

Draft Local Government Out of Area Placements Protocol

Foreword

Content TBD

Introduction

This protocol is a voluntary agreement between the local authorities in England. It particularly applies to local housing authorities and, where applicable, to children's services authorities.

The protocol sets out minimum standards which all participant councils agree to follow when making both temporary and long-term placements of households in another local authority area within England. This applies to accommodation used to meet the duties set out in the homelessness legislation and when a local authority is supporting a child under Section 17 of the Children Act 1989, where this support includes provision of accommodation.

The protocol sets out agreements between councils about practice and procedure. Some elements of the protocol may reflect elements of legislation or statutory guidance. Others do not.

The protocol is not a legal interpretation of the meaning or appropriate application of any legislation.

If there is any inadvertent conflict between this protocol and homelessness legislation, children's legislation or other legislation, and this is brought to light, then the protocol will be amended accordingly.

The protocol does not substitute for, or provide an alternative to, any provisions within the Homelessness Code of Guidance or any other statutory guidance.

Each individual case will be considered on its own facts but authorities who have adopted the protocol will follow it unless there is a good reason to depart from it in the circumstances of the particular case. The fact that it may be onerous or expensive for the placing authority to follow the protocol would not normally be considered a good reason for not doing so.

Background

Local authorities are subject to a number of legal duties to provide households with accommodation or to support households in their attempts to obtain accommodation.

The homelessness legislation requires local housing authorities to take reasonable steps to prevent homelessness for households at risk who meet defined criteria, and to take reasonable steps to relieve homelessness for households meeting defined criteria.

Local authorities may also be required to provide accommodation for some types of homeless households, such as those containing a child or with household members who meet vulnerability criteria. The accommodation provided may be temporary accommodation provided during the period in which a duty is owed to the household, or settled accommodation provided to end a duty.

The children's legislation also contains duties for local authorities to support families with children in need under certain conditions, as set out in S17 of the Children Act 1989. This support may include the provision of accommodation¹.

Wherever possible and appropriate, such placements should be within the area of the local authority which is assisting the household.

However, for a number of reasons, placements are sometimes made in other local authority areas. This may be either on a short term or long-term basis.

Such placements are mainly a result of the shortage of affordable accommodation in some local authority districts. This is a problem which has increased over a number of years because of the reduction in the number of lettings to social or affordable rented accommodation and the decrease in affordability of private rented accommodation in many areas.

However, there are also occasions when a move out of area may be a positive choice by the household concerned and /or may be appropriate for the safe-guarding or welfare of the household.

The legal constraints and guidance around moving households out of area differ when a move is made under the homelessness legislation and when a move is made under the children's legislation. A specific example of this is that moves under the homelessness legislation are governed by the homelessness suitability orders of 2003 and 2012 which prohibit the use of Bed & Breakfast accommodation for families with children for more than 6 weeks, and set out factors to be considered in relation to, or constraints on, the suitability and location of accommodation which can be used. These suitability orders do not apply to moves under the children's legislation.

¹ There are also duties on local authorities to accommodate children without their families in certain circumstances such as in the case of Looked After Children. This protocol does not apply to those placements and applies only to Children Act placements made under S17 .

Moving homeless households away from their home area is something that councils do reluctantly, and it is acknowledged that this can cause a number of difficulties. For example, some households will need support and guidance to settle successfully in a new area. There are also risks of making inappropriate placements. There can also be the potential for disruption to children's education and to the employment of members of the household. Some households may struggle to get access to the services and facilities they need.

This protocol is intended to reduce the risks as much as possible by ensuring that placements are appropriate and well managed, and that households who move to new areas have the best chance of making a successful transition.

Effective practice by local authorities and effective communication between local authorities are both important in ensuring that this is the case.

