

## Issue 126 October 2018

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### Housing matters

*Housing matters* is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

#### Published by:

Shelter, 88 Old Street, London EC1V 9HU

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### National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is funded by the Ministry for Housing, Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at [www.nhas.org.uk](http://www.nhas.org.uk)

**The NHAS provides the following to local authorities, local citizens advice and around 100 other advice agencies in England:**

- **a national telephone housing advice consultancy service.** Call **0300 330 0517** from 9am–6pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of [www.nhas.org.uk](http://www.nhas.org.uk)
- **housing debt advice:** within our consultancy team we have specialist housing debt and welfare benefits advisers who can advise where clients are struggling to pay their housing costs. We can support you to work through your client's housing debt case.
- **free basic housing advice training courses** to develop housing advice skills, covering the main housing advice presenting issues and how to advise households effectively on homelessness prevention options
- **written briefings**, articles in *Housing matters* and *Adviser*, information on housing issues and other written materials
- **support** in the implementation of new homeless prevention initiatives.

### Contact details

For more information about NHAS training, please email [JoanneK@shelter.org.uk](mailto:JoanneK@shelter.org.uk) or call **0344 515 1676**.

For general enquiries about the NHAS service, please email [nhas@shelter.org.uk](mailto:nhas@shelter.org.uk) or call **0344 515 2268**.

Alternatively, please use the 'contact us' page at [www.nhas.org.uk](http://www.nhas.org.uk)



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# Shelter

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# What's new?

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## Duty of public authority to refer

With effect from 1 October 2018, the Schedule to the Homelessness (Review Procedure etc.) Regulations 2018 SI 2018/223 specify the public authorities that must notify a local housing authority where one of its service users is either homeless or at risk of homelessness. They include prisons, hospitals and jobcentre plus.

Guidance on the new duty to refer can be found on Gov.uk for:

- local authorities in chapter 4 [Homelessness Code of Guidance](#)
- referring authorities in [A guide to the duty to refer](#).

A [simple referral form](#) available on Gov.uk may be used where a local housing authority has not established its own referral mechanism. As a minimum, a referral must include the service user's name, contact details and reason for the referral. No referral can be made without the consent of the service user.

## Deregulation Act and section 21

With effect from 1 October 2018, most of the requirements the Deregulation Act 2015 concerning the validity of a section 21 notice will apply to all assured shorthold tenancies (AST) granted in England, including those granted before 1 October 2015:

- notice must be served on prescribed Form 6A
- retaliatory eviction protection will apply
- where the tenancy is contractual periodic, a section 21 notice will not need to expire on the last day of a period of the tenancy
- possession action must begin within six months of service of the section 21 notice.

Further regulations must be made before the requirement to provide the tenant with a copy of an energy performance certificate and gas safety certificate before serving a section 21 notice will apply to an AST granted before 1 October 2015 that has not been renewed.

In addition, there are some areas of uncertainty, for example, will a section 21 notice that was served before 1 October 2018 but expires after that date, be invalid for an AST granted before 1 October 2015 (and not renewed since) if not served in the prescribed form?

## HMO licensing

From 1 October 2018:

- the mandatory licensing of houses in multiple occupation (HMO) is extended to all HMOs in which five or more persons live in two or more separate households and which meet the standard, self-contained flat or converted building test. This removes the exemption for HMOs of less than three storeys. Some exemptions apply
- in addition to existing licence conditions, all HMO licences must (1) specify the minimum size of all rooms used for as sleeping accommodation (depending on the age and number of occupants) and (2) include requirements relating to compliance with any local authority scheme for waste storage and disposal for HMOs.

## Banning order forms

The Court Service has [published forms](#) to be used where a local authority or a landlord applies to the First-tier Tribunal (Residential Property Chamber) under Part 2 of the Housing and Planning Act 2016, including:

- for a banning order (Form BN1)
- to revoke or vary a banning order (Form BN2)
- to appeal against a financial penalty (BN4).

