

Explanatory Memorandum to the Renting Homes (Wales) Act 2016 and Homelessness (Suitability of Accommodation) (Wales) Order 2015 (Amendment) Regulations 2023.

This Explanatory Memorandum has been prepared by the 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 Renting Homes (Wales) Act 2016 and Homelessness (Suitability of Accommodation) (Wales) Order 2015 (Amendment) Regulations 2023. I am satisfied that the benefits justify the potential impacts.

Julie James MS

Minister for Climate Change

24 October 2023

PART 1

1. Description

The Renting Homes (Wales) Act 2016 and Homelessness (Suitability of Accommodation) (Wales) Order 2015 (Amendment) Regulations 2023 [“the draft Regulations”] make a number of amendments to the Renting Homes (Wales) Act 2016 and the Homelessness (Suitability of Accommodation) (Wales) Order 2015, including to:

- a) Amend Schedule 2, to the Renting Homes (Wales) Act 2016 (“the 2016 Act”) to provide that a licence relating to ‘private sector temporary homelessness accommodation’ (as defined in the draft Regulations) is never an occupation contract and to make consequential amendments to the 2016 Act in light of that amendment; and
- b) Amend the definition of ‘B&B accommodation’ in Article 2 of the Homelessness (Suitability of Accommodation) (Wales) Order 2015 (“the 2015 Order”) to more clearly reflect the characteristics of that accommodation.

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

None.

3. Legislative background

The 2016 Act provides that, as a general rule local authorities and registered social landlords (classed as ‘community landlords’) will issue secure contracts. For anyone who is not a community landlord (i.e. private landlord) the standard contract is the default arrangement, which can be periodic or fixed term.

Periodic standard contracts can be ended on a ‘no-fault’ basis by the landlord issuing a six-month possession notice. However, special arrangements apply in relation to accommodation provided in pursuance of a local authority’s homelessness duties. These special arrangements are set out in Part 4 of Schedule 2 to the 2016 Act. In summary, where accommodation is being provided by a third-party landlord, a standard occupation contract subject to a two-month no-fault notice will apply, one year after notification to the individual of the local authority’s homelessness assessment. As part of the implementation of the 2016 Act, a transitional provision was made to provide that an occupation contract cannot arise in relation to this type of accommodation before 1 December 2023.

When the 2016 Act was passed, there was no expectation that a person who is homeless would be living in what is defined in the draft regulations as private

sector temporary homelessness accommodation (generally referred to in the sector as 'B&B accommodation') for long enough for an occupation contract to apply (the usual maximum period of occupation would have been between 2 and 6 weeks, unless the accommodation is provided as a result of an emergency). Therefore, the 2016 Act did not expressly exclude this type of accommodation from potentially being subject to an occupation contract.

The 2015 Order provides a definition of 'B&B accommodation' for its own purposes. The draft Regulations amend Part 2 of Schedule 2 to the 2016 Act and define 'private sector temporary homelessness accommodation' as accommodation provided by a private landlord under arrangements made with a local housing authority in pursuance of any of that authority's homelessness housing functions, and which meets the definition of 'B&B accommodation' in Article 2 of the 2015 Order. This type of accommodation is widely referred to in the sector as 'B&B accommodation' and will be referred to as such for the purposes of this Explanatory Memorandum.

The draft Regulations will follow the affirmative Senedd scrutiny procedure and are made in exercise of the powers conferred on the Welsh Ministers by: paragraph 17 of Schedule 2 and section 256(1) of the Renting Homes (Wales) Act 2016 and sections 59(3) and 142(2) of the Housing (Wales) Act 2014.

4. Purpose and intended effect of the legislation

The commencement of the 2016 Act on 1 December 2022, started the twelve month period, following which a person accommodated by a third party landlord pursuant to a local authority's homeless duties, would receive a standard occupation contract subject to a two-month no-fault notice.

