

Explanatory Memorandum to the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department for Local Government and Communities of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Member's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015.

Lesley Griffiths AM

Minister for Communities and Tackling Poverty

09 March 2015

Description

1. This instrument puts in place a mechanism to allow Welsh Local Authorities to have regard to intentionality when securing accommodation for the homeless under the Housing (Wales) Act 2014.

Matters of special interest to the Constitution and Legislative Affairs Committee

2. As part of the implementation of Part 2, a number of statutory instruments are required to support the intentions of the Act, of which the following are subject to the affirmative procedure:
 - a) The Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015;
 - b) The Homelessness (Suitability of Accommodation) (Wales) Order 2015; and
 - c) The Homelessness (Review Procedure) (Wales) Regulations 2015.

Legislative background

3. The National Assembly for Wales (“the Assembly”) has the legislative competence to make provision for, and in connection with, housing by virtue of Part 4 of the Government of Wales Act 2006 (“the 2006 Act”). The relevant provisions of the 2006 Act are set out in section 108 and Schedule 7. Paragraph 11 of Part 1 of Schedule 7 sets out the following subjects on which the Assembly may legislate under the heading ‘Housing’,

“Housing and housing finance except schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits. Encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation. Regulation of rent. Homelessness. Residential caravans and mobile homes.”

4. The Assembly also has legislative competence to make provisions concerning Local Government by virtue of paragraph 12 of Part 1 of Schedule 7, which specifies the following subjects

“Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance.”

5. The above subjects provided the National Assembly for Wales with the competence to make the provisions contained in the Housing (Wales) Act 2014, which was granted Royal Assent in September 2014.
6. Section 78 of the Housing (Wales) Act 2014 sets out the framework by which the Welsh Ministers must, by regulations, specify the category or categories of applicants to which a Local Authority may decide to have regard.

7. Section 142 (3) (b) (ii) of the Housing (Wales) Act 2014 stipulates the Regulations under Section 78 may not be made:

“Unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.”

Purpose and intended effect of the legislation

8. The use of intentionality as a test to determine whether an applicant is eligible for Local Authority support has long been a contentious issue. Local Authorities insist the test remains a crucial component in discouraging households from giving up accommodation in the false expectation of gaining a social housing tenancy.
9. However, Local Authorities are also known to set aside the intentionality test rules when it comes to supporting some vulnerable people and will continue to house them even though they could, legally, end their duty.
10. Following the process of researching and drafting the Housing White Paper (2012), it was proposed Local Authorities would be given the power to decide whether they intend to have regard to intentionality or not. This proposal had little opposition from both the public and third sectors and is consistent with the intention of ending family homelessness. The proposal for new legislation on homelessness was taken forward in the Housing (Wales) Bill which, after Royal Assent, became the Housing (Wales) Act 2014.
11. The Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015 outline the process a Local Authority must follow in order to have regard to intentionality and is broken into three parts:
- Part 1 – categories of applicant for the purpose of section 78;
 - Part 2 – notification to the Welsh Ministers of the decision to have regard to intentionality; and
 - Part 3 – effect on existing applicant of decision to have regard to intentionality or to revise such a decision.

Part 1 – categories of applicant for the purposes of section 78

12. Since only applicants who are either in priority need or suspected of being in priority need are liable to be subject to an intentionality test, the categories of people to which a Local Authority can choose to have regard, mirror the priority need categories included in section 70 of the Housing (Wales) Act 2014:
- A pregnant woman;
 - A person with whom a dependent child resides;
 - A person who is vulnerable as a result of some special reason (for example: old age, physical or mental illness or physical or mental disability);

- A person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster
- A person who is homeless as a result of being subject to domestic abuse;
- A person who is aged 16 or 17;
- A person who has attained the age of 18, but not the age of 21, who is at particular risk of sexual or financial exploitation;
- A person who has attained the age of 18, but not the age of 21, who was looked after, accommodation or fostered at any time while under the age of 18;
- A person who has served in the regular armed forces of the Crown who has been homeless since leaving those forces;
- A person who has a local connection with the area of the local housing authority and who is vulnerable as a result of one of the following reasons:
 - having served a custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) act 2000,
 - having been remanded in or committed to custody by an order of a court, or
 - having been remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Part 2 – notification to the Welsh Ministers of the decision to have regard to intentionality

13. The Welsh Ministers will have no other responsibility other than to issue the list of categories to which a Local Authority may have regard. When a Local Authority has reached a decision, Regulation 3 requires it to send a written notice of its decision to the Welsh Ministers (including a reason for each category where a decision to have regard has been made). Regulation 3 is made under the power in section 144 to make consequential provisions, which is wide enough to permit making provision in the regulations about publication of notices of decision.
14. Such a notice must be published on the Local Authority's web site, (if they have one) and also posted in the Authority's office(s) where homelessness applications are normally received. The Authority must also take reasonable steps to bring the notice to the attention of applicants, applicants' advisors, and relevant stakeholders.
15. The notice must pre-date the implementation of the regard to intentionality by not less than 14 days.
16. In order to reduce the bureaucracy and uncertainty for applicants and their advisers, Regulation 6 provides for Local Authorities to revise their list of categories only twice in a 12 month period.

Part 3 – effect on existing applicant of decision to have regard to intentionality or to revise such a decision

17. Part 3 outlines the process for considering ongoing applications. Should the Local Authority have regard to a category or categories, any on-going applications will not be subject to a negative impact. Therefore, if a category is withdrawn, then all current affected applicants would no longer be liable to an intentionality test. However, where an Authority has added a category, any affected ongoing applications would not be subject to the revised approach.

Consultation

18. A formal consultation exercise on this statutory instrument took place between 15 January 2015 and 26 February 2015. The consultation was open to all stakeholders to respond. The Welsh Government ensured that all key housing stakeholders were notified of the consultation via the distribution list for its Housing Bulletin.

19. Attached, at Annex 1, is the published ‘Summary of Responses’.

20. Most of the comments are more appropriately considered in the Code of Guidance. However, Regulation 5 has been updated to ensure that more stakeholders are notified of changes to the categories that a Local Authority has decided to have regard to in relation to intentionality.

Regulatory Impact Assessment

21. A Regulatory Impact Assessment was completed in accordance with Standing Order 26.6(vi) for the Housing (Wales) Act 2014, changed to reflect amendments to the Bill following scrutiny by the National Assembly for Wales.

22. The Welsh Ministers’ Code of Practice on carrying out of Regulatory Impact Assessments was considered in relation to these regulations. As a result it was not considered necessary to carry out a Regulatory Impact Assessment as to the likely costs and benefits of complying with these Regulations. The impact Assessment prepared for the Housing (Wales) Act 2014 remains relevant and a copy may be obtained from the Housing Policy Division, Welsh Government, Rhydycar Business Park, Merthyr Tydfil, CF48 1UZ.