

Consultation draft

Draft Order laid before the National Assembly for Wales under section 142(3)(b)(i) of the Housing (Wales) Act 2014, for approval by resolution of the National Assembly for Wales.

W E L S H S T A T U T O R Y I N S T R U M E N T S

2015 No. (W.)

HOUSING, WALES

Homelessness (Suitability of Accommodation) (Wales) Order 2015

EXPLANATORY NOTE

(This note is not part of the Order)

When discharging a housing function to secure that accommodation is available for an applicant who is homeless, or threatened with homelessness, under Part 2 (homelessness) of the Housing (Wales) Act 2014 (“the 2014 Act”), a local housing authority (“authority”) must ensure that the accommodation is suitable. Section 59 specifies matters to be taken into account when determining suitability for the purposes of Part 2 of the 2014 Act.

By section 59(3)(a) of the 2014 Act, the Welsh Ministers have the power to specify circumstances in which accommodation is, or is not, to be regarded as suitable. By section 59(3)(b), they may specify additional matters which an authority must take into account, or disregard, in determining whether accommodation is suitable.

The title of this Order is the Homelessness (Suitability of Accommodation) Order 2015 and it is divided into three parts. Part 1 specifies additional matters which authorities must take into account. Part 2 specifies when B&B and shared accommodation are not suitable to be used for temporary accommodation. Part 3 specifies when Private Rented Sector accommodation is not considered suitable for discharging the duties under section 75 of Part 2 of the 2014 Act. This Order comes into force on ?? April 2015.

This Order applies to households which the authority has reason to believe, or is satisfied, may contain or

Consultation draft

consist of a person in priority need as defined by section 70 of the 2014 Act. It therefore does not apply where a local housing authority is exercising discretionary powers to assist homeless people.

Part 1 of this Order relies on the powers in section 59(3)(b) of Part 2 of the 2014 Act. It applies to households containing persons who are, or may be in priority need. Article 3 specifies additional matters to be taken into account in determining whether accommodation is suitable for a person. These additional matters relate to the health needs of the person, any disability of the person, and the proximity of social services, medical facilities and other essential support. Possible disruption to employment, education or caring responsibilities must also be considered.

Part 2 of this Order applies to interim accommodation made available, under the duties in section 68 of the 2014 Act, to those who are, or may be in priority need. It also applies to temporary accommodation provided under the duties in section 75 of the 2014 Act, to those in priority need.

Parts 2 and 3 of the Order are made in reliance on the powers in section 59(3)(a) of Part 2 of the 2014 Act.

Article 4 of this Order specifies that Bed and Breakfast (“B&B”) accommodation must be of at least the Basic Standard to be regarded as suitable for the purposes of providing temporary accommodation for households who are or may be in priority need under Part 2 of the 2014 Act. The Basic Standard requires that the B&B accommodation must meet all statutory requirements. Some examples are fire and gas safety, planning permission and HMO licencing (where required). The premises must also be managed by a fit and proper person.

Article 4 is subject to the exceptions in Article 7. The first of these provides that accommodation need not meet this standard in the event of a disaster, where there is no reasonable alternative. The second exception provides Article 4 does not apply if the applicant chooses to be accommodated in unsuitable accommodation.

Part 2 then specifies additional circumstances in which accommodation must not be regarded as suitable. It does this by specifying higher minimum standards for B&B and shared accommodation which is used for longer periods of temporary accommodation for households who are, or may be in priority need of accommodation.

Article 5 specifies that, where accommodation is provided under a duty under Part 2 of the 2014 Act to a household containing a person who is, or may be in priority need, B&B accommodation is not to be

Consultation draft

regarded as suitable, unless any of the exceptions contained in Articles 7 and 8 apply.

Article 6 makes similar provision in respect of shared accommodation, which must be of the higher standard, unless any of the exceptions in articles 7 and 8 apply.

Article 7 provides exceptions relating to use of accommodation after an emergency, and the choice of the homeless household. Article 8 provides conditional exceptions relating to the length of time spent in B&B accommodation, the choice of the applicant and the standard of the B&B accommodation. It also provides an exception for some refugees from domestic abuse.

B&B accommodation is defined as commercially provided accommodation which, whether or not breakfast is provided, is not self contained or which involves sharing certain amenities with another household.

