



The right to housing for disabled persons and refugees: UK report

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About ETHOS

ETHOS - Towards a European Theory Of Justice and fairness is a European Commission Horizon 2020 research project that seeks to provide building blocks for the development of an empirically informed European theory of justice and fairness. The project seeks to do so by:

- a) refining and deepening knowledge on the European foundations of justice – both historically based and contemporarily envisaged;
- b) enhancing awareness of mechanisms that impede the realisation of justice ideals as they are lived in contemporary Europe;
- c) advancing the understanding of the process of drawing and re-drawing the boundaries of justice (fault lines); and
- d) providing guidance to politicians, policy makers, activists and other stakeholders on how to design and implement policies to reverse inequalities and prevent injustice.

ETHOS does not merely understand justice as an abstract moral ideal that is universal and worth striving for. Rather, it is understood as a re-enacted and re-constructed ‘lived’ experience. The experience is embedded in firm legal, political, moral, social, economic and cultural institutions that are geared towards giving members of society what is their due.

In the ETHOS project, justice is studied as an interdependent relationship between the ideal of justice and its real manifestation – as set in the highly complex institutions of modern European societies. The relationship between the normative and practical, the formal and informal, is acknowledged and critically assessed through a multi-disciplinary approach.

To enhance the formulation of an empirically based theory of justice and fairness, ETHOS will explore the normative (ideal) underpinnings of justice and its practical realisation in four heuristically defined domains of justice - social justice, economic justice, political justice, and civil and symbolic justice. These domains are revealed in several spheres:

- a) philosophical and political tradition;
- b) legal framework;
- c) daily (bureaucratic) practice;
- d) current public debates; and
- e) the accounts of vulnerable populations in six European countries (Austria, Hungary, the Netherlands, Portugal, Turkey and the United Kingdom).

The question of drawing boundaries and redrawing the fault lines of justice permeates the entire investigation.

Alongside Utrecht University in the Netherlands, which coordinates the project, five further research institutions cooperate. They are based in Austria (European Training and Research Centre for Human Rights and Democracy), Hungary (Central European University), Portugal (Centre for Social Studies), Turkey (Boğaziçi University), and the United Kingdom (University of Bristol). The research project lasts from January 2017 to December 2019.

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ACRONYMS

EA	Equality Act
ECHR	European Convention on Human Rights
EWCA	England and Wales Court of Appeal
EWHC	England and Wales High Court
HA	Housing Act
HBR	Housing Benefit Regulations
HRA	Human Rights Act
LHA	Local Housing Allowance
SSCBA	Social Security Contributions and Benefits Act
UC	Universal Credit
UCR	Universal Credit Regulations
UK	United Kingdom
UN	United Nations
UKHL	United Kingdom House of Lords
UKSC	United Kingdom Supreme Court
WRA	Welfare Reform Act

INSTITUTIONAL FRAMEWORK

The United Kingdom (UK) is a monarchy with most legislative power vested in a two-chamber Parliament based in Westminster (London). One of the chambers, the House of Commons, is elected for fixed five-year terms and the other, the House of Lords, is made up of life-appointed members. Since the nearly simultaneous adoption of the Scotland Act, the Government of Wales Act and the Northern Ireland Act in 1998, elected assemblies in Scotland, Wales and Northern Ireland have shared legislative authority with the Westminster Parliament in various areas, including the right to housing. However, under the so-called 'Sewel Convention' these regional (or 'devolved') legislative bodies regularly defer to Westminster legislation in their areas of competence. The demographically dominant region of England does not have a legislative body of its own, meaning it falls under the direct jurisdiction of Westminster Parliament. The provision of housing benefits and emergency accommodation, as well as the regulation of evictions, partly fall within the jurisdiction of the Scotland and Northern Ireland Parliaments. Immigration and asylum are an exclusive Westminster competence. This report will discuss the legal framework that applies in England, part of which also covers other regions.

Unlike its other European counterparts, the British constitution is not codified in a single legal text. Constitutional law, which can be defined as 'conditioning the legal relationship between citizen and state in some general, overarching manner, or [enlarging or diminishing] the scope of what might be regarded as fundamental constitutional rights,'¹ thus finds itself scattered across a variety of sources, such as statutes, precedent, European Union (EU) law, the European Convention on Human Rights (ECHR), academic treatises and parliamentary and royal customs.² In domestic courts, international treaties can influence the interpretation of UK law but not call into question its validity. The UK legal system has therefore traditionally been characterised as dualist. However, this position has been significantly eroded by the European Communities Act 1972 and the Human Rights Act (HRA) 1998, which respectively make the rights emanating from the EU and the ECHR directly enforceable in British courts. The HRA 1998, in particular, empowers courts to invalidate the decisions of public authorities and 'subordinate' legislation (created by an executive authority under the explicit mandate set out by Parliament in 'primary' legislation). Given the long-term shift of legislative power from Parliament to the cabinet of ministers, such prerogatives have greatly enhanced the supervisory role of the courts. This being said, the ECHR cannot invalidate a statutory Act or a subordinate regulation or administrative decision directly derived from it. Under the HRA 1998, domestic courts are only allowed to interpret such Acts so as to maximise their compatibility with the ECHR and, where this is not possible, to make a 'declaration of incompatibility' that enables (but does not oblige) the competent Secretary of State to make necessary changes.³ To reduce the likelihood of incompatible legislation being passed in the first place, the HRA establishes an obligation for the relevant minister to make a 'declaration of compatibility'.⁴

¹ Peter Leyland (2012), *The constitution of the United Kingdom*, Oxford: Hart, 2nd edition, p. 27.

² *Ibid.*, pp. 25-32.

³ HRA 1998, Sections 4 and 10.

⁴ HRA 1998, Section 19.

Since the coming into force of the Tribunals Courts and Enforcement Act 2007 most claims against the decision of a public authority must be lodged in generic first tier (first instance) and upper (appellate) tribunals that are independent from the departments making the decisions under review. A limited number of specialised statutory tribunals mandated to ensure compliance with specific standards of public administration also remain in place.⁵ In January 2019 the Civil Justice Council rejected government plans for a specialist housing court, arguing that delays were due to lack of resources and court bailiffs rather than lack of knowledge among judges.⁶ In England, tribunal decisions can be appealed in the Administrative Court, the Court of Appeal and finally the Supreme Court, which took over from House of Lords Appellate Committee in 2009.⁷ Claims for judicial review must meet the requirements of standing and public action. To have standing under the HRA 1998 a claimant must be a direct 'victim' of the contested measure, but in other areas of constitutional law representative organisations have frequently been allowed to bring suit. Public authorities encompass national, regional and local institutions, including lower courts. However, the boundary between public and private has been considerably blurred by the multiplication of semi-autonomous corporations and the contracting out of various public services to limited companies and charities. To determine whether an organisation falls within the scope of public law, courts have taken various and sometimes unpredictable factors into account, such as the source of the power being exercised, the statutory underpinnings of the body, the exercise of monopoly control and the reception of public funding. The main remedies available through judicial review are a quashing order, a mandatory order or a prohibitory order. Financial compensation for individual litigants is rarely available.⁸

GENERAL REGULATION OF THE RIGHT TO HOUSING

BENEFITS

The provision of housing benefits in England is mainly regulated by two pieces of secondary legislation: the Housing Benefits Regulations (HBR) 2006 and the Universal Credit Regulations (UCR) 2013. The latter instrument was adopted following the creation through the Welfare Reform Act (WRA) 2012 of Universal Credit, a social security scheme that brought together six existing means-tested benefits: Housing Benefit, income-related Employment and Support Allowance (for the disabled), income-based Jobseeker's Allowance (for the unemployed), Income Support (for unemployed parents), Child Tax Credits and Working Tax Credits. At the time of writing, Universal Credit was being rolled out across the United Kingdom, with the ultimate aim of replacing all existing social security programmes. As of

⁵ Anthony Wilfred Bradley, Keith Ewing and Christopher Knight (2015), *Constitutional & Administrative Law*, Edinburgh: Pearson, 16th edition, pp. 603-607.

⁶ John Hyde (2019), 'Civil Justice Council says no need for specialist housing court', *The Law Society Gazette* [accessed via <https://www.lawgazette.co.uk/news/civil-justice-council-says-no-need-for-specialist-housing-court/5069016.article>].

⁷ Constitutional Reform Act 2005, Part 3.

⁸ *Constitutional & Administrative Law*, op. cit., pp. 668-676.

December 2017, however, only about 10% of housing benefit was claimed through Universal Credit.⁹ This report will therefore focus on the Housing Benefit Regulations (HBR) 2006, while highlighting the main changes brought about by Universal Credit.

To claim housing benefits, a person must be liable to make payments in respect of a dwelling in Great Britain which she occupies as her home, and her income must be inferior to a legally prescribed amount.¹⁰ Let us unpack in turn each of these requirements.

A person occupies as her home the dwelling normally occupied by herself and, if applicable, her family. The determination of whether a dwelling is 'normally occupied' must take into account any other dwelling occupied by the person in the United Kingdom or abroad. Subject to limited and temporary exceptions, such as during a move, only one dwelling can be considered as occupied at any given time.¹¹ Temporary absences that are expected to last less than 13 weeks are not considered to interrupt occupation if the person intends to return to the dwelling and if the part she occupies has not been let or sub-let.¹² There are exceptional circumstances in which the maximum period of absence may extend to 52 weeks (see section on disability below). To maintain entitlement to housing benefits, the planned return must be a realistic possibility. A 24-hour occupation of the home is usually sufficient to break a period of absence.¹³

A person is considered as liable to make payments in respect of a dwelling if she is directly liable; a partner of the person who is liable; a person who has to make the payments if she is to continue to live in the home because the person liable to make them is not doing so; a person whose liability to make payments is waived by her landlord as reasonable compensation in return for repair or redecoration works actually carried (for a maximum of eight benefit weeks); or a partner of a full-time student who is treated as not liable.¹⁴ Conversely, a person is regarded as not liable to make payments if the tenancy agreement is not on a commercial basis (eg if it includes unenforceable terms). She is not considered liable if that liability is to a person who resides in the dwelling and who is a close relative of hers or of her partner; to her former partner in respect of a dwelling that they occupied before they ceased to be partners, or likewise to her partner's former partner; to a company or a trustee of a trust to which she, her partner, their close relatives or former partners is a director, an employee, a trustee or a beneficiary; a trustee of a trust of which her or her partner's child is a beneficiary. In addition, liability is not recognised if a person's occupation, or her partner's occupation, of the dwelling is a condition of employment by the landlord; if she is a member of and is wholly maintained by a religious order; if she is in residential accommodation; if, before the liability was created, she was a non-dependent of someone who resided and continues to reside in the dwelling; and if she or her partner previously owned the dwelling in respect of which the liability arises and

⁹ Steven Kennedy and Richard Keen (2018), *Universal Credit roll-out: 2018-19*, House of Commons Library Briefing Paper 8299, p. 30 [accessed via <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8299#fullreport>].

¹⁰ SSCBA 1992, Section 130(1).

¹¹ HBR 2006, regs 7(1) and (2).

¹² HBR 2006, reg 7(13).

¹³ Disability Rights UK (2018), *Disability Rights Handbook: A guide to benefits and services for all disabled people, their families, carers and advisers*, 43rd edition, p. 179.

