

Homelessness – the law in Wales



Registered Charity No. 515902

Shelter Cymru's Aim

To bring about long term changes at the national and local level to policies, practices and legislation that will reduce homelessness and housing need. To increase opportunities for people to have a greater say over their own lives.

To contribute practically to the elimination of homelessness and poor housing through housing advice, training, education and information with the aim of providing sustainable solutions for people in housing need.

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Disclaimer

The purpose of these notes is to remind participants of their training day and should not be used in isolation when advising people in housing need. It is essential to ensure that up to date relevant legislation is checked before giving advice. No responsibility can be accepted for any errors or omissions.

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Ground Rules

All participants are expected to share in the responsibility of creating a safe constructive and non- oppressive environment in which everyone feels able to participate. Draw other participant's attention in a supportive and constructive way to any behaviour that falls outside these guidelines.

- ☐ Participants should ensure that others are given the **opportunity to contribute** and be heard.
- ☐ Everyone should respect other people's right to their own opinion; thus, if challenging or commenting on another person's statements or views, **criticism should be given constructively, sensitively and specifically.**
- ☐ Everyone should recognise and **respect differences** of race, culture, disability, sexuality, age etc. and should not make assumptions that such differences do not exist within a group.
- ☐ Participants should also be committed to **learning through sharing each other's knowledge and experiences.** There may be instances when the trainer's expertise and knowledge are vital and must be heard.
- ☐ Delegates should feel **free to say they do not understand.**

Introduction

The Housing (Homeless Persons) Act 1977 defined homelessness and for the first time imposed a legal duty on housing authorities to secure accommodation for certain homeless people. This Act replaced the previously limited duties of social services departments to provide temporary accommodation for those in urgent need under the

National Assistance Act 1948, and built upon joint circulars¹ on homelessness which urged housing authorities to take over responsibility for homeless people. In 1986, this Act was consolidated with other statutes and became Part III of the Housing Act 1985.



A new Housing Act in 1996 repealed and replaced Part III of the Housing Act 1985. This legislation was mostly re-enactments, but importantly it reduced the duty of housing authorities. Under the 1996 Act homeless applicants were only offered accommodation for a two year period. Additionally all allocations of local authority accommodation must be through the waiting list where certain groups receive reasonable preference for re-housing.

On St David's day 2001 the National Assembly for Wales introduced new "priority need" groups for Wales using its powers to issue regulations through statutory instruments.

The Homelessness Act 2002 introduced a number of amendments to Pt.VI & VII of the Housing Act 1996. A number of new powers and duties were introduced to homelessness legislation by these amendments; most importantly the main housing duty owed towards homeless applicants was changed.

The Welsh Government's 10 Year Homelessness Plan of 2009 – 2019 expressed a commitment to the prevention of homelessness. However, it was widely recognised that it was difficult to prevent homelessness effectively within the parameters of the legislation as it stood. Following a review of homelessness legislation during 2011/12 it was concluded that the law needed reform in order to focus on the prevention of homelessness and to help more people struggling with homelessness.

The result was Wales' first ever housing act. The Housing (Wales) Act 2014 came into force on the 27th April 2015 and amongst other things, changed the way in which Welsh local authorities assist homeless households, with the main focus being on the prevention of homelessness.

¹ DOE 18/74; DSS Circular 4/74; Welsh Office Circular 37/74

The Welsh Government's vision for the Act is to provide help for everyone who is homeless or at risk of homelessness. The focus is on early intervention to prevent the crisis of homelessness occurring before meaningful assistance can be given. There is much less emphasis on priority need and intentional homelessness, especially at the point when help is requested.

However, in order to achieve the vision of providing help for everyone, there is a greater emphasis on making best use of all resources available including private rented sector. This means that where local authorities have a duty to secure accommodation for households, they can now meet this duty with the offer of a suitable 6 months assured shorthold tenancy in the private rented sector. Furthermore, there is more emphasis on partnership working, so that local authorities can call on their statutory partners and others to assist them in meeting their duties to help people who are homeless or threatened with homelessness.

There is also an expectation that people seeking help from the local authority will be more involved in the process of addressing their housing problems. This means both that their wishes must be taken into consideration when deciding what help should be provided and also that they will take an active role in finding a housing solution.

A link to the Act is available on

<http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=8220>

The Code of Guidance

To accompany the Housing (Wales) Act 2014, the Welsh Government published a Code of Guidance for the Allocation of Housing and Homelessness (the 'Code') in April 2015, and this was subsequently updated in March 2016.

The purpose of the Code is to provide ministerial guidance on how local authorities should exercise their functions in connection with homelessness and the allocation of housing. It is also an extremely useful tool for others working in the field because it gives a useful insight into how the Welsh Government intends the legislation to be interpreted and implemented by local authorities.

Legal status of the Code

It should be remembered that the Code is statutory guidance rather than legislation and contains explanations of legal requirements, policy guidance and good practice advice. This means that local authorities must have regard to the Code when exercising their functions under Part 2 Housing (Wales) Act 2014, but are not bound to follow it. As long as an authority had paid due regard to the code, they can depart from its provisions.²

² de Falco, *Silvestri v. Crawley B.C.* [1980] Q.B. 460, CA, *Miller v. L.B. Wandsworth*, *The Times*, March 19, 1980, QBD., *Lambert v. L.B. Ealing* [1981] 1 W.L.R. 550, 2 H.L.R. 58, CA

Terminology of the Code

It is important to note the terminology used within the Code when applying it to decision-making by local authorities.

- Where the word 'must' is used, this refers to a statutory duty which must be implemented.
- Where the word 'should' is used, this refers to a level of practice which is not mandatory but would normally be the accepted professional standard.
- Where the word 'may' is used, this refers to good practice which Local Authorities and others are asked to consider.

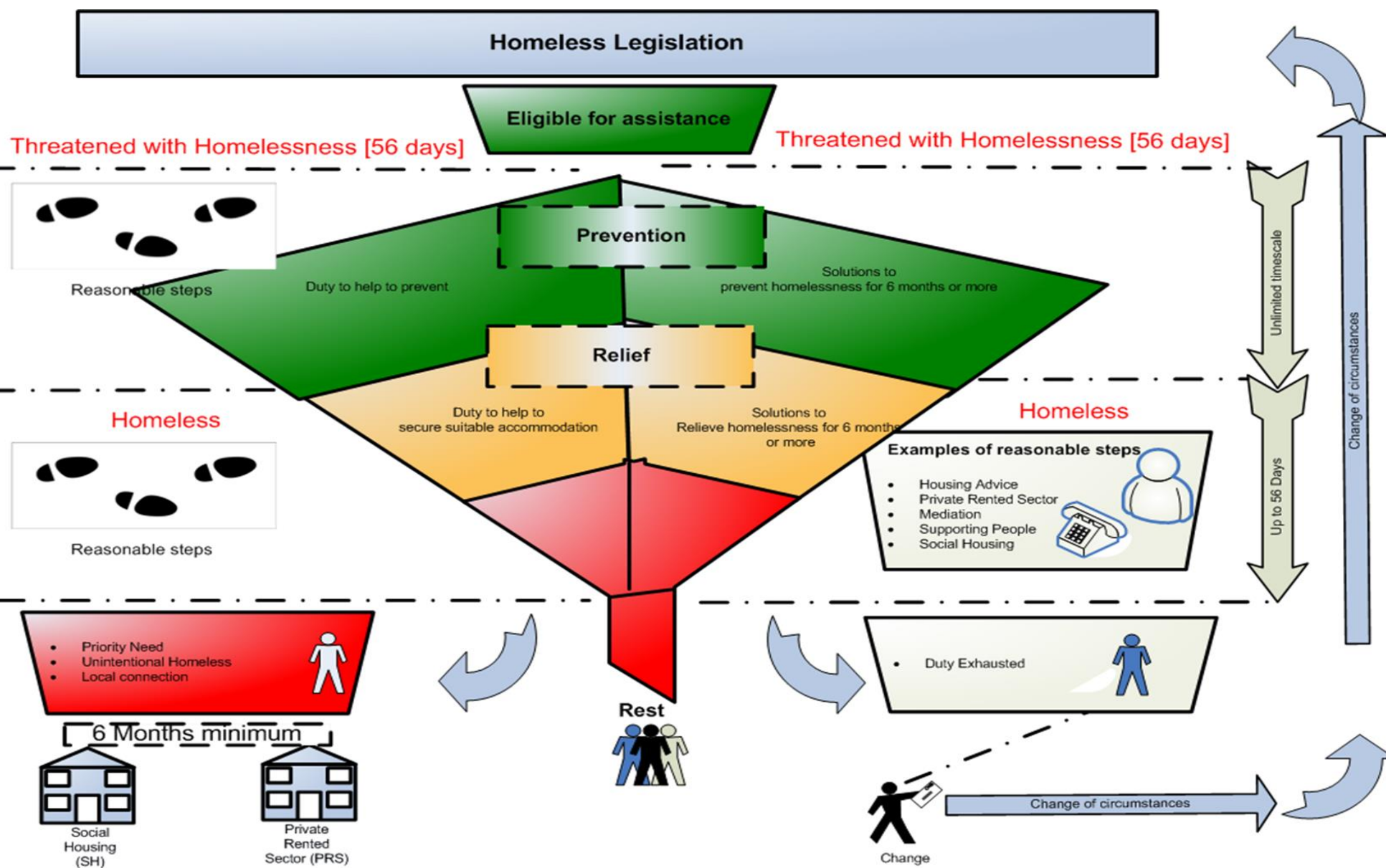
Homelessness -v- Allocations

Homeless persons may be housed by a local authority as a result of their status as a homeless person, although this is perhaps a less common outcome under the Act than it was previously under the Housing Act 1996.

There is however another route into local authority and other forms of social housing (such as a housing association) via the allocation scheme. It is important to discriminate these two routes and recognise their interaction. Applicants can apply to either or both routes, and very often homeless people will be invited to make an application to the allocation scheme in order that they can be considered for offer of permanent housing - homeless applicants must be given a level of priority within local authority allocation schemes, along with other persons in housing need.

Housing (Wales) Act 2014 – overview of sections within Part 2

Area	Contents	Relevant section
Assessment	Purpose of assessing Provision of advice What to assess Outcome of assessment/duty Eligibility	60, 61, 62, 63
Duty to prevent	Threatened with homelessness Ongoing duty Notification Best use of resources	66
Duty to help to secure	May be homeless 56 day duty Notification Best use of resources	73
Reasonable steps	What are they? How are they recorded? How are they communicated?	64, 65
Ending a 66 or 73 duty	Various ways that each duty can be ended Offer must be “suitable”	67, 74, 79
Notification	When and how to notify Template letters	63, 84
Right to Review	Notification of rights Signposting	85, 86, 87, 88, 89
The duty to secure	When does it apply? Who does it apply to?	75
Priority need	What stays the same? What changes? Identify 10 categories Vulnerability	70, 71, 72
Intentionally homeless	When does it apply? Opting in	77, 78
Local connection	When does it apply How to refer	80, 81, 82
Interim accommodation	When is this triggered? When to provide? Who to provide to? What to provide? When does it end? (when intentionally homeless and when unintentionally homeless)	68, 69, 92
The duty to secure	What does it look like? How is it ended? Offers	75
Suitability	What is “suitable”? Affordability	59
Ending a 75 duty	Accepting an offer Social housing offer PRS offer Other ways duty can be ended	76, 79
Notification	When and how to notify Template letters	84
Right to review	Notification of rights Signposting	85, 86, 87, 88, 89



Section 62 – Duty to assess

Duty to assess

A local authority must carry out an assessment of a person's case if—

- (a) the person has applied to a local housing authority for accommodation or help in retaining or obtaining accommodation,
- (b) it appears to the authority that the person may be homeless or threatened with homelessness.³

It is important to note the threshold for an assessment to be carried out is very low and authorities only need to consider if the applicant may be threatened with homelessness to trigger the assessment. The purpose of the assessment is primarily to satisfy themselves the threat of homelessness exists.⁴

Whilst it is open to local authorities to make some initial enquiries to satisfy itself the threat of homelessness exists, if they make enquiries with a 3rd party in order to substantiate the threat, the Welsh Government considers that this triggers the duty to carry out an assessment and to notify the applicant of the outcome.⁵

If there is any doubt as to whether the person is homeless or threatened with homelessness, local authorities should err on the side of caution and begin the assessment process.⁶

Any person, aged 16 or over can ask a local authority for help if they are homeless or threatened with homelessness. This is often called making a 'homelessness application'. When approaching a local authority for help, a person does not specifically have to request assistance under Part 2 Housing (Wales) Act 2014 or ask to make a homelessness application or assessment. Applications could be in person or over the phone, verbal or written. Applications can also be made by a person acting on behalf of the applicant, for example, by a social worker or solicitor acting in a professional capacity, or by a relative or friend if the applicant is unable to do so themselves.⁷

A local authority is not obliged to carry out an assessment if the person has been assessed previously under the Act and the authority is satisfied that –

- (a) the person's circumstances have not changed materially since that assessment was carried out, and
- (b) there is no new information that materially affects that assessment.⁸

³ S62(1) H(W)A 2014

⁴ Code of Guidance paragraph 8.4

⁵ Code of Guidance, paragraph 10.7

⁶ Code of Guidance paragraph 10.9

⁷ Code of Guidance paragraph 10.7

⁸ S62(2) H(W)A 2014

Assessment of eligibility for help

An assessment of whether the applicant is eligible for help must be carried out. However, a local authority can commence the other elements of the assessment before concluding whether or not an applicant is eligible. In the event that it is decided that the applicant is not eligible for help, the local authority must still provide information, advice and assistance under s60 of the Act.⁹

The contents of the assessment

If the applicant is eligible for help, the assessment must include an assessment of—

- (a) the circumstances that have caused the applicant to be homeless or threatened with homelessness;
- (b) the housing needs of the applicant and any person with whom the applicant lives or might reasonably be expected to live;
- (c) the support needed for the applicant and any person with whom the applicant lives or might reasonably be expected to live to retain accommodation which is or may become available;
- (d) whether or not the authority has any duty to the applicant under Part 2.¹⁰

The information gathered under (a), (b) and (c) above will inform the authority whether they have a duty to the applicant under the provisions of the Act. In particular, s66: the duty to help to prevent homelessness, s68: the duty to secure interim accommodation, s73: the duty to help to secure accommodation for homeless applicants and s75: the duty to secure accommodation for applicants in priority need when the duty in s73 ends.

