CHAPTER 4

Homelessness

continued

Introduction

4.1 This chapter considers the statutory definitions of 'homelessness' and of being 'threatened with homelessness'.

4.2 'Homelessness' is defined by Housing Act (HA) 1996 s175 and Housing (Wales) Act (H(W)A) 2014 s55 as:

a) accommodation, which is
b) available for the applicant's occupation, to which
c) there are rights of occupation (subsection (1)),
d) entry to or use of which is not restricted (subsection (2)), and which
e) it is reasonable for the applicant to continue to occupy (subsection (3)).[1]

4.3 The same terms also apply to:

f) what is meant by being threatened with homelessness (subsection (4)).

Accommodation

Location

4.4 Under HA 1985, only accommodation in England, Wales or Scotland was to be taken into account. This had not been stated explicitly in the original legislation – the Housing (Homeless Persons) Act 1977 – but had been accepted, albeit obiter, in *Streeting*[2] and was expressly enacted in HA 1985.

4.5 As departure from accommodation abroad could, however, qualify as intentional homelessness,[3] this did not lead to any benefit: HA 1996 s175(1) and H(W)A 2014 s55(1) now refer to accommodation in the UK 'or elsewhere'.[4]

1 See *Nipa Begum v Tower Hamlets LBC* (1999) 32 HLR 445, CA, for a discussion of the interaction of these different subsections.

2 *R v Hillingdon LBC ex p Streeting* [1980] 1 WLR 1425, CA.

3 See *de Falco, Silvestri v Crawley BC* [1980] QB 460, CA, and other cases considered at paras 6.134–6.135.

4 See, eg *Nipa Begum v Tower Hamlets LBC* (1999) 32 HLR 445, CA, where the accommodation in question was situated in Bangladesh.

Nature

4.6 The term 'accommodation' has proved one of the most controversial under the homelessness legislation, not so much as between applicant and authority, but between, on the one hand, the lower courts and the House of Lords, and, on the other, the House of Lords and parliament.

Settled accommodation

4.7 Thus, between 1977 and 1986, there was a growing tendency on the part of the courts – High Court and Court of Appeal – to equiparate a want of accommodation with accommodation of such poor quality that it could be quit without a finding of intentionality. In this context, a distinction was drawn for both purposes (and arguably for the purpose of defining the duties owed by authorities) between 'settled' and 'unsettled' accommodation.

4.8 Both applications of this approach were firmly rejected by the House of Lords, first in *Puhlhofer*,[5] and, later, in *Awua*.[6] In turn, this led to further legislation, first in the Housing and Planning Act 1986, and, to an extent, also under HA 1996 Part 7 itself.

4.9 In the more recent of these cases,[7] the House of Lords held that the only gloss on the word 'accommodation' which can properly be imported, other than pursuant to the statute itself (ie, availability and reasonableness to continue in occupation),[8] is that it must mean 'a place which can fairly be described as accommodation'.[9]

Non-qualifying accommodation

4.10 As an example of shelter which would have failed this test, Lord Brightman in *Puhlhofer* instanced Diogenes' tub.

4.11 In *Awua*, the modern equivalent was said to be the night shelter in *R v Waveney DC ex p Bowers*,[10] in which the applicant could have had a bed if one was available but where he could not remain by day – and therefore had to walk the streets.[11]

5 *R v Hillingdon LBC ex p Puhlhofer* [1986] AC 484, (1986) 18 HLR 158, HL.
6 *R v Brent LBC ex p Awua* [1996] AC 55, (1995) 27 HLR 453, HL.
7 *Awua*, above.
8 See paras 4.17–4.38 and 4.69–4.140.
9 *R v Brent LBC ex p Awua*, above, per Lord Hoffmann at 461.
10 (1982) *Times* 25 May, QBD. Not cross-appealed on this point – see further [1983] QB 238, (1983) 4 HLR 118, CA.
11 *R v Brent LBC ex p Awua*, above, at 459.

4.12 In *Sidhu*,[12] it was held that a women's refuge was not accommodation, so that a woman who left her violent partner and found temporary shelter in such a refuge was still homeless while residing there.[13]

4.13 In *Ali* and *Moran*,[14] however, the House of Lords concluded that *Sidhu* could probably not survive the decisions in *Puhlhofer*[15] and *Awua*[16] as a theoretical proposition, although the effect of the decision was preserved by reference to HA 1996 ss175(3) and 177, ie it would not normally be reasonable to continue to occupy accommodation in a women's refuge.[17] (The House of Lords declined to comment on whether a prison cell or a hospital ward could amount to accommodation.)[18]

4.14 An applicant who occupies temporary accommodation provided to him or her pending enquiries, review or appeal under HA 1996 s188 or s204(4) is nevertheless homeless for the purpose of section 175(1), because to find otherwise would create the absurd result that a homeless person who is temporarily accommodated would not be entitled to benefit from Part 7.[19]

4.15 Reference may also be made to *Miles*,[20] in which it was held that accommodation within the definition of homelessness means 'habitable'. This decision was followed by the majority in the Court of

12 *R v Ealing LBC ex p Sidhu* (1982) 2 HLR 45, QBD.

13 *Sidhu* followed a county court decision, *Williams v Cynon Valley Council*, January 1980 *LAG Bulletin* 16, CC. In addition to *Bowers* (see para 4.11 and footnote 10, above), other cases to consider the meaning of accommodation within the definition of homelessness before *Puhlhofer* and *Awua* were: *Parr v Wyre BC* (1982) 2 HLR 71, CA; *R v South Herefordshire DC ex p Miles* (1983) 17 HLR 82; *R v Preseli DC ex p Fisher* (1984) 17 HLR 147, QBD; and *R v Dinefwr BC ex p Marshall* (1984) 17 HLR 310, QBD.

14 *Birmingham City Council v Ali; Moran v Manchester City Council (Secretary of State for Communities and Local Governmentand another intervening)* [2009] UKHL 36, [2009] 1 WLR 1506 at [56].

15 *R v Hillingdon LBC ex p Puhlhofer* [1986] AC 484, (1986) 18 HLR 158, HL.

16 *R v Brent LBC ex p Awua* [1996] AC 55, (1995) 27 HLR 453, HL.

17 See para 4.72.

18 *Stewart v Lambeth LBC* [2002] HLR 747; *R (B) v Southwark LBC* [2004] HLR 40.

19 *R (Alam) v Tower Hamlets LBC* [2009] EWHC 44 (Admin), [2009] JHL D47. Approved by the House of Lords in *Ali* at [54]. See, to like effect, H(W)A 2014 ss68(1), 69(11) and 88(5). Likewise, where an authority has concluded that a person is owed the full housing duty under HA 1996 s193(2), but has not identified any specific property in which he could live there is therefore no accommodation which was available for his occupation: *Johnston v Westminster City Council* [2015] EWCA Civ 554, [2015] HLR 35.

20 *City of Gloucester v Miles* (1985) 17 HLR 292, CA.

Appeal in *Puhlhofer*,[21] which was upheld by the House of Lords without reference to *Miles*; nor was the case mentioned in *Awua*.

Accommodation available for occupation

Preconditions

4.16 The requirement that accommodation is 'available for occupation' requires consideration of a number of elements:

a) whether accommodation allows occupation 'together with' others;
b) practical accessibility; and
c) for whom the accommodation must be available.

4.17 The requirement of availability means that the accommodation must be available[22] to occupy 'together with' other members of the applicant's household: HA 1996 s176 and H(W)A 2014 s56. This can be satisfied by a single unit of accommodation in which a family can live together but may also be satisfied by two units of accommodation if they are so located that they enable the family to live 'together' in practical terms; it does not require shared living space.[23]

4.18 To be practically accessible and accordingly available to an applicant, it must be possible for the applicant physically to access the accommodation, a question which includes whether an applicant can afford to return to accommodation overseas which is otherwise available.[24]

4.19 Accommodation will not be available if the applicant is not legally entitled to live in the country in which the accommodation is situated.

21 See (1985) 17 HLR 588.

22 This requires identification of an actual property, so that where an authority has concluded that a person is owed the full housing duty under HA 1996 s193(2), but has not identified any specific property in which he could live, there was no accommodation available for his occupation: *Johnston v Westminster City Council* [2015] EWCA Civ 554, [2015] HLR 35.

23 *Sharif v Camden LBC* [2013] UKSC 10, [2013] HLR 16.

24 See *Nipa Begum v Tower Hamlets LBC* (1999) 32 HLR 445, CA. Although the authority had failed to consider this issue in the case, the Court of Appeal refused to quash the decision since the applicant had not raised the issue, and the authority was accordingly not required to investigate the matter (see para 9.100).

Accommodation for whom?

4.20 By HA 1996 s176 and H(W)A 2014 s256, accommodation is only 'available' if it is available for the applicant together[25] with:

a) any person who usually resides with the applicant as a member of his or her family; or
b) any other person who might reasonably be expected to do so.

Immigration

4.21 HA 1996 s185(4) used[26] to require local housing authorities in England and Wales to disregard household members (including dependent children) who were ineligible[27] for housing assistance when considering whether an eligible housing applicant was homeless. This provision has now[28] been amended so that it applies only to an eligible applicant who is himself or herself a person subject to immigration control[29] – for example, those granted refugee status,[30] indefinite leave to remain[31] or humanitarian protection.[32] Accordingly, when deciding whether an applicant who is a person subject to immigration control (excluding for this purpose a European Economic Area (EEA) national[33] or Swiss national), who is eligible for assistance, is homeless, a local authority must continue to disregard any dependants or other household members who are ineligible for assistance.