¹⁴ HBR 2006, reg 8.

fewer than five years have elapsed since she or her partner ceased to own the property. This last provision does not apply if she or her partner prove they could not have continued to occupy the dwelling without relinquishing ownership. Liability can also be denied in any other case where the appropriate authority considers it was created to take advantage of the housing benefit scheme. Conversely, restrictions on liability to family-related companies and trusts do not apply if the appropriate authority finds that the liability was not intended to be a means of taking advantage.¹⁵ What counts as such can be open to argument.¹⁶

The payments in respect of which housing benefit is payable are those related to rent; license or permission to occupy the dwelling; mesne profits; use and occupation of the dwelling; service charges whose payment is a condition of the right to occupy the dwelling; mooring charges for a houseboat; site where a caravan or mobile home stands; contribution to an almshouse; and rental purchase agreement (for a dwelling whose purchase is deferred until a specified part of the purchase price has been paid).¹⁷ The rent can be paid to a local authority, a housing association, a co-op, a hostel, a bed and breakfast hotel, a private company or a private individual, among others.¹⁸ The following periodic payments are not recoverable through housing benefits: a long tenancy (over 21 years, created in writing), except a shared ownership tenancy granted by a housing association or authority; ownership or co-ownership schemes (where the owner who leaves would be entitled to a sum based on the value of her home); hire purchases or credit sale agreements; conditional sale agreements; and Crown tenancies (where the landlord is the Crown or a government department).¹⁹

Where the relevant authority considers that the amount of an eligible service charge is excessive having regard to the cost of comparable services, it must deduce the excess from that charge.²⁰ It must also subtract ineligible charges paid for water, sewerage or related environmental services; fuel, except in communal areas; meals; laundry (other than the provision of premises or equipment to enable a person to do her own laundry); leisure items such as sports facilities (except a children's play area), or television rental and license fees; cleaning of rooms and windows except communal areas or the exterior of any windows where neither the claimant nor any member of his household are able to clean them himself; transport; acquisition of furniture or household equipment; emergency alarm system; medical expenses; nursing or personal care; general counselling or any other support services; and any other services that are not connected with the provision of adequate accommodation.²¹ Where the authority considers that the amount of an ineligible service charge separately identified is unreasonably low having regard to the service provided, it must substitute a sum for the charge in question which it considers represents the value of the services concerned.²² Where an ineligible service charge is not separated from other payments, the appropriate authority must apportion it as is fairly attributable to the provision of the service, having regard to the cost of

¹⁵ HBR 2006, reg 9.

¹⁶ *Disability Rights Handbook*, op. cit., p. 178.

¹⁷ HBR 2006, reg 12(1).

¹⁸ *Disability Rights Handbook*, op. cit., p. 177.

¹⁹ HBR 2006, reg 12(2); *Disability Rights Handbook*, op. cit., p. 177.

²⁰ HBR 2006, Schedule 1, rule 4.

²¹ HBR 2006, regs 12(3) and (6) and Schedule 1, rules 1 and 5.

²² HBR 2006, Schedule 1, rule 3(2).

comparable services.²³ However the cost of some services is fixed in the regulations. For instance, the cost of meals for a single claimant is set at £27,90 per week for three meals a day, £18,60 for two meals a day and £3,45 for breakfast only.²⁴ The weekly cost of fuel is set at £30,30 for heating, £3,50 for hot water, £2,40 for lighting and £3.50 for cooking.²⁵ The first three amounts are cut by a half if the accommodation consists of one room only.²⁶

When the sum of the eligible payments mentioned above does not exceed a prescribed maximum rent, or when payments are made to a local authority or a registered provider of social housing (see below), the maximum amount of a person's housing benefits (her 'eligible rent') is calculated by aggregating the payments.²⁷ When the sum of eligible payments exceeds the prescribed maximum rent, a claimant's eligible rent is the maximum rent.²⁸

The maximum rent is set at a standard rate called 'local housing allowance' (LHA), set according to the location of the dwelling and the composition of the household. The LHA is determined annually by a local authority rent officer according to the broad rental market area where the dwelling is situated and the number of bedrooms the household is deemed to need.²⁹ The broad market rental area is an area within which the claimant could reasonably be expected to live, having regard to facilities and services, and including a range of accommodation and tenancy types.³⁰ The number of bedroom takes into account the number of people in the household, their relationships, ages, genders and disabilities (see section on disability below). As a general rule, one bedroom is allowed for every adult couple; any other adult aged 16 or over; two children aged under 10; two children aged under 16 of the same sex; any other child; and a non-resident carer who provides required overnight care.³¹ Each claimant is deemed to need a maximum of four bedrooms.³² Subject to specific exceptions, the LHA of single claimants aged under 35 without children is based on one bedroom in shared accommodation.³³ Single claimants aged 35 or over and all couples without children are allowed the one-bedroom rate unless they live in shared accommodation, defined as not having exclusive use of at least two rooms, or the exclusive use of one room, a bathroom and toilet and a kitchen or facilities for cooking.³⁴ LHA rates are usually based on the 30th percentile of rents for properties of the relevant size within the broad rental market area.³⁵ The underlying logic is that claimants whose contractual

²³ HBR 2006, Schedule 1, rule 3(1).

²⁴ HBR 2006, Schedule 1, rule 2.

²⁵ HBR 2006, Schedule 1, rule 6(2).

²⁶ HBR 2006, Schedule 1, rule 6(3).

²⁷ HBR 2006, regs 11(1), 12(3)(a) and (b), 13C(5).

²⁸ HBR 2006, reg 12(3)(a); *Disability Rights Handbook*, op. cit., pp. 179-180.

²⁹ HBR 2006, reg 13D(1); *Disability Rights Handbook*, op. cit., p. 181.

³⁰ The Rent Officers (Housing Benefit Functions) Order 1997, Schedule 3B, rule 2(3).

³¹ HBR 2006, reg B13.

³² HBR 2006, regs 2(1) and 13D(2)(c), 3, 3B and 12.

³³ HBR 2006, regs 2(1) and (1A-C), 13D(2)(a).

³⁴ HBR 2006, reg 13D(2)(b).

³⁵ The Rent Officers (Housing Benefit Functions) Order 1997, Schedule 3B, rule 2(3).

rent is higher than the maximum rent should have a reasonable opportunity of finding cheaper accommodation.³⁶

As mentioned above, tenants of social and council housing are not affected by the LHA. Under the so-called 'bedroom tax', however, the eligible rent of working-age tenants of a local authority or housing association who are deemed to have spare bedrooms is reduced by 14% for one spare bedroom and 25% for two or more spare bedrooms.³⁷

The actual amount of housing benefit is calculated by deducting from the eligible rent 65% of any excess income and an amount for each non-dependent sharing the accommodation.³⁸ Excess income means income over and above an applicable amount. In addition, a person can only claim housing benefit if her capital is below £16 000.³⁹ Let us examine in turn how a claimant's 'income', 'applicable amount' and 'non-dependents' are identified.

Income is calculated on a weekly basis by estimating the amount which is likely to be her average weekly income and deducting any relevant child care charges up to a maximum of £175 per week for one child and £300 per week for more than one child. Child care charges are only deducted for parents who work a minimum of 16 hours per week.⁴⁰ Income includes earnings from employment, benefits and pensions.⁴¹ For employed earners, all the of following count as earnings: bonuses and commissions, any payment in lieu of remuneration except redundancy payments, compensation for the loss of employment or unfair dismissal, holiday pay, sick pay, maternity pay, paternity pay and adoption pay from employers, statutory sick pay, statutory maternity pay, statutory paternity pay, statutory shared parental pay and statutory adoption pay.⁴² Earnings from employment exclude expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment; any payment in kind; and any occupational pension.⁴³ They also exclude income tax, national insurance contributions and half of any contribution made toward an occupational pension scheme.⁴⁴ Earnings from self-employment are the net profit derived from employment, excluding income tax, national insurance contributions, half of the qualifying premium payable in respect of a personal pension scheme and any expenses wholly and exclusively incurred for the purposes of employment.⁴⁵ However, no deduction is made for capital expenditure; the depreciation of any capital asset; any sum employed or intended to be employed in the setting up or expansion of the employment; any loss incurred before the beginning of the assessment period; the repayment of capital on any loan taken out for the purposes of the employment; any expenses incurred in providing business entertainment; and any debts. A deduction is made in respect of the repayment of capital on any loan used for the replacement in the course of business of equipment or machinery or the repair

³⁶ *Disability Rights Handbook*, op. cit., p. 180.

³⁷ HBR 2006, reg B13.

³⁸ HBR 2006, regs 70-71.

³⁹ HBR 2006, reg 43.

⁴⁰ HBR 2006, reg 27.

⁴¹ *Disability Rights Handbook*, op. cit., p. 144.

⁴² HBR 2006, reg 35(1).

⁴³ HBR 2006, reg 35(2).

⁴⁴ HBR 2006, reg 36(3).

⁴⁵ HBR 2006, reg 38(2).

of an existing business asset (unless this is covered by an insurance policy) when the relevant authority is satisfied that the expense has been reasonably incurred.⁴⁶ Earnings of £17,10 a week are disregarded for those who are aged over 25 and work at least 30 hours a week or work at least 16 hours a week and are responsible for a child or young person.⁴⁷

Most benefits are fully taken into account as income, but some are completely or partly disregarded (see section on disability for some examples). Working tax credits and child tax credits are also fully taken into account,⁴⁸ whereas £15 a week is disregarded from maintenance payments to a claimant who is responsible for a child or young person.⁴⁹ Charitable or voluntary payments, made without anything being given in return, are usually disregarded, as are education maintenance allowances.⁵⁰

The applicable amount is a figure intended to reflect the weekly living needs of the claimant and her family. It is made up of a number of personal allowance for the claimant's family members and various 'premiums' or 'additional components' based on childcare responsibilities or disabilities (see below).⁵¹ Family members include the claimant, her partner (spouse or civil partner living in the same household, as well as an unmarried partner living in the same household) and dependent children or young people who are members of the household and under the age of 16 (or 20 if they are in full-time, non-advanced education or approved, unwaged training). The definition of a dependent child includes a natural or adopted child and other children (e.g. grandchildren) the claimant is responsible for. However foster children are not usually included.⁵² The personal allowance for a single person (including a lone parent) aged 25 or over is £73,10, reduced to £57,90 if she is aged between 16 and 24. For a couple aged 18 or over it is £114,85, reduced to £87,50 if both are under 18. A dependent child allowance is £66,90.⁵³ More advantageous rules apply to the determination of the applicable amount for pensioners.⁵⁴

Non-dependents are persons who normally live in the dwelling of the claimant on a non-commercial basis – usually an adult son, daughter, friend or relative. It is assumed that they will contribute toward the rent, whether they do or not.⁵⁵ Non-dependents do not include members of the family as defined above, foster or adopted children, a person with whom the claimant only shares a bathroom, toilet or communal area, a joint occupier, tenant or sub-tenant or resident landlord and their partner, or carers provided by a charity organisation that charges the claimant for the service.⁵⁶ In addition, there is no deduction for non-dependents aged under 18, aged under 25 and receiving

⁴⁶ HBR 2006, reg 38(5).

⁴⁷ HBR 2006, Schedule 4, rule 17.

⁴⁸ HBR 2006, reg 40(6).

⁴⁹ HBR 2006, Schedule 5, rule 47.

⁵⁰ HBR 2006, Schedule 5, rules 2 and 11. The full list of payments which are not considered part of a claimant's income is found in the Schedule. Education maintenance allowances were abolished in England in 2010.

⁵¹ HBR 2006, reg 22.

⁵² HBR 2006, regs 19-21; *Disability Rights Handbook*, op. cit., p. 189.

⁵³ HBR 2006, Schedule 3, Part 1.

⁵⁴ *Disability Rights Handbook*, op. cit., p. 190.

⁵⁵ HBR 2006, reg 3; *Disability Rights Handbook*, op. cit., pp. 187-188.

