



Homelessness Reduction Act 2017: six months on

Riccardo Calzavara Cornerstone Barristers

The statutory scheme in England for homelessness assistance has been contained in Part 7 Housing Act 1996 ("HA 1996") since it came into force on 20 January 1997 replacing the provisions of Part 3 Housing Act 1985, none of which is currently in force. Since that time, it has been substantially amended on no fewer than five occasions by the Homelessness Act 2002, the Housing and Regeneration Act 2008, the Localism Act 2011 ("the LA 2011"), the Housing (Wales) Act 2014 ("H(W)A 2014"), and, most recently, the Homelessness Reduction Act 2017 ("HRA 2017").

In introducing the Private Member's Bill ("PMB"), Mr Blackman [stressed](#) that "*The aim of the bill is to prevent people from becoming homeless in the first place and to prevent people from ever having to sleep rough*" and to "[end] completely the social disease of homelessness". PMBs rarely make their way onto the statute books, with only eight out of 163 gaining Royal Assent in the 2016-17 Parliamentary session. The Homelessness Reduction Bill, however, was bolstered when the Government announced its support on 24 October 2016, with [Sajid Javid MP](#) (then Secretary of State for Housing, Communities and Local Government) stating that "*No one should have to sleep rough on the streets*".

The Act received Royal Assent on 27 April 2017 and came into force on 3 April 2018 (reg.3 Homelessness Reduction Act (Commencement and Transitional and Savings Provisions) Regulations 2018/167).

Wales

The National Assembly for Wales has had the power to legislate in relation to homelessness since 25 July 2006 (sch.7 para.11 Government of Wales Act 2006).

In 2009, the Welsh Assembly Government published a *Ten Year Homelessness Plan for Wales* expressing concern about *inter alia* the questions of priority need, intentionality, local connection, and the discharge of the housing duty by placing applicants into the private rented sector. The review that was born out of these concerns concluded that the priority need categories (contained in s.189 HA 1996) were used to ration limited housing resources and that existing prevention techniques, commendable though they may be, did not sit comfortably with the various duties under that Act.

In 2012, the [Homes for Wales: A White Paper for Better Lives and Communities](#) noted that cases of homelessness in Wales were on the rise; the Welsh Assembly Government expressed its intention to enact legislation whose purpose was to



prevent, and ultimately eliminate, homelessness; the starting point would be a "radical shift" towards duties designed to prevent homelessness. The proposals were for the increase in the period in which a person was considered to be threatened with homelessness from 28 to 56 days (now enacted at ss.55(4) H(W)A 2014); a new duty requiring authorities to take all reasonable steps to achieve a suitable housing solution for households that are homeless or threatened with homelessness (see, in particular, ss.60, 62, 66 H(W)A 2014); the power to remove any consideration of intentionality where the household includes children (s.78 H(W)A 2014); and a gradual phase out of the priority need test.

In an attempt to learn from the Welsh experience, the Communities and Local Government Committee concluded in August 2016 an inquiry into homelessness in England in which it praised the prevention elements of the H(W)A 2014.

What has changed in England?

There have been a number of changes to Part 7 HA 1996 by the enactment and commencement of the HRA 2017; in particular, to the definition of being threatened with homelessness, and to duties owed to such people; the scope of advisory services; the interim accommodation duty; the referral scheme; local connection provisions; and the scope of a statutory review.

Previously, a person was **threatened with homelessness** if it was likely that she would become homeless within 28 days; under the new provisions the relevant period is extended to 56 days (s.175(4) HA 1996), mirroring the equivalent Welsh provision. There had arisen a practice among local authorities approached by an assured shorthold tenant with a s.21 notice to invite her to return when an eviction date had been set. That "prevention" approach is no longer permissible; a person is now also threatened with homelessness if a valid s.21 notice expiring within 56 days has been given to her in respect of the only accommodation available for her occupation (s.175(5) HA 1996).

