible for the young person to return to the area where they may be presumed to have a stronger local connection. For example, it might be possible for the authority where the young person seeks help to negotiate with their "home" authority to take over the assessment of the young person's needs, so that the young person is assessed in a familiar setting close to their family and friends.

2.31 It is essential that disputes about responsibility for the young person in the medium term should not get in the way of the authority that received the young person's request for assistance responding to the young person's immediate needs.

The young person concerned must not be passed between departments or agencies while the authorities determine where he or she comes from.

Young person's wishes and feelings

2.32 Section 20(6) of the Children Act requires that:

Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare:

- (a) ascertain the child's wishes and feelings regarding the provision of accommodation; and*
- (b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.*

2.33 This will include an assessment of their emotional and behavioural development and their capacity to make use of wider resources to manage independent living.

2.34 However, where a young person says they do not wish to be accommodated, a local authority should reach the conclusion that the young person's wishes are decisive only as part of an overall judgment of their assessed welfare needs and the type and location of accommodation that will meet those needs.

2.35 The approach to assessment must be child-centred. It will be very important that children's social services staff responsible for the assessment are able to communicate the assessment plan to the young person so that he or she is provided with information about the enquiries that need to be made and the timescales involved. A key aspect of the assessment will involve reaching an understanding about how the young person views their needs.

2.36 It will be essential that the young person is fully consulted about and understands the implications of being accommodated under section 20 and becoming looked after. Staff conducting the assessment must provide realistic and full information about the support that the young person can expect as a looked after child and, subsequently, as a care leaver. The authority should also ensure that the young person receives accurate information about what assistance may be available to them, including from housing services under Part 7 of the 1996 Act, if they do not become looked after, and how any entitlement for assistance under Part 7 will be determined. In particular, the possible risk of becoming homeless intentionally in future, and the implications of this for further assistance with accommodation, should be made clear to the young person. This information should be provided in a format appropriate to the young person's age and understanding at the start of the assessment process and be available for the young person to take away for full consideration at a later stage or in assisting them seek independent advice.

2.37 Where there is any doubt about the capacity of a 16 or 17 year old to judge what may be in his or her best interests, e.g. whether they should become looked after or seek alternative assistance, there will need to be further discussion (including consideration of the provisions of the Mental Capacity Act 2005, where relevant) involving children's social services, housing services, the young person concerned and their family, in order to reach agreement on the way forward.

2.38 Young people should have access to independent advocacy and support to assist them in weighing up the advantages and disadvantages and coming to a balanced decision⁹.

2.39 Some 16 and 17 year olds may decide that they do not wish to be provided with accommodation by children's social services, for example, because they do not wish to be supported as a looked after child. However, in these circumstances, it is important that children's social services are clear that the young person's decision is properly informed and has been reached after careful consideration of all the relevant information. Young people need to be given a balanced and clear picture of the implications of receiving s20 assistance, and it is vital that they are not influenced to reject s20 assistance in order to minimise the burden on children's social services.

2.40 The fact that a young person may be reluctant to engage with the assessment process is not in itself a basis for assuming that the young person has rejected any children's social services' intervention to provide them with accommodation. Lack of co-operation is no reason for the local authority not to attempt to carry out its duties under the 1989 Act. In these circumstances, the assessment will need to involve careful recording of how the authority has attempted to engage with the young person to assess their needs in order to determine and provide appropriate services. Ultimately, however, it is not possible to force services on young people who persistently continue to refuse them.

2.41 Where a 16 or 17 year old child in need wishes to refuse accommodation offered under section 20 of the 1989 Act, children's social services must be satisfied that the young person:

- has been provided with all relevant information; and
- is competent to make such a decision.

Provision of accommodation under section 17 of the 1989 Act

2.40 Children's social services have powers to accommodate children under section 17(6) of the 1989 Act. A young person provided with accommodation under this section would not be looked after and the local authority would not have the corresponding duties set out at in sections 22, 23 and 24 of the 1989 Act. However,

⁹ Children and young people who have received services under the 1989 Act are able to be supported to make complaints and representation with the help of an independent advocate. Children's social services should provide information about access to advocacy services when they explain the assessment process to 16 and 17 year olds seeking help because of homelessness.

the provision of accommodation under section 17 will almost always concern children needing to be accommodated with their families.

