



Know your Housing Rights *Online Education Series*

KNOW YOUR RIGHTS: INTRODUCTION TO SOCIAL HOUSING LAW

APPLICATIONS FOR SOCIAL HOUSING SUPPORTS

WHAT ARE SOCIAL HOUSING SUPPORTS?

Social housing supports provided by local authorities mainly fall into the following forms:

- **Social Housing:** A tenancy provided by a local authority;
- **Housing Assistance Payment (“HAP”):** Private rented accommodation supported by HAP, a type of rent supplement. For more information, see our publication *Know your Housing Rights: Housing Assistance Payment (HAP) and Homeless HAP*;
- **Other tenancies:** Tenancies provided by an “Approved Housing Body”, or a tenancy in a property which a local authority has leased from a private property owner through a “Rental Accommodation Agreement” or “Rental Accommodation scheme”;

For information on the provision of specific accommodation for the Travelling community, see our publication *Know your Housing Rights: Traveller Accommodation*.

Unless otherwise stated, the Social Housing Assessment Regulations 2011 (SI 84/2011 and SI 198/2011) are the relevant source for the requirements set out in this document regarding social housing applications.

WHICH LOCAL AUTHORITY SHOULD A PERSON APPLY TO

You can only apply to one local authority for housing supports (although you can specify some additional areas that you wish to live in), although you can seek to change this if you move or have a change of circumstances. You should “*normally reside*” in or have a “*local connection*” to the functional area of the local authority you apply to.

A person will be deemed to have a “*local connection*” if they can demonstrate any of the following:

- a member of the household applying for social housing supports lived in the area for a continuous 5-year period at any time previously (eg, if one household member grew up in an area, they would have a “*local connection*” even if they had moved away for a time and the rest of the household isn’t from the area);



- the place of employment of one of the household members is within 15 kilometres of the area;
- a member of the household is in full-time education in any university, college, school or other educational establishment in the area;
- a member of the household with an enduring physical, sensory, mental health or intellectual impairment is attending a medical or residential establishment in the area concerned that has facilities or services specifically related to such impairment;
- a relative of a household member resides in the area and has resided there for a minimum period of 2 years (eg, if an applicant's mother has lived in the functional area of the local authority for 2 years or more, this may satisfy the "local connection" test).

Local authorities have discretion to waive the normal residence and/or local connection test. This can be important for people newly arrived in Ireland or who had to leave an area due to circumstances outside their control.

CAN APPLICANTS SEEK TO OBTAIN SOCIAL HOUSING IN A PARTICULAR AREA?

Local authorities can separate their functional areas into "areas of choice". An applicant for social housing supports may specify up to three areas of choice. At least one must be in the area of the local authority you are applying to and the rest have to be within the same county. For example, you can apply to Dublin City Council and specify two additional areas of choice in the South Dublin County Council area, but not in the Cork County Council.

WHEN WILL AN APPLICANT LEARN WHETHER THEY QUALIFY FOR SOCIAL HOUSING SUPPORTS?

The local authority has a legal obligation to respond to a properly completed application within 12 weeks of the application having been submitted. Local authorities may seek to extend the 12 week period by a further 14 weeks but it must do that during the first 12 weeks and provide reasons.

A local authority may seek additional information before making a decision in respect of an application, but it must do so within 12 weeks of receiving the application, in which case it must respond within 6 weeks of receiving the additional information.

Where a local authority requests further information, the applicant must respond within a period of 4 weeks with the additional information. A further period of 4 weeks can be given.

CAN AN APPLICANT DECLINE SOCIAL HOUSING WHICH IS OFFERED TO THEM?

A qualified household may refuse an offer of a property. However, Regulation 12(2) of Statutory Instrument 198 of 2011 provides that where a household refuses two reasonable offers of two different properties within one year, the household shall not be considered for another allocation for a period of one year. There is no clear definition of a "reasonable offer".



ONCE IN LOCAL AUTHORITY ACCOMMODATION, CAN A HOUSEHOLD SEEK TO TRANSFER TO A DIFFERENT PROPERTY?

Local authorities publish a ‘scheme of allocation’ that sets out how social housing is allocated in their area. Most allocation schemes set out the conditions which an applicant needs to satisfy in order to obtain a transfer from one local authority dwelling to another. Significant deference is afforded to local authorities in respect of the operation of any transfer list (see, for example: *Mulhare v Cork County Council* [2017] IEHC 288 and [2018] IECA 206).

That is not to say that there will never be circumstances where the courts will interfere with a local authority’s refusal to effect a transfer where same would be warranted. In *Zatreanu and Ors. v Dublin County Council* [2013] IEHC 556, Hedigan J quashed (in other words, overturned) a refusal by Dublin City Council to provide priority to a transfer application in circumstances where the applicants had been subjected to harassment in the area where they were living. Hedigan J held that it was unlawful for the local authority in that case to have regard to, or assume, that An Garda Síochána would address the concerns of the applicants particularly in circumstances where harassment and intimidation were cited as reasons for a transfer in the local authority’s own scheme.