4.22 The effect is that HA 1996 s185(4) no longer applies to eligible[34] applicants who are not subject to immigration control[35] for example,

25 Cf para 4.17.
26 In respect of all applications for accommodation or assistance in obtaining accommodation within the meaning of HA 1996 s183, made before 2 March 2009.
27 See chapter 3.
28 By Housing and Regeneration Act 2008 s314 and Sch 15 Part 1, in respect of all applications for accommodation or assistance in obtaining accommodation within the meaning of HA 1996 s183, made on or after 2 March 2009.
29 See para 3.16.
30 See paras 3.122–3.127.
31 See paras 3.131–3.133.
32 See paras 3.134–3.137.
33 See para 3.23.
34 See chapter 3.
35 See paras 5.8–5.11.

a British citizen,[36] a Commonwealth citizen with a right of abode in the UK[37] or an EEA national or Swiss national with a right to reside in the UK.[38] This group of eligible applicants will be able to rely on ineligible household members, known as 'restricted persons',[39] to establish homelessness. A restricted person is someone who is not eligible for assistance under Part 7, who is subject to immigration control and who either does not have leave to enter or remain in the UK or who has leave subject to a condition of no recourse to public funds.

4.23 If the authority can be satisfied that the applicant is homeless only by taking into account the restricted person, the application is known as a 'restricted case'.[40] In these circumstances, the authority must, so far as reasonably practical, bring any HA 1996 s193(2) duty to an end by arranging for an offer of an assured shorthold tenancy to be made to the applicant by a private landlord.[41] This is known as a private accommodation offer.[42]

4.24 In Wales, the substantive position is the same, as the provisions of HA 1996 ss185 and 186 are deemed to apply to the H(W)A 2014.[43] It follows that, as in England, a duty owed to a restricted person must, so far as is reasonably practicable, be brought to an end by securing an offer of accommodation from a private sector landlord.[44]

Family

4.25 'Member of the family' is not defined. Both the English and Welsh Codes of Guidance say that the expression will 'include those with close blood or marital relationships and cohabiting partners (including same sex partners)'.[45]

36 See para 3.21.
37 See para 3.22.
38 See paras 3.23–3.99.
39 HA 1996 s184(7).
40 HA 1996 s193(3B).
41 HA 1996 s193(7AD). See further paras 10.166–10.168.
42 HA 1996 s193(7AC). See para 10.166. From 9 November 2012, when the Localism Act (LA) 2011 s148 came into force in England, a new offer by an English authority is to be known as a 'private rented sector offer': Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 SI No 2599 article 2.
43 H(W)A 2014 Sch 2 para 2.
44 H(W)A 2014 s76.
45 Code of Guidance para 8.5; Welsh Code paras 8.6–8.8.

4.26 Both Codes also state that 'any other person' (who normally resides with the applicant as a member of the family) might cover a companion for an elderly or disabled person, or children being fostered by the applicant or a member of his or her family.[46]

4.27 The English and Welsh Codes conclude:

> Persons who normally live with the applicant but who are unable to do so because there is no accommodation in which they can live together should be included in the assessment.[47]

4.28 This approach echoes the decision of the House of Lords in *Islam*,[48] where the applicant lost his right to a shared room as a result of the arrival of his wife and four children from Bangladesh. A finding of intentionality was quashed by the House of Lords on the basis that what had been lost was not accommodation 'available for his occupation', meaning that of the applicant *and* his family.[49]

4.29 Accordingly, a family which has never enjoyed accommodation in which there were rights of occupation for all of its members will at all times have been homeless. For example, a couple without a home of their own, each still living with his and her parents, will be able to assert an effective right to assistance under Part 7 or Part 2 as soon as a priority need is acquired. An authority wishing to resist the claim cannot resort to intentional homelessness based on the pregnancy itself, as this is precluded by *Islam*.[50]

4.30 Note, however, that an unborn child will not be a person with whom the applicant would be expected to reside. So the future housing needs of the unborn child need not be considered by the authority when determining homelessness,[51] save to the extent to which it had otherwise rendered the mother's accommodation unavailable in her own right.

46 Code of Guidance para 8.5; Welsh Code paras 8.6–8.8.

47 Code of Guidance para 8.6; Welsh Code para 8.8.

48 *Re Islam* [1983] 1 AC 688, (1981) 1 HLR 107, HL.

49 The argument in the Court of Appeal that Mr Islam had made the accommodation unavailable by bringing his family over was dismissed as 'circular . . . because that lack is the very circumstance which section 16 [of the Housing (Homeless Persons) Act 1977, subsequently HA 1985 s75, now s176] and the Act are designed to relieve'.

50 In *R v Eastleigh BC ex p Beattie (No 1)* (1983) 10 HLR 134, QBD, the court rejected out of hand a suggestion that pregnancy causing accommodation to cease to be reasonable to occupy could amount to intentionality.

51 See *R v Newham LBC ex p Dada* (1995) 27 HLR 502, CA.

4.31 That does not make the pregnancy irrelevant. In *Rouf*,[52] it was held that an authority could not jump to the conclusion that accommodation would continue to be available to an applicant with an increasing family. See also *Ali*,[53] in which the court found the proposition that a single, small room was 'available' for a large family (applicant, wife and five children) 'quite extraordinary'.

4.32 In other cases, hopelessly inadequate accommodation had been held not to be accommodation which it was reasonable to continue to occupy.[54]

4.33 A member of the family who usually resides with the applicant need not also be shown to do so reasonably.[55] On the other hand, where children who were not reasonably to be expected to reside with the applicant came to live with him in accommodation (a single room) that was only sufficient for him, he was (to that point) occupying accommodation that was available for him, so that he could be held intentionally homeless for allowing them to come and live with him (which made the accommodation unavailable).[56]

Others

4.34 The question of who is reasonably to be expected to reside with an applicant is a matter for the authority, challengeable on conventional grounds of public law,[57] rather than a question of fact which a court can decide for itself: see *Ly*.[58]

4.35 In *Carr*,[59] it was held that the authority had erred in law in failing to consider whether the applicant's boyfriend – the father of her child – was a person with whom she might reasonably be expected to reside. The authority had wrongly reached its decision solely on the basis that they had not lived together at the applicant's last settled accommodation.

52 *R v Tower Hamlets LBC ex p Rouf* (1989) 21 HLR 294, QBD.

53 *R v Westminster City Council ex p Ali* (1983) 11 HLR 83, QBD.

54 See paras 4.103–4.113.

55 Compare *R v Hillingdon Homeless Persons Panel ex p Islam* (1980) *Times* 10 February QBD, not cross-appealed on the proposition, as it relates to priority need.

56 *Oxford City Council v Bull* [2011] EWCA Civ 609, [2011] HLR 35.

57 See chapter 12.

58 *R v Lambeth LBC ex p Ly* (1986) 19 HLR 51, QBD. Compare *R v Newham LBC ex p Khan and Hussain* (2001) 33 HLR 29, QBD, where a decision that a grandmother, her two daughters and their respective husbands and children did not usually reside together was quashed as *Wednesbury* unreasonable.

59 *R v Peterborough City Council ex p Carr* (1990) 22 HLR 207, CA.

4.36 In *Okuneye*,[60] however, the fact that two people were intending or expecting to reside together did not mean that – when each departed from his and her separate accommodation – they were necessarily reasonably to be expected to reside together at that time. The authority was accordingly entitled to conclude that each had become homeless intentionally for ceasing to occupy available accommodation.

4.37 In *Ryder*,[61] the authority approached the question of whether a carer could reasonably be expected to reside with a disabled applicant by reference to whether the applicant was eligible for Disability Living Allowance. As the test for such an allowance was more stringent – and, it may be said, different – from what is now HA 1996 s176 (H(W)A 2014 s56), the decision was quashed. Similarly, the authority in *Tonnicodi*[62] applied the wrong test – whether the applicant needed a live-in carer – rather than whether the carer was a person who might reasonably be expected to reside with the applicant.

4.38 In *Curtis*,[63] the applicant was occupying her former matrimonial home under a separation agreement which contained a cohabitation clause to the effect that if she cohabited or remarried the property would be sold. The applicant started to cohabit and her husband enforced the power of sale. The authority found the applicant to be homeless intentionally, a decision that was quashed because it had not considered availability in the statutory sense, ie whether, if it was reasonable for her and her cohabitant to live together, the property was available to both of them (which it was not).

Rights of occupation

4.39 It is only accommodation occupied under one of three categories of occupational right which will preclude a finding of homelessness (HA 1996 s175(1); H(W)A 2014 s55(1)):

a) occupation under interest or order;
b) occupation under express or implied licence; or
c) occupation by enactment or restriction.

4.40 It has been held that accommodation in a prison does not fall within any of these rights of occupation, as the prisoner has no enforceable

60 *R v Barking and Dagenham LBC ex p Okuneye* (1995) 28 HLR 174, QBD.
61 *R v Southwark LBC ex p Ryder* (1996) 28 HLR 56, QBD.
62 *R v Hackney LBC ex p Tonnicodi* (1997) 30 HLR 916, QBD.
63 *R v Wimborne DC ex p Curtis* (1985) 18 HLR 79, QBD.

right to occupy the cell,[64] although this question has been reserved by the House of Lords.[65]

Occupation under interest or order

4.41 The right of occupation may be by virtue of an 'interest' in the accommodation: this would seem to mean a legal or equitable interest.

