

The Homelessness (Priority Need and Intentionality) (Wales) Regulations 2022

Introduction

1. This guidance should be read in conjunction with the Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness (March 2016) (“2016 Code”) and the guidance note covering the additional provisions under section 75(3).
2. The Homelessness (Priority Need and Intentionality) (Wales) Regulations 2022 (“the 2022 Regulations”) came into force on 24th October 2022. They have the effect of adding an 11th category which describes a person who has a priority need for accommodation to the pre-existing ten categories identified within section 70 of the Housing (Wales) Act 2014 (“2014 Act”) and is to be used when determining whether a duty is owed under section 68 and 75 duties.
3. The 2022 Regulations also specify a 11th category which is added to the specified categories listed in the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015.
4. Regulations 2 and 3 of the 2022 Regulations state:

Addition of further description of person having a priority need for accommodation under Part 2 of the Housing (Wales) Act 2014

2 In section 70(1) of the Housing (Wales) Act 2014, after paragraph (j) insert—
“(k) a person—
(i) who is street homeless (within the meaning of section 71(2)), or
(ii) with whom a person who falls within sub-paragraph (i) might reasonably be expected to reside.”

Amendment of the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015

3 In regulation 2 of the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015(1), after paragraph (j) insert—
“(k) a person—
(i) who is street homeless (within the meaning of section 71(2)), or
(ii) with whom a person who falls within sub-paragraph (i) might reasonably be expected to reside.”

Guidance

5. The 2022 Regulations have the effect of adding a new description of a person who has a priority need i.e. a person who is ‘street homeless’ as defined by section 71(2) of the 2014 Act. That definition defines ‘street homeless’ as follows:

“street homeless’ (‘digartref ac ar y stryd’), in relation to a person, means that the person has no accommodation available for the person’s occupation in the United Kingdom or elsewhere, which the person –

- a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,*
- b) has an express or implied licence to occupy, or*
- c) occupies as a residence by virtue of an enactment or rule of law giving the person the right to remain in occupation or restricting the right of another person to recover possession;”*

6. The 2022 Regulations also state that a person who might reasonably be expected to reside with a person who is street homeless (as defined by section 71(2) of the Housing (Wales) Act 2014), has a priority need.
7. The following guidance relates to the assessment of “priority need” for the purposes of determining whether an interim duty to secure accommodation is owed under section 68 of the 2014 Act and, on the coming to an end of the duty under section 73, whether a duty to secure accommodation is owed under section 75 of the 2014 Act.

Determining ‘street homeless’

8. The definition of homelessness used in the 2014 Act allows for people to be considered homeless even when they have accommodation – sections 55 to 59 of the 2014 Act and Chapter 8 of the 2016 Code provides further detail. The ‘street homeless’ definition used in the 2022 Regulations is narrower than the definition of ‘homeless’ and captures those persons who have no accommodation in the UK or elsewhere which is available for their occupation and which they have a legal right to occupy.
9. As a result, an applicant must be found to be in priority need for accommodation if they are ‘street homeless’ and they do not:
 - have an entitlement to occupy any accommodation by virtue of a legal interest in it (examples include as a freeholder, lessee or tenant) or by virtue of an order of the court;
 - have an express or implied license to occupy accommodation (examples of an express or implied licence include where someone is a lodger, an employee with a service occupancy, or living with friends or relatives with their consent);
 - occupy accommodation by virtue of any enactment or rule of law giving the person the right to remain in occupation or restricting the right of another person to recover possession (an example is where a person’s contractual right to occupy has expired, or been terminated, but a court has not yet granted an order enabling the landlord to recover possession).
10. Chapter 8 of the 2016 Code also includes additional guidance, covering the terms such as entitled to occupy and licence to occupy.

11. The additional description of a person who has a priority need for accommodation does not include those who are in or have existing accommodation (by virtue of one of the rights set out in the bullet points of paragraph 9 above) be it suitable or otherwise. In scenarios where there is a suspicion that someone is being subjected to domestic abuse, they will be in priority need for accommodation under section 70(1)(e). Paragraphs 8.21-26, 12.161-167 and 16.35-39 of the 2016 Code provide more information.
12. Where someone is 'sofa surfing', and where the landlord/homeowner is aware and agreed to the situation, they will likely have an express or implied licence to occupy and so would not be covered by the 'street homeless' description.
13. Those who are 'squatting' and who have no other accommodation available to them would, of course, fall within the scope of the street homeless category.
14. Paragraphs 10.22 and 16.17 of the 2016 Code provides guidance around where burden of proof lies. Authorities are urged to avoid undertaking verification exercises that may result in a delay in accepting a duty where someone is likely to sleep rough. If further verification is required to satisfy the authority that the applicant is homeless, eligible for help and has a priority need for accommodation, the authority must secure suitable accommodation in line with their interim duty whilst their investigation continues.

