

CARE LEAVERS ACCOMMODATION AND SUPPORT FRAMEWORK FOR WALES

The Legal Framework

sheltercymru.org.uk

Charity no. 515902



Mewn Partneriaeth â
Llywodraeth Cymru
In Partnership with
Welsh Government

CONTENTS

Leaving Care Legislation	1
Housing and Homelessness Legislation	2
G v Southwark	3
Local Connection and Homelessness	3
Local connection and allocation of social housing	4

LEAVING CARE LEGISLATION

Care leavers in Wales have a range of entitlements set out in legislation to ensure that they are housed properly. In addition, care leavers receive some additional support through the general homelessness legislation. This section sets out the key legislation and its interpretation through case law.

Part Six of the Social Services and Well-being (Wales) Act 2014, and Part Six of the Code of Practice (Looked After and Accommodated Children)¹ set out various duties that local authorities have towards young people in and leaving care, including those relating to accommodation. The Act states that duties differ depending on care leavers' status, who are grouped into six categories.² These six categories are;

- Category one: (Known throughout the code as a care experienced person looked after aged 16 or 17)
- Category two: (Known throughout the code as a care leaver under 18)
- Category three: (Known throughout the code as a care leaver aged 18 or over)
- Category four: (Known throughout the code as a care experienced person who reconnects to care for education or training purposes)
- Category five: (Known in the code as a care experienced person who left care under a Special Guardianship Order)
- Category six: (Known throughout the code as a care experienced person who did not qualify as a care leaver)

The regulations and guidance also explains what suitable accommodation is for care leavers and how the local authority must have regards to matters, which are set out in Schedule Three to the Care Leavers (Wales) Regulations 2015.³ This schedule **should not be used as a checklist**: in evaluating the suitability of a specific property, a local authority may not be able to satisfy itself

that the accommodation is 'suitable' on every factor. For example the property may be in an ideal location, whilst its 'affordability' will be influenced by the location and by changes in the care experienced person's financial circumstances. The regulations defines suitable accommodation as:

- which, so far as reasonably practicable is suitable for the care experienced person in light of their needs, including their health needs
- In respect of which the responsible authority has satisfied itself as to the character and suitability of the landlord or other provider
- In respect of which the responsible authority has (so far as reasonably practicable) taken into account the care experienced person's wishes and feelings, education, training or employment needs

Leaving care services will need to ensure arrangements are in place for checking suitability before a care experienced person moves into a property. Services should establish good working relationships with local housing and environmental services so they can access advice and support with this task. In practice, the process should allow for decisions to be made at short notice, so that care leavers can obtain properties.

Where checks for an accommodation's suitability identify the need for improvements to bring the property up to an acceptable standard, then it may be necessary to arrange for these to be made after the property has been obtained for the care experienced person. For example, the authority might assist the person to decorate or provide funding to improve its security. Likewise, young people **must** be given thorough information about how they can get help if problems occur with their home. As a result of the diverse needs of care leavers and how these will change over time, a range of semi-independent and independent accommodation options for care leavers will be required. These might include:

- enabling young people to remain in the accommodation in which they lived whilst being looked after – for example, by converting a foster placement to a post-18 arrangement or supported lodgings
- supported lodgings, other than with former carers
- other supported housing, combining accommodation with support and opportunities for education, training and employment
- trainer flats where young people can 'practise' living more independently without compromising their future housing options
- specialist accommodation – for example, self-contained accommodation with personal assistance support or therapeutic placements for young people

1 Welsh Government (2018) Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice (Looked After and Accommodated Children (Version 2) Available at: <https://gov.wales/sites/default/files/publications/2019-05/part-6-code-of-practice-looked-after-and-accommodated-children.pdf> (Accessed 12 January 2022)

2 Ibid, pp.73 - 79.

3 Welsh Government (2015) Care Leavers (Wales) Regulations. Available at: <https://www.legislation.gov.uk/wsi/2015/1820/schedule/3/made> (Accessed 26 January 2022)

with specific support needs such as physical disabilities and mental health difficulties

- independent accommodation in the social or private rented sectors, with flexible floating support as needed
- living with birth families
- post-18 living arrangements, under which young people can remain with their foster carers beyond the age of 18 and up to age 21 (known as a 'When I am Ready' arrangement)