⁵⁶ HBR 2006, reg 3.

other means-tested benefits, and full-time students, among others.⁵⁷ The amount of deductions for other non-dependents is inversely proportional to their income: £15,25 for non-dependents aged 25 or over whose weekly gross income is under £139, who are not in remunerative work or receive means-tested benefits (unless they are on pension credit, in which case there is no deduction); £35,00 for those whose weekly gross income is between £139 and £203,99; £48,02 between £204 and £264,99; £78,65 between £265 and £353,99; 89,55 between £354 and £438,99; and £98,30 for a weekly gross income of £439 or more.⁵⁸ Remunerative work means work that averages more than 16 hours a week and excludes those on maternity, paternity, shared parental, adoption or sick leave.⁵⁹ Gross weekly income assesses earnings before tax, national insurance and other deductions.⁶⁰ When a non-dependent is also the non-dependent of a joint occupier, the deduction is shared between the claimant and the joint occupier.⁶¹

Subject to specific exceptions for certain categories of claimants, if the sum of the housing benefit and other 'relevant' benefits exceeds a benefit cap, the housing benefit is reduced until the claimant's income equals the cap unless the claimant lives in social or county housing. The relevant benefits include all means-tested benefits as well as some additional ones, such as the bereavement allowance, the maternity allowance, the widowed mother's allowance, the widowed parent's allowance and the widow's pension. The weekly amount of the cap is £442,31 for couples (with or without children) and single parents in Greater London; £296,35 for single people in Greater London; £384,62 for couples (with or without children) and single parents outside Greater London; and £257,69 for single people outside Greater London.⁶²

In the case of a couple, a housing benefit claim can be made by whichever member of the couple agrees should so claim and, in default of agreement, by whom the local authority determines.⁶³ The claim must be made in writing on a properly completed official form or any other form the local authority may accept as sufficient.⁶⁴ The form must be provided free of charge.⁶⁵ Where the local authority has published a telephone number for the purpose of receiving claims for housing benefit, a claim may be made by phone.⁶⁶ Some local authorities have also introduced email or online claiming.⁶⁷

If a housing benefit claim is made within one month of a successful claim for another means-tested benefit, the housing benefit starts from the same date as the means-tested benefit. If a claimant notifies the local authority of her intention to claim housing benefit and submits the claim form within one month (or such longer time as the authority thinks is reasonable), the benefit starts on the date of notification. If a claimant has separated from a partner who claimed housing benefit, or if the partner

⁵⁷ HBR 2006, reg 74(7), (8) and (10).

⁵⁸ HBR 2006, reg 74(2).

⁵⁹ HBR 2006, reg 6.

⁶⁰ HBR 2006, reg 74(9).

⁶¹ HBR 2006, reg 75(5).

⁶² HBR 2006, regs 75C(2)(a), 75G and 75H.

⁶³ HBR 2006, reg 82(1).

⁶⁴ HBR 2006, reg 83(1).

⁶⁵ HBR 2006, reg 83(2).

⁶⁶ HBR 2006, reg 83(4A).

⁶⁷ *Disability Rights Handbook*, op. cit., p. 184.

has died, the benefit starts on date of the separation or death if it is claimed within one month. In all other cases, the benefit starts on the day the claim form is received by the benefit office.⁶⁸ However a housing benefit can be backdated for up to one month if the claimant can show good cause for the delay in claiming.⁶⁹

A person who makes a claim must furnish such certificates, documents, information and evidence in connection with the claim as may reasonably be required by the local authority in order to determine her entitlement to housing benefit. She must do so within one month of the authority requiring it or such longer period as the authority may consider reasonable.⁷⁰ When such a request is made, the local authority must inform the claimant of her duty to notify a designated office of relevant changes of circumstances (see below).⁷¹ A claim made on an approved form is considered properly completed if completed in accordance with the instructions on the form, including any instructions to provide information and evidence.⁷² If a claim received by a local authority is defective because it was made on the wrong form or not properly completed, the authority may request the claimant complete the defective claim, supply her with the approved form or request further information or evidence.⁷³ It may treat a defective claim as if it had been validly made in the first instance if the claim is corrected within one month of the request.⁷⁴

The local authority must make a decision on each claim within 14 days of receiving a completed claim or as soon as reasonably practicable thereafter.⁷⁵ It shall notify in writing any person affected by a decision on a claim forthwith or as soon as reasonably practicable.⁷⁶ Every notification must include a statement explaining, where relevant, the claimant's eligible rent; any deduction of fuel costs; the applicable amount; the claimant's weekly earnings and income other than earnings; the amount and category of non-dependent deductions; the normal weekly amount of rent allowance or rebate to which the claimant is entitled; the day of payment and the period in respect of which it is made; the first day of entitlement; and the duty to notify changes of circumstances.⁷⁷

A local authority must pay housing benefit to which a person is entitled at such time and in such manner as is appropriate having regard to the times at which and the frequency with which a person's liability to make payment of rent arises, as well as her reasonable needs and convenience.⁷⁸ The first payment must be made within 14 days of the receipt of the claim at the designated office or as soon as possible thereafter.⁷⁹ The payment must be either the correct amount or, if it is not yet known, an estimated amount (a 'payment on account') that will be adjusted when the correct amount

⁶⁸ HBR 2006, reg 83(5).

⁶⁹ HBR 2006, reg 83(12) and (12A).

⁷⁰ HBR 2006, reg 86(1).

⁷¹ HBR 2006, reg 86(3).

⁷² HBR 2006, reg 83(9).

⁷³ HBR 2006, reg 83(7).

⁷⁴ HBR 2006, reg 83(8).

⁷⁵ HBR 2006, reg 89.

⁷⁶ HBR 2006, reg 90(1).

⁷⁷ HBR 2006, Schedule 9, rules 9-14.

⁷⁸ HBR 2006, reg 91(1).

⁷⁹ HBR 2006, reg 91(3).

is known. Authorities do not have to make a payment on account to claimants who have failed to give them the information and documents they have asked for, unless the claimant shows the failure was reasonable or outside their control.⁸⁰ Payments are usually made to the claimant's bank account or, alternatively, by cheque. For claimants who pay rent to the local authority, the benefit takes the form of a rebate on the rent.⁸¹ Payments are made directly to the landlord if the claimant requests or consents to it; if it is in her or her family's best interests; she has left the dwelling with rent arrears; or she has at least 8 weeks of rent arrears. The authority can also choose to make the first housing benefit payment directly to the landlord without the claimant's consent if it considers it appropriate.⁸²

Entitlement to housing benefits normally starts on the Monday following the date on which the completed claim was made⁸³ and ceases at the end of the benefit week in which a change in circumstances means the claimant no longer qualifies.⁸⁴ Claimants have a duty to notify in writing or any other means accepted by the local authority at any time between the making of a claim and a decision made on it, or during the award of the benefit, there is a change of circumstances which the claimant might reasonably be expected to know might affect her right to the amount or the receipt of housing benefit.⁸⁵ This duty does not extend to changes in the amount of rent payable to a housing authority, the content of the HBR or the age of a claimant, her family members or her non-dependents.⁸⁶ However a claimant is required to notify the authority of any change in the composition of her family when a person ceases to be a child or young person.⁸⁷

A person to whom an authority sends or delivers a notification of decision affecting her may, by notice in writing within one month of the date of the notification, request the authority to provide a written statement setting out the reasons for the decision.⁸⁸ This statement must be sent to the claimant within 14 day or as soon as reasonably practicable.⁸⁹ Alternatively or in addition to this procedure, a claimant can appeal to a Social Security and Child Support First-tier tribunal. However, there is no right of appeal to a tribunal about most administrative decisions on housing benefit claims and payments (except about when the benefit should begin) and the level of the LHA.⁹⁰

The main changes introduced to housing benefits by Universal Credit are that the 'shared accommodation rate' that restricts the LHA is only applicable to single childless claimants under 35 and flat-rate deductions are applied in respect of non-dependents rather than variable deductions adjusted based on their gross income.⁹¹ While the first modification can be understood as rewarding

⁸⁰ HBR 2006, reg 93.

⁸¹ *Disability Rights Handbook*, op. cit., p. 184.

⁸² HBR 2006, regs 95-96(1) and (2).

⁸³ HBR 2006, reg 76(1).

⁸⁴ HBR 2006, reg 77.

⁸⁵ HBR 2006, reg 88(1).

⁸⁶ HBR 2006, reg 88(3).

⁸⁷ HBR 2006, reg 88(4).

⁸⁸ HBR 2006, reg 90(2).

⁸⁹ HBR 2006, reg 90(4).

⁹⁰ Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001, reg 16 and Schedule.

⁹¹ N/A, Explanatory memorandum to the Universal Credit Regulations 2013, p. 6 [accessed via https://www.legislation.gov.uk/ukdsi/2013/9780111531938/pdfs/ukdsiem_9780111531938_en.pdf]

claimants who choose shared rather than independent accommodation, the second can be viewed as a work incentive for the non-dependents who live with them. An exemption from the benefit cap for claimants in receipt of the means-tested working tax credit is also replaced with a minimum earnings threshold based on 16 hours work at the National Minimum Wage.⁹² Another significant procedural change is that the housing component of Universal Credit is normally paid to claimants who rent their home rather than directly to landlords.⁹³

Under Universal Credit, all claimants are also allocated to one of four work-related conditionality groups: no work-related requirements (where they exceed a specified level of earnings or are unable to meet any work-related requirements); work-focused interviews only (where they are expected to stay in touch with the labour market and begin thinking about a move into work, more work, or better paid work); work preparation (where claimants who have limited capability for work are expected to prepare to move into work, more work or better paid work by participating in work placements, training and skills assessment); and all work-related requirements (where claimants are expected to move into work, more work or better paid work, for instance through job search and job availability). The applicable legislation is intended to provide for flexibility in how work requirements are applied, for instance by leaving open the frequency of work-focused interviews.⁹⁴ Failure to comply with work-related requirements are punishable with four levels of sanctions, or withdrawal of benefit, according to the claimant's conditionality group and type of compliance failure. Higher-level sanctions may be imposed on claimants who are subject to all work-related requirements due to unjustified failure to undertake mandatory work activity, apply for a particular vacancy, take up an offer of paid work or losing paid work or pay by reason of misconduct or voluntarily. These sanctions last 91 days for a first failure, 182 days for a second failure and three years for a third or subsequent failure committed within 365 days or a previous failure that resulted in a 182-day or 3-year sanction. Medium-level sanctions may be imposed on claimants subject to all work-related requirements who unjustifiably fail to take all reasonable work search action and who fail to demonstrate they are able and willing to take up work immediately (or more paid work or better paid work). They last 28 days for a first failure or 91 days for a second and subsequent failure within 365 days of the previous failure. Low-level sanctions may be imposed on claimants in the work preparation conditionality group as well as those subject to all work-related requirements for failure to comply with a requirement to search for work or to come for an interview or provide information. They continue until a compliance condition is met, consisting in meeting the original requirement or an alternative agreed with an adviser. Once the compliance condition is met, there is an additional fixed period of seven days for a first failure, 14 days for a second failure at the same level within 365 days and 28 days for a third or subsequent failure within 365 days of a previous failure which resulted in a 14 or 28-day sanction. Lowest-level sanctions apply to claimants subject to work-focused interview requirements only and are open-ended until the claimant meets the compliance condition. Claimants subject to higher, medium and low-level sanctions are sanctioned an amount equivalent to 100% of their Universal Credit allowance. Claimants subject to lowest level sanctions are sanctioned an amount equivalent to 40% of their standard allowance. A sanction may be reduced if a claimant moves to the no work-related

⁹² Ibid., p. 10.

⁹³ HM Government (2019), 'Renting from a private landlord' [accessed via <https://www.gov.uk/housing-and-universal-credit/renting-from-private-landlord>].

⁹⁴ Ibid., p. 10.

requirements group, to 40% if they have responsibility for children or nil if they have limited capability for work and work-related activity. Lower sanctions apply for 16-17-year olds.⁹⁵

Claimants subject to a sanction can apply for hardship payments provided they meet a number of conditions, including that they have complied with their labour market conditions and can show their household is unable to meet their immediate basic and essential accommodation, food, heating or hygiene needs. Payments are recoverable from future non-sanctioned benefit payments. Recovery of payments ceases where the claimant has been in paid work with an income at or above the level reasonably expected of them for a period of 26 weeks. A hardship payment is paid at a daily rate of 60% of the sanction reduction from the date the claimant meets the conditions to be in hardship to the day before their next Universal Credit payment. A claimant must regularly re-apply for a hardship payment to demonstrate their continuing need for support, and that they are making reasonable efforts to reduce non-essential costs and seeking any alternative sources of support.⁹⁶

EMERGENCY HOUSING ASSISTANCE

In addition to benefits, housing rights are protected by the Housing Act 1996 which places on local authorities various duties toward persons who are homeless or threatened with homelessness. Under section 175 of the Act, a person is homeless if she has no accommodation available for her occupation and which she has a legal right to occupy. A person who has accommodation is to be treated as homeless where it would not be reasonable for her to continue to occupy that accommodation. Accommodation is available for a person's occupation if it can be occupied by herself and her household, defined as any other person who normally resides with her as a member of the family or might reasonably be expected to do so. A person is threatened with homelessness if she is likely to become homeless within 56 days.⁹⁷

Local authorities have prevention, relief and accommodation duties. The prevention duty⁹⁸ consists in working with persons who are threatened with homelessness to prevent them from becoming homeless. The housing authority must take reasonable steps to help the applicant either remain in her existing accommodation or secure alternative accommodation.⁹⁹ The reasonable steps must be set out in a personalised housing plan, jointly agreed by the local authority and the applicant, including an assessment of the circumstances that caused the applicant to become homeless or threatened with homelessness; her housing needs; what support would be necessary for her to have and retain suitable accommodation; and any steps the applicant and the authority should take with

⁹⁵ Ibid., pp. 10-12.