4.42 Those with a legal interest will include both owner-occupiers and tenants, whether under long leases or on short, periodic tenancies, and whether under an initially agreed contractual period or under the contract as statutorily extended by HA 1985 and HA 1988 (secure tenants and assured tenants). If one of a pair of joint tenants unilaterally terminates the joint tenancy, regardless of the concurrence or knowledge of the other, the remaining joint tenant no longer has an interest in the property and therefore cannot be said to have a right of occupation as a tenant.[66]

4.43 Those with an equitable interest commonly include the spouse of an owner-occupier. Spouses and civil partners, whether of owner-occupiers or of tenants, may also be given a right to occupy under an 'order of the court', ie under family legislation.[67]

Occupation under express or implied licence

4.44 Where spouses or other partners are living together, and one only has a right of occupation, such as ownership or tenancy, the other is his or her implied licensee.[68] Lodgers will usually be licensees rather than tenants; flat-sharers may be only licensees rather than joint tenants; a child in the home of his or her parents will be a licensee

64 *R (B) v Southwark LBC* [2003] EWHC 1678 (Admin), [2004] HLR 3; see further para 4.132.

65 *Birmingham City Council v Ali; Moran v Manchester City Council (Secretary of State for Communities and Local Government and another intervening)* [2009] UKHL 36, [2009] 1 WLR 1506; see para 4.13.

66 *Fletcher v Brent LBC* [2006] EWCA Civ 960, [2007] HLR 12; see further para 4.45.

67 See, in particular, Family Law Act 1996 Part 4. The powers can also be applied to cohabitants and former cohabitants.

68 *Hemans & Hemans v Windsor and Maidenhead RLBC* [2011] EWCA Civ 374, [2011] HLR 25.

rather than a tenant or sub-tenant,[69] except in the most exceptional circumstances.[70]

4.45 Where the authority claims that an applicant has a licence to occupy accommodation, it must determine its precise nature. In *Fletcher*,[71] the applicant's wife terminated their joint tenancy by service of a notice to quit. The local authority nonetheless concluded that the applicant was not homeless; on appeal to the county court, the judge concluded that the applicant had some form of licence to occupy the property – the nature of which she decided that it was unnecessary for her to determine – and was therefore not homeless. The Court of Appeal, allowing a further appeal, remitted the case to the authority to determine whether a licence existed and, if so, on what terms.

Tied accommodation

4.46 Where the applicant's licence is as a service occupier and contingent on the contract of employment, there cannot be said to be a licence to occupy once the contract of employment has been terminated.

4.47 Even where the employer of a live-in house-keeper, having terminated the contract of employment, said that the applicant could return to occupy her room, the local authority was in error in concluding that she had a licence to occupy. The licence was dependent on a contract for employment which no longer existed.[72]

Occupation by enactment or restriction

4.48 The final category of 'right of occupation' is occupation as a residence by virtue of any enactment or rule of law giving the applicant the right to remain in occupation, or restricting the right of any other person to recover possession of it.

69 On the distinction between tenant and licensee, see the decisions in *Street v Mountford* [1985] AC 809, (1985) 17 HLR 402, HL; and *AG Securities v Vaughan; Antoniades v Villiers* [1990] AC 417, (1988) 21 HLR 79, HL. See also English Code of Guidance paras 8.9–8.13 on applicants asked to leave accommodation by family or friends.

70 For example, where the house has been subdivided into two flats (self-contained or not), for one of which the parents are charging rent and there are no other criteria which lean against tenancy (such as sharing utilities).

71 *Fletcher v Brent LBC* [2006] EWCA Civ 960, [2007] HLR 12.

72 See *R v Kensington and Chelsea RLBC ex p Minton* (1988) 20 HLR 648, QBD and *Norris v Checksfield* (1991) 23 HLR 425, CA.

Actual occupation v right to occupy

4.49 This category predicates actual occupation, as distinct from a right to occupy, so that a person who walks out of accommodation occupied on this basis will be homeless, albeit at risk of a finding of intentionality.[73] In contrast, a person who walks out of a house in which he or she has an interest will, presuming it is available for his or her occupation,[74] not be homeless until such time as he or she divests himself or herself of that interest, for example, by release or sale.

Protection from Eviction Act 1977

4.50 The definition closely follows the wording of Protection from Eviction Act (PEA) 1977 s1(1).

Rent Act protection

4.51 A tenant within the protection of the Rent Act (RA) 1977 will occupy by virtue of an interest until the determination of the tenancy; thereafter, the person is a statutory tenant. A statutory tenancy is not an interest in land.[75] It is, however, a right of occupation by virtue of an enactment or rule of law, as well as one which gives the tenant the right to remain in occupation and which restricts the right of another to recover possession.

Secure/assured protection

4.52 The same approach was not taken for secure and assured tenants under HAs 1985 and 1988. Rather, there is a restriction on the landlord's right to determine the tenancy itself save by order of the court. Accordingly, the tenancy continues and, as such, occupation is under that interest.

Tied accommodation

4.53 An agricultural worker in tied accommodation, enjoying the benefit of the Rent (Agriculture) Act (R(A)A) 1976,[76] will usually occupy by virtue of a licence before its determination, and thereafter in the same way as a Rent Act statutory tenant. Those whose rights were granted after commencement of HA 1988 Part 1 may have assured agricul-

73 But see further 'Reasonable to continue to occupy' at para 4.69.

74 See para 4.62.

75 *Keeves v Dean* [1924] 1 KB 685, CA.

76 There are conditions which apply before the protection is available.

tural occupancies[77] which – as with assured tenancies[78] – cannot be terminated by the landlord without an order of the court. Those in tied accommodation who do not enjoy the benefit of R(A)A 1976 or HA 1988 derive some temporary benefits under PEA 1977.[79]

Former long leaseholders

4.54 Long leaseholders usually continue to occupy beyond what would otherwise contractually be the termination of their interests by virtue of a statutorily extended tenancy, which is thus still an interest. They will subsequently become either statutory tenants under RA 1977 or assured tenants under HA 1988.[80]

Other tenants and licensees

4.55 PEA 1977 s3 itself prohibits the eviction – otherwise than by court proceedings – of former unprotected tenants and licensees,[81] those who had licences granted on or after 28 November 1980 which qualify as restricted contracts within RA 1977 s19, as well as certain service occupiers. All these people will occupy either by virtue of an interest or a licence until determination, and subsequently by virtue of an enactment restricting the right of another to recover possession.[82]

77 As last footnote.

78 See para 4.52.

79 See PEA 1977 s8(2) applying provisions of that Act to 'a person who, under the terms of his employment, had exclusive possession of any premises other than as a tenant . . .'.

80 Landlord and Tenant Act 1954 Part 1; Local Government and Housing Act 1989 Sch 10.

81 Other than excluded tenants and licensees: see PEA 1977 s3(2B). Note that, by judicial extension, temporary accommodation provided under a licence pursuant to what is now HA 1996 ss188(1), (3), 190(2), 200(1) and 204(4) is incapable of qualifying under PEA 1977 s3: see *R (ZH and CN) v Newham LBC and Lewisham LBC* [2014] UKSC 62, [2015] HLR 6. See also *Mohamed v Manek* (1995) 27 HLR 439 CA and *Desnousse v Newham LBC* [2006] EWCA Civ 547, [2006] HLR 38. It is, however, unclear whether this proposition applies (as it was said in *Manek* to apply) to both tenancies and licences so provided, or only to licences (a difference expressly raised and left open by the court in *Desnousse*).

82 PEA 1977 ss2 and 3, as amended by HA 1980 s69(1) and HA 1988 s30.

Spouses, civil partners and cohabitants

4.56 Even where the applicant is not the tenant, Family Law Act 1996 Part 4[83] protects spouses, civil partners and some cohabitants (including those living together as civil partners) by giving them a right to remain in occupation, or restricting the right of another to recover possession.[84]

Non-qualifying persons

4.57 Those who are left outside the definition altogether are:

a) those who have been trespassers from the outset and remain so; and
b) those who have excluded tenancies and licences which have been brought to an end;[85] or who are otherwise excluded from PEA 1977.[86]

4.58 It follows that 'squatters' properly so-called, as distinct from those to whom a licence to occupy has been granted,[87] are statutorily homeless even though no possession order may yet have been made against them, for, even though they may have the benefit of a roof over their heads, they have no accommodation within any of the classes specified.

4.59 As noted above,[88] an applicant who occupies temporary accommodation provided to him or her pending enquiries, review or appeal under HA 1996 s188 or s204(4) is nevertheless homeless for the purpose of section 175(1).

Timing

4.60 The right not to be evicted otherwise than by court proceedings in PEA 1977 s3 confers protection until execution of a possession order by the court bailiff in accordance with the relevant court rules.[89]

83 As amended by the Civil Partnership Act 2004.
84 *Abdullah v Westminster City Council* [2011] EWCA Civ 1171, [2012] HLR 5.
85 *R v Blankley* [1979] Crim LR 166 and see PEA 1977 s3(2B).
86 Cf footnote 81.
87 Ie a short-life occupation agreement, usually pending redevelopment.
88 Para 4.14.
89 *Hanniff v Robinson* [1993] QB 419, CA. The relevant county court rules are found in CPR 83.

