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My ref:

Your ref:

Prime Minister 4

The recommendations of
this review are
summarised at A.
Mr Heseltine would like
to announce these to the House
in due course.

8 February 1982

De l'air

WR 11/2

A review of the Housing (Homeless Persons) Act 1977 has been in train since December 1978, in fulfilment of an undertaking given by the previous Administration during the passage of the Bill through Parliament.

The attached memorandum sets out the issues we have considered and the conclusions we have reached. With the agreement of Nicholas Edwards, who shares with me joint responsibility for the memorandum, I am seeking colleagues' endorsement of its conclusions and recommendations for the announcement of a non-legislative package as the outcome of the review.

I am sending a copy of this letter to the Prime Minister, who has asked to be kept informed of developments, to the other members of H, and to Sir Robert Armstrong.

This is the most
disappointing housing
document I have read during
the lifetime of this government. If you can
read away from any member
of the Joint Commission
and to liaison with the
Crew-jug. under whom
he sits, on the other side
without any effort
on their part, I believe
left - should be
considered
not

MICHAEL HESELTINE

DRAFT

REVIEW OF THE HOUSING (HOMELESS PERSONS) ACT 1977 AND THE ASSOCIATED CODE OF GUIDANCE

Memorandum by the Secretary of State for the Environment and the Secretary of State for Wales.

1. A review of the Housing (Homeless Persons) Act 1977 has been in train since December 1978, in fulfilment of an undertaking given by the previous administration during the passage of the Bill through Parliament.
2. The local authority associations directly affected (GLC, LBA, AMA and ADC) were consulted and contributions were also invited from the Joint Charities Group on homelessness, representing the main pressure groups active in this area. Comments were received from individual MPs, local authorities, voluntary organisations and members of the public; we have drawn on evidence available from statistical reports and research.
3. Until the early part of last year all local authority associations except the LBA had indicated that they were prepared to continue operating the Act as it stood, although all had asked for additional public expenditure. The Joint Charities Group were also broadly content to accept the status quo. The Conservative majority on the LBA wanted changes to the legislation.
4. More recently we have taken account of a fresh exchange of views with the ADC, who consulted their member authorities on the effects of the Act. The results of the consultation showed that although some

authorities reported having difficulties in meeting their obligations under the Act most authorities had no criticism to offer. The Association made a number of suggestions for detailed amendments to the Act.

5. The large number of points raised during the course of the review can be summarised under main headings:

- A. 'Queue Jumping' of Council waiting lists.
- B. Rent arrears and the Homeless Persons Act.
- C. The costs of operating the Act falling upon a number of metropolitan authorities.
- D. The problems of the homeless people excluded from the priority need categories.
- E. Treatment of homeless immigrants and EEC citizens.

A 'Queue Jumping'

6. The Act incorporates the main policy principles set out in the circular on homelessness issued in February 1974 by the then Conservative Government. That circular identified a number of 'priority groups' of homeless people for whom it said:

"the issue is not whether, but by what means local authorities should provide accommodation themselves, or help those concerned to obtain accommodation in the private sector".

3 It was thus implicit from the outset that there would be some effect on local authority waiting lists. The duties imposed by the Act reflect

the view of Parliament that meeting the needs of those who are genuinely and literally homeless must have priority. That inescapably involves a measure of queue-jumping in some degree.

7. However, certain authorities complain that some of the homeless people that they are obliged to accept and accommodate have little or no local connection with their area and thus "jump the queue" of local residents. Litigation has established that where people voluntarily give up accommodation, whether abroad or in this country, without making adequate long-term arrangements for their future accommodation needs, they may be treated as intentionally homeless, whereupon any obligation on the authority to secure accommodation is for a limited period - in practice about one month. If homelessness is not intentional, ^{which happens when} but the applicants have no local connection with the area of the authority to whom they apply, there is provision in the Act to transfer responsibility to another authority with whom they do have a connection.

8. The local authority associations have drawn up a Referral Agreement to help eliminate disputes between authorities in effecting transfers. The agreement was reviewed two years ago and a number of amendments were made. The Referral Agreement remains in our view the best means of resolving disputes between authorities as to where local connection lies. Any other course would mean reverting to the unsatisfactory situation that existed before the Act when authorities could, and did, shuttle homeless people between their respective areas while they disputed responsibility for them.

9. Another aspect of the queue-jumping issue is the allegation that People are indulging in collusion to get rehoused under the Homeless Persons Act. Rather more than 40 percent of households accepted as homeless had, immediately prior to becoming homeless, been staying with parents, relatives or friends. Typical cases are ^{young} newly formed families and girls who have become pregnant. Housing authorities suspect collusion in feigning disputes in a proportion of such cases. Legal advice is that authorities are not required to "prove" suspicions of collusion to decide that a person is either not homeless or is homeless intentionally, but simply that they should take a reasonable decision in the light of their enquiries.