Providers of B&B accommodation expressed concerns about the likelihood they would become landlords to occupation contracts, given the length of time people are now being housed in B&B accommodation. There was a real risk these providers would refuse to provide this accommodation as a result. In order to mitigate that risk, the draft Regulations will preclude this kind of accommodation from ever becoming an occupation contract. This will have the effect of ensuring people who are living in this type of accommodation, will continue to occupy the accommodation under a licence and not an occupation contract.

To do this, the draft Regulations propose expanding the list of tenancies and licenses that are never occupation contracts within Schedule 2 to the 2016 Act, to include private sector temporary homelessness accommodation, which is defined by the draft Regulations, in part by reference to the definition of B&B accommodation in article 2 of the 2015 Order.

The draft Regulations also amend the definition of 'B&B accommodation' in the 2015 Order, to better reflect the characteristics of that accommodation.

As such, the legislation is intended to ensure people who are homeless and to whom the local authority has a duty to provide support and accommodation, can continue to be accommodated in B&B accommodation where necessary, without an occupation contract arising. It is intended this will reduce the risk of owners of B&B accommodation from withdrawing this accommodation which would potentially increase street homelessness.

5. Consultation

An eight-week consultation exercise commenced on 21 July 2023 and concluded on 15 September 2023.

67 responses were submitted during the consultation period and considered by officials. Responses were provided by a range of organisations and individuals, including B&B owners, local authorities and third sector homelessness organisations. The key finding from the consultation confirms strong support for the proposal, informed by a clear acknowledgment of the risk of losing what is currently an essential provision of emergency accommodation. This is in the context of current extreme pressures faced by the housing system. However, responses to the consultation also confirmed B&B accommodation should wherever possible be used only as a short-term option, and not the default option¹.

The responses to the consultation have been carefully considered in the development of the draft Regulations and will be published on the Welsh Government website.

¹ The Homelessness (Suitability of Accommodation) (Wales) Order 2015 will remain in force and is not affected by this proposal (see related [Ministerial Written Statement](#))

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

In regard to the draft Regulations, the Welsh Government has considered a number of possible options. These include:

- i. Business as usual;
- ii. Place an exemption on the application of occupation contracts to B&B accommodation;
- iii. Place an exemption on the application of occupation contracts for those who are homeless and accommodated in all forms of temporary accommodation.

These options are set out in further detail on pages 9-14.

7. Costs and benefits

Summary of the use of temporary accommodation

In response to the 'No One Left Out' approach adopted at the outset of the Covid-19 pandemic (using Public Health Powers), 'priority need' under Section 70 of the Housing (Wales) Act 2014 was extended to everyone at 'risk of street homelessness'.

This change supported the policy approach to reform homelessness provision to focus on prevention and rapid rehousing and reinforced communication from the Minister for Climate Change outlined in the Ending Homelessness Action Plan, that there would not be a return to the pre-pandemic approach of prioritising support for only some people who are homeless.

At this time, it was theorised that after an initial increase in the use of temporary accommodation, (based on those who were previously 'hidden' from homelessness services), the number of presentations to homelessness services would stabilise but remain marginally higher than pre-pandemic levels due to more inclusive entitlement to temporary accommodation.

However, as a result of the duration of the pandemic as well as continued cost of living pressures, wider asylum dispersal and increases in rent, presentations of households and individuals to local authorities requiring accommodation remain at peak pandemic levels. This has resulted in a steady increase in the number of people in temporary accommodation. Additionally, because supply does not currently meet demand, move on from temporary accommodation remains slow due to the lack of available long-term accommodation. The existing temporary accommodation infrastructure has struggled to adapt to the increased pressure and the use of B&B accommodation (rarely used prior to the pandemic) has increased significantly to cope with demand. As of July

2023, of the 10,931 individuals in temporary accommodation 3,686 individuals are in B&B accommodation.

The draft Regulations are in response to concerns that providers of B&B accommodation will stop allowing their accommodation to be used by local authorities to support homeless people. It is of course for each individual B&B provider to decide whether or not to continue accommodating people who are in receipt of a homeless duty and they should ensure they understand the financial impacts a decision will have for them and their business. However, where B&B accommodation is removed from use, it would exacerbate the current shortage of emergency accommodation significantly.