2.42 The powers of local authorities to provide accommodation under section 17 cannot be used to substitute for their duty to provide accommodation under section 20(1) of the 1989 Act to homeless 16 and 17 year olds who are assessed as being children in need following the process described in paragraphs 2.22 to 2.28, above. Children's social services do not have the option of choosing under which provision they should provide accommodation for homeless 16 and 17 year olds. Section 20 involves an evaluative judgment on some matters but not a discretion¹⁰.

¹⁰ R (G) v Southwark [2009] UKHL 26 – para. 31 – <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090520/appg-2.htm>.

Chapter 3: Provision of suitable supported accommodation under section 20 of the 1989 Act

3.1 The local authority must only provide children with supported accommodation which is suitable and of high quality. The choice of placement for any individual young person will be informed by the assessment of their needs. A range of different types of accommodation may prove suitable for 16 and 17 year olds who cannot live with their families, carers or guardians. These include foster care, children's homes, supported lodgings, foyers properties with visiting support tailored to the young person's needs and other types of supported accommodation. In order for services to work well it is important that the authority's children and housing services work together to ensure that a range of suitable supported accommodation placements are available for young people in their area, whether or not they are looked after children.

3.2 For teenage parents it is particularly important that they are provided with accommodation which gives them the holistic support they require to meet their individual needs and improve their outcomes. This should include support around parenting and independent living skills; their health and well-being; access to education and training; and their readiness for future independent living.

3.3 Some 16 and 17 year olds who require accommodation may be reluctant to take up these kinds of accommodation options and the assessment of their emotional and behavioural development will indicate that they do not require the level or kind of supervision and support that foster or children's home care provides.

3.4 Section 23(2)(f)(i) of the 1989 Act permits local authorities "*to make such other arrangements as seem appropriate to them*" when they place a looked after child. This provision offers scope for children's social services to ensure that they are able to make appropriate provision with support tailored to the needs of the young person for those homeless 16 and 17 year olds who they accommodate, and are looked after, but for whom fostering or a children's home placement would not be the most suitable option.

3.5 From the point at which children's social services accommodate a 16 or 17-year-old child, they should look forward to the support that the young person will need to make a positive transition to greater independence. This might include, for example, the provision of supported accommodation where young people can remain beyond the age of 18 and develop the skills they will need to manage the transition to adulthood. This kind of accommodation will enable the local authority to meet their forthcoming duties to secure sufficient accommodation for looked after children and care leavers in their area¹¹. For example, a formerly homeless young person may be placed in "supported lodgings" to offer them opportunities to take on more responsibility for their own care in order to prepare them for the transition to adulthood.

¹¹ Section 22G of the 1989 Act inserted by section 9 of the Children and Young Persons Act 2008 – http://www.opsi.gov.uk/acts/acts2008/ukpga_20080023_en_3#pt2-pb2-l1g9.

3.6 The primary issue to be addressed in making each and every placement under “*other arrangements*”, just as in any other placement setting, will be: how will making this placement meet the assessed needs of the individual young person?

3.7 Where a young person is placed in “*other arrangements*” then the local authority must prepare a placement plan which is agreed between the young person and the person responsible for supporting the young person in the accommodation. This should be the person who will have the most day to day contact with the young person, for example their key worker or supported lodgings host/carer. Any plan setting out how the supported accommodation service will assist the young person should be integral to the placement plan and avoid duplication.

3.8 The placement planning process should involve an exchange of appropriate information included as part of the core assessment process which informs the development of the looked after young person’s care plan, so that the accommodation provider has a full understanding of the young person’s needs and their role in meeting these needs. It will be essential that the provider appreciates the arrangements that the local authority proposes to put in place to make sure that the young person is adequately supported. The placement plan must be explicit about the respective roles and responsibilities of the placement provider and the young person’s social worker, their Independent Reviewing Officer and of other staff employed or commissioned by the authority to contribute to the plan for the young person’s care.

3.9 The plan must set out:

- the respective safeguarding responsibilities of the provider and local authority;
- the frequency of visits the young person can expect from their responsible authority;
- communication arrangements between the provider and the local authority;
- the provider’s responsibilities for notifying the young person’s social worker and accountable staff of the authority of any significant change in the young person’s circumstances; and
- arrangements for giving notice of intention to terminate the placement (along with the authority’s responsibilities for convening a review of the young person’s care plan where there is a risk of the placement being terminated).

