

Explanatory Memorandum to the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2023

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

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Climate Change
22 May 2023

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) (No. 2) Regulations 2023 (“the amending Regulations”) to extend eligibility for an allocation of housing accommodation and housing assistance provided by local authorities to people who are British Nationals, others not subject to immigration control (or treated as such), and anyone with immigration leave and recourse to public funds arriving in the UK due to the civil unrest in Sudan, which rapidly escalated on 15 April 2023 in Khartoum and across Sudan.

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

The Minister for Climate Change wrote to the Chair of the Legislation, Justice and Constitution Committee on 18 May 2023 to seek the Committee's assistance in expediting the scrutiny of the Regulations to enable an early debate, due to the urgency of making them.

3. Legislative background

Section 160A(3) and (5) under Part 6 of the Housing Act 1996 gives the Welsh Ministers the power to make regulations to prescribe certain categories of persons from abroad to be eligible or ineligible for an allocation of housing accommodation. Similar provision is made in section 61 of, and paragraph 1(2) and (4) of Schedule 2 to, the Housing (Wales) Act 2014 in relation to the Welsh Ministers’ (and the Secretary of State’s) ability to make regulations in relation to the eligibility or ineligibility of certain categories of persons for housing assistance. The 2014 Regulations to be amended are regulations 3, 4, 5 and 6.

The amending Regulations are being made under the affirmative resolution procedure, as is required by section 142(3)(b)(ii) of Housing (Wales) Act 2014, in relation to amendments made under that Act. Regulations made under section 160A of the Housing Act 1996 are subject to the negative procedure. Section 40 of the Legislation (Wales) Act 2019 provides that regulations subject to different procedures can be combined.

4. Purpose and intended effect of the legislation

In response to the violence which rapidly escalated in Khartoum and across Sudan on 15 April 2023, the UK Government led an evacuation that has led to more than 2,000 people being returned to the UK through a series of military

flights¹. The final number of people returning to the UK is not known. Nor do we know how many of these people will come to Wales. However, in order to ease the return of those coming from Sudan, the UK Government has agreed to ensure that they can access benefits, social housing, and housing assistance even if they are not habitually resident in the UK. It will do so by disapplying its rules relating to the Habitual Residence Test.

The UK Government's disapplication of the habitual residence test for people arriving in the UK from Sudan is not reflected in the prescribed classes of persons who are eligible for housing and housing assistance under the 2014 Regulations. Those people to whom the habitual residence test has been disappplied will consequently be ineligible to apply for social housing and housing assistance unless amendments are made to the 2014 Regulations, ensuring consistency between the benefit/welfare law and Welsh housing law.

The amending Regulations amend the 2014 Regulations, which determine which people from abroad are eligible for an allocation of housing accommodation under Part 6 of the Housing Act 1996, or for housing assistance under Schedule 2 of the Housing (Wales) Act 2014.

The amending Regulations will add to the 2014 Regulations a new Class of persons from abroad who are subject to immigration control who will be eligible for housing and housing assistance and exempt from the habitual residence test. Persons in this new Class are those who (a) were residing in Sudan before 15 April 2023, (b) left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan, (c) have been granted leave in accordance with the immigration rules, and (d) are not required to be supported without recourse to public funds.

The amending Regulations also make eligible for housing and housing assistance those persons who are not subject to immigration control, and who have left Sudan in connection with the increase in violence on 15 April 2023, and who were residing in Sudan before 15 April 2023. Persons in this group, most of whom will be British nationals, would also usually need to wait to be eligible as they would not immediately satisfy the habitual residence test. The amendments will exempt such persons (who are not subject to immigration control) from the habitual residence test and consequently they too will immediately be eligible to apply for housing or housing assistance.

