

GREAT BRITAIN'S ANSWER TO HOMELESSNESS: THE HOUSING (HOMELESS PERSONS) ACT OF 1977

At least one quarter of the world's population lacks adequate housing, including approximately 100 million persons who are completely homeless.¹ Although most homeless persons reside in developing countries, a surprisingly large number live in industrialized nations.² While the United States government has not adopted a comprehensive policy to deal with its homeless population, the British government has attempted to address this problem at a national level. This section of the symposium examines Britain's efforts to resolve the problem of homelessness through the Housing (Homeless Persons) Act of 1977.³

I. OVERVIEW OF THE ACT

In an effort to curb increasing homelessness,⁴ overcrowding, and sub-standard housing throughout Great Britain,⁵ Parliament enacted the Housing (Homeless Persons) Act of 1977. This legislation, though

1. Cox, *Objectives of the UN International Year of Shelter for the Homeless (IYSH)—1987*, EKISTICS, July-Aug. 1984, at 284.

The United Nations' proclamation of 1987 as the International Year of Shelter for the Homeless underscores the global magnitude of the problem of homelessness. See G.A. Res. 221, 37 U.N. GAOR Supp. (No. 51) at 148, U.N. Doc. A/37/51 (1983). For a general discussion of the IYSH, see *Development and International Economic Co-operation: Human Settlements, Report of the Secretary-General*, 40 U.N. GAOR Annex 5 (Agenda Item 84(h)) at 1, U.N. Doc. A/40/406 (1985), and Cox, *supra*.

2. In the United States, officials estimate that as many as two million persons may be homeless. N.Y. Times, May 2, 1984, at A1, col. 2. In England the number of homeless households, as defined by the Housing (Homeless Persons) Act of 1977, totalled 53,100 in 1978, 56,800 in 1979, and 62,420 in 1980. Birkinshaw, *Homelessness and the Law—the Effects and Response to Legislation*, 5 URB. L. & POL'Y 255, 256-57 (1982).

3. The Housing (Homeless Persons) Act, 1977, ch. 48 [hereinafter 1977 Act or Act]. *But see* Puhlihofer & Hillingdon London Borough Council, [1986] 2 W.L.R. 259, 283, (H.L.) ("It is an Act to Assist persons who are homeless, not an Act to provide them with homes.").

4. The term "homelessness," in this instance, refers to those persons actually lacking permanent or temporary shelter.

5. See M. PARTINGTON, *THE HOUSING (HOMELESS PERSONS) ACT 1977 AND THE*

a significant improvement over prior governmental policies toward the homeless,⁶ is an ineffective and inadequate means of resolving the problems of many homeless persons.⁷ Single persons and childless couples⁸ who do not meet the criteria for "priority need"⁹ and other

CODE OF GUIDANCE 48 (1978) (citing Government Green Paper, *Housing Policy: A Consultative Document*, Cmnd. 6851, H.M.S.O., 1977).

A decline in housing starts and reductions in public housing expenditures contributed to the pervasive problem of homelessness. Birkinshaw, *supra* note 2, at 256. In *Puhlhofer* Lord Brightman described Britain's housing problem as intractable. [1986] 2 W.L.R. at 284.

6. Parliament previously addressed the issue of homelessness in the National Assistance Act, 1948, 11 & 12 Geo. 6, ch. 29, § 21(1)(b) [hereinafter 1948 Act]. The 1977 Act repealed the National Assistance Act, 1977 Act, § 20. The 1948 Act was not intended to alleviate general homelessness; it merely required that local housing authorities provide temporary accommodations were for persons in emergency situations. Accommodations were required when these persons could not have foreseen the urgent circumstances or when the authorities determined that temporary accommodations were necessary. See 1948 Act, § 21(1)(b); Smith, *The Housing (Homeless Persons) Act 1977—Four Years On*, 1982 J. PLAN. & ENV'T L. 143, 143. Furthermore, the courts failed to enforce even these limited duties of the local housing authorities under the 1948 Act. *Id.* at 143.

In 1974 the Department of the Environment called for a more effective policy toward the homeless. See DEPARTMENT OF THE ENVIRONMENT, CIRCULAR NO. 18/74 [hereinafter DOE CIRCULAR]; Smith, *supra*, at 144. Some of the measures adopted in the Department of the Environment circular provided the framework for key provisions of the 1977 Act. Compare DOE CIRCULAR NO. 18/74, paras. 10, 18 with 1977 Act, §§ 2, 19.

7. See Smith, *supra* note 6, at 156-57. See generally Birkinshaw, *supra* note 2, at 255; Robson & Watchman, *The Homeless Persons' Obstacle Race*, 1981 J. SOC. WELFARE L. 1; Woodward & Davidge, *Homelessness Four Years On*, 1982 J. PLAN. & ENV'T L. 158.

The original bill as introduced in Parliament would have taken more effective measures to resolve the problem of homelessness. Because of strong opposition from local housing authorities in the Association of District Councils and from conservative members of Parliament, the final version of the Act contained a number of amendments that diluted these substantial remedial measures. See M. PARTINGTON, *supra* note 5; Birkinshaw, *supra* note 2, at 258; Robson & Watchman, *supra* at 2; Woodward & Davidge, *supra*, at 158. See *infra* notes 21-22.

8. See Birkinshaw, *supra* note 2, at 259; Robson & Watchman, *supra* note 7, at 9; see also Smith, *supra* note 6, at 157. See generally Wilkinson, *Single & Homeless*, 1982 NEW L.J. 503.

Bringing and keeping together families is an important goal of the statute. See *Din v. Wandsworth London Borough Council*, [1983] 1 A.C. 657, 663 (1981) (opinion of L. Wilberforce); *In re Islam (Tafuzzul)*, [1983] 1 A.C. 688, 716 (1981) (opinion of L. Lowry); *R. v. Swansea City Council*, *ex parte* Thomas, 9 H.L.R. 64 (Q.B. 1983) (opinion of Woolf, J.); *R. v. North Devon Dist. Council*, *ex parte* Lewis, [1981] 1 W.L.R. 328, 333 (Q.B. 1980) (opinion of Woolf, J.); 1977 Act, §§ 1(1)(a), 2(1)(a), 2(1)(c), 2(2), 5(1)(a)(i)-(ii), 16; Code of Guidance, para. 4.2, see *infra* note 36. Courts have held that local housing authorities must look to the needs of the family unit as a whole and not

homeless persons who do not satisfy other statutory requirements¹⁰ fail to qualify for meaningful protection. This is primarily due to the highly discretionary¹¹ decisions of predominantly hostile¹² local housing authorities.¹³

A person seeking housing triggers governmental assistance under the Act by submitting an application to a local housing authority.¹⁴ Under section 3 of the Act,¹⁵ the preliminary duties of housing authorities arise upon application if the authority has reason to believe that the applicant *may* be homeless¹⁶ or threatened with homelessness.¹⁷ These

merely to those of the applicant or head of the family. *See Islam*, [1981] 1 A.C. at 708 (accommodation was not reasonably available for applicant, wife, and children; therefore, they were not intentionally homeless); *Thomas*, 9 H.L.R. at 64 (deliberate acts of members of family unit imputed to applicant, tainting his application to the housing authority); *Lewis*, [1981] 1 W.L.R. at 333-34 (conduct of one member of the family unit imputed to applicant, rendering her intentionally homeless); *infra* note 98.

9. Section 2 of the 1977 Act describes four classes of persons who qualify for priority need status. 1977 Act, § 2. *See infra* notes 20, 53-59 and accompanying texts.

10. *See* text accompanying notes 14-29.

11. *See Birkinshaw*, *supra* note 2, at 257; *Robson & Watchman*, *supra* note 7, at 82.