As part of the assessment, the local authority must also seek to identify the outcome the applicant wishes to achieve from the authority's help, and assess whether the help provided could contribute to the achievement of that outcome.¹¹ For example, an applicant may wish to live in a particular location, in order to be close to schools, work or family members. Part of this process will be discussing with applicants their realistic housing options in light of their specific set of circumstances.

There is no expectation that an authority must meet the wishes of the applicant, unless it is able to do so within the functions available to it under the Act.¹²

Multiple applications

It is not unlawful to apply to more than one authority for assistance. Most authorities will however ask applicants if they have applied to any other authorities. Where an authority is aware of an application being made in another authority they (the authorities) will normally decide between themselves who is to make the inquiries.

Where another authority has previously decided to refuse assistance or duties have come to an end, the authority dealing with the current application may inquire into the previous

⁹ S62(4) & (7) and Code of Guidance para 10.15

¹⁰ S62(5) H(W)A 2014

¹¹ S62(6) H(W)A 2014

¹² Code of Guidance, para 10.35

decision and its reasons but must make its own inquiries and decision. An authority must not rely solely upon the inquiries of another authority.¹³

Notification of the outcome of the assessment

Once a local authority has completed the assessment, or a review of the assessment, it must notify the applicant of the outcome in writing. If the decision made is not in the applicant's favour, it must give reasons for the decision¹⁴

The notification must also inform the applicant of their right to request a review of the decision and the timescales within which a review must be requested.¹⁵

A notification, if it is not received by the applicant, will be treated as having been given if it is made available at the authority's office for a reasonable period for collection by the applicant or someone on their behalf. This will be particularly relevant to note for those people who do not have a postal or 'care of' address¹⁶

There is no time limit for completing an assessment specified with the legislation. However, the Code of Guidance states that where possible, the assessment should be completed and notified to the applicant within 10 working days, but the priority is that the assessment and the decision is correct.¹⁷

The guidance also suggests that where a decision has been made as to eligibility and housing status (e.g. that a person is eligible and either homeless or threatened with homelessness), the applicant can be informed as soon as possible of the duty that is owed to them, and the remaining parts of the assessment process completed and notified within the 10 working days. The purpose of this guidance is to try and ensure that all actions and interventions taken to prevent and alleviate homelessness can be included within the statutory framework¹⁸

¹³ Code of Guidance, para 10.38

¹⁴ S63(1) H(W)A 2014

¹⁵ S63(4)(a) H(W)A 2014

¹⁶ S63(4)(b) H(W)A 2014

¹⁷ Code of Guidance, paragraph 10.51

¹⁸ Code of Guidance, paragraph 10.52

Section 61 – Eligibility for help

To receive the help associated with the main duties found in Part 2 Housing (Wales) Act 2014 a person must be 'eligible'. The term eligibility relates largely to immigration status and habitual residence.

The rules in relation to eligibility are found within section 61 and schedule 2 of the Housing (Wales) Act 2014 and the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014.

The law in relation to eligibility differs for those people from within the European Economic Area (including British nationals) and those from outside. In general terms, those subject to immigration control are not eligible, aside from those exceptions set out within the eligibility regulations. EEA nationals are generally eligible, unless they fall within one of the groups classed as ineligible within the regulations.

Other persons from abroad who are not subject to immigration control, including British citizens, and Irish citizens who are coming to the UK from outside the EEA/EU or the 'Common Travel Area', will be eligible subject to the habitual residence test. The Common Travel Area comprises the UK, Irish Republic, Channel Islands and Isle of Man.

The law around eligibility is extremely complex and where an applicant's eligibility is in doubt, it is always advisable to seek advice on a particular case, if possible.

Persons subject to immigration control

Generally, persons subject to immigration control are not eligible for help, other than by way of the general duty to provide information, advice, and assistance under s60. However, regulation 5 of the eligibility regulations sets out the categories of people who are eligible to receive assistance under s66 (duty to help to prevent homelessness), s68 (duty to secure interim accommodation), s73 (duty to help to secure accommodation) and s75 (duty to secure accommodation for applicants in priority need when the duty in s73 ends), despite being subject to immigration control.

Therefore, the following groups of people who are subject to immigration control are nevertheless eligible for help:¹⁹

- i. **Refugees** – A person is granted refugee status when his or her request for asylum is accepted;
- ii. **Exceptional Leave** - A person who has been granted exceptional leave to enter or remain in the UK outside the provisions of the Immigration Rules and whose leave is not subject to a condition requiring that person to maintain or accommodate themselves, and any person who is dependent on that person, without recourse to public funds is eligible for housing assistance;
- iii. **A person with current leave to enter or remain in the UK with no condition or limitation, and who is habitually resident in the UK, the Channel Islands, the Isle of Man and the Republic of Ireland**, will be eligible for housing assistance.

¹⁹ S61 and schedule 2 H(W)A 2014 and paragraph 7.8 Code of Guidance

However, where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the applicant's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK – or the date of the sponsorship undertaking, whichever is the later – for the applicant to be eligible. Where a sponsor died within the first five years, the applicant would be eligible;

- iv. **Persons who have been granted Humanitarian Protection** – Humanitarian Protection was introduced on 1 April 2003 and partly replaced the policy on Exceptional Leave to Enter/Remain. Humanitarian Protection is granted to non-European Union citizens who do not meet the strict definition of refugee but who have international protection needs. Humanitarian Protection is granted under the Immigration Rules. The Immigration Rules are issued by the Home Secretary under the Immigration Act 1971 and set out how immigration law shall be administered, and are published on the UK Border Agency website.

Humanitarian Protection is granted for five years. Towards the end of this period leave holders have the opportunity to apply for indefinite leave to remain but there is no presumption that it will be granted;

- v. **Asylum Seekers:** An asylum seeker whose claim was made on or after 3 April 2000 will not be eligible for assistance. Some asylum seekers whose claim for asylum was made before 3 April 2000 may be eligible for assistance; and
- vi. **An Afghan citizen** who, as a result of serving the UK Government, has been granted permission to relocate to the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, and who is habitually resident in one of those areas will be eligible.

Other persons from abroad

In general, other persons from abroad who are not subject to immigration control are eligible for help under the Act, unless they fall into one of the groups prescribed by the Welsh Ministers, which are set out in regulation 6 of the eligibility regulations.²⁰

Those people who fall into one of the following categories are ineligible for help:

- (i) a person who is **not habitually resident in the Common Travel Area**, subject to certain exceptions – see below
- (ii) a person whose only right to reside in the UK is derived from their status as **jobseeker** (or family member of a jobseeker)
- (iii) a person whose only right to reside in the UK is an **initial right to reside** for a period not exceeding three months
- (iv) a person whose only right to reside in the UK is a **derivative right** to reside under regulation 15A(4A) of the Immigration (European Economic Area) Regulations 2006*
- (v) a person whose only right to reside in the Common Travel Area is a **right equivalent** to paragraphs (ii) to (iv) above.

²⁰ Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014

* These rights were added to reflect the decision of the Court of Justice of the European Union in the case of C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm) and the subsequent Immigration (European Economic Area) (Amendment) (No 2) Regulations 2012 made by the Home Office to confer rights of residence and entry on the primary carer of a British citizen who is residing in the United Kingdom where the denial of such a right would prevent the British citizen from being able to reside in the United Kingdom or in an EEA State. These are often described as *Zambrano carers*.²¹

Some people from abroad, who not subject to immigration control do not have to satisfy the habitual residence test in order to be eligible for help. These are:

- (i) a worker
- (ii) self-employed person
- (iii) Croatian nationals who are treated as workers for the purpose of the definition of 'qualified person' in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006
- (iv) a family member of a person referred to in paragraph (i) to (iii) above
- (v) a person with a permanent right to reside

a person who is in the UK as a result of the person's deportation, expulsion or other removal by compulsion of law from another country to the UK.

Immigration terms

Asylum seeker

Someone who has applied for refugee status but has not received a decision.

Common Travel Area

- United Kingdom (Britain and Northern Ireland)
- Republic of Ireland
- Channel Islands (Jersey Guernsey, Alderney, Sark and Herm), &
- Isle of Man

Exceptional leave to remain or enter

This is leave to enter or remain as below, but is granted outside the normal immigration rules at the discretion of the Home Secretary. Exceptional leave to remain or enter exempts applicants from the habitual residence test.

'Humanitarian Protection'

Since April 2003 this has replaced Exceptional leave to remain. Humanitarian protection is granted at the discretion of the Home Secretary to those who, though not refugees, would, if removed, face in the country of return a serious risk to life or person arising from the death penalty, unlawful killing or torture, inhuman or degrading treatment or punishment". Under the new system those who qualify for Humanitarian Protection will be granted leave for three years, at which point a person with a continuing need for protection will be eligible to apply for settlement in the United Kingdom. A person with no continuing need will not get any further leave.

²¹ Code of Guidance paragraphs 7.11

Habitual residence

The Habitual Residence Test is designed to establish whether the applicant has a "centre of interest" in the Common Travel Area. The Common Travel Area consists of the UK, Republic of Ireland, Channel Islands and the Isle of Man). An applicant may have no, or more than one, centre of interest.

Habitual residence is not defined in law, and the rules are complicated. The test considers the applicant's previous residence and employment, prospects of work, family ties, history, and the applicants' demonstrable long-term intentions.

All British citizens and people with right of abode have to pass the Habitual Residence Test except:

- (i) a worker
- (ii) self-employed person
- (iii) Croatian nationals who are treated as workers for the purpose of the definition of 'qualified person' in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006
- (iv) a family member of a person referred to in paragraph (i) to (iii) above
- (v) a person with a permanent right to reside
- (vi) a person who is in the UK as a result of the person's deportation, expulsion or other removal by compulsion of law from another country to the UK.

The Code of Guidance states that most people who have been resident in the UK continuously during the 2 years prior to application will be habitually resident and there will be no need to make further investigations. Continuous residence includes trips abroad on business or holiday, or to visit friends and family etc.

UK and other nationals returning to the UK from any country overseas who are re-establishing their ties can be accepted as habitually resident immediately upon their return.

Leave to enter or remain

Permission granted allowing someone to enter or remain in the country. Leave to enter is granted at a port of entry, leave to remain may be granted at a later date if leave to enter is due to expire.

Limited leave to enter or remain

Permission granted allowing someone to remain in the country for a specific period of time. Conditions may apply such as being prohibited from getting a paid job. Leave to enter is granted at a port of entry, leave to remain may be granted at a later date if leave to enter is due to expire

Overstayer

Someone who was allowed into the country with limited leave to remain but who has stayed in the country beyond the time allowed without permission from the Home Office.

Refugee

Someone who has been granted refugee status, under the Geneva Convention, by the Home Office.

Subject to immigration control

Someone is subject to immigration control who under the 1971 Act requires leave to enter or remain in the United Kingdom (whether or not such leave has been given).

Section 55 – Meaning of homelessness and threatened homelessness

For the purposes of the Act, a person is homeless if they, together with anyone who normally resides with them:

- has no accommodation in the UK or elsewhere that they are legally entitled to occupy
- has accommodation, but cannot secure entry to it or it is a moveable structure and there is nowhere they are permitted to place and reside in it
- has accommodation, but it is not reasonable for them to continue to occupy it.

