

Draft Regulations laid before the National Assembly for Wales under section 9(4) of the Prevention of Social Housing Fraud Act 2013, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2014 No. (W.)

HOUSING, WALES

**The Prevention of Social Housing
Fraud (Detection of Fraud) (Wales)
Regulations 2014**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Prevention of Social Housing Fraud Act 2013 (“the Act”) creates offences related to subletting and parting with possession of social housing and makes provision for the investigation and prosecution of social housing fraud offences. These Regulations are made under sections 7 and 8 of that Act and make provision for powers to require information for housing fraud investigation purposes.

Regulation 3 provides that a local authority may authorise an individual to exercise the powers conferred on an authorised officer under regulation 4.

Regulation 4 enables officers authorised under regulation 3 to require information from specified persons for housing fraud investigation purposes. These purposes are the prevention, detection or securing evidence for the conviction of one of the offences listed in section 7(7) of the Act.

Regulation 5 provides that it is an offence to refuse or fail to provide information when required to do so under regulation 4.

Regulation 6 makes provision for offences under the Regulations committed by bodies corporate.

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Fraud (Detection of Fraud) (Wales)
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Made

Coming into force

28 March 2014

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 7 and 8 of the Prevention of Social Housing Fraud Act 2013(1)

In accordance with section 9(4) of that Act, a draft of this instrument was laid before and approved by a resolution of the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of these Regulations is the Prevention of Social Housing Fraud (Detection of Fraud) (Wales) Regulations 2014 and they come into force on 28 March 2014.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“authorised officer” (“*swyddog awdurdodedig*”) means a person acting in accordance with any authorisation for the purposes of these Regulations, which is for the time being in force in relation to that person.

(2) For the purposes of these Regulations—

(1) 2013 c.3.

- (a) references to a document includes references to anything in which information is recorded in electronic or any other form;
- (b) the requirement that notice be given by an authorised officer in writing will be taken to be satisfied in any case where the contents of the notice—
 - (i) are transmitted to the recipient of the notice by electronic means; and
 - (ii) are received by that person in a form that is legible and capable of being recorded for future reference.

Authorisation by local authorities

3.—(1) Subject to paragraphs (2) and (3), a local authority may grant an authorisation to an individual to exercise the powers conferred on an authorised officer under regulation 4.

(2) A local authority may only grant authorisation to an individual if that person is—

- (a) an individual employed by that authority; or
- (b) an individual employed by another local authority or joint committee that carries out functions relating to housing fraud investigation purposes on behalf of that authority.

(3) An authorisation granted to an individual for the purposes of these Regulations—

- (a) must be in writing and provided to that individual as evidence of their entitlement to exercise powers conferred by these Regulations;
- (b) may contain provision as to the period for which the authorisation is to have effect; and
- (c) may restrict the powers exercisable by virtue of the authorisation so as to prohibit their exercise except for particular purposes or in particular circumstances.

(4) An authorisation may be withdrawn at any time in writing by the local authority that granted it.

(5) The written authorisation or withdrawal of an authorisation by any local authority must be signed by either—

- (a) the officer designated under section 4 of the Local Government and Housing Act

1989(1) as the head of the authority's paid service; or

- (b) the officer who is the authority's chief finance officer (within the meaning of section 5 of that Act).

(6) An individual who for the time being is authorised for the purposes of regulation 4, is only entitled to exercise any of the powers which are conferred on an authorised officer by that regulation for housing fraud investigation purposes.

(7) An authorised officer may exercise the powers conferred under regulation 4 in relation to a dwelling-house—

- (a) whether or not that dwelling-house is or was let under a tenancy under which the landlord is or was the authority by which the officer's authorisation was granted; and
- (b) whether or not that dwelling house is located in the area of the authority by which the officer's authorisation was granted.

Power to require information

4.—(1) An authorised officer who has reasonable grounds for suspecting that a person—

- (a) is a person falling within paragraph (2); and
- (b) has or may have possession of or access to any information about any matter that is relevant to housing fraud investigation purposes,

may, by written notice, require that person to provide all such information described in the notice of which that person has possession, or to which that person has access, and which it is reasonable for the authorised officer to require for the purpose so mentioned.

(2) The persons who fall within this paragraph are—

- (a) any bank;
- (b) any person carrying on a business the whole or a significant part of which consists of the provision of credit (whether secured or unsecured) to members of the public;
- (c) any water undertaker or sewage undertaker;
- (d) any person who—

(1) 1989 c.42. Amendments have been made to sections 4 and 5 which are not relevant to these Regulations.

- (i) is the holder of a licence under section 7 of the Gas Act 1986⁽¹⁾ to convey gas through pipes; or
- (ii) is the holder of a licence under section 7A of that Act⁽²⁾ to supply gas through pipes;
- (e) any person who (within the meaning of the Electricity Act 1989⁽³⁾) distributes or supplies electricity;
- (f) any person who provides a telecommunications service; or
- (g) any servant or agent of any person mentioned in sub-paragraphs (a) to (f).

(3) Subject to the following provisions of this regulation, the powers conferred by this regulation on an authorised officer to require information from any person by virtue of that person falling within paragraph (2) are exercisable for the purpose only of obtaining information relating to a particular person identified (by name or description) by the officer.