⁹⁶ Ibid., p. 12.

⁹⁷ Ministry of Housing, Communities & Local Government (2018), *Homelessness Code of Guidance for Local Authorities*, p. 42 [accessed via https://assets.publishing.service.gov.uk/media/5a969da940f0b67aa5087b93/Homelessness_Code_of_Guidance.pdf].

⁹⁸ HA 1996, Section 195.

⁹⁹ HA 1996, Section 195.

this purpose.¹⁰⁰ The relief duty¹⁰¹ requires housing authorities to help a homeless person to secure accommodation. The housing authority must take reasonable steps to help the applicant secure suitable accommodation with a reasonable prospect that it will be available for her occupation for at least six months. The reasonable steps to be taken by the housing authority and the applicant to secure accommodation must be set out in the personalised housing plan.¹⁰² The interim accommodation duty¹⁰³ obliges local housing authorities to secure suitable accommodation for an applicant who appears to be homeless, eligible and have priority needs while her circumstances are being assessed. The duty to secure accommodation¹⁰⁴ ('main duty') consists in securing accommodation that is available for the applicant and her household. The duty to provide accommodation to applicants who are 'intentionally homeless'¹⁰⁵ means that housing authorities must secure accommodation for a period that will provide the applicant with a reasonable opportunity to find accommodation. In determining this period authorities must consider the circumstances of each case. There are residual accommodation duties applying in specific cases. All emergency accommodation must be suitable for the applicant and her household.¹⁰⁶

In addition to being homeless or threatened with homelessness, recipients of emergency housing assistance must comply with various eligibility criteria. To benefit from the duty to accommodate beyond interim accommodation, they must also have priority needs. Further details on eligibility and priority needs will be addressed in the sections on the rights of disabled persons and refugees.

The prevention duty ends when the applicant becomes homeless. The relief duty ends when 56 days have passed and the applicant has a priority need and is unintentionally homeless. Prevention and relief duties both end when 1) the applicant has suitable accommodation available for occupation and a reasonable prospect that it will be available for at least six months; 2) the applicant has refused an offer of suitable accommodation; 3) the applicant has become intentionally homeless from any accommodation that has been made available to her; 4) the applicant is no longer eligible for assistance; 5) the applicant has withdrawn her application for assistance; 5) the applicant deliberately and unreasonably refuses to co-operate.¹⁰⁷ The main accommodation duty ends when 1) the applicant accepts a suitable offer of social housing; 2) she accepts an offer of assured tenancy from a private landlord; 3) she accepts or refuses an offer of assured shorthold tenancy of at least 12 months made by a private landlord; 4) she refuses a final offer of social housing; 5) she refuses a suitable offer of temporary accommodation. The main accommodation duty also ends if the applicant ceases to be eligible for assistance, becomes homeless intentionally from the accommodation made available by the housing authority or voluntarily ceases to occupy it as her principal home.¹⁰⁸

¹⁰⁰ HA 1989, Section 189A.

¹⁰¹ HA 1996, Section 189B.

¹⁰² *Homelessness Code of Guidance*, op. cit., p. 95.

¹⁰³ HA 1996, Section 188.

¹⁰⁴ HA 1996, Section 193(2).

¹⁰⁵ HA 1996, Section 190(2).

¹⁰⁶ HA 1996, Section 206(1).

¹⁰⁷ *Homelessness Code of Guidance*, op. cit., pp. 98-103.

¹⁰⁸ *Ibid.*, p. 116.

EVICTION OF SQUATTERS

Until 2012, trespassing (or entering into a private property without authority) was a civil but not a criminal offence. Part 55 of the Civil Procedure Rules, which remains in force, establishes that landowners who wish to pursue procedures against trespassers need only prove their title and intention to regain possession. A special procedure used by most landlords, available when occupancy rights are not in dispute, dispenses them from identifying the occupiers. A summons may be served to the trespasser personally or by fixing it to the door, stating the owner's interest in the property and that it has been occupied without her consent. A minimum of five days must then elapse before the court hearing. If the court finds that the occupiers are trespassers it is obliged to make an order for possession specifying a date for the trespasser to leave (usually 14 days). Landlords may need to enforce eviction by resorting to court bailiffs. If occupiers wish to claim a right of occupation, the burden of proof lies with them. Under these procedures the court can make a cost order against an occupier but not award any damages to a landlord.¹⁰⁹

Under the Criminal Justice and Public Order Act 1994, a speedier repossession procedure is available to owners within 28 days of knowing, or reasonably having to know, about the unlawful occupancy. They must first serve a 48-hour notice of intention to commence proceedings before applying to the county court for an Interim Possession Order (IPO). The occupier may make written representations to the court. The hearing date must be set at least three days after the IPO application. If an order is granted it must be served to the occupier within 48 hours. The occupier has 24 hours to leave the premises. To protect lawful occupiers, Section 75 of the Act makes it an offence to make a false or misleading statement in order to obtain an IPO. Section 76 makes it a criminal offence for a person who is the subject of an interim order to fail to leave the premises within 24 hours or to re-enter within one year. The maximum penalty for failing to leave or re-occupying is six months' imprisonment. If squatters refuse to leave the landlord may ask the police to arrest them.¹¹⁰

In addition to these procedures, Section 7 of the the Criminal Law Act 1977 made it an offence for a trespasser to fail to leave premises if asked to do so by a displaced residential occupier or a protected intending occupier (i.e. a person who has been designated to occupy a property by a local authority or housing association, or those who find that a property that they have just bought has been occupied while the sale was being transacted). A protected intending occupier must produce statements proving her status and may ask the police to remove the trespassers. Section 10 also makes it an offence to resist or intentionally obstruct a court officer executing a possession order.¹¹¹

Section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 created a self-standing offence of squatting in residential buildings. The offence is committed if a person enters the building as trespasser and lives or intends to live there for a period of time. The person must know or ought to have known that she is a trespasser. A residential building includes any structure designed or adapted for use as a place to live. The offence does not apply to tenants who fall behind with rent

¹⁰⁹ Wendy Wilson (2017), *Evicting squatters*, House of Commons Library Briefing Paper 00355, pp. 5-6 [accessed via <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN00355>].

¹¹⁰ *Ibid.*, pp. 6-7.

¹¹¹ *Ibid.*, p. 8.

payments or who refuse to leave at the end of their tenancy. The penalty is imprisonment for a term of up to 51 weeks or a fine not exceeding Level 5 on the standard scale, or both.¹¹²

Under the law of adverse possession, a squatter can claim title over land by occupying it for a prescribed period of time. No action may be brought by the owner for the recovery of land after this period. This reflects the principle that owners who unreasonably delay their property claims should not be assisted by the courts. Where adverse possession is used to gain ownership of land, occupiers have to show either a discontinuance by the owner followed by possession or a dispossession of the owner. Schedule 6 of the Land Registration Act 2002 created new rules in relation to registered land that conferred greater protection to owners against the acquisition of title through adverse possession. Until then, squatters acquired title automatically after 12 years of adverse possession. The 2002 rules reduced this period to 10 years but obliged squatters to notify the owner and give her the opportunity to object. If she does object the application is rejected but the owner must evict the squatter within two years. Failure to do so gives the latter the right to be registered as the proprietor.¹¹³

RELEVANT ANTI-DISCRIMINATION PROVISIONS

The Equality Act (EA) 2010 prohibits direct discrimination, indirect discrimination, harassment and victimisation. A person directly discriminates against another person if, because of a protected characteristic, she treats her less favourably than she treats or would treat others.¹¹⁴ A person indirectly discriminates against another if she applies a provision, criterion or practice that is also applied to persons who do not share the protected characteristic but puts or would put persons sharing the characteristics at a particular disadvantage and is not a proportionate means of achieving a legitimate aim.¹¹⁵ A person harasses another if she engages in unwanted conduct related to a relevant protected characteristic that has the purpose or effect of violating the person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.¹¹⁶ A person victimises another if she subjects her to a detriment because she brings proceedings under the EA 2010, gives evidence or information in connection with proceedings under the Act, does any other thing in connection with the Act or makes an allegation that someone has contravened the Act.¹¹⁷

Where a person reasonably thinks that those who share a protected characteristic suffer a disadvantage connected to the characteristic, have different needs or disproportionately low rates of participation in an activity, Section 158 allows her to take any proportionate action to meet those needs to enable or encourage persons who share the protected characteristic to overcome or minimise their disadvantage or participate in the activity.

¹¹² *Ibid.*, p. 9.

¹¹³ *Ibid.*, pp. 21-22.

¹¹⁴ EA 2010, Sections 13(1) and (3).

¹¹⁵ EA 2010, Section 19.

¹¹⁶ EA 2010, Section 26.

¹¹⁷ EA 2010, Section 27.

Section 29 specifically prohibits the following forms of discrimination, harassment and victimisation by providers of services to the public or a section of the public, for payment or not: 1) not providing the person with the service; and 2) discriminating against a person as to the terms of service provision, by terminating service provision or by any other detriment. It also imposes a duty on service providers and persons who exercise a public function to make reasonable adjustments. Public authorities or other persons who exercise public functions must have due regard to eliminating discrimination, harassment, victimisation and any other discriminatory conduct, advancing equality of opportunity and fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.¹¹⁸

Section 33 makes it unlawful for a person who has the authority to dispose of premises to discriminate against or victimise another, including by offering the premises to her on less favourable terms, not letting or selling the premises to her or treating her less favourably. Section 34 prohibits a person whose permission is needed to dispose of premises from discriminating against or victimising another by withholding that permission. Section 35 makes it unlawful for a person who manages premises to discriminate against or victimise another who occupies the property in the way she allows her to use a benefit or facility associated with the property, by evicting her or by otherwise treating her unfavourably. All three provisions also include a prohibition against harassment of those who occupy or apply for premises.

Schedule 5 sets out two exceptions to the prohibition of discrimination and harassment. The first applies when a person who owns and lives in a property disposes of all or part of it privately without using the services of an estate agent or publishing an advertisement. The second applies to the disposal, management or occupation of part of a small premises where a person engages in discriminatory conduct toward another who is not part of her household but with whom she shares facilities. Premises are 'small' if 1) the only other persons occupying the accommodation occupied by the resident are members of the same household; 2) the premises also include accommodation for at least one other household; 3) the accommodation for each of those other households is let or available for letting on a separate tenancy or similar agreement; and 4) the premises are not normally sufficient to accommodate more than two other households. They are also considered small if they are not normally sufficient to provide residential accommodation for more than six persons in addition to the discriminating resident and members of her household.

Discrimination claims can be brought in county courts within six months after the act to which they relate, or such other period as the court thinks just and equitable.¹¹⁹ County courts have the power to grant any remedy that could be granted by the High Court in proceedings in tort or on a claim for judicial review.¹²⁰ If there are facts from which the court could decide, in the absence of any other explanation, that discrimination has occurred, the court must hold that the provision concerned has been contravened unless the defendant proves the contrary.¹²¹

¹¹⁸ EA 2010, Section 149.

¹¹⁹ EA 2010, Sections 114 and 118.

¹²⁰ EA 2010, Section 119.

¹²¹ EA 2010, Section 136(1)(2)(3).

