



19 September 2025

Dear Applicant

Our Ref: FOI 910

Your request for information received on 26 August 2025 has been handled under the Freedom of Information Act 2000 (FOIA).

Request

Request for Policy Information – Tenancy Agreements where Tenant Lacks Capacity
Under the Freedom of Information Act 2000, I request disclosure of the Northern Ireland Housing Executive's current policy position, guidance, or procedures relating to situations where:

- 1. A tenant of the Housing Executive requests that another individual be added to their tenancy agreement as a joint tenant;*
- 2. The tenant lacks capacity to manage their own affairs;*
- 3. No other individual has legal authority (e.g., Enduring/Lasting Power of Attorney) to act on the tenant's behalf; and*
- 4. Prior to the request for a joint tenancy, the Court has ordered that the existing tenancy agreement be surrendered to the Office of Care and Protection.*

Specifically, I am requesting:

- Any written policy, internal guidance, or procedures used by the Housing Executive when considering such requests;*
- Any criteria, decision-making framework, or relevant instructions given to housing officers in relation to such cases;*
- Copies of documents, circulars, or memoranda (whether internal or external) that set out the Housing Executive's approach to the above circumstances.*

If the requested information is only available in part, please provide the information that can be disclosed. If the Housing Executive believes that an exemption applies, please provide the legal basis for such exemption and supply the non-exempt information.

Our response

We have enclosed a copy of the relevant guidance concerning capacity and tenancy changes. If a Housing Executive tenant has been determined to lack capacity to make a

decision in relation to their tenancy, only someone with the requisite legal authority can make a decision on the tenant's behalf. Formal determination of incapacity is a matter for the relevant Trust. The Office of Care and Protection is the body responsible for granting the legal authority for someone else to act on the tenant's behalf. The Housing Executive will comply with any lawful order in relation to the tenant/tenancy.

This concludes our response.

1.1.3 Capacity

All requests regarding tenancy changes must be tenant led. However, if a tenant's capacity comes into question, the following guidance should be referred to for information.

In accordance with the Mental Capacity Act 2016, a person is deemed to lack capacity if they are unable to make a decision for themselves due to an impairment of, or a disturbance in the functioning of the mind or brain at that particular time. It is not condition specific, and it does not matter whether the disturbance or impairment is permanent or temporary.

There is always a presumption of capacity, unless otherwise stated or evidenced. New legislation which will be fully implemented in 2020 extends additional protections for individuals with regard to capacity. Essentially the Mental Capacity Act (Northern Ireland) 2016 provides a broader framework which includes;

- A statutory presumption of capacity.
- A requirement to support decision-making
- Mechanisms to allow individuals to plan for times that they do not have capacity
- Safeguards to protect the rights of individuals when compulsory interventions or substitute decisions are required.

Until it has been established that a tenant does not have capacity, reasonable efforts should be made to engage with the tenant at all times. If you suspect that the tenant may not have capacity, it would be appropriate to request that the Next of Kin (NOK), other family member or Social Worker be present at any interview. Staff should never make decisions regarding a tenant's capacity, ordinarily an assessment must be completed to determine an individual's capacity (this is normally verified by two qualified medical experts), without this, and evidence of such, there is a presumption of capacity.

When it becomes evident that a person no longer has capacity and this is presented to the Housing Executive, the following advice should be taken into consideration:-

- Has there been any assessment of the individuals' capacity?
- Has anyone been registered as an Enduring Power of Attorney? (see below)
- Has there been a Controller appointed by the Office of Care and Protection? (see below) It is important that staff liaise with Social Services, Next of Kin or a family member to determine if anyone has been appointed.
- Is the person still resident in their property?

- Are there any external agencies involved- e.g. Social Services, Consultants/GP?
- Supporting evidence regarding their capacity (i.e. registration certificates from the Office of Care and Protection or written confirmation from the Trust).
- Has additional support been offered/provided to enable the individual to make a decision?
- Rarely, when a tenant lives alone and does not have any family or representatives, a staff member may be the first person to suspect that the tenant could have capacity issues. In this instance the staff member should contact Social Services for further advice.

In the event of a tenant no longer having capacity, family members or Next-of-Kin (NOK) should only sign any change of tenancy requests or terminations if they have legal authority to do so:

1.1.4 Enduring Power of Attorney (EPA)

In the event of the sufficient information provided which demonstrates that the tenant does not have the capacity to make the decision in question at the time, it would be useful to determine if there is anyone registered as an Enduring Power of Attorney. Importantly, someone appointed to deal with their benefits via the Social Security Agency or just an Attorney will not be sufficient, as neither have the appropriate authority to act on the individuals' behalf.

An Enduring Power of Attorney is an individual (normally a next of kin or close family member) whom the individual has chosen to act on their behalf in the event of no longer having capacity. An EPA must be registered through the Office of Care and Protection (OCP). If this is applicable, a copy of the registration should be requested and retained on file.

1.1.5 Controllership

In the event of a tenant being assessed as no longer having the capacity to make a decision (in respect of his or her tenancy), and it has been established that there is no EPA appointed, it may be necessary for a family member or next of kin to make an application to the OCP for Controllership. If there are no family members or next of kin, the relevant Health Trust may apply to the Courts, or alternatively the OCP may appoint a solicitor to look after the affairs of the individual. The OCP will generally appoint a Controller to deal with the day to day affairs of the person. There are costs associated for registration, and further information is available from the Department of Justice website: <https://www.justice-ni.gov.uk/articles/how-apply-become-controller> . If this is applicable, a copy of the registration should be requested and retained on file.

1.1.6 Short Procedure Order

If the value of the individuals' assets or income is deemed to be relatively low, or in the case where there is no owned property or the level of income applicable is less than what the Court considered in need of being managed by a controller, the Master may authorise someone to manage the property and affairs of the Patient under a 'Short Procedure Order'.

This guidance regarding capacity is for information purposes only and should not be taken as a form of legal advice. Tenants (or their families/Controllers) should be advised to seek independent legal advice if they require this. Should staff require further guidance they should contact Legal Services or Housing Policy.