In Wales, statutory guidance has been strengthened to require local authorities to make 'exhaustive efforts to avoid the use of bed and breakfast accommodation for 16 and 17-year-olds'.⁴ The Social Services and Well-being (Wales) Act 2014⁵ sets out additional requirements on local authorities regarding looked after children's accommodation. Section 75 of the 2014 Act **requires** local authorities to secure sufficient accommodation in their areas for the children they look after.⁶

A 2010 judgement from the Court of Appeal clarified the duty on children's services authorities to provide accommodation for care leavers aged over 18 (defined as category three young people⁷) in certain circumstances. *R (on the application of SO) v Barking and Dagenham*⁸ concluded that: '...If the former relevant child is unable to access appropriate accommodation through some other means (such as through a combination of a council tenancy and housing benefit), and the provision of accommodation is necessary for that care experienced person's welfare, then social services will be under a duty to provide or arrange suitable accommodation.'

The Regulation and Inspection of Social Care (Wales) Act 2016⁹ aims to change the regulation and inspection of social care in Wales, placing quality and improvement at the heart of regulation, strengthening protection for those who need it, and ensuring services deliver high-quality care and support. The Act supports the aims of the Social Services and Wellbeing (Wales) Act 2014¹⁰ which enshrines the rights of people using care and support services into law.

HOUSING AND HOMELESSNESS LEGISLATION

The Housing (Wales) Act 2014¹¹ sets out requirements on local authorities to assist people who are homeless. Part 2 requires that local authorities assist those homeless applicants who are eligible for assistance (broadly, those whose immigration status is not restricted) by:

- Assessing to determine whether they are homeless or threatened with homelessness
- Drafting a personal housing plan or similar to include reasonable steps to be taken by the local authority and the applicant to prevent homelessness or help to secure accommodation (with a 56-day time limit)
- Providing suitable temporary accommodation during the 56 days to an applicant in priority need (specified categories of people)
- If no suitable accommodation has been found at the end of the 56 days, securing suitable accommodation to those in priority need and not intentionally homeless. Local authorities may refer an applicant who has no local connection to another local authority, subject to some exceptions
- In addition, local authorities can use their discretion regarding whether a household has a local connection

Recent changes to legislation include:

- Adding 'Person who is street homeless' as an 11th category of Priority Need under Section 71(2)) under part 2 of the Housing (Wales) Act 2014
- Including public health emergencies in the list of emergency events (such as floods) under Article 6A

The Housing (Wales) Act 2014¹² places a duty on housing authorities to have a strategy for preventing homelessness and ensuring that accommodation and support will be available for people - who are homeless or at risk of homelessness. The Act places a duty on local authorities to adopt a strategy in 2018¹³, with engagement from social services departments. Local authorities must take their strategy into account when discharging their functions.

4 Welsh Government (2016) Code for Guidance for Local Authorities on the Allocation of Accommodation and Homelessness, pp299-300. Available at: <https://gov.wales/sites/default/files/publications/2019-03/allocation-of-accommodation-and-homelessness-guidance-for-local-authorities.pdf> (Accessed 12 January 2022)

5 Welsh Government (2014) Social Services and Well-being (Wales) Act 2014. Available at: <https://www.legislation.gov.uk/anaw/2014/4/contents> (Accessed 12 January 2022)

6 Welsh Government (2018) Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice (Looked After and Accommodated Children (Version 2)). pp. Available at: <https://gov.wales/sites/default/files/publications/2019-05/part-6-code-of-practice-looked-after-and-accommodated-children.pdf> (Accessed 12 January 2022)

7 Ibid.

8 Family Law Week (2010) *R (SO) v London Borough of Barking & Dagenham*. Available at: <https://www.familylawweek.co.uk/site.aspx?i=ed67968> (Accessed 12 January 2022)

9 Welsh Government (2016) Regulation and Inspection of Social Care (Wales) Act. Available at: <https://www.legislation.gov.uk/anaw/2016/2/contents> (Accessed 12 January 2022)

10 Welsh Government (2018) Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice (Looked After and Accommodated Children (Version 2)) Available at: <https://gov.wales/sites/default/files/publications/2019-05/part-6-code-of-practice-looked-after-and-accommodated-children.pdf> (Accessed 12 January 2022)

11 Welsh Government (2014) Housing Act. Available at: <https://www.legislation.gov.uk/anaw/2014/7/contents/enacted> (Accessed 12 January 2022)