Provisions

General

1. Local authorities providing accommodation under any of the homelessness duties, or because they are supporting a Child in Need under s17 of the Children Act 1989 will, in so far as is reasonably practicable, secure accommodation within their own council area.
2. In the case of s17 support by the upper tier authority in two tier authority areas, accommodation will be provided, where reasonably practicable, within the area of the local housing authority where the household was most recently resident.
3. Where it is not reasonably practicable to place within the same local housing authority area, local authorities will place households as close as possible to the local housing authority area or in accordance with a published policy which provides for fair and reasonable allocation of accommodation.
4. Provisions 1., 2. and 3. do not apply where the household has found their own accommodation or expressed a preference to move to a different area, or where an out of area move is required in order to ensure the safety or welfare of the household.
5. It is understood that the provisions within this protocol may need to be temporarily suspended in the case of short-term emergency placements where the only option to provide accommodation immediately is an out of area placement. However, suspensions on these grounds should be as short as possible, and it should be no

more than five working days before efforts to comply with the protocol are made, with regular reviews undertaken thereafter until a protocol compliant move can be achieved. If a non-compliant emergency placement is made out of area, then the placing authority will notify the receiving authority of that placement within two working days.

6. Before deciding to move a household out of the local housing authority area for anything other than a short-term emergency placement, the placing authority will undertake a suitability assessment. This assessment will consider the affordability of any proposed accommodation. The assessment will also consider the medical and educational needs of the household as well as links with social workers and other key services and support, including the impact of separating children and other household members from support networks. The suitability assessment will also consider potential disruption to the employment of household members and any caring responsibilities held by members of the household.
7. For moves of families with children under the homelessness legislation, the suitability assessment will include asking the household if there has ever been contact with children's social services. If so, and subject to consent from the household, the relevant children's services department will be contacted to establish if there is or has previously been a child protection plan or a child in need plan in place for any member of the household. The household will also be asked if any child has Special Educational Needs or an Education, Health and Care Plan. If so this will form part of the assessment of where it would be suitable to place them.
8. It may be necessary in some cases to move a household, where it is clear that the complex needs of a child or children in the household will require services to be provided by the receiving authority. In such cases, the placing authority will liaise with the receiving authority (or authorities in two tier areas) prior to the placement being made, in order to ensure the necessary services or provision can be delivered. Receiving authorities so consulted will respond to the placing authority within three working days. For short term placements and placements close to the placing authority area, it may be most sensible for services to continue from the placing authority for a period.

Suitability of accommodation

9. All placements, including s17 support, will be into accommodation which has been assessed as suitable for the household concerned. This will include not overcrowding households by more than one room according to the bedroom

standard contained in the Housing Benefit and Universal Credit regulations, other than for short term emergency placements or in exceptional circumstances.

10. Placements will not be made into accommodation which does not meet the minimum space and location standards set out in Annex 1, other than for short term emergency placements or in exceptional circumstances. The maximum distances to shops and public transport within Annex 1 do not apply to households which own their own car.
11. Bed & Breakfast accommodation with shared facilities will not be used for households with children or pregnant women except in an emergency, and even then for as short a time as possible, which should not exceed 6 weeks. This includes provision of accommodation under s17 of the Children Act, as well as under the homelessness legislation.
12. When an out of area placement is made in a property for the first time, the placing authority must make arrangements to ensure that the property is inspected by a competent council officer or an HHSRS qualified inspector independent of any managing agent involved in the booking of the property. This must be within five working days of the placement being made. If agreed by both placing and receiving authorities, inspections could be carried out by the receiving authority. The requirement for an independent inspection does not apply where the household has found their own accommodation or has expressed a preference to move to a distant area and agreed in writing that they are happy to move to accommodation which has not been independently inspected.
13. Certification must be obtained for EPC, gas, and electrical safety in PRS accommodation in order for a placement to go ahead.
14. If actions are identified as a result of the inspection, the placing authority must make arrangements to ensure that these are followed through within a reasonable period of time. Any identified Category 1 hazards will be remedied urgently or the placement will be cancelled and the placing authority will make alternative accommodation available.
15. Local authorities should take particular account of the impact of health and safety hazards on vulnerable occupants, including children, when deciding on the action to be taken by landlords to improve conditions.
16. Where more than one placement is made in the same property over a period, such as in a Bed & Breakfast hotel or other forms of temporary accommodation,

inspections do not need to take place for every placement, but within five working days of the first placement, and subsequently if evidence comes to light which causes concern. For Bed & Breakfast hotels, it is good practice to inspect the property on an annual basis.

