Housing Rights

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Homelessness test

This information is for professionals working in housing and homelessness in Northern Ireland.

If you are a member of the public looking for help, please visit our housing advice pages.

No accommodation

An applicant should be treated as homeless if:

- their accommodation cannot be occupied by them and anyone else who could reasonably be expected to live with them
- they cannot gain entry to their accommodation
- occupying their accommodation is likely to lead to violence or threats of violence from someone else living in the accommodation
- their accommodation is a moveable structure, like a caravan or houseboat, and they have no place to pitch or moor it**5**

Temporary housing, such as a night shelter or domestic abuse refuge, is not considered accommodation.**6**

Right to occupy

An applicant can only be treated as having accommodation if they have a right to reside in that accommodation.**7** This right to occupy can come from:

- a legal interest in the accommodation as the tenant or owner

- a legal interest in the accommodation by a court order
- an express or implied right of occupation, such as a licence to occupy or permission from the owner or tenant
- a right to live in the property or to stop someone else taking possession of it. For example, a private tenant who has received notice to quit, but whose landlord has not got a possession order.

A person has a right to occupy a property if they:

- have a tenancy of the property
- own the property and have not rented it to another person
- have a licence to occupy accommodation
- were given the accommodation as part of their employment contract
- live in residential or supported accommodation
- got a court order allowing them to live in the property, like an occupation order

Settled address

The homelessness assessment looks at the applicant's most recent settled address. This is not necessarily the place the applicant is currently staying.

A settled address should have a degree of permanence about it. The housing officer should look at the applicant's intention and behaviour when they moved into the dwelling. The courts have said 'what amounts to a "settled residence", is a question of fact and degree depending on the circumstances of each individual case.'**8**

For accommodation to be considered settled, the person must have intended to stay in the accommodation permanently.**9**

The person's intentions are not the only relevant factor to be considered. The Housing Executive must consider if the accommodation was**10** secure, suitable and permanently available to the person.

Accommodation outside Northern Ireland

The housing officer must check if the applicant has accommodation available to them outside of Northern Ireland. The housing officer must check if:

- the accommodation would be available to the applicant and anyone else who could reasonably be expected to live with them, and

- it is reasonable for the applicant to continue to occupy that accommodation

A person who left accommodation in another country which they could reasonably have continued to occupy may be found to be intentionally homeless.**11**

The courts have confirmed that having no accommodation includes those who live in temporary accommodation like hostels and refuges. It also includes those who have no shelter and are sleeping rough.**12**

A person who has suitable, accessible accommodation abroad is not usually homeless even if their life is in the UK.**13**

An applicant is homeless if:**4**

- they have no accommodation in Northern Ireland or elsewhere, or
- they have to leave their current accommodation within 28 days, or
- it is not reasonable for them to continue to occupy their current accommodation

The housing officer should consider:

- where the applicant is currently residing and whether that should be categorised as ‘accommodation’
- whether the person has a right to occupy the accommodation they currently reside in
- the person’s most recent settled address if it is not their current residence
- whether there is accommodation outside of Northern Ireland that the person could reasonably occupy

Threatened with homelessness

A person is threatened with homelessness if it is likely that they are going to become homeless within 28 days of making a homeless application.1 This can include a:

- person leaving custody, hospital or other residential care
- private tenant who has been given a notice to quit
- person living in tied accommodation who has lost or is about to lose their job
- homeowner whose home has been repossessed

The person is not homeless until 28 days before the date they must leave.

Notice to quit from a private landlord

Most private tenants are entitled to at least eight weeks' notice to quit so they are not homeless when they initially get their eviction notice.

The renter can still ask the Housing Executive for help and should ask their housing officer to note in the diary the date the 28-day trigger is reached.

Asked to leave home by family or friends

A person who is living with family or friends but has no tenancy or licence agreement of their own has no right to remain in the property once the tenant or homeowner asks them to leave.[2]

The Housing Executive will want to speak to the tenant or homeowner to ensure the person cannot return to the home. They should not do this if there is any suggestion of domestic abuse or risk of violence.

