

Explanatory Memorandum to the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2023

This Explanatory Memorandum has been prepared by the Climate Change and Rural Affairs Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister 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 2023. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Climate Change
13 December 2022

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 2023 (“the 2023 Regulations”) to extend eligibility for an allocation of housing and housing assistance provided by local authorities to people who have been victims of slavery or human trafficking and granted temporary permission to stay (TPS) in the UK.

The new immigration route will come into force on 30 January 2023 when the Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery is added to the Immigration Rules.

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

None.

3. Legislative background

Part 6 of the Housing Act 1996 and section 61 of and paragraph 1(2) of Schedule 2 to, the Housing (Wales) Act 2014 give the Welsh Ministers the power to make regulations to prescribe certain categories of persons from abroad to be eligible or ineligible for an allocation of housing accommodation. Similar provision is made in the Housing (Wales) Act 2014 in relation to the Welsh Ministers’ (and the Secretary of State’s) ability to make regulations in relation to the eligibility or ineligibility of certain categories of persons for housing assistance. The 2014 Regulations to be amended are regulations 3 and 5.

The 2023 Regulations are being made under the affirmative resolution procedure, as is required by section 142(3)(b)(ii) of Housing (Wales) Act 2014, in relation to amendments made under that Act. Regulations made under section 160A of the Housing Act 1996 are subject to the negative procedure. Section 40 of the Legislation (Wales) Act 2019 provides that regulations subject to different procedures can be combined.

4. Purpose and intended effect of the legislation

These Regulations amend the provisions of the 2014 Regulations which determine which persons from abroad, are eligible 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.

The Regulations, through the amendments they make, will add to the 2014 Regulation a new Class of persons from abroad who are subject to immigration control who will be eligible for housing and homelessness assistance. This new Class of persons will apply to persons who have been provided with a positive ‘conclusive grounds’ decision¹ and granted temporary leave to remain in the UK by section 65 of the Nationality and Borders Act 2022, referred to as temporary permission to stay (TPS), which will be a form of leave provided in accordance with Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery in the Immigration Rules. Successful applicants under the TPS will be able to remain in the UK for up to 30 months, or 12 months for those seeking compensation and provided with the right to work, study and access to public funds, including housing and homelessness assistance.

It has not been possible to obtain data from the UK Government about the number of people who could be affected and switch from benefitting from discretionary leave to the TPS. However, Bawso, Wales’s leading charity supporting people from Black and Ethnic Minority backgrounds who are affected by domestic abuse and other forms of abuse, have provided management information based on the support they have provided to people living in Wales who have been provided with a positive conclusive grounds decision. This shows that between April 2021 and March 2022, 33 people received a positive conclusive decision and from April 2022 until October 2022, a further 35 people received a positive conclusive grounds decision.

The Regulations will support the Welsh Government’s commitment to promote Wales as a globally responsible nation and that of a nation of sanctuary, through its International Strategy. The Welsh Government is also concerned about the vulnerability of those applying to the TPS given the mistreatment many will have suffered. Consequently, people granted TPS may face greater risk of exploitation without access to housing and homelessness assistance.

The Regulations support the Welsh Government’s objective of ending homelessness in Wales. Without the regulations in place and with the ending of the use of the Home Office’s use of its discretionary powers to those now eligible to the TPS, this group will be at greater risk of becoming homeless. This would contradict current homelessness policy and the Welsh Government’s ambition of ending homelessness in Wales and when that is not possible ensure that it is rare, brief and unrepeatable.

5. Consultation

As the TPS is a product of reserved UK Government policy (immigration), it would not be possible to undertake a meaningful consultation on alternative

¹ A “positive conclusive grounds decision” means a decision made by a competent authority (which are Home Office bodies) that a person is a victim of slavery or human trafficking

approaches, as the effect of the 2022 Regulations is to ensure consistency between Welsh housing law and immigration law.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

The Welsh Government has considered two options to address the needs of people coming to Wales via the TPS.

Option 1: Business as usual – Maintain the status quo, meaning that people who are granted the TPS will manage without access to housing or housing assistance.

Option 2: Make the legislation (the preferred option).

7. Costs and benefits

Option 1: Business as usual

Before the coming into force of the TPS, this option would have meant there were no additional direct costs or benefits associated with its retention. However, as the granting of TPS will be done within the Immigration Rules rather than outside it, via the current discretionary leave, if no action was taken, victims of slavery or human trafficking living in Wales would be treated less favourably than if they were living in other parts of the UK.

Option 2: Make the legislation

As outlined in section 4 of Part 1, Bawso has provided management data to indicate that 68 people would qualify for the TPS in Wales if it was already in place. Those people have previously relied on discretionary leave provided by the Home Office to access public funds and services, including housing and homelessness assistance. Consequently, the following impact assessment represent costs and benefits which we think are likely to have been incurred anyway. We are doubtful that the proposal will lead to a noticeable increase in numbers making applications for housing or homelessness assistance.

