Transcript

RRA Unit 3.5
Changes to the homelessness legislation

Hi, everyone. In this video, we're going to have a look at the changes to the homelessness legislation which have been brought about by the Renters' Rights Act.

Before we go to the slide, let's just understand what happens. The homelessness legislation has been amended by the Renters' Rights Act. So the clauses which amend Part 7, the homelessness legislation, are all in the Renters' Rights Act, and these come in on May the 1st. If you're the case officer, don't worry, if you're having to write a decision letter, about whether you now have to say "the homelessness legislation as amended by the Renters' Rights Act." You don't need to say that. It still remains the same. The homelessness legislation is a decision under Part 7 of the Housing Act 1996. That's it. You don't need to say anything else. You don't need to say "as amended by the Homelessness Reduction Act" and then "as amended by the Renters' Rights Act." That's not of concern. Just stick to: it's the Housing Act 1996, Part 7.

There are five big changes to the homelessness legislation. There are also changes to the Code of Guidance, and in some ways the changes to the Code of Guidance are going to be pretty interesting because they tell us a lot more about when you should consider someone to be homeless. But we're going to cover that in the video specifically looking at the changes to the Code. This video looks specifically at the changes to the homelessness legislation. We're going to have a look now at the detail of these five changes in the slides.

Change number one. What I'm going to try and do is explain what the legislation is before May the 1st and what the legislation is after May the 1st. Before May the 1st, the legislation states that an applicant is to be treated as threatened with homelessness if they've received a valid section 21 notice and that notice is due to expire in the next 56 days. On that basis, before May the 1st, you would accept, as long as they were eligible on immigration grounds and as long as they had no other accommodation, a homelessness application, and you would have to accept a prevention duty.

From May the 1st, there's no such thing as a section 21 notice anymore. So what we have is a change brought about by the Renters' Rights Act. The new legislation states that an applicant is to be considered as threatened with homelessness if they've

received a valid section 8 notice and the date set out in the notice is within 56 days and the applicant does not have any other accommodation. So what's happened is the section 21 reference has been changed to the section 8 reference. The notice that's been issued still has to expire within 56 days for this to apply—in other words, for you to have to accept an application and a prevention duty. And of course, the applicant still needs to be eligible, and the applicant should not have any other accommodation. Obviously, if they have any other accommodation that they can go to, then of course they would not be homeless on that basis.

This is quite an important change, and it will be a little more complicated than the old section 21 notice situation because a lot of the notice periods for section 8 notices are more than 56 days. For example, if I was trying to regain possession as a landlord by issuing a section 8 notice because I wanted to sell the property, then I would have to give four months' notice. It will therefore give you, as a case officer and for your council, a decision to be made. Do you accept a homelessness application when the notice has been given, if the notice is more than 56 days—say if the notice was four months—or do you wait until that notice clock runs down to 56 days and then take the homelessness application?

Remember, the Code of Guidance says you can always be more generous than the legislation. So there's nothing to stop a council, on the issuing of a four month notice, taking a homelessness application even though the person is not threatened with homelessness within 56 days because there's four months until the end of the notice. If you want to take a homelessness application, you certainly can; it's not unlawful to do so. But with this change, if it is a valid section 8 notice and the date set out in the notice is due to expire within 56 days and the applicant does not have any other accommodation, then you must take a homelessness application. That's what the legal requirement will be. That's change number one.

Let's look at change number two. Before May the 1st, a prevention duty could not be ended for the reason that 56 days or more had passed. It would continue until there was an outcome to that duty. That might be a positive outcome, that you prevented homelessness, or a negative outcome. That's what the legislation previously said. This will be changed so that the prevention duty will continue—so if you've taken a prevention duty on the case because it's a valid section 8 notice due to expire within 56 days—until the case has either been prevented or it ends for another reason. For example, it could have ended because you've lost contact. It could have ended because they become homeless. It could have ended because they refused an offer. It could have ended because they were no longer eligible. You can still end it for one of

the other reasons that you can end the prevention duty for, but the one you cannot end it for is that 56 days have passed.

So 56 days or more have passed: you cannot end it on that basis. To sum up the second change: it still has to be a case where you accepted a prevention duty because a valid section 8 notice had been served and the date set out in the notice was within 56 days. It's still got to be one of those cases. If it is one of those cases, and you've then accepted a prevention duty, as the legislation says you must, then when you get to day 56 of the prevention duty, you cannot end it for the reason that 56 days have passed. You can end it for another reason, like lost contact, refusing an offer, no longer eligible, or they become homeless, or the successful outcome, but you can't end it for the reason that 56 days or more have passed. That's our second change to the homelessness legislation brought about by the Renters' Rights Act.

Let's have a look at change number three. This is a big change. As we know, to end the prevention duty, the relief duty, or the main duty through an offer of a private rented home has restrictions on it. For the prevention or relief duty, if you want to use a private rented tenancy, it had to be a minimum six month assured shorthold tenancy. If it was the main duty and you wanted to end it with a private rented home, then it must be a 12 months fixed term, or minimum 12 month fixed term, private rented sector tenancy.