They may offer mediation if there is no risk and there is a possibility of reconciliation to try to prevent the person from becoming homeless.

Social services may have a responsibility to provide accommodation if the person being asked to leave is under 18.

Homeowners going through repossession

Homeowners who are going through repossession are homeless if they:

- have received notice that the Enforcement of Judgments Office will evict them in less than 28 days, or
- can show that they cannot continue living in their home because they have to go without essentials like food or heat in order to pay their mortgage[3]

Relationship breakdown

A person may be homeless or threatened with homelessness because of a relationship breakdown.

The NIHE Homelessness Guidance Manual states that if a person has received legal advice or assistance, they may be able to provide documents to help the Housing Executive reach a decision.

The Housing Executive will ask for documentation to prove the relationship has ended. The person can provide one of the following:

- Order for Maintenance, Residence or Contact
- Occupation or Non-Molestation Order
- Decree of Judicial Separation or Divorce
- Dissolution Order – in the case of breakdown of civil partnership
- documents from a solicitor

If a person hasn't needed or taken legal action to end a relationship, the Housing Executive should consider:

- evidence that they had been residing with a partner
- evidence from a supporting agency, such as Women's Aid, to confirm the relationship has ended
- information from the police, social worker, social security agency or other reputable source
- evidence from a GP or other professional

The Housing Executive must use its own discretion to decide if the person can reasonably return to the accommodation they had occupied if there is no evidence beyond the person's statement.[4]

Accommodation not reasonable

A person is homeless if it is not reasonable for them to continue to occupy their home. This can be for various reasons. What is reasonable is closely linked to the suitability of offers of housing.

Homeless because accommodation is not reasonable to continue to occupy

The Housing Executive can decide that someone is homeless if they have accommodation, but that accommodation is not reasonable for them to continue to occupy.[5]

Accommodation can be unreasonable to continue to occupy for various reasons, including:

- physical condition
- location

- cost
- overcrowding
- risk of violence

The Housing Executive must consider each case on its own merits and facts. They can take into consideration the general circumstances prevailing in Northern Ireland when making its decision.

Considering the prevailing circumstances in Northern Ireland

The Housing Executive can consider the general circumstances prevailing to housing in Northern Ireland when deciding if accommodation is reasonable to continue to occupy.[6]

This means that the Housing Executive may decide the person can stay in accommodation that is not ideal if there is evidence that the person's situation is commonly experienced by others in Northern Ireland.

The court of appeal in England and Wales held that it was not unreasonable for a person to live in overcrowded housing when there were other households in the borough living in similarly or more intensely overcrowded properties.[7]

Reasonable to continue to occupy

The Housing Executive must consider if the applicant can continue to occupy the property over time. The person may still be homeless even though it is possible for the person to keep living there in the short term.[8]

The Court of Appeal for England and Wales further established a 'reasonable over time' test.[9] The Housing Executive must ask itself:

- is it reasonable for the person and their household to continue occupying accommodation for the present and the foreseeable future
- if not, how long in the short term could they continue occupying this accommodation and would they be likely to find suitable alternative housing within that period

Assessing whether accommodation is reasonable to continue to occupy

The Housing Executive should place a sharp focus on the following considerations when deciding if it is reasonable for the person to continue to occupy their current accommodation:[10]

- is the person, or any member of the household disabled and to what extent
- what are the likely effects of those disabilities for as long as the person continues to live in the accommodation
- what particular accommodation needs does the person have because of their disability and how does the current accommodation meet those
- how do the person's accommodation needs compare to the needs of someone without those disabilities
- how do disability discrimination laws impact the decision and is there a requirement to make adjustments to protect the rights of someone with a protected characteristic

Guidance on unreasonable accommodation

The NIHE Homeless Guidance Manual provides some guidance on what to consider when they are making this decision. The accommodation might not be reasonable to continue to occupy if it:

- is unfit for human habitation
- does not meet the needs of a person in the household with a disability
- is having a negative impact on the mental health of someone in the household
- is having a negative impact on someone in the household due to overcrowding
- is causing financial hardship
- is causing the applicant to experience violence, threats of violence, domestic abuse, harassment or intimidation

Harassment and violence

It may not be reasonable to occupy accommodation where the applicant is experiencing harassment, violence or threats of violence.

