

Explanatory Memorandum to the Homelessness (Suitability of Accommodation) (Wales) Order 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 and is now laid 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 (Suitability of Accommodation) (Wales) Order 2015.

Lesley Griffiths AM

Minister for Communities and Tackling Poverty

09 March 2015

Description

1. This instrument sets out the framework for assessment of suitability in relation to the use of shared and bed and breakfast accommodation for the purposes of section 68 and 75 of the Housing (Wales) Act 2014. The instrument also sets out the criteria for what is not suitable for the purposes of a local authority discharging its duties under sections 66, 68, 73 and 75 of that Act in relation to an offer of accommodation. The Order also sets out other matters which a local authority must take into account when assessing suitability.

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 59 of the Housing (Wales) Act 2014 specifies matters to be taken into account when determining suitability for the purposes of Part 2 of the 2014 Act. By section 59(3)(a) of the Housing (Wales) Act, the Welsh Ministers have the power to specify circumstances in which accommodation is, or is not, to be regarded as suitable. By section 59(3)(b), they may specify additional matters which an authority must take into account, or disregard, in determining whether accommodation is suitable.
7. Section 142 (3) (b) (i) of the Housing (Wales) Act 2014 stipulates that the Regulations under Section 59 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 concept of suitable accommodation is not new and is part of the Housing Act 1996. It has been re-enacted with slight modifications in the Housing (Wales) Act 2014. In particular, the concept of “affordability” is now in section 59(2) rather than in the secondary legislation.
9. Local Authorities must consider the suitability of all accommodation offered to fulfil or discharge the respective duties owed to the applicant.
10. The current Orders made under the Housing Act 1996, are the Homelessness (Suitability of Accommodation) Order 1996; the Homelessness (Suitability of Accommodation) (Amendment) Order 1997; and the Homelessness (Suitability of Accommodation) Order 2006. The draft Order consolidates and modernises these, taking into account the changes made by the Housing (Wales) Act 2014.
11. The current Orders made provision about matters to be taken into account and introduced basic and higher standards in respect of shared accommodation used for the purposes of temporary accommodation, and introduced time limits for the use of the accommodation for it to be considered as remaining suitable for applicant’s occupation.
12. The Housing (Wales) Act 2014 allows Local Authorities to discharge their duty to secure accommodation through offers of suitable accommodation not only in the social sector but also in the private sector.
13. The Homelessness (Suitability of Accommodation) (Wales) Order 2015 outlines the criteria a Local Authority must consider in order to satisfy itself that accommodation is suitable for the purposes of performing and ending its duties.
 - Part 1 of this Order relies on the powers in section 59(3)(b) of Part 2 of the Housing (Wales) Act 2014 to specify additional matters to be taken into account in determining whether accommodation is suitable. It

applies to households containing persons who are, or may be, in priority need. Article 3 specifies additional matters relating to the health needs of the person, any disability of the person, and the proximity of social services, medical facilities and other essential support. Possible disruption to employment, education or caring responsibilities must also be considered, and where appropriate, the proximity to a perpetrator or victim of domestic abuse relevant to the person. These factors are also considered in relation to a person who is a member of the applicant's household.

- Part 2 of this Order applies to offers of 'Bed and Breakfast' ("B&B") and shared accommodation made to those applicants who are, or may be in priority need, and to whom the local authority owes certain duties under the Housing (Wales) Act 2014. These duties are the duty to provide interim accommodation in section 68; in limited circumstances an offer of such accommodation made under section 73 duties; and interim accommodation provided under the duties in section 75 of the Housing (Wales) Act 2014, to those in priority need. Part 2 specifies that shared and B&B accommodation is not suitable for accommodation for those in priority need and that shared accommodation is not suitable unless it meets the 'higher standard'. These rules are subject to several exceptions and conditions relating to length of occupancy, standards, and the choice of the applicant. Provision is also made to allow for otherwise unsuitable accommodation in emergencies.
- Part 3 of the Order relates to private rented sector accommodation offered in discharge of an Authority's duties to homeless applicants in priority need of accommodation as provided by section 76(2), (3) and (4) of the Housing (Wales) Act 2014. Article 9 specifies circumstances in which such accommodation is not to be regarded as suitable.

Part 2+3 – categories of applicant for the purposes of section 68 and 75 of the Housing (Wales) Act 2014.

14. Only those applicants who are either in priority need or suspected of being in priority need are owed the duties relating to interim accommodation under section 68, or an offer of accommodation under section 75 (Duty to secure accommodation for applicants in priority need when the duty in section 73 ends). The priority need categories are included in section 70 of the Housing (Wales) Act 2014.

Consultation

15. 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, but the Welsh Government ensured that all key housing stakeholders were notified of the consultation via the distribution list for its Housing Bulletin.

16. Attached at Annex 1 is the published 'Summary of Responses'.

17. Most of the comments are more appropriately considered in the Code of Guidance, but the consultation has led to some changes in the Order including:

- An inclusion of the proximity to domestic abuse perpetrator or victim as a consideration when taking into account the suitability of accommodation;
- In line with the same approach taken on the face of the Housing (Wales) Act 2014, including all members of the household when considering all of the factors to be considered under Part 1; and
- Ensuring that adequate safety arrangements are in place in relation to domestic abuse refuges under Article 8.

Regulatory Impact Assessment

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

19. The Welsh Ministers' Code of Practice on carrying out of Regulatory Impact Assessments was considered in relation to this Order. 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 this Order. 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.