12. Local housing authorities have expressed their opposition to the broad protection of homeless persons under the Act. *See M. PARTINGTON*, *supra* note 5, at 48; *Birkinshaw*, *supra* note 2, at 255, 257-58; *Robson & Watchman*, *supra* note 7, at 2; *supra* note 7; *infra* notes 21-22.

13. Section 19 of the 1977 Act cites to § 1 of the Housing Act, 1957, 5 & 6 Eliz. 2, ch. 56, § 1, for the definition of "housing authority." 1977 Act, § 19(1). Section 1 of the 1957 Act provides:

(1) Subject to the provisions of this Act, the local authority for the purposes of this Act as respects England and Wales other than the administrative county of London shall be the council of the borough, urban district or rural district.

(2) Subject to the provisions of this Act, the local authority for the purposes of this Act as respects the administrative county of London shall be,—

(a) as respects the City of London, the Common Council,

(b) as respects the administrative county of London other than the City of London, the metropolitan borough council or the London County Council as hereinafter provided.

1957 Act, § 1(2).

14. *See* 1977 Act, § 3(1)(A).

15. *Id.* § 3(1).

16. Section 1 of the 1977 Act defines "homelessness" broadly to include persons with no accommodations and persons who normally reside together with others as a family but have no accommodations that they as a group are entitled or permitted to occupy. *Id.* § 1(1). Thus, Parliament provided for and courts have upheld a loose concept of "family" encompassing more than the traditional family unit. *See R. v. Swansea City Council*, *ex parte Thomas*, 9 H.L.R. 64 (Q.B. 1983) (man and woman living together with children); *R. v. North Devon Dist. Council*, *ex parte Lewis*, [1981] 1 W.L.R. 328 (Q.B. 1980) (man living with woman who was separated from her legal

duties include making "appropriate inquiries"¹⁸ to satisfy the authority that the applicant *is* homeless or threatened with homelessness.¹⁹ If the authority is satisfied that the applicant is homeless or threatened with homelessness, it must then determine whether the applicant has a "priority need"²⁰ and whether he became homeless or threatened with

husband, and their child). The Secretary of State, who is responsible for promulgating guidelines under the 1977 Act, has explained that the term "family" should include not only persons related by blood or marriage, but also persons "living together as if they were members of a family" such as cohabitating couples and disabled or elderly persons with housekeepers or other companions. Code of Guidance, para. 2.8, *see infra* note 36. *See also* Robson & Watchman, *supra* note 7, at 3 n.13; Smith, *supra* note 6, at 146-47 and n.21.

Parliament did not provide a precise definition of "accommodations" in the 1977 Act. In *Puhlhofer v. Hillingdon London Borough Council*, [1986] 2 W.L.R. 259 (H.L.), the House of Lords held that in determining whether an applicant has accommodations under §§ 1 and 4 of the Act, an authority should look to the ordinary meaning of the word and should not read into the statute a requirement of "reasonable" or "appropriate" accommodations. *Id.* at 283. Lord Brightman explained that applicants residing in accommodations that violate other statutes because they are unfit for habitation or overcrowded may still not qualify as homeless persons under § 1. *Id.* The Lord Justices stated that what constitutes "accommodations" is a question of fact for local authorities, and that in the instant case they could properly find that the applicants were not homeless despite their overcrowded situation. *Id.*

Section 1 includes within its definition of "homelessness" persons who have accommodations but cannot secure entry to them; persons who have accommodations but occupation will probably result in violence or threats of violence from other persons residing there; and persons with accommodations that are movable structures, vehicles, or vessels designed or adapted for human habitation but without places where they are entitled or permitted to reside. 1977 Act, § 1(2)(a)-(c).

Persons housed in temporary accommodations may still qualify as homeless under the Act. *See* *Din v. Wandsworth London Borough Council*, [1982] 1 A.C. 657, 677 (1981) (opinion of L. Lowry) ("I consider that to be homeless and to have found some temporary accommodation are not mutually inconsistent concepts."). The High Court has held that a woman housed at a refuge for battered wives was homeless within the meaning of the Act. *R. v. London Borough of Ealing, ex parte Sidhu*, 2 H.L.R. 45, 3 F.L.R. 438 (Q.B. 1982). The court explained that a contrary result would defeat the purposes of the Act. *Id.* *See R. v. East Hertfordshire Dist. Council, ex parte Hunt*, [1986] 1 F.L.R. 431 (Q.B. 1985).

17. Section 1 of the Act defines "threatened with homelessness" as the situation in which a person is likely to become homeless (as defined in this section) within 28 days. 1977 Act, § 1(3).

18. *Id.* § 3.

Under § 11 of the Act, a person is guilty of an offense if he knowingly or recklessly makes a false statement of a material fact or knowingly withholds information that an authority reasonably requires him to reveal pursuant to the Act. *Id.* § 11(1).

19. Local housing authorities have the discretion to determine what constitutes an "appropriate inquiry" under the Act. *See infra* notes 41-52 and accompanying text.

20. Section 2 of the Act defines "priority need" to include persons with whom de-

homelessness intentionally.²¹ Moreover, the authority, at its own discretion, may inquire whether the applicant has a "local connection" with another housing authority; if so, the former authority may be able to transfer the applicant to the latter authority.²² If the inquiring au-

pendent children reside or might reasonably be expected to reside; persons whose homelessness is a result of emergencies or disasters such as floods or fires; persons or others with whom they reside or may reasonably be expected to reside, who are particularly vulnerable because of old age, mental illness, physical disability, or other special reasons; and pregnant women or those who reside or might reasonably be expected to reside with pregnant women. 1977 Act, § 2(1)-(2). In addition, the Secretary of State, upon approval of both Houses of Parliament, may designate other categories of persons as having a priority need. *Id.* § 2(3)-(4). The Code of Guidance describes in detail the categories of priority need. Code of Guidance, para. 2.12, *see infra* note 36. *See infra* notes 53-59 and accompanying text.

21. *See infra* notes 80-113 and accompanying text. Section 17 of the Act describes the circumstances in which housing authorities should treat persons as intentionally homeless or threatened with homelessness:

(1) Subject to subsection (3) below, for the purposes of this Act a person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2) Subject to subsection (3) below, for the purposes of this Act a person becomes threatened with homelessness intentionally if he deliberately does or fails to do anything the likely result of which is that he will be forced to leave accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(3) An act or omission in good faith on the part of a person who was unaware of any relevant fact is not to be treated as deliberate for the purposes of subsection (1) or (2) above.

(4) Regard may be had, in determining for the purposes of subsections (1) and (2) above whether it would have been reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the area of the housing authority to whom he applied for accommodation or for assistance in obtaining accommodation.

1977 Act, § 17.

The notion of "intentional homelessness" was the major concession that the proponents of the original bill made to the opposition, including local housing authorities. M. PARTINGTON, *supra* note 5. *See supra* note 7. These authorities feared that they would be burdened with persons who were "self-induced homeless" trying to gain priority on housing waiting lists by "jumping the queue." Robson & Watchman, *supra* note 7, at 9 n.43 (quoting Paul Channon, Conservative Member of Parliament for Southend West, H.C. Deb., Second Reading, Vol. 926, col. 914). *See Smith, supra* note 6, at 153. Local housing authorities favored the statutory requirement of unintentional homelessness because their duties toward homeless persons under the Act are substantially less when authorities find that persons are intentionally homeless. *See* 1977 Act, § 4. *See infra* text accompanying notes 27-29.

