

## Issue 112 June 2016

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### Housing matters

*Housing matters* is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

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*Housing matters* welcomes contributions from NHAS members. If you would like to provide an article or update for *Housing matters* please email [JackieL@shelter.org.uk](mailto:JackieL@shelter.org.uk)

### National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is a partnership between Shelter and Citizens Advice funded by the Department for Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at [www.nhas.org.uk](http://www.nhas.org.uk)

**The NHAS provides the following to local authorities, CABs and around 100 other advice agencies in England:**

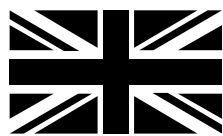
- a national telephone housing advice consultancy service for local authorities, Citizens Advice and around 100 other advice agencies in England. Call **0300 330 0517** 9am–6pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of [www.nhas.org.uk](http://www.nhas.org.uk)
- housing debt casework - specialist support for cases relating to mortgage arrears and other problems with housing affordability, including welfare benefits issues. Call **0300 330 0517** or use the online enquiries form (see above for details)
- free basic housing advice training courses to develop housing advice skills, covering the main housing advice presenting issues and how to advise households effectively on homelessness prevention options
- written briefings, articles in *Housing matters* and *Adviser*, information on housing issues and other written materials
- support in the implementation of new homeless prevention initiatives.

### Contact details

For more information about NHAS training, please email [JoanneK@shelter.org.uk](mailto:JoanneK@shelter.org.uk) or call **0344 515 1676**.

For general enquiries about the NHAS service, please email [nhas@shelter.org.uk](mailto:nhas@shelter.org.uk) or call **0344 515 2268**.

Alternatively, please use the 'contact us' page at [www.nhas.org.uk](http://www.nhas.org.uk)



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# What's new?

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## **Housing and Planning Act 2016**

The Housing and Planning Act received Royal Assent on 12 May 2016. Its provisions include:

- requiring local authority tenants on higher incomes to pay higher rents. Housing associations can choose whether or not to adopt this provision. Regulations are to be issued setting out details of how this provision will operate (ss.80-91)
- ending the power of local authority landlords to grant 'lifetime' secure tenancies, except in specified circumstances. They can offer tenants a fixed-term flexible tenancy of between 2 and 10 years, with the potential for a longer term for tenants with a child aged under 9 (s.118 and Sch.7)
- providing greater powers for local authorities to identify and tackle rogue landlords and agents with the introduction of banning orders and a rogue landlord/agent database (ss.13-39)
- giving the First-tier Tribunal the power to make a rent repayment order where a landlord has committed specified offences (ss.40-52)
- creating a fast track eviction process for private landlords to end an assured shorthold tenancy without getting a court order where the property has been abandoned (ss.57-63)
- giving the Secretary of State the power to impose duties on private landlords in respect of electrical safety standards (ss.122-123), and to require property agents to join client money protection schemes (ss.133-135)
- extending the right to buy their home to housing association tenants under a voluntary agreement between the government and the National Housing Federation (ss.64-68).

The commencement date for the above provisions is not yet known.

## **Rent out a room: tax relief**

With effect from 6 April 2016, the Income Tax (Limit for Rent-a-Room Relief) Order 2015 SI 2015/1539 provides that the amount of tax-free income that can be received from renting out a room to a lodger is increased from £4,250 to £7,500 per year.

## **Immigration Act 2016**

The Immigration Act received Royal Assent on 12 May 2016.

The Act includes provisions relating to residential tenancy agreements with people without a right to rent in the UK due to their immigration status (ss.39-42), and to support for destitute failed asylum seekers and certain other migrants with no recourse to public funds (ss.66-73 and Schedule 11). The Act will:

- create a new criminal offence for landlords and agents who know or have reasonable cause to believe that a person without right to rent is occupying rented premises as their only or main home. The penalty is a fine and/or up to five years imprisonment
- allow a landlord to terminate a tenancy by serving 28 days written notice on the tenant where the Home Office has given the landlord notice that the tenant does not have a right to rent. The landlord will be able to evict the tenant after the expiry of the notice without obtaining a court order
- create new mandatory grounds for possession against assured (ground 7B) and regulated tenants (case 10A) where the Home Office has given the landlord notice that the tenant does not have a right to rent
- abolish section 4 of the Immigration and Asylum Act 1999 (IAA'99) relating to support for destitute failed asylum seekers and certain other migrants
- abolish section 94(5) IAA'99 which allows failed asylum seekers with children to continue to remain on section 95 support
- create a new section 95A IAA'99 to provide support for failed asylum seekers and certain other migrants who face a 'genuine obstacle' to leaving the UK.