Chapter 4: Provision of accommodation for 16 and 17 year olds to whom a section 20 duty is not owed or who refuse section 20 accommodation

4.1 If the local authority assessment concludes that section 20 accommodation for a homeless 16 or 17 year old is not appropriate the authority must consider what other support and services should be provided for the young person to meet their needs in conjunction with housing services.

Securing accommodation under Part 7 of the 1996 Act (housing services)

4.2 Under Part 7 of the 1996 Act, and the *Homeless Persons (Priority Need) (Wales) Order 2001*¹², applicants aged 16 or 17 have a priority need for accommodation. Where such applicants are also eligible for assistance and unintentionally homeless, the local housing authority will owe them a duty under section 193(2) of the 1996 Act to secure that accommodation is available for their occupation. Authorities should refer to the *Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness 2003*¹³ for general guidance on discharging their homelessness functions under Part 7 of the 1996 Act¹⁴. This guidance is currently being revised and will be re-issued in 2010.

4.3 Where the authority has decided that a section 20 duty is not owed for one of the reasons above, and the young person may be homeless, the authority's housing services should ensure that it assess the needs of the young person as if an application for homelessness assistance had been made under the 1996 Act. Housing services will then need to consider whether any duty is owed under Part 7 of the 1996 Act (section 184). Children's social services will need to inform housing services and the young person when the provision of temporary accommodation under s20 will come to an end in such a way as to enable suitable alternative arrangements to be made.

4.4 In any case where housing services provide accommodation for a child in need, children's social services will need to consider the provision of services under section 17 of the 1989 Act to meet the young person's other needs.

4.5 Where an application for housing assistance is already under consideration and where the assessment has concluded a section 20 duty is not owed the authority should proceed with their inquiries under section 184 of the 1996 Act and decide whether any duty is owed under Part 7. The authority must satisfy themselves in each individual case whether the applicant is homeless or threatened with homelessness. Authorities should not adopt general policies which seek to pre-define circumstances that do or do not amount to intentional homelessness or threat of homelessness.

¹² <http://www.opsi.gov.uk/legislation/wales/wsi2001/20010607e.htm>.

¹³ <http://wales.gov.uk/topics/housingandcommunity/housing/publications/allocatehousingcode/?lang=en>.

¹⁴ http://www.opsi.gov.uk/acts/acts1996/ukpga_19960052_en_1.

4.6 Where a 16 or 17 year old is secured accommodation under Part 7 of the 1996 Act, the local authority must ensure that the young person is provided with sufficient support, possibly under section 17 of the 1989 Act, to ensure he or she does not become homeless intentionally in the future, for example, as a result of accruing rent arrears or being evicted due to bad behaviour. The local authority children and housing services will need to work together closely to ensure that the young person's ongoing housing needs can be met in the most practical and timely way possible.

4.7 Local authorities are reminded that applicants cannot be considered to have become homeless intentionally because of failing to take up an offer of accommodation; homelessness is only capable of being "intentional" where the applicant has ceased to occupy accommodation that it would have been reasonable for him or her to continue to occupy. Case law has established that in some circumstances a person does not do, or fail to do, something "deliberately" for the purpose of Part 7 of the 1996 Act if they make a considered choice between two courses of action or inaction, either of which they are able to take.

4.8 Thus, the Welsh Assembly Government expectation is that where a 16 or 17 year old is required to leave accommodation as a result of his or her decision to refuse section 20 accommodation (for example, where children's social services bring to an end interim accommodation provided pending assessment of the young person's needs), that decision should not be treated as deliberate action or inaction that contributed to intentional homelessness, subject to it being an informed and considered decision

4.9 If, for whatever reason, a 16 or 17 year old is found to have become homeless intentionally, housing services should inform children's social services immediately (see Chapter 5 on joint protocols below). For further guidance about intentional homelessness, authorities should refer to Chapter 15 of the *Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness 2003*.

Chapter 5: Joint working to tackle youth homelessness

5.1 There is a clear legal framework for co-operation between children's social services and housing services to meet the needs of children and young people. Section 27 of the 1989 Act empowers a children's social services authority to ask other authorities, including any local housing authority, for "help in the exercise of any of their functions" in request of supporting children and families under Part 3; the requested authority must provide that help if it is compatible with their own statutory or other duties and does not unduly prejudice the discharge of any of their own functions. In Wales, Part 3 of the *Children Act 2004* broadened and strengthened the statutory framework requiring co-operation between relevant statutory services to improve outcomes for children and young people.