22. *See infra* notes 60-79 and accompanying text. A person has a "local connection" with an area if he is now or was in the past normally residing there by his own

thority has reason to believe the applicant may be homeless and have a priority need, it has a duty to ensure that an accommodation is available for the applicant's occupation pending the results of the inquiry.²³

After these section 3 inquiries, if the housing authority finds that the applicant is homeless or threatened with homelessness, more substantial duties arise under section 4 of the Act.²⁴ If a housing official is not satisfied that an applicant has a priority need, however, the official's only duty is to provide advice²⁵ and "appropriate assistance."²⁶ When

choice, if he is employed in the area, if he has family associations there, or in any other special circumstances. 1977 Act, § 18(1). Under § 5 of the Act, a housing authority may shift its § 4 duty to another authority in order to obtain permanent accommodation for homeless applicants with priority need if (1) the former authority is of the opinion that neither the applicant nor anyone who might reasonably be expected to reside with him has a local connection with the area in which the authority operates; (2) the applicant or person who might reasonably be expected to reside with him has a local connection with the latter authority's area; (3) neither the applicant nor any person who might reasonably be expected to reside with him runs the risk of domestic violence in the latter authority's area; and (4) the former authority properly notifies the latter authority of the pending application and of its finding that the applicant has no local connection with its area. *Id.* § 5.

In any case, the authority from whom the applicant seeks assistance has the duty to ensure that housing becomes available for occupation. *Id.* § 5(5). *See infra* note 29. This duty rests with the authority, pending a determination of whether a local connection is present. 1977 Act, § 5(6). Moreover, the Code adds that an authority "may not seek to transfer responsibility on the ground that the person has a greater connection with the area of another authority." Code of Guidance, para. 2.20, *see infra* note 36.

The "local connection" concept was included in the Act as a concession to towns that feared they would be "magnets" for homeless persons because these towns are located in resort areas or near major railway stations. Robson & Watchman, *supra* note 7, at 12 (quoting H.C. Deb., Second Reading, Vol. 926 (W.R. Rees-Davies), cols. 905, 921, 972 & 973 (Feb. 18, 1977)); M. PARTINGTON, *supra* note 5, § 48/3; Woodward & Davidge, *supra* note 7, at 164. By making inquiries of applicants and finding local connections with other authorities, these "magnet authorities" could lessen the burden of having a disproportionate share of homeless persons within their jurisdictions. Robson & Watchman, *supra* note 7, at 12.

23. 1977 Act, § 3(4). *See infra* note 29. Section 16 of the Act defines "accommodation available for occupation" as an accommodation that is available for occupation both by the applicant and by any other person who might reasonably be expected to reside with him. 1977 Act, § 16.

24. *See id.* § 4. Section 8 of the Act details the housing authority's duties in notifying the applicant of its findings pursuant to its § 3 inquiries. *Id.* § 8.

25. The Act does not define "advice," but the Code of Guidance states that authorities should give advice and other forms of assistance "as helpfully and constructively as they are able," including financial advice. Code of Guidance, para. 6.2, *see infra* note 36. Furthermore, paragraph 6.4 of the Code explains:

Advice and assistance to homeless people and people threatened with homelessness should always be positive, and include for example advice about the possibility of

the authority determines that the applicant has a priority need, but finds that he became homeless or threatened with homelessness intentionally, the authority must do more than merely provide advice and assistance. The local authority must ensure that accommodations are available for a period of time reasonable to enable the applicant to secure housing on his own.²⁷

If the housing authority is satisfied that the applicant is *threatened with* homelessness, has a priority need, and did not become threatened with homelessness intentionally, the authority's duty is "to take reasonable steps to secure that accommodation does not cease to be available for his occupation."²⁸ If the local authority finds that the applicant *is* homeless, has a priority need, did not become homeless intentionally, and has no local connection with another housing authority, the authority must ensure that accommodations become available for his occupation.²⁹

II. DISCRETIONARY DECISIONS OF LOCAL HOUSING AUTHORITIES

The 1977 Act delegates broad discriminatory powers³⁰ to predominantly hostile³¹ authorities. Courts interpreting the statute have reinforced this grant of discretion.³² Thus, authorities exercising these

registration on the housing waiting list, and of help available through a housing aid centre. Lists of accommodation agencies, hostels, lodgings and provision available through arrangements with registered housing associations will also be relevant. *Id.* para. 6.4.

26. 1977 Act, § 4(2). Section 19(1) defines "appropriate assistance" to mean "such assistance as a housing authority considers it appropriate in the circumstances to give [the applicant] in any attempts that he may make to secure that accommodation becomes or does not cease to be available for his occupation." *Id.* § 19(1).

27. *Id.* § 4(3). *See supra* note 23.

28. 1977 Act, § 4(4). *See Lally v. Royal Borough of Kensington & Chelsea* (Ch. Mar. 21, 1980) (LEXIS, Enggen library, Cases file) (14-day period held not to be reasonable opportunity to secure accommodation in light of circumstances whereby pregnant wife became ill).

29. 1977 Act, § 4(5). A housing authority fulfills this duty by making council housing available to the applicant, by assuring that he obtains housing from some third party, or by giving him advice and assistance that will ensure that he obtains housing from some third party. *Id.* § 6. The House of Lords has explained that authorities should not read into the statute a requirement of reasonable or appropriate accommodations. *Puhlhofer v. Hillingdon London Borough Council* [1986] 2 W.L.R. 259, 283 (H L.). *See supra* note 16.

30. *See Birkinshaw, supra* note 2, at 257; *Robson & Watchman, supra* note 7, at 82.

31. *See supra* note 12.

32. *See infra* notes 41-113 and accompanying text.

powers may avoid their responsibilities to provide significant housing assistance to homeless persons under the Act.³³

A. *The Code of Guidance*

The housing authority's discretion in enforcing the Act derives in part from the non-binding nature of the ministerial guidelines³⁴ that the Act explicitly authorizes. The language of section 12 of the Act apparently requires that housing authorities follow any guidelines that the Secretary of State may periodically promulgate.³⁵ In 1977 the Department of the Environment, the Department of Health & Social Security, and the Welsh Office issued a Code of Guidance that established guidelines for local authorities to follow in dealing with both homeless persons and those threatened with homelessness.³⁶ The Code liberally interprets the provisions of the 1977 Act that entitle applicants to receive significant housing assistance.³⁷ Despite the mandatory language of section 12,³⁸ however, the Court of Appeal in *De Falco v. Crawley Borough Council*³⁹ held that the Code of Guidance is not binding on local authorities but is merely discretionary in nature.⁴⁰ Thus, housing authorities are able to avert the liberal code provisions and restrict the number of applicants who qualify for significant protection under the Act.

33. *Id.*

34. See *infra* notes 35-40 and accompanying text.

35. Section 12(1) provides:

In relation to homeless persons and persons threatened with homelessness a relevant authority *shall* have regard in the exercise of their functions to such guidance as may from time to time be given by the Secretary of State.

1977 Act, § 12(1) (emphasis added).

36. The Housing (Homeless Persons) Act, Code of Guidance (England & Wales) D.O.E., D.H.S.S., and Welsh Office (1977), reprinted in M. PARTINGTON, *supra* note 5, app. [hereinafter Code of Guidance]; Code of Guidance (1983 amendments), reprinted in Wilkinson, *Homeless Persons: The New Code of Guidance*, 1983 NEW L.J. 1029 [hereinafter 1983 Code of Guidance].

37. Birkinshaw, *supra* note 2, at 274. See *Din v. Wandsworth London Borough Council* [1983] 1 A.C. 657, 664 (1981) (Act must be interpreted "with liberality having regard to its social purposes").

38. See *supra* note 35. The term "shall" in a statutory provision generally denotes a mandatory act.

39. [1980] 1 Q.B. 460 (C.A. 1979) (Italian families found intentionally homeless when they moved to Britain without ensuring that they had permanent accommodations there).

40. *Id.* at 477-78.