SPECIFIC PROVISIONS FOR DISABLED PERSONS

Various definitions of disability, tailored to different purposes, coexist in UK housing law. This section will briefly address four. The first is set out in the EA 2010 and is designed to address discrimination. The second, found in the Social Security Contributions and Benefits Act (SSCBA) 1992, aims to provide help toward the extra costs of bringing up a disabled child.¹²² The third, incorporated in the Welfare Reform Act (WRA) 2012, was developed for people who need help taking part in everyday life or who find it difficult to get around.¹²³ The fourth, which forms part of the Universal Credit Regulations (UCR) 2013, aims to support adults with limited ability to undertake paid work.¹²⁴

Section 6(1) of the EA 2010 states that a person has a disability if she has a physical or mental impairment that has a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. Statutory guidance lists the following types of impairments from which a disability can arise: sensory impairments affecting sight or hearing; impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis, chronic fatigue syndrome, fibromyalgia, depression and epilepsy; progressive impairments such as motor neurone disease, muscular dystrophy, and forms of dementia; auto-immune conditions such as systemic lupus erythematosus; organ specific, including respiratory conditions such as asthma, and cardiovascular diseases, including thrombosis, stroke and heart disease; developmental, such as autistic spectrum disorders, dyslexia and dyspraxia; learning disabilities; mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias, or unshared perceptions; eating disorders; bipolar affective disorders; obsessive compulsive disorders; personality disorders; post-traumatic stress disorder, and some self-harming behaviour; mental illnesses such as depression and schizophrenia; impairments produced by injury to the body, including to the brain.¹²⁵ HIV, cancer and multiple sclerosis are also considered as disabilities. A person who is certified as blind, severely sight impaired, sight impaired or partially sight impaired by a consultant ophthalmologist is deemed to have a disability without having to show the effects of the impairment.¹²⁶ Unless it was originally the result of the administration of prescribed drugs or other medical treatment, addiction to alcohol, nicotine or any other substance is not treated as an impairment.¹²⁷ Neither are the tendencies to set fires, steal, physically or sexually abuse other persons, exhibitionism and voyeurism. Allergic rhinitis only qualifies as an impairment if it aggravates the effect of any other condition.¹²⁸ Severe disfigurement cannot be treated as having a substantial adverse effect on day-to-day activities if it consists of a tattoo or non-medical piercing.¹²⁹ For other types of severe disfigurement, substantial adverse effects need not be demonstrated. The severity of

¹²² *Disability Rights Handbook*, op. cit., p. 16.

¹²³ *Ibid.*, p. 30.

¹²⁴ *Ibid.*, p. 68.

¹²⁵ Office for Disability Issues (2010), *Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability*, pp. 8-9 [accessed via https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf].

¹²⁶ *Ibid.*, p. 11 and EA 2010 (Disability) Regulations 2010, reg 7.

¹²⁷ EA 2010 (Disability) Regulations 2010, reg 3.

¹²⁸ EA 2010 (Disability) Regulations 2010, reg 4.

¹²⁹ EA 2010 (Disability) Regulations 2010, reg 5.

disfigurements such as scars, birthmarks, deformation or skin diseases must be assessed through factors such as the nature, size, prominence and location of the disfigurement.¹³⁰

Substantial effect can be determined by considering the time taken to carry out an activity, the way in which it is carried out and the number of activities affected by the impairment, the possibility of behavioural adaptation to the impairment and the effects of the environment. Except in the cases of spectacles or contact lenses, impairments that are subject to treatment or correction must be treated as having a substantial adverse effect if they would have that effect without the treatment.¹³¹ Progressive conditions such as dementia and motor neurone disease must be treated as having a substantial adverse effect from the moment they have some adverse effect, provided it is likely to become substantial.¹³² A long-term effect is one that has lasted or is likely to last at least 12 months.¹³³

For the purposes of the Act, day-to-day activities are understood as things people do on a regular or daily basis such as shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.¹³⁴ Where a child under six years of age has an impairment that does not have a substantial and long-term adverse effect on the ability of that child to carry out normal day-to-day activities, she is deemed disabled where it would normally have that effect on a person aged six years or over.¹³⁵

Under Section 15(1) and (2) of the EA 2010, a person discriminates against a disabled person if she treats her unfavourably because of something that is a consequence of her disability and cannot show that the treatment is a proportionate means of achieving a legitimate aim. There is an exception if the former did not know, and could not reasonably be expected to know, that the person had the disability. A person also discriminates on the grounds of disability if she fails to comply with the duty to make reasonable adjustments. The duty comprises three requirements: 1) where a provision, criterion or practice puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take reasonable steps to avoid the disadvantage;¹³⁶ 2) where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take reasonable steps to avoid the disadvantage;¹³⁷ 3) where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with

¹³⁰ *Equality Act 2010: Guidance*, op. cit., p. 26.

¹³¹ *Ibid.*, p. 21.

¹³² *Ibid.*, op. cit., p. 23.

¹³³ EA 2010, Schedule 1, rule 2.

¹³⁴ *Ibid.*, op. cit., p. 34.

¹³⁵ EA 2010 (Disability) Regulations 2010, reg 6.

¹³⁶ EA 2010, Section 20(3).

¹³⁷ EA 2010, Section 20(4).

persons who are not disabled, to take reasonable steps to provide the auxiliary aid.¹³⁸ Where the first or third requirement relates to the provision of information, the steps include ensuring that the information is provided in an accessible format.¹³⁹ A person is not entitled to require a disabled person in relation to whom she is required to comply with the duty to pay the costs of complying.¹⁴⁰ In relation to the second requirement, avoiding a substantial disadvantage includes removing the physical feature in question, altering it or providing a reasonable means of avoiding it.¹⁴¹ A physical feature can be a feature arising from the design or construction of a building; a feature of an approach to, exit from or access to a building; a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises; or any other physical element or quality.¹⁴²

In Section 71 of the SSCBA 1992, disability is divided into a care and a mobility component. A person is entitled to the care component of a disability living allowance if at least one of the three following conditions apply. The first condition is that she is so severely disabled physically or mentally that she requires in connection with her bodily functions attention from another person for a significant portion of the day, or cannot prepare a cooked main meal for herself if she has the ingredients. The second condition is that she is so severely disabled physically or mentally that, throughout the day, she requires from another person frequent attention in connection with her bodily functions, or continual supervision in order to avoid substantial danger to herself or other. The third condition is that she is so severely disabled physically or mentally that, at night, she requires from another person prolonged or repeated attention in connection with her bodily functions, or she requires in order to avoid substantial danger to herself or others another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over her.¹⁴³ A person is entitled to the mobility component of a disability living allowance if she is suffering from physical disability such that she is either unable to walk or virtually unable to do so; she is able to walk but is so severely disabled physically or mentally that she cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time; she is both blind and deaf; or she is severely mentally impaired, displays severe behavioural problems and requires usually frequent guidance supervision during the day and the night.¹⁴⁴

In Sections 78-79 WRA 2012, disability is defined as a limitation with respect to a daily living and a mobility component. Daily living activities comprise preparing food, taking nutrition, managing therapy or monitoring a health condition, washing and bathing, managing toilet needs or incontinence, dressing and undressing, communicating verbally, reading and understanding signs, symbols and words, engaging with other people face to face and making budgeting decisions. Mobility activities consist in planning and following journeys (long distances) and moving around (distances of up to 200 metres).¹⁴⁵

¹³⁸ EA 2010, Section 20(5).

¹³⁹ EA 2010, Section 20(6).

¹⁴⁰ EA 2010, Section 20(7).

¹⁴¹ EA 2010, Section 20(9).

¹⁴² EA 2010, Section 20(10).

¹⁴³ SSCBA 1992, Section 72(1).

¹⁴⁴ SSCBA 1992, Section 73(1)-(4).

¹⁴⁵ The Social Security (Personal Independence Payment) Regulations 2013, Schedule 1, Parts 3-4.

In Schedule 6 of the UCR 2013, a person is treated as having limited capability for work if she has significant difficulties carrying out the following physical and mental tasks: moving unaided by another person with or without a walking stick, manual wheelchair or other aid; standing and sitting; reaching; picking up and moving or transferring by the use of the upper body and arms; manual dexterity; making herself understood through speaking, writing, typing, or other means; understanding verbal and/or non-verbal communication; navigating and maintaining safety; control of bowel and/or bladder; consciousness during waking moments; learning tasks; awareness of everyday hazards; initiating and completing personal action; coping with change; getting about; coping with social engagement; and behaving appropriately. Most of the physical activities specified expect the person to use normally available aids. Persons who, inter alia, receive certain medical treatments, pose a risk to self or others or suffer from a life-threatening illness are deemed to have limited capability for work.¹⁴⁶ Additional criteria apply for the determination of limited capability for work and work-related activity.¹⁴⁷

Section 36 of the EA 2010 imposes a duty to make reasonable adjustments on those who let premises, commonhold associations, and those who are responsible for the common parts of let or commonhold premises. Common parts of premises are defined as the structure and exterior of, and any common facilities within or used in connection with, the building that includes the premises. Schedule 4 of the Act explains that the duty does not require the removal or alteration of a physical feature and makes clear what are not 'physical features' for these purposes. The duty only applies if a request for an adjustment is made by or on behalf of a disabled person. Where such a request is made, the schedule explains that the duty to make reasonable adjustments includes a consultation process with others affected. If the responsible person decides to make an adjustment to avoid the disadvantage to the disabled person, a written agreement must set out their rights and responsibilities. The schedule makes it unlawful for a controller or responsible person to victimise a disabled tenant because costs have been incurred in making a reasonable adjustment.

The exceptions laid out in Schedule 5 exempt a controller of leasehold premises from the duty to make reasonable adjustments if the premises are or have been the controller's main home and if she has not used the services of a manager since letting the premises (where the premises have been let) or that they are the controller's main or only home and she has not used the service of an estate agent for letting purposes (where the premises are to let). They also exempt a controller of premises or a person responsible in relation to common parts or her relative where the premises are small, that person lives in one part of the premises and residents who are not members of her household live in another part.

BENEFITS

The HBR 2006 set out specific exemptions for certain categories of disabled persons at various stages of a housing benefit claim.¹⁴⁸ These are mainly designed to take into account the implications of

¹⁴⁶ UCR 2013, Schedule 8.

¹⁴⁷ UCR 2013, Schedules 7 and 9.

¹⁴⁸ See generally *Disability Rights Handbook*, op. cit., pp. 175-190.

disability in terms of participation in paid work, care and accommodation needs. In some cases, the disability is explicitly defined in relation to the legal sources mentioned above. In other cases, the concept is linked to another circumstance closely linked to disability (e.g. staying in hospital or a care home) or left open to the interpretation of the parties concerned.

If a person does not move into a rented home immediately because it is being adapted to meet her disablement needs or those of a member of her family, she can receive housing benefits for up to four weeks before she moves in. If she is liable to pay rent on her previous home, she can receive benefits on both homes during this time.¹⁴⁹

A claimant can receive housing benefits during a temporary absence for up to 52 weeks (instead of 13) if she is a patient in a hospital or similar institution or otherwise receiving treatment or medically approved care; if she is providing care to a child who is receiving medical treatment or medically approved convalescence, or whose parent or guardian is absent from home because they are receiving such treatment; and if she is providing medically approved care to anyone.¹⁵⁰

In the calculation of the number of bedrooms needed by a claimant for the purposes of the maximum rent and the bedroom tax, couples where one of the members receives certain disability benefits and who cannot reasonably be expected to share a room are allowed an additional bedroom.¹⁵¹ If one of the claimant's children is not reasonably able to share a room because of their disability and they receive certain disability benefits, an additional bedroom may be allowed depending on the nature and frequency of the care the child needs during the night and the extent and regularity of the disturbance to the sleep of the child who would normally have to share the bedroom with them.¹⁵² A claimant is also allowed one additional bedroom for a carer to sleep in if she, her partner, her child or an adult non-dependent needs overnight care and receives certain disability benefits or provides alternative evidence that overnight care is needed. The carer must not be living with the claimant, must be engaged to provide the overnight care and must need to stay overnight at the claimant's home on a regular basis. Only one additional bedroom is allowed for carers.¹⁵³

The income of claimants who receive certain disability benefits excludes their earnings from work undertaken within the applicable limit. If their partner is doing other work, up to £20 a week of their income can also be disregarded.¹⁵⁴ The £17,10 disregard on the earnings of those who work at least 16 hours a week extends to those who receive certain disability benefits or find themselves in the work-related activity group.¹⁵⁵ Various non-means-tested benefits for the disabled are also disregarded from income.¹⁵⁶

¹⁴⁹ HBR 2006, reg 7(6)(e) and (8)(c)(i).