Welsh Government data on homelessness outcomes for 2020-21² showed that the 12,708 people were provided with preventative assistance or relief, in accordance with duties under the Housing (Wales) Act 2014, representing 0.4% of Wales's population. However, people with the TPS, are likely to be particularly at risk of becoming homeless given the exploitation they will have been subjected to. Many are likely to be disorientated from the trauma of that experience, whilst lacking support from family members and wider networks, having to recover in possibly unfamiliar settings and circumstances. Given the abuse many will have suffered, they may own few possessions and lack savings to live independently and are also likely to be reliant on benefits and few may find employment immediately. The Welsh Government and partners involved with supporting individuals and families will seek to mitigate these factors, but doing so will be challenging given the nature of the experiences of the individuals affected. Consequently, a worst-case estimate of 80%-95% of

² [Households for which assistance has been provided by outcome and household type \(gov.wales\)](https://gov.wales)

the current group of people with a conclusive grounds decision, or 55 or 65 individuals may require homelessness assistance. The costs of this assistance is provided at Table 1.

Estimates within 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 updated to reflect inflation during the intervening period and are used in this RIA to estimate the cost a local authority might incur if any people coming to Wales through the TPS apply for housing or housing assistance.

This 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). Estimated costs are shown in Table 1.

Table 1: Estimated cost to local authorities from homelessness services

	55 applicants per year	65 applicants per year
£428.40 per “ineligible” applicants	£23,562	£27,846
£214.20 per applicant considered as “not homeless”	£11,781	£13,923
£1,112 per applicant eligible to assistance in accordance with the prevention duty	£61,160	£72,280
£2,274 per applicant who may be considered as “eligible, homeless, in priority need and unintentionally homeless”	£125,070	£147,810

Once an individual has been provided with TPS they will be able to draw on benefits, such as Universal Credit, which may lead them to decide to look for a home within the private rented sector, whilst others might apply for social housing for the duration of their stay in the UK. It is difficult to predict the preferred choices that individuals will take at this stage, but due to the

temporary nature of their stay the probability of making a social housing application may be low. Instead, individuals or families may prefer the short-term flexibility that may be more accessible within the private rented sector.

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. Assuming that a low proportion (5%-20% or around 3 to 14 individuals) of people provided with TPS will apply for social housing, those costs might range from £1,200 to £11,200. With a number of people with TPS potentially living in the UK for 12 months or less, such as those seeking compensation from their experiences, the housing impact may be minimal. Due to the length of time it can take to apply and then obtain social housing, through a local authority's common housing register, even those entitled to live in the UK for the maximum 30 month period might find it easier to rent privately, minimising the impact of housing.

Benefits

Section 4 of Part 1 of the Explanatory Memorandum outlines the justification for making the Regulations. The Welsh Government considers that providing people with TPS eligibility to housing and homelessness assistance people will help reduce this risk or homelessness, and should it occur, ensure that it is brief, rare and non-recurring. The safeguard provided by the Regulations will help demonstrate Wales's reputation as a safe and welcoming country.

The benefits of preventing homelessness extend well beyond the actual, additional, costs of helping people who are homeless, for example, the cost of providing them temporary accommodation. There have been multiple studies³⁴⁵⁶ examining the costs and benefits associated with providing homelessness assistance, which recognise the significant savings which might be made from effective intervention. Effective homelessness services can provide benefits that may last someone's lifetime. They include better health and well-being, child development and education, and adults' participation in the labour market and contribution to economic output. As a result, the demands on some services, local authority homelessness services and the NHS and social care services for example, can be reduced. The benefits have been shown to outweigh the costs, often to a significant degree, particularly given that someone who is street homeless will rarely experience that disadvantage alone. Many individuals will also be negatively affected by their mental health and, for a significant number, substance misuse also. The longer those experiences are felt, often the harder it will become to recover, which will require even greater support and cost. In light of the circumstances of many people eligible to TPS, who may have experienced a variety of traumas, the need to prevent homelessness may be more acute than the wider population eligible to housing and housing assistance.

³ [At what cost? | Crisis UK | Together we will end homelessness](#)

⁴ [Better than cure? | Crisis UK](#)

⁵ [Hard-Edges-Mapping-SMD-2015.pdf \(lankellychase.org.uk\)](#)

⁶ [assessing the costs and benefits of crisis- plan to end homelessness 2018.pdf](#)

Benefits of effective action will contribute to the achievement of several Welsh Government Acts, such as the Social Services and Well-being (Wales) Act 2014, Well-being of Future Generations (Wales) Act 2015, and the Ending Violence against Women and Domestic Abuse (Wales) Act 2015.

8. Competition Assessment

Not applicable.

9. Post implementation review

Not applicable.