B. "Appropriate Inquiries"

Under the Act, a local authority has a duty to make "appropriate inquiries" to determine whether a person is homeless or threatened with homelessness, and if so, whether he has a priority need and whether he became homeless or threatened with homelessness intentionally.⁴¹ Because a finding of homelessness, priority need, and intentional homelessness determines the extent of the housing authority's duties⁴² toward an applicant seeking accommodations, the nature of the inquiry takes on great significance. The Act simply provides that "appropriate inquiries" are those necessary to satisfy the authority.⁴³ The Code of Guidance, though detailing a list of subjects that should be covered during inquiry,⁴⁴ merely asks that authorities make their inquiries as quickly and sympathetically as possible.⁴⁵

Courts have refrained from imposing strict procedural requirements on the manner of inquiry and instead seem to require that inquiries accord with the principles of fairness.⁴⁶ In *Lally v. Royal Borough of Kensington and Chelsea*⁴⁷ the court held that local authorities need only conduct inquiries of the applicants and that detailed "C.I.D."-type inquiries are unnecessary.⁴⁸ Judge Browne-Wilkinson noted, however, that authorities should make inquiries in a rigorous and fair man-

41. 1977 Act, § 3(1)-(2). The authority may inquire whether the applicant has a local connection with the area of another housing authority. *Id.* § 3(3).

42. *See id.* §§ 3(4), 4(1)-(5).

43. *Id.* § 3(2).

44. Paragraph 2.2 of the Code provides:

The inquiries will normally cover such matters as the size and structure of the household, the nature and location of the accommodation last occupied, the reasons for leaving it, the prospects of return, the question of the availability of accommodation elsewhere, any particular problems such as illness or handicap, any need for accommodation at some distance from a violent partner, and the length of time that the applicant expects to stay in the area. Other relevant matters may include the place and type of employment, family connections, or attendance at hospitals or schools.

Code of Guidance, para. 2.2.

45. *Id.* para. 2.3. The Code provides that authorities should conduct inquiries as to intentional homelessness in a sensitive and careful manner. *Id.* para. 2.19.

46. *See M. PARTINGTON, supra* note 5, § 48/3; Robson & Watchman, *supra* note 7, at 66-67. *See infra* notes 47-52 and accompanying text.

47. Ch. Mar. 21, 1980 (LEXIS, Enggen library, Cases file) (authority made adequate inquiry when it found that family was intentionally homeless but did not allow a reasonable time to find other accommodations under § 4(3) of the Act).

48. *See Miller v. London Borough of Wandsworth* (Ch. Mar. 17, 1980) (LEXIS, Enggen library, Cases file).

ner.⁴⁹ In addition, an authority must conduct inquiries that provide the reviewing courts with an adequate factual basis upon which to decide the case.⁵⁰ Because the authority's inquiries are a question of fact,⁵¹ judicial review of whether the authority conducted an appropriate inquiry is extremely limited.⁵²

C. "Priority Need"

Housing authorities also have discretion to determine whether applicants have a "priority need"⁵³ under section 2 of the Act.⁵⁴ A determi-

49. Ch. Mar. 21, 1980. See *R. v. Penwith Dist. Council, ex parte Kevern*, CO/810/84 (Q.B. Dec. 14, 1985) (LEXIS, Enggen library, Cases file).

Two recent court decisions held that housing authorities may not assume facts about which they fail to inquire in order to find intentional homelessness. See *R. v. London Borough of Wandsworth, ex parte Rose*, 11 H.L.R. 105 (Q.B. 1983) (authority could not assume, without inquiry, that applicant failed to act in good faith when she left secure accommodations in Jamaica to reside with her father in England, where accommodations proved to be inadequate); *R. v. Reigate & Banstead Council, ex parte Paris*, [1985] F.L.R. 123 (Q.B. 1984) (authority was not entitled to assume without inquiry that previous accommodation in Italy was available for occupation or that it would have been reasonable to continue occupation there); see also *R. v. West Dorset Dist. Council, ex parte Phillips*, CO/114/84 (Q.B. Nov. 15, 1984) (LEXIS, Enggen Library, Cases file) (authority failed to make proper inquiries whether applicant knew that husband used rent money to buy liquor).

50. See *Rose*, 11 H.L.R. at 105; *Parr v. Wyre Borough Council*, 2 H.L.R. 71 (C.A. 1982) (opinion of L.J. Eveleigh).

51. *Youngs v. Thanet Dist. Council*, 78 L.G.R. 474 (Ch. 1980).

52. See *infra* notes 114-21 and accompanying text.

53. See *supra* note 20. It is immaterial whether priority need arises from one or a combination of the factors set out within a category. *R. v. Waveney Dist. Council, ex parte Bowers*, [1983] 1 Q.B. 238, 245-48 (C.A. 1982) (applicant with brain injury was "vulnerable" within the meaning of § 2(1)(c)).

Lord Wilberforce described how the Act operates: [The Act] forms part of a complex of duties which local authorities owe to categories of persons seeking housing. These persons are normally placed on a waiting list, in some areas a very long one, and are given accommodation according to a points system of priority. Inevitably every allocation of priority housing to homeless persons must have the effect of deferring the hopes of persons in other categories, some of whom may have been waiting for a long time. . . . [A] decision against priority treatment under this Act does not mean that nothing can be done for the "homeless" applicants. They can join the waiting list for a council tenancy . . . or they can seek nomination to a housing association or, with the help of advice, they can seek private sector housing, with temporary accommodation meanwhile.

Din v. Wandsworth London Borough Council, [1983] 1 A.C. 657, 663-64 (1981).

54. 1977 Act, § 2. The Court of Appeal has noted that the Code of Guidance is useful to ascertain the degree of vulnerability comprising "priority need." See *Bowers*, [1983] 1 Q.B. at 245; Code of Guidance, para. 2.12.

nation of priority need is important because a homeless applicant without priority need will receive only advice and appropriate assistance from the authority.⁵⁵ If an authority finds that a person has a priority need and did not become homeless intentionally, a more substantial duty to secure housing arises.⁵⁶ To qualify for priority need status under the Act, a person, or someone with whom the person resides, must possess a characteristic, such as pregnancy, mental illness, physical disability, old age, or living with dependent children, that indicates his particular vulnerability.⁵⁷ Thus, by requiring a finding of priority need, the Act effectively excludes single homeless persons from its coverage.⁵⁸ Moreover, housing authorities may use their discretion to interpret the Act's priority need classifications narrowly, thereby excluding persons whom authorities do not wish to protect.⁵⁹

D. "Local Connection"

A housing authority wields a great deal of discretion in determining that an applicant has a local connection with another authority. The former authority, therefore, may transfer the responsibility of securing accommodations to the latter authority.⁶⁰ Section 5 of the Act, providing for the transfer of duties between local authorities, was a concession to certain cities' authorities that feared the burden of housing an inordinate number of homeless persons because of the cities' proximity to railway stations or holiday areas.⁶¹ The courts that have interpreted this provision have responded to these concerns by promoting the liberal transfer of duties.⁶² This policy generally operates to the disadvantage of the homeless applicant by compelling him to move away from his desired place of residence, or even out of the country, in order to obtain housing.⁶³

55. 1977 Act, § 4(2). See *supra* notes 25-26 and accompanying text.

56. See *supra* note 29 and accompanying text.

57. See *supra* note 20.

58. See *supra* note 8. The Secretary of State for the Environment has acknowledged his department's desire to maintain the priority groups described within the statute. See Birkinshaw, *supra* note 2, at 286-87 (quoting statement of Secretary of State for the Environment, H.C. Deb., Vol. 23, May 13, 1982).