¹⁵⁰ HBR 2006, reg 7(16) and (17).

¹⁵¹ HBR 2006, regs B13(5)(za) and (zb). See also case of MA & Others below.

¹⁵² HBR 2006, reg B13(5)(ba). See also case of Burnip below.

¹⁵³ HBR 2006, regs B13(6)(a) and (ab).

¹⁵⁴ HBR 2006, Schedule 4, rule 10A.

¹⁵⁵ HBR 2006, Schedule 4, rule 17.

¹⁵⁶ *Disability Rights Handbook*, op. cit., p. 146.

The applicable amount that determines how much income a claimant is allowed before her benefits start to be withdrawn includes a premium for disability (£33,55 for a single person and £47,80 for a couple), a disabled child (£62,86), severe disability (£64,30 for a single person or a member of a couple, £128,60 for two members of a couple) and enhanced disability (£16,40 for a single person, £23,55 for a couple and £25,48 for a child).¹⁵⁷ The applicable amount also includes an additional component for those who are assessed as having limited capability for work.¹⁵⁸

No deductions are made from the housing benefits of claimants who receive the main non-means-tested disability benefits. In addition, the gross income of non-dependents excludes these benefits,¹⁵⁹ and claimants who receive them are exempt from the overall benefit cap.¹⁶⁰

Disabled persons and their carers can be completely or partially exempt from work-related requirements under Universal Credit. A claimant who is assessed as having limited capability for work and work-related activity is subject to no work-related requirement, whereas those who have limited capability for work only are subject to a work preparation requirement.¹⁶¹ A claimant who has caring responsibilities for at least one severely disabled person for at least 35 hours a week is subject to no work-related requirements if she satisfies the relevant authorities that it would be unreasonable to require her to comply with a work search and availability requirement.¹⁶²

EMERGENCY HOUSING ASSISTANCE

The Housing Act 1996 and its associated regulations include various specific provisions for disabled persons. Most significantly, they cite as having a priority need for accommodation persons who are vulnerable as a result of mental illness, learning disability or physical disability. These can either be the applicants themselves or members of their household.¹⁶³ Decisions as to whether an applicant's disability makes her vulnerable ultimately rest with the housing authority. Administrative guidance states that they should take into account the nature and extent of the disability, the relationship between the disability and the individual's housing difficulties and the relationship between the disability and factors such as drug/alcohol misuse, offending behaviour, challenging behaviour, age and personality disorder. It also specifies that people who are homeless on discharge from hospital following treatment for mental illness are likely to be vulnerable.¹⁶⁴

For the purpose of determining whether accommodation is available to a person applying to a local authority, the group of persons who might reasonably be expected to reside with her includes the companion of a disabled person.¹⁶⁵ Where applicants have been asked to leave their current

¹⁵⁷ HBR 2006, Schedule 3, Parts 3 and 4.

¹⁵⁸ HBR 2006, Schedule 3, Part 5.

¹⁵⁹ HBR 2006, regs 74(6) and (9).

¹⁶⁰ HBR 2006, reg 75F.

¹⁶¹ WRA 2012, Sections 19 and 21.

¹⁶² UCR 2013, reg 89(1)(b).

¹⁶³ HA 1996, Section 189(1)(c); Homelessness (Priority Need for Accommodation) (England) Order 2002.

¹⁶⁴ *Homelessness Code of Guidance*, op. cit., p. 63.

¹⁶⁵ *Ibid.*, p. 43.

accommodation by family or friends, administrative guidance encourages authorities to be sensitive to parents or carers who have been providing a home for a family member with care or support needs (for example, a person with learning difficulties) and who are finding it difficult to continue with that arrangement.¹⁶⁶ Among the factors which may be relevant in determining whether it would be reasonable for an applicant to continue to occupy their current accommodation, the guidance cites the physical characteristics of the accommodation which may be unsuitable for the applicant because, inter alia, she is a wheelchair user and access is limited.¹⁶⁷ The affordability of accommodation must be evaluated in light of the applicant's wider circumstances, such as a disabled child who may require higher travelling distances to access additional support or education.¹⁶⁸ When assessing situations of 'intentional homelessness', an applicant's acts or omissions should not be considered deliberate if they were the result of limited mental capacity, temporary aberrations or aberrations caused by mental illness, frailty, or an assessed substance misuse problem.¹⁶⁹ When allocating temporary accommodation, an authority should give careful consideration to applicants with a mental illness or learning disability who may need to remain in a specific area, for example to maintain links with health professionals or informal support networks.¹⁷⁰

EVICTION OF SQUATTERS

The Land Registration Act 2002¹⁷¹ provides that no one may apply to be registered as the proprietor of an estate in land during any period in which the registered proprietor is unable because of mental disability to make decisions about issues of the kind to which such an application would give rise, or unable to communicate such decisions because of mental disability or physical impairment. This provision defines mental disability as a permanent or temporary disorder of the mind or brain that results in an impairment or disturbance of mental functioning. If she considers it relevant, a registrar may include a note to that effect in respect of an estate in land.

SPECIFIC PROVISIONS ON REFUGEES

Refugees are not specifically protected against discrimination by the EA 2010. In addition, Schedule 23 explicitly allows provisions, criteria or practices that relate to a person's nationality or the length of time she has been present or resident in the United Kingdom or an area within it, as long as they are done in pursuance of an enactment, in pursuance of an instrument made by a member of the executive under an enactment, to comply with a requirement imposed by a member of the executive by virtue of an enactment, in pursuance of arrangements made by or with the approval of a Minister of the

¹⁶⁶ *Ibid.*, p. 44.

¹⁶⁷ *Ibid.*, p. 49.

¹⁶⁸ *Ibid.*, p. 137.

¹⁶⁹ *Ibid.*, p. 70.

¹⁷⁰ *Ibid.*, pp. 138-139.

¹⁷¹ Schedule 6, reg 8.

Crown or to comply with a condition imposed by a Minister of the Crown.¹⁷² Schedule 18 rule 2 excludes nationality and ethnic or national origin from the public sector duty to advance equality of opportunity in the exercise of immigration and nationality functions.

BENEFITS

Regulation 10(1) of the HBR 2006 stipulates that a 'person from abroad' who is liable to make payments in respect of a dwelling shall be treated as if she were not so liable. A person from abroad means a person who has limited leave to remain (there are some exceptions) or who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.¹⁷³ However section 10(3B)(g) explicitly excludes persons granted refugee or humanitarian status under the Immigration Rules 2016¹⁷⁴ from the category of people from abroad, thus entitling them to housing benefits.

The key specificity of housing benefit entitlement for refugees (but not persons granted humanitarian protection) is that it deviates from the general rule according to which the latter can only be backdated for a maximum period of one month. Under regulation 10A and Schedule A1 of the HBR 2006, a person who has made a claim for asylum and is subsequently notified by the Secretary of State that she has been recorded as a refugee can, within a period of 28 days, claim benefits in respect of one or more periods from the date of her claim for asylum to the date she is so notified.¹⁷⁵ In effect, this creates a retrospective entitlement to housing benefits for asylum-seekers who obtain refugee status. Where the claimant has occupied more than one dwelling as her home during this period, only one claim for housing benefit must be made to the authority for the area of the dwelling occupied by the refugee at the time of making the claim.¹⁷⁶ The authority must determine the claimant's entitlement to the benefit for the whole of the relevant period.¹⁷⁷ In determining a claimant's eligible rent for the relevant period, the authority may have regard to information in their possession or which they may obtain as to the level of rents that had effect in that period in respect of any area in which the claimant occupied a dwelling.¹⁷⁸ The applicable amounts must be the aggregate of any personal allowance and premium that would have been applicable in the claimant's case in the relevant period.¹⁷⁹

The refugee claimant must furnish such certificates, documents, information and evidence in connection with the claim as may be reasonably required by the relevant authority in order to determine her entitlement and that are in her possession or that she may reasonably be expected to

¹⁷² EA 2010, Schedule 23, rule 1.

¹⁷³ HBR 2006, reg 10(2). See also Steven Kennedy (2015), *People from abroad: What benefits can they claim?*, House of Commons Library Briefing Paper 06847, pp. 6-9 [accessed via <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06847>].

¹⁷⁴ Part 11: asylum, para 326A-352H.

¹⁷⁵ HBR 2006, Schedule A1, rules 1 and 2.

¹⁷⁶ HBR 2006, Schedule A1, rule 2(2).

¹⁷⁷ HBR 2006, Schedule A1, rule 2(3).

¹⁷⁸ HBR 2006, Schedule A1, rule 3(2).

¹⁷⁹ HBR 2006, Schedule A1, rule 4.

obtain.¹⁸⁰ The relevant authority may require information to be provided as to the amount of any rent and service charges that were included in the rent by the landlord of any dwelling in respect of which a claim for housing benefit arises, any other person to whom the rent was paid and any person who made payments of rent to a landlord on behalf of a claimant.¹⁸¹ The claimant must provide the authority with information concerning any change of circumstances that occurred during the period to which the claim relates which she might reasonably expect to affect her right to and the amount of benefit.¹⁸² Where the claimant is unable to furnish the necessary evidence to substantiate her claim, the authority must determine the claim on the basis of the evidence that is produced, including any statements made by the claimant herself and any information provided by a landlord or by any other person.¹⁸³

Where it is determined that the claimant is entitled to housing benefit, payment must be made within 14 days of the date of that determination. Benefits may be paid directly to the landlord where a landlord provides information showing that some rent remains due, the claimant has been notified that a payment to the landlord may be made and the relevant authority, having taken into account any representations made by the claimant, considers that it is reasonable that the benefit or part of the benefit should be paid to the landlord.¹⁸⁴

EMERGENCY HOUSING ASSISTANCE

Like the HBR 2006, the Allocation of Housing and Homelessness (England) Regulations 2006 exclude 'persons from abroad' from emergency housing rights but make an exception for refugees. Unlike in the case of housing benefits however there are no exceptions for persons granted humanitarian protection.¹⁸⁵

The specific authority at which refugees are entitled to receive emergency housing services is partly shaped by the place where they lived as asylum seekers. This is because a housing authority which determines that an applicant has no local connection is allowed to refer her case to another housing authority where she does have such a connection at the point of the relief or main accommodation duties.¹⁸⁶ On the other hand, if neither an applicant nor any person who might reasonably be expected to live with them has a local connection with any district in Great Britain, housing duties rest with the authority that has received the application.¹⁸⁷ A person has a local connection with the district of a housing authority if she was provided with accommodation there under section 95 of the Immigration and Asylum Act 1999, unless she was subsequently provided with

¹⁸⁰ HBR 2006, Schedule A1, rule 5(1).

¹⁸¹ HBR 2006, Schedule A1, rule 5(2).

¹⁸² HBR 2006, Schedule A1, rule 5(6).

¹⁸³ HBR 2006, Schedule A1, rule 5(3).

¹⁸⁴ HBR 2006, Schedule A1, rule 8.

¹⁸⁵ Reg 5(1)(a).

¹⁸⁶ HA 1996, Section 198.