A person will be threatened with homelessness if any of the above is likely to occur within 56 days.²²

No accommodation

Someone is homeless if they have no accommodation in the UK or elsewhere that they are entitled or permitted to occupy. No accommodation obviously includes people sleeping on the streets, but the courts have held that it also covers people living in emergency temporary accommodation such as night shelters²³ and women's refuges.²⁴

Legal right to occupy accommodation

There are 3 types of legal right to occupy accommodation under the Act:

- by virtue of a legal interest in the property or a court order which gives a right to occupy, for example an owner, tenant, or someone with a beneficial interest (financial stake), or someone with an order from the matrimonial/family courts granting a right to occupy (known as an occupation order)²⁵
- an express or implied licence to occupy, for example an applicant who is living with her/his family or friends and has not been asked to leave.²⁶
- a right to remain granted by statute or a rule of law.²⁷ A spouse or civil partner of a tenant or home owner has the right to remain in occupation of the matrimonial home, and s/he cannot be evicted or excluded from the home without a court order.²⁸

²² S55(4) H(W)A 2014

²³ R v Waveney DC ex parte Bowers (1982) 4 HLR 118, CA.

²⁴ R v Ealing LBC ex parte Sidhu (1982) 2 HLR 45, QBD.

²⁵ S55(1)(a) H(W)A 2014

^{26,26} S55(1)(b) H(W)A 2014

²⁷ S55(1)(c) H(W)A 2014

²⁸ s.30 Family Law Act 1996.

Accommodation abroad

In order to find that a person is not homeless because s/he has accommodation abroad, the local authority must establish:

- on what terms the accommodation was occupied, ie whether the applicant has a right to occupy within the meaning of the Act, and
- whether or not it was reasonable to continue to occupy it.

A local authority is entitled to find that a person is not homeless if s/he has accommodation anywhere in the world that is available for her/his occupation. The definition of 'availability' has been the subject of case law.²⁹ A person who can afford to return to accommodation that is legally and practically accessible in another country may be found to not be homeless. 'Availability' includes accessibility. If an applicant does not have sufficient money to return, s/he should raise the issue of inability to pay with the local authority.

Cannot secure entry

Someone is homeless if they have accommodation but they cannot secure entry to it. This may be as a result of an illegal eviction or if the property is being squatted.

The local authority cannot refuse to assist while someone is homeless in this situation, even though legal remedies may be available to the applicant to regain possession of the accommodation.³⁰

If a person's accommodation is a mobile home, caravan or house boat, and there is nowhere that they are permitted to both place and reside in it then they are homeless.³¹

Reasonable to continue to occupy

A person is not treated as having accommodation if it is not reasonable for them to continue to occupy.³² It is important to remember that the accommodation needs to be suitable for all members of the applicant's household or someone who could be reasonably expected to live with the applicant.

Reasonableness to occupy has no correlation to security of tenure, so it is possible for a home owner, or a tenant with security of tenure either in the private or social rented sectors, to become homeless if it is, or becomes, no longer reasonable for them to continue to occupy their accommodation.³³

²⁹ Begum (Nipa) v Tower Hamlets LBC (1999) 32 HLR 445, CA.

³⁰ Code of Guidance, paragraph 8.17

³¹ S55(2)(b)

³² S55(3) H(W)A 2014

³³ Code of Guidance 8.19

Domestic and other abuse

It will not be reasonable for a person to continue to occupy accommodation if it is probable that it will lead to the person or a member of their household being subjected to abuse.³⁴

‘Abuse’ has a wider meaning than violence and includes physical violence, threatening or intimidating behaviour, and any other form of abuse which may give rise to harm.³⁵

Abuse is ‘domestic abuse’ when the victim is associated³⁶ to the perpetrator, but is not confined to instances within the home and can include sexual, psychological, emotional or financial abuse. This is in line with the definition of domestic abuse in Section 24 of Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.³⁷

The Code states that the fact that abuse has not yet occurred does not mean that it is not likely to occur³⁸ and that evidence of actual or threatened abuse may not always be available, for example, because there were no adult witnesses or the applicant was too frightened or ashamed to report the incidents to family, friends or the police. Authorities should remember that victims of domestic abuse are not obliged to obtain injunctions against the perpetrators: injunctions are not always effective, and often there is a fear that such legal action may prompt further abuse.³⁹

This can include abuse from anyone who is not an associated person and consideration will need to be given as to whether it is reasonable to continue to occupy accommodation. Authorities are advised to liaise with relevant agencies such as Race Equality Councils to ensure they have arrangements in place for responding to hate crimes and incidents.⁴⁰

General housing circumstances in the area

When considering whether it is reasonable for an applicant to continue to occupy accommodation, local authorities may have regard to the housing circumstances prevailing in the area.⁴¹ This may be relevant, for example, when considering whether accommodation is reasonable to occupy in the following circumstances, as highlighted in the Code⁴²:

- (i) physical conditions: Authorities will need to consider after inspection whether the condition of the property is such as to render it unsuitable for human habitation or so bad in comparison with other accommodation in the area that it would not be reasonable to expect someone to continue to live there. The Health and Safety Rating System should be used to assess the risk and suitability to the household who are to be offered the accommodation, taking account of their particular needs, particularly for people with physical disabilities and/or children;

³⁴ S57(1) H(W)A 2014

³⁵ S58(1) H(W)A 2014

³⁶ S58(2) H(W)A 2014

³⁷ Code of Guidance, paragraph 8.21

³⁸ Code of Guidance, paragraph 8.22

³⁹ Code of Guidance, paragraph 8.23

⁴⁰ Code of Guidance, paragraph 8.27

⁴¹ S57(3)(a) H(W)A 2014

⁴² Code of Guidance, paragraph 8.27

- (ii) overcrowding: Authorities may wish to refer to Part 10 of the Housing Act 1985. Although statutory overcrowding, by itself, is not sufficient to determine whether it is unreasonable for the applicant to continue to live in accommodation, it can be a key factor which suggests unreasonableness. Overcrowding will need to be considered in relation to general housing conditions in the area.

The type of accommodation that a person is occupying will also be relevant. Some types of accommodation are not intended to be occupied in the long term such as hostels, night shelters, or Women's Aid refuges.

The House of Lords judgement in the joined appeals of *Birmingham v Ali* and *Moran v Manchester*⁴³ provides useful guidance on reasonableness to occupy in relation to housing conditions and refuge accommodation:

'What is suitable for occupation in the short term may not be suitable for occupation in the medium term and what is suitable for accommodation in the medium term may not be suitable for accommodation in the longer term'.

In considering whether or not a person is homeless because they have accommodation but it would be unreasonable to expect them to continue to occupy that accommodation, Local Authorities will need to consider if it would be reasonable for a person to continue to occupy accommodation which is available to them for as long as they would have to if the Local Authority did not intervene. In other words, if it would be acceptable for the applicant to remain there for a short while, but not over the longer term, then it is likely that they should be considered to be homeless.⁴⁴

Affordability

Affordability must be considered in all cases⁴⁵ and a local authority should take into account:

- a) the financial resources available to the person;
- b) the costs in respect of the accommodation;
- c) maintenance payments (in respect of ex-family members); and
- d) The applicant's other reasonable living expenses.⁴⁶

Tenant given valid notice

The Welsh Government considers that where:

- i) the applicant is an assured shorthold tenant who has received proper notice of seeking possession, or notice to quit,
- ii) the Local Authority is satisfied that the landlord intends to seek possession; and
- iii) there would be no defence to an application for a possession order,

then it is unlikely to be reasonable for the applicant to continue to occupy the accommodation beyond the date of the section 21 notice unless the Local Authority are taking steps to persuade the landlord to withdraw the notice or delay applying to court for

⁴³ [2009] UKHL 36

⁴⁴ Code of Guidance, paragraph 8.30

⁴⁵ S57(3)(b) H(W)A 2014

⁴⁶ Code of Guidance, paragraph 8.29

possession to allow the Local Authority time to make alternative arrangements for accommodation. Authorities should treat cases that have received a valid notice as threatened with homelessness and take reasonable steps to help to prevent homelessness.⁴⁷

⁴⁷ Code of Guidance, paragraph 8.31

Section 66 – Duty to help to prevent an applicant from becoming homeless

A local housing authority must help to secure that suitable accommodation does not cease to be available for occupation by an applicant if the authority is satisfied that the applicant is—

(a) threatened with homelessness,

(b) eligible for help.⁴⁸

Remember that the applicant does not have to be in priority need or unintentionally homeless to owed the duty to help to prevent homelessness and even if the housing authority believe that the applicant may have become homeless intentionally they still have a duty to help.

‘Prevention’ does not just involve trying to keep an applicant in their current accommodation and can also include:

- Directly meeting the applicant’s housing need
- Delaying a need to move out of current accommodation in order to allow a planned move into alternative accommodation
- Finding alternative accommodation and/or
- Sustaining independent living.⁴⁹

⁴⁸ S66(1) H(W)A 2014

⁴⁹ Code of Guidance, paragraph 12.4

Section 73 – Duty to help to secure accommodation for homeless applicants

A local housing authority must help to secure that suitable accommodation is available for occupation by an applicant, if the authority is satisfied that the applicant is—

- (a) homeless, and
- (b) eligible for help.⁵⁰

This does not mean that the local authority have a duty to secure or provide accommodation for the applicant, although they can meet the duty by doing so.

An applicant does not have to have a priority need or be unintentionally homeless to be owed the duty to help to secure accommodation.

A local authority may also have a duty to secure interim accommodation for homeless applicants, at the same time as they have a duty to 'help to secure' under this section, if they have reason to believe they may:

- Be homeless
- Be eligible for help
- Have a priority need for accommodation.⁵¹

If the local authority does have a duty to secure interim accommodation, it is a separate duty, stand-alone duty to the help to secure duty, although the two duties run in tandem with each other.

See page 40 for more information regarding interim accommodation.

If a local authority concludes that an applicant is homeless and eligible for help but intends to refer the applicant to another local authority because the conditions for referral are met, then the duty to help to secure will not be owed.⁵²

See page 42 for more information on local connection.

⁵⁰ S73(1) H(W)A 2014

⁵¹ S68(2) H(W)A 2014

⁵² S73(2) H(W)A 2014

Section 65 – Meaning of help to secure

Where a local housing authority is required to help to secure (rather than “to secure”) that suitable accommodation is available, or does not cease to be available, for occupation by an applicant, the authority—

- (a) is required to take **reasonable steps** to help, having regard (among other things) to the need to make the best use of the authority’s resources;
- (b) is not required to secure an offer of accommodation under Part 6 of the Housing Act 1996 (allocation of housing)
- (c) is not required to otherwise provide accommodation.⁵³

Examples of reasonable steps and interventions that local authorities ought to have in place as a minimum are given in the Code:⁵⁴

- **Housing Options Advisors** – to provide constructive advice to individuals to help identify and tackle the underlying housing and other needs of the applicant(s) and the factors associated with their threatened homelessness and provide appropriate advice and/or help to secure accommodation;
- **Services to resolve disputes between different parties**, such as mediation and conciliation – to assist clients to resolve relationship issues via mediation and conciliation services. This might include family, spousal or neighbourly relationships that have resulted in a threatened eviction, etc. Local Authorities will need to aware that it is not always appropriate to undertake mediation in all situations (e.g. domestic abuse);
- **Financial payments from a homelessness prevention fund** – potential financial assistance to assist those with financial issues to clear possible debts and/or assist them to move to other accommodation [this intervention should be considered alongside debt/money advice below to tackle the underlying causes and break the potential for a cycle of debt];
- **Specialist advice on welfare/benefit rights and debt/money advice**, including access to independent advice – to support an individual to make the appropriate decision in light of benefit entitlements and other financial considerations, support an applicant to downsize, or support an individual to negotiate with lenders and set a realistic household budget;
- **Independent housing advice** – refer individuals to a relevant local advice service such as Shelter Cymru, which may be the most suitable agency to provide specialist advice;
- **Joint working between Local Authorities and RSLs to prevent homelessness** – this support could potentially range from helping with an application for social housing, giving them added priority on choice based lettings, to discussing and resolving rent arrears;
- **Joint approaches with other services such as Social Care and Health** – work in partnership with colleagues both corporately within the Local Authority and with

⁵³ S65 H(W)A 2014

⁵⁴ Code of Guidance, paragraph 12.13

relevant local health boards to assess an applicant's social care, health and other needs to develop a holistic plan to prevent their homelessness, which may be integrated into a statutory care and support plan under the Social Services and Well-being (Wales) Act 2014;