Homelessness data

Prior to the pandemic, data on households in temporary accommodation, including B&B accommodation was captured within the quarterly statutory publication. This included snapshot data (as at end March of the respective year) on the length of time spent in B&B accommodation and information on household type captured within the annual statutory publication.

The annual household data gives information on the number of single person households, and households with dependent children (including couple or single parent household with dependent children), however it does not give an accurate representation of the number of individuals residing in temporary accommodation. This is largely due to the inability to capture the total number of individuals in a household (other than a specified single person household). Furthermore, this data is reflective of a single snapshot in time during the year, and therefore does not necessarily reflect the true picture.

At the start of the pandemic, as the numbers in temporary accommodation started to increase, local authorities were asked to collect additional monthly management information. Unlike the statutory data, the monthly management information (MMI) is based on individual level data and is therefore a more accurate measure of the number of people in temporary accommodation. However, whilst the MMI provides a more accurate reflection of the number of people in temporary accommodation, it does not include the length of stay.

Table 1 provides the latest statutory household level data (correct to end of March 2023), while table 2 provides the latest MMI individual level data (as at end of July 2023). Although the accommodation type breakdown has only been published since April 2023, there will be the opportunity to compare in future periods.

Table 1 – Households accommodated temporarily by accommodation type and household type (post 2015-16) – as at end of March 2023 – Time spent in B&B accommodation

	All	Families with children
Up to 2 weeks	357	99
Between 2 and 6 weeks	456	96
Between 6 weeks and 6 months	861	147
6 months to 12 months	345	45
1 year and over	174	6
Total	2,187	393

[Households accommodated temporarily by accommodation type and household type \(Post 2015-16\) \(gov.wales\)](#)

Table 2 – Number of homeless individuals in temporary accommodation at the end of the month (July 2023)

Bed and breakfast and hotels	All	Aged 16 and under
April 2023	3,404	902
May 2023	3,651	982
June 2023	3,612	974
July 2023	3,686	989

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

Table 3 – average number of people in temporary accommodation at month end (individuals and households) – 2022/23

	2022/23
Average number of individuals in TA over 12 months	8,886
Average number of households in TA at end of March, per year	5,481

The financial information to determine the cost of placements into B&B / hotel accommodation and other forms of temporary accommodation has a number of caveats making it difficult to provide an accurate estimate of the average cost of placements in B&B accommodation.

At the beginning of the pandemic a Local Authority Hardship Fund was established to cover authorities' full costs of providing additional temporary accommodation during the health emergency. However, that source of funding was the primary fund for a number of housing related costs that were not solely linked to the provision of temporary accommodation and would therefore be an inappropriate source to estimate the associated unit cost.

In 2022/23 the Local Authority Hardship Fund was replaced by Welsh Government's 'No One Left Out' (NOLO) funding. Its purpose was to support local authorities' continuation of the 'No One Left Out' approach, and the additional financial burdens in relation to additional placements in temporary accommodation. Funding was limited to £20m across Wales and was allocated to each local authority in advance. Financial claims from local authorities indicate that they spent a further £13.8m on top of the original £20m allocated in 2022/23.

Table 4 – Total spend reported by local authorities (2022/23)

	2022/23
Welsh Government – 'No One Left Out' Funding (£)	£20,000,000
Additional Local Authority Funding for TA (£)	£13,800,000
Total TA funding (£)	£33,800,00
Average TA funding per month (£)	£2,816,667

Note that 4 out of 22 Ls have not provided details of full expenditure

Using this data, it is estimated that **£2,816,667** is spent per month providing temporary accommodation across Wales.

Table 5 – average unit cost (MMI) – 2022/23

	2022/23
Average individuals in TA Per month	8,886
Average cost of TA per month (£)	£2,816,667
Average TA unit cost per month (£)	£317
Average TA unit cost per year (£)	£3,804

Table 6 – average unit cost (statutory data) – 2022/23

	2022/23
Average individuals in TA as at 31 March 2023	5,481
Average cost of TA per month (£)	£2,816,667
Average TA unit cost per month (£)	£514
Average TA unit cost per year (£)	£6,167

For the purposes of this impact assessment, financial calculations are based on household-level data which results in an estimate of Average cost of TA per year is **£6,167 per household**.

