

Explanatory Memorandum to the Homelessness (Review Procedure) (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 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 (Review Procedure) (Wales) Regulations 2015.

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Minister for Communities and Tackling Poverty

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Description

1. This instrument puts in place the procedure to be followed in connection with a review of a Local Authority decision under section 85 of the Housing (Wales) Act 2014.

Matters of special interest to the Constitutional 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 86 of the Housing (Wales) Act 2014 sets out the framework by which the Welsh Ministers may, by regulations, set the procedure to be followed in

connection with reviewing a Local Authority decision under section 85 of the Housing (Wales) Act 2014.

7. Section 142 (3) (b) (ii) of the Housing (Wales) Act 2014 stipulates that the Regulations under section 86 may not be made unless

“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. Maintaining a robust and accessible review system is important to ensure Local Authorities follow both the spirit and the letter of the legislation in Part 2 of the Housing (Wales) Act 2014. The existing, UK-wide, review process has been developed over a number of years and is considered to offer the necessary protection to applicants.
9. For this reason, Welsh Government proposed no substantive changes to the existing process as set out in the Housing Act 1996, the Homelessness Act 2002, and the Allocation of Housing, and Homelessness (Review Procedures) Regulations 1999.
10. However, with additional duties on the face of the Housing (Wales) Act 2014, it is necessary to update some parts of existing legislation to ensure the new additional duties are covered when it comes to an applicants being able to request a review of the decisions.
11. It is also an opportunity to consolidate all of the secondary legislation into one instrument, which, alongside other secondary legislation, will help form a package of new Welsh law and guidance. In addition, it will allow the legislation to be made bilingually.
12. Section 85 of the Housing (Wales) Act 2014, makes it explicit that an applicant is able to request a review to decision made by a Local Authority as to whether:
 - They are eligible for help;
 - A duty is owed to them under section 66, 68, 73 or 75;
 - A duty under section 66, 68, 73 or 75 has come to an end;
 - Reasonable steps have taken place where a duty has ended under section 73; and
 - The accommodation offered that resulted in the ending of one of the duties under section 66, 68, 73 or 75 is suitable.
13. The applicant must make the request within 21 days of the date of the notification of the decision which is under review.
14. The Homelessness (Review Procedures) (Wales) Regulations 2015 outlines the process and is broken down into eight regulations:

- Regulation 1 – Title Commencement and interpretation
- Regulation 2 – Request for a review and notification of review procedure
- Regulation 3 – Who is to make the decision on the review
- Regulation 4 – Initial procedure where the original decision was made under the Decisions on Referrals Order
- Regulation 5 – Procedure on a review
- Regulation 6 – Notification of the decision on a review
- Regulation 7 – Application of the Decision on Referrals Order
- Regulation 8 – Revocation and transitional provisions

Regulation 1 - Title, commencement and interpretation

15. Sets the title and date of commencement in addition to defining some of the terminology.

Regulation 2 - Request for a review and notification of review procedure

16. As per existing legislation, the regulation makes it clear that the request for a review must be made to the Local Authority which made the original decision that is being challenged.

17. Local Authorities must then, within 5 working days, inform applicants of the referral process and also invite them to submit either orally, in writing or both, their version of events and the facts of the case from their perspective.

18. Where an applicant is challenging a decision made under the Homelessness (Decisions on Referrals) Order 1998, the same process applies, but it is undertaken by the person appointed to undertake the review.

Regulation 3 - Who is to make the decision on the review

19. This makes it clear the decision on review must be made by someone who was not involved in the original decision.

Regulation 4 - Initial procedure where the original decision was made under the Decisions on Referrals Order

20. In some cases there are likely to be requests for review made on decisions made under the Homelessness (Decisions on Referrals) Order 1998, which will cover whether or not someone meets the conditions for referral to either a Welsh or English Local Authority.

21. Co-operation between the two relevant Local Authorities is required. Therefore, the review must be carried out by someone appointed by both the notifying and notified Authority.

22. Should there be a delay in appointing a person to carry out the review, the review must be carried out either by someone included on the Local Government Association Panel as per paragraph 3 of the Schedule in the

Homelessness (Decisions on Referrals) Order 1998, or request the chair of the Welsh Local Government Association to appoint a person from their panel.

23. When the person is appointed, both the notifying and notified Authorities must provide the appointed person with the information and evidence that informed their original decision.

Regulation 5 - Procedure on a review

24. The reviewer must consider all representations and evidence presented in relation to the review.
25. Where a reviewer discovers a deficiency or an irregularity in the original decision, but is minded to agree the original decision, the reviewer must make contact with the applicant to explain the situation and if possible seek further oral or written evidence or both.

Regulation 6 - Notification of the decision on a review

26. Notification of a decision on review must be given to the applicant no later than 8 weeks from the day on which the request for a review is made in the majority of cases. Exceptions are:
- 10 weeks for those subject to reviews of the referral to another Local Authority area and where the review is carried out by a person appointed by the notifying and notified Authority; and
 - 12 weeks for those whose original decision was made under the Homelessness (Decisions on Referrals) Order 1998.
27. These set periods can be extended, but only by agreement with the applicant and in writing.
28. Where an applicant has requested a review under the Homelessness (Decisions on Referrals) Order 1998, the appointed person must notify both Local Authorities, in writing, within 11 weeks from the date of the request to review. If the 12 week period has been extended by agreement, the appointed person must inform both Local Authorities a week before they notify the applicant.

Regulation 7 - Application of the Decision on Referrals Order

29. This regulation establishes that the Homelessness (Decision on Referrals) Order 1998 is, for the purpose of these regulations, to have effect as if made under section 80(5)(b) and (6)(b) of the Housing (Wales) Act 2014.

Regulation 8 - Revocation and transitional provisions

30. This regulation makes the necessary revocations in Wales of the existing legislation.

31. In relation to transitional arrangements, those revocations do not apply where a request for a review is made prior to the date the regulations come into force.

Consultation

32. A formal consultation exercise on this statutory instrument was undertaken 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.

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

34. Most of the comments are more appropriately considered for the Code of Guidance, but the consultation has resulted in some changes in the Regulations including:

- The ability for an applicant to provide oral as well as written evidence when giving presentations to the person appointed to undertake the review; and
- The removal of the requirement that a review is undertaken by an officer more senior to the officer who made the original decision, but was independent from the original decision. This would allow those Local Authorities who have separate review teams to the main teams providing homelessness services to continue this arrangement.

Regulatory Impact Assessment

35. 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.

36. 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.