59. Cf. *supra* note 12.

60. See *supra* note 22 and accompanying text.

61. See *id.*

62. See *infra* notes 64-79 and accompanying text. See also Woodward & Davidge, *supra* note 7, at 165.

63. See *infra* notes 65-70 and accompanying text. But see *R. v. Slough Borough*

One court has used section 6 to avoid the section 5 requirement that a housing authority may transfer its responsibilities only to other authorities within the country.⁶⁴ In *R. v. Bristol City Council, ex parte Browne*,⁶⁵ the divisional court, applying section 6(1)(c),⁶⁶ held that the authority could fulfill its section 4(5) duty⁶⁷ to ensure that accommodations became available by transferring an applicant, who had no local connection with any area of England,⁶⁸ to her home country as long as local officials in the other country were willing to secure accommodations for her.⁶⁹ Thus, the court's interpretation of section 6(1)(c)

Council, *ex parte* Ealing London Borough Council, [1981] 1 Q.B. 801 (C.A. 1980). In *Slough* the borough council evicted two families who had resided in Slough for several years. *Id.* at 808-10. When the families applied for accommodations, the authority found them intentionally homeless and arranged for temporary housing in Ealing and Hillingdon, other housing authority areas, because none was available in Slough. *Id.* The families then applied to the Ealing and Hillingdon authorities for accommodations, and these authorities found that the families were unintentionally homeless and that they had local connections with Slough. *Id.* The Court of Appeal held that the Ealing and Hillingdon authorities could transfer the responsibility to insure that accommodations became available to the Slough authority, which had previously determined that the families were intentionally homeless. *Id.* at 810-11. Thus, the *Slough* court's application of a liberal transfer policy created a curious result. See Woodward & Davidge, *supra* note 7, at 165.

64. See *infra* notes 65-69 and accompanying text.

65. [1979] 1 W.L.R. 1437 (Q.B.). In *Browne* the applicant and her seven children left their home in Tralee, Ireland and moved to Limerick, Ireland because of domestic violence. *Id.* at 1439. When her husband discovered her whereabouts, the hostel where she had been staying arranged for her and her children to go to Bristol, England. *Id.* She applied to the Bristol housing authority, which subsequently found that the applicant had a priority need and had become homeless unintentionally. The authority, therefore, had a duty under § 4(5) of the Act to insure that accommodations became available for her occupation, despite the fact that she had no local connection with Bristol. *Id.* at 1439-40. The authority fulfilled its duty by applying § 6(1)(c) which allows an authority to comply with its § 4(5) duty by giving the applicant "advice and assistance as will secure that he obtains accommodation from some other person." *Id.* at 1441. The authority, in the course of its inquiries, spoke with the community welfare officer in Tralee who knew of the husband's violence and gave his assurance that upon the return of the applicant and her children, they would be provided with suitable accommodation. *Id.* at 1440. The housing authority reasoned that because the Tralee official was willing to secure accommodation, the authority could fulfill its duty under the Act by advising the applicant to return to Tralee and contact the welfare officer, and then arranging to pay for her return, despite the applicant's desire not to return to Tralee. *Id.* at 1440-41.

66. 1977 Act, § 6(1)(c).

67. 1977 Act, § 4(5). See *supra* text accompanying note 23.

68. But see *infra* note 71.

69. [1979] 1 W.L.R. at 1442-43. The court upheld the authority's use of § 6(1)(c) in fulfilling its duty to the applicant to secure that accommodations become available

encourages authorities to evade their section 5 duties.⁷⁰ Most courts have not extended this decision to cases in which the applicant's home country was unwilling to secure accommodations.⁷¹

The House of Lords recently upheld this liberal transfer policy in its interpretation of section 18(1),⁷² which defines "local connection."⁷³ In *Eastleigh Borough Council v. Betts*⁷⁴ the Lord Justices held that a local connection must be founded upon the factors cited in section 18(1), "normal residence," "employment," "family connections," or "special circumstances," but is not equivalent to any one of these factors.⁷⁵ Lord Brightman explained that an authority could establish

under § 4(5). *Id.* Section 6(1)(c) provides that the duty under §§ 4 and 5 to insure that accommodations become available for occupation may be fulfilled by giving an applicant "advice and assistance as will secure that he obtains accommodation from some other person." 1977 Act, § 6(1)(c). The court held that "some other person" could be someone outside of Great Britain; here, the other person was the welfare officer in Tralee. *See* [1979] 1 W.L.R. at 1442. The court further held that the welfare officer's general offer of housing constituted "accommodation available for occupation" under § 16 of the Act, even though the authority and the welfare officer failed to discuss the specifics of the accommodations. *Id.* at 1443.

The consequences of the *Browne* decision are particularly harsh. The court allowed the local authority to return the unwilling applicant to the country and city from which she fled because of domestic violence. *See supra* note 65. The court explained that even though the applicant had been a victim of domestic violence in Tralee, she did not necessarily run a risk of violence upon returning there. [1979] 1 W.L.R. at 1443. Moreover, the court permitted the authority to determine "on the barest of evidence" that no risk of domestic violence would exist upon the applicant's return. *Robson & Watchman, supra* note 7, at 13.

70. *See Woodward & Davidge, supra* note 7, at 164.

71. *See R. v. Hillingdon London Borough Council, ex parte Streeting*, [1980] 1 W.L.R. 1425, 1432-33 (C.A.). In *Streeting* the housing authority found that the applicant had priority need and was not intentionally homeless, but had no local connection with any British housing authority. *Id.* at 1431-32. The Court of Appeal held that nothing in the Act limited an authority's duty to persons with local connections, that the Act applied to any person without accommodations in Great Britain, and that the only condition to providing accommodations was that the person must be in the country lawfully. *Id.* at 1432-34. The result would have been different if accommodations had been available outside of the country. *Id.* at 1433. *See Smith, supra* note 6, at 153.

72. 1977 act, § 18(1). *See supra* note 22.

73. *See infra* notes 74-78 and accompanying text.

74. [1983] 2 A.C. 613, 626. In *Betts* the House of Lords upheld a housing authority's determination that an applicant had no local connection with the area of the authority because he had lived in the area less than six months. *Id.* at 628. The authority, therefore, could transfer the responsibility to another authority in an area with which the applicant had a local connection. *Id.*

75. Thus, an authority's decision that an applicant was normally resident in its area would not necessarily mandate a finding of a local connection with the area. *See*

guidelines⁷⁶ to determine what constitutes "normal residence" under section 18(1)(a), provided the authority makes its decisions on a case-by-case basis.⁷⁷ *Betts* apparently allows an authority to find no local connection with an applicant even if one or more of the section 18(1) criteria are met.⁷⁸ Thus, the House of Lords has broadened housing authorities' discretion to find that no connection exists and, consequently, has allowed authorities to shirk their duties under the Act.⁷⁹

E. *Intentional Homelessness*

The most heavily litigated⁸⁰ and highly discretionary⁸¹ aspect of the 1977 Act is the concept of intentional homelessness,⁸² whereby a housing authority may significantly reduce its duties toward a homeless person by determining that he became homeless intentionally.⁸³ Section 17(1) defines a person as intentionally homeless "if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy."⁸⁴ The courts that have examined the issue of intentional homelessness have focused on one or more of the various elements comprising this definition.

First, the definition encompasses both acts and omissions, allowing an authority to find a person intentionally homeless as a result of his

Watchman, *Recent Cases, R. v. Eastleigh Borough Council, ex parte Betts*, 1984 J. Soc. WELFARE L. 365, 368.

76. The housing authority based its finding of no local connection on an agreement issued by the Association of District Councils, the Association of Metropolitan Authorities, and the London Boroughs Association which provided that "a working definition of 'normal residence' should be that the household has been residing for at least 6 months in the area during the previous 12 months." [1983] 2 A.C. at 622.

77. *Id.* at 627-28 (citing *British Oxygen Co. v. Board of Trade*, [1971] A.C. 610).

78. *See supra* note 75 and accompanying text.

79. *Cf.* Watchman, *supra* note 75, at 368-69 (decision will result in authorities arbitrarily finding no local connection, despite the fact that one or more of the § 18(1) criteria are met, and will lead to disagreements between housing authorities).

80. *See Cocks v. Thanet Dist. Council*, [1983] 2 A.C. 286, 291 (1982).