(4) An authorised officer must not, in exercise of those powers, require any information from any person by virtue of that person falling within paragraph (2) unless it appears to that officer that there are reasonable grounds for believing that the person to whom it relates is—

- (a) a person who has committed, is committing or intends to commit an offence listed in section 7(7) of the Prevention of Social Housing Fraud Act 2013; or
- (b) a person who is a member of the family of a person falling within sub-paragraph (a).

(5) The powers conferred by this regulation are not exercisable for the purpose of obtaining from any person providing a telecommunications service any information other than information which (within the meaning of section 21 of the Regulation of Investigatory Powers Act 2000⁽⁴⁾) is communications data but not traffic data.

(1) 1986 c.44. Section 7 was substituted by section 5 of the Gas Act 1995 (c.45) and subsection (1) was subsequently amended by section 76 of the Utilities Act 2000 (c.27). Other amendments made to that subsection and section 7 more generally are not relevant to these Regulations.

(2) Section 7A was inserted by section 6(1) of the Gas Act 1995 (c.45). Subsections (1) and (2) were subsequently amended by section 3(2) of the Utilities Act 2000 (c.27); subsection (2) was further amended by section 108 of and paragraphs 1 and 2 of Schedule 6 to that Act; and subsection (3) was amended by section 149 of the Energy Act 2004 (c.20). Other amendments have been made to section 7A which are not relevant to these Regulations.

(3) 1989 c.29.

(4) 2000 c.23.

(6) Nothing in paragraph (3) or (4) prevents an authorised person from exercising the powers conferred by this regulation for requiring information from a person who provides a telecommunications service, about the identity and postal address of a person identified by the authorised officer solely by reference to a telephone number or electronic address used in connection with the provision of such a service.

(7) The obligation of a person to provide information in accordance with a notice under this regulation will be discharged only by the provision of that information, at such reasonable time and in such form as may be specified in the notice, to the authorised officer who—

- (a) is identified by or in accordance with the terms of the notice; or
- (b) has been identified, since the giving of the notice, by a further written notice given by the authorised officer who imposed the original requirement, or another authorised officer.

(8) The power of an authorised officer under this regulation to require the provision of information includes a power to require the production and delivery up and (if necessary) creation of any such documents containing the information as may be specified or described in the notice imposing the requirement, or the creation of copies of or extracts from any such documents.

(9) No person will be required under this regulation to provide—

- (a) any information that tends to incriminate either that person or, in the case of a person who is married or is a civil partner, that person's spouse or civil partner; or
- (b) any information in respect of which a claim to legal professional privilege would be successful in any proceedings,

and for the purposes of this paragraph it is immaterial whether the information is in documentary form or not.

(10) In this regulation—

“bank” (“*banc*”) means—

- (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000⁽¹⁾ to accept deposits;

(1) 2000 c.8. Part 4A was inserted by section 11(2) of the Financial Services Act 2012 (c.21).

(b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act⁽¹⁾ which has permission under paragraph 15 of that Schedule⁽²⁾ (as a result of qualifying for authorisation under paragraph 12 of that Schedule⁽³⁾) to accept deposits or other repayable funds from the public; or

(c) a person who does not require permission under that Act to accept deposits in the course of that person's business in the United Kingdom;

“family” (“*teulu*”) is to be construed in accordance with section 113 of the Housing Act 1985⁽⁴⁾; and

“telecommunications service” (“*gwasanaeth telathrebu*”) has the same meaning as in the Regulation of Investigatory Powers Act 2000.

(11) The definition of “bank” (“*banc*”) in paragraph (10) must be read in accordance with—

- (a) section 22 of the Financial Services and Markets Act 2000⁽⁵⁾;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

Delay, obstruction etc. of an authorised officer

5.—(1) If a person (P)—

- (a) intentionally delays or obstructs an authorised officer in the exercise of any power under regulation 4; or
- (b) refuses or fails, without reasonable excuse, to provide any information or to provide any document when required to do so under regulation 4,

P is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where P is convicted of an offence under paragraph (1)(b) and the refusal or failure is continued by P after P's conviction, P will be guilty of a further offence and liable on summary conviction to a fine not exceeding £40 for each day on which it is continued.

(1) Sub-paragraph (b) was substituted by regulation 29 of, and paragraph 2 of Schedule 3 to, S.I. 2006/3221.

(2) Sub-paragraph (1) of paragraph 15 was amended by S.I. 2007/3253. Other amendments made to paragraph 15 are not relevant to these Regulations.

(3) Sub-paragraph (9) of paragraph 12 was inserted by S.I. 2012/1906. Other amendments made to paragraph 12 are not relevant to these Regulations.

(4) 1985 c.68.

(5) The heading to section 22 was substituted by section 7(1)(d) of the Financial Services Act 2012 (c.21). Other amendments made to section 22 are not relevant to these Regulations.

Offences by bodies corporate

6.—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person, as well as the body corporate, will be guilty of that offence and liable to be proceeded against accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.

Name

Minister for Housing and Regeneration, one of the
Welsh Ministers

Date