IN WHAT FORM MUST A LOCAL AUTHORITY COMMUNICATE A REFUSAL?

A local authority is required to provide reasons for refusing to deem a household as qualifying for social housing supports. This is a specific requirement under SI 84/2011, as well as an element of the right to ‘fair procedures’ under the Constitution.

CRITERIA TO QUALIFY FOR SOCIAL HOUSING SUPPORTS

HOW ARE SOCIAL HOUSING ASSESSMENTS CONDUCTED?

The social housing assessment carried out by local authorities is a two-step process:

- First, an assessment will be carried out to determine whether a household is **eligible** for social housing supports; and
- Second, a local authority will then seek to determine whether the household is **in need of** social housing supports.

CAN A LOCAL AUTHORITY TAKE ACCOUNT OF AN APPLICANT’S HISTORIC OR FUTURE CIRCUMSTANCES WHEN CARRYING OUT A SOCIAL HOUSING ASSESSMENT?

A social housing assessment may only take account of a household’s circumstances at the time when the application under consideration was submitted to the local authority (see: *Zabiello v South Dublin County Council* [2019] IEHC 863).

WHAT ROLE WILL AN APPLICANT'S INCOME PLAY IN A SOCIAL HOUSING ASSESSMENT?

In order to obtain social housing supports, a household must not be over the income threshold for that particular local authority area. The applicable threshold will depend on (i) the relevant local authority and (ii) the number of people within the household, with allowances for additional adults and children. Local authorities do not have discretion to waive income thresholds.

WHAT IF AN APPLICANT HAS ACCESS TO ALTERNATIVE ACCOMMODATION?

A household will not qualify for social housing supports if there is other accommodation that the household could reasonably be expected to either occupy or to sell and use the proceeds to secure suitable accommodation.

This will be the case if a household member owns property and:

- the accommodation is vacant; or
- the accommodation is let and the tenancy could therefore be terminated on the grounds set out in section 34 of the Residential Tenancies Act 2004, ie, that it is required to accommodate the owner and/or their family; or
- the accommodation is occupied by a person other than a person who is divorced or separated from a member of the household, or whose civil partnership with a member of the household has been dissolved.

In determining whether a household is in need of social housing support, a local authority will take account of whether the family's current accommodation has any of the following characteristics:

- it is emergency accommodation, an institution, or a hostel;
- it would be overcrowded if the household lived in it;
- it is unfit for human habitation;
- it would not adequately meet the accommodation requirements of a household member with a disability;
- it is shared with another household, and one of the households has a reasonable requirement for separate accommodation; or
- it is unsuitable in any material respect, having regard to the household's circumstances or on "[e]xceptional medical or compassionate grounds".

CAN RENT ARREARS IMPACT ON AN APPLICATION FOR SOCIAL HOUSING SUPPORTS?

Local authorities have the power to deem an applicant for social housing supports ineligible on the basis that they or anyone within their household was previously a local authority tenant and they had rent arrears for at least 12 weeks within the 3 years immediately preceding the submission of an application. If you are concerned about arrears it is really important to get advice. In the first instance you can contact your local Citizens Information Centre or the Money Advice and Budgeting Service (MABS).

CAN CERTAIN CATEGORIES OF APPLICANTS GAIN PRIORITY ON THE HOUSING LIST?

Local authorities have the power to provide for an order of priority in their allocation scheme. It is possible to apply for priority on any of the following grounds:

- exceptional medical circumstances;
- exceptional social grounds; or
- homelessness (in certain local authority areas).

Medical priority will only be provided if it is relevant to an aspect of the current or required housing. In other words, having a medical diagnosis will not automatically result in priority unless it creates a specific housing need. A form must be completed by two medical professionals. The local authority's Chief Medical Officer will then make a decision, which can be appealed.

To apply for priority on exceptional social grounds an applicant will be required to write to their local authority setting out the nature of their living conditions and how they can only be improved by a change in accommodation. A person's circumstances must be exceptional and not already be covered by a scheme of letting priorities. Supporting evidence may include submissions made by and/or documentation furnished by social workers, members of An Garda Síochána, public representatives, and others.

STANDARDS IN RESPECT OF LOCAL AUTHORITY DWELLINGS

DO LOCAL AUTHORITIES HAVE OBLIGATIONS IN RESPECT OF THE STANDARD OF ACCOMMODATION THEY PROVIDE?

Local authorities are required to provide social housing which is fit for habitation and to ensure that its housing stock is kept in a proper state of structural repair (see: *Siney v Dublin Corporation* [1980] IR 400 and *Burke v Dublin Corporation* [1991] IR 341).

ARE THERE ANY LEGAL STANDARDS IN RESPECT OF THE STANDARD OF DWELLINGS?

Statutory Instrument 137 of 2019 – Housing (Standards for Rented Houses) Regulations 2019 (**the 2019 Regulations**) direct the standards a home should be maintained at. In general, the standards apply to all accommodation, private rented and local authority accommodation.