Those at risk of 'street homelessness'

15. An applicant will not be "street homeless" just because their living conditions are not satisfactory, for example, they are currently residing in accommodation which is unstable e.g. sofa surfing, or short-term accommodation which necessitates frequent moves between family and friends.
16. However, as well as considering their duties under the 2014 Act, authorities are reminded of the need to explore what other statutory services may be available to the applicant as well as use other functions to provide support, assistance and/or source temporary accommodation.
17. Please note however, that a person living in situations outlined in paragraph 15 may be street homeless if they are not entitled to occupy accommodation in accordance with the definition of street homeless in s.71(2) of the 2014 Act.
18. Authorities are also reminded that those living in situations outlined above may also fall under one or more of the other descriptions of a person in priority need under Section 70 of the 2014 Act, including "vulnerable as a result of some special reason" under s70(1)(c).

Rough sleeping

19. The 'street homeless' definition at section 71(2) does not reference rough sleeping and therefore there is no need for an applicant to evidence that they are or have been sleeping rough, just whether they are 'street homeless' at the

precise time that they present. Enquiries should be focused on the three ‘street homeless’ factors as outlined at paragraph 9 above.

20. The 2016 Code provides more guidance in relation to the assessment process. Authorities are urged to avoid the use of excessive time spent determining whether a person is ‘street homeless’.

Affordability

21. Chapter 8 of the 2016 Code includes information and guidance on determining affordability. To reiterate, where someone is living in accommodation which is unaffordable, then it is unlikely to be reasonable to continue to occupy, and therefore that person is homeless under section 55 of the 2014 Act.

22. However, they would not be ‘street homeless’ based on the unaffordability of their current accommodation alone.

Use of ‘waiting lists’

23. The use of ‘waiting lists’ for people who are entitled to accommodation under either s68 or s75 is unlawful. If a s68 (interim duty to secure accommodation for homeless applicants in priority need) or a s75 (duty to secure accommodation for applicants in priority need when the section 73 duty ends) duty is owed, the local authority must secure that suitable accommodation is available for occupation.

‘Might reasonably be expected to reside’

24. Paragraph 8.8 of the 2016 Code provides more detailed information on who “might reasonably be expected to reside” with someone applying to the local authority for homelessness assistance.

Has ‘reason to believe’

25. Assessing officers are reminded that section 68 of the 2014 Act allows for a lower threshold when it comes to determine whether an applicant meets the conditions – i.e. ‘reason to believe’ rather than a completed assessment. Paragraph 11.4 of the 2016 Code provides more information on this. As per the above paragraphs, authorities are urged not to use drawn out verification processes when that time could be better employed finding solutions.

Referral to another local authority

26. Section 80 of the 2014 Act provides for the referral of cases to other local authorities under specific conditions. The process for referring to another local authority is outlined at Chapter 18 of the 2016 Code.

27. The 2016 Code includes guidance around referring to a local authority in England within paragraphs 18.31-18.33. Where the referral is to a local authority in

England, that applicant may not be in priority need under the legislation applicable to England and as a result may suffer a detriment by being referred.

Out of area placements

28. While section 80 provides for referrals to be made to other local authorities under specific circumstances, a local authority may also secure accommodation outside of its own area as long as it is suitable (section 59 of the 2014 Act relates to 'suitability').
29. Section 91(2) of the 2014 Act puts a duty on the local authority securing accommodation outside its area to give notice to the local authority in whose area the accommodation is situated. The notice must contain the information listed in section 91(3) of the 2014 Act. It must be in writing and be given before the end of the period of 14 days beginning with the day on which the accommodation was made available to the applicant (s.91(4) 2014 Act). All authorities are urged to work proactively and constructively with neighbouring authorities where out of area placements have taken place in order to enhance the chances to secure a long-term solution, be that in the home authority or the host authority area.