## Mandatory fixed term tenancies - update

The Government has announced that the government will not (for the time being) be going ahead with the introduction of mandatory fixed-term secure tenancies as allowed for in the Housing and Planning Act 2016. Local authorities will continue to have discretion to grant either periodic secure tenancies or flexible tenancies (of between 2 and 5-year fixed terms) to new tenants.

## Social housing consultation

Following publication of the Social Housing Green Paper '[A new deal for social housing](#)', the government has launched a [consultation](#) on how it proposes to ensure that social homes 'provide an essential, safe and well managed service for all those who need it'. These include addressing the 'stigma' associated with living in social housing. The government is also [calling for evidence](#) in relation to its review of the social housing regulatory framework. Both consultations close on **6 November 2018**.

# Time to go home

**In this article, Sarah Durrant looks at the options for a patient who is ready to leave hospital, but who is either homeless or their home is not longer suitable.**

**Sarah Durrant is an NHAS consultancy line adviser.**

The discharge of hospital in-patients is problematic where a patient does not have a suitable home to go to. This can lead to what is often referred to as 'bed-blocking'. Although elderly people are a large group affected by [problems related to leaving hospital](#) the issue is wider than this group.

Issues around hospital discharge procedures, including cooperation between health and social services, are considered in both the Care Act 2014 and related regulations,<sup>1</sup> but are largely outside the scope of this article.

## Duty to refer

From 1 October 2018, certain public authorities are under a duty to refer a service user who is homeless or at risk of homelessness to the local housing authority.<sup>2</sup> The service user must consent to the referral. [Government guidance](#) for public authorities on the duty to refer advises that consent is obtained in writing.

In the context of hospital discharge, this new duty applies to:<sup>3</sup>

- hospital accident and emergency services and urgent treatment centres
- hospitals in their capacity of providing in-patient treatment
- social services.

A referral made under the duty to refer does not constitute a homelessness application, however, the local authority must contact the patient concerned on receipt of a referral. If the local authority has reason to believe the patient may be homeless or threatened with homelessness, this will constitute a homelessness application.<sup>4</sup>

The [Homelessness Code of Guidance](#) suggests that local authorities and 'service partners' in its area should agree a referral procedure and establish joint working arrangements. Hospital front-line staff should be informed of the point of contact.

Public authorities should consider whether it is more appropriate to assist a patient to make a homeless application, rather than referring them to a local authority, particularly in cases where a service user has a need for support.<sup>5</sup>

## Applying as homeless

A person who has nowhere suitable to live can apply to the council as homeless. The following issues are inherent to applying as homeless prior to discharge from hospital:

### *Applying as an in-patient*

There is no required format for making a homeless application. A third party can apply on behalf of a hospital in-patient. Alternatively, a patient could apply at a distance, for example, by phone from her hospital bed. It is neither lawful nor good practice to refuse to accept a homeless application until the applicant can go to the council's offices after they leave hospital. As stated above a referral from a public authority can trigger an application.

### *Homeless or threatened with homelessness?*

On receipt of a homeless application, the housing authority must carry out inquiries to decide whether it is satisfied that a person is homeless or threatened with homelessness (and eligible for assistance). The authority must notify the applicant in writing as to whether it accepts a relief or prevention duty.<sup>6</sup>

Whether a person is homeless or threatened with homelessness may hinge on if hospital can be considered 'accommodation'. We would argue that a hospital bed does not amount to accommodation, but the courts have not fully considered this issue.<sup>7</sup>

If being in hospital constitutes having accommodation, then a patient being discharged within 56 days is merely threatened with homelessness. However, if a stay in hospital, however long, is not considered as having accommodation, then a patient who has nowhere suitable to live can be homeless from the point of admission or at the point of discharge, thus triggering the relief duty.

### *Is the patient in priority need?*

Homelessness legislation defines which applicants are in priority need. This includes pregnant women, people with dependent children, and applicants who are vulnerable, eg as a result of old age, mental illness or disability, or physical disability.

The local authority need only have ‘reason to believe’ that an applicant may be vulnerable (and in priority need) before the duty to provide interim accommodation is triggered. A recent stay in hospital may well be sufficient to meet this low threshold test.