Harassment can include:

- unwanted phone calls, letters, emails and visits
- verbal abuse

- online bullying
- stalking
- verbal abuse
- threats
- smashing windows
- sing dogs to frighten a person

The Housing Executive must take into consideration the severity and impact of the harassment.

Risk of violence within the home

An applicant who is at risk of violence in their accommodation from another person living there should be considered homeless.[11] The applicant does not have to have actually experienced violence in the home.[12]

The Housing Executive may advise the person about legal assistance to deal with violence in the home. They cannot refuse assistance on the grounds that the person has not reported or sought legal help to deal with the violence.

Home is unsuitable due to health conditions

A person may be homeless if their current accommodation does not meet their needs and it is unreasonable for them to continue living there.

The Housing Executive must consider the short term and foreseeable future and take into consideration any anticipated change or deterioration in a person's condition.

Physical health issues

A person's accommodation may be unsuitable if they, or any member of their household, have health or disability needs that cannot be met within the property. For example:

- level-floor accommodation
- adapted or wheelchair accessible accommodation
- a larger property to accommodate certain disability needs

The Housing Executive may try to prevent homelessness in these cases by looking at ways to make the property more suitable for the person's needs.

Mental health issues

A person’s mental health can be impacted by their housing conditions.

The Housing Executive must consider all medical evidence provided and decide if rehousing would alleviate the person’s mental health issues. The person can provide evidence from medical professionals, social workers or mental health staff. To be effective, the evidence needs to link the mental health issues with the person’s current accommodation.

The Housing Executive may decide that the person’s issues would be better alleviated with appropriate support.

Homelessness and overcrowding

An applicant will not normally be homeless simply because there are not enough rooms in the property for all the people who live there.

Overcrowding alone is not usually enough for an applicant to be considered homeless.

Overcrowding is common in Northern Ireland and the Housing Executive can consider the general circumstances which prevail when deciding if someone is homeless.

An applicant may be considered homeless by the Housing Executive because of overcrowding if it’s:

- more severe or pronounced than in other overcrowded homes
- creating conditions that are impacting a person’s health or welfare (for example, adding to mould growth, interfering with educational development)

The Housing Executive typically disregards ineligible people when deciding if a household is homeless.13 This means that any ineligible household members will not be counted when considering if the accommodation is overcrowded.

The accommodation is not reasonable to continue to occupy if the overcrowding is having a negative impact on members of the household.14

Footnotes

- [1]The Housing (Northern Ireland) Order 1988, Art 3(6).
- [2]Northern Ireland Housing Executive, Homeless Guidance, Chapter 3.13.
- [3]Re Canavan [1991] 6 NIJB 85 (Murray LJ).
- [4]Northern Ireland Housing Executive, Homeless Guidance, Chapter 3.5.2.
- [5]The Homeless (Northern Ireland) Order 1988, Article 3(3).
- [6]The Housing Order (Northern Ireland) 1988, Article 3(4).
- [7]Harouki v Royal Borough of Kensington & Chelsea [2007] EWCA Civ 1000.
- [8]Birmingham City Council v Ali & Ors [2009] UKHL 36 (1 July 2009).
- [9]R (Safi) v The Borough Council of Sandwell [2018] EWCA 2876.
- [10]Lomax v Gosport Borough Council [2018] EWCA Civ 1846.
- [11]The Housing (Northern Ireland) Order 1988, Article 3(5)(b).
- [12]Northern Ireland Housing Executive, Homeless Guidance, Chapter 3.5.6.
- [13]The Housing Order (Northern Ireland) 1988, 7A (4).
- [14]Northern Ireland Housing Executive, Homeless Guidance, Chapter 3.5.10.4.