Now, of course, we don't have fixed term tenancies after May the 1st because all tenancies are assured periodic tenancies. So the homelessness legislation has had to be changed to take out the references to fixed term tenancies to end the duty—in other words, six months or 12 months to end the duty. If you're going to use a private rented sector home to end either the prevention duty, the relief duty, or the main duty, then all it has to be is an assured periodic tenancy, an APT. No longer will you have to worry about the length of the tenancy because fixed term tenancies have been abolished. There will be no difference in the way you end the main duty from, say, the relief duty, whereas before May the 1st it was six months minimum to end the relief duty and 12 months minimum to end the main duty if it was a private rented tenancy. That's gone from May the 1st. If you offer them a suitable offer of an APT, an assured periodic tenancy, as long as it's suitable and as long as it's offered in the right way as a final accommodation offer—which of course means it must be offered in writing; that hasn't changed—then that will bring the duty to an end: prevention, relief, or main duty, whether or not the applicant accepts the property or whether the applicant refuses the property. Change three is quite a big one.

Let's have a look at change four. It's a techy one, so let me give you some background. Before May the 1st, if you had ended the prevention or relief duty for non cooperation—and be clear what that means: that means an applicant did not cooperate with the steps you gave them to do in their personal housing plan—then what used to happen was this. If you ended the prevention or relief duty for non cooperation, but the applicant was still, at the end of all this, owed something—for example, let's say the relief duty was unsuccessful and you ended it for non cooperation—then before May the 1st the applicant was owed a lesser version of the main duty. It was called the 193C(4) duty.

The lesser version of the main duty meant that the applicant still got the main duty, but the council was able to end it not with a 12 month tenancy in the private rented sector. The council could end it with a six month tenancy in the private rented sector. Since May the 1st, we don't have fixed term tenancies anymore. So if you end the prevention or relief duty for non cooperation and they are eventually owed the main duty, they just get the main duty. There's no lesser version of the main duty since the Renters' Rights Act came in on May the 1st.

I'll run that through as a practical example. Let's say we have an applicant that's homeless, and you assess and agree they are homeless and eligible, and you owe them a relief duty. You give them a personal housing plan, and that gives them steps to take to try and relieve their homelessness. They refuse to take those steps, or they refuse to take a step—it might be one step, it might be more than one step. The legislation says you have to issue them a warning that if they don't take the step, you could end the relief duty for non cooperation. Let's say, in this example, you give them a warning letter, they don't heed the warning, and you end the relief duty for their non cooperation.

However, they have kids under the age of 16, so they have a priority need, and they're not intentionally homeless from the last settled address. So they would still be owed the main duty. In a way, by not cooperating with the steps in the personal housing plan, perversely, if you then end the relief duty for non cooperation, they would just go fast track to the main duty because now we have no lesser version of the main duty for applicants that have the relief duty ended for non cooperation. As long as they've got the priority need and they're not intentionally homeless, they will go straight to the main duty.

Realistically, if you have an applicant in priority need and not intentionally homeless from the last settled address, there's no point in ending the relief duty for non cooperation after May the 1st, because all that happens is they'll just go to the main

duty more quickly. You'd be better to keep it open and then try and end the relief duty through another type of offer or another type of arrangement. That's change four. Change five is a change to what's called the reapplication duty. First we need to understand and remember what the reapplication duty is. The reapplication duty before May the 1st was this: if a council had ended the main duty with a private rented sector offer—so the council arranged a private rented sector offer with a landlord, and the purpose of that arrangement was to end the main duty—then the old legislation gave the applicant some protection. That protection was that if the applicant re presented again as homeless within two years of accepting that private rented sector offer, then they had added protection.

What happened is they could reapply to the authority and they would not need to establish priority need. So if they'd lost their priority need in those two years, it would make no difference, and they would go straight to the main duty without needing to go through the relief duty. They could still have been found intentionally homeless; the reapplication duty didn't protect them from that. So if they'd lost their private rented home for, say, rent arrears and it was a deliberate act, then you could still make an intentional decision. But if they hadn't lost that private rented sector offer through their own fault, then as long as they reapplied to a council within two years of accepting the private rented sector offer—which was offered by the council to end the main duty—they would go straight to the main duty. They wouldn't have to pass through the relief duty. This was an extra protection for the applicant.

From May the 1st, all that's gone. The private rented sector offer reapplication duty is repealed from Part 7 of the homelessness legislation. That means an applicant that reapplies to the council within two years of accepting the private rented sector offer that was made to end the main duty will be treated the same as any other applicant. They'll have no extra protection. So if in those two years they've lost their priority need, then that's relevant; they would be found not in priority need. They wouldn't go straight, fast track, to the main duty. They would be treated no differently from any other applicant.

If you found it quite technical and complicated—because it is—to fully understand what the reapplication duty was, then you don't need to worry about it anymore because after May the 1st there is no reapplication duty anymore. There's no added protection for applicants who had had their main duty ended through a private rented sector offer. If they come back in one year, two years, three years, they're treated the same as any other applicant who's applying as homeless.

Those are the five changes to the homelessness legislation. I'll see you a little later on a video where we look at the changes to the Code of Guidance, but these are the legislative changes first. Thanks for listening, and I'll see you on another video.