Under the changes brought in by the Homelessness Reduction Act 2017 (on 3 April 2018) a decision that an applicant is not in priority need can bring the interim duty to an end, but it is not a basis for ending prevention or relief duties.

#### *Which local authority?*

A patient can apply to any local authority for homelessness assistance, and to more than one authority. However, from the point at which the relief duty is accepted if the patient has no local connection to the authority applied to, that authority can refer them to another authority where they do have a connection (if there is no risk of violence). Receiving support in a particular area in connection with hospital treatment might constitute a local connection.<sup>8</sup> Although normal residence in an area can also establish local connection, because residence must be the applicant’s own choice, a stay in hospital will not (of itself) establish a connection.

#### **Care and support under Care Act 2014**

Where social services are aware that an adult may have care and support needs (eg following notification by the hospital of a proposed date for discharge), they must carry out an assessment of those needs under the Care Act 2014. Care and support needs are ‘eligible’ where they:<sup>9</sup>

- arise from a physical or mental impairment or illness
- result in the person being unable to achieve two or more specified outcomes (eg being safe at home), and
- have a significant impact on the person’s well-being.

Social services are only required to meet eligible needs in respect of an adult who is ‘ordinarily resident’ in its area (or who has no settled residence). There is no minimum period in which a person has to be living in a particular place to be ordinarily resident, as long as it is voluntary and for settled purposes.

For someone without accommodation at all, their physical presence in the local authority area may be sufficient. A stay in hospital,

however long, does not count as ordinary residence. The patient is deemed resident in their former area.<sup>10</sup>

Care and support needs can be met by providing, for example, accommodation in a care home, or homecare services. They cannot be met by providing general housing where there would be a duty to accommodate under housing law.<sup>11</sup>

Where an eligible need is met by providing a fixed period of ‘intermediate care’ (ie care to help the person maintain or regain the ability to live independently at home), the first six weeks must be provided free of charge.

Accommodation and support can also be provided under the Care Act for people who are not eligible for homelessness assistance. However, where care needs arise solely out of destitution, this support can only be provided if a failure to do so would breach the patient’s human rights.<sup>12</sup>

#### **Aftercare under the Mental Health Act**

When a person who was detained under sections 3, 37, 45A or 47 of the Mental Health Act 1983 is discharged, they must be provided with aftercare services under section 117. The duty will be owed regardless of the person’s financial resources and continues until both the health and social services authorities are satisfied that the person no longer needs those services.<sup>13</sup>

Aftercare services can include (supported) accommodation but only where it:<sup>14</sup>

- meets a need related to the person’s mental ill health, and
- reduces the risk of the person’s condition deteriorating.

#### **Adaptations to the home**

If a patient is being discharged to a property which requires adaptation to make it suitable, a grant to do the work may be available. In certain circumstances a grant is mandatory.<sup>15</sup> Where a person’s care and support needs can be met by supplying aids and minor adaptations costing less than £1000, social services must provide these free of charge.<sup>16</sup>

#### **Applying for an allocation**

A patient may be on (or can apply to go on) a local authority’s housing waiting list. If the patient’s health will be worsened by their housing conditions, this could result in greater priority, especially if their need for rehousing is urgent.

## **Shelter Legal**

### **Duty of public authority to refer**

#### **Footnotes**

<sup>1</sup> Annex G, Care Act 2014; Care and Support (Discharge of Hospital Patients) Regulations 2014 SI 2014/2823.

<sup>2</sup> s.213B Housing Act 1996 as inserted by s.10 Homelessness Reduction Act 2017; ch.4 Homelessness Code of Guidance, MHCLG, Feb 2018.

<sup>3</sup> reg 10 Homelessness (Review Procedure etc.) Regulations 2018 SI 2018/223.

<sup>4</sup> paras 4.19 and 4.20, Homelessness Code of Guidance, MHCLG, Feb 2018.

<sup>5</sup> Para 4.12 Homelessness Code of Guidance, MHCLG, Feb 2018.

<sup>6</sup> s.184 Housing Act 1996, as amended by Homelessness Reduction Act 2017.