¹⁸⁷ *Homelessness Code of Guidance*, op. cit., pp. 78-79.

section 95 accommodation in a different area (in which case the latter area overrides the former).¹⁸⁸ The other circumstances that are deemed as proving a local connection are residence in the area for at least six of the previous 12 months or three of the previous five years; employment in the area; association with long-term resident partners, parents, adult children, siblings and other close family members; and special circumstances such as the need for special medical support or services.¹⁸⁹

Under Section 95, destitute individuals who submit an application as soon as reasonably practicable after arriving in the United Kingdom can apply for accommodation and/or financial support from the Home Office while their claim is being processed. Section 95(3) defines a destitute person as someone who does not have adequate accommodation or any means of obtaining it or has adequate accommodation or the means of obtaining it but cannot meet her other living needs. Regulation 7 of the Asylum Support Regulations 2000 specify that initial applicants must not have adequate accommodation or money to meet their expenses within the next 14 days. Accommodation is provided on a no-choice basis by private contractors of the Home Office. As a National Audit Office report explains, the Home Office first places eligible asylum seekers in hostel-style accommodation while they make their application for financial assistance. Unless there are exceptional circumstances such as medical needs, accommodation is provided outside London and the private providers transport asylum seekers to their initial accommodation. They then arrange to move asylum seekers to long-term 'dispersal' accommodation once the Home Office has assessed their eligibility for support. They must propose a property to the Home Office within five days and should normally complete the accommodation process within nine days. Dispersal accommodation is typically a flat or shared house where the asylum seeker is provided with bedding and basic kitchen equipment as well as basic furniture and access to cooking and washing facilities. Accommodation is provided in areas where the local authority has agreed to receive a fixed number of asylum seekers. When proposing properties, contractors are required to consider various factors such as cost, the availability and concentration of accommodation, the capacity of local health, education and other support services and the potential risks of social tension. These are monitored by local authorities, who can withdraw their consent for specific properties to be allocated to asylum seekers or reject new proposals.¹⁹⁰

Article 186 of the HA 1996 stipulates that an asylum seeker is not eligible for emergency housing assistance if she has any accommodation in the United Kingdom, however temporary, available for her occupation. At the request of a local authority, the Secretary of State must provide information as to whether an applicant falls within this definition. The Secretary of State must also inform the authority of any change of circumstance affecting the status of the person in question.¹⁹¹ As a general rule, therefore, Home Office support and emergency housing assistance are mutually exclusive.

New refugees' emergency housing rights are not only tied to the districts where they were dispersed as asylum seekers but are also curtailed in practice by housing law's limited responsiveness

¹⁸⁸ HA 1996, Sections 199(6) and (7).

¹⁸⁹ *Homelessness Code of Guidance*, op. cit., pp. 74-75.

¹⁹⁰ Melanie Gower (2015), 'Asylum support': *Accommodation and financial support for asylum seekers*, House of Commons Library Briefing Paper 1909, pp. 5-6 [accessed via <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01909#fullreport>].

¹⁹¹ HA 1996, Section 187.

to their needs. Destitute asylum seekers' legal exclusion from paid work¹⁹² and minimal cash support¹⁹³ means that they normally cannot afford to rent in the private sector when their Home Office support is withdrawn. It is also likely that there will be some delay in the payment of any housing benefits they are due. However, if they apply to a local housing authority for emergency assistance, they will not normally be considered as having priority needs. This leaves them with few options other than sofa-surf or sleep rough.¹⁹⁴

JUDICIAL REVIEW AND COMPLIANCE WITH HUMAN RIGHTS LAW

Two key judicial decisions concerning discrimination against disabled claimants of housing benefits have shaped the regulation of deemed bedroom needs for the purpose the LHA and the 'bedroom tax'.¹⁹⁵ In *Burnip v Birmingham City Council*,¹⁹⁶ two claimants were disabled adults who required a carer throughout the night. The third case, *Gorry v Wiltshire Country Council*, concerned two children of the same sex whose disabilities made it inappropriate for them to share a bedroom. All claimants alleged that previous housing benefit rules in relation to private sector tenants discriminated against them as they did not take into account the bedroom needs arising from their disability. These cases relied entirely on Article 14 ECHR, which offers protection against disability discrimination under the phrase 'other status'.¹⁹⁷ The UK Equality and Human Rights Commission intervened on behalf of the claimants. The Court held that there had been an unjustified disparate impact on these claimants, and the regulations were amended to deal with disabled claimants in similar circumstances.

In *R (Carmichael and Rourke) v Secretary of State for Work and Pensions*¹⁹⁸, the Supreme Court considered a range of appeals from the Court of Appeal concerning the bedroom tax imposed on social housing tenants deemed to be under-occupying their dwelling. Three of the four claims before the court involved disabled claimants or claimants living with disabled family members. The situations of Mrs Carmichael and the Rutherford family were the mirror image of those in *Burnip*, with the positions of the adults and the children inverted. In the same way as the children in *Gorry* were unable to share a room, Mrs Carmichael could not share a bedroom with her husband because of her disabilities. Like the adult claimants in *Burnip* who needed an additional room for a carer, the Rutherfords needed a regular overnight carer for their disabled grandson. The claimants argued that the Regulations, by

¹⁹² Melanie Gower (2016), *Should asylum seekers have unrestricted rights to work in the UK?*, House of Commons Library Briefing Paper 1908, p. 5 [accessed via <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01908>].

¹⁹³ *Asylum support*, op. cit., pp. 6-10.

¹⁹⁴ John Murphy (2017), 'Barriers to migrants accessing public services', *Free movement* [accessed via <https://www.freemovement.org.uk/guest-post-barriers-migrants-accessing-public-services/>].

¹⁹⁵ This overview draws on Timothy Sayer (2017), 'The Bedroom Tax Case: *R (Carmichael and Rourke) v Secretary of State for Work and Pensions* [2016] UKSC 58 [2016] 1 WLR 4550', *Judicial Review* 22(2), pp. 208-214.

¹⁹⁶ [2012] EWCA Civ 629.

¹⁹⁷ 'The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

¹⁹⁸ [2016] UKSC 58.

ignoring the claimants housing needs, constituted unjustified discrimination on the grounds of disability under Art. 14 ECHR taken with Art. 8 and/or Art. 1 of the First Protocol to the Convention. Relying on domestic law, they also alleged that the Secretary of State had failed to have due regard to the matters set out in s. 149 of the EA 2010.¹⁹⁹ In both cases the Court could discern no reasonable justification for distinguishing between adults and children and found a violation of Articles 14 and 8 of the First Protocol.²⁰⁰ However it rejected, upon examination of the legislative process, the claim that the Secretary of State had failed to fulfil the public sector equality duty.²⁰¹

In the case of James Daly, Mervyn Drage, JD and Richard Rourke, the claimants argued that their special circumstances necessitated additional bedroom space but were unable to persuade the Court that this was were unreasonably dealt with by the regulations. Mr Daly occupied a two-bedroom property. His disabled son stayed with him regularly but did not qualify for a bedroom because he spent less than half of his time with his father. The Court concluded that this had nothing to do with his disability. Mr Drage suffered from obsessive compulsive disorder and was the sole occupier of a three-bedroom flat which was full of accumulated papers. The Court found that this was connected to his mental illness but did not prove a need for three bedrooms. JD also lived in a three-bedroom property with his adult daughter who was severely disabled. The Court found no objective need for that number of bedrooms. Richard Rourke lived with his step-daughter in a three-bedroom property, with one bedroom used for the storage of equipment. Here again the Court did not see his circumstances as justifying a right to full compensation for the rent. In all these cases however it justified its decision in part through the availability of discretionary housing payments awarded by local authorities based on individual assessments.²⁰²

In its 2017 concluding observations on the United Kingdom,²⁰³ the UN Committee on the Rights of Persons with Disabilities expressed concern at the austerity measures introduced in the aftermath of the 2008/2009 financial crisis, which resulted in severe economic constraints for persons with disabilities and their families. It cited the negative impact of reductions in Universal Credit payments, the insufficient compensation of disability-related costs and the eligibility criteria which reduced the number of recipients of disability-related allowances. It recommended that the state carry out a cumulative impact assessment, based on disaggregated data, of the reforms of the social protection system for persons with disabilities and implement and monitor measures to tackle regression in the standard of living of persons with disabilities. It also emphasised the need to ensure that eligibility criteria and assessments to access UC were in line with the human rights model of disability.²⁰⁴ In a 2013 report on the United Kingdom, the UN Special Rapporteur on the right to housing described how changes to the welfare systems and other factors had left the disabled 'between a rock and a hard

¹⁹⁹ Para 3.

²⁰⁰ Para 49.

²⁰¹ Para 68.

²⁰² Para 50-55. For a general commentary on these cases, see *The Bedroom Tax Case*, op. cit., p. 210.

²⁰³ Committee on the Rights of Persons with Disabilities (2017), Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1*, para 60-61.

²⁰⁴ *Ibid.*, para 58-59.

place: downsizing or facing rent arrears and eviction. Many testimonies refer to anxiety, stress and suicidal thoughts as a result.²⁰⁵

In its 2016 concluding observations on the United Kingdom, the UN Committee on the Rights of the Child expressed serious concern at the benefit caps and the bedroom tax and recommended measures to reduce homelessness and progressively guarantee all children stable access to adequate housing that provides physical safety, adequate space, protection against threats to health and structural hazards and accessibility for children with disabilities.²⁰⁶ In the same year, the UN Committee on Economic, Social and Cultural Rights noted the disproportionate impact of the benefit cap, the benefit sanctions and the bedroom tax on persons with disabilities. It recommended reviewing entitlement conditions, reversing austerity cuts in social security benefits, reviewing the use of sanctions and providing disaggregated data on the impact of the reforms on persons with disabilities.²⁰⁷

Emergency housing duties toward disabled persons were reviewed in the Supreme Court case of *Hotak v London Borough of Southwark*,²⁰⁸ which hinged on the interpretation of the HA 1996 but also engaged the public sector equality duty. The three applicants alleged that they found themselves in a situation of vulnerability mainly due to mental illnesses and disabilities. In addition to the degree of vulnerability which applicants had to demonstrate, the key legal question was whether it was permissible for housing authorities to take into account the support they would receive from family or household members if they were homeless. The Court answered affirmatively as long as support was provided on a consistent and predictable basis, but qualified that the mere availability of support did not rule out the possibility of vulnerability.²⁰⁹ It also rejected the contention that this position was incompatible with the public sector equality duty as the ensuing homelessness was a proportionate means of achieving the legitimate aim of allocating scarce resources to particular classes of homeless persons.²¹⁰ A dissenting opinion by Lady Hale argued otherwise, rhetorically asking why Parliament would want to prioritise a person who did not support the vulnerable members of her household over one who did.²¹¹

²⁰⁵ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik. Mission to the United Kingdom of Great Britain and Northern Ireland, A/HRC/25/54/Add.2, para 65.

²⁰⁶ Committee on the Rights of the Child (2016), Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/5, para 70-71.

²⁰⁷ Committee on Economic, Social and Cultural Rights (2016), Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/6, para 40.

²⁰⁸ [2015] UKSC 30.

²⁰⁹ Para 65 and 69.

²¹⁰ Para 80.

²¹¹ Para 96.

The Equality Impact Assessment of the 2012 law criminalising squatting²¹² identified a potential differential impact on disabled persons. This conclusion relied on a 2011 report²¹³ finding that 41% of single homeless squatters had mental health issues, as well as on responses to a consultation²¹⁴ suggesting that disabled squatters may have difficulty in understanding the law if it is changed; that physical disabilities may need to be taken into account when leaving a squat; and that people with serious illnesses should be given time to leave.

Refugees and persons granted humanitarian protection do not seem to have cited this status as a ground of discrimination in applications for judicial review. However, several decisions have addressed housing services for asylum seekers, some of whom may subsequently attain refugee or humanitarian protection status.²¹⁵ The main issue of contention has been the distribution of accommodation duties between the Home Office and local authorities. As explained above, the latter is the default provider of accommodation for asylum seekers, but various statutes (such as the Children Act 1989 and the Care Act 2014) also place a duty on local authorities to meet their residents' needs for care and support. Since local authorities generally have at their disposal a wider range of housing facilities than the Home Office, various claims have been brought against the former's refusal to discharge their housing duties toward vulnerable applicants. The general thrust of case law, reinforced by a specific exception in Section 21 of the CA 2014 for adult asylum seekers whose needs for care and support arise solely because of destitution and its effects, has been to limit local authority duties to children and adults with special needs that cannot adequately be met by Home Office provision.

Without referring directly to housing, para 77(f) of the Committee on the Rights of the Child's 2016 concluding observations emphasised the duty to provide sufficient support to refugee and asylum-seeking children to access basic services.

HOUSING LAW AND JUSTICE

When examined through the prism of justice, UK law on housing benefits, emergency housing assistance and evictions appears to reflect the notion that housing is a fundamental interest that gives individuals actionable rights against the state (provider of housing benefits), local authorities (providers of emergency housing assistance), property owners (providers of rented or occupied housing) and squatters (whose presence may jeopardise owners' or tenants' enjoyment of their

²¹² Ministry of Justice, 'Options for dealing with squatting – Equality Impact Assessment' [accessed via <https://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/squatting-eia.pdf>].