17. Placing authorities will only place into accommodation where they are confident that the landlord and where applicable the managing agent is a fit and proper person. It is good practice for placing authorities to contact host authorities to check whether there are any known issues with landlords or managing agents prior to making a placement with them for the first time. Receiving authorities so consulted will respond to the placing authority within three working days. It is also good practice to make enquiries through landlord and agent checking websites such as the 'Database of Rogue Landlords and Property Agents' and the London 'Rogue Landlord and Agent Checker'.
18. When placing in HMOs which require a license, the placing authority will check that the HMO is licensed before making a placement.
19. The name of the landlord or agent will be notified to the host authority as part of the notification of the placement, so that the host authority has the opportunity to inform the placing authority of any concerns or previous convictions.

Vulnerable Households

20. Local authorities will avoid placing the most vulnerable households out of area unless there are specific reasons to do so for the safety or wellbeing of the household or others.
21. Specifically, local authorities agree to make best endeavours to avoid making out of area placements of families including a child with a Child Protection Plan or an Education, Health and Care Plan (EHCP), prolific and persistent offenders, and those housed through MAPPA (Multi-Agency Public Protection Arrangements), unless there are clear reasons to do so for the safety or well-being of the household or others. Annex 2 provides guidance on when vulnerability of children in a household would be expected to prevent a move out of area.
22. Where there are clear reasons to move such a vulnerable household out of area, the placing authority should liaise with the host authority in advance of any placement being made in order to ensure the suitability of the placement, appropriate sharing of information with key agencies, and the capacity and availability of necessary services. Receiving authorities so consulted will respond to

the placing authority within three working days.

23. When vulnerable households, where there is a safeguarding concern, are placed out of area, safeguarding issues will be carefully considered, including with the host authority in advance of any placement (or authorities in a two-tier area), in assessing the appropriateness of the placement. In the case of a Child in Need, parental consent is required to share assessments with receiving children's services authorities unless the child is subject of a s47 investigation, Child Protection Plan, or in care.

Resettlement Support

24. The placing authority will have arrangements in place to offer resettlement support to households placed out of area, where this is needed. This support may vary depending on whether the placement is short-term or for a longer period, and depending on the specific needs of the household identified in the suitability assessment made before the placement.
25. If a household is placed outside of the local housing authority to end a duty, or in temporary accommodation for more than a short period, then support will be offered by the placing authority either directly or by arrangement, where this is needed to achieve the following objectives:
- a. Appropriate welfare benefits are claimed and checks made to ensure they are in payment
 - b. Gas (where applicable), electricity and water supplies are connected and payment arrangements are in place
 - c. The household has basic furniture and essential equipment in their new accommodation
 - d. Children secure a place in local schools if continuing at their previous school is not feasible (more details are set out in the Children's Education provisions, below)
 - e. Information is provided to the household about relevant local services, including public transport, GPs and other relevant health services, shopping facilities, local advice services, and local employment services if applicable.
26. Taking into account the particular circumstances in each case, it is agreed that when placing a household in accommodation in another local housing authority, the placing authority will take reasonable steps to ensure that the above basic necessities for settling in a new area are in place, and to follow up with the

household and/or their landlord to establish whether this has been achieved.

27. Where support is not provided directly, indirect arrangements may include contracting with an external agency, or working jointly with other councils to procure an appropriate service. It may also be possible to work with the host local authority or other local services to provide support.
28. The extent to which any given household will need support in the above areas will depend on the capabilities, needs and circumstances of that household, as well as the distance they are moving. Some households may refuse to engage with offers of support.
29. Details of the support available and how to access it will be set out in the letter offering the accommodation.