10. We see no means of completely eliminating queue-jumping as a source of grievance, short of repealing the entire Act. Repeal would be highly controversial and would be very strongly opposed not only in Parliament but by many outside bodies, including the churches. Moreover repeal would still leave the problem of housing the homeless to be resolved administratively. Repeal of the 1977 Act is not recommended. Instead we recommend that:

- a. authorities should be reminded that the Act does not require council accommodation to be provided in every case;
- b. the local authority associations should keep the operation of the Referral Agreement under review to achieve equitable arrangements as between authorities in dealing with cases where the main local connection is disputed;
- c. to deal with collusion authorities should be reminded of the very wide discretion they have under the Act by means of clarifying the advice in the Code of Guidance, which is issued jointly by DOE, the Welsh Office and DHSS and to which

authorities are required by the Act to have regard.

B. Rent Arrears

11. Individual authorities have represented that the Act makes it difficult to deal with hard core deliberate rent arrears cases. Even if such people are evicted for arrears and declared intentionally homeless, the authority still has the duty to secure accommodation for a limited period. This can be costly. But the alternative step of breaking up the family and taking the children into care is even more unsatisfactory, resulting in some cases in considerable hardship and suffering for the children and sometimes in parents abrogating responsibility altogether; it is also extremely expensive.

12. One solution authorities have proposed is that where a family is in receipt of supplementary benefit, the rent element should be paid direct to the housing authority. The proposed Unified Housing Benefit scheme now before Parliament would have this effect; local authorities would receive a subsidy of 100% on rent and rate rebates paid to tenants in receipt of supplementary benefit and would gain both from a reduction in arrears and from a reduction in rent collection and accounting. Meanwhile, the publication last year, in Regulations made by the Secretary of State for Health and Social Services, of criteria for benefit officers for instituting direct payment of rent should have helped to reduce the burden on housing authorities.

13. It is proposed to draw attention to these developments in announcing the conclusions of the review.

C. Costs falling on a number of Metropolitan Authorities

14. The local authority associations, especially those representing metropolitan authorities, claim that operating the Act is giving rise to significant extra expenditure, mainly on making enquiries and providing bed and breakfast accommodation. Authorities may charge for accommodation secured, but many homeless people may be effectively destitute; and the supplementary benefit allowances do not generally meet the full cost.

15. Under the Housing Act, the Secretary of State has power to determine what expenditure debited to the Housing Revenue Account will be reckonable for subsidy. We are satisfied that nothing in the subsidy rules would prevent much of the cost of work involved in the consideration and investigation of applications from homeless people to be provided with accommodation by an authority being regarded as housing management costs properly falling to be debited to the authority's HRA, and thus being included in the calculation for subsidy entitlement in the same way as other management costs in the account.

16. Net expenditure by local authorities falling outside the HRA, including expenditure of bed and breakfast, is eligible for rate support grant, and rate-borne expenditure on the relief of housing stress will continue to be taken into account in the calculation of block grant entitlements.

17. To the extent that homelessness requires housing investment by local authorities, it is one of the factors taken into account in

determining Housing Investment Programme allocations. In England for 1982/83 allocations the homelessness indicator has been revised, after discussions with the local authority associations, to reflect more accurately than in the past both the demands placed on local authorities by the homeless and authorities' resources, in terms of relets etc., available to meet that demand.

18. We propose therefore to draw attention in the announcement of our conclusions to the provision made under the subsidy rules, rate support grant and HIP allocations.

D. The problems of homeless people excluded
~~Non-priority categories~~
from the priority need categories

19. The priority categories (effectively those homeless people for whom accommodation must be secured by local authorities) exclude most homeless single people and childless couples. This exclusion was deliberate, because in 1977 local authorities' housing resources were insufficient to deal with a more wide-ranging duty. The very substantial reduction in the provision for local authority housing capital expenditure makes this consideration still more relevant today.

20. There is no short term solution. Any addition, however small, to the duties of local authorities would be strongly resisted by them as being inconsistent with the economic situation which points to reduced rather than extended responsibility.

21. We propose no change in the legislation but intend to emphasise that the Government's recent initiatives to increase the availability of short term rented accommodation and of low-cost home ownership

opportunities all represent useful steps for the benefit of these groups.

E. Homeless Immigrants

22. The housing of homeless immigrants ahead of local people on waiting lists is a focus of controversy. In numerical terms the problem is small (only about 2% of households accepted as homeless have been abroad one month before becoming homeless). But it receives much publicity.

23. Litigation has established that immigrants who apply for assistance under the Act are to be treated in the same way as indigenous applicants. Though the Appeal Court has commented that any duty to secure accommodation for an (unintentionally) homeless immigrant could be discharged by "finding accommodation for him in the country whence he came", this is a safeguard which could be both very difficult and very costly to operate.

24. Demands on the housing stock of local authorities in this country by immigrants is already limited, by immigration controls restricting the entry of homeless foreigners. The exceptions are EEC immigrants who have a free right of access to seek employment. But, on the limited evidence available, the number of EEC nationals who have been helped under the Act is tiny, and there are no indications that this situation is about to change radically. Nevertheless the LBA argue that a limited number of authorities are being expected to undertake responsibilities

and burdens which are national rather than local. Their proposed solution, supported recently by the ADC, is to deny 'entitlement' to people without a local connection in Great Britain.