Welsh Government has considered a number of possible **options**. These include:

- i. Business as usual;
- ii. Place an exemption on the application of occupation contracts to B&B accommodation;
- iii. Place an exemption on the application of occupation contracts for those who are homeless and accommodated in all forms of temporary accommodation.

Option 1: business as usual.

This option would potentially have the most significant impact in terms of cost savings, but also in potential increases in street homelessness. This would directly increase demand and costs to other services, such as health and criminal justice.

The 2015 Order sets time limits for stays in B&B accommodation. Although those time limits only apply in certain circumstances, this type of accommodation has not traditionally been used for long term occupation. Therefore, under normal circumstances the twelve-month time limit before an occupation contract arises would not be triggered.

However, as a result of the pandemic, and the increased demand for temporary accommodation, there were 2,187 households in B&B accommodation at the end of March 2023 (3,686 individuals at the end of July 2023). According to table 1, as of March 2023, that would include at least 174 households (not individuals) who have been in temporary accommodation for longer than 12 months already. By 1 December 2023, this number of 174 households would potentially be increased by a further 345 households who have been in B&B between 6 months and 12 months and an unknown proportion of the 861 who have been in 'B&B accommodation' between 6 weeks and 6 months.

In a worst case scenario, it is not just those who would trigger the occupation contract who may be impacted if Option 1 is pursued, but potentially all of the 2,187 households currently residing in B&B accommodation. This is because there is a risk B&B providers could make the accommodation unavailable to *all* occupants due to a reluctance to issue occupation contracts to some. In this scenario, one of a small number of different scenarios would play out:

Scenario 1 (100%) – All of the 2,187 households are found alternative permanent or temporary accommodation elsewhere, within the original local authority or outside.

The volume of temporary accommodation currently in use and the proportion of B&B accommodation being used due to a lack of alternatives (allied to the need to use forms of temporary accommodation in the first place) suggests this scenario and the ability of local authorities to source alternative accommodation is highly unlikely.

In this scenario, local authorities would be likely to attempt to undertake an emergency exercise to find alternative settings for their share of the 2,187 households. With permanent solutions for all 2,187 households unlikely, this scenario would likely result in an increase in street homelessness.

There is a wide variation in the use of B&B accommodation across Wales, but in the view of policy officials, due to the current volume of people in B&B accommodation requiring alternative accommodation, such an exercise would inevitably result in an increase in street homelessness and sofa surfing which would significantly impact some local authorities.

Additionally, for those who may find themselves street homeless or without an address (even if temporary), there is strong evidence to suggest that this could result in increased risks to their physical and mental health and personal safety. The lack of an address precludes people from mainstream public services which often leads to the misuse of acute and emergency care which is associated with high costs.

In addition, if local authorities are unable to comply with their legal obligations to help secure accommodation, they would be in breach of their duties and subject to legal challenge and possible judicial review, potentially increasing costs to the authority.

Scenario 2 (0%) - None of the 2,187 households are found alternative accommodation.

This scenario is also considered unlikely. Latest data indicates 393 of the 2,187 households contain young people (and MMI reports 989 individuals are aged 16 or under). This means that at least 393 families would be owed a duty set out in Part 2 of the Housing (Wales) Act 2014, and the Social Services and Wellbeing (Wales) Act 2014, which includes provision of accommodation where necessary. This could result in the local authority prioritising finding accommodation for any household which includes a child/young person. However, this course of action could result in the remaining households (many of whom are likely to be single people) left with no accommodation and at risk of becoming street homeless.

Scenario 3 (50%) – some of the 2,187 households are found alternative accommodation.

This scenario, where *some* of the households are found alternative accommodation is the most likely. For the purposes of this assessment, an assumption has been made that 50% of the available accommodation will remain in use. However, there is no current evidence confirming the actual percentage of accommodation that may remain in use.