4.61 In *Sacupima*,[90] it was held that the same applied under the Civil Procedure Rules (CPR) and, therefore, under HA 1996 s175(1)(c).[91] Accordingly, an assured tenant[92] does not become homeless for the purposes of section 175(1)(c) until the warrant for possession against him or her is executed.[93] Note, however, that from 9 November 2012 when the Localism Act (LA) 2011 s149 came into force,[94] an applicant who makes a fresh application to an English authority within two years of a previous application which had resulted in the offer and acceptance of an assured shorthold tenancy,[95] in respect of which notice has been given under HA 1988 s21,[96] is homeless from the expiry of that notice, so that the applicant need not await proceedings for eviction.[97] This does not apply where the application was made before – and the duty to secure accommodation was still in existence at – that date.[98]

Restriction on entry or use

Entry prevented

4.62 A person is also homeless if he or she 'cannot secure entry to' his or her accommodation.[99]

4.63 This provision is primarily intended to benefit the illegally evicted tenant or occupier, but covers anyone else who for some reason cannot immediately be restored to occupation of a home to which he or

90 *R v Newham LBC ex p Sacupima* (2001) 33 HLR 1, QBD. See also *R v Newham LBC ex p Khan* (2001) 33 HLR 29, QBD.

91 HA 1996 s230 defines 'enactment' as including subordinate legislation.

92 Entitled to remain in occupation under HA 1988 s5 until a court order is made. The same argument will apply to secure tenancies: see HA 1985 s82.

93 In these circumstances, however, the applicant will be threatened with homelessness: see para 4.141.

94 Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 SI No 2599 article 2.

95 See *Manual of Housing Law*, 10th edn, Arden & Dymond, para 1.248.

96 See *Manual of Housing Law*, para 2.203.

97 HA 1996 s195A(2). This right only arises on one re-application: HA 1996 s195A(6).

98 Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 SI No 2599 article 3.

99 HA 1996 s175(2)(a); H(W)A 2014 s55(2)(a).

she has a legal entitlement – for example, because of occupation by squatters.[100]

4.64 This provision has not proved to be of as much practical use as was intended, because authorities have tended to consider that unless the applicant uses available legal remedies to re-enter, he or she will be considered intentionally homeless, albeit possibly provided with temporary assistance until an order from the court is obtained.

4.65 Authorities should, however, have no rigid policy to this effect,[101] for there may be circumstances in which, even though legal redress exists, both the benefits to be gained from using it and the circumstances generally suggest that it would be inappropriate, for example, illegal eviction by a resident landlord who will shortly recover possession in any event, where tensions are such that it is impracticable for the tenant to remain in the property.

Moveable structures

4.66 A person is also homeless if his or her accommodation consists of a moveable structure, vehicle or vessel designed or adapted for human habitation, and there is no place where the applicant is entitled or permitted both to place it and to reside in it – for example, a mobile home, caravan or house-boat.[102]

4.67 In *Roberts*,[103] travelling showmen were considered to be neither homeless nor threatened with homelessness while moving between fairgrounds during the fairground season, residing at each ground in caravans on a temporary basis. 'Reside' does not require permanence: it means 'live' or 'occupy'.

4.68 In *Smith v Wokingham DC*,[104] a county court considered that a caravan parked on land belonging to a county council, without express permission but in which the applicant and his family had lived for two-and-a-half years, had been the subject of an acquiescence

100 Code of Guidance para 8.16; Welsh Code para 8.16. It does not include where an applicant cannot travel to accommodation (which is otherwise available): *Nipa Begum v Tower Hamlets LBC* (1999) 32 HLR 445, CA.

101 See, eg *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610, HL; *Re Betts* [1983] 2 AC 613, 10 HLR 97, HL; *Attorney-General ex rel Tilley v Wandsworth LBC* [1981] 1 WLR 854, CA; *R v Warwickshire CC ex p Williams* [1995] COD 182, QBD; *R v North Yorkshire CC ex p Hargreaves* (1997) 96 LGR 39, QBD.

102 HA 1996 s175(2)(b); H(W)A 2014 s55(2)(b).

103 *R v Chiltern DC ex p Roberts et al* (1990) 23 HLR 387, QBD.

104 April 1980 *LAG Bulletin* 92, CC. See also *Higgs v Brighton and Hove City Council* [2003] EWCA Civ 895, [2004] HLR 2.

sufficient to constitute permission for the purpose of what is now HA 1996 s175(2)(b).

Reasonable to continue to occupy

4.69 A person is homeless if his or her accommodation is such that it is not reasonable to continue to occupy it.[105] There is a relationship between reasonableness to continue to occupy and suitability of accommodation.[106] Therefore, case-law on one of these issues may be relevant to the other.[107]

4.70 The test is satisfied only if it is reasonable for the applicant to occupy the accommodation indefinitely, or at least for as long as the applicant otherwise would if the authority did not intervene to rehouse him or her: *Ali* and *Moran*.[108] Thus, an applicant may be homeless long before the situation becomes so bad that it is not reasonable for him or her to occupy the accommodation for another night.[109] What this recognises is that accommodation which it may be unreasonable for a person to occupy for a long period, may nonetheless be reasonable to occupy for a short period.[110]

4.71 The test is linked to 'suitability':[111] accommodation which is not reasonable for an applicant to continue to occupy may nevertheless be suitable for the time being; there are degrees of suitability and what is suitable for occupation in the short term may not be suitable in the longer term.[112] The point in time at which accommodation which it is not reasonable for an applicant to continue to occupy becomes unsuitable is primarily for the authority to decide, and

105 HA 1996 s175(3); H(W)A 2014 s55(3). This element of the definition was introduced into HA 1985 as s58(2A) by Housing and Planning Act 1986 s14(2), as a parliamentary response to the House of Lords decision in *R v Hillingdon LBC ex p Puhlhofer* [1986] AC 484, (1986) 18 HLR 158, HL.

106 See para 4.71; see further paras 10.145–10.163.

107 *Harouki v Kensington and Chelsea RLBC* [2007] EWCA Civ 1000, [2008] HLR 16. This is also implicit in *Birmingham City Council v Ali; Moran v Manchester City Council (Secretary of State for Communities and Local Government)* [2009] UKHL 36, [2009] 1 WLR 1506 where the House of Lords came close to eliding the two concepts.

108 *Birmingham City Council v Ali; Moran v Manchester City Council (Secretary of State for Communities and Local Government)*, above, at [37].

109 *Ali* and *Moran* at [40].

110 *Ali* and *Moran* at [42].

111 See paras 10.145–10.163.

112 *Ali* and *Moran* at [47]. See also *R (Edwards) v Birmingham City Council* [2016] EWHC 173 (Admin), [2016] HLR 11.

involves taking into account matters such as the severe constraints on budgets and personnel and the very limited number of satisfactory properties for large families.[113]

4.72 On the same basis, a woman who has left her home because of domestic or other violence[114] normally remains homeless even if she has found a temporary haven in a women's refugee[115] because it would usually not be reasonable for her to continue to occupy her place in the refuge indefinitely,[116] ie for as long as she would have to occupy it if the authority did not intervene to rehouse her.[117]

4.73 The test of reasonableness to continue to occupy does not apply only to accommodation which is actually occupied: continuation refers to the entitlement rather than the occupation. Accordingly, a person is homeless if it is – or if it would not be – reasonable to occupy the accommodation, whether or not in prior occupation of it, or in occupation of it at the time of the application or decision. Any other approach would mean that if the circumstances were so bad that the applicant had left, he or she might (in theory at least) be found not to be homeless,[118] where he or she would be found homeless if the circumstances were such that, although unreasonable to continue to occupy the accommodation, they were not so bad that the applicant had actually left it. Such a result could not have been intended: *Maloba*.[119]

4.74 Whether it would have been reasonable for an applicant to continue to occupy accommodation for the purposes of HA 1996 s191(1) is to be determined at a time before the deliberate acts or omissions which led to the loss of that accommodation. In answering this question, an authority must ignore those acts or omissions: *Denton*.[120]

4.75 The term 'reasonable to continue to occupy' is governed by HA 1996 s177 or H(W)A 2014 s57, as to both:

a) violence (HA 1996 s177(1) and (1A)) or abuse (H(W)A 2014 s57(1)); and

113 *Ali* and *Moran* at [50].

114 See paras 4.82–4.92.

115 *Ali* and *Moran* at [65].

116 *Ali* and *Moran* at [52].

117 *Ali* and *Moran* at [46].

118 In *Nipa Begum v Tower Hamlets LBC* (1999) 32 HLR 445, CA, at [41], while taking a contrary view of the statutory provisions, it was said that no reasonable authority could reach such a decision.

119 *Waltham Forest LBC v Maloba* [2007] EWCA Civ 1281, [2008] HLR 26, rejecting the majority obiter conclusion in *Nipa Begum*, in favour of the minority view.

120 *Denton v Southwark LBC* [2007] EWCA Civ 623, [2008] HLR 11.

b) the general housing circumstances of the area (HA 1996 s177(2); H(W)A 2014 s57(3)).

4.76 The secretary of state and the Welsh Ministers have power to specify other circumstances in which it is or is not to be regarded as reasonable to continue to occupy accommodation, and matters (other than the general housing circumstances of the area) which are to be taken into account when determining whether or not it is reasonable to continue in occupation (HA 1996 s177(3); H(W)A 2014 s57(4)).[121]

4.77 These considerations are not exhaustive of matters to be taken into account in determining whether or not it is reasonable to continue in occupation: *Duro-Rama*.[122] The question is not limited to consideration of the size, structural quality and amenities of accommodation.[123] It follows that, in addition to violence and the general housing circumstances of the area and any other considerations that may be specified, there is a wide range of other matters which may affect the issue.

4.78 Subject to the provisions of HA 1996 s177(2) and H(W)A 2014 s57(3), which allows regard to be had to the general housing circumstances of the area, the question whether it is reasonable to continue to occupy has been described as subjective, and not susceptible to a generalised or objective standard: *McManus*.[124] This does not mean wholly subjective in the view of the applicant, but has been construed as meaning that the issue has to be determined on all the facts of the case – not, on the one hand, determined simply by reference to local conditions or the local authority's policy, nor, on the other, looked at from the perspective of the applicant alone, so that the role of other persons or factors is ignored.[125]

121 See para 4.122 as to the regulations which have been issued.

122 *R v Hammersmith and Fulham LBC ex p Duro-Rama* (1983) 9 HLR 71, QBD.

