

Consultation draft

Draft Regulations laid before the National Assembly for Wales under section 142(3)(b)(ii) of the Housing (Wales) Act 2014, for approval by resolution of the National Assembly for Wales.

W E L S H S T A T U T O R Y I N S T R U M E N T S

2015 No. (W.)

HOUSING, WALES

The Homelessness (Review Procedure) (Wales) Regulations 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the procedure to be followed under section 85 of the Housing (Wales) Act 2014 (“the 2014 Act”), in connection with a review by local housing authorities of specific decisions relating to homelessness.

Regulation 2 provides that requests for review must be made to the local housing authority which made the decision whose review under section 85 has been requested. Authorities must inform applicants and representatives that they make written representations in connection with the review. Applicants must also be notified of the procedure to be followed on review. These requirements apply equally in relation to reviews falling within regulation 4 (Initial procedure where the original decision was made under the Decisions on Referrals Order).

Regulation 3 provides that where a decision was originally made by an officer of the authority, any review must be made by an officer of seniority to the original decision-maker, and the reviewing officer must not have been involved in the original decision.

Regulation 4 sets out the initial procedure to be followed where the original decision was made under the Homelessness (Decisions on Referrals) Order 1998 (SI 1998/1578) (“the Decisions on Referrals Order”) (as applied by regulation 7).

Regulation 5 provides the procedural requirements applying to all reviews under the Regulations. The

reviewer must consider any representations made in accordance with regulation 2 and 4. If the reviewer is minded to make a decision against the interests of applicant notwithstanding some deficiency or irregularity in the original decision or its making, the reviewer must inform the applicant its reasons and invite representations. These representations can be made by the applicant or a representative, either in writing, orally, or both.

Regulation 6 sets out the requirements for notifying applicants of decisions on review.

Regulation 7 sets out the application of the Decisions on Referrals Order for the purpose of these Regulations.

Regulation 8 makes various consequential revocations in relation to Wales. In particular, Regulation 8 revokes the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 (SI 1999/71), which dealt with reviews of local housing authority decisions on homelessness under the Housing Act 1996. The remaining revocations relate to now ineffectual amending legislation. There is a transitional provision saving the application of the regulations to be revoked, in relation to ongoing cases under the Housing Act 1996.

Draft Regulations laid before the National Assembly for Wales under section 142(3)(b)(ii) of the Housing (Wales) Act 2014, for approval by resolution of the National Assembly for Wales.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2015 No. (W.)

HOUSING, WALES

**The Homelessness (Review
Procedure) (Wales) Regulations
2015**

Made ***

Coming into force ***

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 86(1) and (2), and 142(2)(c) of the Housing (Wales) Act 2014⁽¹⁾.

A draft of this instrument was laid before and approved by resolution of the National Assembly for Wales in accordance with section 142(3)(b)(ii) of that Act.

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Homelessness (Review Procedure) (Wales) Regulations 2015.

(2) These Regulations come into force on ***.

(3) In these Regulations—

“the authority” means—

- (a) the local housing authority which made the decision whose review under section 85 has been requested, or
- (b) the notifying authority if the said decision was made under section 80(5) (a decision as to whether the conditions are met for the referral of a case to another local housing authority);

(1) 2014 anaw. 7.

“the Decisions on Referrals Order” means the Homelessness (Decisions on Referrals) Order 1998(1);

“the reviewer” means—

- (a) where the original decision is not made under section 80(5), the authority;
- (b) where the original decision is made under section 80(5) (a decision whether the conditions are met for the referral of a case)—
 - (i) the notifying authority and the notified authority, where the review is carried out by those authorities; or
 - (ii) the person appointed to carry out the review in accordance with regulation 4, where the case falls within that regulation;
- (c) “working day” means a day other than Saturday, Sunday, Christmas Day, Good Friday or a bank holiday(2).

(4) In these Regulations, references to sections are references to sections of the Housing (Wales) Act 2014.

Request for a review and notification of review procedure

2.—(1) A request for a review under section 85 must be made to the authority.

(2) Except where the case falls within regulation 4, the authority to whom a request for a review under section 85 has been made must (within [?] [working][?] days of receipt of a request)—

- (a) invite the applicant, and where relevant, the applicant’s representative, to make representations in writing to the authority in connection with the review; and
- (b) if they have not already done so, notify the applicant of the procedure to be followed in connection with the review.