The commencement date for these provisions is not yet known. It is expected that the government will issue related guidance.

With effect from 31 May 2016, the Immigration Act 2016 (Commencement No.1) Regulations 2016 SI 2016/603 bring sections 69-72 of the Act into force. These 'transfer of responsibility' provisions are designed to provide a fairer distribution of responsibility for unaccompanied asylum seeking children throughout English local authorities.

# Out-of-area placements: local authority good practice

**The NHAS has developed a good practice guide to help local authorities decide when an out-of-area placement may be suitable. This is a summary of the guide.**

**The guide was developed from a Shelter research report into local authority practice to place homeless households in temporary accommodation out of area. The report 'Home and away: the rise in homeless families moved away from their local area' was published in May 2016.**

The NHAS encourages its members to use this good practice guide and adopt the guidance contained in it.

## **Legal background**

Local authorities should provide suitable accommodation for homeless households in their own area as far as reasonably possible.<sup>1</sup> Where no 'in-area' accommodation can be found, the authority must ensure that an offer of temporary accommodation (TA) is suitable, taking into account the practical impact of the location on the homeless household<sup>2</sup>, for example:

- disruption of employment, education, nursery places and caring responsibilities
- access to medical facilities, transport, amenities and other support.

The Supreme Court has stressed that:<sup>3</sup>

- distance from the home area is key. A homeless household should be placed as near to their previous home as possible
- decisions must be made on the basis of the needs of the whole household
- a child's welfare must be safeguarded and promoted
- an applicant must be given sufficient time to respond to an offer
- authorities must give reasons if offering out-of-area accommodation.

## **Local authority good practice**

The following practices have been adopted by at least one local authority involved in Shelter's research and are recommended as good practice.<sup>4</sup>

### **Notify host authority in timely manner**

A local authority is required to notify the host authority of a new placement within 14 days of placing a household out-of-area, giving the household and accommodation details as specified in the Act.<sup>5</sup>

As good practice, it is recommended that placing authorities adopt a stricter timeframe for notification, for example, notify the host authority within five days of making an out-of-area placement.

Notifying the host authority benefits all concerned. For example, housing officers in the host authority are likely to advise on rogue landlords, which will benefit future procurement of accommodation in that area.

### **Maintain contact**

Shelter's research suggested that some households and host authorities struggle to make or maintain contact with the placing authority once the move has taken place. This could cause problems if a household's circumstances change while they are in TA, or if they have an issue with the accommodation that needs to be resolved.

Placing authorities should ensure that the host authority is given a named contact who can help to resolve any issues that arise.

### **Screen thoroughly**

The homelessness legislation and Code of Guidance do not address every situation in which it may not be suitable to move a household out of their local area. Before making an out-of-area offer it is essential to carefully assess and screen each household in order to determine whether the offer would be suitable, based on the applicant's presenting needs and situation.

Applicants should be given an opportunity to describe the support they currently have locally, how it affects them and what the likely impact of losing it would be.

### **Accommodate in-area while suitability is properly assessed**

If self-contained accommodation is not available immediately within its own area, authorities could consider placing homeless households in emergency accommodation or shared accommodation for a short period to allow time to source suitable accommodation. Shared accommodation for families is not a suitable long-term option and bed and breakfast accommodation should not be provided for more than 6 weeks.

A longer timeframe for out-of-area offers allows the authority to help the household understand the rationale for the decision and to plan the move to another area.