12 Ibid.

13 Welsh Government (2014) Housing Wales Act 2014. Available at: <https://www.legislation.gov.uk/anaw/2014/7/contents/enacted> (Accessed 12 January 2022)

The Welsh Government's statutory Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness¹⁴ sets out requirements on local housing authorities when discharging their homelessness functions. Aspects of this guidance also apply to social services authorities when exercising their functions relating to homelessness. The Code states that care leavers are among the groups likely to be more at risk of homelessness than others and that:

- Social services departments' information about the numbers of care leavers may assist housing departments in conducting homelessness reviews
- It is important that wherever possible the housing needs of care leavers are addressed before they leave care
- Making arrangements for accommodation and ensuring that care leavers are provided with suitable housing support will be an essential aspect of a care experienced person's pathway plan
- Where necessary, arrangements should be made for joint assessment by social services and housing authorities as a part of a multi-agency assessment to inform the pathway plan
- Whether young people leaving care are accommodated by the social services or the housing authority is for individual authorities to determine in each case. There should be jointly agreed to protocols in place regarding the assessment of needs

G V SOUTHWARK

In May 2009, the House of Lords made a landmark judgement in the case of *R(G) v London Borough of Southwark*,¹⁵ which affects how local authorities provide accommodation and support for homeless 16 and 17-year-olds. The judgment, in that case means that:

- The primary duty to a homeless 16 or 17-year-old is under the Social Services and Wellbeing (Wales) Act 2014,¹⁶ and the ongoing duty to accommodate and support that care experienced person will fall to children's services. This includes the range of support available as a looked after child and a care leaver
- A homeless 16 or 17-year-old who applies to a housing authority should be provided with interim accommodation under the homelessness legislation. They should then be referred to children's services for an assessment of their needs under section 21 of the Social Services and Wellbeing (Wales) Act 2014¹⁷



LOCAL CONNECTION AND HOMELESSNESS

Under Part 2 of the Housing (Wales) Act 2014,¹⁸ which covers homelessness, there are sections which allow one authority to pass the homelessness duty on to another. Local connection is a discretionary test in homelessness assessments, but in reality all local authorities will apply the test in most cases (cases in which someone is fleeing violence should not be considered for referral).

Under Section 81 of the Housing (Wales) Act 2014,¹⁹ a person has a local connection with the district of a local housing authority if she or he has a connection with it:

- Because they are, or were in the past, normally resident there, and that residence was of their own choice
- Because they are employed there
- Because of family associations
- Because of special circumstances

The Code of Guidance to Local Authorities on the Allocation of Accommodation and Homelessness²⁰ states that in the case of young people in the looked after system who have been placed out of area, where they are leaving care and wish to return to the area to which they were originally connected they should be accepted as having a connection with the area, even where they have been placed for a considerable time elsewhere. In assessing whether an applicant's household has a local connection with their area, an authority should also consider whether any person who might reasonably be expected to live with the applicant has such a connection. Care leavers who wish to remain in the area of placement should also be considered to have a local connection should they meet the local connection test.²¹ So if a care leaver has been placed out of area and wishes to return to their original area, the authority of the original area must accept local connection with it.

14 Welsh Government (2016) Code for Guidance for Local Authorities on the Allocation of Accommodation and Homelessness. Available at: <https://gov.wales/sites/default/files/publications/2019-03/allocation-of-accommodation-and-homelessness-guidance-for-local-authorities.pdf> (Accessed 12 January 2022)

15 Family Law (2009) Local Authority/ Housing: *R (G) v Southwark London Borough Council*. Available at: https://www.familylaw.co.uk/news_and_comment/r-g-v-southwark-london-borough-council (Accessed 13 January 2022)

16 Welsh Government (2014) Social Services and Well-being (Wales) Act 2014. Available at: <https://www.legislation.gov.uk/anaw/2014/4/contents> (Accessed 12 January 2022)

17 Ibid

18 Welsh Government (2014) Social Services and Well-being (Wales) Act 2014. Available at: <https://www.legislation.gov.uk/anaw/2014/4/contents> (Accessed 12 January 2022)

19 Welsh Government (2014) Housing Act. Available at: <https://www.legislation.gov.uk/anaw/2014/7/contents/enacted> (Accessed 12 January 2022)