In calculating the total period of time during which a household containing a person in priority need has been housed in B&B accommodation, an authority is to disregard any period spent in such accommodation where such an applicant was being housed by another local housing authority prior to the conditions for a referral being met in accordance with sections 80 to 83 of the 2014 Act. Those sections provide that, where an authority is of the opinion that the conditions for a referral are met and that an applicant has a local connection with the district of another local authority, it may refer the applicant to that authority and, if the conditions for referral are met, the second authority is subject to the duty under section 73 of the 2014 Act in respect of the applicant.

Part 3 of the Order relates to private rented sector accommodation offered in discharge of an authority's duties to homeless applicants in priority need of accommodation as provided by section 76(3) and (4) of the 2014 Act. Article 9 specifies circumstances in which such accommodation is not to be regarded as suitable.

Article 10 makes provision for revocation of the previous suitability Orders made under Part 7 of the Housing Act 1996. Paragraph (2) makes a transitional and saving provision for those applicants who have applied before this Order has commenced.

Consultation draft

Draft Order laid before the National Assembly for Wales under section 142(3)(b)(i) of the Housing (Wales) Act 2014 for approval by resolution of the National Assembly for Wales.

W E L S H S T A T U T O R Y I N S T R U M E N T S

2015 No. (W.)

HOUSING, WALES

Homelessness (Suitability of Accommodation)(Wales) Order 2015

Made ***2015

Coming into force ***2015

The Welsh Ministers make the following Order in exercise of the powers conferred on them by sections 59(3) and 142(2) of the Housing (Wales) Act 2014(1).

A draft of this instrument was laid before and approved by resolution of the National Assembly for Wales in accordance with section 142(3)(b)(i) of that Act.

Title, commencement and application

1.—(1) The title of this Order is the Homelessness (Suitability of Accommodation) (Wales) Order 2015.

(2) This Order comes into force on ?? April 2015.

Interpretation

2. In this Order —

“the 2014 Act” (“*y Ddeddf 2014*”) means the Housing (Wales) Act 2014; and any reference to a numbered section is a reference to a section of the Housing (Wales) Act 2014;

“authority” (“*awdurdod*”) means the relevant local housing authority (“*awdurdod tai lleol*”) (2)

(1) 2014 anaw 7

(2) See the definition of local housing authority in section 99 of the Housing (Wales) Act 2014.

Consultation draft

which owes a duty to a homeless person under sections 68 or 75;

“B&B accommodation” (“*llety Gwely a Brecwast*”) means commercially provided accommodation (whether or not breakfast is included)—

- (a) which is not separate and self-contained premises;
- (b) in which any of the following amenities is not available to the applicant or is shared by more than one household—
 - (i) a toilet;
 - (ii) personal washing facilities;
 - (iii) cooking facilities,
- (c) which is not accommodation which is owned or managed by a local housing authority, a registered social landlord or a voluntary organisation as defined in section 99; or
- (d) which is not an establishment registered under the provisions of the Care Standards Act 2000(1);

and “B&B” (“*Gwely a Brecwast*”) is to be construed accordingly.

“basic standard accommodation” (“*llety o safon sylfaenol*”) means accommodation that—

- (e) complies with all statutory requirements (such as, where applicable, requirements relating to fire, gas, electrical, and other safety; planning; and licences for houses in multiple occupation) and
- (f) has a manager deemed by the authority to be a fit and proper person with the ability to manage B&B accommodation;

and “basic standard” (“*safon sylfaenol*”) is to be construed accordingly;

“higher standard accommodation” (“*llety o safon uwch*”) means accommodation that meets—

- (g) the basic standard; and
- (h) the standards contained in the Schedule to this Order,

and “higher standard” (“*safon uwch*”) is to be construed accordingly;

“member of a person’s household” (“*aelod o aelwyd y person*”) bears the same meaning as in section 57, and “household” (“*aelwyd*”) is to be construed accordingly;

“shared accommodation” (“*llety o rennir*”) means accommodation—

(1) 2000 c.14.

Consultation draft

- (i) which is not separate and self-contained premises; or
 - (j) in which any of the following amenities is not available to the applicant or is shared by more than one household—
 - (i) a toilet;
 - (ii) personal washing facilities;
 - (iii) cooking facilities; or
 - (k) which is not an establishment registered under the provisions of the Care Standards Act 2000;
- “small B&B” (*“llety Gwely a Brecwast bach”*) means—
- B&B accommodation—
- (i) where the manager resides on the premises; and
 - (ii) which has fewer than 7 bedrooms available for letting.