### **Give a choice of location**

Local authorities should consider the reasonable preferences of the applicant when looking at out-of-area options. Being close to friends and family is usually crucial to basic everyday support, and forms a key basis for enabling the household to settle and sustain accommodation.

### **Locate housing officers out of area**

If a local authority has a high concentration of out-of-area TA in one part of the country, it can be helpful to employ a housing officer in that area to provide support to households placed there, for example, with settling into their new home and registering for essential services such as schools and GPs.

Having an out-of-area officer also assists the placing authority with procuring TA, and making sure it is of a good standard, with a fit and proper landlord.

If a number of local authorities are using one particular area to procure out-of-area accommodation, those authorities could consider the joint employment of housing officers through housing partnerships.

### **Give information on the new area**

Households placed out of area need as much information about their new area as possible, for example, details of:

- the new local area, eg places of worship and its ethnic and religious make-up
- activities for children such as playgroups and breakfast or after school clubs
- travel options, eg to school, work or training.<sup>6</sup>

Authorities should support families before, during and after their move for a set period of time. This could include providing key information, maintaining regular contact with households, and importantly, checking that the accommodation remains suitable for the household's needs.

### **Check school places**

The Code of Guidance states that the TA's location should avoid disrupting a child's education, especially those children who are close to taking GCSEs.<sup>7</sup> However, authorities must consider the interests of all children, not just those taking exams.<sup>8</sup>

It is necessary to check the availability of school places before placing homeless families out-of-area, either through the host authority's school admissions team

or directly with schools in the local area. Not having a school place available immediately would constitute significant disruption to a child's education.

Account should be taken of differences in education services, school term times and their curriculums.

### **Help with travel and removal costs**

Placing authorities should cover the full cost of travel and the removal of vital furniture for out-of-area moves.<sup>9</sup> Household possessions and furniture are essential to helping a family settle into their new area, and give a sense of home amongst the upheaval of leaving their local area, friends, and family behind.

### **Equalities impact assessments**

As with school places, authorities should give serious consideration to the impact that an out-of-area move has on households with protected characteristics.

Notifying and liaising with the host authority will provide invaluable insights into the impact of an area in relation to the protected characteristics of a household moved out of area. For example, how racially diverse the area is, places of worship and access to specific medical or care services.

### **Reviewing an out-of-area offer**

Authorities should make sure that applicants are clear on their rights when they are offered out-of-area accommodation.

The consequences of turning down an offer must be clearly explained. The applicant should have the chance to ask questions.

When the authority has accepted it has a full housing duty, it must explain in writing that the applicant can request a review of the suitability of the offer.

Where a review is requested, in-area emergency accommodation should be offered to households until it is completed. This avoids significant disruption to the household, otherwise caused by moving out of area during the period of a review.

### **Questions and feedback**

Any questions or feedback can be made by email to [nhas@shelter.org.uk](mailto:nhas@shelter.org.uk) or via the contact us page at [www.nhas.org.uk](http://www.nhas.org.uk)

Contact [kevin\\_garvey@shelter.org.uk](mailto:kevin_garvey@shelter.org.uk) for questions on the Shelter research.

### **AdviserNet**

11.1.1.74 What is suitable accommodation?

### **Footnotes**

<sup>1</sup> s.208 Housing Act 1996.

<sup>2</sup> Art. 2 Homelessness (Suitability of Accommodation) (England) Order 2012 (SI 2012/2601).

<sup>3</sup> *Nzolameso v City of Westminster* [2015] UKSC 22. See the case brief 'Out of area offers' in *HOMAT 106* for a review of this case.

<sup>4</sup> Home and away: the rise in homeless families moved away from their local area, Shelter, May 2016.

<sup>5</sup> s.208 Housing Act 1996.

<sup>6</sup> Note that discretionary housing payments (DHPs) can be used to pay for some additional costs associated with moving, eg travel to work or school.

<sup>7</sup> para 17.41 Homelessness Code of Guidance, July 2006.

<sup>8</sup> [2015] UKSC 22 para 27.

<sup>9</sup> DHPs can help with some of these costs.

