

Explanatory Memorandum to the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2024

This Explanatory Memorandum has been prepared by Climate Change and Rural Affairs Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

I believe, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2024. I am satisfied that the benefits justify the likely costs.

Jayne Byant MS
Cabinet Secretary for Housing and Local Government

12 November 2024

PART 1

1. Description

The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (“the 2014 Regulations”) provide for certain categories of persons from abroad to be eligible or ineligible for an allocation of housing accommodation and/or for housing assistance (essentially, support for homelessness).

The 2014 Regulations are to be amended by the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2024 (“these Regulations”) to extend eligibility for an allocation of housing accommodation and housing assistance provided by local authorities to people subject to immigration control who are victims of transnational marriage abandonment (TMA) and to people subject to immigration control who would ordinarily have a no recourse to public funds (NRPF) condition applied to their immigration status but that condition has been lifted by the Home Office (HO).

The 2014 Regulations are also to be amended to omit references to the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (S.I. 2013/1460) which are redundant now that the accession period (the period beginning with 1 July 2013 and ending with 30 June 2018) has come to an end.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

Part 6 of the Housing Act 1996 and Schedule 2 of the Housing (Wales) Act 2014, enable the Welsh Ministers, to prescribe classes of persons from abroad who are eligible for an allocation of housing accommodation and for housing assistance. Regulations 2, 3, 4, 5 and 6 of the 2014 Regulations are to be amended.

These Regulations are subject to the affirmative procedure.

4. Purpose and intended effect of the legislation

These Regulations will make victims of TMA eligible for an allocation of housing accommodation and for homelessness assistance in Wales. TMA is a form of domestic abuse involving controlling and coercive behaviour. It refers to a practice whereby the sponsoring partner or their family members, abandons or strands their visa dependent spouse abroad, usually without any financial resources or immigration documents, with the aim of preventing them from returning to the UK.

These Regulations will also make those individuals whose NRPF condition has been lifted by the HO eligible for an allocation of housing and for homelessness assistance in Wales.

These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 which determine which persons are eligible for an allocation of housing accommodation under Part 6 of the Housing Act 1996 and for housing assistance under the Housing (Wales) Act 2014.

Following a High Court ruling in October 2022, the UK Government legislated to establish a new visa route for victims of TMA and to people subject to immigration control who would ordinarily have NRPF. This came into force on 31 January 2024. These Regulations are necessary to ensure victims of TMA and people subject to immigration control who would ordinarily have a NRPF arriving under the new route are eligible for an allocation of housing and homelessness assistance.

Following a separate successful legal challenge, the HO has also updated caseworker guidance to reflect that there is now a discretion to lift the 'NRPF' condition for persons on any immigration route in certain circumstances (such as destitution, welfare of a relevant child, or exceptional financial circumstances).

We are also removing redundant provisions which refer to the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013, because the accession period has come to an end.

Regulations 3, 5 and 7 omit references to the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (S.I. 2013/1460) which are redundant now that the accession period (the period beginning with 1st July 2013 and ending with 30th June 2018) has come to an end.

Regulation 4 amends regulation 3 of the 2014 Regulations which relates to the eligibility of persons subject to immigration control for an allocation of housing accommodation under the 1996 Act. It prescribes two additional classes of persons ("Class P" and "Class Q") subject to immigration control who are eligible for an allocation of housing accommodation under the 1996 Act.

"Class P" applies to persons who are the victims of transnational marriage abandonment, and "Class Q" applies to persons whose leave to enter or remain in the United Kingdom would ordinarily have a NRPF condition applied, but that condition has been lifted by the HO.

Regulation 6 amends regulation 5(1) of the 2014 Regulations which relates to the eligibility of persons subject to immigration control for housing assistance under the 2014 Act. It prescribes two additional classes of persons ("Class Q" and "Class R") who are eligible for such assistance. Class Q is equivalent to Class P and Class R is equivalent to Class Q inserted by regulation 4.

The Regulations support the Welsh Government's objective of ending homelessness in Wales by preventing it in most cases and where that is not possible ensuring it is rare, brief and unrepeatable.

5. Consultation

As the Regulations provide for amendments which will affect only a very small number of individuals and does not reflect a change of the Welsh Government's policy, a formal public consultation did not take place.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

The Welsh Government has considered two options to address the potential discrimination victims of TMA and people subject to immigration control who would ordinarily have NRPF might face accessing housing and housing assistance.

- Option 1: Business as Usual – Do nothing
- Option 2: Make the legislation (the preferred option)

We have not been able to identify alternative forms of legislation, nor a non-legislative approach to address the issues facing people who have been victims of TMA and to people subject to immigration control who would ordinarily have NRPF.