Transfer of responsibility when a duty is ended out of area

A: No Recourse to Public Funds cases where households have gained access to public funds

30. When a s17 duty to a household with No Recourse to Public Funds, who has been placed out of area, ends because the household has gained access to public funds, the placing authority will take steps to ensure that the household does not become homeless, including, if necessary, referring them to an appropriate local housing authority under the Homelessness Reduction Act Duty to Refer (s 213B of the Housing Act 1996).
31. Where the Duty to Refer arises, the children's service authority will ask the family to agree to it notifying a local housing authority of its opinion that the family is or may be homeless or threatened with homelessness. If the family agrees to the authority making the notification and identifies a local housing authority in England to which they would like the notification to be made, the authority will notify that local housing authority.
32. The placing authority may advise the family as to which would be the most appropriate local housing authority for the notification to be made to. In so advising, the placing authority will consider where the family has established a local connection as defined in the homelessness legislation, as well as the family's wishes and where there is the best chance of integration. This is likely to be either the local housing authority where they have been placed or the local housing authority where the household was resident before they were placed, if a local connection was established there. Authorities may advise as to the possibility of the family's case being referred to another local housing authority if the notification is made to a local housing authority where no local connection exists if a local connection does

exist elsewhere.

33. The placing authority will give the local housing authority they are referring to at least 28 days' notice before the placement ends, when ending a s17 duty in these circumstances, in order to allow a support pathway to be put in place and for accommodation to be provided if necessary.
34. This referral should be made under the Duty to Refer, and should include information around support and language requirements and the contact details of a named social worker.
35. If the household includes a Child in Need for any reason other than homelessness, then the placing authority will also notify the host children's services authority with at least 28 days' notice before the placement ceases. This is subject to parental consent having been obtained, unless any child is subject of a s47 investigation, a Child Protection Plan, or is in care.
36. During this 28 day period, the placing authority should liaise with the local housing authority being referred to, to ensure adequate financial support and accommodation is in place.
37. The placing children's services authority will work to ensure that any welfare benefits, for which the household is eligible, are in place before subsistence payments are withdrawn in order to ensure there is no risk of destitution.
38. If the local housing authority referral is to the host authority, the host authority may be able to arrange for the household to stay in their current accommodation under the prevention duty, if this is appropriate.
39. If the referral is to the host authority, then, if the household has lived in the area for at least 6 months out of the last 12 or at least 3 years out of the last 5, the host authority will generally accept that a local connection has been established.

B: Intentional Homelessness and other negative decision cases

40. If an Intentional Homelessness decision is made for a household already placed in temporary accommodation out of area, which includes dependent children, the placing local housing authority should carefully consider the best interests of the children in the household before deciding, in a case where it is possible, whether or not to retain responsibility for the household through their own children's services

department (or, in two tier authorities, through a referral to the children's services authority covering the placing local authority area). Such consideration should include potential disruption to children's education and continued links to services. Information on responsibilities under the Children Act 1989 when households move from one area to another is set out in **Annex 4**.

41. Local housing authorities will not make placements of households, whom they have already informed they are minded to find intentionally homeless, in temporary accommodation out of the local housing authority area, unless the household is already accommodated out of area when the 'minded to' decision is made.
42. On reaching a decision that an applicant, who has been placed in temporary accommodation outside of the local housing authority area, has a priority need but became homeless intentionally, the placing local housing authority will continue to provide secure accommodation for a period of time that will provide a reasonable opportunity for them to find their own accommodation.
43. In these circumstances, the placing authority will also provide, or secure the provision of, advice and assistance in any attempts the applicant might make to secure accommodation. This should include advice on finding accommodation within the placing authority area, and should not be limited to suggesting that the household approaches the host local housing authority or children's services authority for assistance.
44. If an intentional homelessness decision is made for a household already accommodated out of area, and a decision made by the placing local housing authority not to then refer the case to their own children's services authority, then the placing authority will notify both the host local housing authority and the host children's services authority on the day of the intentional homelessness decision, with at least 28 days' notice before temporary accommodation ceases. The notification to the host local housing authority may be through an update to the s208 notification already in place.
45. The host local housing authority will then make contact with the household to consider whether to accept an application for housing assistance under Part 7 of the Housing Act 1996. If the host local housing authority decides to offer assistance under the homelessness relief duty, this assistance should include work with their local children's services to ensure that a support and accommodation pathway is in place, should the relief duty fail.

