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Consultation – summary of responses

Statutory Instruments under Part 2 of the Housing (Wales) Act 2014

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1. The Consultation Exercise

The consultation exercise sought views on the statutory instruments associated with Part 2 of the Housing (Wales) Act 2014 which gained Royal Assent in September 2014 and which is scheduled to be implemented during the spring of 2015.

Part 2 of the Act introduces a new system to tackle homelessness and the threat of homelessness, including a far greater emphasis on preventing homelessness in the first place. This has been achieved by strengthening the role of prevention in the duties Local Authorities owe to homeless people.

The main aims of Part 2 are:

- To achieve an even greater focus on preventing homelessness in the first place.
- To extend the entitlement of many applicants who, under current legislation, would only be entitled to advice and assistance.
- To ease the burden on Local Authority accommodation by allowing Authorities to discharge their homelessness duty into suitable private rented accommodation.
- To enhance the co-operation of Registered Social Landlords with Local Authorities in the discharge of their homelessness duties.

The three statutory instruments, which were the subject of consultation were:

- The Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015.
- The Homelessness (Suitability of Accommodation) (Wales) Order 2015.
- The Homelessness (Review Procedures) (Wales) Regulations 2015.

The consultation was launched on 15 January 2015 and closed on 26 February 2015.

This document summaries the responses.

2. Responses to the Consultation Exercise

Respondents were asked to consider eight questions across the three statutory instruments and to comment on related issues, which may not have been specifically addressed in the consultation document.

There were 27 responses to the consultations. Responses were received from organisations, businesses, groups and individuals. A list of respondents is provided at Annex 1. Where respondents have asked that their personal details not be published, they are described below and at Annex A as 'anonymous'.

Not all respondents directly answered each of the nine questions and some respondents grouped their responses based on the statutory instrument concerned. Where this was the case, and particularly where extracts from those responses have been quoted in this document, the responses have been grouped by statutory instruments.

The Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015

Question 1: Do you agree with the categories of applicant specified in Part 1 of the Regulations?

Question 2: Are the procedures for having regard to intentionality set out in Part 2 appropriate

The vast majority of respondents (21) were in favour of both the categories and the process outlined in the draft Regulations.

However, a number of observations were made and some amendments proposed:

- Of the 27 responses, only two that suggested changes to the categories a Local Authority can decide to have regard to for the purposes of intentionality. Both responses were suggested that Welsh Government could remove the 16/17 year old category as a starting point to attain the Welsh Government's long-term aim of removing intentionality.
- Three responses were concerned about the potential for the policy and legislation to allow Local Authorities to pick and choose categories. It was felt this could create unacceptable variations and in equalities across Wales, particularly when it is anticipated that Local Authorities could make decisions on which group, or groups, of vulnerable individuals to have regard to for intentionality based on costs rather than need.
- Some responses referred to the process as set out in the Regulations and, in particular, the lack of engagement with stakeholders to help inform Local Authorities' decision making:
 - Four were in favour of the inclusion of a mandatory consultation phase in the process for a Local Authority to follow in order to make a decision on the categories to have regard to for intentionality.
 - Five respondents were in favour of placing further requirements on Local Authorities for communicating decisions made. This would help ensure all relevant local stakeholders are informed of changes in the list of categories.
- While the majority were in favour of the process, 3 were in favour of extending the 14 day period between a Local Authority's decision being publicised and implemented to 28 days in order to allow local services to adjust.

- In addition, one respondent was in favour of including an appeal process so that local representatives can make a request to a Local Authority to reconsider their decisions on what categories they will have regard to. It was suggested this process could include the Welsh Ministers confirming a decision.

