

Explanatory Memorandum for the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by Education and Public Services Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government
23 February 2021

PART 1

1. Description

The Allocation of Housing and Homelessness (Eligibility) (Wales) 2014 Regulations (“the 2014 Regulations”) provide for certain categories of persons from abroad to be eligible or ineligible for an allocation of housing accommodation and/or for housing assistance (essentially, support for homelessness).

The 2014 Regulations are to be amended by the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2021 to extend eligibility for housing and housing assistance provided by local authorities in Wales to stateless persons.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

Part 6 of the Housing Act 1996 and Schedule 2 of the Housing (Wales) Act 2014, which are powers given to the Welsh Ministers, enable them to prepare regulations for certain categories of persons from abroad to be eligible or ineligible for an allocation of housing accommodation and/or for housing assistance. The Regulations to be amended are Regulations 3 and 5.

These Regulations are being made under the draft affirmative resolution procedure.

4. Purpose and intended effect of the legislation

These Regulations amend the provisions of the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 which determine which persons from abroad, other than persons subject to immigration control, are ineligible for an allocation of housing accommodation under Part 6 of the Housing Act 1996, or for housing assistance under Schedule 2 of the Housing (Wales) Act 2014. For these purposes, “person subject to immigration control” has the meaning given in section 13(2) of the Asylum and Immigration Act 1996.

The Regulations, through the amendments they make, will extend the eligibility rights of stateless persons, so that persons with stateless leave will be eligible for housing and homelessness assistance, subject to passing the habitual residence test.

A stateless person is someone who does not have a home country and is not allowed to reside in any other country. Stateless persons derive their status

from two UN conventions. The 1954 convention¹, ratified by the UK, requires stateless persons to have access to housing on terms that are ‘not less favourable than that accorded to aliens generally in the same circumstances’. The 1961 Convention on the Reduction of Statelessness² aims to prevent statelessness and reduce it over time. Although the UK has acceded to both conventions neither has been fully incorporated into domestic law.

‘Statelessness’ can occur due to gaps in nationality laws, movement of borders, creation of new states, and lack of effective administrative systems in the country of origin, such as the lack of a system to formally register a person’s birth. Statelessness does not necessarily relate to migration as it is possible to become stateless without crossing a border or moving to another country.

Asylum and statelessness differ in that asylum is granted on the basis of *fear* of returning to one’s own country, whereas statelessness is the *inability* to return to and live permanently there as a resident. Stateless persons will often have been living a precarious existence, since without leave to be in, or remain in the UK, they will have very few rights.

A specific category of leave was created within the Immigration Rules³ in 2013. This provides limited leave with recourse to public funds and lasts for five years, after which an individual can apply for settlement. As with other routes to settlement, convicted criminals are excluded from stateless persons leave.

The Welsh Government understands from the UK Government that fewer than 200 individuals have been granted stateless persons leave across the UK⁴. Neither the Welsh nor UK Governments hold data on how many stateless persons are in Wales, whilst there is no published data based on the UK Government’s statelessness determination procedure for those applying for stateless leave. This could mean that there are more individuals who may subsequently apply, however, we have no evidence to suggest the numbers will be more than a handful of people.

In meeting the commitment made under the UN Convention, requiring stateless persons to have access to housing on terms that are ‘not less favourable than that accorded to aliens generally in the same circumstances’, an expectation could be reached that stateless persons ought to be given similar rights to housing as asylum seekers, as provided by the 2014 Regulations. By not amending eligibility rights in this way, the Welsh Ministers could be subject to challenge on the basis of human rights and discrimination against stateless people.

¹ <https://www.unhcr.org/uk/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html>

² <https://www.unhcr.org/uk/protection/statelessness/3bbb286d8/convention-reduction-statelessness.html>

³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843704/stateless-leave-guidance-v3.0ext.pdf

⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928963/PoNI_and_Stateless_Person_LA_Letter.pdf

Although the proposed amendment will affect a relatively small number of people, it will provide clarity and certainty to public services, who may, on rare occasions, be dealing with applications for housing or housing assistance from a stateless person.

5. Consultation

As the Regulations provide a limited amendment, affecting a small number of individuals and does not reflect a change in the Welsh Government's policy, a formal public consultation did not take place.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

The Welsh Government has considered two options to address the potential discrimination stateless people might face accessing housing and housing assistance.

- Option 1: Business as Usual - Maintain the status quo and rely on the current category of leave within the Immigration Rules;
- Option 2 - Make the legislation (the preferred option).

We have not been able to identify alternative forms of legislation, nor a non-legislative approach to address the issues facing stateless people.

7. Costs and benefits

Costs

Option 1: Business as Usual

This is the baseline option and as such there are no additional direct costs or benefits associated with this option. There is, however a risk that the current policy could be found to be discriminatory and in contravention of the UN Conventions on stateless people.

Option 2: Make the legislation

As noted in section 4, at present fewer than 200 people have been granted this status across the UK, with a Freedom of Information request made by the European Network on Statelessness confirming a total of 174 grants of stateless leave as at 30 June 2019⁵. Though it should be noted that the exact dates at which stateless leave was granted is not known. The specific category of 'stateless leave', under the Immigration Rules, provides eligibility to public funds for five years, before an individual may apply for settlement. The proposed amendments to the 2014 Regulations should not affect these numbers by widening entitlement to a large group of individuals, rather they will extend eligibility to stateless people (of which there are few) and ensure consistency between their rights and those of 'aliens generally in the same circumstances'. Consequently, the costs, if any, to public services in Wales, should remain the same.