Based on the numbers of young people in B&B accommodation and the additional statutory duties they will be owed, there will be at least 393 households that must be provided with alternative accommodation, regardless of how much overall B&B accommodation is retained. As set out in scenario 1 and 2 above, this may result in between 1,093 and 1,794 households owed a homelessness duty but insufficient accommodation available to house them. This will likely result in an increase in street homelessness.

Table 7 – potential financial cost savings in option 1

	Percentage found alternative accommodation (%)	Households moved to alternative accommodation	B&B Accommodation released (per household)	Cost savings per annum (£)
Scenario 1	100	2,187	2,187	13,487,229
Scenario 2	0	393	1,794	11,063,598
Scenario 3	50	1,093.5	1,093.5	6,743,614

Should the business as usual option be implemented, Table 7 suggests between **£6.7m (scenario 3) and £13.5m (scenario 1)** per annum would be recouped if B&B accommodation were no longer available for homeless households. However, it is unlikely there would be any significant cash savings made from the business as usual scenario given the likely costs associated with finding alternative temporary accommodation. In addition, there is the likelihood of increased costs on other services such as health and possible legal challenges brought against local authorities as a result of any possible failures to discharge their statutory duties and most importantly the impacts on the households who may be left without accommodation. There is also a wider economic impact of individual homelessness to consider, while the loss of so much B&B accommodation would also likely hit the local economies around the establishments across Wales.

In reality, due to the shortage of accommodation options available across Wales, the potential impact of continuing with business as usual could result in up to 2,187 households who were owed a duty left without a long-term housing solution. **For this reason, we have rejected this option.**

Option 2: Place an exemption on 'B&B accommodation'

This option, would mean B&B accommodation is exempt from the requirement set out in the 2016 Act, thereby ensuring owners of B&B accommodation are not required to issue occupation contracts.

This scenario would address concerns from providers of B&B accommodation that they will become landlords to occupation contracts, which was never their intention. By making B&B accommodation exempt from the requirement set out in the 2016 Act, it should ensure providers will continue to offer this accommodation rather than withdraw their properties. In so doing, it would remove the urgency and pressure on local housing authorities to find alternative accommodation.

Table 7 outlines the potential costs associated with the continuation of 2,187 households remaining in B&B accommodation. However, these costs are theoretical and discretionary. If all 2,187 households are being accommodated under a homelessness duty, there would be expectations that the savings would be used to fund alternative forms of accommodation. In addition, there is no reason why the annual cost of placing someone in a B&B could not be invested in solutions that help to secure settled accommodation instead.

This proposal will be generally welcomed by local authorities, who are under considerable pressure due to the number of people seeking assistance and those who end up requiring some form of temporary accommodation. However, this option does prevent occupants from gaining the benefit of the additional security of tenure offered by an occupation contract.

Despite the use of B&B accommodation, local authorities still consider the use of this form of accommodation only as a last resort. This is in recognition of the potential detrimental impact B&B accommodation has on a household or individual. Within this context, the impact of not receiving an occupation contract (and associated level of security), is considered by local authorities to be an acceptable situation compared to the potential risk in the increase in street homelessness arising from B&B providers withdrawing their properties.

Based on the above rationale, **this option has been accepted.**

Option 3: Place an exemption on all forms of temporary accommodation.

This option was raised in consultation responses received from a number of local authorities suggesting an exemption for all forms of temporary accommodation.

The sole purpose of the original proposal is to retain the additional stock of B&B accommodation currently being used as temporary accommodation and thereby reduce the likelihood of increasing street homelessness significantly.

Exempting all temporary accommodation would not necessarily provide additional protection from homelessness, but would negate one of the key objectives of the 2016 Act namely, to provide greater security of tenure to all tenants.

This option would deny those in temporary accommodation this security and, in addition, may actually perversely incentivise prolonged stays in temporary accommodation, particularly for those who have significantly fewer housing options due to past history or behaviour. This is because the urgency to move them on, before the expiry of the twelve-month period, in order to avoid an occupation contract arising would have fallen away. Retaining the twelve-month limit for applications supported through homeless legislation is also in line with the Welsh Government's long-term ambitions to transition to a Rapid Rehousing model of homelessness services, and to move people out of temporary accommodation and into suitable settled accommodation as quickly as possible.