20 Welsh Government (2016) Code for Guidance for Local Authorities on the Allocation of Accommodation and Homelessness. Available at: <https://gov.wales/sites/default/files/publications/2019-03/allocation-of-accommodation-and-homelessness-guidance-for-local-authorities.pdf> (Accessed 12 January 2022)

21 Welsh Government (2016) Code for Guidance for Local Authorities on the Allocation of Accommodation and Homelessness. Available at: <https://gov.wales/sites/default/files/publications/2019-03/allocation-of-accommodation-and-homelessness-guidance-for-local-authorities.pdf> (Accessed 12 January 2022)

LOCAL CONNECTION AND ALLOCATION OF SOCIAL HOUSING

The allocation of social housing is covered within Part Six of the Housing Act 1996.²² Section 167(2A) requires a local authority through their allocation scheme to give applicants who fall within a 'reasonable preference' category a head-start in the queue for social housing. Reasonable preference categories include those owed any homeless duty under the Housing (Wales) Act 2014, people living in unfit or overcrowded housing, or who have a medical or disability issue that is affected by their housing, and those applicants who would face hardship if they did not obtain social housing. Many local authorities include care leavers as a group that fall into a reasonable preference category, but there is not necessarily a statutory requirement to do so, as it depends on the local authority criteria set in their allocation policy as to whether hardship qualifies for an award of reasonable preference.

Young people who have been living in out-of-authority placements and wish to stay in that local area when they leave care (rather than returning to the local authority area where they are looked after) may need to provide evidence that they have a local connection. However, each individual case should be decided on its own merits unless the allocation scheme specifies how local connection is being interpreted beyond the four areas of residence, employment, family association and special reasons. For example, a housing authority might consider that a family association could include being placed with foster carers in that local authority area, or that being in care and placed in that local authority area could be considered as 'special circumstances'.

Welsh Tenancy Legislation: The Renting Homes (Wales) Act 2016

Commenced on the 1st of December 2022, the Renting Homes (Wales) Act 2016 provides a new framework for all rented housing in Wales. It gives more protections for tenants and licensees, and makes clearer their rights and responsibilities. Tenants and licensees are called 'contract-holders' under the new law. Landlords must issue contract-holders with an 'occupation contract', replacing licences or tenancy agreements.

Contract-holders cannot be under 18, so the below section on tenancies on trust still applies in those cases. For contract-holders aged 18 and above, there are two types of occupation contract:

- **Secure contract:** This replaces secure tenancies issued by local authorities and assured tenancies issued by housing associations; and
- **Standard contract:** This is the contract that will mainly be used in the private rented sector (where you have a landlord who is not a council/local authority or a housing association), but can be used by local authorities and housing associations in some circumstances (e.g. a 'supported standard contract' for supported accommodation)

The occupation contract must be set out in a 'written statement'. The purpose of the written statement is to confirm the terms of the contract.

Renting Homes also includes other important changes to housing law. These include:

- **Fitness for Human Habitation:** Landlords must ensure properties are fit for human habitation (FFHH). This will include, for instance, electrical safety testing and ensuring working smoke alarms and carbon monoxide detectors are fitted. In addition, rent is not payable for any period during which the property is not fit for human habitation
- There is greater security for people who live in the private rented sector (PRS)
- Landlords must give at least six months' notice (a 'section 173' notice in the Act) to end the contract, providing the contract-holder does not break a term of the contract, often called a 'no fault' notice (increased from two months' notice)
- No fault notices **cannot** be issued until six months after the move-in date (the 'occupation date' of the contract)
- Protection against 'retaliatory eviction': landlords cannot issue a no fault notice just because the contract-holder has complained that the home is in a poor state of repair. The Court would need to be satisfied the landlord hasn't issued the notice to avoid carrying out the repair
- Joint Contracts: Contract-holders can be added or removed from occupation contracts without the need to end one contract and start another. This makes managing joint contracts easier and helps people experiencing domestic abuse by enabling the abuser to be targeted for eviction
- Enhanced Succession Rights: Enables both a 'priority' and 'reserve' person ('successor') to succeed to the occupation contract. This allows two successions to the contract to take place, for example a husband or wife followed by another family member. In addition, a new succession right for carers is created
- Abandonment Procedure: Landlords can repossess an abandoned property without needing a court order, after serving a four-week warning notice and carrying out investigations to be sure the property is abandoned

²² UK Government (1996) Housing Act 1996. Available at: <https://www.legislation.gov.uk/ukpga/1996/52/section/167> (Accessed 13 January 2022)

