

## **Explanatory Memorandum to the Housing (Wales) Act (Consequential Amendments) 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 in conjunction with the above subordinate legislation 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 Housing (Wales) Act 2014 (Consequential Amendments) Regulations 2015.

**Lesley Griffiths AM**

Minister for Communities and Tackling Poverty

16 March 2015

## **Description**

1. This instrument ensures that the necessary consequential amendments are made, in reliance on the power in section 144 of the Housing (Wales) Act 2014, prior to implementation of the Act.

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

2. None.

## **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 144(1) of the Housing (Wales) Act 2014 (“the 2014 Act”) empowers the Welsh Ministers to make regulations which are for the purpose of, or in consequence of, giving full effect to any provision of the Act. Such regulations may make:
  - a) Any supplementary, incidental or consequential provision, and
  - b) Any transitional or saving provision.

7. Section 144(2) of the 2014 Act provides that regulations under this section may (among other things) amend, repeal or revoke any enactment.
8. Section 144(3) of the 2014 Act defines an enactment as including both primary and secondary legislation.
9. Section 142 of the 2014 Act makes provision about orders and regulations made under the Act. Section 142(3) sets out which secondary legislation may not be made unless laid before, and approved by resolution of the National Assembly for Wales (“the affirmative procedure”).
10. Section 142(4) provides that all other statutory instruments (with some exceptions not relevant here) are subject to annulment in pursuance of a resolution of the National Assembly for Wales (“the negative procedure”). Section 142(3)(d) provides that regulations made under section 144 are only subject to the affirmative procedure if they amend primary legislation. The Housing (Wales) Act 2014 (Consequential Amendments) Regulations 2015 do not amend primary legislation and are therefore subject to the negative procedure.

### **Purpose and intended effect of the legislation**

11. The purpose of this legislation is to ensure that relevant existing secondary legislation is amended in light of the 2014 Act.
12. Schedule 3 of the 2014 Act already contains a number of minor and consequential amendments to the following legislation resulting from Part 2 of the 2014 Act:
  - Housing Act 1985
  - Housing Act 1996
  - Homelessness Act 2002
  - Mental Health (Wales) Measure 2010
  - Legal Aid, Sentencing and Punishment of Offenders Act 2012
  - Prevention of Social Housing Fraud Act 2013
  - Social Services and Well-being (Wales) Act 2014
13. The amendments either substitute references to existing legislation with the 2014 Act or, in some cases, substitute references to individual sections of existing legislation with references to sections of the 2014 Act.
14. The 2014 Act did not make provision for consequential amendments to the existing secondary legislation which refers to the homelessness provisions in Part 7 of the Housing Act 1996. Much of this secondary legislation is being amended or revoked by the three statutory instruments laid under the affirmative procedure regulations in readiness for implementation of the 2014 Act. These are the Homelessness (Suitability of Accommodation) (Wales) Order 2015, the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015 and the Homelessness (Review Procedure) (Wales) Regulations 2015.

15. In order to ensure the remaining relevant legislation is amended to reflect the changes to legislation in Wales as a result of the 2014 Act, the Housing (Wales) Act 2014 (Consequential Amendments) Regulations 2015 set out additional amendments to secondary legislation which were not provided for by Schedule 3, nor by the three statutory instruments referred to above. The statutory instrument which is being amended is:

- Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996.

#### Description of consequential amendments

16. The Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 is an England and Wales Order made under the powers of the Deregulation and Contracting Out Act 1994. This Order provides that local authorities have the power to contract out their functions relating to homelessness.

17. A reference to Chapter 2 of Part 2 of the 2014 Act is being inserted into the Order so that authorities will continue to have the power after the 2014 Act is in force.

18. The Schedules to the Order contain sections which refer to particular functions which are excluded from contracting out. Only one of those sections was re-enacted in the 2014 Act. It is section 213 of the Housing Act 1996 which provides for co-operation between relevant housing authorities and bodies. A reference to the new section 95 in the 2014 Act – co-operation - has been added to Schedule 2 to the Order. This will ensure the provision about co-operation between authorities in section 95 of the 2014 Act continues to be excluded from the power to contract out homelessness functions.

19. Since the purpose of these Regulations is to make amendments which are consequential to the 2014 Act, the impact of these regulations will be neutral.

#### **Consultation**

20. No consultation has taken place since these regulations make consequential technical amendments.

#### **Regulatory Impact Assessment**

21. 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.

22. 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.