Operational joint working – joint protocols

5.2 It follows from the guidance above that the particular services a 16 or 17 year old should be provided with by the local authority will depend on a range of factors in each case. These include the service they initially seek help from, the outcomes of assessments and enquiries and the wishes and feelings of the young person and the young person's family. It is therefore essential that services for homeless 16 and 17 year olds are underpinned by written joint protocols which set out clear, practical arrangements for providing services that are centred on young people and their families and prevent young people from being passed around the authority.

5.3 An effective joint protocol will set out a mutually agreed vision, objectives, systems and processes to ensure effective action to prevent youth homelessness and the provision of sufficient accommodation to meet the range of needs of homeless young people. In formulating a joint protocol, due regard should be had to the fact that the 1989 Act takes precedence over the 1996 Act in providing for children in need.

5.4 A joint protocol might cover the following:

- (a) inter-agency arrangements to prevent youth homelessness and provide support to young people to remain living with their families;
- (b) information for agencies who may refer young people, for example Youth services and Youth Offending Teams, about where they should refer young people for help with homelessness;
- (c) arrangements for integrated or joint assessment processes where 16 and 17 year olds seek help because they are homeless, including information-sharing procedures;
- (d) agreed timescales (in line with *The Framework*) for assessing whether or not a homeless young person is a child in need and will be provided with accommodation by children's social services;
- (e) arrangements for timely assessment and placement provision for young people who require accommodation on release from custody;

- (f) arrangements for access to suitable emergency accommodation when needed;
 - (g) arrangements for access to longer term accommodation with support for young people (including looked after children and care leavers) who need this service;
 - (h) agreed standards as to how the suitability of accommodation that is not formally regulated or inspected will be assured. These must meet the requirements set out in the *Homelessness (Suitability of Accommodation)(Wales) Order 2006*¹⁵;
 - (i) arrangements for the provision of accommodation and other services to any 16 and 17 year olds who are neither being accommodated under section 20 nor have found to be owed the main homelessness duty by housing services for example, because they do not wish to be accommodated under section 20 and are considered by housing services to have become homeless intentionally (subject to paragraph 4.8 above). In this situation, where a young person remains homeless housing services should make a fresh referral to children's social services – and children's social services should undertake a further assessment of the young person's needs in the light of the change of circumstances. This will give the young person the opportunity to reconsider the option of being assisted under section 20.
 - (j) integrated monitoring arrangements to provide management information regarding outcomes for young people including through reconciliation with parents or carers; and
 - (k) processes for resolving any disputes arising between staff from children's social services and staff from housing services (for example, where expectations for completing assessments within specified timescales have not been met).
- 5.5 The effectiveness and continuing relevance of joint protocols should be reviewed at least annually. Local authorities may find it helpful to establish multi-agency arrangements to monitor the effectiveness of protocols and the performance of local services in responding to homeless young people. Local authorities will need to consider at the outset, what data will be required for monitoring purposes and how the agencies involved in providing services to homeless young people will collect and analyse this. These arrangements will contribute to wider monitoring of the overall effectiveness for safeguarding children and young people and promoting their welfare.
- 5.6 It would be good practice for young people who have been provided with services to be consulted about the quality of services and contribute to service reviews.

¹⁵ <http://www.opsi.gov.uk/legislation/wales/wsi2006/20060650e.htm>.

Strategic joint working

5.7 The local authority will need to work with their housing services, registered social landlords; housing related support services and with other partners to secure a range of suitable housing and support options for young people and their families. This will include options for the provision of accommodation with support for 16 and 17 year olds who seek help because they are homeless, and for care leavers.

5.8 Children's social services should be linked to authorities' strategic housing function in planning the housing and support needs of young people.

5.9 The anticipated accommodation and support needs of vulnerable young people, including homeless 16 and 17 year olds and care leavers, should be represented in the following strategies and plans:

- The Children and Young People's Plan;
- Housing and Homelessness Strategies; and
- Supporting People Operational Plan or Housing Related Support/Supporting People Strategies.

5.10 The Welsh Assembly Government will shortly issue further good practice guidance on joint working within the authority's children and housing services to prevent homelessness amongst vulnerable young people.