As a result, we have rejected this option but have been clear in the consultation summary document that the evaluation of the Renting Homes Act currently underway provides further opportunities for this matter to be considered.

Benefits of option 2

Section 4 of this Explanatory Memorandum describes the benefits which are likely to result from amendments made by the draft Regulations. In a broad sense, we anticipate the resulting outcome will be a continuation in the type of homelessness assistance provided since the start of the pandemic period. This is aligned to the aim of the Welsh Ministers – to reduce the risk of homelessness and should it occur, ensure homelessness is rare, brief and unrepeatable.

The benefits of preventing homelessness extend well beyond the actual, additional, costs of helping people who are homeless, for example, the cost of providing temporary accommodation. There have been multiple studies²³⁴⁵ examining the costs associated with providing homelessness assistance, all of which recognise the potential significant savings which might be made from effective intervention.

Effective homelessness services can provide benefits that may last for a person's lifetime. They include better health and well-being, child development and education, an adults' participation in the labour market and contribution to

² [At what cost? | Crisis UK | Together we will end homelessness](#)

³ [Better than cure? | Crisis UK](#)

⁴ [Hard-Edges-Mapping-SMD-2015.pdf \(lankellychase.org.uk\)](#)

⁵ [assessing the costs and benefits of crisis- plan to end homelessness 2018.pdf](#)

economic output. As a result, the demands on public services including, the NHS and social care services will 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 also be negatively affected by their mental health and substance misuse. The longer those experiences are felt, the more complex they become resulting in the requirement for an increased level of support and long-term clinical intervention to assist in recovery.

In addition, the lack of address, even a temporary one, prevents an individual from gaining and maintaining access to health, education and social services, all of which are needed to support a person or household to live independently and maintain a sense of belonging within their local community⁶.

Further benefits of reducing the risk of street homelessness are aligned to the successful achievement of goals set out in 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.

In retaining the status quo, the benefit of the legislation will also assist in maintaining harmonious relationships between local authorities and B&B providers who currently play a pivotal role supporting local authorities to meet statutory homelessness duties.

8. Competition Assessment

The competition filter test has been completed for the B&B sector. The Regulations are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

9. Post implementation review

In line with the Programme for Government commitment to fundamentally reform homelessness services, to focus on prevention and Rapid Rehousing, a White Paper has been published. Through the development of legislation to end homelessness, the effectiveness of this secondary order will be re-examined.

⁶ [Well-being of Future Generations \(Wales\) Act 2015: the essentials \[HTML\] | GOV.WALES](#)

Table 8 – Households accommodated temporarily by accommodation type and household type (post 2015-16)

	All duration	Of which are families with children	Under 2 weeks	Of which are families with children	Between 2 and 6 weeks	Of which are families with children	6 weeks to 6 months	Of which are families with children	6 to 12 months	Of which are families with children	1 year plus	Of which are families with children
Total	5481	1593										
Private sector accommodation	1203	411							279	90	360	138
Within local authority stock	645	342							165	93	138	57
RSL stock	219	102							48	24	72	36
Hostels (including reception centres and emergency units)	651	153							135	36	132	33
Women's refuge	144	69							30	15	30	15
Bed and breakfast	2187	393	357	99	456	96	861	147	345	45	174	6
Other	180	63							30	15	12	6
Homeless at home	255	66							72	15	12	*

[Households accommodated temporarily by accommodation type and household type \(Post 2015-16\) \(gov.wales\)](https://gov.wales)

Table 9 – Homelessness Accommodation Provision and Rough Sleeping (July 2023)

	July 2021	July 2022	July 2023
Total	6,685	8,468	10,931
Bed and breakfast and hotels*			3,686
Caravan parks or similar holiday accommodation*			324
Hostels (including reception centres and emergency units)*			1,800
Women's refuge*			225
Private sector accommodation*			2,010
Within local authority stock*			1,594
RSL stock*			489
Other (including homeless at home)*			803

* data only published since April 2023

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