123 *Waltham Forest LBC v Maloba* [2007] EWCA Civ 1281, [2008] HLR 26.

124 *R v Brent LBC ex p McManus* (1993) 25 HLR 643, QBD.

125 *Denton v Southwark LBC* [2007] EWCA Civ 623, [2008] HLR 11, at [13], [30] and [31]. This approach is consistent with *Ahmed v Leicester City Council* [2007] EWCA Civ 843, [2008] HLR 6, which concerned HA 1996 s193(7F) (paras 10.174–10.175), in which it was held that an applicant's genuine belief that it was not reasonable to accept an offer of accommodation was not conclusive of whether it was reasonable to do so; if the authority has evidence which entitles it to consider that the belief was not objectively reasonable, even if that evidence was not available to the applicant at the time of the refusal, the authority may nonetheless decide that it was reasonable for the applicant to accept the offer. It would seem that a similar approach may therefore be available in relation to HA 1996 s177.

4.79 The question is not, however, whether it is reasonable to leave accommodation, but whether or not it is reasonable to continue to occupy it.[126] The distinction is significant: it will commonly be reasonable (in the sense of not being unreasonable) to leave somewhere; what has to be sustained is the proposition that it is positively not reasonable to stay.

4.80 There is no presumption that an applicant's current accommodation is unsuitable, such as to impose a burden on the authority to rebut it: *McCarthy*.[127]

4.81 Whether or not it is reasonable to continue to occupy accommodation relates not only to the applicant but also to any other person who might reasonably be expected to reside with the applicant: *Bishop*.[128] This must be as true of a person residing with the applicant as a member of the family.

Violence and abuse

4.82 It is not reasonable to continue to occupy accommodation if, even though there may be a legal entitlement to do so, it is 'probable' that occupation of it will lead to domestic or other abuse (in Wales)[129] or violence or threats of violence which are likely to be carried out (in England):

a) against the applicant; or
b) against any person who usually resides with the applicant, or against any person who might reasonably be expected to reside with the applicant.[130]

4.83 In *Danesh*[131] a narrow definition of 'violence' was adopted, to mean actual physical violence, not including threats of violence or acts or gestures which lead a person to fear physical violence. In *Yemshaw*,[132] however, the Supreme Court adopted a much broader view which,

126 See *R v Kensington and Chelsea RLBC ex p Bayani* (1990) 22 HLR 406, CA; see also *R v Gravesham BC ex p Winchester* (1986) 18 HLR 208, QBD.

127 *R v Sedgemoor DC ex p McCarthy* (1996) 28 HLR 608, QBD.

128 *R v Westminster City Council ex p Bishop* (1993) 25 HLR 459, CA.

129 'Abuse' means physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm: H(W)A 2014 s58(1). Given the decision in *Yemshaw* (below), the terms violence and abuse appear to be synonymous.

130 HA 1996 s177(1), (1A); H(W)A 2014 s57(1).

131 *Danesh v Kensington and Chelsea RLBC* [2006] EWCA Civ 1404, [2007] HLR 17.

132 *Yemshaw v Hounslow LBC* [2011] UKSC 3, [2011] HLR 16; see also H(W)A 2014 s58.

it held, was consistent with the purpose of the legislative scheme; accordingly, it included physical violence, threats, intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to a risk of harm.[133] It followed that the authority had erred in applying the narrow definition in *Danesh* and the case was remitted for reconsideration by them. This wider definition was subsequently incorporated into statutory guidance[134] and, in *Waltham Forest LBC v Hussein*,[135] it was held that, although *Danesh* had not been expressly overruled by *Yemshaw*, it was clear that much of the reasoning was disapproved; the wider approach in *Yemshaw* should be followed.

4.84 It is not necessary to show an actual history of violence. The test may be satisfied by the lower standard, ie, threats by someone likely to carry them out. Many authorities fail to observe this important distinction, and require a high standard of proof of actual violence in the past, as evidence of both probability and likelihood. As this section draws a careful distinction, so also must authorities.

4.85 The position is not the same as failure to use legal redress in connection with 'entry prevented'.[136] Authorities are not to concern themselves with what steps to prevent the violence applicants should (in the authority's view) take or could have taken: *Bond*.[137]

4.86 Therefore, when determining whether it is reasonable to continue to occupy under HA 1996 s177, an authority may consider only whether it was probable that continued occupation of the property would lead to violence or the threat of violence.[138] Whether a victim of violence had failed to take measures to prevent the violence (such as contacting the police or taking out an injunction) is irrelevant: if, however, the victim does take preventative measures which it is considered will probably prove effective in preventing actual or threatened violence, the level of risk may factually be reduced below probability. Those are the questions which an authority must ask itself; it may

133 The wider view had also been adopted in the English Code of Guidance para 8.21 which *Danesh* had criticised.

134 *Supplementary guidance on domestic abuse and homelessness*: CLG, November 2014.

135 [2015] EWCA Civ 14, [2015] HLR 16.

136 See para 4.62.

137 *Bond v Leicester City Council* [2001] EWCA Civ 1544, [2002] HLR 6. See also English Code of Guidance para 8.22; Welsh Code para 8.23. Compare the earlier decisions of *R v Eastleigh BC ex p Evans* (1984) 17 HLR 515, QBD; *R v Purbeck DC ex p Cadney* (1985) 17 HLR 534; and *R v Wandsworth LBC ex p Nimako-Boateng* (1984) 11 HLR 95, QBD.

138 *Bond v Leicester City Council* [2001] EWCA Civ 1544, [2002] HLR 6.

not assume that such measures will be taken or, if taken, that they will be effective.[139]

Threats

4.87 The only test that an authority may apply to establish whether threats are likely to be carried out is likewise what is probable: see *Bond*.[140] See also English Code of Guidance para 8.22:[141]

> . . . an assessment of the likelihood of a threat of violence being carried out should not be based solely on whether there has been actual violence in the past.

Residing with applicant

4.88 The violence need not be against the applicant but could be against any person who usually resides with the applicant or against any person who might reasonably be expected to do so. See above 'Accommodation available for occupation' at paras 4.16–4.38, and note that the person to whom the violence is shown need not be residing with the applicant as a member of the applicant's family, so that, for example, a carer could qualify.

Domestic violence/abuse

4.89 Domestic violence or abuse is not confined to that between spouses or cohabitants. It may come from any person with whom the applicant or other person who is the subject of it is associated.[142] The English Code of Guidance[143] suggests that 'domestic violence' should be understood to include threatening behaviour, violence or abuse

139 *Bond v Leicester City Council* [2001] EWCA Civ 1544, [2002] HLR 6. The earlier decision in *R v Wandsworth LBC ex p Nimako-Boateng*, above, in which it had been held that an authority could conclude that it would be reasonable for a woman to continue to occupy accommodation – notwithstanding domestic violence – by reference to the remedies otherwise available to her for her protection, was decided under HA 1985 s58, now HA 1996 s175(3), at a time when the question of reasonableness was at large, rather than statutorily defined as it now is in section 177. Accordingly, *Nimako-Boateng* was distinguished in *Bond*, as was the decision to like effect in *R v Purbeck DC ex p Cadney* (1985) 17 HLR 534.

140 *Bond v Leicester City Council* [2001] EWCA Civ 1544, [2002] HLR 6.

141 See Welsh Code para 8.22 to the same effect.

142 HA 1996 s177(1A), as amended by Civil Partnership Act 2004; H(W)A 2014 s58(2).

143 Code of Guidance para 8.21; see also Welsh Code para 8.21 and Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 s24.

(psychological, physical, sexual, financial or emotional) between associated persons.

4.90 People are associated if:

a) they are or have been married to each other;
b) they are or have been civil partners of each other;
c) they are cohabitants or former cohabitants (meaning a man and a woman who are living together without being married to one another, or two people of the same sex who are living together without being civil partners) or, in Wales, they live or have lived together in an enduring family relationship (whether they are of different sexes or the same sex);
d) they live or have lived in the same household;
e) they are relatives, meaning:
   i) parent, step-parent, child, stepchild, grandparent or grandchild of a person or of that person's spouse, civil partner, former spouse or former civil partner; or
   ii) sibling, aunt or uncle, niece or nephew of a person or that person's spouse, civil partner, former spouse or former civil partner, whether of full- or half-blood, or by marriage or civil partnership;
f) they have agreed to marry (whether or not that agreement has been terminated);
g) they have entered into a civil partnership agreement between them (whether or not that agreement has been terminated);
h) in relation to a child, each of the persons is a parent of the child, or has or has had parental responsibility (within the meaning of the Children Act (CA) 1989) for the child;
j) in relation to a child who has been adopted (or subsequently freed from adoption), if one person is a natural parent or natural parent of a natural parent, and the other is the child, or is a person who has become a parent by adoption, or who has applied for an adoption order, or with whom the child was at any time placed for adoption;[144] and
k) in Wales, people who have or have had an intimate personal relationship with each other which is or was of significant duration.[145]

4.91 HA 1996 s178(2) and (2A) and H(W)A 2014 s58(3) and (4) contain detailed provisions governing association arising out of adoptions.