In addition to the practical necessity of aligning the housing rules in Wales so that the habitual residence is disappplied, there is also justification; in particular to those with immigration leave and recourse to public funds; in extending eligibility for housing and housing assistance in Wales. This is a reflection of the Welsh Government's commitment to promote Wales as a globally responsible nation and that of a nation of sanctuary, through its International Strategy. The violence in Sudan could harm the human rights and individual freedoms of people returning to the UK if Wales did not match the commitment being made by the UK and other devolved governments. The Welsh Government's firm commitment

¹ [2,197 people safely evacuated from Sudan by the UK - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/2-197-people-safely-evacuated-from-sudan-by-the-uk)

to end homelessness in Wales strengthens the justification for this proposal, as any barrier which prevents help from getting to people seeking housing or housing assistance would contradict current homelessness policy.

5. Consultation

Due to the speed at which events in Sudan have occurred and the practical necessity of ensuring those who have arrived or are arriving in Wales can access housing or housing assistance, we consider it would be disadvantageous to undertake a consultation exercise. As the amending Regulations will also deliver outcomes relating to reserved UK Government policy (immigration and welfare), it would not be possible to undertake a meaningful consultation on alternative approaches, as the effect of the amending Regulations is to ensure consistency between Welsh housing law and immigration/welfare law.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

The Welsh Government has considered two options to address the needs of people coming to Wales from Sudan.

Option 1: Business as usual – Maintain the status quo, meaning that British Nationals, others not subject to immigration control (or treated as such), and anyone with immigration leave and recourse to public funds will manage without access to housing or housing assistance.

Option 2: Make the legislation (the preferred option).

7. Costs and benefits

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. However, as the UK Government is content for the habitual residence test to be disapplied for people coming to Wales from Sudan, allowing them to obtain benefits, this policy option could be found to be unfair given its application in other parts of the UK.

Option 2: Make the legislation

The amending Regulations have been made without a limit on the number of people who can come to the UK and they do not have an end date. It is therefore, difficult to provide an accurate forecast of possible arrivals. However, based on advice from UK Government officials, we understand that there are unlikely to be many more people arriving and consider that a high estimate of 3,000 people will be affected by the UK Government's disapplication of the habitual residence test.

The Sudanese diaspora within the UK is relatively small. 2021 Census data² suggests that there are 2,000 people living in Wales who were born in Sudan (though it is unclear in which local authority area they live); that number is 40,000 for the UK. The largest UK based Sudanese communities are understood to be located outside of Wales; in Birmingham, London and Manchester.

For the purpose of the Regulations, the estimate of 3000 possible arrivals will be used to assess who may require housing or housing assistance in Wales, as a result of the changes proposed above.

²

<https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationalityunderlyingdatasheets/july2020tojune2021/underlyingdatasheetsforpopulationbycountryofbirthandnationalityjul20tojune21.xls>

A calculation based on Welsh population compared to the rest of the UK³ and based on the 3,000 people we consider may come to the UK, could mean that 150 people will move to Wales in 2023 from Sudan. However, this would need to be adjusted to understand the proportion of the people who then require housing or housing assistance. Most of those arriving from Sudan into Wales will be either British nationals or their dependents – not refugees without prior immigration permission.

Welsh Government data on homelessness outcomes for 2020-21⁴ showed that 12,708 people were provided with preventative assistance or relief, in accordance with duties under the Housing (Wales) Act 2014, representing 0.4% of the Welsh population. If that proportion is applied to the people who may arrive in Wales from Sudan and subsequently require assistance, six individuals may be affected.

Despite this low forecast, it is important to note that those coming to Wales from a place of conflict may be vulnerable to becoming homeless. Some will arrive, potentially disorientated from the trauma of leaving their homes, family members and support networks, having to settle in unfamiliar settings and circumstances. They may also have few possessions beyond what is carried in suitcases and funds potentially limited to savings, which given the differences of income between the UK and Sudan, will have less value than in Sudan. If those individuals have been separated from friends and family, there may be a reliance on benefits and few may find employment immediately. Consequently, a worst-case estimate of 10-15 individuals requiring housing assistance is provided at Table 1 of costs which may be incurred.