Unfortunately, the provisions affecting the validity of s.21 notices are notoriously opaque and require consideration of the Housing Act 1988 ("HA 1988"), the Housing Act 2004 ("HA 2004"), the LA 2011, and the Deregulation Act 2015 ("DA 2015"). In particular, such notices will not be valid if:

- Less than two months' notice were given (s.21(1), (4) HA 1988)
- The notice was not actually "given" (s.196 Law of Property Act 1925)
- It was given within four months and/or expiring within six months of commencement of the tenancy (s.21(4B), (5) HA 1988)
- Form 6A was not used (s.21(8) HA 1988; Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015/620)
- An energy performance certificate and/or gas safety certificate was not given (s.21A HA 1988; reg.2 Assured Shorthold Tenancy Notices and Prescribed Requirements



(England) Regulations 2015/1646; Energy Performance of Buildings (England and Wales) Regulations 2012/3118; Gas Safety (Installation and Use) Regulations 1998/2451)

- The *How to rent: the checklist for renting in England* booklet has not been provided (s.21B HA 2004; reg.3 Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015/1646)
- The notice was given in respect of an unlicensed property requiring to be licensed (ss.75, 98 HA 2004)
- Any deposit was not protected (or repaid) and/or the prescribed information was not served (ss.213-215 HA 2004)
- There was an element of disrepair-related retaliation (s.33 DA 2015)

The new definition of being threatened with homelessness was accompanied by a shift of focus in the duties to such persons towards homelessness prevention. The new **prevention duty**, which is to take reasonable steps to ensure that accommodation does not cease to be available, arises regardless of whether the applicant has a priority need and/or became threatened with homelessness intentionally (s.195(1)-(2) HA 1996). In deciding what steps to take, the authority must have regard to their s.189A assessment (s.195(3) HA 1996; see further below). The duty will come to an end (s.195(8), (10) HA 1996) if:

- The applicant has suitable accommodation available for her occupation and a reasonable prospect of having that accommodation for at least six months
- The authority have complied with the duty for a period of 56 days, unless a valid s.21 notice has been given
- The applicant has become homeless
- The applicant has refused an offer of suitable accommodation and, on the date of refusal, there was a reasonable prospect that suitable accommodation would be available for her occupation for at least six months
- The applicant has become intentionally homeless from accommodation made available by the authority in the exercise of their duty
- The applicant is no longer eligible for homelessness assistance
- The applicant has withdrawn her application for homelessness assistance
- The applicant deliberately and unreasonably refuses to cooperate with the authority

In parallel with the prevention provisions, the **advisory duty** has become beefier. The authority must now provide (or secure the provision of) free advice to any person in their district on preventing homelessness; securing accommodation when homeless; the rights of those who are homeless and threatened with homelessness (including the authority's Part 7 HA 1996 duties); any help that is available for persons in the authority's district who are, or may become, homeless; and how to access that help (s.179(1) HA 1996).



The advisory duty has been reconfigured so that it must take into account, in particular, the needs of ex-prisoners, care leavers, former members of the armed forces, victims of domestic violence, hospital leavers, those with a mental illness/impairment, and any other groups identified by the authority as being at a particular risk of homelessness (s.179(2) HA 1996).

The old **interim accommodation duty** has been replaced. As before - and unlike many of the other amended duties which have lost any priority need and/or intentional homelessness consideration - the duty to secure that accommodation is available for the applicant's occupation arises if the authority have reason to believe that she may be homeless, eligible for assistance, and have a priority need (s.188(1) HA 1996). Whereas the prior duty ended upon communication of the s.184 decision, the administration of the new duty is not so straightforward.

If the authority determine that the applicant does not have a priority need and they do not owe her the s.189B "relief" duty, the interim accommodation duty ends upon notification of the s.184 decision (s.188(1ZA)(a) HA 1996; see further below). If they determine that she does not have a priority need and they do owe her the relief duty, the interim accommodation duty ends when the authority notify her that, upon the relief duty ending, they will not owe her any further duty under s.190 or s.193 HA 1996 (s.188(1ZA)(b) HA 1996).