- **Domestic abuse services** – support to source the most appropriate domestic abuse service, including but not limited to support through personal safety advice, target hardening and help to find a refuge placement if appropriate, considering all the risks to the applicant;
- **Crisis intervention** – securing accommodation immediately (e.g. through a partner agency, hostel or payment to a landlord);
- **Referral to a statutory Intensive Family Support Team**, which must be in place to assist families where the welfare of children is at risk;
- **Discretionary Housing Payments (DHPs)** – support an applicant to access the Local Authority's DHP fund. Support should also be considered to tackle the underlying issue as to why the intervention was required initially;
- **Employment and training options advice** – where an applicant's housing situation would be improved by enhanced employment and training. This is particularly important in the context of welfare reform.
- **Housing/Tenancy support** – supporting people to sustain their accommodation through the help of a Tenancy or a local Housing Support Service, possible via Supporting People funding;
- **Specialist welfare services for armed forces personnel/veterans** – support armed forces veterans to access the specialised services available to them;
- **Action to resolve anti-social behaviour** – such as referrals to an ASB preventative support service, including interventions relating to responding to hate crime and/or harassment;
- **Working in prisons prior to release in order to prevent homelessness** – utilising the National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate work proactively with partners such as the Prison, National Probation Service in Wales and the Wales Community Rehabilitation Company along with Local Health Boards, third sector organisations, Local Authority Social Services and private landlords to help prisoners to either secure accommodation upon release or help them to retain existing accommodation;
- **Options to facilitate access to the Private Rented Sector (PRS)** – ensure that suitable PRS options are available locally to applicants. This could be via support to the applicant to access a locally managed private rented sector access service that should be available in every Local Authority area, a well maintained list of PRS opportunities or referral to a house sharing website; this may also include payments for rent in advance or deposit and/or bond scheme;
- **Action to intervene with mortgage arrears** – help to access local and national programmes to support people at risk of homelessness as a result of mortgage arrears, including mortgage rescue schemes where available;

- **Action to support disabled applicants** – utilise funds to help adapt existing properties (DFGs, PAGS and RRAP), and in addition and where appropriate, consider a referral to one of the Welsh Accessible Housing Registers;
- **Access to supported housing** – where a support need is identified, refer and manage a transition to supported housing or placement on a relevant waiting list;
- **Arranging accommodation with relatives and friends** – help to identify and secure, including mediation where necessary, suitable accommodation with relatives or friends;
- **Options for the accommodation of vulnerable people** – ensure that all options are considered including the potential for the applicant to be accommodated and supported in housing which is funded, for example, by health, social services, the Supporting People programme or through third sector grant funding, etc.;

However, it is made clear that the list is not exhaustive, nor prescriptive and local authorities should consider the most appropriate interventions for the applicant in question.⁵⁵

Best use of resources

In meeting the duty to help to prevent homelessness or help to secure accommodation local authorities are ‘required to take reasonable steps to help, *having regard (among other things) to the need to make the best use of the authority’s resources.*’⁵⁶

What does ‘best use of resources’ mean?

Of the best use of resources, the Code says: ‘*resources should be allocated effectively and efficiently to ensure that all clients have the ability to receive a tailored core service of key interventions which can best meet their individual needs.*’

Whilst it may be that some people will require a higher level or support and as a result, resources, the Code states:

*“It is not appropriate for a local authority to consciously allocate additional resources to applicants likely to be eligible for the s75 duty during either s66 or s73. Local authorities should provide a service to all applicants who are eligible for either but within the context of an individualised service.”*⁵⁷

An applicant’s local connection to the area or those who have a clear need to move from their original area.⁵⁸

At the point where a local authority is bringing its duty under s73 to end because 56 days has ended or all reasonable steps having been taken before the end of 56 days, they

⁵⁵ Code of Guidance, paragraph 12.9

⁵⁶ S65 H(W)A 2014

⁵⁷ Code of Guidance, paragraph 15.25

⁵⁸ Code of Guidance, paragraph 15.26

must include in the written notification of the decision why they consider all reasonable steps have been taken within the context of the best use of resources, and an applicant can request a review of this decision.⁵⁹

⁵⁹ Code of Guidance paragraph 15.29

Section 64 How to secure or help to secure the availability of accommodation

The local authority may help to prevent homelessness or help to secure accommodation in the following ways:

- **By arranging for a person other than the authority to provide something⁶⁰** – for example, the housing authority may ask other organisations to help, if it believes their service may help to prevent homelessness or help to secure accommodation, such as specialist housing or debt advice services or a housing support service
- **By providing something itself⁶¹** – the authority may provide some services themselves, such as a welfare rights service, bond scheme or a social lettings agency amongst others
- **By providing something, or arranging for something to be provided to a person other than the applicant⁶²** – for example, if the authority paid off rent arrears directly to a landlord to enable an applicant to keep their home, or paid a tenancy deposit to a landlord to secure accommodation for someone.

The Act gives examples of what may be provided or arranged to secure or help to secure that suitable accommodation is available, or does not cease to be available, for occupation by an applicant—

- (a) mediation;
- (b) payments by way of grant or loan;
- (c) guarantees that payments will be made;
- (d) support in managing debt, mortgage arrears or rent arrears;
- (e) security measures for applicants at risk of abuse;
- (f) advocacy or other representation;
- (g) accommodation;
- (h) information and advice;
- (i) other services, goods or facilities.⁶³

⁶⁰ S64(1)(a) H(W)A 2014

⁶¹ S64(1)(b) H(W)A 2014

⁶² S64(1)(c) H(W)A 2014

⁶³ S64(2)H(W) A 2014

Personal housing plans

Although it is not a requirement in law, the Code recommends the use of 'Personal Housing Plans' to set out the reasonable steps that will be taken by the local authority, the applicant and anyone else involved in the application, such as a 3rd party organisation.⁶⁴

If the applicant also has a care and support plan under the Social Services and Well-being (Wales) Act 2014, steps should be taken to ensure the two plans are appropriately linked.⁶⁵

⁶⁴ Code of Guidance, paragraph 12.17

⁶⁵ Ibid

Ending the duties to help to prevent (s66) and help to secure (s73)

S84 Notification that duties have ended

When a local authority has concluded that any of the main duties to an applicant under the Housing (Wales) Act 2014 have come to an end (s66, s68, s73 and s75), they must notify the applicant in writing⁶⁶ and include the following information:

- (a) that it no longer regards itself as being subject to the relevant duty,
- (b) of the reasons why it considers that the duty has come to an end,
- (c) of the right to request a review, and
- (d) of the time within which such a request must be made.⁶⁷

If the notification is not received by the applicant (for example because they have no fixed abode or 'care of' address), notification will be treated as given if the local authority make the notification available at their offices for a reasonable period.⁶⁸

s67 Circumstances in which the duty in section 66 ends

The duty under s66 to help to prevent an applicant from becoming homeless continues indefinitely until one of the following arises and the applicant is notified in writing:

- the local authority is satisfied that the applicant has become homeless⁶⁹
- the local housing authority is satisfied (whether as a result of the steps it has taken or not) that—
 - (a) the applicant is no longer threatened with homelessness, and
 - (b) suitable accommodation is likely to be available for occupation by the applicant for a period of at least 6 months⁷⁰
- the applicant, having been notified in writing of the possible consequences of refusal or acceptance of the offer,
 - (a) refuses an offer of accommodation from any person which the authority is satisfied is suitable for the applicant, and
 - (b) the authority is satisfied that the accommodation offered is likely to be available for occupation by the applicant for a period of at least 6 months.⁷¹

The period of 6 months referred to above begins on the day that the notification is sent to the applicant or made available for collection.⁷²

⁶⁶ S84(3) H(W)A 2014

⁶⁷ S84(1) H(W)A 2014

⁶⁸ S84(4) H(W)A 2014

⁶⁹ S67(2) H(W)A 2014

⁷⁰ S67(3) H(W)A 2014

⁷¹ S67(4) H(W)A 2014

⁷² S67(5) H(W)A 2014

There are additional ways that a local authority can end any of the main duties under the Act (s66, s68, s73 and s75). These are set out in s79. The duty can also come to an end if one of the following occurs:

- The local housing authority is no longer satisfied that the applicant is eligible for help.⁷³
- The local housing authority is satisfied that a mistake of fact led to the applicant being notified that the duty was owed to them.⁷⁴
- The local authority is satisfied that the applicant has withdrawn his or her application⁷⁵
- The local housing authority is satisfied that the applicant is unreasonably failing to co-operate with the authority in connection with the exercise of its functions under this Chapter as they apply to the applicant.⁷⁶

Where a local authority considers that an applicant is unreasonably failing to co-operate, and is considering ending the duty for this reason, the Code specifies that they must be satisfied that this is not as a result of unmet support needs or vulnerability and that every attempt is made to secure the co-operation of the applicant in the implementation of the reasonable steps.⁷⁷

s74 Circumstances in which the duty in section 73 ends

Unlike s66, the duty to help to secure accommodation for homeless applicants is time-limited to a maximum of 56 days. The duty will come to an end if the applicant has been notified in writing and one of the following has arisen:

- the end of a period of 56 days⁷⁸
- before the end of a period of 56 days the local housing authority is satisfied that reasonable steps have been taken to help to secure that suitable accommodation is available for occupation by the applicant⁷⁹
- the local housing authority is satisfied (whether as a result of the steps it has taken or not) that—
 - (a) the applicant has suitable accommodation available for occupation, and
 - (b) the accommodation is likely to be available for occupation by the applicant for a period of at least 6 months⁸⁰
- The circumstances are that—
 - (a) the applicant, having been notified of the possible consequence of refusal or acceptance of the offer, refuses an offer of accommodation from any person which the authority is satisfied is suitable for the applicant, and

⁷³ S79(2) H(W)A 2014

⁷⁴ S79(3)H(W)A 2014

⁷⁵ S79(4) H(W)A 2014

⁷⁶ S79 (5)H(W)A 2014

⁷⁷ Code of Guidance, paragraph 15.87-90

⁷⁸ S74(2) H(W)A 2014

⁷⁹ S74(3) H(W)A 2014

⁸⁰ S74(4) H(W)A 2014

(b) the authority is satisfied that the accommodation offered is likely to be available for occupation by the applicant for a period of at least 6 months.⁸¹

The period of 6 months referred to above begins on the day that the notification is sent to the applicant or made available for collection.⁸²

As when bringing the help to prevent duty to an end, the help to secure can also be ended if one of the circumstances in s79 arises.⁸³

⁸¹ S74(5) H(W)A 2014

⁸² S74(7) H(W)A 2014

⁸³ S79 H(W)A 2014

Keeping assessments under review

The assessment must be kept under review throughout the period where a duty is or may be owed.⁸⁴

In particular, there are two circumstances in which an assessment must be reviewed:

1. Where the duty under s66 (help to prevent homelessness) has or is likely to come to an end because the applicant has become homeless.⁸⁵
2. Where the duty under s73 has or is likely to come to an end and the applicant may be owed the duty under s75 (to secure accommodation for applicants in priority need when the duty under s73 ends).⁸⁶

When the local authority reviews the assessment, it must notify the applicant of the outcome of the reviewed assessment under s63. See page 15 for more information on notifications of the outcome of assessments/reviewed assessments.

Therefore, when the duty under s73 ends because either:

- a) a period of 56 days has ended, or
- b) before the period of 56 has ended, the local authority is satisfied that it has taken all reasonable steps to help to secure that suitable accommodation is available to the applicant,

the local authority must review to assessment to come to a decision as to whether they have a duty to secure accommodation for the applicant under s75.⁸⁷

⁸⁴ S62(8) H(W)A 2014

⁸⁵ S62(9) H(W)A 2014

⁸⁶ *ibid*

⁸⁷ *Ibid* and Code of Guidance, paragraph 10.43

S70 Priority need for accommodation

Whilst ‘priority need’ has less prominence within the Housing (Wales) Act 2014 than it does within the Housing Act 1996, it is nevertheless relevant when local authorities are considering whether the applicant is owed the following duties:

- s68 – Interim duty to secure accommodation for homeless applicants in priority need
- s75 – Duty to secure accommodation for applicants in priority need when the duty in s73 (help to secure) ends.

Under the Act, the following groups of people are defined as having a priority need⁸⁸

- Pregnant woman*
- Person with dependent children
- Vulnerable for a special reason*
- Emergency; fire or flood*
- Domestic Abuse*
- 16 and 17 year old*
- 18-21 year old at risk of sexual or financial exploitation*
- 18-21 year old who was previously LAC*
- Homeless on release from the armed forces*
- Vulnerable as a result of custody or remand*

*plus those who reside with or might reasonably be expected to reside with the applicant.

Pregnant Women

A pregnant woman, together with anyone who lives with them or could reasonably be expected to live with them, is in priority need. Any stage of pregnancy qualifies as priority need.⁸⁹

Dependent children

Priority need will arise if the applicant has one or more dependent children living with them or who might reasonably be expected to live with them.⁹⁰

The Act does not define dependent children but the Code of Guidance states:⁹¹

⁸⁸ S70(1)(a)-(j)

⁸⁹ Code of Guidance, paragraph 16.5

⁹⁰ S70(1)(b) H(W)A 2014

⁹¹ Code of Guidance, paragraph 16.6

“Authorities should treat as dependant all children under 16, and all children aged 16-18 (up to their 19th birthday) who are in, or are about to begin, full-time education (including further but not higher education) or training, or who for other reasons are unable to support themselves and who live at home.”

The Code makes a number of other points in relation to dependent children⁹² including that the child need not be the applicant’s biological child, but there must be a parent child relationship. All 16 & 17 year olds are automatically seen as in priority need, so where there is not a parent child relationship it is advisable for the 16 or 17 year old to make the homelessness application in their name. Authorities should take care that each case is fully assessed on its individual circumstances.