46. If an out of area placement is ended for other negative reasons, such as a 'not homeless' decision, or because the household refuses a reasonable offer of accommodation, then the placing authority will notify the host local housing authority of this decision at least 7 days before the placement ends and will ensure that the correct notice period and any necessary possession proceedings are followed before evicting the household from their temporary accommodation.

Children's Education

47. Households including one or more children studying the syllabus for GCSE and A-Level examinations will be prioritised for placements within reasonable travelling distance of their existing school if they are in an exam year. If this is not possible then placing authorities will provide support, including support towards travel and other necessary expenses where needed, to ensure that disruption to school attendance is minimised.
48. Children with Special Educational Needs (SEN) will be prioritised for placements which allow them to continue at their existing school, unless there are specific concerns for the safety or wellbeing of the household that make it impossible to do so. In exceptional circumstances where it is impossible for them to continue at their existing school, the placing authority should liaise with the host authority in advance of any placement being made to ensure suitability of the placement, appropriate sharing of information with key agencies, and capacity/availability of necessary services.
49. If, in exceptional circumstances, a child with an Education, Health and Care Plan (EHCP) is moved to a different local education authority and needs to change school, the placing authority will inform the host local education authority of this before the move, with as much notice as possible. This will if necessary be achieved by the placing authority requesting, subject to consent being obtained from the household, that their local provider of EHCPs make the notification.
50. When placing authorities make multiple placements to another authority, and especially if this involves placements to a new block or a block which is being used for family accommodation for the first time, they will check with the host children's services authority whether there are particular difficulties in finding school, nursery and pre-school places for certain year groups in that area in advance of any placements being made. This information will be used in suitability assessments to help determine which families are placed.
51. Children being placed out of area for a short period which makes it undesirable for them to transfer to a new school will be given assistance to continue to attend their

existing school, including, where necessary, support with travel and other necessary expenses.

52. Where out of area placements require children to transfer to a new school, the placing authority will provide assistance to help enable the transfer to take place as smoothly and rapidly as possible. This may include the placing authority assisting the household directly to obtain a school place and/or providing information to the household to ensure that they are empowered to apply for a school place themselves. In either case, the placing authority will ensure that the local education authority has been informed of the need for a school place/s, and of any Special Educational Needs of children within the household, and will follow up with the household and/or their previous school to check that a school place has been secured successfully. If not, the placing authority will offer further support to the household to achieve this.

Blocks and Permitted Development Rights (PDR) Developments

53. Before agreeing a deal to use a new block where they intend to place households in 10 or more units of accommodation, or a new PDR block where they intend to place any number of households, the placing authority will contact the designated protocol contact officer at the host authority, in the first instance, to ascertain if there are any issues which would make it unsuitable for this purpose. It may be determined as a result of such discussions that the block is not suitable, or not suitable for the placement of certain households. These discussions will include issues around suitability of accommodation, local school places (as also set out in provision 50.), amenities and services, and key risks within the neighbourhood that could jeopardise a successful placement, such as high levels of crime, anti-social behaviour, gang activity or county lines.
54. Placing authorities will ensure that all PDR properties are inspected by an HHSRS qualified inspector independent of the developer or any managing agent involved in the booking of the property. This will include verification that proper fire safety arrangements are in place.
55. Placing authorities will not make placements in PDR accommodation which does not meet the minimum space and location standards set out in Annex 1. to this protocol. Where transport facilities are inadequate, placing authorities may consider liaison with host authorities to provide suitable transport.
56. When blocks are offered to multiple authorities, each potential placing authority will endeavour to find out from the developer or agent, and where relevant the host authority, which other councils are placing or likely to place in the block, as a

precondition of using it.