A number of individual responses raised points which are more appropriate to the Code of Guidance consultation. At the time of preparing this summary report, the consultation on the Code is still open. The points made in responses are summarised below and will be included in the analysis of responses on the Code itself:

- Concern that the changes to the legislation around family intentionality, which will be implemented in 2019, will lead to families deliberately leaving suitable accommodation in order to secure different accommodation;
- A request to adopt a national standard for the intentionality test;
- Concern over how intentionality decisions are made in relation to domestic abuse cases, which often force a victim to leave the family home. In addition, a Domestic Violence Prevention Order will often exclude a perpetrator from an address. Both can lead to inappropriate intentionality decisions;
- Clarification needed on the evidence requirements to enable an applicant to be classified under either the 'domestic abuse' priority need category or the 'at risk of sexual exploitation' category;
- More clarification on the definition of 'served' when it comes to armed forces in relation to whether it is active service or more supportive role in the armed forces;
- A comment that the current Code of Guidance is at odds with both primary and secondary legislation in relation to intentionality decisions on former prisoners;
- Concern about the lack of support for single homeless people; and
- Concern about the removal of the blanket priority need for prisoners.

The Homelessness (Suitability of Accommodation) (Wales) Order 2015

Question 3: Do you agree with the additional matters to be taken account of under Part 1 of the draft Order?

The clear majority were supportive, with 17 of the 27 responses in favour of the additional matter. Eight respondents were not in favour and 2 did not answer this question. The key concerns and suggested amendments are set out below:

- 3 respondents suggested the addition of health, mental, physical disability.
- One respondent would like to see personal safety of the applicant included along with risk of anti social behaviour.

- One respondent called for the needs of care leavers to be an additional matter.
- Affordability was also raised in 2 responses where additional detail was sought, while 2 other responses suggested that accommodation must be furnished for the purposes of being considered suitable.
- A concern was raised that the additional matters in the Order are too vague and may provide further opportunity for challenge based on interpretation.
- Three responses felt that compliance with the requirement to take into account the matters will be difficult due to a lack of accommodation in their areas.
- One respondent – an organisation - questioned the reasonableness of having to take into account all of the additional matters.
- One respondent suggested that the Order emphasised it is for the Local Authority to demonstrate minimal disruption to the applicant and not for the applicant to prove his or her case.

Question 4: Are the specific requirements in Part 2 (which set out the circumstances in which accommodation is not to be regarded as suitable) appropriate?

Of the 27 responses, 18 were in favour of the circumstances in which accommodation is not to be regarded as suitable. Four were not in favour and 5 responses did not answer this question.

- Five respondents suggested that the requirement for a draft tenancy agreement be provided to the Local Authority for the purposes of identifying accommodation suitable to be used to discharge Section 75 was not necessary. It was felt this would create additional bureaucracy limiting the amount of accommodation that may be made available.
- One response did not agree with the term “The Homeless” and suggested it be amended to “Homeless Persons”
- Three responses felt that the requirement for a landlord to be deemed “fit and proper” was not necessary due to Part 1 Housing Act 2014 requirement, which will commence later in 2015. Also, and currently, the Disclosure and Barring Service is not required for landlords to rent out their property.

Question 5: Are the exceptions to the specified requirements appropriate (see Articles 7 and 8)?

Of the 27 responses, 19 agreed with the exceptions to the specified requirements. Two did not agree and 6 responses did not answer this question

- One response suggested that suitable accommodation with support should not only be provided to individuals but should also include households with dependant children and people with mental health needs.

Question 6: With regard to Part 2, Article 8 sets out a number of time limits by when alternative offers of accommodation must be made. Are these the appropriate time limits?

Eighteen of the 27 responses felt the timescales were appropriate. Three felt they were not and 6 did not answer.

- Two responses felt that the 2 week time limit was too restrictive. However, 2 commented that they felt it was acceptable.
- One response felt the time scales were acceptable in the main, but difficult cases may not be able to be moved on within this time frame.
- One response felt these timescales would be difficult for rural Authorities.
- One response asked what would happen if the Local Authority had no other option available.

Question 7: Article 8(h) makes an exception for domestic abuse refuges. Is this appropriate? What is the correct standard?

Of the 27 responses, 20 felt that the exceptions for domestic abuse refuges were appropriate. One respondent did not agree and 6 did not answer.