In any other case, the interim accommodation duty ceases on the later of (i) the relief duty coming to an end and (ii) notification of the authority's decision as to what duty is owed after the relief duty ends (s.188(1ZB) HA 1996).

The power to accommodate pending a s.202 decision on review is unchanged (s.188(3) HA 1996).

The **local connection** provisions have also been amended. First, the definition of local connection has been extended in relation to care leavers so that, broadly, they will have a local connection with the district of an authority who has a duty under s.23C Children Act 1989 (s.199(8) HA 1996). Secondly, where a child in care has been accommodated in a district under s.22A Children Act 1989 for a continuous period of two years, that person has a local connection with that district until she attains 21 years of age (s.199(10)-(11) HA 1996).

Thirdly, the authority may refer the applicant at the initial duty stage (s.198(A1) HA 1996) whereupon they cease to have an interim duty and/or relief duty obligations (s.199A(1) HA 1996) unless they have reason to believe that the applicant may have a priority need, in which case they must secure that accommodation is available until the applicant is notified of the decision as to whether the referral conditions are met (s.199A(2) HA 1996).

If the conditions are not met, the notifying authority become subject to the relief duty and, if the applicant may have a priority need, the interim accommodation duty arises



(s.199A(4) HA 1996). If the conditions *are* met, the notified authority take all Part 7 duties towards her, and must accept any decision made by the notifying authority as to eligibility, homelessness, or intentional homelessness unless the applicant's circumstances have changed or further information has come to light (s.199A(5) HA 1996).

The rights of review have been expanded to take account of the various changes and new duties, including those detailed below. The ultimate effect is that there is greater scope for s.204 appeals to the county court and beyond. In addition to the previous decisions in respect of which it was possible to seek a s.202 review, applicants may now seek a review of:

- Any decision as to the duty (if any) owed under ss.189B-193C, 195 HA 1996 (s.202(1)(b) HA 1996)
- Any decision as to the steps the authority is to take pursuant to the relief duty (s.202(1)(ba) HA 1996)
- The authority's decision to give notice under s.193B(2) based on the applicant's refusal to cooperate (s.202(1)(bb) HA 1996)
- Any decision as to the steps the authority intend to take pursuant to the prevention duty, including bringing that duty to an end (s.202(1)(bc) HA 1996)
- Any decision as to the suitability of a final offer of accommodation, or a Part 6 allocation (s.202(1)(h) HA 1996)

What is new in England?

There has also been the introduction of a number of new provisions. In particular, authorities are now under duties to assess and to provide initial relief. Other public bodies may have notification obligations, and the means through which duties may be discharged have become more complicated.

The new **duty to assess** arises where the authority are satisfied that the applicant is homeless or threatened with homelessness and eligible for assistance (s.189A(1) HA 1996), irrespective of whether she appears to have a priority need and/or whether she became homeless intentionally.

The assessment must consider the circumstances that caused the homelessness, the applicant's housing needs, and what support would be necessary to enable her to have and retain suitable accommodation (s.189A(2) HA 1996).

Once it is complete, the authority must try to agree with the applicant what steps are to be taken for the purpose of securing that she has, and is able to retain, suitable accommodation (s.189A(4) HA 1996); this is called a "care plan". If no agreement can be reached, this must be recorded in writing (s.189A(6) HA 1996).

The assessment and the consequent care plan are living documents; the authority are under a constant obligation to review them until such time as they consider that they



owe the applicant no duty (s.189A(9), (11) HA 1996). This sort of approach will be familiar to authorities, many of whom now retain and update assessments under the Equality Act 2010.

