Transcript

RRA Unit 6.1.1

Changes to the Code of Guidance

Hi everyone, and welcome to this video which looks at the changes to the Homelessness Code of Guidance brought about by the Renters' Rights Act. We're not going to repeat what we looked at in the video which showed the legal changes; the Code of Guidance largely just reiterates those. Instead, we'll focus on the additional statutory guidance – the things the Code comments on that go beyond the bare legislation. There are some important issues in that respect, and we'll concentrate on those.

The Code largely restates the changes to the legislation, which we've already covered in a previous video about the amendments to Part 7 (the homelessness legislation). However, there is new guidance across a number of issues. I've highlighted three big areas where there is new statutory guidance that you, as a case officer working for the council, would need to understand and consider.

The three issues are:

1. Considering if someone is homeless due to a Section 13 rent increase.

2. When to consider someone as homeless if they've received a valid Section 8 notice. Most of this video will look at that point, because it's really important and there is new guidance on it.

3. In what circumstances the "reapplication duty" applies and does not apply.

Let's start with the first of these: considering if someone is homeless due to a Section 13 rent increase.

You'll remember from the previous videos on rent increases that one of the changes brought about by the Renters' Rights Act (from 1 May) is that a landlord can now only increase the rent using a Section 13 notice of increase. The tenant has a right to appeal that rent increase to the First Tier Tribunal (FTT). A landlord can no longer increase the rent by a clause in the tenancy agreement or by a simple verbal agreement with the tenant. That's just a recap.

Now, the new guidance appears in paragraphs 6.38 and 6.39 of the revised Code (from 1 May 2026).

Paragraph 6.38 says that where an applicant has been served with a valid Section 13 notice of an increase, housing authorities will need to assess whether the proposed rent would render the accommodation unaffordable for the household such that it would no longer be reasonable for the applicant to continue to occupy. There's nothing controversial in that. If

©Locata (Housing Services) Ltd 2026. All Rights Reserved

someone walks in and says, "Because of a rent increase I'm now homeless because I can't afford it," you would naturally consider whether they are homeless – not simply because they were served a notice, but because it may no longer be reasonable for them to continue to occupy if they cannot afford the rent. That is an affordability and "reasonable to continue to occupy" assessment.

Paragraph 6.39 brings in the FTT. It provides that applicants may be advised about the process for referring the proposed increase to the FTT if they consider the increase to be above the rent the landlord could reasonably expect on the open market. Whether or not a referral is made, if there is a possibility that the rent may be increased to a level the household cannot reasonably afford, the applicant will be threatened with homelessness. So this is about prevention activity: you can and should advise applicants on referring the rent to the FTT, particularly if you also consider the rent to be above market. The FTT could potentially reduce that rent. The Code then says that where there is a possibility the rent may be increased to an unaffordable level, the applicant is threatened with homelessness (not yet homeless).

That's the first change to the statutory Code of Guidance, relating to rent increases.

Now we move on to the big one: when to consider someone as homeless if they've received a valid notice – from 1 May that will be a Section 8 notice (rather than a Section 21). This has always been a contentious area and councils have been criticised by the Ombudsman and the courts for not accepting tenants as homeless – meaning, for example, not placing them into temporary accommodation – upon the expiry of a valid Section 21 notice under the old regime. The controversy stems from how the old Code of Guidance was worded, and therefore whether councils should have placed people into temporary accommodation at the expiry of the notice.

Let's recall the key passage from the old Code (pre–1 May 2026). It said that where an applicant is (1) an assured shorthold tenant who has received a valid Section 21 notice, (2) the housing authority is satisfied the landlord intends to seek possession and further efforts to resolve the situation are unlikely to succeed, and (3) there would be no defence to a possession claim, then it is unlikely to be reasonable for the applicant to continue to occupy beyond the expiry of a valid Section 21 notice unless the housing authority has taken steps to persuade the landlord to allow the tenant to remain for a reasonable period to find alternative accommodation.

In plain English: if the notice is valid, prevention work has realistically failed, and there is no defence to the possession proceedings (for example, no arguable issue about deposits or EPCs, etc.), then from the expiry of the Section 21 notice it is unlikely to be reasonable to continue to occupy. In practice this was treated as meaning that the person should generally be considered homeless at the expiry of the notice – and so should be provided with temporary accommodation at that point.

This caused huge problems for councils. In the past, many councils told tenants, "Don't leave at the expiry of the Section 21; stay until the possession order, or even until the bailiffs

©Locata (Housing Services) Ltd 2026. All Rights Reserved

come." That advice was often found to be contrary to the Code because, where the three conditions above were satisfied, the Code was effectively saying that the person should be considered homeless at the expiry of the notice. Councils then faced Ombudsman criticism and adverse court decisions for not following the Code in those circumstances.

The crucial question after the Renters' Rights Act came in was whether the revised Code would repeat similar advice in relation to the new Section 8 regime. If it had, councils would still have been under strong pressure to treat people as homeless from the expiry of a valid notice, with all the associated temporary accommodation demand.