81. *See Smith, supra* note 6, at 156.

82. *See supra* note 21.

83. *See Cocks*, [1983] 2 A.C. at 291 (finding of intentional homelessness is of crucial importance because of practical differences between full housing duties and limited housing duties).

84. 1977 Act, § 17(1). Section 17(2) similarly defines persons who are threatened with homelessness intentionally.

actions or his failure to act.⁸⁵ Second, the intentional homelessness must be deliberate. The applicant must have deliberately done something or failed to do something that brought about his homelessness.⁸⁶ Section 17(3) clearly states that an act or omission in good faith by "a person who was unaware of any relevant fact" does not constitute deliberateness.⁸⁷ Thus, the courts normally find that deliberate acts or omissions stem from willful and persistent behavior.⁸⁸ This type of behavior is evident when an applicant voluntarily terminates⁸⁹ or fails to retain⁹⁰ his tenancy, fails to make a reasonable attempt to pay rent,⁹¹ or takes part in undesirable conduct that results in his eviction.⁹² In *Devenport v. Salford City Council*⁹³ the Court of Appeal interpreted the language of section 17(1) to merely require any deliberate act or

85. 1977 Act, § 17(1). See Robson & Watchman, *supra* note 7, at 10.

86. 1977 Act, § 17(1). See Robson & Watchman, *supra* note 6, at 10-11.

87. 1977 Act, § 17(3).

88. See Robson & Watchman, *supra* note 7, at 10-11; See also *infra* notes 89-92. But see 1983 Code of Guidance, para. 2.15. Paragraph 2.15 (as amended) provides:

Where . . . a person was obliged to sell because he could not keep up the mortgage repayments, or got into rent arrears, because of real personal or financial difficulties or because he was incapable of managing his affairs on account of *e.g.* old age or mental illness, his acts or omissions should not be regarded as having been deliberate. Where homelessness is the result of serious financial difficulties arising, for example, from loss of employment or greatly reduced earnings, the applicant should not normally be regarded as intentionally homeless.

Id.

89. See, *e.g.*, *Dyson v. Kerrier Dist. Council* [1980] 1 W.L.R. 1205 (C.A.) (young pregnant girl voluntarily terminated tenancy when she moved away to be near her family); *Lally v. Royal Borough of Kensington & Chelsea* (Ch. Mar. 21, 1980) (LEXIS, Enggen library, Cases file) (family voluntarily abandoned tenancy without indicating an intent to return).

90. See *Miller v. London Borough of Wandsworth*, (Ch. Mar. 17, 1980) (LEXIS, Enggen library, Cases file) (family failed to retain apartment that was damaged by fire despite authority's warning that this conduct would render them intentionally homeless).

91. See, *e.g.*, *Robinson v. Torbay Borough Council* [1982] 1 All E.R. 726 (Q.B. 1981) (applicant's continued failure to make rent payments until landlord brought action against him constituted deliberate act that reasonably resulted in eviction); *Hamilton Dist. Council v. Brown* (H.L. Nov. 25, 1982) (Scot.) (LEXIS, Enggen library, Cases file) (applicant's deliberate failure to pay rent allowances resulted in intentional homelessness).

92. See, *e.g.*, *Davenport v. Salford City Council*, 8 H.L.R. 54, 4 F.L.R. 744, 82 L.G.R. 89 (C.A. 1983) (family evicted as a result of children's misconduct); *R. v. Slough Borough Council, ex parte Ealing London Borough Council*, [1981] 1 Q.B. 801 (C.A. 1980) (family evicted by local authority because of undesirable conduct).

93. 8 H.L.R. 54, 4 F.L.R. 744, 82 L.G.R. 89 (C.A. 1983).

omission by an applicant. The court rejected the argument that section 17(1) requires a deliberate act or omission *with the intention* of becoming homeless.⁹⁴ By expanding the group of persons whose acts or omissions meet the deliberateness requirement, the court facilitated a finding of intentional homelessness.⁹⁵ This interpretation of the statute provides housing authorities with greater discretion to limit their duties toward homeless persons.

The third requisite element for a finding of intentional homelessness under section 17(1) is causation. An applicant's deliberate act or omission must bring about his homeless condition.⁹⁶ In determining the chain of causation, housing authorities may examine previous actions to find the deliberate act or omission that was the catalyst for the series of events that eventually resulted in homelessness.⁹⁷ Moreover, authorities may further enlarge the broad scope of acts and omissions causally connected to the resulting homelessness by imputing the acts and omissions of family members to the applicants.⁹⁸ Once an author-

94. See *Robinson*, [1982] 1 All E.R. at 729-31 (continued failure to pay rent until action brought by landlord constituted deliberate act reasonably resulting in eviction, despite applicant's unawareness that this conduct would result in eviction). *But cf.* 1983 Code of Guidance, para. 2.15 (when finding an applicant intentionally homeless, authority should be satisfied that the person has acted "with full knowledge of the likely consequences").

95. See Watchman, *Recent Cases, R. v. Salford City Council, ex parte Devenport*, 1983 J. SOC. WELFARE L. 353, 355.

96. See 1977 Act, § 17(1); see also Robson & Watchman, *supra* note 7, at 9-12.

97. See, e.g., *Lambert v. Ealing London Borough Council* [1982] 1 W.L.R. 550, 556-57 (C.A.) (accommodations that person left "intentionally" do not have to be the last accommodations before applying for housing under the Act); *Dyson v. Kerrier Dist. Council*, [1980] 1 W.L.R. 1205, 1213-15 (C.A.) (proper for authority to look beyond circumstances of recent eviction to fact that young pregnant girl had previously given up secure accommodations to return to the town where her family resided).

The Code of Guidance as initially promulgated in 1977 stated that in determining intentional homelessness, authorities should look solely at the most immediate cause of the homelessness. Code of Guidance, para. 2.18. The 1983 amendments, however, have revised paragraph 2.18. The Code now recognizes that courts have approved the housing authorities' practice of looking beyond the most immediate cause of homelessness: "[W]here homelessness arises from loss of accommodation of a temporary nature, it may therefore be relevant to consider the circumstances in which the previous accommodation was given up." 1983 Code of Guidance, para. 2.18. See generally Rattenbury, *The Housing (Homeless Persons) Act 1977, s.17, Din and the Voluntary Homeless*, 1983 J. PLAN. & ENV'T L. 4, 8-16.

98. Because the courts have required that housing authorities consider the needs of the family unit as a whole, see *supra* note 8, the deliberate acts or omissions of a member of a family unit may be imputed to the applicant, rendering him intentionally homeless. See, e.g., *R. v. Swansea City Council, ex parte Thomas*, 9 H.L.R. 64 (Q.B. 1983) (co-

ity finds a person intentionally homeless, however, certain intervening events may occur to change his status to unintentionally homeless upon reapplication to the authority.⁹⁹

In *Din v. Wandsworth London Borough Council*¹⁰⁰ the court held that the material date for determining whether or not an applicant is intentionally homeless is the date when he vacated the premises, and

habitee's anti-social behavior imputed to applicant who was in prison during such conduct); *R. v. North Devon Dist. Council, ex parte Lewis*, [1981] 1 W.L.R. 328 (Q.B. 1980) (co-habitee's voluntary termination of employment imputed to applicant); *Devenport*, 8 H.L.R. at 54, 4 F.L.R. at 744, 82 L.G.R. at 89 (children's misconduct constituting a nuisance or annoyance to neighbors imputed to parents). The *Thomas* and *Lewis* courts held that an applicant's acquiescence to his co-habitee's deliberate act entitles the housing authority to impute this act to the applicant and to find that the act caused him to become homeless intentionally. See *Thomas*, 9 H.L.R. at 64; *Lewis*, [1981] 1 W.L.R. at 334. The *Thomas* court, however, cautioned that housing authorities should not automatically assume that the applicant is a party to the deliberate act or omission of another member of his family unit and should make specific inquiries to this effect. 9 H.L.R. at 64. See *R. v. West Dorset Dist. Council, ex parte Phillips*, CO/114/84 (Q.B. Nov. 15, 1984) (LEXIS, Enggen library, Cases file). The court noted that the authority's finding should depend on the particular facts of each case. *Id. But cf. Lewis*, [1981] 1 W.L.R. at 333 (reasonable for authority to look at the family unit as a whole and assume, in the absence of contrary evidence, that applicant was a party to the deliberate act of another member of the family unit). The *Thomas* case indicates that an applicant must actively disassociate himself from the acts or omissions that constitute the grounds for a finding of intentional homelessness. See *Watchman, Recent Cases, R. v. Swansea City Council, ex parte Thomas*, 1983 J. SOC. WELFARE L. 356, 357.