The s.189B **relief duty** (referred to above) arises if the applicant is homeless and eligible for assistance (s.189B(1) HA 1996), again irrespective of whether she has a priority need and/or became homeless intentionally. The duty is to take reasonable steps to secure that accommodation is available for her occupation for at least six months (s.189B(2) HA 1996), having regard to the authority's care plan (s.189B(3) HA 1996). Where they are satisfied that the applicant has a priority need and did not become homeless intentionally, the relief duty ends after 56 days (s.189B(4) HA 1996). Otherwise, the duty comes to an end only if (s.189B(7), (9) HA 1996):

- The applicant has suitable accommodation, and a reasonable prospect of maintaining it, for at least six months
- The duty has been carried out for 56 days
- The applicant has refused an offer of suitable accommodation in respect of which there was a reasonable prospect that the accommodation would be available for at least six months
- The applicant has become homeless intentionally from accommodation made available under s.189B(2) HA 1996
- The applicant is no longer eligible for housing assistance
- The applicant has withdrawn her application for homelessness assistance
- The applicant refuses a final offer of accommodation or a Part 6 allocation
- The applicant deliberately and unreasonably refuses to cooperate with the authority.

The more holistic approach of the HRA 2017 is exemplified also in the way that duties are imposed upon bodies other than local housing authorities. If a specified public authority consider that a person in relation to whom that authority exercises functions is or may be homeless or threatened with homelessness, they must seek permission from that person to notify a local housing authority of their opinion, and ask how the latter authority may contact her (s.213B(1)-(2) HA 1996).

The authorities who will owe the **notification duty** from 1 October 2018 are governors, directors, or principals of prisons, young offender institutions, secure training centres, or secure colleges; the youth offending team; providers of probation services; designated Jobcentre officers; social services authorities; persons performing local authorities' education functions; NHS trusts or foundations providing emergency, urgent, or in-patient treatment; and the Secretary of State for Defence, in relation to members of the armed forces (sch.1 Homelessness (Review Procedures) Regulations 2018/223).

There are a number of new ways in which *inter alia* the s.193 full housing duty can come to an end. Where an applicant refuses a **final offer of accommodation** or a Part 6 allocation, the relief duty comes to an end and the full housing duty does not



apply (s.193A(2)-(3) HA 1996). A final offer of accommodation is an offer of an assured shorthold tenancy, arranged with the approval of the authority, from a private landlord for a fixed term of at least six months (s.193A(4) HA 1996). Such offers must be suitable for the applicant (s.193A(6) HA 1996), and cannot be approved by the authority if the applicant is under any contractual obligation in respect of her existing accommodation which she is not able to bring to an end before she would have to accept the final offer (s.193A(7) HA 1996).

Where an applicant has **deliberately and unreasonably refused to cooperate**, the authority may serve a warning notice (s.193B(4) HA 1996). Once such notice has been given and a reasonable period has elapsed, the authority may give notice to the appellant that she has deliberately and unreasonably refused to cooperate (s.193B(2) HA 1996). The giving of such notice causes the relief duty and any prevention duty to end (s.193C(2) HA 1996).

Further, if the authority would otherwise have owed the full housing duty, that duty will fall away; instead, the authority must secure that accommodation is available for the applicant's occupation until she ceases to be eligible, becomes homeless intentionally from that accommodation, accepts an offer of an assured tenancy, or voluntarily ceases to occupy the accommodation made available (s.193C(4) HA 1996), or until she refuses or accepts a final offer of accommodation or a Part 6 allocation (s.193C(6) HA 1996).

What next?

The passage of the HRA 2017 brought with it a new Homelessness code of guidance for local authorities (June 2018) to which authorities must have regard (s.182 HA 1996). In addition, the Secretary of State is empowered to issue codes of practice dealing with the functions of authorities relating to homelessness or its prevention (s.214A(1) HA 1996); no such code has yet been laid before Parliament. The Ministry of Housing, Communities and Local Government recently issued a [guide](#) to the duty to refer.

The almost inevitable consequence of the various new provisions and of the new powers and duties in respect of which a s.202 review lies is an increase in litigation. Authorities will want to seek advice at an early stage on the likely interpretation, and effect, of the new provisions.

With any luck, and a rather large injection of money, homelessness can be prevented.