PART 1

Additional matters to be taken into account in determining whether accommodation is suitable for persons who are, or may be in priority need

3. In determining for the purposes of Part 2 of the 2014 Act whether accommodation is suitable for a person who is, or may be in priority need⁽¹⁾, there must be taken into account the following matters—

- (a) the specific health needs of the person;
- (b) the proximity and accessibility of family support;
- (c) any disability of the person;
- (d) the proximity and accessibility of medical facilities, and other support services which—
 - (i) are currently used by or provided to the person or members of the person’s household; and
 - (ii) are essential to the well-being of the person or members of the person’s household.
- (e) where the accommodation is situated outside the area of the authority, the distance of the accommodation from the area of the authority;
- (f) the significance of any disruption which would be caused by the location of the

(1) See the definition of “priority need” in section 70 of the Housing Act 2014.

Consultation draft

accommodation to the employment, caring responsibilities or education of the person or members of the person's household.

PART 2

Circumstances in which B&B and shared accommodation is not to be regarded as suitable for persons who are, or may be in priority need

B&B accommodation used for housing the homeless to meet the basic standard

4. For the purposes of Part 2 of the 2014 Act, and subject to the exceptions contained in article 7, B&B accommodation is not to be regarded as suitable for a person who is, or may be in priority need unless it meets at least the basic standard.

B&B accommodation unsuitable for a homeless person in priority need

5. For the purposes of Part 2 of the 2014 Act and subject to the exceptions contained in articles 7 and 8, B&B accommodation is not to be regarded as suitable for a person who is, or may be in priority need.

Shared accommodation unsuitable for a homeless person who is, or may be in priority need unless it meets the higher standard

6. For the purposes of Part 2 of the 2014 Act and subject to the exceptions contained in articles 7 and 8, shared accommodation is not to be regarded as suitable for a person who is, or may be in priority need unless it meets the higher standard.

Exceptions to Articles 4, 5 and 6

7. Articles 4, 5 and 6 do not apply where—

- (a) the authority believes that the applicant may be homeless or threatened with homelessness as a result of an emergency such as fire, flood or other disaster, and no other accommodation is reasonably available to the authority; or
- (b) the authority has offered suitable accommodation to the applicant, but the applicant wishes to be accommodated in other accommodation;

Exceptions to Articles 5 and 6

8.—(1) Articles 5 and 6 do not apply where—

Consultation draft

- (a) the person occupies a basic standard B&B for a period, or a total of periods, which does not exceed 2 weeks;
- (b) the person occupies a higher standard B&B for a period, or a total of periods which does not exceed 6 weeks;
- (c) the person occupies a basic standard small B&B for a period, or a total of periods, which does not exceed 6 weeks; the authority has, before the expiry of the two-week period referred to in sub-paragraph (a), offered suitable alternative accommodation, but the person has chosen to remain in the said B&B;
- (d) the person occupies a basic standard small B&B after exercising the choice referred to in sub-paragraph (c), the authority has offered suitable alternative accommodation before the end of the six-week period referred to in sub-paragraph (c) above, but the person has chosen to remain in the said B&B;
- (e) the person occupies a higher standard small B&B, the authority has offered suitable alternative accommodation, before the expiry of the six-week period referred to in sub-paragraph (b), but the person has chosen to remain in the said B&B; or
- (f) the person occupies basic standard shared accommodation for a period, or a total of periods, which does not exceed 2 weeks;
- (g) the person occupies, for a period, or a total of periods, which does not exceed 6 weeks, basic standard shared accommodation owned by a local housing authority or registered social landlord, the authority has offered suitable alternative accommodation before the expiry of the two-week period referred to in sub-paragraph (f), but the person has chosen to remain in the said accommodation; or
- (h) (i) the person occupies [basic standard shared] accommodation which is used wholly or mainly to provide temporary accommodation to persons who have left their homes as a result of domestic abuse and is managed by an organisation which—
 - (aa) is not a local housing authority; and
 - (bb) does not trade for profit; and
- (ii) the authority has offered suitable alternative accommodation before the end of the six-week period referred to in sub-paragraph (g) above, but the person has chosen to remain in the said accommodation.