Annex 1

Local Authority Social Services Act 1970 Schedule 1

Social Services Functions

ENACTMENT	NATURE OF FUNCTIONS	NOTES
Children and Young Persons Act 1933		
Part III	Protection of the young in relation to criminal and summary proceedings; children appearing before court as in need of care, protection or control; committal of children to approved school or care of fit person, etc	Still in Force
Part IV	Remand homes, approved schools and children in care of fit persons	Still in Force
National Assistance Act 1948		
Sections 21 to 27	Provision of residential accommodation for the aged, infirm, needy, etc	s.21, 23, 24 & 26 still in force s.22 in force but to be Repealed s.25 & 27 Repealed
Sections 29 and 30	Welfare of persons who are blind, deaf, dumb or otherwise handicapped or are suffering from mental disorder; use of voluntary organisations for administration of welfare schemes	Still in Force
Sections 43 to 45	Recovery of costs of providing certain services	s.43 and 45 in force s.44 Repealed
Section 48	Temporary protection of property belonging to persons in hospital or accommodation provided under Part III of the Act, etc	Still in Force
Section 49	Defraying expenses of Local Authority officer applying for appointment as deputy for certain patients	Still in Force

ENACTMENT	NATURE OF FUNCTIONS	NOTES
Section 56(3) except so far as it relates to an offence under section 47(11)	Prosecution of offences	Still in Force
Disabled Persons (Employment) Act 1958		
Section 3	Provision of facilities for enabling disabled persons to be employed or work under special conditions	Still in Force
Mental Health Act 1959		
Section 8	Welfare and accommodation of mentally disordered persons	In force but to be repealed
Health Visiting and Social Work (Training) Act 1962		
Section 5(1)(b)	Research into matters relating to Local Authority welfare services	Act Repealed
Section 5(1)(c)	Research into matters relating to functions of Local Authorities	Act Repealed
Children and Young Persons Act 1963		
Part 1	Powers relating to young persons in need of care, protection or control; further provisions for protection of the young in relation to criminal proceedings	Sections dealing with Social Services functions repealed
Health Services and Public Health Act 1968		
Section 45	Promotion of welfare of old people	Still in Force
Section 65	Financial and other assistance to voluntary organisations	Still in Force
Social Work (Scotland) Act 1968		
Sections 75(2) and 76(4)	Reference for consideration, etc. of case of child in care whose parent moves to Scotland and transfer of child	s.75 & 76 repealed

ENACTMENT	NATURE OF FUNCTIONS	NOTES
Children and Young Persons Act 1969		
The whole Act except section 9 in so far as they assign functions to a Local Authority in their capacity of a local education authority	Care and other treatment of children and young persons through court proceedings	Some sections (s.9, for example) dealing with Social Services functions still in force
Chronically Sick and Disabled Persons Act 1970		
Section 1	Obtaining information as to need for and publishing information as to existence of, certain welfare services	Still in Force
Section 2	Provision of certain welfare services	Still in Force
Section 18	Provision of certain information required by Secretary of State	In force but to be repealed
Local Authority Social Services Act		
Section 6	Appointment of Director of Social Services in Wales	s.6 still in force
Section 7B	Provision and conduct of complaints procedure	s.7B in force but to be repealed
Adoption Act 1976		
	Functions continuing to be exercisable by virtue of any transitional or saving provision made by or under the Adoption and Children Act 2002	Sections dealing with Social Services functions repealed
Children Act 1975		
Part II	Application by Local Authority for revocation of custodianship order; inquiries carried out by Local Authority in custodianship cases	Repealed

ENACTMENT	NATURE OF FUNCTIONS	NOTES
Supplementary Benefits Act 1976		
Schedule 5	Provision and maintenance of [resettlement units] for persons without a settled way of living	Repealed
National Health Service Act 1977		
Schedule 8	Care of Mothers and young children; prevention, care and after-care; home help and laundry facilities	Still in force but now contained in Schedule 15 of the National Health Service (Wales) Act 2006
Residential Homes Act 1980		
Sections 1 to 7	Registration of disabled or old persons' homes and residential homes for mentally disordered persons	Repealed
Mental Health Act 1983		
Parts II, III and VI	Welfare of the mentally disordered; guardianship of persons suffering from mental disorder including such persons removed to England and Wales from Scotland or Northern Ireland; exercise of functions of nearest relative of person so suffering	Still in Force
Sections 66, 67, 69(1)	Exercise of functions of nearest relative in relation to applications and references to Mental Health Review Tribunals	Still in Force
Section 114	Appointment of approved social workers	Still in Force
Section 115	Entry and inspection	Still in Force
Section 116	Welfare of certain hospital patients	Still in Force
Section 117	After-care of detained patients	Still in Force
Section 130	Prosecutions	Still in Force