The 2019 Regulations place an obligation on local authorities and landlords to keep the house to a standard of repair that is reasonable in all the circumstances. In deciding what standards are to be expected, factors such as the age, character and prospective life of the house are taken into consideration. The provisions of the 2019 Regulations set out specific obligations in respect of certain facilities which are to be provided in accommodation. The 2019 Regulations do not apply to a housing authority in their provision of caravan or mobile home accommodation.

ANTI-SOCIAL BEHAVIOUR

IF A PERSON HAS ENGAGED IN ANTI-SOCIAL BEHAVIOUR AND/OR HAS A CRIMINAL CONVICTION, WILL THIS HAVE AN IMPACT ON THEIR APPLICATION?

Section 14 of the Housing (Miscellaneous Provisions) Act 1997 (**the 1997 Act**) provides local authorities with the power to refuse or delay allocating social housing to individuals who would normally be entitled to same based on previous or current engagement with anti-social behaviour or to maintain good estate management.

HOW ARE “ANTI-SOCIAL BEHAVIOUR” AND “GOOD ESTATE MANAGEMENT” DEFINED?

The definition of “anti-social behaviour” and “good estate management” in the legislation are very general which means that local authorities have significant discretion in respect of what individuals they may subject to such a deferral or refusal. In summary, anti-social behaviour may include:

- drug related activities;
- any behaviour which causes or is likely to cause any significant danger, injury, damage, alarm, loss or fear to any person living, working or otherwise lawfully in the vicinity of the particular social housing;
- violence, threats, intimidation, coercion, harassment or serious obstruction of any person;
- behaviour which causes significant impairment of a person’s use of their home;
- damage to or defacement of a property, including a person’s home.

“Estate management” is defined as including:

- securing or promotion of other tenants;
- preventing anti-social behaviour in any housing estate which includes a social housing dwelling.

HOMELESSNESS AND EMERGENCY ACCOMMODATION

A person who is homeless can apply for housing supports under the usual procedures. However, if there is an immediate housing need a person can apply for 'emergency accommodation'. This is separate from social housing supports and different criteria apply to it. The Housing Act 1988 (**The 1988 Act**) deals with homelessness and emergency accommodation.

WHEN IS A PERSON CONSIDERED HOMELESS IN LAW?

Section 2 of the 1988 Act provides three criteria that must be fulfilled before a person can be classified as homeless;

- they lack accommodation which they could reasonably occupy or remain in occupation of;
- they lack the resources to be able to provide their own accommodation;
- they must not be living with another person and/or reasonably be expected to live with another person who has access to alternative accommodation.

In short, if you have nowhere you can live and insufficient income or savings to get your own accommodation, you may be considered homeless. Local authorities are responsible for determining whether a person is homeless and have significant discretion in carrying out the assessment (see, for example: *Tee v Wicklow County Council* [2017] IEHC 194).

DOES A LOCAL AUTHORITY HAVE TO PROVIDE EMERGENCY ACCOMMODATION TO A PERSON WHO IS HOMELESS?

There is no expressly written obligation on local authorities to provide such assistance to a person who is homeless. However, Section 10 of the Housing Act sets out the ways in which local authorities may provide assistance to people who are homeless. This includes making arrangements through an approved housing body, providing financial assistance to pay for accommodation (which could include a hotel or B&B), or renting lodging for the person.

Where a person who is homeless makes a request for assistance under Section 10(2) of the 1988 Act, it is likely that this will give rise to a legal duty being placed on a local authority to address their needs (see: *O'Donnell v South Dublin County Council* [2015] IESC 28).

ONCE A PERSON IS CLASSIFIED AS HOMELESS AND/OR GAINS ACCESS TO EMERGENCY ACCOMMODATION, ARE THEY ALSO PLACED ON A LOCAL AUTHORITY HOUSING LIST?

When a person is provided with access to emergency accommodation, this does not mean they are automatically entitled to social housing supports and/or on a local authority's housing list. A separate application must be made for social housing supports.

MLRC CONTACT DETAILS

Mercy Law Resource Centre (MLRC) is a registered charity and independent law centre. MLRC provides free legal advice and representation to people who are homeless or who are at risk of homelessness in relation to social housing and related social welfare law. MLRC also provides training and support to organisations that encounter issues in this area of law.

Visit our website www.mercylaw.ie to find out more. You can contact MLRC by phone at **(01) 453 7459** or by email to info@mercylaw.ie.

THE 'KNOW YOUR HOUSING RIGHTS' SERIES

This is Module 1 in the 4 part '*Know your Housing Rights*' legal training series. The topics in the series are:

1. *Know Your Housing Rights: Introduction to Social Housing Law*
2. *Know Your Housing Rights: The Public Sector Equality & Human Rights Duty*
3. *Know your Housing Rights: Housing Assistance Payment (HAP) and Homeless HAP*
4. *Know your Housing Rights: Traveller Accommodation and the Law*

Details of online training sessions for these modules, and copies of the other guides, are all available at www.mercylaw.ie/training/KYHR