<sup>7</sup> Birmingham CC v Ali and others: Moran v Manchester CC [2009] UKHL 36.

<sup>8</sup> para 10.11 Homelessness Code of Guidance, MHCLG, Feb 2018; para 4.1(iv) Procedures for referrals of homeless applicants to another local authority, Local Government Association, 2018.

<sup>9</sup> s.9 Care Act 2014; reg.2 Care and Support (Eligibility Criteria) Regulations 2015 SI 2015/313.

<sup>10</sup> s.39(5) Care Act 2014.

<sup>11</sup> s.23 Care Act 2014; para 15.51 onwards, Care and Support Statutory Guidance, Oct 2014.

<sup>12</sup> s.21 Care Act 2014; note that accommodation and support can also be provided under s.1 Localism Act 2011.

<sup>13</sup> s.117 Mental Health Act 1983.

<sup>14</sup> s.117(6) Mental Health Act 1983 as amended by s.75 Care Act 2014.

<sup>15</sup> s.24 Housing Grants, Construction and Regeneration Act 1996, as amended by Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 SI 2002/1860.

<sup>16</sup> reg 3 Care and Support (Charging and Assessment of Resources) Regulations 2014 SI 2014/2672.

# HMO licensing: new rules

**In this article, Shaylla Shabbir sets out changes to HMO licensing rules from October 2010.**

**Shaylla Shabbir is an adviser at Shelter.**

From 1 October 2018, new rules relating to the licensing of houses in multiple occupation (HMOs) come into force. The new rules:

- extend the scope of mandatory licensing to HMOs that are less than three storeys
- introduce new compulsory minimum room sizing and waste disposal conditions for all HMO licences.

The government has published guidance on HMOs and licensing reform.<sup>1</sup> The guidance explains that HMOs are an important part of the private rented sector, offering accommodation that is more affordable than self-contained properties. As such it is generally occupied by the most vulnerable people in society.

HMO licensing aims to address poor management of HMOs for the safety and protection of tenants and communities alike by requiring landlords to meet conditions relating to, for example, fire safety. The decision to extend HMO mandatory licensing provisions was taken by the Prime Minister in 2015.<sup>2</sup>

It is estimated that an additional 177,000 HMOs will be subject to mandatory licensing under the new rules, in comparison with 60,000 prior to October 2018.<sup>3</sup>

## What is an HMO?

An HMO is a building (or part of a building) that is shared by more than one household. The 'part of a building' criterion allows, say, a flat above a shop to be an HMO.

To be an HMO, the building must meet the:<sup>4</sup>

- a) 'standard test' or the 'self-contained flat test': at least two households living in the same building (or the same flat) share a basic amenity (kitchen, personal washing facilities or toilet), or a basic amenity is lacking; or
- b) 'converted building test': the building has been converted and either the tests in (a) above are met, or each household in the building has exclusive use of all three basic amenities but they are not within the main building.

To pass any of these tests, the building must be solely used for living accommodation and house at least three people. However, the local authority can issue an 'HMO declaration' where a building also has other uses, stating that it is to be treated as an HMO.<sup>5</sup>

## HMO licensing

Under the Housing Act 2004, an HMO may be subject to mandatory or additional licensing requirements.<sup>6</sup> A licence may only be granted if the licence holder is a 'fit and proper' person, the management standards are satisfactory, and the HMO is suitable (or has the potential to be made suitable).<sup>7</sup>

*Mandatory* licensing applies to all HMOs of a certain type across the country.

*Additional* licensing applies where a local authority designates other types of HMOs as subject to licensing either within particular areas or all of its district.

Before 1 October 2018, HMOs were subject to mandatory licensing only if they were occupied by five or more individuals and had three or more storeys (floors).<sup>8</sup>

Around 12% of HMOs across England were subject to mandatory licensing prior to October 2018. Since most smaller HMOs were also not covered by additional licensing schemes, a landlord could often use a property of less than three storeys as an HMO and circumvent licensing requirements.