Estimates within 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 reflect inflation during the intervening period and are used in this RIA to estimate the cost a local authority might incur if any person coming to Wales from Sudan were to apply for housing or housing assistance.

This provision of homelessness services would involve an initial assessment for those applicants that are either not homeless or ineligible for assistance. The cost of this assessment is assumed to be £428.40 per “ineligible” applicant and £214.20 for an individual who is considered as “not homeless”. When fulfilling the prevention duty as prescribed by the 2014 legislation, costs are estimated to be £1,112 per applicant.

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.

³ According to [Census data](#), the population of Wales in mid 2021 was 3,105,410, representing 4.6% of the UK's population of 67,026,292. This is rounded up to 5% for this assessment.

⁴ [Households for which assistance has been provided by outcome and household type \(gov.wales\)](#)

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 to a full duty at a cost of £2,274 per applicant (£2,702.40 less the cost of an assessment of £428.40). Estimated costs are shown in Table 1.

Table 1: Estimated cost to local authorities from homelessness services

	10 applicants per year	15 applicants per year
£428.40 per “ineligible” applicants	£4,284	£6,426
£214.20 per applicant considered as “not homeless”	£2,142	£3,213
£1,112 per applicant eligible to assistance in accordance with the prevention duty	£11,120	£16,680
£2,274 per applicant who may be considered as “eligible, homeless, in priority need and unintentionally homeless”	£22,740	£34,110

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. It is our assumption that that a large proportion of those coming to Wales from Sudan will already have their own homes, as many will be British nationals. Our worst-case estimate is that 10%-20% of the 150 people potentially coming to Wales may choose to apply for social housing. Costs associated with such applications could range from £6,000 to £24,000.

Table 2: Estimated costs from social housing applications

	Lowest cost (£400)	Highest cost (£800)
15 homes needed (10%)	£6,000	£12,000
30 homes needed (20%)	£12,000	£24,000

Benefits

Section 4 of Part 1 of the Explanatory Memorandum outlines the justification for making the Regulations. The Welsh Government considers that extending eligibility for housing and housing assistance to people coming to Wales from Sudan will help reduce this risk of homelessness, and should it occur, ensure that it is brief, rare and non-recurring. The safeguard provided by the Regulations will help demonstrate Wales’s reputation as a safe and welcoming country.

The benefits of preventing homelessness extend well beyond the actual, additional, costs of helping people who are homeless, for example, the cost of providing them temporary accommodation. There have been multiple

studies⁵⁶⁷⁸ examining the costs and benefits associated with providing housing assistance, which recognise the significant savings which might be made from effective intervention. Effective homelessness services can provide benefits that may last someone's lifetime. They include better health and well-being, child development and education, and adults' participation in the labour market and contribution to economic output. As a result, the demands on some services, local authority homelessness services and the NHS and social care services for example, can be reduced. The benefits have been shown to outweigh the costs, often to a significant degree, particularly given that someone who is street homeless will rarely experience that disadvantage alone. Many individuals will also experience negative impacts to their mental health and, for a significant number, substance misuse also. The longer those experiences are felt, often the harder it will become to recover, which will require even greater support and cost. In light of the circumstances of those coming to Wales from Sudan, who may have experienced trauma, the need to prevent homelessness may be more acute than the wider population eligible to housing and housing assistance.

Benefits of effective action will contribute to the achievement of several Welsh Government Acts, such as the Social Services and Well-being (Wales) Act 2014, Well-being of Future Generations (Wales) Act 2015, and the Ending Violence against Women and Domestic Abuse (Wales) Act 2015.

8. Competition Assessment

Not applicable.

9. Post implementation review

Not applicable.

⁵ [At what cost? | Crisis UK | Together we will end homelessness](#)

⁶ [Better than cure? | Crisis UK](#)

⁷ [Hard-Edges-Mapping-SMD-2015.pdf \(lankellychase.org.uk\)](#)

⁸ [assessing the costs and benefits of crisis- plan to end homelessness 2018.pdf](#)