

Additional provisions under section 75(3)

Introduction

1. This section should be read in conjunction with Chapters 14, 16 and 17 of the Code of Guidance for Local Authorities on the Allocation and Accommodation and Homelessness (March 2016) prior to the publication of a new code of guidance in 2020.
2. The Housing (Wales) Act 2014 (Commencement Order No. 10) Order 2019 commenced section 75(3) of the Housing (Wales) Act 2014 on 2nd December 2019.
3. Section 75(3) ensures that the following categories of applicants will continue to be eligible for the section 75 duty even where a local authority is satisfied that they have been found intentionally homeless:
 - A pregnant woman;
 - A person with whom a dependent child resides;
 - A person who had not attained the age of 21 when the application for help was made;
 - A person who had attained the age of 21, but not the age of 25, when the application for help was made and who was looked after, accommodated or fostered at any time while under the age of 18
4. However, section 75(3)(f)(i) limits this provision so that where someone has been found intentionally homeless twice in a five year period, they would not be subject to the section 75 duty.

The Act states

Section 75 - Duty to secure accommodation for applicants in priority need when the duty in section 73 ends

- (3) This subsection applies where the local housing authority is having regard to whether or not the applicant is homeless intentionally and is satisfied that—
- (a) the applicant became homeless intentionally in the circumstances which gave rise to the application,
 - (b) the applicant—
 - (i) does not have suitable accommodation available for occupation, or
 - (ii) has suitable accommodation, but it is not likely that the accommodation will be available for occupation by the applicant for a period of at least 6 months starting on the day on which the applicant is notified in accordance with section 84 that section 73 does not apply,
 - (c) the applicant is eligible for help,
 - (d) the applicant has a priority need for accommodation,
 - (e) the applicant is—

- (i) a pregnant woman or a person with whom she resides or might reasonably be expected to reside,
- (ii) a person with whom a dependent child resides or might reasonably be expected to reside,
- (iii) a person who had not attained the age of 21 when the application for help was made or a person with whom such a person resides or might reasonably be expected to reside, or
- (iv) a person who had attained the age of 21, but not the age of 25, when the application for help was made and who was looked after, accommodated or fostered at any time while under the age of 18, or a person with whom such a person resides or might reasonably be expected to reside, and
- (f) the authority has not previously secured an offer of accommodation to the applicant under this section following a previous application for help under this Chapter, where that offer was made—
- (i) at any time within the period of 5 years before the day on which the applicant was notified under section 63 that a duty was owed to him or her under this section, and
- (ii) on the basis that the applicant fell within this subsection.
- (4) For the purpose of subsections (2)(a)(ii) and (3)(b)(ii), the applicant is to be treated as notified on the day the notice is sent or first made available for collection.

Guidance

5. This section only applies where a local authority has notified Minister's whether they are having regard to intentionality and which categories. This is covered in more detail in Chapter 17. No further notifications to the Welsh Government is necessary.
6. Chapter 16 provides guidance for ending the duty at section 73 and picking up the section 75 duty. The provisions under this section only apply where someone has been assessed as in priority need.
7. Where an applicant meets a priority need category AND falls within one of the following categories of people, they will continue to be eligible to receive support under section 75 even where they have been found intentionally homelessness in the past five years:
 - A pregnant woman;
 - A person with whom a dependent child resides;
 - A person who had not attained the age of 21 when the application for help was made;
 - A person who had attained the age of 21, but not the age of 25, when the application for help was made and who was looked after, accommodated or fostered at any time while under the age of 18

8. The legislation is blind to intentionality until the revised section 62 assessment which is owed when section 73 comes to an end. Where someone continues to receive support as a result of section 75(3), support must be continuous.

Five year time limit

9. Where someone has been found intentionally homeless, the five years commences on the date that they received notification that they were owed a duty under section 75. For example, if a duty is owed under this section on 1st January 2020, then if no more than one intentionality decision has taken place since 1st January 2015, then the applicant would be eligible for support under section 75 as a result of section 75(3).
10. The date of the intentionality decision is the date of the letter notifying the applicant that they have been found intentionally homeless.
11. Authorities should not under any circumstances look to discharge section 73 early (via section 74.3) purely in order to ensure that an applicant would fail the five year test.

Notification

12. Guidance in relation to notifying applicants is contained within Chapter 15. Local authorities will need to be aware that where an applicant has been provided accommodation following the section 75(3) provision, then the notification letter should ensure that this is outlined. Failure to do so, will result in the five year time limit not being enforceable.

Legacy

13. There are no legacy considerations. Where an intentionality decision has been made prior to commencement of section 75(3) on 2nd December 2019, the new provisions are still relevant.