99. Thus, the initial state of intentional homelessness does not necessarily continue. See *Youngs v. Thanet Dist. Council*, 78 L.G.R. 474 (Ch. 1980) (applicant was no longer intentionally homeless after being forced out of accommodations that he had found on his own); *Robson & Watchman, supra* note 7, at 4-6; *cf. R. v. Slough Borough Council, ex parte Ealing London Borough Council*, [1981] 1 Q.B. 801 (C.A. 1980) (authorities transferred back responsibility to insure that accommodations became available to another authority that had previously determined that applicants were intentionally homeless). *But see Lambert* [1982] 1 W.L.R. at 557 (status of intentional homelessness not affected by acquiring temporary vacation rentals); *Delahaye v. Oswestry Borough Council*, SJ 42a/80 (A.B. 1980) (LEXIS, Enggen library, Cases file) (no change in applicant's intentionally homeless status when he reapplied after authority evicted his family from temporary accommodations).

100. [1983] 1 A.C. 657, 666-68 (1981). In *Din* a family suffering from financial difficulties disregarded the housing authority's advice to stay on the premises until the court issued an order for possession. *Id.* at 665. Upon receiving a distress warrant, the family moved into overcrowded temporary housing with relatives. *Id.* After their relatives forced the family to leave, they applied to the authority for permanent accommodations. *Id.* at 666. Housing officials refused to provide assistance because the applicants had become homeless intentionally by voluntarily leaving their original accommodations before receiving the court order for possession. *Id.* See generally *Ratentbury, supra* note 97.

other events¹⁰¹ that may have occurred prior to applying to the housing authority are irrelevant. Thus, because the applicant prematurely left his accommodations before receiving a court order mandating his eviction, the authority could properly find that he deliberately caused his homeless condition.¹⁰² To find unintentional homelessness, some lower courts have not required applicants to remain on the premises until they receive an actual court order for possession. Rather, these courts merely require a threat of imminent eviction.¹⁰³ On the whole, however, courts have accepted housing authorities' determinations that the requisite causal connections exist between applicants' deliberate acts or omissions and their resulting homelessness.¹⁰⁴

The fourth requirement of section 17(1) allows an authority to find an applicant intentionally homeless if his deliberate act or omission resulted in his ceasing to occupy accommodations that were available for his occupation.¹⁰⁵ The House of Lords interpreted the availability requirement¹⁰⁶ less broadly than the local authority in *In re Islam (Tafazzul)*,¹⁰⁷ holding that the accommodations in question were not available for occupation.¹⁰⁸

101. These hypothetical events include the following: (1) the applicant would have remained on the premises; (2) he would have received a court order for possession forcing his eviction; and (3) the authority then would have found him to be unintentionally homeless. See [1983] 1 A.C. at 667.

102. *Id.* at 671. See generally Rattenbury, *supra* note 97, at 16-18.

103. See *R. v. Surrey Heath Borough Council, ex parte Li*, 16 H.L.R. 79 [1985] F.L.R. 38 (Q.B. 1984); *R. v. Portsmouth City Council, ex parte Knight*, 10 H.L.R. 115, [1984] F.L.R. 899, 82 L.G.R. 184 (Q.B. 1983).

104. See *supra* notes 97-98, 100-02 and accompanying texts.

105. 1977 Act, § 17(1).

106. See Rattenbury, *supra* note 97, at 5-8.

107. [1983] 1 A.C. 688, 708, 716 (1981). In *Islam* a Bangladesh applicant who was a resident of England sent for his wife and children to join him from Bangladesh where they had lived with his parents. *Id.* at 707. After their arrival, he and his family lacked adequate accommodations and became homeless. *Id.* The authority found that the applicant had become intentionally homeless because he deliberately arranged for his wife and children to leave accommodations that they could reasonably have continued to occupy. *Id.* at 707-08. Speaking for the Court of Appeal, Lord Denning upheld the authority's decision, explaining that the applicant, though having resided in England for 16 years, "occupied" the home in Bangladesh through his wife and family. *R. v. Hillingdon London Borough Council, ex parte Islam (Tafazzul)*, [1983] 1 A.C. 688, 694 (1981). The House of Lords reversed the lower court's decision, rejecting the notion that the applicant had left accommodations that were available for occupation by his family under §§ 16 and 17 of the Act. [1983] 1 A.C. at 708, 716.

108. The Court of Appeal decision in *Islam* reflects a xenophobic attitude on the part of the majority and their efforts to use the Homeless Persons Act as a means of

The final factor necessary for a finding of intentional homelessness is the unsuitability of prior accommodations.¹⁰⁹ Courts have also construed the suitability element less liberally than local authorities.¹¹⁰ Local authorities usually adopt the prevailing attitude among housing authorities¹¹¹ and attempt to prevent aliens and non-residents from obtaining benefits under the 1977 Act.¹¹²

immigration control. See Woodward & Davidge, *supra* note 7, at 166-67; see also Smith, *supra* note 6, at 155. Lord Denning displayed this attitude when he declared: "The moral of this case is that men from overseas should not bring their wives and children here unless they have arranged permanent and suitable accommodation for them to come to." [1983] 1 A.C. at 695. See *De Falco v. Crawley Borough Council* [1980] 1 Q.B. 460, 472, 477-78 (C.A. 1979) (opinion of L. Denning) (Italian families held intentionally homeless because they came to England without ensuring that they had permanent accommodations). But see *R. v. Hammersmith & Fulham London Borough Council, ex parte Duro-Rama*, 9 H.L.R. 71 (Q.B. 1983); *R. v. Reigate & Banstead Council, ex parte Paris*, [1985] F.L.R. 123 (Q.B. 1984); *R. v. London Borough of Wandsworth, ex parte Rose*, 11 H.L.R. 105 (Q.B. 1983).

109. See Rattenbury, *supra* note 97, at 5-8.

110. See *Duro-Rama*, 9 H.L.R. at 71; *Paris*, [1985] F.L.R. at 123. In *Duro-Rama* the High Court held that in determining whether or not it was reasonable for an applicant to continue to occupy available accommodations, a housing authority is entitled to take into account non-housing circumstances. 9 H.L.R. at 71. In this case, the authority was entitled to take into account the fact that the Spanish nationals with a right of abode in the United Kingdom had no opportunity to work in Spain, where they had been residing, and were not eligible for unemployment benefits there. *Id.* The court rejected the housing authority's argument that § 17(4) of the Act, which states that the authority may have regard to general housing circumstances prevailing in the area of application, is the sole factor to which an authority may look when determining whether the applicant has met the suitability requirement of § 17(1). *Id.* In addition, the *Paris* court held that a housing authority may not assume that an applicant's accommodations are suitable without expressly inquiring into the matter. [1985] F.L.R. at 123. But see *De Falco*, [1980] 1 Q.B. at 482-84.