Consultation draft

(2) If the suitable alternative accommodation offered for the purposes of paragraph (1) is shared, it must meet the higher standard.

(3) In the case of households with dependant children or a pregnant woman, the offer made under sub-paragraphs (d), (e) or (h) must be of suitable self-contained accommodation. In the case of an applicant who is a minor, the offer must be of suitable accommodation with support.

(4) In calculating a period, or total period, of a person's occupation of shared accommodation for the purposes of paragraph (1), there must be disregarded any period before an authority became subject to the duty under section 73 by virtue of section 82(4) or 83(2) (local connection referrals).

PART 3

Suitability of private rented sector accommodation for ending the section 75 duty to homeless applicants

9. For the purposes of a private rented sector offer under section 76 (circumstances when the duty to secure accommodation for applicants in priority need ends), accommodation must not be regarded as suitable where one or more of the following apply–

- (a) the authority are of the view that the accommodation is not in a reasonable physical condition;
- (b) the authority are of the view that the accommodation does not comply with all statutory requirements (such as, where applicable, requirements relating to fire, gas, electrical, carbon monoxide and other safety; planning; and licences for houses in multiple occupation).
- (c) the authority are of the view that the landlord is not a fit and proper person within the meaning of section 20 to act in the capacity of landlord; or
- (d) the landlord has not provided to the authority a copy of a draft written tenancy agreement, which the landlord proposes to use for the purposes of a private rented sector offer, and which the authority considers to be adequate.

Revocation and transitional and saving provision

10.–(1) Subject to paragraph (2) below, the following provisions are hereby revoked–

- (a) the Homelessness (Suitability of Accommodation) Order 1996;

Consultation draft

- (b) the Homelessness (Suitability of Accommodation) (Amendment) Order 1997; and
- (c) the Homelessness (Suitability of Accommodation) Order 2006.

(2) The provisions revoked by paragraph (1) are to continue in force in any case where an application under section 183 of the Housing Act 1996 is made prior to the date this Order come into force.

11.*Lesley Griffiths*

Minister for Communities and Tackling Poverty, one of the Welsh Ministers

Date****

DRAFT

SCHEDULE

Higher Standard

1. Space Standards

Space standards for sleeping accommodation

Room sizes where cooking facilities provided in a separate room/kitchen

Floor Area of Room	Maximum No of Persons
Not less than 6.5 square metres	1 person
Not less than 10.2 square metres	2 persons
Not less than 14.9 square metres	3 persons
Not less than 19.6 square metres	4 persons

Room sizes where cooking facilities provided within the room

Floor area of room	Maximum No of Persons
Not less than 10.2 square metres	1 person
Not less than 13.9 square metres	2 persons
Not less than 18.6 square metres	3 persons
Not less than 23.2 square metres	4 persons

For the purposes of the room see calculations above, a child less than 10 years old is treated as a half person.

- (a) No room to be occupied by more than 4 persons, except where the occupants consent.
- (b) No sharing of rooms for those of opposite genders, aged 10 or above unless they are living together as partners and both are over the age of consent, or where a parent or guardian elects to share with an older child.
- (c) All rooms must have a floor to ceiling height of at least 2.1 metres over not less than 75% of the room area. Any part of the room where the ceiling height is less than 1.5 metres must be disregarded when calculating the floor area.
- (d) Separate kitchens and bathrooms are unsuitable for sleeping accommodation.

Installation for heating

2. The premises must have adequate provision for heating. All habitable rooms and bath- or shower-rooms must be capable of maintaining the room at a minimum temperature of 18°C when the outside temperature is minus 1°C.

Facilities for the storage, preparation and cooking of food within the unit

3.—(1) In a unit of accommodation accommodating more than one person, the food preparation area provided within the unit must include the following facilities:

- (a) four burners/hobs, conventional oven and grill, or two burners/hobs and a microwave with a built in oven and grill,
- (b) a sink and integral drainer, with a constant supply of hot and cold drinking water,
- (c) a storage cupboard of a minimum capacity 0.2 cubic metres excluding storage beneath the sink,
- (d) a refrigerator,
- (e) a minimum of four 13 amp sockets (single or double) situated over the worktop,
- (f) a worktop for food preparation of minimum dimensions 1 metre x 0.6 metre,
- (g) a minimum of 1 metre circulation space from facilities to other furniture in the room.