- **Supported Accommodation:** If someone lives in supported accommodation for more than six months, they become entitled to a 'supported standard contract'. The supported standard contract operates in a similar way to the standard contract. However, the landlord may include terms in the contract relating to:
 - the ability to change where the contract-holder is living within the building; and
 - the ability for the landlord to temporarily exclude the contract-holder from the dwelling for up to 48 hours, a maximum of three times in six months

Tenancies on Trust

It is an established principle of property law that a minor (someone under the age of 18 years) is unable to hold a legal estate in land (s.1(6) Law of Property Act 1925; para 1(1)(b), Sch.1, Trusts of Land and Appointment of Trustees Act 1996). This means that a minor cannot hold a tenancy, this being a legal estate in land. The Renting Homes Wales Act 2016, (s.7(6)) goes one step further and makes it clear that anyone under the age of 18 also cannot be a contract holder under an occupation contract. This has the effect that a minor cannot hold an occupation contract, nor indeed the tenancy that sits underneath it.

Where does this leave a minor?

The Welsh Government do not have delegated powers to amend the above principles of property law. As such, there is nothing in the RHWA which will change the principle that a minor cannot hold a legal tenancy. There is also no change to the principle that a minor is able to 'benefit' in equity from a tenancy so, as provided by para 1, Sch.1 Trusts of Land and Appointment of Trustees Act 1996, the tenancy can be held on 'trust' for their benefit.

However, section 239 of the Renting Homes Wales Act 2016 states that no new tenancies or licences can be created under the various statutory regimes (i.e.: assured, secure, AST etc.) post 15 July 2022. As such, any equitable benefit the minor might have will come only from a common law tenancy or licence. That common law tenancy or licence is specifically excluded from being an occupation contract whilst the minor remains under the age of 18 and therefore won't be protected by the provisions of the Renting Homes Wales Act 2016.

So, the options for the minor are similar to now, with one major difference – that is, the tenancy or licence that is held on trust for them is protected only by common law principles and not by any statutory regime, including the Renting Homes Wales Act 2016 regime.



How can a 16/17 year old benefit from a tenancy post-Renting Homes Wales Act 2016?

- A landlord can hold a common law tenancy on trust for the minor until they reach they age of 18. The minor is able to benefit from the tenancy and live in the accommodation but the legal title to the tenancy remains held by the landlord. This option can cause problems in the event of the landlord wishing to seek possession, because the landlord cannot serve notice on themselves
- A third party (such as an adult family member, a social or support worker) can hold a common law tenancy on trust for the minor until they reach they age of 18. The minor is able to benefit from the common law tenancy and live in the accommodation but the legal title of the tenancy remains held by the landlord
- A third party enters into a joint occupation contract with the minor. The adult contract holder holds the occupation contract as trustee for both joint contract holders until the minor reaches the age of 18

What happens when the care experienced person turns 18?

Once the minor reaches the age of 18 they do then become capable of holding a legal interest in land, so, therefore, are able to hold the tenancy or licence themselves, without the need for a trustee. The Renting Homes Wales Act 2016 (s233) provides that when the minor reaches the age of 18, it is also then possible for an occupation contract to be created and held in their own name. A number of questions are to be considered at that time:

- Is the tenancy or licence an occupation contract under the provisions of the Renting Homes Wales Act 2016?
- Who are the contract-holders under the contract?
- If it is an occupation contract, is it a secure contract or a standard contract?

Questions to ask your teams

The legislation and case law relating to care leavers and their housing can be complicated and can affect young people in different ways and at different times. How well do staff in your leaving care and housing teams know the legal context?

In thinking about what housing young people can access, what access do they have to finances? Young people may be entitled to different funding sources, depending on their past experiences and their current situation. Are your teams up to date on the funding sources available? They might include:

- Housing benefit
- Low-income benefits
- Entitlements to tax credits
- Universal Credit
- Local welfare assistance
- Council tax support schemes
- Child benefits
- Disability benefits
- Junior ISA
- Setting up home allowance (leaving care grant)
- Funds from the Criminal Injuries Compensation Scheme

Training and Development

If the questions above have spurred a desire to build on your good practice or develop greater understanding and capacity within your team, Shelter Cymru is one of Wales' leading providers of training on housing law and related matters. The team delivers e-Learning and live training on a range of relevant topics. Please find them attached here.