# Joint tenancies

**In this feature, Helen Farren sets out the features of a joint tenancy, and discusses some common issues faced by advisers when dealing with joint tenants.**

**Helen Farren is a Training and Support Officer at Shelter**

A tenancy can be held by more than one person. Two or more people entering into the same agreement will normally be joint tenants. Joint tenants are 'jointly and severally' liable for all of the obligations under the tenancy. This means each joint tenant has equal rights and responsibilities, and exclusive possession of the whole accommodation rather than just one part of it, such as a bedroom. No joint tenant can exclude the other from any part of the property without obtaining a court order.<sup>1</sup>

## Key features of a joint tenancy

Under common law, for a joint tenancy to exist the 'four unities' must be in place:

- unity of title - the tenants must be parties to the same agreement
- unity of time – the tenants must enter into the agreement at the same time
- unity of interest - each tenant must have the same interest in the property in terms of extent, nature and duration
- unity of possession – each tenant is equally entitled to possession of the entire property as any of the others.

## Rent

Each tenant is legally liable for the whole of the rent. The landlord can choose to pursue any or all of them for any arrears. From an advice point of view, anyone considering entering into a joint tenancy should be aware that they could be sued for the rent unpaid by another joint tenant, even if they had paid their 'own share' of the rent.

## Guarantors

Where payment of rent on a joint tenancy is guaranteed by a third party, the guarantee agreement usually covers the whole rent and other liabilities under the tenancy, unless it specifically states otherwise.

## Ending a joint tenancy

### *Landlord giving notice*

The landlord can validly terminate the tenancy by serving a notice in line with the legal requirements for that particular type of tenancy on any one of the joint tenants.<sup>2</sup>

### *Tenant giving notice*

Where the tenancy is periodic, each joint tenant can terminate the tenancy by serving

a valid notice to quit (NTQ) on the landlord and this will end the tenancy for all the tenants.<sup>3</sup> In the case of a secure tenancy, the landlord must still get a court order to evict any remaining occupiers.<sup>4</sup>

The courts have held that this rule is not incompatible with the other tenants' rights under Article 8 (right to respect for the home, private and family life) of the European Convention on Human Rights.<sup>5</sup> If any of the joint tenants who have not served the NTQ wants to remain in the property, they will be dependent upon the landlord's willingness to grant a new tenancy.

During a fixed term, one joint tenant cannot end the tenancy by serving an NTQ without the consent of the other joint tenants, unless there is a break clause in the tenancy agreement that explicitly allows for this.

### *Surrender*

One joint tenant cannot surrender the tenancy without the consent of the others.<sup>6</sup>

### *Regulated (Rent Act) tenancies*

Where there is a contractual periodic tenancy, if one joint tenant serves an NTQ, this will end the contractual tenancy and their own liability for rent. The remaining tenant will become the sole statutory tenant.<sup>7</sup> In effect, one joint tenant cannot end the other joint tenant's right to occupy, but can end their own.

## Replacing a joint tenant

If a joint tenant wants to leave during the course of a tenancy, they could find a replacement who is acceptable to both the remaining joint tenant(s) and the landlord. If one of the joint tenants simply leaves a joint tenancy, any replacement will not automatically become a joint tenant.

A new joint tenancy can be created if the previous tenancy had been surrendered. The signing of a new joint tenancy agreement which includes the replacement tenant would be evidence that the landlord had accepted a surrender.

In the absence of a surrender, the replacement will be a subtenant or licensee of the existing joint tenants. In this case, the outgoing tenant will remain liable for all the obligations under the agreement, including the rent, until the joint tenancy is ended.

