

Explanatory Memorandum to the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 3) 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. 3) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Climate Change
7 November 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. 3) 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 from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon, due to the Hamas terrorist attack in Israel on 7th October, and subsequent escalating conflict.

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 30th October 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) of the Housing Act 1996 gives the Welsh Ministers the power to make regulations to prescribe certain categories of persons from abroad as being 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 at regulations 3, 4, 5 and 6.

The amending Regulations are being made under the draft 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 escalating conflict in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, and Lebanon, following the Hamas terrorist attacks on 7 October 2023, the UK Government are preparing for the possible evacuation of and arrival of people returning from the affected territories to the UK.

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 Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, and Lebanon, 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 Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, and Lebanon is not reflected in the currently prescribed classes of persons who are eligible for housing and housing assistance under the 2014 Regulations. Those people returning to Wales from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, and Lebanon (in relation to whom the habitual residence test has not been disappplied) will consequently be ineligible to apply for social housing and housing assistance unless the proposed 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 ("Class P") 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 Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, or Lebanon immediately before 7th October 2023, (b) left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, or Lebanon in connection with the violence which rapidly escalated on 7 October 2023 in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, or Lebanon, (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 Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, or Lebanon in connection with the terrorist attack on 7 October or the escalating conflict following that attack and who were residing in Israel, the Golan Heights, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, or

Lebanon, immediately before 7 October 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.

On 27 October 2023, the UK Government brought into force Regulations to disapply the habitual residence test (HRT) for people from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, or Lebanon, allowing them to apply for housing and homelessness assistance immediately. The approach in Wales is therefore consistent with UK Government Regulations (which include Scotland and Northern Ireland).

In addition to the practical necessity of aligning the housing rules in Wales so that the habitual residence is disapplied throughout England and Wales, 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 Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, and Lebanon, 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 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 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.

Local authorities will however be informed of the legislative change, along with an addendum to the Code of Guidance, to ensure local authorities are aware of how to apply the new legislation.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

The Welsh Government has considered two options to address the needs of people coming to Wales from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, and Lebanon.

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 Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, and Lebanon, 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. Currently it is estimated that there are 20,000 – 50,000 British Nationals within the area of Israel alone. For those British Nationals who have registered with the Foreign, Commonwealth and Development Office to be kept up to date and remain in contact of potential evacuation plans etc. as of 31st October 210 people have registered across all affected territories. However, information at this time is limited and communication with those in the affected areas are likely to be impacted, causing delays and inconsistency of available accurate data. It is therefore, difficult to provide an accurate forecast of possible arrivals into the UK or Wales as a whole at this time.

Details regarding the Israeli, Palestinian and Lebanese diaspora within the UK is limited, but is believed to be relatively small. We do not have exact data, especially at a Welsh level. 2021 Census data¹ suggests that there are 26,000 people living in the UK who were born in Israel, and whilst Welsh level data is

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

unknown, 25,000 of those resided in England in 2021. Similarly of the 14,000 people residing in the UK who were born in Lebanon, 13,000 of those were residing in England. Of the 4,000 people born in the West Bank and Gaza, all 4,000 are captured as living in England. Whilst we are working with a limited breakdown of where exactly they live, it is understood that the largest UK based communities of people born in any of the affected territories, is London, the Midlands and Northern England, and consequently mainly outside of Wales.

For the purpose of the Regulations, and due to the limitations in available data, the estimate of 20,000 possible arrivals in the UK will be used to assess who may require housing or housing assistance in Wales, as a result of the changes proposed above. This is likely to be a significant overestimation, however this is a highly complex and sensitive situation that is ever evolving, so a conservative estimate is used to help prepare should the situation change rapidly. It is noted however that it could possibly be as many as 50,000 if all estimated British Nationals were to return to the UK from Israel alone. Detailed information on the numbers of British Nationals in the affected territories and Lebanon is lacking considerably.

A calculation based on Welsh population compared to the rest of the UK² and based on the 20,000 people we consider may come to the UK, could mean that 1,000 people will move to Wales in 2023 from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, and Lebanon. 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 the affected territories into Wales will be either British nationals or their dependents – not refugees without prior immigration permission.

Welsh Government data on homelessness outcomes for 2020-21³ 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. Whilst there is no indication that this proportion is reflective of the need for social housing and housing assistance of the people arriving in Wales from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, and Lebanon, it is the only available data to use to estimate the numbers that may require assistance. Applying this proportion, we can assess five individuals may be affected. This could be as many as seven individuals if 30,000 individuals returned to the UK.

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 nations, will have less value than in the affected territories.

² 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.

³ [Households for which assistance has been provided by outcome and household type \(gov.wales\)](#)

If those individuals have been separated from friends and family, there may be a reliance on benefits and few may find employment immediately. Also, we need to take account that at this time we have no known figures for those British Nationals in the other affected Territories or in Lebanon. Consequently, a worst-case estimate of 15-20 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 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.

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 to local authorities are shown in Table 1.

Table 1: Estimated cost to local authorities from homelessness services

| | 15 applicants | 20 applicants |
|---|---------------|---------------|
| £428.40 per “ineligible” applicants | £6,426 | £8,568 |
| £214.20 per applicant considered as “not homeless” | £3,213 | £4,284 |
| £1,112 per applicant eligible to assistance in accordance with the prevention duty | £16,680 | £22,240 |
| £2,274 per applicant who may be considered as “eligible, homeless, in priority need and unintentionally homeless” | £34,110 | £45,480 |

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 Israel, the West Bank, the Gaza Strip, East

Jerusalem, the Golan Heights, and Lebanon will already have their own homes, as many will be British nationals. Our worst-case estimate is that 10%-20% of the 1,000 people potentially coming to Wales may choose to apply for social housing. Costs associated with such applications could range from £40,000 to £160,000.

Table 2: Estimated costs from social housing applications

| | Lowest cost (£400) | Highest cost (£800) |
|------------------------|-----------------------|------------------------|
| 100 homes needed (10%) | £40,000 | £80,000 |
| 200 homes needed (20%) | £80,000 | £160,000 |

These costs will be borne by local authorities.

This cost should also be considered against the context of available housing supply in Wales, and the already existing over demand for social housing. Current data shows more than 11,185 people are housed within temporary accommodation (as at 31 August)⁴, with local authorities also responding to the housing needs of people arriving in the UK from Ukraine, Afghan and Sudan arrivals/returnees schemes. We do not have available data to provide the total number of people or households on the social housing waiting lists, to estimate total social housing demand. The duration of stay of people from the affected territories, and the time spent in accommodation, will increase these time periods further.

It is recognised that any number of arrivals from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, or Lebanon, eligible for housing or housing support, will be an increase to an already existing demand that outweighs social housing supply. People arriving from the affected territories are likely to have to be accommodated in temporary accommodation, ahead of placement into suitable settled accommodation. Any such increased demand may result in increased lengths of stay for existing applicants within temporary accommodation, or extend the period of time spent on social housing waiting lists.

- **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 Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, Lebanon will help reduce this risk or homelessness, and should it occur, ensure that it is brief, rare and non-recurring. The safeguard provided by the

⁴ [Homelessness accommodation provision and rough sleeping: August 2023 | GOV.WALES](#)

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 Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights, and Lebanon, 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](#)