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# **A guide to the Homelessness Act, 2002**

***By admin***

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## **Homeless application process**

Everyone is entitled to make a full homeless application if they are threatened with homelessness. Normally the homeless department is operated by your Local Authority but sometimes it may be a local housing association. This is due to the fact that many councils have now transferred their old council housing stock to their local housing associations.

When somebody makes a homeless applicaiton there are five main points that are investigated. The Local Authority bases it's decision about what assistance it will provide on the investigation of these five points. Legally it has has thirty-three working days in which to make a decision on a homeless application.

### **1. Eligibility for assistance**

This is basically looking at a person's immigration status as certain people from abroad are ineligible for housing assistance. This can be quite complicated depending on which country a person originates from, what right they have to leave or remain in the United Kingdom and whether they are an asylum seeker. If you were born in the UK and are a British citizen this is not a problem – you will automatically be eligible for assistance. Homelessness legislation in Scotland and Wales does vary.

### **2. Are you homeless/ threatened with homelessness within twenty-eight days?**

There are certain definitions as to whether someone is classed as being homeless/ threatened with homelessness that the Local Authority is guided by.

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**Homeless?** There are a number of different factors that determine whether a person is homeless:

- A person is homeless if s/he has no accommodation in the UK or elsewhere, which is available for his/her occupation and which that person has a legal right to occupy.
- A person is homeless if s/he has accommodation but cannot secure entry to it or the accommodation is a moveable structure, vehicle or vessel designed or adapted for human habitation (e.g houseboat/ caravan) and there is no place where it can be placed in order to provide accommodation.
- A person who has accommodation is to be treated as homeless where it would not be reasonable for him or her to occupy that accommodation (unfitness/ threats of violence).

**Threatened with homelessness?** A person is threatened with homelessness if s/he is likely to become homeless within twenty-eight days. This usually applies to people who have received a 'notice to quit' or a 'possession order'. In many cases, effective intervention can enable homelessness to be prevented or the loss of the current home to be delayed enough to allow for a planned move.

### 3. Priority need

A person must be determined as having a priority need for the Local Authority to owe them a full duty where temporary accommodation would be provided followed by assistance in moving on to permanent accommodation. There are some specific categories of priority need:

- A pregnant woman
- A person with dependent children
- A person of 16/17 years of age who is not classed as being a 'relevant child'.
- A person below 21 years of age who was (but is no longer) looked after, accommodated or fostered between the ages of 16 and 18 (except 'relevant students').
- A person aged 21 or more who is vulnerable as a result of being looked after, accommodated or fostered (except 'relevant students').
- A person who is homeless/ threatened with homelessness as a result of an emergency such as flood, fire or other disaster.

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- A person who is vulnerable as a result of ceasing to occupy accommodation because of violence, harassment from another person or threats of violence from another person, which are likely to be carried out.

A person can also be classed as having a priority need if the Local Authority deems them to be vulnerable. However, being classed as vulnerable is not straightforward as it is a matter of judgement as to whether the applicant's circumstances make him or her vulnerable. When the local authority are making this decision they have to consider whether, when homeless, the applicant would be less able to fend for him/herself than an ordinary person so that he or she would suffer injury or detriment, in circumstances where a less vulnerable person would be able to cope without harmful effects. Examples of contributing factors as to what could determine a person as vulnerable are:

- Physical/ mental health issues
- Old age
- Drug/ alcohol problems
- Having been a member of the armed forces and has become institutionalised
- Having been in custody/ detention and has become institutionalised
- Learning disability/ physical disability

#### **4. Intentionality**

Whether a person is intentional or unintentional in relation to why they have become homeless can alter what duties are owed to a person. Basically intentionality is when it is deemed that a person has caused their own homelessness through a deliberate act or omission. Examples of what can be seen as intentional:

- If a person deliberately does or fails to do something, which as a consequence of they will cease to occupy their property (or the likely result of will be that they will be forced to leave their accommodation).

- A person leaves accommodation which is deemed as suitable and available for them to continue to occupy.

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- When a person chooses to sell his or her home in circumstances where s/ he is under no risk of losing it.
  - A person's home was lost due to wilful and persistent failure to pay rent/ mortgage payments.
  - Is evicted because of his/ her anti-social behaviour.

There are incidences when it could not be seen as a deliberate act or omission:

- If an act/ omission was made in good faith by someone it must not be treated as deliberate.
- An act/ omission should not be treated as deliberate when the act/omission was the result of limited mental capacity/ a temporary aberration or aberrations caused by mental illness, frailty or an assessed substance abuse problem.
- The act/ omission was made when the applicant was under duress.

If an intentionally homeless decision is made where the applicant is classed as a priority need the Local Authority must provide them with twenty-eight days temporary accommodation.

## **5. Local connection**

When a local authority makes inquiries to determine whether an applicant is eligible for assistance and owed a duty it must also make inquiries to decide whether the applicant has a local connection with the district of another Local Authority in England, Wales or Scotland. A person has a local connection with a district if s/he has a connection with it:

- Because s/he is, or was in the past, normally resident there, and that residence was of his or her choice.
- Because s/he is employed there (this must not just be that the headquarters of where someone works are located in that district – they must actually work within the district).
- Because of family associations there.

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- Because of special circumstances.

Once the Local Authority has completed their inquiries and they have made a decision on the application they must notify the applicant, give the reasons for the decision (if it is against the applicant's interest) and provide information regarding the fact that the applicant has a right to review (including the time in which this must be done). An applicant has twenty-one days in which to request a review of the decision if they do not agree with it. It is advisable that when requesting a review an applicant gets some assistance from an agency such as the [Citizens Advice Bureau](#) or [Shelter](#). The Local Authority has powers to temporarily accommodate whilst a review is taking place but bear in mind this is discretionary.