

EXPLANATORY MEMORANDUM TO THE HOUSING ACT 1985 (AMENDMENT OF SCHEDULE 2A) (SERIOUS OFFENCES) (WALES) ORDER 2016

This Explanatory Memorandum has been prepared by the Housing Policy Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Housing Act 1985 (Amendment of Schedule 2A) (Serious Offences) (Wales) Order 2016.

Lesley Griffiths

Minister for Communities and Tackling Poverty, one of the Welsh Ministers.

DATE

1. Description

1.1 This Order adds the offences of slavery, servitude and forced or compulsory labour and human trafficking introduced by sections 1 and 2 of the Modern Slavery Act 2015 to the list of serious offences in Schedule 2A of the Housing Act 1985. This list relates to the grounds for a possession order on the basis of serious anti-social behaviour.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 None.

3. Legislative background

3.1 Section 84A of the Housing Act 1985 (“the 1985 Act”) provides for possession of a dwelling which is the subject of a secure tenancy on the grounds of serious anti-social behaviour. Ground 7A of Part 1 of Schedule 2 to the Housing Act 1988 provides an equivalent ground for possession in respect of assured tenancies. Both grounds for possession on the basis of serious anti-social behaviour refer to a conviction of a serious offence. These serious offences are listed in Schedule 2A to the 1985 Act.

3.2 The provisions of Section 84A(11) of the 1985 Act mean the Welsh Ministers may, by Order, amend Schedule 2A as it applies in relation to dwelling-houses in Wales by adding an indictable offence or removing an offence.

3.3 This Order is subject to the affirmative procedure by virtue of section 84A(13)(b) of the 1985 Act.

3.4 The amendments made by this Order relate to the Modern Slavery Act 2015 (the 2015 Act). Part 1 of the 2015 Act consolidates and clarifies the existing offences of slavery and human trafficking whilst increasing the maximum penalty for such offences. Sections 1 and 2 of the 2015 Act make provision for the criminal offences related to slavery and human trafficking. The offences consolidate and replace the existing criminal offences of slavery, servitude and forced or compulsory labour (section 71 of the Coroners and Justice Act 2009), trafficking for the purpose of sexual exploitation (section 59A of the Sexual Offences Act 2003) and trafficking for other forms of exploitation (section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004).

4. Purpose & intended effect of the legislation

4.1 The Anti-social Behaviour, Crime and Policing Act 2014 inserted a new absolute ground for possession of a dwelling-house for serious anti social behaviour in respect of both secure and assured tenancies. One of the conditions for possession includes where a tenant, or a person residing in or visiting the dwelling house has been convicted of a serious offence, where the serious offence has been committed (wholly or partly) in, or in the locality of the dwelling house, against a

person living near the house, or against the landlord or a person connected with the landlord's housing management functions, and the offence directly, or indirectly related to or affected those housing management functions.

4.2 The Modern Slavery Act 2015 (the 2015 Act) introduces 2 new offences. The offence under section 1 of the 2015 Act relates to slavery, servitude and forced or compulsory labour, and the offence under section 2 relates to human trafficking.

4.3 The list of serious offences in Schedule 2A to the 1985 Act includes offences under Part 1 of the Sexual Offences Act 2003 which includes trafficking for the purpose of sexual exploitation. This has been replaced by section 2 (human trafficking) of the 2015 Act. Therefore, section 2 of the 2015 Act is being added to the list of serious offences to ensure the offence of trafficking for the purpose of sexual exploitation remains in the list. In addition, the addition of sections 1 and 2 to the list of serious offences will ensure these new offences are caught. Therefore, a landlord would be able to seek possession on the basis a tenant had committed the offence of slavery, servitude, forced or compulsory labour, or the offence of human trafficking, providing the other criteria for seeking possession under this ground had been met.

4.4 The Home Office is making equivalent amendments in relation to England as part of the consequential amendments arising as a result of the 2015 Act. The Welsh Ministers are making the amendments by virtue of the power in section 84A(11) of the 1985 Act to, by order, amend Schedule 2A as it applies to dwelling-houses in Wales.

5. Consultation

5.1 No formal consultation has been undertaken for this instrument as the instrument makes minor amendments to legislation in light of the commencement of the offences which deal with slavery and trafficking.

6. Regulatory Impact Assessment

6.1 There is no impact on business, charities or voluntary bodies.

6.2 An Impact Assessment has not been prepared for this instrument.