The UK Government does not publish data on people applying for stateless leave, but a FOI request found that between 1 April 2013 and 30 September 2019, 5,236 applications for stateless leave were made in the UK⁶, presenting a larger possible cohort.

⁵ <https://index.statelessness.eu/country/united-kingdom>

⁶ <https://index.statelessness.eu/country/united-kingdom>

A crude calculation based on Wales' population compared to the rest of the UK suggests 5-10 people granted stateless leave reside in Wales, with perhaps 20-40 applications for stateless leave made annually during the period between 1 April 2013 and 30 September 2019.

There could be factors stifling the actual numbers of applicants for stateless leave, such as the cost of naturalisation and delays in registering births, but it is difficult to judge the extent this is relevant. We consider that it is more likely the estimate is too high, as the Welsh Government is not aware of stateless people living in Wales currently using public services. Also, people granted stateless leave may not travel far from their point of entry (normally around the UK's main transport and populations centres) and could be attracted to more prosperous parts of the UK, like London and south east England, rather than Wales.

Cost to local authorities

There will be an additional cost to a local authority if any person granted stateless leave were to apply for housing or housing assistance in Wales. In reality, of the small number of applicants who obtain stateless leave, not all will apply for housing or housing assistance and consequently a very low number of potential applicants will be reduced further. The cost placed upon any local authority in Wales, therefore, in providing housing or housing assistance is expected to be extremely low or zero.

The Explanatory Memorandum for the Housing (Wales) Act 2014 calculated costs to local authorities providing homelessness services to applicants for the 2015-16 period. These costs have been uprated to reflect inflation during the intervening period and are used in this RIA to estimate the cost a local authority might incur if any person granted stateless leave were to apply for housing or housing assistance.

The provision of homelessness services would involve an initial assessment for those applicants that are either not homeless or ineligible for assistance. The cost of this assessment was assumed to be £428.40 per "ineligible" applicant and £214.20 for an individual who was considered as "not homeless". When fulfilling the prevention duty as prescribed by the 2014 legislation, costs were estimated to be £1,112 per applicant.

There is a duty to relieve homelessness to applicants for whom prevention fails or who are deemed to be homeless upon presentation. The duty to relieve homelessness is assumed to have no additional cost for those applicants who have already been through the prevention duty.

For cases in which the duty to relieve homelessness is not successful, applicants who may be considered as "eligible, homeless, in priority need and unintentionally homeless" and for whom action to relieve homelessness is unsuccessful, will be entitled to a full duty at a cost of £2,274 per applicant (£2,702.40 less the cost of an assessment of £428.40).

The table below presents an estimate of the cost if 5-10 people granted stateless leave were to apply for housing assistance. The estimated figures reflect a worst case involving all those individuals granted stateless leave, who might end up living in Wales, becoming at risk of homelessness or actually end up homeless. Such a scenario is not considered likely, as such extreme events are not a typical outcome.

	5 applicants	10 applicants
£428.40 per “ineligible” applicants	£2,142	£4,284
£214.20 per applicant considered as “not homeless”	£1,071	£2,142
£1,112 per applicant eligible to assistance in accordance with the prevention duty	£5,560	£11,120
£2,274 per applicant who may be considered as “eligible, homeless, in priority need and unintentionally homeless”	£11,370	£22,740

Should a stateless person make an application for social housing, then the costs to a local authority would be lower. Based upon general estimates calculated by reviewing management data, local authority colleagues have indicated that the processing of a housing application would range from £400-£800. If the same criteria of applications for social housing is made as for housing assistance (5 to 10 applications across Wales), then the total cost for local authorities could range from £2,000 to £8,000.

Patterns of people arriving within the UK as stateless persons differ from asylum seekers. Although discrimination plays a significant part for both groups, people become stateless less often due to the complexity of circumstances that could disenfranchise them, whereas asylum can be caused due to persecution, war, natural disasters, etc. Attempting to project into the future any observable pattern of growth or decline in stateless people, particularly as the current numbers are so low, has not been possible. For this reason we have not provided a range of figures over a timeline extending beyond the current known numbers as it would be highly speculative and probably misleading.

Benefits

The amendments to the 2014 Regulations, extending eligibility to housing and housing assistance to stateless people, will help remove a disadvantage this group currently faces compared to those in similar circumstances, for example,

people granted asylum. The Welsh Government, by acting consistently with the 1954 UN Convention, will avoid the possibility of a potential challenge from a stateless person who considers they are subject to discrimination. Although the numbers affected are extremely low, with possibly no stateless people living in Wales, the change brought about will act as an example to other parts of the world where stateless people have fewer rights. Doing so, will enhance Wales' reputation as a safe and welcoming country for those less fortunate and without a home state to which to return.

8. Consultation

Not applicable. See section 5 of Part 1.

9. Competition Assessment

Not applicable.

10. Post implementation review

Not applicable.