However, the revised Code does not carry over that specific advice. There is no similar guidance post–1 May 2026 saying that an applicant should be considered homeless at the expiry of a valid notice (now Section 8) in the way the old Code did for Section 21. That wording has been removed.

Instead, the new Code re-emphasises something that was in the old Code but shifts the critical point in time. It now focuses on the date by which the court has ordered the tenant to leave, rather than the date the notice expires.

Paragraph 6.48 of the revised Code says that the Secretary of State considers it unlikely to be reasonable for the applicant to continue to occupy beyond the date on which the court has ordered them to leave the property and give possession to the landlord. That means the date in the possession order by which the tenant must leave, not the date the order is made. From that date, the Code says it is unlikely to be reasonable to continue to occupy.

Notably, the wording is "unlikely to be reasonable" rather than the more prescriptive language in the old Code which, in effect, equated to the person being homeless at a specific earlier point. It also uses "unlikely" rather than the old "highly unlikely" in some passages. "Highly unlikely" implies a higher threshold than "unlikely". So the revised wording is a little less absolute, but the clear direction remains: beyond the date specified in the possession order, continuing to occupy is generally not reasonable.

So the new position is this: the earlier, quite explicit guidance to treat people as homeless from the expiry of a valid Section 21 notice (subject to the three conditions) has been removed. The new Code instead emphasises that it is unlikely to be reasonable to continue to occupy beyond the date set by the court in a possession order. That is now the key reference point.

However, the Code still provides general guidance on the issues a council should consider when deciding if it is reasonable for a tenant to remain beyond the expiry of a valid Section 8 notice. It expressly warns that councils must not adopt a blanket policy as to the point at which it will no longer be reasonable to occupy after the expiry of a Section 8 notice. Instead, councils must consider six factors in deciding, on the facts of any given case, when it is no longer reasonable for an applicant to remain once a notice has expired.

©Locata (Housing Services) Ltd 2026. All Rights Reserved

These six factors (which are not new – they were in the old Code) are not weighted in any particular order. They are:

1. The preference of the applicant who may, for example, want to remain in the property until they can move into alternative settled accommodation where there is a realistic prospect of a timely move. The applicant has a legal right to remain in the property until a bailiff physically evicts them. Many applicants may prefer to stay in self-contained accommodation rather than move into temporary hostel or bed and breakfast, especially if that TA is out of area.

2. The preference of the applicant who may wish to leave earlier to avoid incurring court costs. In practice, many councils now deal with this by offering to pay the landlord's court fee (for example, £404 to issue possession proceedings) because it is cheaper than several months of nightly-paid or bed and breakfast accommodation. This can neutralise some of the applicant's concern about court costs.

3. The position of the landlord. Councils should consider the landlord's circumstances. There may be exceptional reasons why the landlord needs the property back at or shortly after the expiry of a valid notice (e.g. urgent need to move in themselves or to complete a sale). In those exceptional cases, a council might reasonably offer temporary accommodation earlier.

4. The financial impact of court action and any build-up of rent arrears on both landlord and tenant. This is not straightforward. Yes, there is always a financial impact of court action, but where the landlord must prove a ground under Section 8, the tenant also has a right to test that case in court. The justice of allowing a proper hearing may outweigh the simple desire to avoid costs.

5. The burden on the court of unnecessary proceedings where there is no defence to a possession claim that has a reasonable prospect of success. Under the revised wording, this factor is now more specific. The old Code simply referred to the burden of unnecessary proceedings. The new Code adds: "where there is no defence to a possession claim that has a reasonable prospect of success." So you are specifically to consider whether there is any realistic defence. For some grounds (like selling with evidence of a buyer and solicitors instructed), there may be no real defence and the burden on the court of a contested case may weigh more heavily in your decision-making. For other grounds (rent arrears, antisocial behaviour), you may not be able to say in advance that the claim has no reasonable defence until a court has heard it.

6. The general cost to the council. Taking someone into TA immediately at the expiry of a valid notice might mean paying for temporary accommodation for an additional two, three, four months compared with waiting until closer to the possession order date. That is a significant financial issue, especially where B&B or nightly lets are involved.

These six factors must be weighed up in each case. They are not new but, now that the old "expiry-of-notice" trigger has been removed, they take on greater practical importance. A sensible approach is for each council to have a standard form or pro forma that sets out the

©Locata (Housing Services) Ltd 2026. All Rights Reserved

six factors and records how they have been considered on the facts of the case. That gives you an audit trail if your decision is later challenged.

One of those six factors – the burden on the courts – has had its wording expanded in the revised Code. Under the old Code, councils had to consider "the burden on the court of unnecessary proceedings" and the sentence stopped there. The revised Code continues: "…of unnecessary proceedings where there is no defence to a possession claim that has a reasonable prospect of success." This change makes explicit that the "burden on the courts" factor is tied to cases where there really is no arguable defence.