144 HA 1996 s178, as amended by Civil Partnership Act 2004 Sch 8; H(W)A 2014 s58.

145 H(W)A 2014 s58(2)(h).

Other violence

4.92 The Homelessness Act 2002 extended the application of HA 1996 s177 to 'other violence', ie, from someone not associated with the victim – covering, for example, those suffering from violent racial harassment or witnesses in trials who have been intimidated by violence or threats of violence.[146] This is a significant extension. Formerly, violence from non-associated persons was only relevant to the question of reasonableness 'at large'.[147] An authority considering reasonableness at large could therefore take into account whether an applicant could obtain protection from violence through the courts or by seeking a transfer.[148] Incorporation into HA 1996 s177, means that the proper approach to the availability of alternative remedies will be the same as set out in *Bond*.[149]

General housing circumstances of area

4.93 The comparison between accommodation occupied and the general circumstances prevailing in relation to housing accommodation in the district of the authority to which an application has been made[150] is one of the central concepts of homelessness law, albeit that most of it was developed in relation to intentionality.

4.94 Indeed, it initially bore not at all on the definition of homelessness, although it was in practice being applied by the courts at the point in the evolution of the law[151] at which an there was an equiparation between being homeless and occupation of accommodation so poor that it could be left without a finding of intentionality.

4.95 *Awua*[152] notwithstanding, it is difficult to conceive that parliament intended anything other than the importation of an identical criterion when it adopted the exact same phraseology for use in the definition (HA 1985 s58) of homelessness as had long existed in relation to intentionality (HA 1985 s60), ie whether or not it was reasonable to

146 In Wales, the extension is found in H(W)A 2014 s58(1) in respect of 'abuse'.
147 *R v Hillingdon LBC ex p H* (1988) 20 HLR 554, QBD.
148 See, eg *R v Newham LBC ex p McIlroy* (1991) 23 HLR 570, QBD.
149 See para 4.85.
150 HA 1996 s177(2); H(W)A 2014 s57(3).
151 See para 4.7 in relation to accommodation.
152 *R v Brent LBC ex p Awua* [1996] AC 55, (1995) 27 HLR 453, HL.

continue to occupy, subject to the general housing conditions of the area.[153]

4.96 The comparison is between current accommodation, wherever situated, and conditions in the area of the authority to which application is made.[154]

4.97 HA 1996 s177(2) requires the authority to carry out a balancing act between the housing conditions in the authority's area and the accommodation quit, although whether or not it is reasonable to continue to occupy accommodation involves other questions, such as the pattern of life followed by the applicant: *Monaf*.[155] Such comparisons should only be made, however, where relevant to a case.[156]

4.98 The decision in *Tickner v Mole Valley DC*,[157] in which the applicants were evicted from a caravan site because they refused to pay increased rents which they thought excessive in view of the conditions on the site, turned on what is now HA 1996 s177(2), albeit in the context of intentionality:

> That is what influenced this authority here. They had long waiting lists for housing. On those lists there were young couples waiting to be married: or young married couples sometimes staying with their in-laws: or people in poor accommodation. All those people were on the housing waiting lists – people who had been waiting for housing for years. The council thought it would be extremely unfair to all those on the waiting lists if these caravan dwellers – by coming in in this way – jumped the queue, when they were well able to pay the rent for the caravans and stay on. Those were perfectly legitimate considerations for the local authority to consider.[158]

153 Housing and Planning Act 1986 s14(2); see also para 4.75. See also *R v Wandsworth LBC ex p Wingrove*, and *R v Wandsworth LBC ex p Mansoor* [1996] 3 All ER 913, (1997) 29 HLR 801, CA. See also *Nipa Begum v Tower Hamlets LBC* (1999) 32 HLR 445, CA, at p319/H ('[T]he plain intention of Parliament was to enable a local authority to determine the question of homelessness . . . without having to go on to the corresponding question in the test of intentional homelessness . . .') and at p326/A–B.

154 *R v Tower Hamlets LBC ex p Monaf* (1988) 20 HLR 529, CA.

155 See para 4.69. See also *R v Newham LBC ex p Ajayi* (1994) 28 HLR 25, QBD, referring to matters 'of social history and national status', such as where children were born and how long a person has lived somewhere.

156 *R v Newham LBC ex p Tower Hamlets LBC* (1990) 23 HLR 62, CA.

157 August 1980 *LAG Bulletin* 187, CA.

158 The same judge – Lord Denning MR – in *de Falco, Silvestri v Crawley BC* [1980] QB 460, CA, described the provision as a 'ray of hope', allowing the authority to say: 'You ought to have stayed where you were before. You ought not to have landed yourself on us when it would have been reasonable for you to stay where you were.'

4.99 In order to rely on this provision, the authority need not consider in great detail all the information on housing conditions in its area, but may have regard to 'the generally prevailing standard of accommodation in their area, with which people have to be satisfied'.[159]

Other reasons

4.100 There is an infinite number of reasons why people may not wish to remain in accommodation; accordingly, there is no simple test of reasonableness.[160]

Location

4.101 The question is not confined to matters relating to the accommodation in itself, but can extend to its location: *Homes*.[161]

Permanence

4.102 The fact that the accommodation is not permanent is not relevant to whether or not it is reasonable to continue the occupation: *Nipa Begum*.[162]

Physical conditions

4.103 Physical conditions may produce circumstances in which it is not reasonable to continue to occupy accommodation.

4.104 It is clear that, before an applicant can claim with confidence that it would not be reasonable to continue to occupy accommodation on the ground of its physical condition, the accommodation will have to be very poor indeed, although in some cases (for example, a wheelchair user) the physical characteristics of the accommodation may make it per se unsuitable for the particular applicant.[163]

4.105 In *Miles*,[164] a hut approximately 20 feet by ten feet, with two rooms, infested by rats, and with no mains services (although services were available in a nearby caravan occupied by relatives), was held to constitute accommodation of which an authority could consider it reasonable for the applicant to continue in occupation, at a time when

159 Per Lord Denning MR in *Tickner*, para 4.98.
160 See English Code of Guidance para 8.18; Welsh Code para 8.20.
161 *R v Wycombe DC ex p Homes* (1988) 22 HLR 150, QBD.
162 *Nipa Begum v Tower Hamlets LBC* (1999) 32 HLR 445, CA.
163 English Code of Guidance para 8.34; Welsh Code para 8.27.
164 *R v South Herefordshire DC ex p Miles* (1983) 17 HLR 82, QBD.

there were two adults and two children living in it, albeit that it was on the 'borderline' of what was reasonable and would cross the border-line into what no authority could consider reasonable on the birth of a third child.

4.106 In *Fisher*,[165] the applicant and her children had been living in temporary accommodation. For a period they lived in a caravan. Immediately before her application, they lived on a boat, without bath, shower, WC, electricity, hot water system or kitchen with a sink. There was one cabin, which was kitchen, living room and bedroom combined, and the applicant occupied it with her children and two friends. This was held not to amount to accommodation of which it was reasonable to continue in occupation.

4.107 In *Winchester*,[166] the applicant and his family had left accommodation in Alderney. Among the reasons for leaving was that the accommodation was in an appalling state of disrepair, suffering from damp and a dangerous outside staircase and balcony. The family was found to be intentionally homeless. The decision of the local authority that it would have been reasonable to remain was not considered to be unreasonable or perverse.

4.108 In *Dee*,[167] a decision that it would have been reasonable for a young woman and her new baby to occupy a pre-fabricated beach bungalow which suffered severe damp problems was quashed because the authority had given too much weight to the fact that the property was not considered to be unfit for human habitation and too little to the medical advice which had been given to the applicant.[168]

4.109 In *Ben-El-Mabrouk*,[169] the want of adequate means of escape from fire did not necessarily mean that it was not reasonable for a couple with a small baby to stay in occupation of a fifth-floor flat in a house in multiple occupation (HMO), although a delay in rehousing the family under the provisions of the Land Compensation Act 1973[170]

165 *R v Preseli DC ex p Fisher* (1984) 17 HLR 147, QBD.

166 *R v Gravesham BC ex p Winchester* (1986) 18 HLR 208, QBD.

167 *R v Medina BC ex p Dee* (1992) 24 HLR 562, QBD.

168 See also the discussion of *Shala v Birmingham City Council* [2007] EWCA Civ 624, [2008] HLR 8 at para 5.41, the principle of which must apply in the same way to issues of suitability having regard to medical conditions.

169 *R v Kensington and Chelsea RLBC ex p Youssef Ben-El-Mabrouk* (1995) 27 HLR 564, CA.

170 Land Compensation Act 1973 s39 requires an authority to re-house residential occupiers displaced from their accommodation as a result of specified enforcement action taken by the authority under (now) HA 2004 Part 1, previously under HA 1985 Part 10.

might itself (in the absence of an explanation from the authority) have been challengeable.

4.110 In *Puhlhofer*,[171] at the Court of Appeal, Ackner LJ's view as to whether or not the applicants had any accommodation (within the meaning of the legislation) at all[172] was based in part on the question whether or not it would have been reasonable to continue to occupy it. He considered that accommodation for the applicant, his wife and two children in one room in a guesthouse, with no cooking or laundry facilities, was still such that it could have been reasonable to continue to occupy it in the light of the authority's evidence that there were at least 44 families on the council's waiting list for two-bedroomed accommodation considered to be of higher priority.