If the applicant’s children are being looked after by a local authority, i.e. are subject to a care order or accommodated under a voluntary agreement, and are not currently living at home, the advice of the social services department will be essential in determining the nature and the degree of the children’s dependency. This is of particular importance as authorities are required to take steps to settle the children back with their family and encourage contact between them (unless either of these things would be contrary to the child’s best interests). A joint approach should be adopted with social services in such cases.⁹³

The need for custody orders.

In the case of *Sidhu*⁹⁴ the applicant was living in a women’s refuge and had an interim custody order from the County Court. The local authority claimed that they could consider her not in priority need, as a full custody order had not been granted. The court held that a custody order was irrelevant when considering priority need, nor could the authority defer their decision in order to have more time to assure themselves that no change would take place i.e. the (remote) prospect that the applicant would lose custody at a full hearing.

Although the court held that a custody order was irrelevant, this would not be the case if the applicant’s children were not resident but might reasonably be expected to do so. This may be the situation if the applicant has won custody but can not in practice care for their child/ for want of accommodation. They must however be dependent upon the parent; the applicant cannot be in priority need when the children are dependent on someone else. Bear in mind however that all 16 & 17 year olds are seen as priority need in their own right.

Children residing in two households.

In the case of *Bishop*⁹⁵ the applicant was a father of two. The father had an agreement with the children’s mother that the children would divide their time between parents. Their mother received child benefit for the children. The father applied to the local authority for accommodation under Part III of the Housing Act 1985 (analogous to Pt.VII Housing Act 1996). The local authorities established that the children did sometimes reside with the applicant and the investigating officer concluded that he was in priority need. The principal homelessness officer disagreed however, and the authority sent a letter to the

⁹² Code of Guidance, paragraph 16.7 – 16.10

⁹³ Code of Guidance, paragraph 16.10

⁹⁴ R -v- LB Ealing, ex p *Sidhu* (1982) 2 HLR 647, QBD.

⁹⁵ R -v- Westminster CC, ex p *Bishop* 29 HLR 546, QBD

applicant stating their decision that he was not in priority need: the authority was not satisfied that the children were dependant on the applicant, were adequately housed with their mother, were not dependant on the applicant as their mother received child benefit and the applicant did not have financial means of supporting them.

On appeal the court ruled in favour of the local authority stating that to be in priority need it was necessary that the child was dependant at least in part on the applicant, and the authority had take all relevant information into account and acted upon it correctly.

Further guidance on this can also be found in the judgement of *Holmes-Moorehouse v Richmond Upon Thames LBC* ⁹⁶

Vulnerable as a result of some special reason

An applicant will be in priority need if they, or anyone residing or reasonably expecting to reside with them are vulnerable as a result of some special reason, for example, old age, physical or mental illness or physical or mental disability.

Vulnerability is not confined to physical and/or mental characteristics. The degree of severity is the relevant factor. ⁹⁷

When considered whether an applicant is vulnerable, advice from professionals should be taken into account, and where there is doubt a clinical opinion may be sought. ⁹⁸

The burden of proof lies with the local authority, although applicants can be expected to provide their written consent, so that necessary enquiries can be made. ⁹⁹

The final decision as to whether an applicant is vulnerable lies with the local authority.

The Code gives further examples that may constitute vulnerability as a result of some special reason.

Old age

Careful consideration should be given to applicants over the age of 60, who should normally be considered vulnerable, although no ‘fixed age’ should be set. ¹⁰⁰

Mental and physical illness and mental and physical disability including Autistic Spectrum Disorder (ASD):

Factors which an Authority will need to consider include:

⁹⁶ [2009] UKHL 7

⁹⁷ Code of Guidance, paragraph 16.12

⁹⁸ Code of Guidance, paragraph 16.15

⁹⁹ Code of Guidance, paragraph 16.16

¹⁰⁰ Code of Guidance, paragraph 16.20

- i) the nature and extent of the illness or impairment which may render the applicant vulnerable;
- ii) the relationship between the illness or impairment and the individual's housing difficulties; and
- iii) the relationship between the illness and or impairment and other factors such as drug/alcohol misuse, offending behaviour, challenging behaviours, age and personality disorder.¹⁰¹

Particular consideration should also be given to the following groups¹⁰²:

- People in receipt of psychiatric services
- Chronically sick people
- Victims of abuse
- Rough sleepers
- Former asylum seekers

Homeless as a result of an emergency

For example, fire, flood or other disaster.¹⁰³ This applies whether or not there are dependent children in the household or the applicant has any vulnerabilities.¹⁰⁴

Domestic abuse

A person is in priority need if they (or anyone residing/reasonably expected to reside with them) are homeless as a result of being subjected to domestic abuse.¹⁰⁵

Abuse is defined in the act at S.58 (1) as meaning physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm: abuse is domestic abuse where the victim is associated with the abuser.

Domestic abuse can occur in same gender as well as mixed gender relationships. S.58 (2) sets out the meaning of a person being 'associated' with another.

In cases involving domestic abuse, the safety of the applicant and ensuring confidentiality will be of paramount importance. Authorities should not seek confirmation of domestic abuse from the alleged perpetrator. Victims of domestic abuse may wish to remain in their homes. Authorities should consider what reasonable steps they can take to assist with this wish.¹⁰⁶

¹⁰¹ Code of Guidance, paragraph 16.23

¹⁰² Code of Guidance, paragraphs 16.25 – 16.33

¹⁰³ S70(1)(d) H(W)A 2014

¹⁰⁴ Code of Guidance, paragraph 16.34

¹⁰⁵ S70(1)(e) H(W)A 2014

¹⁰⁶ Code of Guidance, paragraph 16.35 – 16.39

16/17 year olds

All 16/17 year olds must be treated as being in priority need.¹⁰⁷

It should be noted that it is the age of the applicant when they make their homelessness application that is relevant. If the applicant turns 18 during the assessment or subsequent duties, they will retain their priority need status.¹⁰⁸

The Code of Guidance highlights the need for joint working arrangements between housing and social services to ensure proper assessment and resettlement for vulnerable young people, maintaining the principles set out in *R (G) v Southwark*.¹⁰⁹

18-20 and at risk of sexual or financial exploitation¹¹⁰

The Code of Guidance gives examples that this may include a young person who is:

- (i) at risk of sexual abuse; or
- (ii) at risk due to their sexual orientation; or
- iv) at risk of prostitution; or
- v) has learning difficulties; or
- vi) at risk of misuse of power or exercise of control by another person; or
- vii) at risk of financial extortion; or
- viii) on a low income and is vulnerable due to a lack of alternative financial means ('low income' should not be regarded as someone whose income is below a threshold, but someone whose income falls substantially below their needs. It would therefore be a matter of judgement in each individual case based on the applicant's personal circumstances, but for the purposes of this clause does not include a student who is in further education).¹¹¹

Care leavers aged 18-20

Priority need will arise for this reason in respect young people who were looked after, accommodated or fostered whilst still a child, have now reached the age of 18 but are under 21.

Looked after is defined as¹¹²:

- was looked after by the local authority within the meaning of s74 of the Social Services and Well-Being (Wales) Act 2014; or
- was accommodated by or on behalf of a voluntary organisation; or
- was accommodated in a private children's home; or
- was accommodated for a consecutive period of at least three months by

¹⁰⁷ S70(1)(f)

¹⁰⁸ Code of Guidance, paragraph 16.40

¹⁰⁹ *R (G) v Southwark* [2009] UKHL 26

¹¹⁰ S70(1)(g) H(W)A 2014

¹¹¹ Code of Guidance, paragraph 16.45

¹¹² Code of Guidance, paragraph 16.49

- any health authority, special health authority or local education authority, or
- in any residential care home, nursing home or in any accommodation provided by the NHS; or
- privately fostered .

The Code of Guidance says that a young person is in priority need if he or she has spent any time, however short, during their childhood in care. The guidance goes on to say that care leavers over 21 should still be considered carefully with regards to vulnerability.¹¹³

Homeless since leaving the armed forces

Priority need will arise where a person who was formerly serving in the regular Armed Forces of the Crown has been homeless since leaving those forces.¹¹⁴ Persons included in this definition mean the Royal Navy, the regular forces as defined by S.225 of the Army Act 1955, the regular Air Force as defined by S. 223 of the Air Forces act 1955 and Queen Alexandra's Royal Naval Nursing Service.¹¹⁵

Priority need arises where the applicant has failed to secure suitable permanent accommodation and has therefore been unable to establish stable accommodation since leaving the armed forces. 'Suitable permanent accommodation' is defined as:

- accommodation provided by a social landlord (an introductory, a secure or an assured tenancy)
- a private landlord (assured (shorthold tenancy), or
- an accredited supported housing provider, or
- permanently settled with family or friends as part of their household.¹¹⁶

Vulnerable as a result of time spent in custody

A person will be in priority need under this section if they have a local connection to the area of the local authority and are vulnerable as a result of:

- (i) having served a custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000
- (ii) having been remanded in or committed to custody by an order of the court, or
- (iii) having been remanded in youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.¹¹⁷

¹¹³ Code of Guidance, paragraph 16.51

¹¹⁴ S70(1)(i) H(W)A 2014

¹¹⁵ Code of Guidance, paragraph 16.57

¹¹⁶ Code of Guidance, paragraph 16.60

¹¹⁷ S70(1)(j) H(W)A 2014

The Code of Guidance sets out factors that local authorities should consider when making their determination as to whether a person is vulnerable as a result of time spent in custody:

- the length of time the applicant served in custody or detention (although Authorities should not assume that vulnerability could not occur as a result of a short period in custody or detention);
- whether the applicant is still suffering the effects of any traumatic episode/s have been experienced during a spell in custody or detention;
- whether the applicant is receiving supervision from a criminal justice agency e.g. the National Probation Service in Wales, Wales Community Rehabilitation Company, Youth Offending Team or Drug Intervention Programme. Housing Authorities should have regard to any advice from criminal justice agency staff regarding their view of the applicant's general vulnerability, but the final decision on the question of vulnerability for the purposes of the homelessness legislation will rest with the Local Authority;
- the length of time since the applicant was released from custody or detention, and the extent to which the applicant had been able to obtain and/or maintain accommodation during that time
- whether the applicant has any existing support networks, for example family or friends, and how much of a positive influence these networks are likely to be in the applicant's life
- whether the applicant has received an assessment and is in receipt of care whether the applicant is in receipt of services under the Mental Health Measure 2010.¹¹⁸

Meaning of vulnerability

The meaning of vulnerability is now defined within the Act at section 71:

“(1) A person is vulnerable as a result of a reason mentioned in paragraph (c) or (j) of section 70(1) if, having regard to all the circumstances of the person's case,—

(a) the person would be less able to fend for himself or herself (as a result of that reason) if the person were to become street homeless than would an ordinary homeless person who becomes street homeless, and

(b) this would lead to the person suffering more harm than would be suffered by the ordinary homeless person.”

The Code of Guidance advises that when comparing the applicant to ‘the ordinary homeless person’ the local authority should not equate the ordinary homeless person to a ‘chronic rough sleeper with the associated social, mental and physical health problems that they can display. This has been confirmed by the judgment of the Supreme Court in the *Johnson v Solihull* case 2015¹¹⁹, where the Court clarified that the law was not meant to compare the vulnerable with the vulnerable.’¹²⁰

¹¹⁸ Code of Guidance, paragraph 16.64

¹¹⁹ *Hotak v London Borough of Southwark, Kanu v London Borough of Southwark, Johnson v Solihull Metropolitan Borough Council*, [2015] UKSC 30

¹²⁰ Code of Guidance, paragraph 16.73

A local authority is entitled to take into consideration 3rd party support that an applicant is receiving in their determination of whether the applicant is vulnerable, provided the support is consistent and predictable.¹²¹

Prisoners and homelessness

Prisoners leavers who were homeless on leaving custody were automatically in priority need prior to the introduction of Part 2 Housing (Wales) Act 2014. This meant that they would often be provided with interim accommodation if they were homeless on release from prison, whilst a decision on their homelessness application was pending, unless their application was considered to be a repeat application, with no change of circumstances since a previous application.

Under Part 2 Housing (Wales) Act 2014, homeless prison leavers are only in priority need if they are considered to be vulnerable as a result of the time spent in custody (as outlined above) and as a consequence, local authorities are less likely to have a duty to secure interim accommodation on their release.

As automatic priority need has been abolished for homeless prison leavers, the Welsh Government has developed a *National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate*¹²². This provides guidance for agencies involved in the resettlement planning for those in custody from their reception to their release. It is a joint approach between the National Probation Service, the Wales Community Rehabilitation Company and Local Authorities and its purpose is to bridge the gap between the Offender Rehabilitation Act 2014 and the Housing (Wales) Act 2014.

The table below provides a basic overview of the pathway in respect of how it integrates with Part 2 Housing (Wales) Act 2014. More detailed and comprehensive information is contained within the Pathway itself and is relevant to those working with prisoners who are homeless or threatened with homelessness.

