

Section 202 Review Guide
April 2018



Homelessness Reduction Act 2017

Since the 3rd April 2018, the Homelessness Reduction Act 2017 has been in force. The act puts a legal duty on councils to offer more support to a wider range of people who are homeless or threatened with homelessness - and to intervene earlier.

This new act expands the list of decisions that can be reviewed to include the new prevention and relief duties.

Reviews

If you are homeless or threatened with homelessness within 56 days, you may have made a homeless application with your local authority. As you are guided through the homelessness process, being offered the support needed to prevent or relieve your homelessness, there may be points that you wish to review on. The possible points to review are as follows:

1. Eligibility
2. The duty owed (if any)
3. of the steps they are to take in their personalised housing plan at the prevention duty
4. to give notice to bring the prevention duty to an end
5. of the steps they are to take in their personalised housing plan at the relief duty
6. to give notice to bring the relief duty to an end
7. to give notice under section 193B(2) in cases of deliberate and unreasonable refusal to co-operate
8. to notify their case to another authority under section 198(1) (i.e. a decision to refer the applicant at the main housing duty, to another housing authority because they consider that the conditions for referral are met)
9. (under section 198(5) as to whether the conditions are met for the referral of their case to another housing authority at the relief duty or main housing duty (including a decision reached either by agreement between the notifying and notified authority, or taken by a person appointed under the Homelessness
10. under section 200(3) (i.e. where a decision is made that the conditions for referral are not met and so the notifying housing authority owe the section 193 main housing duty) or a decision under section 200(4) (i.e. a decision that the conditions for referral to a notified authority in Wales are met and the notified authority owe the section 193 main housing duty)
11. as to the suitability of accommodation offered to the applicant under any of the provisions in paragraph (b) or (j) above or the suitability of accommodation offered under section 193(7) in relation to allocations under Part 6
12. as to the suitability of accommodation offered to the applicant by way of a private rented sector offer under section 193
13. as to the suitability of accommodation offered to the applicant by way of a final accommodation offer or a final Part 6 offer under section 193A or 193C. Applicants can request a review of the suitability of accommodation whether or not they have accepted the offer.

Requesting a Review

14 day and 21 day deadlines

If you want a decision reviewed please tell us as soon as possible. If we do not receive your request within 14 days for 3, 5 and 7 of the above, or 21 days on all other points, of the day you received our decision letter, we are not obliged to review the decision. Please ensure you give us an address where we may write to you during the period of the review; this can be an email address if you prefer.

You may ask to be accommodated during the review but the authority is under no obligation to agree to this and will do so only in exceptional circumstances. You are advised to look for alternative accommodation as soon as you receive a decision letter informing you that the council has no duty to house you.

A review may be carried out by the housing authority itself which made the original decision or by someone acting as an agent of the housing authority. Where the review is to be carried out by an officer of the housing authority, the officer must not have been involved in the original decision, and they must be senior to the officer (or officers) who took that decision. Seniority for these purposes means seniority in rank or grade within the housing authority's organisational structure. The seniority provision does not apply where a committee or sub-committee of elected members took the original decision.

The same officer is able to carry out multiple reviews relating to a single case as long as they were not involved in the original decisions.

Where the decision under review is a joint decision by a notifying housing authority and the notified housing authority as to whether the conditions of referral of a case are satisfied, section 202(4) requires that the review should be carried out jointly by the 2 housing authorities.

Where the decision under review was taken by a person appointed by the notifying and notified authority, the review of that decision must also be carried out by a person appointed by the 2 authorities.

Acknowledgement

You will receive an acknowledgement of your review request which will confirm with you our review procedure, including confirmation of the review type you have requested, the deadline for the review, as well as the deadline for further submissions.

Submissions

You – or someone acting on your behalf – may give us written details, including information from doctors, consultants etc., of the reasons why you want us to review the council's decision. If you have not given us any written reasons for your request within three weeks, or 2 weeks for 3, 5 and 7 of the above, a decision will be based on the information that we have on file.

Please note that we may disregard any representations received after the deadline, unless there is a prior agreement or *exceptional* reason for the delay.

Oral Hearings

Regulation 7 provides that in cases where a review has been requested, if the housing authority, authorities or person carrying out the review consider that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but they are minded nonetheless to make a

decision that is against the applicant's interests on one or more issues, they should notify the applicant:

- a) that they are so minded and the reasons why; and,
- b) that the applicant, or someone acting on their behalf, may, within a reasonable period, make oral representations, further written representations, or both oral and written representations.

Such deficiencies or irregularities would include:

- a) failure to take into account relevant considerations and to ignore irrelevant ones;
- b) failure to base the decision on the facts;
- c) bad faith or dishonesty;
- d) mistake of law;
- e) decisions that run contrary to the policy of Part 7 of the 1996 Act;
- f) irrationality or unreasonableness; or,
- g) procedural unfairness, e.g. where an applicant has not been given a chance to comment on matters relevant to a decision.

The reviewer must consider whether there is 'something lacking' in the decision, i.e. were any significant issues not addressed or addressed inadequately, which could have led to unfairness. An original decision could subsequently be rendered deficient because of intervening events which occurred between the date of the original decision and the review decision.

Final decision

Your review will be investigated by an independent officer, senior to the original deciding officer. The officer will write to you with a decision and the reasons for it within the following time limits;

- 3 weeks from:
 - the date the request for a review was made where the review concerns a decision as to the steps a local authority will take to discharge the prevention or relief duty, or to serve a notice of unreasonable and deliberate refusal to cooperate
- 8 weeks to review a decision that of the duty owed
- 8 weeks to review an unsuitable housing offer
- 12 weeks if you challenge a local connection referral

The final decision will either uphold the original decision or overturn the original decision

Appeals

Section 204 provides an applicant who has requested a section 202 review with the right of appeal on a point of law to the county court if:

- a) they are dissatisfied with the decision on a review; or,
- b) they are not notified of the decision on the review within the time prescribed in regulations made under Section 203

An appeal must be brought by an applicant within 21 days of:

- a) the date on which they are notified of the decision on review; or,
- b) the date on which they should have been notified (i.e. the date marking the end or
- c) the period for the review prescribed in the regulations, or any extended period agreed in writing by the applicant).

The court may give permission for an appeal to be brought after 21 days, but only where it is satisfied that:

- a) (where permission is sought within the 21 day period), there is good reason for the applicant to be unable to bring the appeal in time; or,
- b) (where permission is sought after the 21 day period has expired), there was a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for permission.

On an appeal, the county court is empowered to make an order confirming, quashing or varying the housing authority's decision as it thinks fit. It is important, therefore, that housing authorities have in place review procedures that are robust, fair, and transparent.