7. Costs and benefits

Costs

Option 1: Business as Usual

This is the baseline option and as such there are no additional direct costs or benefits associated with this option. This will, however, mean that eligibility in Wales does not reflect either the eligibility in England or the recent amendments made to the Immigration Rules in response to recent successful legal challenges.

Option 2: Make the Legislation

It has not been possible to obtain data from the UK Government about the number of people who could be affected, however, the number is expected to be very small. At this time calculating precise estimates is difficult due to the uncertainty surrounding the number of people affected by transnational marriage abandonment, and the number of people who would ordinarily have NRPF who may come to Wales.

Cost to Welsh Government

Welsh Government costs are expected to be minimal and relate to notifying the local authorities and publishing guidance as an addendum to the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014. The guidance will explain the changes to the regulations.

Cost to local authorities

There will be additional cost to local authorities if any person who is a victim of transnational marriage abandonment or a person who would ordinarily have NRPF were to apply for housing or housing assistance in Wales and be owed a duty. These regulations will extend eligibility to only a very small cohort of people. As a result, the cost placed upon any local authority in Wales, in provided housing or housing assistance where a duty is owed is expected to be extremely low.

The Explanatory Memorandum for the [Housing \(Wales\) Act 2014](#) calculated costs to local authorities providing homelessness services to applicants for the 2015-16 period. These costs have been updated to current prices to reflect inflation during the intervening period and are used in this Regulatory Impact Assessment (RIA) to estimate the cost a local authority might incur if any person who is a victim of transnational marriage abandonment or a person who would ordinarily have NRPF were to apply for housing or housing assistance and be owed a duty.

The provision of homelessness services would involve an initial assessment for those applicants. The cost of this assessment was assumed to be £214.20 for an individual who was considered as “not homeless”. When fulfilling the prevention duty as prescribed by the 2014 legislation, costs were estimated to be £1,112 per application.

There is a duty to relieve homelessness to applicants for whom prevention fails or who are deemed to be homeless upon presentation. The duty to relieve homelessness is assumed to have no additional cost for those applicants who have already been through the prevention duty.

For cases in which the duty to relieve homelessness is not successful, applicants who may be considered as “eligible, homeless, in priority need and unintentionally homeless” and for whom action to relieve homelessness is unsuccessful, will be entitled for a full duty cost of £3,274 per applicant (£2,702.40 less the cost of an assessment of £428.40).

The table below presents an estimate of the cost if 5-10 people who have been victims of transnational marriage abandonment or a person who would ordinarily have NRPF were to apply for housing assistance and be owed a duty. The estimated figures reflect a worst case scenario, although such a scenario is not considered likely.

	5 applicants	10 applicants
£428.40 per “ineligible” applicants	£2,142	£4,284
£214.20 per applicant considered as “not homeless”	£1,071	£2,142
£1,112 per applicant eligible to assistance in accordance with the prevention duty	£5,560	£11,120
£2,274 per applicant who may be considered as “eligible, homeless, in priority need and unintentionally homeless”	£11,370	£22,740

Should a victim of transnational marriage abandonment or a person who would ordinarily have NRPF make an application for social housing, then the costs to a local authority would be lower. Based upon general estimates calculated by reviewing management data, local authority colleagues have indicated that the processing of a housing application would range from £400 - £800. If the same number of applications for social housing is made as for housing assistance (5-10 applicants across Wales), then the total cost for local authorities could range from £2,000 to £8,000.

Attempting to project into the future any observable pattern of growth or decline of people who may be victims of transnational marriage abandonment or persons who would ordinarily have NRPF, particularly as the numbers are so low, has not been possible. For this reason, we have not provided a range of figures over a timeline extending beyond the above scenario as it would be highly speculative and probably misleading.

The legislation is not expected to have a significant impact on private business or third sector organisations.

Benefits

The amendments to the 2014 Regulations, extending the eligibility to housing and homelessness assistance to people who are victims of TMA and people who would ordinarily have a NRPF condition applied to their immigration leave but that condition has been removed, will help remove a disadvantage people would face compared to those in similar circumstances, for example, people granted asylum. Although the cohort is small, with possibly no persons coming to Wales in need of housing and housing assistance, the change brought about will act as an example to other parts of the world where this cohort of people have fewer rights. Doing so, will enhance Wales' reputation as a safe and welcoming country for those less fortunate and without a home.

8. Competition Assessment

Not applicable.

9. Post implementation review

Not applicable.