One court deferred to an authority's finding of suitability despite evidence that accommodations were unfit for human habitation. See *R. v. Borough of Dinefwr, ex parte Marshall*, CO/623/84 (Q.B. Nov. 13, 1984) (LEXIS, Enggen library, Cases file) (accommodations suitable despite inadequate supply of electricity and unwholesome tap water).

111. See, e.g., *Islam*, [1983] 1 A.C. at 688 (authority found Bangladesh family to be intentionally homeless); *De Falco*, [1980] 1 Q.B. at 460 (authority found Italian families to be intentionally homeless); *Paris*, [1985] F.L.R. at 123 (authority determined that Italian husband, English wife, and their child, all previously living in Italy, were intentionally homeless); *Duro-Rama*, 9 H.L.R. at 71 (authority found Spanish family to be intentionally homeless); *Rose*, 11 H.L.R. at 105 (authority found that English mother and child, previously living in Jamaica, were intentionally homeless); *R. v. Bristol City Council, ex parte Browne*, [1979] 1 W.L.R. 1437 (Q.B.) authority determined that Irish mother and her children had no local connection and transferred them back to Ireland).

112. See *supra* note 108.

Thus, in some respects the courts have occasionally provided a check on housing authorities' discretionary decisions regarding intentional homelessness. The judiciary, however, has too often upheld findings of intentional homelessness that enable authorities to provide considerably less assistance to applicants under the Act.¹¹³

III. REMEDIES

The 1977 Act does not specifically provide for the enforcement of housing authorities' duties.¹¹⁴ In *Cocks v. Thanet District Council*¹¹⁵ the House of Lords held that an application for judicial review¹¹⁶ is the appropriate procedure to challenge an authority's discretionary decision.¹¹⁷ More specifically, the Lord Justices ruled that the only appropriate means for an unsuccessful applicant to attack an authority's adverse decision¹¹⁸ is through an order of certiorari to quash the decision or an order of mandamus to compel the authority to reconsider its

113. See *supra* notes 80-112 and accompanying text.

114. Robson & Watchman, *supra* note 7, at 73; Smith, *supra* note 6, at 150.

115. [1983] 2 A.C. 286, 294-95 (1982). See generally Robson & Watchman, *supra* note 7, at 75-78.

116. Judicial Review is available pursuant to Rules of Supreme Court Order 53, as amended. See Supreme Court Act, 1981, § 31.

Courts are limited in their review of local authorities' decisionmaking by the principles articulated in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.*, [1948] 1 K.B. 223, 228-29 (C.A. 1947). See *Cocks*, [1983] 2 A.C. at 292. The *Wednesbury* standards, which a court must use to review an authority's decision, are as follows: (1) the exercise of discretion must be real; (2) the local authority must consider matters that the statute requires it to consider and must disregard all irrelevant and collateral matters; (3) the authority must not act dishonestly or in bad faith; and (4) the court may nonetheless intervene if it determines that the local authority's decision is unreasonable, rendering its determination an absurdity. *Wednesbury*, [1948] 1 K.B. at 228-29. In *Cocks* the House of Lords recognized the *Wednesbury* guidelines and other limited means by which a party may challenge an authority's exercise of statutory powers, including the grounds of bias or procedural unfairness. [1983] 2 A.C. at 292.

117. More recently, the House of Lords noted in dicta that courts should exercise great restraint in giving leave to proceed by judicial review. *Puhlhofer v. Hillingdon London Borough Council*, [1986] 2 W.L.R. 259, 284 (H.L.). The court stated that except in rare cases persons should not use judicial review to monitor the authorities' actions under the statute. *Id.* Lord Brightman further explained that courts should overturn authorities' public law decisions only if the administrative bodies have acted perversely. *Id.* at 284.

118. In *Cocks* Lord Bridge explained that housing authorities' decisionmaking duties under the Act constitute public law functions, including discretionary determinations as to appropriate inquiries, priority need, local connections, and intentional homelessness. See [1983] 2 A.C. at 292.

decision under the law.¹¹⁹ An applicant may bring an action seeking an injunction and damages only after the authority establishes that it owes a duty to the applicant under the Act.¹²⁰ Thus, a proper public law decision is a condition precedent to the establishment of a private law duty giving rise to injunctive or monetary relief.¹²¹ In limiting the judiciary to this type of deferential review of authorities' decisionmaking, the *Cocks* decision enables hostile authorities to undermine the purposes of the Act by finding that they have no substantial duties to assist the homeless.

IV. CONCLUSION

Although Parliament enacted the 1977 Act to afford greater protection to the increasing number of homeless persons,¹²² several impediments prevent the achievement of this goal. First, the statutory language itself narrows the scope of the protected classes through the stringent requirements of priority need.¹²³ While providing some relief for select groups, the Act falls far short of establishing any meaningful protection to single homeless persons and childless couples.¹²⁴ Second, the statute grants vast decisionmaking powers to hostile housing authorities that generally use their discretion to substantially limit their duties toward the homeless.¹²⁵ Thus, authorities' decisions regarding appropriate inquiries, priority need, local connections, and intentional homelessness tend to result in minimal protection for homeless applicants. Third, the judiciary encourages authorities to avoid their statutory responsibilities through its interpretation of the Act¹²⁶ and its limited review of authorities' discretionary decisions.¹²⁷ Together, the statutory language and judicial decisions enable housing authorities to provide only minimal assistance to select groups of homeless persons.

119. *Id.* at 295. Lord Bridge noted that the rationale for limited judicial review is that courts should not substitute their judgment for that of the housing authorities. *Id.*

120. *Id.* at 292-93. See *Thornton v. Kirklees Metro. Council*, [1979] 1 Q.B. 626, 642-43 (C.A.).

121. *Cocks*, [1983] 2 A.C. at 293.

122. See *supra* note 5.

123. See *supra* notes 53-59 and accompanying text.

124. See *supra* note 8.

125. See *supra* note 11.

126. See *supra* notes 30-113 and accompanying text.

127. See *supra* notes 114-21 and accompanying text.

Given the hostility of housing authorities¹²⁸ and the tremendous amount of discretion that authorities have in carrying out statutory procedures,¹²⁹ the courts should interpret the Act broadly to afford greater protection to the homeless. Though courts are constrained by the principles of judicial review,¹³⁰ they can and should do more than merely defer to authorities' decisions. The judiciary has the power to rule that administrative bodies have acted unreasonably,¹³¹ and such rulings would provide the necessary direction to local authorities enforcing the Act. The only other means of providing more substantial protection would be to amend the statute to significantly limit authorities' discretionary decisionmaking. Because members of Parliament must answer to their local constituents, including hostile authorities and local governments that do not want the burden of providing housing for the homeless,¹³² the judiciary must make the effort to liberally interpret statutory requirements, especially the finding of unintentional homelessness.¹³³ Otherwise, housing authorities will continue to shirk their responsibilities and thereby undermine the purposes of the Act.

The Housing (Homeless Persons) Act of 1977, Britain's response to the plight of its homeless, provides a model for United States legislators contemplating the adoption of a comprehensive scheme to address this problem at a national level. An American counterpart to the British statute should provide significant guidelines and refrain from granting extraordinary decisionmaking powers to local officials who enforce the legislation. Thus, local administrators, who may be reluctant to provide significant assistance, will not be able to take advantage of the system by avoiding their statutory obligations to homeless persons seeking aid. Additionally, a United States counterpart should provide more meaningful protection to single persons and childless couples who are homeless. Finally, the courts must be willing to provide a more substantive review of housing officials' decisions and not merely defer to administrative findings. If Congress and the courts are aware

128. *See supra* note 12.

129. *See supra* note 11.

130. *See supra* notes 115-21 and accompanying text.

131. *See supra* note 116.

132. *See supra* note 12.

133. *See supra* notes 80-113 and accompanying text.

of the pitfalls of the British Act and seek to rectify them, homeless persons in the United States will reap the benefits.

Amy B. Corday