ENACTMENT	NATURE OF FUNCTIONS	NOTES
Health and Social Services and Social Security Adjudications Act 1983		
Section 17, so far as relating to services provided under the enactments mentioned in subsection (2)(a) to (c)	Charges for Local Authority welfare services	Still in Force
Mental Health (Scotland) Act 1984		
Section 10	Welfare of certain person while in hospital in Scotland	Still in Force
Public Health (Control of Disease) Act 1984		
Section 46(2) and (5)	Burial or cremation of person dying in accommodation provided under Part III of the National Assistance Act 1948, and recovery of expenses from his estate	Still in Force
Disabled Persons (Services, Consultation and Representation) Act 1986		
Sections 1 to 5, 7 and 8 except in so far as they assign functions to a Local Authority in their capacity as a local education authority	Representation and assessment of disabled persons	Still in Force
Housing (Scotland) Act 1987		
Section 38(b)	Co-operation in relation to homeless persons and persons threatened with homelessness	Still in Force

ENACTMENT	NATURE OF FUNCTIONS	NOTES
Children Act 1989		
The whole Act, in so far as it confers functions on a Local Authority within the meaning of that Act	Welfare reports Consent to application for residence order in respect of child in care Functions relating to special guardianship orders Family assistance orders Functions under Part III of the Act (Local Authority support for children and families) Protection of children Functions in relation to community homes, voluntary homes and voluntary organisations, private children's homes, private arrangements for fostering children, child minding and day care for young children Inspection of children's homes on behalf of Secretary of State Research and returns of information Functions in relation to children accommodated by Local Health Boards, Primary Care Trusts, National Health Service trusts and local education authorities or care homes, independent hospitals or schools	Still in Force
National Health Service and Community Care Act 1990		
Section 46	Preparation of plans for community care services	Still in Force
Section 47	Assessment of needs for community care services	Still in Force
Education Act 1996		
Section 322	Help for local education authority in exercising functions under Part III of the Act	Still in Force
Carers (Recognition and Services) Act 1995		
Section 1	Assessment of ability of carers to provide care	Still in Force

ENACTMENT	NATURE OF FUNCTIONS	NOTES
Community Care (Direct Payments) Act 1996		
	Functions in connection with the making of payments to persons in respect of their securing the provision of community care services or services under the Carers and Disabled Children Act 2000	Repealed by the Health and Social Care Act 2001 but repeal not yet in force
Housing Act 1996 Section 213(1)(b)		
	Co-operation in relation to homeless persons and persons threatened with homelessness	Still in Force
Adoption (Intercountry Aspects) Act 1999		
Sections 1 and 2(4)	Functions under regulations made under section 1 giving effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29 May 1993 and functions under Article 9(a) to (c) of the Convention	Still in Force
Carers and Disabled Children Act 2000		
The whole Act, in so far as it confers functions on a Local Authority within the meaning of that Act	Assessment of carers' needs Provision of services to carers Provision of vouchers	Still in Force
Health and Social Care Act 2001		
Part 4 in so far as it confers functions on a Local Authority in England or Wales within the meaning of that Part	Functions in relation to the provision of residential accommodation Making of direct payments to person in respect of his securing provision of community care services or services to carers	Part 4 is in force, apart from section 56 which is in force in so far as conferring any power to make an order or regulations which is exercisable by the Secretary of State, not in force otherwise s.56 deals with