Section 78 of the Housing (Wales) Act 2014 and The Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015

30. The Regulations have the effect of including 'street homeless' as a category within the list of categories that an authority can have regard to when it comes to making intentionality decisions.
31. Chapter 14 and 17 of the 2016 Code provides extensive guidance in relation to determining intentionality as well as the process that must be followed to allow for an authority to take account of intentionality in the first place.
32. A local authority that wishes to have regard to the new category of "street homeless" will need to comply with the procedural requirements set out in regulations 3 to 6 of the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015. For a local authority that already has regard to intentionality, this will involve revising its list of specified categories. Lists may be revised no more than twice in a 12 month period and a published notice will need to be issued to the Welsh Ministers. The notice must be in place at least 14 days before the local authority can implement its determination.
33. Regulations 7 and 8 of the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015 relate the effect of changes on existing applications.

Intentionality decisions

34. It remains an ongoing objective to support authorities to avoid the use of intentionality decisions if at all possible.
35. Authorities should consider paragraph 17.30 of the 2016 Code which relates to intentionality decisions based on collusion with friends, relatives and current or

former landlords. Unless objective evidence has been obtained to justify an assertion that collusion has taken place, authorities are advised to continue to focus on solutions to what is clearly an unstable housing situation, including discussions about the potential to remain in the property while alternative accommodation is sought.

36. Authorities are also reminded of paragraph 17.18 and 17.19 of the 2016 Code which makes it clear that affordability should be taken into account when considering intentionality decisions. In examples where rent is not being paid in order to pay for food or utilities, then that is not grounds for an intentionality decision to be made and authorities are recommended to prioritise support to such households to either improve their financial situation (i.e. maximise income/benefit entitlement, use of LA prevention funds, etc) or find alternative accommodation.

Legacy

37. The new 11th priority need category came into force on 24th October 2022. If someone has priority need before that date (i.e. one of the 10 descriptions of priority need existing before 24 October 2022) that status will likely continue.
38. As per section 62(8), authorities must keep assessments under review, however, once a decision has been made and a duty is owed, then it can only be revised in limited specific circumstances. Therefore, if someone has priority need before the final duty (section 75) is accepted, we would not expect their priority need status to be withdrawn routinely, unless additional information is received.

Additional guidance:

Partnership and planning:

39. The Welsh Government has signalled an intention to move towards the Rapid Rehousing approach to delivering homelessness services in Wales. While this suggests a speedier journey through acute homelessness services in order to find settled accommodation as quickly as possible, it is also about ensuring a strong emphasis on the role of prevention services so that acute services have the capacity to support only those who absolutely need to access them.
40. For this focus on prevention services to take place, there must be an emphasis on developing effective partnerships with key local services and key local partners. These include third sector homelessness and housing support providers, local health boards, probation and housing associations, but they must also include much better working arrangements with other local authority run services such as social services, early intervention services and education. Chapter 5 and paragraph 5.10 of the 2016 Code provides guidance around instilling a corporate approach to the prevention of homelessness within an LA.
41. As part of the transition to Rapid Rehousing, each local authority should have commenced the process of planning the transition with local partners. During this

process, local authorities should take the opportunity to consider the immediate operational benefits of improved partnership working, particularly during the post-pandemic period. Where these local partnership discussions have not yet taken place as a result of pressures on staff time, authorities are strongly urged to prioritise them in order to support services, and in particular prevention services, as a matter of urgency. This may include the re-establishment of local 'cells' that proved to be highly effective in developing multi-agency responses during the pandemic.

Assessment process and prevention services:

42. Chapter 10 of the 2016 Code provides detailed guidance on the assessment process, while Chapter 9 also provides guidance on the duty to provide a homelessness advice service.
43. Despite the introduction of the 11th category and the demand on services as a result of ongoing pressures, local authorities are urged to reinforce their prevention activities as well as reinforce the initial assessment process in order to avoid missed opportunities to prevent homelessness. This includes the prioritisation of staff time to support prevention activities.
44. The assessment should be conducted in a way in which it helps to determine the most suitable type of support and/or accommodation for an applicant. Paragraph 10.2 of the 2016 code reinforces the need for the assessment to be undertaken "in the overall context of providing a service to those in housing need" with the adoption of "a person-centred, non-judgemental, proactive approach that focuses on finding solutions to housing problems".
45. The duty to help to prevent an applicant from becoming homeless under section 66 of the 2014 Act places a responsibility on local authorities to support an applicant when they are at risk of homelessness within 56 days. Given the extension to the six month notice period, as a result of the Renting Homes (Wales) Act 2016, authorities are encouraged to take a proactive approach and look to support an applicant well before the 56 day trigger (and potentially up to the new extended six month notice period) in order to increase the likelihood of supporting an applicant to remain in their own home.
46. Authorities are advised to look closely at how to align prevention activities and prevention partnership along with local authority prevention funds. From a financial point of view, authorities should take into account the impact of an earlier use of funding compared to the costs associated with the provision of temporary accommodation. However, where prevention funding is utilised in such scenarios where rent arrears are being reduced, authorities should also look to provide additional support to prevent the need for the fund to be used again at a later date.
47. Wherever possible, the assessment required under section 62 of the 2014 Act should be undertaken with full input from as many key partners as possible, including other key local authority departments such as social services, education services, etc. Clearly, housing associations, probation, local health boards and

voluntary organisations are key partners and paragraph 10.4 of the 2016 Code states that protocols for sharing information are essential, in addition to support planning systems, in order to clearly define roles and responsibilities as well as strengthen the objective of meeting applicants' housing needs.

48. In scenarios where someone is occupying unaffordable accommodation, local authorities are urged to take a longer-term view of someone's position, particularly where the continual accrual of arrears may hinder someone's future housing options or someone's longer-term wellbeing. Support could include access to Discretionary Housing Payments (DHPs) or other funding from the local authorities to support someone to stay in unaffordable accommodation or to offset possible temporary accommodation costs. There are scenarios where the provision of top ups may help to allow someone to stay in unaffordable accommodation where the affordability issue is considered to be short-term, such as where a key member of the household has been made unemployed.

Repeat presentations

49. Avoiding repeat homelessness is a key priority of the Welsh Government's Ending Homelessness Action Plan. Chapter 10 of the 2016 Code provides the detail in relation to repeat presentations (and paragraph 10.12 reiterates that there is no defined period of disqualification), but the key to avoiding repeat presentations is ensuring that the solutions found provide long-term sustainability of accommodation which means the full understanding of someone's level of need, the provision of appropriate accommodation in a suitable location (if needed) and the development and allocation of appropriate support packages.

Material change of circumstance

50. Section 62(1) and (2) provides that an authority is not required to undertake an assessment in relation to an applicant whose circumstances have not changed materially since their previous assessment and if there is no new information that materially affects that assessment.

51. Paragraph 10.12 of the 2016 Code provides more detail.

Ending duties

52. Chapter 15 of the 2016 Code provides extensive guidance on ending of the duties.

53. Those who are deemed to fail to 'co-operate' are often those most likely to experience multiple episodes of homelessness with many of those again trapped in a cycle of homelessness. Many will have experienced adverse childhood experiences and other forms of trauma that make it difficult to build trusting relationships with services. In this interim period between the height of the pandemic and the likely introduction of changes to primary homelessness legislation, the ending of duties has the potential to be most at odds with the aim of developing a universal homelessness service that provides tailored, trauma-informed, person-centred packages of support for everyone.

54. No changes have been made to the ability of an authority to end a duty because of a 'failure to co-operate', but authorities are urged to develop strong positive relationships between officers and applicants in order to reduce the occurrence of a duty ending for this reason.

Refusal of an offer of accommodation

55. Paragraphs 15.14-17 of the 2016 Code provides the guidance on this point. The legislation provides for an authority to discharge a duty following the refusal of an offer of suitable accommodation, but only after the applicant receives written confirmation of the possible outcome should they refuse the offer. With accommodation in short supply, an applicant should be made aware of the realistic options available to them in order to make an informed decision. There may be many reasons why accommodation is refused; reasons may range from an undesirable location to an applicant hoping that a better offer may be made in the near future. When considering the suitability of accommodation, it is of paramount importance that the authority has obtained all of the relevant information which could indicate a very significant reason why accommodation is not suitable, and which may, if offered, be refused. This could include, for example, the location of previous abuser, difficulty in visiting children or support networks, attendance at work or school, or refusal to accept pets. In addition, the Welsh Government's Rapid Rehousing approach does not mean that authorities should focus on making quick decisions that may compromise the long-term sustainability of accommodation, but rather balance the time required to match an applicant to the most suitable property which would enhance the chance of a long-term solution against the short and long-term impact of a longer than necessary stay in temporary accommodation.