## Assignment

Joint assured and assured shorthold tenants may be able to assign their tenancy with the landlord's consent if the tenancy agreement allows for it.<sup>8</sup>

A joint secure tenancy cannot be assigned.<sup>9</sup>

## Succession/survivorship

If one joint tenant dies, the other joint tenant becomes the sole tenant by 'survivorship'.<sup>10</sup> This is not a succession, but the other joint tenant will still be treated as a successor – no further successions can take place unless the tenancy agreement allows for it. The only exception to this would be with a secure tenancy where the original joint tenant died before the Housing Act 1980 came into force (on 3 October 1980).<sup>11</sup>

## Relationship breakdown

In the event of a relationship breakdown, provided that one joint tenant is occupying the property as their only or principal home, the tenancy will continue.<sup>12</sup>

If there is a dispute about who will stay in a property then, under family or matrimonial law or the Children Act 1989, it is possible to apply to court to transfer the joint tenancy into the sole name of one partner.<sup>13</sup>

If a joint tenant serves an NTQ with a view to ending their former partner's right to occupy, they should not do so without assurance in writing that the landlord will grant them a new sole tenancy.

In limited circumstances, it may be possible to apply to the court for an injunction to prevent an NTQ being served. This could be where there is an existing application for a tenancy transfer under the Family Law Act 1996 or the Children Act 1989. It could also be considered in divorce, nullity or judicial separation proceedings.<sup>14</sup>

A county court (non-binding) decision has held that where a joint tenant had been 'encouraged' by the local authority landlord to serve an NTQ, the granting of a possession order would be a disproportionate breach of the other joint tenant's human rights.<sup>15</sup>

## Deposits

A deposit for a joint tenancy is regarded as one deposit, even if it is made up of individual payments from different tenants. The landlord must protect the deposit with a tenancy deposit protection scheme and serve the prescribed information within 30 days.<sup>16</sup>

Sending the prescribed information to the 'lead tenant' (if one has been nominated) or in a single communication addressed to all the joint tenants will arguably be sufficient for service. The prescribed information must include the name and contact details of each joint tenant.

If the landlord breaches the rules regarding protection of deposit or service of prescribed information any claim for compensation must be made jointly.<sup>17</sup> If one tenant has disappeared, the other tenant(s) can apply to the court (under Civil Procedure Rule 19.3) for an order that the claim can proceed and the missing tenant is not required to be a party.

When one joint tenant moves out and is replaced by another tenant, the replacement tenant is often asked to pay their share of the deposit to the departing tenant. This may mean that at the end of the tenancy the tenant who has moved in could lose their share of the deposit, because the tenant who moved out owed rent or caused damage.

One way of resolving this concern is for the incoming tenant to ask the landlord to return any money to the former tenant at this point and then pay the landlord their share of the deposit directly. The landlord would have to re-protect the entire existing deposit and serve new prescribed information to the new and remaining tenants.<sup>18</sup>

## More than four tenants

The maximum number of joint tenants is capped at four by section 34(2) of the Law of Property Act 1925. Where a joint tenancy agreement contains the names of five or more joint tenants, the first four listed on the tenancy agreement are the legal tenants.

Any additional joint tenant will have an 'equitable interest' in the property. The first four tenants are known as the 'trustees', and the remainder 'beneficiaries'. A beneficiary will not be jointly and severally liable for the rent. However, the landlord (and possibly the trustees) may be able to hold them as liable under the contract.

A 'beneficiary' cannot serve an NTQ. This would have to be done by a 'trustee'. Should they refuse, the beneficiary would need to apply to the court under the Trust of Land and Appointment of Trustees Act 1996.

The landlord can validly terminate the tenancy by serving the required notice on any of the four trustees.

## AdviserNet

8.25.14.78 Relationship breakdown and housing – rights if you rent your home jointly with your partner

## Footnotes

<sup>1</sup> This can only be done by obtaining a court order under s.42 Family Law Act 1996 in cases of domestic violence or relationship breakdown.

<sup>2</sup> Hammersmith and Fulham LBC v Monk [1991] UKHL 6.

<sup>3</sup> Hammersmith and Fulham LBC v Monk [1991] UKHL 6.

<sup>4</sup> s.3 Protection from Eviction Act 1977.

<sup>5</sup> Sims v Dacorum BC [2014] UKSC 63; Harrow LBC v Qazi [2003] UKHL 43.

<sup>6</sup> Leek and Moorlands Building Society v Clark [1952] 2 QB 788.

<sup>7</sup> s.2(1)(a) Rent Act 1977.