When?	What?	Who?
Reception into custody	Screen for housing needs. Retain existing accommodation where viable.	CRC/NPS Prison Link Cymru
12 week resettlement window	Support to retain or obtain accommodation.	CRC
66 days prior to release	Refer to local authority for an assessment under s62 if housing issue not resolved. If s66 or s73 duty owed – local authority to take reasonable steps to help.	CRC Local authority

¹²¹ Code of Guidance, paragraph 16.74

¹²² National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate, Welsh Government, December 2015

On release	Continue with reasonable steps under s66 or s73 as applicable & review assessment as appropriate. If s73 duty ended prior to release, carry out further assessment under s62 on release. If applicable (reason to believe homeless, eligible for help and in priority need) provide interim accommodation under s68.	Local authority Local authority
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S68 Interim duty to secure accommodation for applicants in priority need

Local authorities have a duty to secure that suitable accommodation is available for an applicant it has reason to believe may be:

- a) Homeless
- b) Eligible for help, and
- c) Have a priority need for accommodation

This applies where a local authority ‘is not yet satisfied of the above.’¹²³

This means that when in some circumstances a local authority will have a duty to secure interim accommodation whilst they are carrying out their enquiries and assessment under the Act.

The threshold for establishing that a duty is owed under s68 to provide interim accommodation is lower than for the more substantive duties. Note that the local authority only have to have ‘*reason to believe*’ that the applicant ‘*may*’ be homeless, eligible and have a priority need, whereas with the substantive duties they must be ‘satisfied’ of this.

The duty to provide interim accommodation is a free-standing duty and will generally run alongside the duty under s73 to help to secure accommodation, although it may start before it is established that the duty under s73 is owed.

It carries its own review rights and an applicant can request a review of whether they are owed the duty, whether the duty has been brought to an end and of the suitability of the interim accommodation offered.

Ending the interim duty to secure accommodation

The duty to secure interim accommodation will continue until one of the following occurs and the local authority notifies the applicant in writing (in accordance with s84):¹²⁴

- The local authority decides the applicant is not owed a duty under s73 (help to secure duty).¹²⁵ This could arise where the local authority has concluded that the applicant is either not homeless or not eligible for help.
- The duty under s73 (help to secure) has come to an end and the duty under s75 (to secure accommodation/the ‘final duty’) is or is not owed to the applicant, and the applicant has been notified of this decision.¹²⁶

¹²⁴ S69(1) H(W)A 2014

¹²⁵ S69(2) H(W)A 2014

¹²⁶ S69(3) H(W)A 2014

- The applicant is not owed the final duty under s75 (to secure accommodation) because they have been found to be intentionally homeless, following the review of their assessment when the duty in s73 comes to an end. In these circumstances, interim accommodation must be provided for a 'sufficient period' beginning on the day it has notified the applicant that the final duty under s75 (to secure accommodation) is not owed. This must not be less than 56 days from the day that the applicant was notified that they were owed the duty under s73 to 'help to secure' accommodation.¹²⁷
- The applicant, having been notified in writing of the possible consequences of refusal, refuses an offer of interim accommodation, which the local authority is satisfied is suitable for the applicant.¹²⁸
- The applicant becomes intentionally homeless from suitable interim accommodation.¹²⁹
- The applicant ceases to occupy the suitable interim accommodation as their only or principle home.¹³⁰

Note that the duty to secure interim accommodation can also end due to any of the reasons set out in s79:

- The applicant is no longer eligible for help;
- A mistake of fact led to the applicant being notified they were owed the duty;
- The applicant has withdrawn their application;
- The applicant is unreasonably failing to co-operate with the authority in relation to their homelessness application¹³¹

¹²⁷ S69(4)-(6) H(W)A 2014

¹²⁸ S69(7) H(W)A 2014

¹²⁹ S69 (8) H(W)A 2014

¹³⁰ S69(9) H(W)A 2014

¹³¹ S79(2)-(5) H(W)A 2014

Local connection

S81 - What is local connection?

A person has a local connection with the area of a local housing authority in Wales or England if the person has a connection with it -

- (a) because the person is, or in the past was, normally resident there, and that residence is or was of the person's own choice,
- (b) because the person is employed there,
- (c) because of family associations, or
- (d) because of special circumstances.¹³²

These terms are not defined any further in the legislation. Definitions have been formulated and agreed by the Welsh Local Government Association with similar bodies in England and Scotland. This is commonly known as and referred to here as the 'Local Authority Agreement'.¹³³

Normal residence

Residence must be of a person's own choice and therefore time spent in prison does not count towards establishing a local connection.¹³⁴

The Code of Guidance states that there is no set period that an applicant has to live in an area to establish a local connection. The question will be if they are 'clearly settled or not, and whether they have a connection elsewhere.'¹³⁵ However, the Local Authority Agreement provides that 'normal residence' should be accepted where an applicant has been living in an area for 6 out of the last 12 months or three out of the last five years.

Employment

As with residence, employment in an area is not established for the purposes of local connection in an area if the applicant has been serving in the regular armed forces

The Local Authority Agreement adds that employment in the area 'of a casual nature' will not normally count, and that confirmation from an employer should be obtained.

Family association

The Local Authority Agreement says family associations arise where an applicant, or member of his/her household:

- has parents, adult children or brothers or sisters currently residing in the area, and
- these relatives have been resident for a period of at least five years, and
- the applicant indicates a wish to be near them.

¹³² S81(2) H(W)A 2014

¹³³ Local Authority Association Joint Local Connection Agreement.

¹³⁴ S81(3) H(W)A 2014

¹³⁵ Code of Guidance, paragraph 18.8

A referral should not be made to another local authority on the grounds of family association if the applicant objects to those grounds.

Special circumstances

The Agreement says that other special circumstances include the fact that an applicant seeks to return to an area where s/he was brought up or had lived for a considerable period of time in the past may be a ground for finding a local connection because of special circumstances. These are not the only reasons though, the joint connection agreement states that local authorities must exercise their discretion, and that “other special reason” may be particularly relevant in dealing with people who have been in prison or in hospital and who do not conform to residence or family connection rules.

Local connection will be established with a local housing authority in England or Wales if a person has been provided with accommodation at any time under support for asylum seekers (under s95 Immigration and Asylum Act 1995).¹³⁶ However, if the asylum seeker is subsequently moved to another area under the same provision, the local connection to the previous area (established by virtue of this section) would be lost. The same would apply if they were provided with accommodation in an accommodation centre under s22 Nationality, Immigration and Asylum Act 2002.¹³⁷

Time spent in the armed forces will establish a local connection.¹³⁸

No local connection anywhere

Where the applicant or anyone reasonably expected to reside with the applicant has no local connection to any area in Great Britain, the duty to help will rest with the authority to which the application is made.¹³⁹

S80 – referral of a case to another local housing authority

Where a local authority would be subject to the duty in s73 (to help to secure accommodation), the local authority may consider referring the application to another local authority area, if:

- a) The conditions for a referral are met, and
- b) The applicant is in priority need and unintentionally homeless.¹⁴⁰

Conditions for referral to another local authority

¹³⁶ S81(5) H(W)A 2014

¹³⁷ S81(6) H(W)A 2014

¹³⁸ Code of Guidance, paragraph 18.11

¹³⁹ Code of Guidance, paragraph 18.19

¹⁴⁰ S80(1) H(W)A 2014

- a) Neither applicant but the applicant nor anyone residing or reasonably expected to reside with them has a local connection to the area of the authority where the application was made;
- b) The applicant or a person reasonably expected to reside with the applicant has a local connection to the area of the other authority; and
- c) Neither the applicant nor any person reasonably expected to reside with the applicant will run the risk of domestic abuse in that other area.¹⁴¹

The conditions for referral will not be met if:

- a) The applicant or anyone reasonably expected to reside with them has suffered abuse (other than domestic abuse) in the other area; and
- b) It is probable that the return to that area of the victim will lead to further abuse of a similar kind against him or her.¹⁴²

Duties to applicants being referred

Where an applicant is being referred the authority in which the application was made must notify the other housing authority. The applicant must also be informed of this.¹⁴³

Where a case is referred to another authority, the original authority must accommodate the applicant pending the acceptance of the main duty by the other authority.¹⁴⁴

If the applicant requests a review of this decision to refer, the accommodation duty ends but the authority retains a power to provide such accommodation.¹⁴⁵ The Code of Guidance recommends that accommodation pending the outcome of a review is provided in these circumstances.¹⁴⁶

Referral accepted

If the other authority decide that the conditions for referral are met they must accept the referring authority's decisions concerning homelessness, priority need and intentionality and accept the duty towards the applicant. This will be a duty to provide interim accommodation under s68 and a duty to help to secure accommodation under s73.¹⁴⁷

The accepting authority must inform the applicant that they now owe these duties, their reasons for this and of their right to review.

¹⁴¹ S80(3) H(W)A 2014

¹⁴² S80(4) H(W)A 2014

¹⁴³ S84(1) H(W)A 2014

¹⁴⁴ S82(2) H(W)A 2014

¹⁴⁵ S82(5)-(6) H(W)A 2014

¹⁴⁶ Code of Guidance, paragraph 18.25

¹⁴⁷ S82(4) H(W)A 2014

Referral rejected

If the referral is not accepted the original authority are subject to the duty under s73 to help to secure accommodation, and any duty to secure interim accommodation under s68.¹⁴⁸

The Code of Guidance advises that in the event of two authorities being unable to agree whether the conditions for referral are met, they must seek to agree on a person to be appointed to make the decision for them. If unable to agree on who should be the appointed person, they may wish to seek advice from the Welsh Local Government Association.

The arrangements set out in the Schedule to The Homelessness (Decisions on Referrals) Order 1998 No. 1578 apply in all cases where a Local Authority in England or Wales seeks to refer a homelessness case to another authority in England or Wales, and the two authorities are unable to agree whether the conditions for referral are met.

¹⁴⁸ S82(3) H(W)A 2014

S75 Duty to secure accommodation for applicants in priority need when the duty in section s73 ends

When the duty in section 73 (duty to help secure suitable accommodation for a homeless applicant) comes to an end for the following reasons:

- Because a period of 56 days has ended;
- A period of 56 days has not ended but all reasonable steps have been taken,

the local housing authority must secure that suitable accommodation is available for occupation by the applicant if it:

(a) is satisfied that the applicant—

(i) does not have suitable accommodation available for occupation, or

(ii) has suitable accommodation, but it is not likely that the accommodation will be available for occupation by the applicant for a period of at least 6 months starting on the day the applicant is notified in accordance with section 84 that section 73 does not apply,

(b) is satisfied that the applicant is eligible for help,

(c) is satisfied that the applicant has a priority need for accommodation, and

(d) if the authority is having regard to whether or not the applicant is homeless intentionally (see section 77), is not satisfied that the applicant became homeless intentionally in the circumstances which gave rise to the application.¹⁴⁹

Therefore, where the duty in s73 (to help to secure accommodation) comes to an end because either a period of 56 days has ended, or a period of 56 days has not ended but all reasonable steps have been taken, the local authority must review the applicant's assessment and decide whether they are owed the 'final duty' (as outlined above) under s75 (the duty to secure accommodation).¹⁵⁰

The applicant must be notified in writing of the outcome of this reviewed assessment. This written notification must inform them of the reasons for the decision and also of their right to request a review of the decision in the event that the final duty under s75 (to secure accommodation) is not owed.

If the local authority decides that it has a duty to secure accommodation under s75 (the final duty), it must secure suitable accommodation for the applicant and the household until that duty can be brought to an end.

The accommodation is referred to within the legislation as 'interim accommodation under s75.' The accommodation provided under s75 is essentially temporary accommodation. The type of accommodation used to meet the duty will depend on the specific applicant and the needs of the household, but it must be suitable. The possibilities could range from bed and breakfast type accommodation (in certain circumstances only), hostels, temporary tenancies of local authority owned or leased properties or assured shorthold tenancies owned by housing associations.

The applicant will always have a right to request a review of the suitability of the accommodation offered, whether or not they accept the offer,¹⁵¹ but should be aware that challenges on the issue of suitability do not often succeed and it may be prudent for the applicant to accept an offer and to request a review, so that they have the accommodation

¹⁴⁹ S75(1)-(2) H(W)A 2014

¹⁵⁰ Code of Guidance, paragraph 10.45

¹⁵¹ S85(3) H(W)A 2014

as a safety net, in the event the review is not successful, even if just for a short period whilst they try and find something they consider to be more suitable.

Ending the s75 duty

The duty to secure accommodation under s75 will continue until it is brought to an end in one of the ways described within the Act, and the applicant is notified in writing of the decision.