²¹³ Kesia Reeve (2011), *Squatting: A homelessness issue. An evidence review*, Crisis/Centre for Regional Economic and Social Research, Sheffield Hallam University [accessed via https://www.crisis.org.uk/media/236930/squatting_a_homelessness_issue_2011.pdf].

²¹⁴ Ministry of Justice (2011), *Options for dealing with squatting* [accessed via <https://consult.justice.gov.uk/digital-communications/dealing-with-squatters/results/options-dealing-squatting-response.pdf>].

²¹⁵ Westminster City Council v National Asylum Support Service, [2002] UKHL 38; R (on the application of A) (FC) v London Borough of Croydon, [2009] UKSC 8; SG v Haringey [2015] EWHC 2579 (Admin); S v London Borough of Croydon [2017] EWHC 265 (Admin).

home). Indeed, the procedural and substantive detail in which the law regulates the rights and obligations of these parties may be understood as a recognition of the high stakes involved in the allocation of housing and the correlative importance of balancing competing interests. Housing benefit regulations best embody this trend, with their elaborate definitions of key legal terms such as ‘liability to pay’, ‘eligible charge’, ‘income’, ‘applicable amount’ and ‘(non-)dependent’. However, the aspiration to maximum legal certainty also transpires in the substantive and temporal delimitation of local authorities’ ‘prevention’, ‘relief’ and ‘accommodation’ duties, as well as in the procedural safeguards against state-enforced eviction which squatters enjoy under civil law. One particularly complex aspect of the law of housing benefits and emergency housing assistance relates to the eligibility criteria that claimants must fulfil to receive support. In the case of housing benefits these mainly have to do with aggregate income, whereas claimants of emergency accommodation must demonstrate other ‘priority needs’ beyond deprivation, including those which may derive from a disability (see below).

The scope of housing justice sought by the law is by and large national, illustrating the general embeddedness of social rights in state institutions. Like voting but unlike education,²¹⁶ the exercise of housing rights is thus subject to strict citizenship requirements and excludes an expansive category of ‘people from abroad’. Refugees, like most foreign nationals with unlimited leave to remain, are not considered as ‘people from abroad’, suggesting that recognition of refugee status amounts to recognition of membership in the community of the state. Persons who are granted humanitarian protection as considered as ‘people from abroad’ for the purpose of emergency housing assistance but not for the purpose of housing benefits. This normative logic constructs asylum seekers as a borderline case straddling the outsider category of ‘people from abroad’ and the insider category of ‘refugees’, a position that translates into an intermediate level of housing entitlements. For instance, asylum seekers as such are not eligible for housing benefits but, unlike all other categories of claimants, they can claim them retroactively upon obtaining refugee status. However this right is not available to those who obtain the less inclusive status of humanitarian protection, and its exercise is likely to be hampered in practice by the extremely short period of 28 days available to lodge a claim. In addition, destitute asylum seekers are not normally entitled to emergency housing assistance but have access to alternative accommodation arranged by the Home Office. Yet the latter offers weaker guarantees than local authorities, which must take into account various suitability criteria when allocating accommodation.

The concept of ‘local connections’, which simultaneously operates as a criterion of suitability and eligibility, reveals that national conceptions of justice interact in housing law with more localised ones. In this regard, the case law on the accommodation of asylum seekers with special needs can partly be understood as an attempt to justify the distribution of housing responsibilities between local and state authorities. Like its state-level counterpart, the local conception of justice partly rests on settlement, so that claimants may have to prove that they have been living in the local authority area for a certain time in order to benefit from emergency housing assistance. However it also seeks to

²¹⁶ Cf Pier-Luc Dupont (2019), *The right to vote for disabled persons and citizens living abroad: UK report*, ETHOS WP 3.4; and Pier-Luc Dupont (2019), *The right to education for disabled persons and religious minorities: UK report*, ETHOS WP 3.6.

protect significant social relations such as those that link a person to her close relatives, her employer or service providers. Some housing rights are thus simultaneously attached to a person's membership in the national and the local community, and the forced dispersal of destitute asylum seekers throughout UK territory follows from the assumption that they are not members of any local community. When used as a requirement to access housing services, local connections also reflect the long-standing notion that control over one's mobility, both within and between states, is a privilege that can legitimately be denied to the poor.²¹⁷ Asylum seekers frequently pay the price of these assumptions through separation from the informal support networks that could mitigate the effects of deprivation.²¹⁸

Two grounds of justice permeate housing law in a way that has no parallel in the fields of voting and compulsory education. The first is dependency, an idea mainly drawn upon to justify the allocation of additional space for the accommodation of claimants' dependents and carers. In most cases care is conceived as provided by parents to children, and the additional rooms enable the physical proximity that the latter's dependency requires. In the case of disabled household members however the additional space is designed to be occupied by a care provider who may or may not be a family member. The law therefore expresses the expectation that home-based care will be provided within the family, but that care for disabled children or adults will often be commodified.²¹⁹ The law also assumes that adult partners will cohabit but that, like other 'non-dependents', they will contribute part of their income toward the rent. In sum, the law conceives non-disabled children as dependent on their parents; disabled children as dependent on their parents and paid carers; non-disabled adult household members as dependent on each other, but not financially; and disabled adults as dependent on other adult household members and paid carers, but not financially.

The other key ground for making housing claims is vulnerability. This ground emerges most explicitly in the allocation of emergency housing, which gives priority to claimants who are deemed to be vulnerable due to disability or other factors. Vulnerability is usually evoked in connection with existential fragility and risks of deadly harm. In the landmark decision of *Hotak v Southwark* for instance the Supreme Court opposed the vulnerable applicant to a 'robust and healthy' person, and the Government's Code of Guidance on homelessness enjoins local housing authorities to 'consider whether the applicant would suffer or be at risk of suffering harm or detriment [which] would make a noticeable difference to their ability to deal with the consequences of homelessness.'²²⁰ Describing the settlement process of an unaccompanied asylum seeking child in *S v London Borough of Croydon*, the Court reported that accommodation staff had no concern about the claimant's 'vulnerability, risks or safeguarding'.²²¹ The judgment then evoked vulnerability in relation to the claimant's limited capacity to defend herself from the potential threat posed by adults:

²¹⁷ Bridget Anderson (2014), 'Precarious Pasts, Precarious Futures', in Cathryn Costello and Mark Freedland (eds), *Migrants at Work: Immigration and Vulnerability in Labour Law*, Oxford: Oxford University Press, pp. 29-43.

²¹⁸ Rebecca Yeo (2017), 'The deprivation experienced by disabled asylum seekers in the United Kingdom: Symptoms, causes, and possible solutions', *Disability & Society* 32(5), p. 661.

²¹⁹ For a theoretical discussion on the commodification of care for disabled persons, see Bridget Anderson (2013), *Justice, care and personal assistance*, ETHOS Deliverable 5.3.

²²⁰ *Homelessness Code of Guidance*, op. cit., p. 61.

²²¹ Para 8.

Unaccompanied asylum seeking children and child victims of human trafficking are some of the most vulnerable children in the country. Unaccompanied children are alone, in an unfamiliar country and are likely to be surrounded by people unable to speak their first language. ... Both groups may have experienced emotional trauma in their country of birth, in their journey to the UK or through their treatment by adults in the UK. They are likely to be uncertain or unaware of who to trust and of their rights. They may be unaware of their right to have a childhood.²²²

Later on, the Court described social workers as ‘justifiably concerned about the implications of taking an unknown adult into their care, and potentially placing them with vulnerable children.’ These risks were seen as mitigated ‘by the fact that they will be supervised, either closely or at least on a regular basis by those employed to care for and support them.’²²³ In a similar vein, the judgment in *S v Haringey* referred to the claimant as a ‘vulnerable person in need of care and support’²²⁴ and stressed the importance for vulnerable persons to receive the ‘protection’ of an independent advocate.²²⁵ In all these contexts, vulnerability functions as an argumentative tool to justify ‘safeguarding’, ‘care’, ‘support’ or ‘protection’ measures for a person who lacks access to adequate housing. The fact that vulnerability must flow from a disability or other personal circumstances to give rise to a right to emergency accommodation may be understood either as an association of vulnerability with particular social categories or as an acknowledgment of its social construction through processes of normalisation and discrimination. These processes come to light in legal definitions of disability through anti-discrimination and social security law, which revolve around notions of ‘normal day-to-day activities’ (including complex ones such as reading, writing, reading a computer, driving, managing a budget and engaging in social activities) and ‘normally available aids’ (emphasis added).

In addition to dependency and vulnerability, engaging in work-related or other behaviour deemed desirable is a recurring legal ground for access to housing. This is particularly true under Universal Credit, which has transformed job search, training and work placements into mandatory conditions for the receipt of benefits, but behavioural conditions may take more subtle forms, such as the obligation for emergency accommodation applicants to ‘cooperate’ with authorities and not make themselves ‘intentionally homeless’. The circumstances which authorities must take into account when determining the vulnerability of an applicant also suggest that those whose disabilities are linked to drug misuse or offending behaviour may be refused services. All this means that the exercise of the right to housing, to a much greater extent than the rights to vote and to education, can in practice be reserved for the ‘good’ (working) citizen.²²⁶

In the law on the eviction of squatters, the aforementioned grounds are replaced by two context-specific ones: possession of a property title, which tends to protect owners, and effective occupation, which offers squatters procedural safeguards against immediate eviction and the possibility to acquire title after 10 years. These grounds may be viewed as proxies for legitimate

²²² Para 27.

²²³ Para 45.

²²⁴ Para 8.

²²⁵ Para 39.

²²⁶ Bridget Anderson (2015), ‘Heads I Win. Tails you Lose. Migration and the Worker Citizen’, *Current Legal Problems* 68, pp. 179-196.

expectations to occupy an accommodation, with property rights acting as the default and effective occupation as a factor to take into account in the short term or when property rights are not exercised by their holders.

As the law's focus on financial considerations and property rights suggests, the right to housing is best viewed as falling within Nancy Fraser's redistributive dimension of justice, which is concerned with the allocation of goods and the means to obtain them. Assessing whether an additional room should be offered to disabled claimants of housing benefits, the Court in *Burnip v Birmingham* thus cited a previous decision according to which 'the practical effect of making the exception involves public expenditure. In my judgement the courts will be particularly slow to require special treatment for a group where it affects the distribution of national resources, even if it be the case that the sums will be relatively small.'²²⁷

The redistributive egalitarianism underlying both housing benefits and emergency housing assistance appears mainly sufficientarian in nature, with occasional glimpses of a more relational ideal that may approximate prioritarianism's concern to maximise the welfare of the worst off.²²⁸ The sufficientarian thrust of the law is manifest in the elaborate regulation, justification and means testing of housing benefits, as well as in the precise conditions attached to 'homeless' status. The overall logic is that everyone should enjoy 'adequate' or 'suitable' housing in light of their own needs and those of their dependents, and the close scrutiny of claimants' personal resources and circumstances is meant to ensure they receive no more than this. Within this paradigm disability is conceived as a personal circumstance generating additional material needs that must be met by the state (and in some cases by landlords). The perceived reasons for this additional need go from limited capacity to participate in employment to lesser autonomy in the conduct of daily tasks, incapacity to share a bedroom with another person, use of adapted accommodation and recourse to medical treatment or specialised educational providers. The expected financial impact of different types of disabilities in specific circumstances is captured by the definitions, conditions and amounts set out in social security law. Relational elements of egalitarianism emerge in the setting of the LHA at 30% of the median rent. This method of calculation embodies the principle that deprived benefit claimants should have access to a third of the rental housing market and, therefore, that their housing conditions should vary alongside those of the general population.

²²⁷ Para 59.

²²⁸ Simon Rippon et al. (2017), *Report on the European heritage of philosophical theorizing about justice*, ETHOS Deliverable 2.1, p. 12 [accessed via https://www.ethos-europe.eu/sites/default/files//docs/d2.1_website_report_complete.pdf].

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