(2) In a unit of accommodation accommodating one person, the food preparation area provided within the unit of accommodation must include the following facilities:

As (a) – (g) above but (a) to have a minimum of two burners/hobs.

Storage, preparation and cooking of food in a shared facility

4.—(1) Where food preparation areas are shared between more than one household there must be one set of kitchen facilities for:

- (a) every 3 family households or fewer;
- (b) every 5 single-person households or fewer. (For between 6 and 9 single-person households an additional oven or microwave is required.)
- (c) every 10 persons or fewer where there is a mixture of family and single-person households within the same premises.

(2) Each set of shared facilities must provide the following facilities:

- (a) as for unit accommodating more than one person except that cooking facilities must consist of 4 burners/hobs, conventional oven, grill and microwave
- (b) electric kettle
- (c) toaster.

The food preparation area used by the management may be included when calculating the ratio, provided it meets the criteria for storage, preparation and cooking of food in a shared facility

Where residents have no access to kitchen facilities and the proprietor provides at least a breakfast and evening-meal for residents, the requirements for shared kitchen facilities will be deemed to have been met.

Additional facilities to be provided in each bedroom or within the total accommodation occupied exclusively by each household must include;

- (d) a refrigerator; and
- (e) lockable storage

Alternatively, these may be provided elsewhere within the building.

Toilet and washing facilities

5.—(1) Facilities for the exclusive use of the occupant or household must include:

- (a) a bath or shower,
- (b) a wash hand basin with a constant supply of hot and cold water, and
- (c) a water-closet either en-suite or in a separate room reserved for the exclusive use of individuals or households.

(2) Shared facilities must include:

- (a) One water closet and wash hand basin with a constant supply of hot and cold water within the building for every five households or fewer. This must be located not more than one floor away from the intended users. For the first five households the water closet and wash hand basin may be in the shower or bathroom. All additional water closets and wash hand basins for occupancies of six households or more must be in a separate compartment.
- (b) One bathroom or shower-room to be provided for every five persons. This must be located not more than one floor away from the intended users.
- (c) In premises accommodating children under the age of 10, at least half of the bathing facilities must contain baths suitable for children.

The number of persons occupying a unit of accommodation with a water closet facility provided for their exclusive use must not be included in the calculation for shared water closets.

Security

6. The entrance door to each unit of accommodation must be lockable and be capable of being unlocked from inside without the use of a key.

Common Room (s)

7. Every premises must have a common room of at least 12 square metres unless all households have a living area separate from their sleeping area that is available for their exclusive use, or the premises are for single person households only.

Management Standard(1)

8.—

- (a) Each household must be issued with written 'house rules' which include details as to how sanctions will be applied. This document is to be approved by the local authority placing homeless households in the premises.
- (b) Each household must be issued with written information relating to the premises including how to operate all installations, for example heating and hot water appliances and fire fighting equipment.
- (c) Written information must be made available to residents relating to the local area including the location or contact details of local facilities, laundrettes, doctors' surgeries and schools.
- (d) Residents must have access to their rooms at all times except when rooms are being cleaned or otherwise maintained. Provision must be made to accommodate residents at these times.
- (e) Access is allowed for the appropriate officers of the authority in whose area the premises are situated, and officers of any authority placing homeless households in the premises, to inspect the premises as and when they consider necessary, to ensure that the requirements are being complied with; and

(1) This standard will be in addition to the legal standard contained in 'The Housing (Management of Houses in Multiple Occupation) Regulations 1990' or the standard developed as a result of 'Licensing in the Private Rented Sector – A Consultation Paper on the Implementation of HMO licensing in Wales' published in January 2005.

that the manager will allow such inspections to take place, if necessary without notice.

- (f) Access is allowed for the officers of the area health authority, local authority and authorised community workers for the area in which the premises are situated, to visit the occupiers of the premises and interview them in private in the room(s) they occupy.
- (g) A manager with adequate day to day responsibility to ensure the good management of the property can be contacted at all times and that a notice giving the name, address and telephone number of the manager must be displayed in a readily visible position in the property.
- (h) A clear emergency evacuation plan is in place setting out action upon hearing the fire alarm, escape routes and safe assembly points. The managers must ensure that each person newly arriving at the premises is told what to do in the event of a fire and about fire precautions provided.
- (i) Each household must be issued with a complaints procedure which specifies how a complaint can be made. This information must also include where the complainant can obtain further advice and assistance.