The ways that the duty can end are:

- The applicant accepts an offer of suitable accommodation under Part 6 of the Housing Act 1996.¹⁵² This is an allocation of housing via a local authority's allocation scheme which often will include both council and housing association properties.
- The applicant accepts an offer of suitable accommodation under an assured tenancy (including an assured shorthold tenancy).¹⁵³ An assured or assured shorthold tenancy could be offered by either a housing association or a private landlord.
- The applicant refuses an offer of suitable interim accommodation under s75, a suitable private rented sector offer, or a suitable offer of accommodation under Part 6 Housing Act 1996.¹⁵⁴
A 'private rented sector offer' is an offer made by a private landlord to the applicant, with the approval of the local authority with a view to bringing the local authority's duty to an end. Any such offer must have a fixed term of at least 6 months.¹⁵⁵
- The local authority is satisfied that the applicant has become intentionally homeless from suitable interim accommodation made available. This includes accommodation provided under s75 (the final duty) and accommodation that was initially provided under s68 (the interim duty to accommodate), but is now provided under s75 (because the final duty is owed to the applicant).¹⁵⁶
- The local authority is satisfied that the applicant has voluntarily ceased to occupy as their only or principal home the suitable interim accommodation made available. This includes accommodation provided under s75 (the final duty) and accommodation that was initially provided under s68 (the interim duty to accommodate), but is now provided under s75 (because the final duty is owed to the applicant).¹⁵⁷

Note that the duty to secure accommodation under s75 can also end due to any of the reasons set out in s79:

- The applicant is no longer eligible for help;
- A mistake of fact led to the applicant being notified they were owed the duty;
- The applicant has withdrawn their application;
- The applicant is unreasonably failing to co-operate with the authority in relation to their homelessness application¹⁵⁸

¹⁵² S76(2)(a) H(W)A 2014

¹⁵³ S76(2)(b) H(W)A 2014

¹⁵⁴ S76(3)(a)-(c) H(W)A 2014

¹⁵⁵ S76(4) H(W)A 2014

¹⁵⁶ S76(6) H(W)A 2014

¹⁵⁷ S76(7) H(W)A 2014

¹⁵⁸ S79(2)-(5) H(W)A 2014

Intentional Homelessness

Having regard to intentional homelessness

Under the Housing (Wales) Act 2014, local authorities can make the decision as to whether they will have regard to intentional homelessness.¹⁵⁹ They can consider which (or any) of the priority need groups they will have regard to priority need in respect of. For example, a local authority could make the decision that they will not consider intentional homelessness for all 16-17 year olds or all households with dependent children.

Once the authority has made a decision on which groups it will have regard to intentional homelessness in respect of, it must publish a notice advising of this.

Intentional homeless does not apply to the following duties:

- Provision of interim accommodation under s68 (before a decision has been made as to whether the applicant is owed a duty under s73);
- The duty to help to prevent homelessness under s66;
- The duty to help to secure that accommodation is available under s73

However, local authorities can consider whether an applicant has become intentionally homeless at the point they are assessing whether the applicant is owed the final duty under s75 (to secure accommodation).

The Code of Guidance points out that the Act does not say that local authorities cannot look at the question of intentional homelessness at any point during its assessment, but it should not spend time investigating intentionality to the detriment of problem solving.¹⁶⁰

Where a local authority considers that it is likely to find an applicant intentionally homeless should the application reach the stage where such a decision is required (at the end of s73 if the duty has ended without the housing problem being resolved), the Welsh Government recommends that they should notify the applicant of this in writing, explaining the potential consequences of the decision.¹⁶¹ The purposes of a 'minded to' letter is to ensure that the applicant has an opportunity to provide any information that may have a bearing on the decision and also to ensure that they can make realistic choices with regard to their housing options.

Definition of intentional homelessness

S77 of the Housing (Wales) Act 2014 defines the circumstances in which an applicant is to be regarded as having become homelessness intentionally or threatened with homelessness intentionally. Decisions in relation to intentionality must follow

¹⁵⁹ S78 H(W)A 2014

¹⁶⁰ Code of Guidance, paragraph 17.36

¹⁶¹ Code of Guidance, paragraph 17.35

investigations of the applicant's circumstances and cannot be based on a blanket policy.¹⁶²

Under the Housing (Wales) Act 2014 there are two ways in which a person can become homeless or threatened with homelessness intentionally:

- deliberate act or omission
- entering into an arrangement

Someone cannot be found intentionally homeless if the accommodation they are accused of losing intentionally was not reasonable for them to continue to occupy.

Deliberate act or omission

A person becomes homeless intentionally if they deliberately do, or fail to do anything, in consequence of which they cease to occupy accommodation which is available for their occupation and which it would have been reasonable for them to continue to occupy.¹⁶³

The action, or omission, which led to the applicant losing accommodation must be deliberate. The Code of Guidance highlights a number of circumstances that may or may not be seen as deliberate:

Acts not to be considered as deliberate

- i) the act or omission was non-payment of rent which was the result of housing benefit delays, or financial difficulties which were beyond the applicant's control;
- ii) the Local Authority have reason to believe the applicant is incapable of managing their affairs, for example, due to age, physical or mental illness or physical or mental disability;
- iii) particular acts or omissions were the result of a vulnerability as defined by section 71. The appropriate partner agency should be consulted before a conclusion on the applicant's intentionality status is reached.
- iv) imprudence or lack of foresight on the part of an applicant led to homelessness but the act or omission was in good faith.¹⁶⁴

Acts or omissions which may be regarded as deliberate

- i) where someone chooses to sell their home where there is no risk of losing it;
- ii) where someone has lost their home due to wilful and persistent refusal to pay rent or mortgage payments;
- iii) where someone could be said to have significantly neglected their affairs having disregard to sound advice from qualified persons;
- iv) where someone voluntarily surrenders adequate accommodation in this country or abroad which it would have been reasonable to continue to occupy;
- v) where someone is evicted because of anti-social behaviour, for example, nuisance to neighbours, harassment etc.;

¹⁶² Code of Guidance, paragraph 17.12

¹⁶³ S77(2) H(W)A 2014

¹⁶⁴ Code of Guidance, paragraph 17.17

vi) where someone is evicted because of violence or threats of violence by them; or
 vii) where someone leaves a job with tied accommodation and the circumstances indicate that it would have been reasonable for them to continue in the employment and reasonable to continue to occupy the accommodation.¹⁶⁵

Actions carried out in good faith where the applicant was unaware of a relevant fact do not constitute intentional homelessness¹⁶⁶

Again, the Code provides some examples of acts that may be considered to have been in good faith:

- someone gives up possession of accommodation in the belief that he or she has no legal right to continue to occupy the accommodation and it would therefore not be reasonable for them to continue to occupy. For example, where someone leaves accommodation in the private sector after receiving a valid notice to quit or notice that the assured shorthold tenancy has come to an end and was genuinely unaware that he or she had a right to remain until the court granted an order and warrant for possession.¹⁶⁷
- someone gets into rent arrears, being unaware that he or she may be entitled to housing benefit or other benefits;
- an owner/occupier faced with foreclosure or possession proceedings to which there is no defence, sells before the mortgagee recovers possession through the courts, or surrenders the property to the lender; or
- a tenant, faced with possession proceedings to which there would be no defence, and where the granting of a possession order would be mandatory, surrenders the property to the landlord. Although the Local Authority may consider that it would have been reasonable for the tenant to continue to occupy the accommodation, the tenant would not have become homeless deliberately if he or she had taken a contrary view in ignorance of material facts, e.g. the general pressure on the Local Authority for housing assistance.¹⁶⁸

Other circumstances in which the applicant's actions might not amount to intentional homelessness include:

- Where an applicant has fled their home because of domestic violence, intimidation or harassment, or threats of such, and the applicant has failed to pursue all legal remedies against the perpetrator because of fear of reprisal.
- Where an applicant has a priority need and is a prison leaver, s.70 and the prison sentence has led to loss of their accommodation, the Welsh Government considers that the actions that caused the person to be imprisoned ought not be automatically considered as grounds for regarding them intentionally homeless. However, if the offence which resulted in the prison sentence was a direct cause of the homelessness, for example breach of a tenancy agreement which led to

¹⁶⁵ Code of Guidance, paragraph 17.23

¹⁶⁶ S77(3)H(W)A 2014

¹⁶⁷ Code of Guidance, paragraph 17.25

¹⁶⁸ Code of Guidance, paragraph 17.26

repossession of the property, then it may be reasonable to consider whether that person was homeless intentionally.

- Where it is unreasonable to expect the applicant to remain in the accommodation due to a breakdown in relationship with the host, or where the behaviour of the host has been unreasonable. Where the surrender of accommodation is due to unreasonable behaviour of the applicant, this may be considered as intentionally homeless. The situation may arise where the applicant was not fully responsible for the loss of accommodation due to the actions of others. The reasonableness of the applicant's actions will need to be considered by the Local Authority in light of the alternative action he or she could reasonably have taken.
- Where the applicant's homelessness has been caused by an unmet need.¹⁶⁹

Settled accommodation

The local authority may also look back beyond the incident that was the immediate cause of homelessness to the reasons surrounding the departure from any previous accommodation. The authority can consider whether there is any intentional homelessness from any of the accommodation which the applicant has lived in, from the most recent accommodation and then going back to the last 'settled' accommodation.

Time of consideration

In determining whether an applicant became homeless intentionally, the local housing authority must:

- Firstly, assess if s/he deliberately did or failed to do anything which caused her/him to lose accommodation that it was reasonable for her/him to continue to occupy at the time s/he left, and
- secondly, at the time of its decision (or review decision if applicable), assess if that deliberate act or omission is still the cause of her/his homelessness.

A later intervening event constituting an involuntary cause of homelessness can be regarded as superseding and breaking the chain of causation from the applicant's earlier deliberate conduct by the time of the authority's decision. In the case considered by the Supreme Court the applicant had voluntarily left a single persons' hostel when pregnant, however she had given birth to a child at the time of the authority's decision into her homelessness application, which meant that she would undeniably have been evicted from the hostel by that time. As such the applicant was not intentionally homeless.¹⁷⁰

Enters into an arrangement

An applicant is seen as intentionally homeless if they enter into an arrangement under which they are required to cease to occupy accommodation which it was reasonable to continue to occupy and the purpose of the arrangement is to enable the applicant to

¹⁶⁹ Code of Guidance, 17.26

¹⁷⁰ *Haile v Waltham Forest LBC* [2015] UKSC 34.

become entitled to assistance under Part 2 of the Act. There must be no other good reason why s/he is homeless or threatened with homelessness.¹⁷¹

Families with children

Where a family with children are found to be intentionally homeless the housing department must seek the family's consent to refer their case to social services.¹⁷²

From 2019 onwards

The intention is that from 2019 onwards the duties owed to an applicant who is found intentionally homeless will be extended if the applicant is:

- A pregnant woman*
- A person with whom a dependent child lives
- A person under the age of 21*
- A person who has been in care whilst under 18, but is now aged between 21 and 25*

*or someone with whom such a person lives or could be reasonably expected to live.

Provided that someone falling into one of the above groups has not been offered accommodation under this section within the previous 5 years, then there will be a duty to secure accommodation under s75(the final duty).¹⁷³

¹⁷¹ S77(4)H(W)A 2014

¹⁷² S96(2) H(W)A 2014

¹⁷³ S75(3) H(W)A 2014

Suitability of accommodation

Accommodation must be considered suitable and reasonable to occupy.

Any attempt to discharge S.66, S.68, S.73, or S.75 by way of an offer of accommodation must be considered suitable for the applicant's occupation and any other person reasonably expected to reside with them.¹⁷⁴

The provision of two separate units of accommodation (such as two adjoining flats or two separate rooms in a hostel, whether self-contained or not) could be suitable if they are located to enable the applicant and her/his family to live together in practical terms.¹⁷⁵

Suitability of accommodation is addressed in:

- s59 of the Housing (Wales) Act 2014, and
- The Homelessness (Suitability of Accommodation) (Wales) Order 2015

S.59 requires that, in assessing suitability, authorities must have regard to:

- (a) Part 9 of the Housing Act 1985 (slum clearance);
- (b) Part 10 of the Housing Act 1985 (overcrowding);
- (c) Part 1 of the Housing Act 2004 (housing conditions);
- (d) Part 2 of the Housing Act 2004 (licensing of houses in multiple occupation);
- (e) Part 3 of the Housing Act 2004 (selective licensing of other residential accommodation);
- (f) Part 4 of the Housing Act 2004 (additional control provisions in relation to residential accommodation);
- (g) Part 1 of this Act (regulation of private rented housing).¹⁷⁶

Affordability

S59 also requires that a local authorities must have regard to whether accommodation is affordable when assessing suitability.¹⁷⁷

The Code of Guidance gives detailed guidance on the affordability of accommodation and the factors to be taken into account at paragraph 19.26 and states that:

“In considering an applicant’s residual income after meeting the costs of the accommodation, the Welsh Government recommends that Local Authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be significantly less than the level of income support, income-based Jobseekers allowance or Universal Credit that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit. This amount will vary from case to case, according to the circumstances and composition

¹⁷⁴ Code of Guidance, paragraph 19.3 – 19.4

¹⁷⁵ Sharif v Camden LBC [2013] UKSC 10.

¹⁷⁶ S59(1) H(W)A 2014

¹⁷⁷ S59(2) H(W)A 2014

of the applicant's household. A current tariff of applicable amounts in respect of such benefits should be available within the Authority's housing benefit section. Local Authorities will need to ensure that the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, utilities, transport and other essentials."¹⁷⁸

The Homelessness (Suitability of Accommodation) (Wales) Order 2015

The order is divided into 3 parts.