57. They will then consult with those councils to ensure that the allocations policies of the councils are compatible and will not result in a mix of client groups in the block which is likely to be detrimental to the safety or wellbeing of the residents. If making placements in an existing block, placing authorities will endeavour to ensure that the placements they make are appropriate by making enquiries from the provider about the profile of existing residents.
58. Some blocks may only be suitable if additional support to the residents of the block is provided. Where this is the case, and there are multiple authorities using the block, it may be good practice to procure such support jointly between authorities.
59. When a decision has been made to make placements to 10 or more units in a new block, the placing authority will inform the host housing and children's services authorities with as much notice as possible in advance. This is in addition to the notification requirements for individual households as set out in provision 61.
60. When a placing authority makes an agreement to let to 20 or more units in a new or newly converted block, it is good practice to offer the host authority the opportunity to nominate to at least 10% of the units on equivalent terms to the placing authority.

Notifications

61. All placing authorities making placements out of area under any of the duties in the homelessness legislation will notify the host local housing authority as soon as possible of the placement through a s208 notification and at the latest within 14 days of the accommodation being made available to the applicant. The information provided in the notification will include:
 - (a) the name of the applicant;
 - (b) the number and description of other persons who normally reside with the applicant as a member of his or her family or might reasonably be expected to do so, including the names and dates of birth of all children in the household;
 - (c) the address of the accommodation;
 - (d) contact details for the applicant (subject to having obtained the necessary consent);
 - (e) the date on which the accommodation was made available;

- (f) which function the housing authority is discharging in securing the accommodation;
 - (g) the name and address of the landlord or housing supplier
 - (h) the nightly or weekly rent payable
 - (i) the details of any financial incentive paid to the landlord or supplier
 - (j) the tenure of the accommodation – either temporary accommodation or Assured Shorthold Tenancy
 - (k) whether it anticipates that there are children in the household who will need a school place in the host authority area
62. Placing authorities disclosing information under (g), (h) and (i) above will seek the consent of landlords or housing suppliers to do so if they are not satisfied that disclosure is necessary for the exercise of a function conferred on the authority by an enactment².
63. All local housing authorities will set up a s208 e-mail address to receive s208 notifications in the format s208@nameofcouncil.gov.uk.
64. All local housing authorities making an out of area placement under one of the homelessness duties for a household which includes dependent children with a Child in Need plan or a Child Protection Plan will, subject to necessary consent from the household, inform their local children's services department of the placement being made. As stated elsewhere in this protocol, the needs of the children in the household, including any children's social services involvement, will have been considered as part of the suitability assessment prior to the placement being made.
65. If the placement is also outside that children's services authority area, then the children's services department will assess whether it should make a referral or notification to the host children's services department according to its agreed procedures, and if so will make such a referral or notification.
66. Children's services authorities providing accommodation under s17 of the Children Act or for a child with a Child in Need plan or a Child Protection Plan, or who have been informed of an out of area homelessness placement made by a local housing authority in their area for families including such children, will, so far as it is

² For example, to assist in fulfilling the legal requirement to ensure a landlord is a fit and proper person through the knowledge of the host authority about landlords in their area, or to support delivery of the best value duty under S3 of the Local Government Act 1999

possible for them to do so, not close or downgrade the CPP or CiN plan unless there is a change in circumstances which provides good reason to do so.

Communication and Disputes Resolution

In the event that an authority believes that another local authority has breached the provisions of this protocol then both local authorities will follow the disputes resolution process at Annex 3. to this protocol.

As set out in more detail in Annex 3., each participant local authority will appoint one or more designated contact officers for other participant authorities to contact about any issues pertinent to the operation of this protocol, including enquiries made prior to placements being made and in the event of disputes.

The LGA will provide annual reports on the number, type, and outcome of disputes involving the use of an independent referee.

Review

This protocol will be reviewed within 6 months of the date it comes into effect, and annually thereafter by the LGA.

Contact

Any comments or questions related to this protocol should be referred to the Local Government Association: firstname.surname@local.gov.uk