ENACTMENT	NATURE OF FUNCTIONS	NOTES
		regulations that may make provision for a LA to make arrangements for residential accommodation in Scotland, N. Ireland, Channel islands or Isle of Man
Adoption and Children Act 2002		
	Maintenance of Adoption Service; functions of Local Authority as adoption agency	Still in Force
Community Care (Delayed Discharges etc) Act 2003		
Part 1	Functions relating to hospital patients likely to need community care services to be made available in order to be discharged safely	Not yet in force in Wales
Health and Social Care (Community Health and Standards) Act 2003		
Section 114	Consideration of complaints	In force but Schedule not yet amended to refer to it
Carers (Equal Opportunities) Act 2004		
Section 3, in so far as it confers functions on a Local Authority within the meaning of that section	Co-operation between authorities	Still in Force
Children Act 2004		
Sections 13 to 16 and 31 to 34	Functions relating to Local Safeguarding Children Boards	Still in Force NB Sections 31 to 34 apply only to Wales
Mental Capacity Act 2005		

ENACTMENT	NATURE OF FUNCTIONS	NOTES
Section 39	Instructing independent mental capacity advocate before providing accommodation for person lacking capacity	Still in Force
Section 39A	Instructing independent mental capacity advocate when giving an urgent authorisation, or making a request for a standard authorisation, under Schedule A1 to the Act	Still in Force
Section 39C	Instructing independent mental capacity advocate when no representative for relevant person under Part 10 of Schedule A1 to the Act	Still in Force
Section 39D	Instructing independent mental capacity advocate when representative for relevant person under Part 10 of Schedule A1 to the Act is not being paid	Still in Force
Section 49	Reports in proceedings	Still in Force
Schedule A1	Any functions	Still in Force
Children and Young Persons Act 2008		
Part 1	Making arrangements for the discharge of relevant care functions in relation to certain children and young persons	Still in Force

Annex 2

Local Authority Duties under the Children Act 1989

Section 17 of the 1989 Act places a general duty on local authorities to provide services for children in need and their families:

- (a) to safeguard and promote the welfare of children within their area who are in need; and*
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs.*

2.18 Section 17(10) of the 1989 Act defines a child as being in need if:

- a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;*
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or*
- (c) he is disabled.*

The duties described in section 17 apply to all children in need in the area of the local authority.

A child is any person under the age of 18. (See section 105(1) of the 1989 Act.)

2.19 Section 20(1) of the 1989 Act requires that:

Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of:

- (a) there being no person who has parental responsibility for him;*
- (b) his being lost or having been abandoned; or*
- (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.*

2.20 In addition, even if the criteria in section 20(1) do not apply, section 20(3) requires that:

Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.

2.21 In addition, **section 20(4) of the 1989 Act**, provides that:

A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare.

2.22 Local authority duties for accommodating young people under this section are not simply a matter for local policy. The duty is engaged whenever any authority has determined that the young person is in fact in need and requires accommodation as a result of one of the factors set out in section 20(1)(a) to (c) or in section 20(3).

2.23 There can be no doubt that where a young person requires accommodation as a result of one of the factors set out in section 20(1)(a) to (c) or section 20(3) then that young person will be in need and must be provided with accommodation. As a result of being accommodated the young person will become **looked after** and the local authority will owe them the duties that are owed to all looked after children, set out in sections 22 and 23 and once they cease to be looked after, the duties that are owed to care leavers under that Act.

Annex 3

Factors to be considered by children's social services when assessing 16/17 year olds who may be homeless children in need

	Dimensions of Need	Issues to consider in assessing child's future needs
1.	Accommodation	<ul style="list-style-type: none"> • Does the child have access to stable accommodation? • How far is this suitable to the full range of the child's needs?
2.	Family and Social Relationships	<ul style="list-style-type: none"> • Assessment of the child's relationship with their parents and wider family. • What is the capacity of the child's family and social network to provide stable and secure accommodation and meet the child's practical, emotional and social needs.
3.	Emotional and Behavioural Development	<ul style="list-style-type: none"> • Does the child show self esteem, resilience and confidence? • Assessment of their attachments and the quality of their relationships. Does the child show self control and appropriate self-awareness?
4.	Education, Training and Employment	<ul style="list-style-type: none"> • Information about the child's education experience and background. • Assessment as to whether support may be required to enable the child to access education, training or employment.
5.	Financial Capability and independent living skills	<ul style="list-style-type: none"> • Assessment of the child's financial competence and how they will secure financial support in future. • Information about the support the child might need to develop self-management and independent living skills.
6.	Health and Development	<ul style="list-style-type: none"> • Assessment of child's physical, emotional and mental health needs.
7.	Identity	<ul style="list-style-type: none"> • Assessment of the child's needs as a result of their ethnicity, preferred language, cultural background, religion or sexual identity.