<sup>8</sup> s.15 Housing Act 1988.

<sup>9</sup> s.91(1) Housing Act 1985.

<sup>10</sup> Hickin v Solihull MBC [2012] UKSC 39; Cunningham-Reid v Public Trustee [1944] KB 602.

<sup>11</sup> Birmingham v Walker [2007] UKHL 22.

<sup>12</sup> s.1 Housing Act 1985; s.1(1)(b) Housing Act 1988; s.1 Rent Act 1977.

<sup>13</sup> para 1 of Sch.7 Family Law Act 1996; s.15 and Sch.1 Children Act 1989.

<sup>14</sup> s.37 Matrimonial Causes Act 1973.

<sup>15</sup> Chesterfield BC v Bailey [2011] EW Misc 18 (CC).

<sup>16</sup> s.213 Housing Act 2004, as amended by s.184 Localism Act 2011.

<sup>17</sup> Gladehurst Properties Ltd v Hashemi [2011] EWCA Civ 604.

<sup>18</sup> s.213 Housing Act 2004, as amended by s.184 Localism Act 2011.

# Help with mortgage interest payments

**This leaflet looks at the support available to homeowners struggling to pay their mortgages.**

You can get help to pay the interest on your mortgage if you receive a qualifying benefit. You could also get help with the interest on loans for repairs or improvements to your home.

## Qualifying benefits

To qualify for support for mortgage interest (SMI) payments you must live in your home. You or your partner must also receive one of the following benefits:

- income support
- income-based jobseeker's allowance (JSA)
- contributions-based JSA (only in some circumstances)
- income-related employment and support allowance
- pension credit.

## Claiming SMI

To claim SMI, contact either Jobcentre Plus or the Pension Service. Ask for form *MI 12*. Send it to your mortgage lender to fill in. They should forward the completed form to the Department for Work and Pensions (DWP).

You must make sure that your lender returns the form to the DWP. These forms can get lost, so be prepared to chase your lender.

SMI payments are made direct to your lender.

## Universal credit claimants

If you get universal credit after claiming it through the 'full digital service', you can claim the 'housing costs element for owner-occupiers'. If you qualify, this can pay the interest on your mortgage or on any loan secured on your home. Ring the universal credit helpline on **0345 600 0723**.

## How long before you qualify?

If you receive pension credit, you can get SMI immediately after claiming it.

If you are of working age you will get nothing for 39 weeks (nine months if you are on universal credit) from the date of your claim for SMI. If you had already claimed this support before 1 April 2016 you only have to wait for 13 weeks.

## How much can you claim?

You can only claim help to pay the interest on a mortgage up to the value of:

- £200,000 if you are of working age (£100,000 for some people who first claimed a qualifying benefit before 5 January 2009)
- £100,000 if you receive pension credit.

If you claimed SMI while you were getting a working-age benefit and then claimed pension credit within 12 weeks of that benefit ending, you can still get help on mortgages up to £200,000.

The rate of interest used to calculate your payment is fixed, regardless of the actual interest rate you pay to your lender. The current rate is 3.12%. Check the up-to-date rate on **Gov.uk**

## How long can you get support for?

If you get JSA or universal credit and are required to look for work, you can only get help with mortgage interest for a maximum of two years. If you stop receiving either benefit for longer than 12 weeks and later get it again you can put in a new claim for support. A fresh waiting period will apply.

If you receive universal credit and earn any money at all, your mortgage interest payments will stop. However, working may mean that you will no longer be subject to the benefit cap. The benefit cap limits the total amount of welfare benefits you can get. A benefits adviser can calculate if you will be better off in work.

As long as you continue to receive one of the other qualifying benefits listed in this factsheet you can get support for as long as you need it.

## Further advice

You can get further advice from Shelter's free\* housing advice helpline (**0808 800 4444**), a local Shelter advice service or local Citizens Advice office, or by visiting **shelter.org.uk/advice** or **adviceguide.org.uk**

\*Calls are free from UK landlines and main mobile networks.



**Note**  
Information contained in this leaflet is correct at the time of publication. Please check details before use.