Best use of resources

56. Paragraphs 15.19-29 provide guidance in relation to potential discharge of duties based on best use of resources. In line with the Welsh Government aim of making homelessness rare, brief and unrepeatable, authorities are urged to take a longer-term view of the benefit of providing what may be costly support and resource, particularly in relation to an applicant with a history of failed tenancies. Two recent studies published by Crisis ([At what cost? | Crisis UK](#) | [Together we will end homelessness](#) and [Better than cure? | Crisis UK](#)), make a strong case for continuing support in order to make long-term savings.

Mistake of fact

57. Paragraphs 15.80-83 provide guidance in relation to a mistake of fact. In the spirit of providing long-term solutions, authorities are urged to use this discharge point sparingly for anything other than egregious examples.

Withdrawn application

58. Paragraphs 15.84-85 provide guidance in relation to establishing when an application has been withdrawn. It is understood that applicants can leave

accommodation or stop answering their messages for a number of reasons, which might include them not continuing to be homeless. However, with the aim that occurrences of homelessness will be rare, brief and unrepeated, authorities are urged to maintain contact with applicants wherever possible to understand whether an applicant is likely to make a further application to the local authority for homelessness assistance again in the near future.

Unreasonably failing to co-operate

59. Paragraphs 15.86-89 provide the key guidance which again has not been changed since implementation in 2015. The prime factor in making a decision is an understanding as to whether a 'failure to co-operate' is linked to any existing vulnerabilities, including a failure to understand the process or the management of an ongoing issue such as substance misuse or mental health. Where the evidence supports a clearer example of an unreasonable 'failure to co-operate', authorities are first urged to discuss the potential consequences of continued failure to co-operate with applicants, leading up to the deployment of 'minded to' letters as suggested in paragraph 15.88 of the 2016 Code. The discharge of the duty based on unreasonably failing to co-operate should be the last resort and again should be considered in the context of a likely re-presentation at a later date.

Local connection:

60. The 2014 Act has not changed in relation to the duties surrounding use of local connection and Chapter 18 of the 2016 Code provides detailed guidance in relation to the rules concerning referrals.
61. Fundamentally, it remains the case that local connection is not relevant to the acceptance of s66 and s73 duties and that a s80 referral to another local authority must take place prior to the acceptance of a s73 duty. It also remains the case that a s68 duty can be accepted while a referral to another local authority is being considered or entitlement for a s73 duty is being assessed.
62. The concept of local connection is used to ensure that some authorities are not unduly and unfairly burdened by giving them the discretion to apply the s80 referral process and reconnect some applicants back to their 'home' local authority (as long as abuse is not likely should they return).
63. The establishment of the 11th category may increase the potential for an authority to consider making a local connection referral on the basis that there is an expectation of a higher number of applicants who can meet the conditions for both section 68 and section 75 duties. Authorities are reminded that when determining local connection, establishing a connection with another area needs to be established rather than there not being a local connection to their own area.
64. Authorities are urged to avoid developing disproportionate assessment processes to filter out those with a local connection to other areas in order to trigger s80 referrals and reduce demand on local temporary accommodation services. Authorities are reminded that referrals can only take place if the applicant has no

local connection to the area they have presented to, but also urged to avoid the additional bureaucracy that would surround a referral process and understand the potential impacts on the applicant.

65. The [Housing Support Grant guidance](#) (implemented April 2020) was updated at para 2.5.5 and 2.5.6 to ensure that there is greater alignment with the 2014 Act when it comes to local connection and the provision of housing related support services. As a result, no-one should be denied access to support based on establishing local connection and local authorities must meet the need at the point where it is presented.

Renting Homes/working with the private rented sector (PRS):

66. Guidance concerning the implementation of the Renting Homes (Wales) Act 2016 can be found at [Renting Homes: housing law is changing | Sub-topic | GOV.WALES](#).

67. The PRS continues to be a crucial and significant source of accommodation and we recommend that local authorities work proactively with key local partners to identify landlords considering leaving the sector in order to open discussions with landlords in order to work up solutions to help prevent homelessness for the household or households impacted where the landlord holds a number of properties in a portfolio. This could include offers to be involved in the Welsh Government funded Leasing Scheme Wales scheme or other Welsh Government programmes.