Local authorities can also require '*selective* licensing' of properties which are not HMOs.<sup>9</sup>

## The extension of mandatory licensing

The new mandatory licensing rules apply to all HMOs occupied by five or more persons living in two or more households. The three-storey element has been removed. An HMO which is occupied by five or more persons will require a licence even if it has only one or two storeys.<sup>10</sup>

This includes HMOs already being let. However, if a landlord has applied for a licence by this date, s/he will be exempt

from sanctions such as prosecution relating to breach of licensing requirements, while the application is considered.<sup>11</sup>

Where an HMO subject to mandatory licensing under the new rules is already licensed under an additional licensing scheme, the current licence remains valid until expiry.<sup>12</sup>

### Exemptions

Two types of HMO no longer require mandatory licensing from 1 October 2018. This is the case where a property:

- is not solely used as living accommodation but has been designated an HMO
- meets the self-contained flat test above, and is a purpose-built flat in a block of three or more self-contained flats.

Such properties may be included in an authority's additional licensing scheme.

### New compulsory licence conditions

Section 67 of the Housing Act 2004 grants the local authority the power to impose any conditions it sees appropriate relating to the management, use and occupation of a licensed HMO.

The following conditions must be included in any licence (whether under mandatory or additional licensing):<sup>13</sup>

- gas safety certificates must be provided to the authority every year
- electrical appliances and furniture must be kept safe
- smoke alarms must be fitted in each storey used for living accommodation and alarms must be in working order
- carbon monoxide alarms must be fitted in each room with a wood or coal fire.

Under the new rules, the following additional compulsory licence conditions<sup>14</sup> must be applied to all HMO licences granted on or after 1 October 2018:

#### Minimum room sizes

All HMO licenses must contain minimum room size conditions. These relate to rooms 'normally used as a bedroom'. Communal space in other parts of the HMO cannot be used to compensate for smaller rooms. The new rules set a lower limit to the minimum size which a licence can allow.

These minimum size limits are as follows:

- 6.51 m<sup>2</sup> for one person over 10 years of age
- 10.22 m<sup>2</sup> for two persons over 10 years of age
- 4.64 m<sup>2</sup> for one child under the age of 10 years.

These limits are similar to the minimum allowed by the 'space standard' used to determine statutory overcrowding.

Local authorities have the discretion to set higher standards in the licence.

Minimum room sizes will not apply to accommodation managed by charities and being used as a night shelter or temporary accommodation for people with drug and alcohol or mental health issues.<sup>15</sup>

#### Waste disposal provision requirements

HMOs are likely to produce more waste than properties occupied by a single household. Where a local authority has a scheme for dealing with waste storage and collection specific to HMOs, the new rules require the authority to impose a condition requiring licence holders to comply with that scheme. This might include, for example, provision of a storage area for bins.

Where a local authority does not have a system specifically dealing with waste from HMOs, no condition needs to be imposed, but guidance recommends that the authority reviews its policy on waste.<sup>16</sup>

#### Transitional protection

The new compulsory conditions will apply to HMO licences granted from 1 October 2018. Where a licence has been granted before this date, it will continue to be valid until it expires, even if it does not contain the new conditions.<sup>17</sup>

Where a person applies for an HMO licence after 1 October and the rooms are smaller than the sizes specified in the licence, s/he must be given up to 18 months to comply with the specified sizes and s/he cannot be penalised for breaching the licence during this time.<sup>18</sup> This will apply unless s/he has previously breached an HMO licence and will give her/him time to adapt the property or ensure that rooms which do not meet the requirements are no longer used.

## Shelter Legal

### HMO licensing

#### Footnotes

<sup>1</sup> Houses in multiple occupation and residential property licensing reform, MHCLG, 2018.

<sup>2</sup> [www.gov.uk/government/speeches/pm-speech-on-immigration](http://www.gov.uk/government/speeches/pm-speech-on-immigration).

<sup>3</sup> Explanatory memo to the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (SI 2018/221)

<sup>4</sup> s.254 Housing Act 2004 and Explanatory notes to s.254.

<sup>5</sup> s.255 Housing Act 2004. Some conversions which did not comply with building regulations will also be HMOs. These are not normally subject to licensing.