Overcrowding

4.111 Overcrowding is a relevant consideration: *Beattie (No 1)*.[173] An authority cannot refuse to consider an application simply because the accommodation is not statutorily overcrowded: *Alouat*.[174] The authority is, however, entitled to take into account the fact that the property is not statutorily overcrowded: *Beattie (No 2)*.[175] Even if it is, this does not prevent it being reasonable for an applicant to continue to occupy the accommodation.[176]

4.112 In *Ali*,[177] even if accommodation had been 'available', it was said:

> . . . that anyone should regard it as reasonable that a family of that size should live in one room 10ft x 12ft in size, or thereabouts, is something which I find astonishing. However, the matter has to be seen in the light of s17(4) [now HA 1996 s177(2)] which requires that reasonableness must take account of the general circumstances prevailing in relation to housing in the area. No evidence has been placed before

171 (1985) 17 HLR 588, CA.

172 See para 4.8.

173 *R v Eastleigh BC ex p Beattie (No 1)* (1983) 10 HLR 134, QBD.

174 *R v Westminster City Council ex p Alouat* (1989) 21 HLR 477, QBD. See also Code of Guidance para 8.28. The Welsh Code para 8.27 says that: '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.'

175 *R v Eastleigh BC ex p Beattie (No 2)* (1984) 17 HLR 168, QBD. See also, on overcrowding, *Krishnan v Hillingdon LBC* January 1981 *LAG Bulletin* 137, QBD; *R v Tower Hamlets LBC ex p Ojo* (1991) 23 HLR 488, QBD; and *R v Tower Hamlets LBC ex p Bibi* (1991) 23 HLR 500, QBD.

176 *Harouki v Kensington and Chelsea RLBC* [2007] EWCA Civ 1000, [2008] HLR 16.

177 *R v Westminster City Council ex p Ali* (1983) 11 HLR 83, QBD.

> me that accommodation in the area of the Westminster City Council is so desperately short that it is reasonable to accept overcrowding of this degree. In the absence of such evidence I am driven to the conclusion that this question could not properly have been determined against the applicant.

4.113 In *Osei*,[178] it was held that, even if the applicant's flat in Madrid had been overcrowded when he surrendered his tenancy, it was open to the authority to conclude that it was reasonable for him and his family to continue to occupy it until he had secured alternative accommodation for his family in London.

Legal conditions

4.114 The fact that accommodation had been obtained by deception meant that it would not have been reasonable to remain in occupation of it: *Gliddon*.[179]

4.115 In *Knight*,[180] and in *Li*,[181] once service occupancies had been ended and there could be no defence to an action for possession, the authorities were not able to consider that occupiers should reasonably have remained in occupation pending proceedings.

4.116 These decisions can be difficult to reconcile with the definition of rights of occupation (including the right to remain in occupation under an enactment),[182] although it is not hard to see the common sense in discouraging authorities from requiring possession orders where there would be no defence. Indeed, the Code of Guidance has long made clear that authorities should not require tenants to fight possession proceedings where the landlord has a strong prospect of success.[183] In *Ugbo*,[184] the authority's failure to consider such

178 *Osei v Southwark LBC* [2007] EWCA Civ 787, [2008] HLR 15.

179 *R v Exeter City Council ex p Gliddon* (1984) 14 HLR 103, QBD; *Chishimba v Kensington and Chelsea RLBC* [2013] EWCA Civ 786, [2013] HLR 34.

180 *R v Portsmouth City Council ex p Knight* (1983) 10 HLR 115, QBD.

181 *R v Surrey Heath BC ex p Li* (1984) 16 HLR 79, QBD.

182 See paras 4.48–4.61.

183 See paras 8.30-8.32 in the English Code paras 8.14 and 8.31 of the Welsh Code. The concept appears to have first been stated in para A1.3 of the 2nd edn of the Code, although has been strengthened and developed in subsequent editions.

184 *R v Newham LBC ex p Ugbo* (1993) 26 HLR 263, QBD, a case on para 10.12 of the 3rd edn of the Code: 'Local authorities should not require tenants to fight a possession action where the landlord has a certain prospect of success, such as an action for recovery of property let on an assured shorthold tenant, on the ground that the fixed term of the tenancy has ended. Authorities need only be satisfied that proper notice had been served with the intention to proceed.'

guidance (and the implications of the fact that that applicant was only an assured shorthold tenant rather than fully assured) invalidated its decision on this issue.

4.117 The current Code[185] suggests that where the applicant is an assured shorthold tenant who has received proper notice (under HA 1988 s21)[186] that the tenancy is to be terminated and the landlord intends to seek possession, and there is no defence to the possession proceedings, it is unlikely to be reasonable for the applicant to occupy the accommodation beyond the date given in the section 21 notice, unless he or she is taking steps to persuade the landlord to withdraw the notice.

4.118 *Ugbo* must be compared with *Jarvis*,[187] where the authority had considered the Code but was held still to be entitled to reach the conclusion that it was reasonable to continue to occupy pending a court order following termination of an assured shorthold tenancy.[188]

4.119 In *Minnett*,[189] the authority should have disregarded departure one day before the date specified in a consent order for possession.

4.120 Given the decision in *Khan and Hussain*[190] that a tenant who is subject to a possession order only becomes homeless when that order is executed, authorities should also consider cases where the applicant leaves between the possession order and physical eviction by the court bailiffs, even though – on that analysis – the applicant will not yet be homeless.[191]

185 English Code of Guidance para 8.32; Welsh Code para 8.31. See also the letter from the secretary of state to English Local Authority CEOs (June 2016, DCLG) reminding authorities that they 'should not adopt a general policy of accepting – or refusing to accept – applicants as homeless or threatened with homelessness when they are threatened with eviction but a court has not yet made an order for possession or issued a warrant of execution'.

186 See *Manual of Housing Law*, para 2.203.

187 *R v Croydon LBC ex p Jarvis* (1993) 26 HLR 194, QBD; see also *R v Bradford City Council ex p Parveen* (1996) 28 HLR 681, QBD.

188 The 2nd edn of the Code at para 1.3 read: 'Where it is clear from the facts that tenants have no defence . . . to an application for possession, authorities should not insist that an order is obtained, and a date for eviction set, before agreeing to help the tenant.'

189 *R v Mole Valley DC ex p Minnett* (1983) 12 HLR 49, QBD.

190 *R v Newham LBC ex p Khan and Hussain* (2001) 33 HLR 29, QBD.

191 *R v Newham LBC ex p Sacupima* (2001) 33 HLR 1, QBD.

Financial conditions

4.121 Financial considerations raise the question of 'affordability': see *Hawthorne*,[192] in which the authority had to consider whether the applicant's failure to pay rent had been caused by the inadequacy of her financial resources.

4.122 The secretary of state has required authorities in England to take affordability into account when determining whether or not it is reasonable to continue to occupy accommodation: Homelessness (Suitability of Accommodation) Order 1996.[193]

4.123 In reaching this decision, the authority must consider the financial resources available to a person, including, but not limited to: the costs of the accommodation; payments being made under a court order to a spouse or former spouse; any payments made to support children; whether under a court order or under the Child Support Act 1991; and the applicant's other reasonable living expenses.[194]

4.124 The order also contains a detailed list of deductible accommodation costs,[195] although authorities are not limited to considering only these.[196]

4.125 In determining the amount that an applicant requires for residual living costs, the English Code of Guidance[197] suggests that authorities may wish to have regard to the amount of benefit to which the applicant would be entitled. Both the English and Welsh Codes[198]

192 *R v Wandsworth LBC ex p Hawthorne* (1994) 27 HLR 59, CA.

193 SI No 3204 (see appendix B). In Wales, see H(W)A 2014 s59(2), to the same effect. When deciding issues of affordability, all forms of income should be considered: *Samuels v Birmingham City Council* [2015] EWCA Civ 1051, [2015] HLR 47 (rejecting an argument that all welfare benefits other than housing benefit should be left out of account).

194 1996 Order, article 2(a).

195 1996 Order, article 2(b).

196 Unlike under the 1996 Order in England, in Wales H(W)A 2014 s59(2) provides no further details. The Welsh Code requires consideration of the 'financial resources available to the applicant; the costs in respect of the accommodation; maintenance payments (in respect of ex-family members); and the applicant's other reasonable living expenses': see para 8.29; see also para 19.26.

197 English Code of Guidance para 17.40.

198 English Code of Guidance, para 8.29; Welsh Code para 8.29.

makes it clear that affordability is always an issue which must be considered.[199]

4.126 This is consistent with case-law. In *Duro-Rama*,[200] the availability of benefits was held to be a relevant consideration which the authority had ignored by confining itself to the matters set out in HA 1985 s60(4) (now HA 1996 s177(2)).

4.127 In *Griffiths*,[201] it was said that it cannot be assumed that income support is sufficient to meet housing costs.

4.128 Inadequacy of financial resources goes not merely to ability to pay the rent, but also to funding the necessities of life, including food: *Bibi*,[202] following *Tinn*.[203]

4.129 It is, however, for the authority not the court to assess whether or not accommodation is affordable: *Grossett*.[204]

Employment

4.130 In *Duro-Rama*,[205] it was also said that the issue of employment was a relevant considerations which the authority had ignored. This reflects the comment of Lord Lowry in *Islam*,[206] that:

> There will, of course, and in the interests of mobility of labour ought to be, cases where the housing authority will . . . accept that it would not have been reasonable in the circumstances for the applicant to continue to occupy the accommodation which he has left.

199 Welsh Code para 19.28 is more prescriptive: accommodation is not to be considered affordable if the applicant 'would be left with a residual income which would be significantly less than the level of income support or 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 . . . Local authorities will need to consider whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials'.

200 *R v Hammersmith and Fulham LBC ex p Duro-Rama* (1983) 9 HLR 71, QBD.