- One response felt that the basic standard was not good enough for accommodation provided for those fleeing domestic abuse.
- One organisation suggested that the timescales for persons in shared accommodation provided for persons fleeing domestic abuse should be shorter than the earlier parts of the order.
- One response felt it was not a realistic expectation for authorities to provide self contained emergency accommodation due to supply issues.
- One response raised the point that accommodation used to help in cases of domestic abuse may not meet the basic standard and may not have suitable safety measures.

The Homelessness (Review Procedures) (Wales) Regulations 2015

Question 8: Do you agree with the draft procedures on the right to request a review?

The vast majority of respondents (21), agreed with the draft procedures on the right to request a review as set out in the Regulation. Specific comments and amendments suggested were as follows:

- Some comments were received in relation to the requirement that a review be undertaken by someone independent from the original decision in addition to that officer being of a more senior position than the person who made the original decision. One rural Local Authority was concerned about difficulty in separating the duties within the confines of staffing. Two other Local Authorities were also concerned how the requirement would fit into their existing review mechanisms which have been incorporated into separate review teams.

- Two of the responses received were concerned that the new legislation framework did not include the power to accommodate pending review as it was in the Housing Act 1996.
- Three responses felt that the time limit set out in Regulation 2(2) and 2(3) should be 21 days, while 2 responses felt the time limit should mirror that in the Decisions Referral Order at 5 working days.
- In order to reduce the number of potential reviews and given the applicant would have a second opportunity for support should discharge be negative, 1 respondent felt that a decision under section 66 could be removed as a reviewable decision.
- Some responses were concerned with the process of communicating with the applicant who had requested a review:
- The Housing (Wales) Act 2014 does not restrict an applicant to requesting a review in writing only. To save confusion over whether a request has been made, 1 respondent felt that written request should be re-introduced;
- In contrast, there were concerns about inclusivity of working with applicants who might find written communication difficult. Three respondents felt the legislation could be amended to allow for more opportunity for communication orally as well as in writing.
- Two respondents felt that the statutory instrument should include the requirement for Local Authorities to suggest an applicant seeks advocacy service when requesting representations.

Generic matters

Question 9: Are there any more comments you would like to make about the draft regulations?

Of the 27 responses, 14 didn't take the opportunity to provide any additional comments. Comments by the other 13 respondents covered some of issues raised in response to the questions set out earlier in this summary. Other comments are summarised below:

- A concern that at a time of tightening Local Authority budgets, their performance might be affected by the significant drop in funding for the implementation of the new legislation in year two and year three, and the improvements made in those years may not be sustainable.
- A concern about Local Authorities having the resources to investigate an applicant's prior history in order to make an appropriate placement or a successful decision regarding support. An initiative to increase sharing data between Local Authorities and Registered Social Landlords would be beneficial.
- A concern that housing former prisoners can be a particularly problematic issue.
- An emphasis that monitoring of the impact of the legislation is the key priority of understanding the new legislation moving forward.

Next Steps

This document and the consultation responses will be presented to the Minister for Communities and Tackling Poverty. This will inform the decision on the three Orders, which are due to be tabled prior to a Plenary vote on 21 April 2015.

List of Respondents

1. Kristina Martinsson,
2. Torfaen County Borough Council and Monmouthshire County Council
3. Wales Audit Office
4. Ceredigion County Borough Council
5. Anonymous
6. Welsh Local Government Association
7. Vale of Glamorgan Council
8. Welsh Government Police Liaison Unit (on behalf of the four Welsh Police Forces)
9. Shelter Cymru
10. Wrexham County Borough Council
11. Powys County Council
12. Rhondda Cynon Taf County Borough Council
13. Cymorth Cymru
14. City of Cardiff Council
15. Conwy County Borough Council
16. Merthyr Tydfil County Borough Council (Social Services)
17. Crisis
18. Bridgend County Borough Council
19. Citizens Advice Cymru
20. Community Housing Cymru
21. Anonymous
22. Isle of Anglesey County Council
23. Llamau
24. Bro Myrddin Housing Association
25. Chartered Institute of Housing Cymru
26. Solas Cymru
27. Grwp Cynefin