<sup>6</sup> ss.55, 56 and 61 Housing Act 2004.

<sup>7</sup> s.64(3) Housing Act 2004.

<sup>8</sup> Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006/371.

<sup>9</sup> Part 3, Housing Act 2004.

<sup>10</sup> The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 SI 2018/221.

<sup>11</sup> s.72(4) Housing Act 2004.

<sup>12</sup> s.61 and para 1B sch.4 Housing Act 2004 as inserted by reg 2 Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 SI 2018/616.

<sup>13</sup> Schedule 4, Housing Act 2004.

<sup>14</sup> Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 SI 2018/616.

<sup>15</sup> para 1A(10) Schedule 4, Housing Act 2004 as inserted by reg 2, SI 2018/616.

<sup>16</sup> Houses in multiple occupation and residential property licensing reform, MHCLG, 2018.

<sup>17</sup> reg 1(2), SI 2018/616.

<sup>18</sup> Paragraph 1B, Schedule 4, Housing Act 2004 as inserted by reg 2, SI 2018/616.

# Personal housing plans

**This factsheet looks at why you are given a personal housing plan if you apply for help as homeless.**

You can apply to the council for help if you are homeless or likely to be homeless in the next 8 weeks. How much help you will get depends on your circumstances.

## Creating a personal housing plan

After you apply for help the council will assess your housing and support needs. This will include looking at what you can afford and any particular needs you have, for example relating to your health.

The council will then draw up a personal housing plan (PHP) for you. The aim of the PHP is that you and the council work together – for no less than 8 weeks – to try to help you keep your current home if it is suitable, or to find you somewhere to live.

You should be given a copy of your PHP.

Not everyone gets a PHP. If you don't meet immigration and residence conditions the council only has to give you general advice and information.

## What's in your PHP

Your PHP contains steps for you and the council to take. Some of your steps will be compulsory. Others are 'recommended'. All the steps should be reasonable.

## Emergency accommodation

If it's likely you are homeless, meet immigration and residence conditions and are in 'priority need' the council must provide you emergency accommodation so you have somewhere to stay while you and the council work on the steps in your PHP.

## Agreeing the steps

The steps in your plan should take account of your wishes. The council will ask you to agree to the steps in your plan.

Explain clearly if you think a step is not reasonable, for example because it isn't practical or realistic for you.

## Examples of reasonable steps

Your steps might be to:

- claim benefits
- look for an affordable private tenancy – you may be asked to widen your search area if you can't afford where you are
- work with a service that can help you.

The council's steps might be to:

- negotiate with your landlord for you to stay in your current home
- arrange mediation if your parents/family have said you cannot live at home
- increase security at home if you want to remain there but are at risk of violence
- help you claim benefits to help you pay your rent and pay off arrears
- give you a list of landlords to contact (or contact them for you if you can't do it)
- provide a deposit.

## Updating your PHP

The council should change the steps in your PHP if they are no longer reasonable or your circumstances change. Tell the council why you think a step in your PHP should be changed or removed.

## Cooperating with the PHP

The council can stop helping you if it decides you have deliberately and unreasonably refused to take a compulsory step in your PHP. It can only do this after it has given you a written warning and given you reasonable time to do what is asked. If you still don't, the council has to write to you again.

## Challenging the council's decisions

You can ask the council to review a decision:

- about its own steps in your PHP if you think there are other actions it should take which would help you
- to stop helping you after 8 weeks, if you think it didn't do enough to follow its own steps in your PHP
- that you have deliberately and unreasonably not cooperated with it

You must ask for a review within 21 days of the council's decision.

If you are on a low income you may qualify for [legal aid](#) to help you.

## Further advice

You can get further advice from Shelter's free\* housing advice helpline (0808 800 4444), a local Shelter advice service or local Citizens Advice office, or by visiting [england.shelter.org.uk/housing\\_advice](http://england.shelter.org.uk/housing_advice)

\*Calls are free from UK landlines and main mobile networks.



**Note**  
Information contained in this factsheet is correct at the time of publication. Please check details before use.