(3) Where the case falls within regulation 4, the person appointed in accordance with that regulation must (within [?] [working][?] days of appointment)—

- (a) invite the applicant, and where relevant, the applicant’s representative, to make representations in writing to that person in connection with the review; and
- (b) notify the applicant of the procedure to be followed in connection with the review.

(1) SI 1998/1578

(2) As defined in section 1 of and Schedule 1 to the Banking and Financial Dealings Act 1971 (c. 80).

Who is to make the decision on the review

3. Where the decision of the authority on a review of an original decision made by an officer of the authority is also to be made by an officer, that officer must be someone who was not involved in the original decision and who is senior to the officer who made the original decision.

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

4.—(1) Where the original decision under section 80(5) (whether the conditions are met for the referral of a case) was made under the Decisions on Referrals Order, a review of the decision is (subject to paragraph 2) to be carried out by a person appointed by the notifying authority and the notified authority.

(2) If a person is not appointed in accordance with paragraph (1) within five working days then the review is to be carried out by a person –

- (a) from the panel constituted in accordance with paragraph 3 of the Schedule to the Decisions on Referrals Order (“the panel”), and
- (b) appointed in accordance with paragraph (3) below.

(3) The notifying authority must within five working days from the end of the period specified in paragraph (2) request the chair of the Welsh Local Government Association or the chair’s nominee (“the proper officer”) to appoint a person from the panel and the proper officer must do so within seven days of the request.

(4) The notifying authority and the notified authority must within five working days of the appointment of the person appointed (“the appointed person”) provide that person with the reasons for the original decision and the information and evidence on which that decision was based.

(5) The appointed person must–

- (a) send to the notifying authority and the notified authority any representations made under regulation 2; and
- (b) invite those authorities to respond to those representations.

(6) The appointed person must not be the same person as the person who made the original decision.

Procedure on a review

5.—(1) The reviewer must, subject to compliance with the provisions of regulation 6 consider—

- (a) any representations made under regulation 2, and in a case falling within regulation 4, any responses to them; and
- (b) any representations made under paragraph (2) below.

(2) If the reviewer considers there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but is minded nonetheless to make a decision which is against the interests of the applicant on one or more issues, the reviewer must notify the applicant—

- (a) that the reviewer is so minded and the reasons why; and
- (b) that the applicant, or someone acting on the applicant's behalf, may make representations to the reviewer orally or in writing or both orally and in writing.

Notification of the decision on a review

6.—(1) The period within which notice of the decision on a review under section 85 must be given under section 85(3) to the applicant is to be—

- (a) 8 weeks from the day on which the request for the review is made, except where the original decision falls within sub-paragraphs (b) and (c) below;
- (b) 10 weeks from the day on which the request for the review is made, where the original decision falls within section 80(5) and the review is carried by a person appointed by the notified and notifying authorities);
- (c) 12 weeks from the day on which the request for the review is made in a case falling within regulation 4.

(2) The period specified in paragraph (1) may be such longer period as the applicant and the reviewer may agree in writing.

(3) In a case falling within paragraph (1)(c), the appointed person must notify the decision on the review, and the reasons for it, in writing to the notifying authority and the notified authority within a period of eleven weeks from the day on which the request for the review is made, or within a period commencing on that day which is one week shorter than that agreed in accordance with paragraph (2).

Application of the Decision on Referrals Order

7. The Decisions on Referrals Order have effect for the purpose of these Regulations as if made under the powers in section 80(5)(b) and (6)(b), and references in those regulations to the Housing Act 1996 are to be

construed as if referring to the equivalent provisions of the Housing (Wales) Act 2014.

Revocation and transitional provisions

8.—(1) Subject to paragraph (2), the following provisions are hereby revoked in relation to Wales—

- (a) the Allocation of Housing and Homelessness (Review Procedures and Amendment) Regulations 1996**(1)**;
- (b) the Allocation of Housing and Homelessness (Amendment) Regulations 1997**(2)**;
- (c) the Allocation of Housing and Homelessness (Amendment) (No.2) Regulations 1997**(3)**;
- (d) the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999**(4)**.

(2) The provisions revoked by paragraph (1) are to continue in force in any case where a request for a review under section 202 of the Housing Act 1996 is made prior to the date these Regulations come into force.

Lesley Griffiths

Minister for Communities and Tackling Poverty, one
of the Welsh Ministers

Date***

(1) S.I. 1996/3122.
(2) S.I. 1997/631.
(3) S.I. 1997/2046.
(4) S.I. 1999/71.