

EXPLANATORY MEMORANDUM The Secure Tenancies (Absolute Ground for Possession for Anti-Social Behaviour) (Review Procedure) (Wales) Regulations 2014

This Explanatory Memorandum has been prepared by the Housing Policy Division and is laid before the National Assembly for Wales 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 Secure Tenancies (Absolute Ground for Possession for Anti-Social Behaviour) (Review Procedure) (Wales) Regulations 2014

Lesley Griffiths

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

9 December 2014

1. Description

The Secure Tenancies (Absolute Ground for Possession for Anti-social Behaviour) (Review Procedure) (Wales) Regulations 2014 (“the Regulations”) specify the procedure to be followed in an internal review by a local housing authority of its decision to seek possession under the new absolute ground for anti-social behaviour.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative background

Section 84A of the Housing Act 1985 (“the 1985 Act”) (as inserted by section 94(1) of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”)) introduces a new absolute ground for possession of a dwelling on the grounds of serious anti-social behaviour that is the subject of a secure tenancy. Section 84A provides that the court will be required to grant possession if any one of the following five conditions is met:

Condition 1. The tenant, a member of the tenant’s household, or a person visiting the property, has been convicted of a serious offence (which is one of the offences set out in Schedule 2A to the 1985 Act as inserted by section 94(2) and Schedule 3 to the 2014 Act);

Condition 2. The tenant, a member of the tenant’s household, or a person visiting the property has been found by a court to have breached an injunction obtained under section 1 of the 2014 Act (anti-social behaviour injunction), other than a provision requiring a person to participate in a particular activity;

Condition 3. The tenant, a member of the tenant’s household, or a person visiting the property has been convicted of an offence under section 30 of the 2014 Act consisting of a breach of a criminal behaviour order;

Condition 4. The tenant’s property has been closed for more than 48 hours under a closure order (under section 80 of the 2014 Act) for anti-social behaviour; or

Condition 5. The tenant, a member of the tenant’s household, or a person visiting the property has been convicted for breaching a noise abatement notice or order in relation to the tenant’s property under the Environmental Protection Act 1990.

The offence or anti-social behaviour must have been committed in, or in the locality of, the property, affected a person with a right to live in the locality of the property or

affected the landlord or a person connected with the landlord's housing management functions. Section 84A of the 1985 Act came into force on the 21 October 2014.

Section 85ZA(1) of the 1985 Act provides secure tenants of local housing authorities with a right to request a review of the landlord's decision to seek possession on the absolute ground. The landlord must review the decision, if the tenant so requests. Section 85ZA(8) provides that the Welsh Ministers may make regulations about the procedure to be followed in connection with these reviews. These Regulations are made in exercise of that power and are subject to annulment procedure as required under section 85ZA(10)(b)(ii).

4. Purpose & intended effect of the legislation

A new absolute ground for possession for anti-social behaviour was introduced by the 2014 Act in order to expedite the eviction of landlords' most anti-social tenants and, thereby, bring faster relief to victims and witnesses.

The new ground is designed to be used for the most serious cases of anti-social behaviour and the recently produced UK guidance for frontline practitioners on the use of the new anti-social behaviour powers in the 2014 Act advises landlords to use it selectively. The guidance is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf

Section 85ZA(1) of the 1985 Act (as introduced by section 96 of the 2014 Act) introduces an important safeguard by providing secure tenants of local housing authorities with a right to request a review of the landlord's decision to seek possession under the new ground.

Where a secure tenant requests such a review, a local housing authority will have an opportunity to reconsider its decision to ensure that it is robust and proportionate, prior to court proceedings.

This instrument sets out the basic requirements to be followed by a local housing authority when conducting a review. The Regulations seek to ensure that the review is conducted fairly. They will ensure that local housing authorities apply a clear and consistent approach. They will also ensure that landlords and tenants (or their representatives) understand the process and know what to expect.

The Regulations set out, amongst other things, the tenant's right to an oral hearing, the procedure for such hearings, as well as the procedure for carrying out reviews without an oral hearing. The Regulations also require that the decision on review is made by a person of appropriate seniority who was not involved in the original decision.

Regulation 5 (review without a hearing) provides a tenant with no less than ten days to make written representations, from receipt of the landlord's notification to the tenant inviting such representations as part of the review procedure. Regulation 6 (review by way of hearing) similarly provides that following a landlord's notification to

a tenant that an oral-hearing will be held, the hearing can take place no earlier than ten days after receipt of that notification.

5. Consultation

No formal consultation has been undertaken for this instrument.

The broad policy proposals to introduce a new absolute ground for possession were the subject of a public consultation in Wales undertaken between 18 November 2011 and February 2012. The UK Government also consulted on proposals for a simplified toolkit of powers for practitioners to tackle anti-social behaviour both in England and Wales in August 2011. Consultation results demonstrated that Welsh stakeholders were keen to have the same tools to deal with anti-social behaviour as England.

6. Regulatory Impact Assessment (RIA)

There is no impact on business, charities or voluntary bodies as the Regulations simply specify the procedure to be followed where a secure tenant of a local housing authority requests a review of a landlord's decision to seek possession under the new absolute ground.

The impact on the public sector will be limited to local authority landlords who choose to seek possession under the new absolute ground.

An Impact Assessment has not been prepared for this instrument. These Regulations relate to the implementation of Part 5 of the 2014 Act. An Impact Assessment relating to that Part as well as an overarching Impact Assessment of the whole Act has been carried out by the Home Office and is published on the Home Office's website. <https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>