201 *R v Shrewsbury BC ex p Griffiths* (1993) 25 HLR 613, QBD. See further *R v Hillingdon LBC ex p Tinn* (1988) 20 HLR 206, QBD; and *R v Camden LBC ex p Aranda* (1996) 28 HLR 672, QBD. Cf *R v Westminster City Council ex p Moklis Ali* (1996) 29 HLR 580, QBD.

202 *R v Islington LBC ex p Bibi* (1996) 29 HLR 498, QBD.

203 *R v Hillingdon LBC ex p Tinn* (1988) 20 HLR 206, QBD.

204 *R v Brent LBC ex p Grossett* (1994) 28 HLR 9, CA. See too *R v Brent LBC ex p Baruwa* (1997) 29 HLR 915, CA and *Bernard v Enfield LBC* [2001] EWCA Civ 1831, CA.

205 *R v Hammersmith and Fulham LBC ex p Duro-Rama* (1983) 9 HLR 71, QBD.

206 *Re Islam* [1983] 1 AC 688, (1981) 1 HLR 107, HL.

4.131 To the same effect, in *Ashton*,[207] it was held that no reasonable authority would have allowed the provisions of what is now HA 1996 s177(2) to have governed a decision on intentionality where a middle-aged woman who had been unemployed for six years, and who had chronic active hepatitis, left settled accommodation to take up work in another area.

Type of accommodation

4.132 It has been held that accommodation in a prison cell is not accommodation which it is reasonable for the applicant to continue to occupy (where the applicant has the opportunity to obtain early release under a tagging scheme): *B*.[208]

4.133 Both the English and Welsh Codes[209] suggest that some types of accommodation – for example, women's refuges; direct access hostels; and night shelters intended to provide very short-term temporary accommodation in a crisis – should not be regarded as reasonable for someone to continue to occupy in the medium and longer term. It may be that in some circumstances such accommodation should not be considered reasonable to occupy at all.[210]

Other considerations

4.134 In *Bassett*,[211] the court held that a woman who had followed her husband to Canada, notwithstanding the uncertainties of their prospects there, could not reasonably have remained in occupation of their secure council accommodation, when going to join him was her only chance of saving their marriage.

4.135 It would be wrong, however, to view this as anything more than an illustration of the proposition that it is the particular circumstances of applicant and household which are relevant.[212]

207 *R v Winchester City Council ex p Ashton* (1991) 24 HLR 520, CA.

208 *R (B) v Southwark LBC* [2003] EWHC 1678 (Admin), [2004] HLR 3. But cf, now, *Birmingham City Council v Ali; Moran v Manchester City Council (Secretary of State for Communities and Local Government and another intervening)* [2009] UKHL 36, [2009] 1 WLR 1506, para 4.13, where the House of Lords expressly reserved the issue of whether prison could comprise accommodation at all.

209 Para 8.34; Welsh Code para 8.27.

210 See now *Birmingham City Council v Ali; Moran v Manchester City Council (Secretary of State for Communities and Local Government and another intervening)*, para 4.13.

211 *R v Basingstoke and Deane BC ex p Bassett* (1983) 10 HLR 125, QBD.

212 Cf, above, *R v Brent LBC ex p McManus* (1993) 25 HLR 643, QBD; and *R v Shrewsbury BC ex p Griffiths* (1993) 25 HLR 613, QBD.

4.136 In *Hearn*,[213] the applicant's sense of isolation was held to be a factor relevant to deciding whether it was reasonable for her to continue to occupy premises.

4.137 In *Healiss*,[214] the authority failed to consider the applicant's reasons for concluding that it was not reasonable for her to continue in occupation of the accommodation of which she was a secure tenant, including repeated break-ins to empty flats in her block, two burglaries of her own flat, harassment involving strangers knocking at the door, stones thrown at windows, and shouting up to her windows at all hours of the day and night; in addition, gangs of youths congregated on the stairway smoking what was assumed to be drugs, the first-floor landing was used as a latrine and smelled as such, and the applicant was too frightened to allow her child to play in the block and gardens.

4.138 In *Nimako-Boateng*,[215] however, the court upheld the decision of the authority that a woman could reasonably have remained in occupation of the matrimonial home in Ghana, even though her relationship with her husband had broken down. (The court noted that it had been given no information about Ghanaian family law, and assumed that the woman's rights would have been the same as under English law. There was no complaint of domestic violence.)[216] *Nimako-Boateng* was followed in *Evans*.[217]

4.139 In *Moncada*,[218] the applicant was divorced from his wife and had custody of his two sons. The court refused to interfere with a finding that, given the shortage of accommodation in London, it was reasonable for him to continue to live in the four-bedroomed matrimonial home, notwithstanding that his ex-wife and daughter also continued to live in it.

213 *R v Swansea City Council ex p Hearn* (1990) 23 HLR 372, QBD.

214 *R v Sefton MBC ex p Healiss* (1994) 27 HLR 34, QBD.

215 *R v Wandsworth LBC ex p Nimako-Boateng* (1983) 11 HLR 95, QBD.

216 On the issue of domestic violence, as distinct from matrimonial breakdown, see now, however, *Bond*, para 4.85.

217 *R v Eastleigh BC ex p Evans* (1984) 17 HLR 515, QBD.

218 *R v Kensington and Chelsea RLBC ex p Moncada* (1996) 29 HLR 289, QBD.

4.140 All violence and threats of violence, whatever their source, will now fall to be considered under HA 1996 s177[219] rather than – as previously – under section 175(2).[220]

Threatened with homelessness

4.141 A person is threatened with homelessness for the purposes of HA 1996 Part 7 if it is likely that he or she will become homeless within 28 days.[221] In Wales, the period is 56 days.[222] Note, however, that since 9 November 2012, when LA 2011 s149 came fully into force in England,[223] an applicant who makes a fresh application to an English authority within two years of a previous application which had resulted in the offer and acceptance of an assured shorthold tenancy,[224] in respect of which notice has been given under HA 1988 s21,[225] is threatened with homelessness from when the notice is given.[226] This does not apply where the application was made before – and the duty to secure accommodation was still in existence at – that date.[227]

4.142 The period of 28 days, now only applicable in England, was originally referable to the 'normal' period granted by a court before a possession order would take effect. Since 3 October 1980, however, courts have been obliged to make orders to take effect within 14 days, save where exceptional hardship would be caused: see HA 1980 s89, although this is applicable only where the court has no other

219 See paras 4.82–4.92.

220 See, for example, *R v Hillingdon LBC ex p H* (1988) 20 HLR 559, QBD; *R v Northampton BC ex p Clarkson* (1992) 24 HLR 529, QBD; *R v Croydon LBC ex p Toth* (1987) 20 HLR 576, CA; and *R v Newham LBC ex p McIlroy and McIlroy* (1991) 23 HLR 570, QBD.

221 HA 1996 s175(4).

222 H(W)A 2014 s55(4).

223 Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 SI No 2599 Article 2.

224 See *Manual of Housing Law*, para 1.246.

225 See *Manual of Housing Law*, para 2.203.

226 HA 1996 s195A(4). This right only arises on one re-application: HA 1996 s195A(6). See also the letter in June 2016, from the secretary of state to all local authority chief executives reminding them that authorities 'should not adopt a general policy of accepting – or refusing to accept – applicants as homeless or threatened with homelessness when they are threatened with eviction but a court has not yet made an order for possession or issued a warrant of execution'.

227 Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 SI No 2599 article 3.

discretion to suspend, for example, under the RA 1977, HA 1985 or HA 1988.

4.143 Even once the date for possession has passed, the applicant will not be homeless until the warrant for possession is executed.[228] During this period, the applicant will, however, be threatened with homelessness.

4.144 There is no reason to draw any distinction of principle between the definitions of 'homelessness' and 'threatened with homelessness', other than the 28-day[229] criterion: *Dyson*.[230] This seems to be based on a concession by counsel, but must surely be correct.

4.145 Once faced with an applicant who is threatened with homelessness, the authority must start making appropriate enquiries under HA 1996 s184.[231] The duty cannot be postponed until the applicant is actually homeless: *Khan and Hussain*.[232] If enquiries are made before the 28 days, they will be non-statutory: *Hunt*.[233]

4.146 Once the Homelessness Reduction Act (HRA) 2017 comes into force, the period of 56 days currently applicable in Wales (para 4.141) will also serve to determine when a person becomes threatened with homelessness in England.[234] In addition, an assured shorthold tenant[235] served with a valid notice under HA 1988 s21,[236] in respect of the only accommodation which that person has[237] which is available for his or her occupation,[238] and which will expire within 56 days, is also threatened with homelessness.[239]

228 See *R v Newham LBC ex p Sacupima* (2001) 33 HLR 1, QBD.

229 In Wales, 56 days: H(W)A 2014 s55(4).

230 *Dyson v Kerrier DC* [1980] 1 WLR 1206, CA, at p1212.

231 In Wales, H(W)A 2014 s60. See chapter 9.

232 *R v Newham LBC ex p Khan and Hussain* (2001) 33 HLR 29, QBD.

233 *R v Rugby BC ex p Hunt* (1992) 26 HLR 1, QBD.

234 HRA 2017 s1: HA 1996 s175(4), as amended.

235 See *Manual of Housing Law*, para 1.246.

236 See *Manual of Housing Law*, para 2.203.

237 For a tenancy to be assured – including assured shorthold – it must be occupied as an only or principal home; accordingly, a tenant could have a principal home with a second home elsewhere, eg used for weekends or holidays; such a tenant will therefore not benefit from this extension. See, generally, *Manual of Housing Law*, chapter 1.

238 This will be interpreted in the usual way: paras 4.14–4.24.

239 HRA 2017 s1: HA 1996 s175(5), as added.