25. This solution is rendered impossible by two pieces of legislation. First, differential treatment of immigrants is unlawful under the provisions of the Race Relations Act 1976. Second, in the case of migrant workers from EEC Member States, it is prohibited by EEC Regulation 1612/68 dealing with free movement of labour, which requires that workers from Member States should enjoy the same rights and benefits as national workers in matters of housing. The requirement of the Race Relations Act can be overridden if the differential treatment is sanctioned by primary or secondary legislation, ^{but} apart from the question of merits, this would not seem the moment for ^{differential race relations} ~~such~~ legislation. The EEC Regulation could only be set aside by seeking fundamental changes in EEC legislation which would be seen as an attack on one of the founding principles of the Community. While the Regulation stands, it is, by virtue of Article 189 of the Treaty of Rome, "binding in its entirety and directly applicable to all Member States"; it overrides inconsistent national statutes.

26. Measures to relieve the pressure on local housing authorities must, therefore, depend upon steps designed to reduce the flow of potentially homeless immigrants. We have revised the text of the leaflets issued by British High Commission offices to intending immigrants, so as to leave no doubt that access to public housing is not to be easily secured by those who fail to make adequate arrangements for their accommodation.

27. We propose to refer in the announcement to the tightening up of the immigration rules and advice to immigrants and to the recent litigation which establishes that the Act contains safeguards against ~~exploitation~~ ^{abuse} by those who are intentionally homeless, whether from the UK or abroad.

CONCLUSION

28. Repeal of the Act is not advocated for the reasons set out in paragraph 10 above. We have considered a variety of amending legislative options, including those put forward by the ADC and others, but have concluded that none of these can achieve any material change without effectively emasculating local authority obligations. Any legislative change would be highly controversial and time-consuming. The Government would be caught in a cross-fire between those who wanted to repeal or emasculate the Act on one side and those who wanted to strengthen it on the other. Two highly controversial non-housing issues would also get drawn into the parliamentary debate on any amending legislation - the Common Market (in the context of the relationship between the homeless legislation and our EEC Treaty obligations) and abortion (the anti-abortion lobby want no weakening, such as the ADC have proposed, of the existing priority given to pregnant ^{young women} ~~girls~~).

29. While legislative options will be kept under review, we consider that the best way forward is to announce the non-legislative package outlined in this memorandum. This deals with the most conspicuous difficulties and is most likely to find the maximum amount of common

ground both in and out of the House. It will provide some reassurance on our side and avoid the hornet's nest of legislation.

30. 'We would be grateful for colleagues' agreement that the recommendations, as summarised in Annex A to this memorandum, should form the conclusions of our review of the Homeless Persons Act. We would propose to announce these by a Statement to the House, to be cleared in the normal way by those colleagues who have a direct interest.

REVIEW OF THE HOUSING (HOMELESS PERSONS) ACT

SUMMARY OF RECOMMENDATIONS

We do not propose any amendment of the primary legislation at the present time though we will continue to keep the legislation under review. Instead we propose the following non-legislative package.

A Queue-jumping of Council house waiting lists

- (i) Authorities should be reminded that council accommodation is not required in every case and that there is scope for more co-operation between authorities and with other bodies to share the burden of homelessness more evenly;
- (ii) The local authority associations should keep under review the operation of their Referral Agreement to achieve more equitable arrangements between authorities in dealing with cases where local connection is disputed;
- (iii) The Code of Guidance should be amended to make clear to authorities the very wide discretion they have in cases where they suspect abuse of the Act through collusion;

B Rent Arrears

No further action is required on the question of rent arrears cases but attention should be drawn to the effects of the Unified Housing Benefits scheme and to the fact that supplementary benefit officers have discretion to make direct payment of rent to housing authorities.

C Costs to authorities of operating the Act

- (i) We should advise authorities that housing management costs, relating to applications from the homeless and properly falling to be debited to the Housing Revenue Account, can be included in the calculation for subsidy entitlement; and remind them that -

(ii) Remaining net local authority expenditure is eligible for rate support grant, and rate-borne expenditure on the relief of housing stress will continue to be taken into account in the calculation of block grant entitlements;

(iii) In England for 1982/83 HIP allocations we have agreed with the local authority associations a revised homelessness indicator to reflect more accurately both the demands placed on authorities by the homeless and the resources available to authorities to meet that demand.

D. Non-priority categories

(i) There should be no extension of the priority categories given the current restraints on local authorities' resources;

(ii) The Government's initiatives to increase overall availability of accommodation should be emphasised as representing useful steps which will be of benefit to the non-priority groups.

E. Homeless immigrants

(i) There will be no discriminatory legislative change to exclude homeless immigrants from the benefits of the Act;

(ii) The measures taken to reduce the flow of potentially homeless immigrants - namely the stricter wording of leaflets issued to prospective immigrants and the revised Immigration Rules - should be emphasised;

(iii) We should re-affirm that there are already safeguards in the Act against exploitation by those who are intentionally homeless, whether at home or from abroad.