To sum up this central issue of when to consider someone homeless on a valid notice and subsequent possession proceedings:

- There is now no specific wording that says the government considers someone to be homeless at the expiry of a valid notice. That earlier, very prescriptive guidance has been removed.
- The new Code does say that it is unlikely to be reasonable for an applicant to continue to occupy beyond the date on which the court has ordered them to leave the property and give possession to the landlord. That is now the main anchor point.
- The Code also repeats that councils should not consider it reasonable for an applicant to remain in occupation up until the point a court issues a warrant or writ to enforce an order for possession. That guidance is in paragraph 6.49 and remains unchanged from the old Code. So if an applicant does not leave by the date in the possession order, councils should not operate on the basis that it is "reasonable" for them to remain until the bailiffs come. Councils should not be telling applicants "you must stay until the bailiffs come."
- However, none of that stops an applicant choosing to exercise their legal right to remain until a bailiff evicts them. The guidance about what is "reasonable to continue to occupy" for homelessness purposes does not remove their rights under landlord and tenant law. If they say they want to stay until bailiffs attend – for example to avoid unsuitable TA or out-of-area placements – that is their choice.
- A person might also be homeless for other reasons unrelated to the notice and possession timetable, for example if the accommodation is no longer affordable or the property is in such poor or unsafe condition that it is not reasonable to continue to occupy. The new wording on notices does not displace those other grounds.
- Even though many councils will see the new wording as easing some of the earlier pressure, they still must consider all six factors each time, and record their reasoning. Decisions still have to be made on the individual facts as to when it is no longer reasonable to continue to occupy.

That covers the second, major area of new guidance.

Finally, we come to the third change: the reapplication duty where the main duty was ended by a private rented sector offer (PRSO).

©Locata (Housing Services) Ltd 2026. All Rights Reserved

Under the old rules (before 1 May), where a council ended its main homelessness duty with a PRSO, the applicant got extra protections if they became homeless again. If they reapplied to any council within two years of accepting the PRSO, they would go straight back to a main duty (provided they were not intentionally homeless). They would not go through a fresh relief duty first. They would also retain any priority need they had at the time of the PRSO, even if they had lost that priority need in the meantime.

At first sight, the new legislation seemed to repeal this entirely. However, the revised Code clarifies the position and shows how this is phased out:

- The reapplication duty – that two-year protection – is withdrawn for new tenancies that start on or after 1 May 2026. For those new PRSOs, the special two-year rule no longer applies; it is effectively null and void going forward.
- But the protection remains in place for PRSOs accepted in the two years prior to 1 May 2026. So if a main duty was ended by a PRSO offered and accepted during that two-year window, the old two-year protection still applies. Those applicants will continue to benefit from the reapplication duty if they become homeless again within two years of that offer, provided they are not intentionally homeless.

So from 1 May 2026 onwards:

- If someone signs a PRSO tenancy to end the main duty on or after that date, and then becomes homeless within two years, the special reapplication protections do not apply. They must be treated like any other applicant: if homeless, they start at relief duty, and if they have lost their priority need during that period, they no longer have the "carry forward" of their previous priority need.
- If the PRSO was accepted within the two years before 1 May 2026, then the old reapplication rules still apply. If they become homeless again within two years of that PRSO, they go straight to a main duty (if not intentionally homeless) and retain any previous priority need, even if they would not otherwise have it at that point.

This residual protection is time-limited. It only applies to PRSOs accepted in the two years before 1 May 2026, and the protection only lasts for up to two years from the date of each such PRSO. So as time progresses, fewer and fewer cases will still fall under this transitional protection, and by 1 May 2028, all such protections will have ended. After that date, no applicant will benefit from the old reapplication duty in relation to PRSOs.

To summarise the three areas where the Code has been substantively amended (beyond simply restating the legislative changes):

1. Rent increases and Section 13: the Code confirms that councils must assess affordability and reasonableness to continue to occupy when a Section 13 notice is served, and it encourages advice about referring excessive increases to the FTT. Where a proposed increase could make the rent unaffordable, the applicant is threatened with homelessness.

©Locata (Housing Services) Ltd 2026. All Rights Reserved

2. Valid notices and homelessness (the big one): the explicit old guidance to treat applicants as homeless from the expiry of a valid Section 21 notice (subject to certain conditions) has been removed. The revised Code now focuses on the court's possession date, saying it is unlikely to be reasonable to continue to occupy beyond the date the court orders the tenant to leave. Councils must not operate on the basis that it is reasonable to remain until the warrant/writ is issued, but applicants retain their legal right to stay until bailiff eviction if they choose. Councils must continue to weigh the six listed factors (preference of the applicant, court costs, landlord's position, financial impacts, burden on courts where there is no defence with reasonable prospects, and cost to the council) on a case-by-case basis and keep clear records.

3. Reapplication duty after PRSOs: the special two-year reapplication protection is withdrawn for new tenancies that start on or after 1 May 2026. It remains in place only for PRSOs accepted in the two years prior to 1 May 2026, and only until up to two years from each such PRSO. In practice, all such protections will have expired by 1 May 2028.

Some of the new guidance, especially on when to consider someone as homeless with a valid notice, is a bit complex and nuanced, but understanding these changes is crucial for casework practice.

©Locata (Housing Services) Ltd 2026. All Rights Reserved