Part 1 sets out matters to be taken into account in considering whether accommodation is suitable for people who are or maybe in priority need:

- (a) the specific health needs of the person;
- (b) the proximity and accessibility of family support;
- (c) any disability of the person;
- (d) the proximity and accessibility of medical facilities, and other support services which—
 - (i) are currently used by or provided to the person; and
 - (ii) are essential to the well-being of the person;
- (e) where the accommodation is situated outside the area of the authority, the distance of the accommodation from the area of the authority;
- (f) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person; and
- (g) the proximity of alleged perpetrators and victims of domestic abuse.

Part 2 covers the use of bed and breakfast for those in priority need. B&B must meet the standards set out in the Order and the circumstances when the use of B&B and other shared accommodation may or may not be suitable.

The Code of Guidance states that B&B should be avoided for all cases where possible and gives specific additional guidance in respect of 16/17 year olds:

Additional Guidance for 16/17 and 18-21 year olds including care leavers and the use of Bed and Breakfast Accommodation. ¹⁷⁹

19.63 The Welsh Ministers intend to see an end of the use of B&B accommodation for single 16 and 17 year olds and will meanwhile encourage and support the minimisation of the use of this form of temporary accommodation. Accordingly, the Welsh Government are working with stakeholders and policy partners to introduce an initiative to identify more suitable accommodation options and implement a co-ordinated process to ensure young homeless people are provided with suitable accommodation.

19.64 The Welsh Government highlights placements in B&B for 16 and 17 year olds are not normally regarded as suitable. Welsh Government recommends that pending the

¹⁷⁸ Code of Guidance, paragraph 19.28

¹⁷⁹ Code of Guidance, paragraph 19.63 – 19.72

ending of placements in B&B for 16/17 year olds they should only occur in emergency/temporary accommodation situations.

19.65 The Welsh Ministers recommend that where vulnerable young people, including all 16 and 17 year olds are involved, Local Authorities should have in place a network of suitable provision which can meet all likely need for emergency/temporary accommodation. This may include a mixture of hostels, supported lodgings, supported housing for young people, supported “crashpads”, Nightstop or similar provision. The Local Authority should understand the possible impacts on the young person if B&B is provided and make every effort to find more suitable emergency accommodation.

19.66 Where B&B accommodation is used for 16 and 17 years olds, the placement should be signed off by a senior decision maker with a clear plan in place for the individual to be moved to more suitable accommodation as soon as possible, ideally within 48 hours. The Head of Service/Director should be aware which establishments are being used, ensure compliance with the guidance and the Order in respect of the minimum standard of such accommodation, and ensure that the required provision of support for the young person is in place.

19.67 In such instances where an emergency/temporary placement is made in B&B for 16 and 17 year olds and 18 to 21 year old care leavers, this should quickly trigger a multi-agency planning meeting of local agencies, (including Housing, Children’s Services, if relevant Youth Offending Service/CRC/Probation, local supported housing providers, health partners etc.) to agree a planned move to more appropriate accommodation.

19.68 Where any vulnerable young person up to the age of 21 is placed in B&B temporary accommodation, Local Authorities should have clear arrangements in place to provide practical support. This should include where necessary, financial support for the individual and appropriate mechanisms for the young person to access support when required 24 hours a day.

19.69 If a young person is placed out of their Local Authority area or some distance from their local community, arrangements including travel costs if necessary, should be made to ensure they are able continue in education, training or employment and can attend meetings/appointments at the Job Centre.

19.70 The local Social Services Emergency Duty/Out of Hours Homelessness Team should be informed of placements of all 16/17 year olds and care leavers aged 18 to 21 whether or not this placement is through Homelessness or Social Services provisions. The young person should have access to a telephone (free to use) within the establishment in order to contact services should the need arise.

19.71 In relation to emergency placements, regardless of the service area placing vulnerable 16 and 17 year olds and care leavers aged 18 to 21 should be provided with basic provisions such as toiletries if required on entry to the placement and access to a hot meal during their stay at the B&B.

19.72 Additional monitoring requirements will be introduced at the start of the 2016/17 financial year to capture the use of B&B accommodation for young people. The Welsh

Government expects cooperation between Social Services and Housing Departments to ensure the data returns reflect the activity in respect of B&B placements.

Definitions of B&B standards

Two standards of B&B accommodation are defined; basic and higher standard.¹⁸⁰

Basic standard

Complies with all statutory requirements such as fire and gas safety, planning and licensing of HMOs where applicable.

The accommodation must be managed by a fit and proper person, deemed so by the local authority.

Higher standard

Complies with all of the requirements for Basic Standard in addition to the following.

Space requirements

Max No. of persons	Room size where cooking facilities are separate	Room size where cooking facilities are not separate
1	6.5 m ² or greater	10.2 m ² or greater
2	10.2 m ² or greater	13.9 m ² or greater
3	14.9 m ² or greater	18.6 m ² or greater
4	19.6 m ² or greater	23.2 m ² or greater

- Children under 10 count as half a person
- No room is to be shared by more than 4 people
- No room is to be shared by people of the opposite gender over 10 year of age unless they are living together as partners and are over the age of consent, or if a parent elects to share with a child.
- All rooms must have a ceiling height of at least 2.1 metres for at least 75% of floor area.
- Any part of the room of a ceiling height of less than 1.5 metres is disregarded.
- Separate kitchens and bathrooms are not suitable for sleeping accommodation

Heating facilities

All habitable rooms and bath / shower rooms must have heating capable of maintaining a minimum temperature of 18°C when the outside temperature is 1°C

¹⁸⁰ Schedule, Homelessness (Suitability of Accommodation)(Wales) Order 2015

Food preparation facilities

Where a household has exclusive use of facilities.

If the accommodation is occupied by more than one person cooking facilities should contain

- a) Four burners/hobs and conventional oven and grill, or two burners/hobs and a microwave oven with a built in oven and grill.
- b) Sink and integral drainer, with constant supply of hot water and cold drinking water
- c) Cupboard space of at least 0.2 m³, this excludes space beneath the sink
- d) A refrigerator
- e) At least 4 13-amp sockets located over the work-top
- f) Be located a minimum of 1m away from other furniture in the room

Food preparation facilities continued.....

Facilities for one person must include all the above except a minimum of 2 burners/hobs in a). **Where households share cooking facilities.**

There must be one set of facilities for every

- 3 family households
- 5 single-person households
- 10 persons or fewer where there is a mix of family and single person households

Share facilities must consist of a) – f) above and must have at least 4 burners/hobs, conventional oven, grill and microwave, electric kettle and toaster.

None of the above standards need to be met if the landlord provides breakfast and evening meal.

Each household must have exclusive use of a refrigerator and lockable storage

Part 3 sets out when a private rented sector offer made to discharge the duty under s75 may not be suitable:

- (a) the authority is of the view that the accommodation is not in a reasonable physical condition;
- (b) the authority is of the view that the accommodation does not comply with all statutory requirements (such as, where applicable, requirements relating to fire, gas, electrical, carbon monoxide and other safety; planning; and licences for houses in multiple occupation); or
- (c) the authority is of the view that the landlord is not a fit and proper person within the meaning of section 20 to act in the capacity of landlord.

The Code of Guidance also highlights other factors that are related to the suitability of accommodation:

Location

The suitability of the location for all members of the household must be considered by the Authority and generally speaking accommodation should be located as close to where the applicant was previously living unless they have asked to be relocated.¹⁸¹

¹⁸¹ Code of Guidance, paragraph 19.15

Inspection

Local Authorities should inspect all properties used to meet their duties before they are offered to applicants, and then be re-inspecting them for succeeding offers if the property has been occupied since the last inspection. The inspection should be carried out in accordance with a standard assessment process, to ensure the assessment covers each of the statutory criteria, including the Health and Safety Rating System.¹⁸²

¹⁸² Code of Guidance, paragraph 19.30

Reviews

An applicant has a right to request a review of the following decisions:

- a) Any decision of an Authority about his or her eligibility for assistance (i.e., whether he or she is considered to be a person from abroad who is ineligible for assistance);
- b) Any decision of an Authority as to what duty (if any) is not owed to him or her under S.66, S.68, S.73 or S.75 of the Housing (Wales) Act 2014;
- c) Any decision of an Authority to end any of the duties under S.66, S.68, S.73 and S.75;
- d) Any decision made on the discharge of S.73 duty following either (a) the end of the 56 day period of support to relieve homelessness; or (b) that the Authority is satisfied that accommodation is available and that the accommodation is likely to be available for at least six months, whether or not reasonable steps were taken;
- e) Any decision of an Authority to notify another Authority under S.80 (2) (i.e. a decision to refer the applicant to the other Authority because they appear to have a local connection with that Authority's area and not with the area where they have made the application);
- f) Any decision under S.80(5) where the conditions are met for the referral of the applicant's case; and
- g) Any decision under S.82(3) or (4) (i.e. a decision as to whether the notified Authority or the notifying Authority owe the duty to secure accommodation in a case considered for referral or referred);
- h) Any decision of an Authority as to the suitability of accommodation offered to the applicant or accepted by the applicant pursuant to the Housing (Wales) Act 2014.¹⁸³

There is no requirement for the review to be requested in writing¹⁸⁴, although it would be prudent to do so.

There is no right to request a review of a decision reached on an earlier review. The authority must notify the applicant in writing of the result of the review and the reasons for any adverse decision.¹⁸⁵

The review must be requested within 21 days of the applicant being notified of the decision. This can be extended but only with the agreement of the local authority.¹⁸⁶

The local authority must follow the procedure set out in the Homelessness (Review Procedure) (Wales) Regulations 2015 when conducting the review, including the following:

- A review may be carried out by the Authority itself or by someone acting as an agent of the Authority. The regulations provide that where the review is to be carried out by an officer of the Authority, the officer must not have been involved in the original decision.

¹⁸³ S85(1) H(W)A 2014

¹⁸⁴ Code of Guidance, paragraph 20.4

¹⁸⁵ S85(4) H(W)A 2014

¹⁸⁶ S85(5) H(W)A 2014

- Where the decision under review is a joint decision by the notifying Authority and the notified Authority as to whether the conditions of referral of the case are satisfied the review should be carried out jointly by the two Authorities.
- Applicants must be invited to make representations (or someone acting on their behalf to do so) orally or in writing (or both) in connection with his or her request for a review.
- Applicants should be notified of the procedure to be followed on review.

The review decision should be notified to the applicant within the following timescales:

- eight weeks from the day of the request for a review, where the original decision was made by the Authority;
- ten weeks, where the decision was made jointly by two Authorities under S.80(5) (a decision whether the conditions for referral are met); and
- twelve weeks, where the decision is taken by a person appointed pursuant to the Homelessness (Review Procedure) (Wales) Regulations 2015 (local connection referral review where person not appointed with 5 days of request by notifying and notified authority).

The decision must be notified in writing and the authority must also explain the reasoning behind the decision of the review where the decision is against the interest of the applicant. This includes an explanation of why the reviewer considers reasonable steps have been taken.¹⁸⁷

Accommodation pending review

A local authority has a power rather than a duty to accommodate pending the outcome of the review.

Whilst it is a decision for the local authority whether to exercise the discretion to accommodate pending the outcome of the review, the High Court set out some criteria that authorities must always consider when deciding whether to exercise their discretion to provide accommodation pending a review and this has been included in the Code of Guidance, which states the following factors must be taken into account:

- i. The merits of the case itself and the extent to which it could be said that the decision was either one that appears to be contrary to the merits of the case or one that required a very fine balance of judgement that could have gone either way;
- ii. Whether any new material, information or argument has been put to the Authority, which could have a real effect on the decision under review; and
- iii. The personal circumstances of the applicant and the consequences to him or her of a decision not to exercise the discretion to accommodate.¹⁸⁸

¹⁸⁷ S86(4) H(W)A 2014

¹⁸⁸ R v Camden LBC ex parte Mohammed (1997) 30 HLR 315, QBD & Code of Guidance, paragraph 20.30

Duty to protect property.

There is provision for local authorities to take steps to protect the property of homeless persons¹⁸⁹. The duty is owed to applicants where

- the authority has become subject to a duty under s66(if applicant is in priority need), s68, s75 and s82 (if priority need)
- the authority has reason to believe that:
 - there is a danger of loss of, or damage to, the property by reason of the applicant's inability to deal with it, and
 - no other suitable arrangements have been made or are being made.
 -

In order to discharge the duty authorities have an exceptional power of entry onto private property, underlining the importance of these provisions. At all reasonable times they may enter any premises which are 'the usual place of residence of the applicant or which were his/her last usual place of residence', and deal with her/his property in any way which is reasonably necessary, including storing or arranging to store the property¹⁹⁰.

The duty is subject 'to any conditions the local authority considers appropriate in the particular case which may include:

- the making and recovery of reasonable charges for the action taken,
- the disposal of the property by the authority in such circumstances as may be specified, of property in relation to which it has taken action.¹⁹¹

¹⁸⁹ S93 H(W)A 2014

¹⁹⁰ S94 H(W)A 2014

¹⁹¹ S93(4) H(W)A 2014

Notes
