

EXPLANATORY MEMORANDUM TO

THE HOMELESSNESS (REVIEW PROCEDURE ETC.) REGULATIONS 2018

2018 No. 223

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Homelessness Reduction Act 2017 (“the 2017 Act”) amends Part 7 of the Housing Act 1996 (“the Housing Act”) which sets out the functions that local housing authorities (“LHA”) have in relation to persons who are homeless, or threatened with homelessness.

- 2.2 This instrument:

- Sets out the procedure to be followed by a local housing authority (LHA) when issuing a notice to bring their duties to an end in cases of an applicant’s deliberate and unreasonable refusal to co-operate. An applicant is a person who applies to a LHA for accommodation or assistance in obtaining accommodation and the authority have reason to believe they may be homeless or threatened with becoming homeless within 56 days and eligible for assistance.
- Revokes and replaces the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 and sets out provisions for completing reviews.
- Specifies the public authorities that will have a duty to refer people in England they consider may be homeless or threatened with becoming homeless within 56 days to LHAs.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 2017 Act introduces duties on LHAs to intervene at earlier stages to prevent homelessness and to take reasonable steps to relieve homelessness by helping those who are homeless to secure accommodation (the ‘prevention’ and ‘relief’ duties). It also requires LHAs to provide some new homelessness services to all people in their area and expands the categories of people who they have to help to find accommodation.

- 4.2 As part of the prevention and relief duties introduced by the 2017 Act, LHAs must work with an applicant to develop a personalised housing plan which will set out the steps to be taken by both parties to ensure the applicant has, and is able to retain, suitable accommodation. LHAs are able to issue a notice bringing their prevention or relief duties to an end if the applicant deliberately and unreasonably refuses to cooperate with the required steps. Section 193B(7) of the 2017 Act gives the Secretary of State the power to make provision by regulations as to the procedure to be followed by a LHA in connection with notices of non-cooperation. This is the first use of this power. This instrument requires LHAs to ensure the procedure is in writing, kept under review and makes provision for the decision to issue a notice to be authorised by a second officer not involved in the original decision.
- 4.3 When individuals make applications to LHAs for accommodation, or for assistance in obtaining accommodation, section 202 of the Housing Act provides applicants with the right to request a review of certain decisions made by LHAs during their applications. The 2017 Act amends section 202 to add further rights of review related to the new prevention and relief duties. This instrument revokes and replaces the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 which made provision for reviews under section 202, and also makes new provision in relation to new rights of review introduced by the 2017 Act.
- 4.4 Section 213B of the 2017 Act introduces a new duty on public authorities to refer services users in England who they consider may be homeless or threatened with becoming homeless within 56 days to LHAs. Section 213B(4) of the 2017 Act gives the Secretary of State the power to specify the public authorities which will be subject to the duty. This is the first use of this power. This instrument specifies these public authorities.

5. Extent and Territorial Application.

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The 2017 Act significantly reforms current homelessness legislation and seeks to ensure that more people receive help earlier to prevent them from becoming homeless in the first place. The number of homeless households in England is increasing. 59,090 households were accepted as statutorily homeless and in priority need in 2016/17, up 48% since 2009/10. The total numbers in temporary accommodation are also rising.
- 7.2 Currently, LHAs are likely to focus their resources on households in ‘priority need’, such as families with dependent children. However, an estimated total of 214,480 successful cases of homelessness prevention or relief took place outside of the main provisions of the statutory homelessness framework in England during 2016/17. The 2017 Act will mean that homelessness prevention and relief becomes part of the

statutory homelessness framework in England, extending support to all eligible applicants, regardless of whether they are in ‘priority need’.

The provisions in this instrument seek to ensure the effective operation of the new duties in the 2017 Act in a number of ways as set out in greater detail below.

Procedure to be followed by local housing authorities when issuing notices of non-cooperation

- 7.3 The provision under section 193B in the 2017 Act, which allows LHAs to issue notices bringing their duties to an end when applicants deliberately or unreasonably refuse to cooperate, is designed to encourage applicants to take responsibility for working proactively with the LHA to resolve their housing situation as soon as possible. The 2017 Act contains safeguards to prevent LHAs from ending the prevention or relief duties too soon, such as the requirement for a warning to be given by the LHA before any notice is issued.. The provisions in this instrument are an addition to these safeguards to ensure that LHAs develop written procedures for issuing notices which are kept under review and will guarantee that a notice is authorised by a second officer before it is served to an applicant.

Review Regulations

- 7.4 Having the right to request a review of decisions made by LHAs in the homelessness support process provides an opportunity for redress for applicants who are not content with decisions made about their case. Regulations provide a clear process for applicants and LHAs to follow and it is vital that this process covers all relevant decisions that can affect an applicant’s journey. This instrument introduces a revised expedited review timeframe for appropriate decisions to enable the overturning of decisions to have a meaningful impact for the applicant and to maximise the opportunity for the prevention or relief of their homelessness.

Specifying the public authorities to be subject to the duty to refer

- 7.5 There are varied and sometimes complex reasons behind homelessness, and a person will often come into contact with a wide range of public services before reaching a homelessness crisis or approaching a LHA for assistance. The duty to refer will ensure that where a specified public authority becomes aware that someone may be homeless or at risk of homelessness they are given the opportunity to be referred for help.
- 7.6 The duty to refer seeks to extend the good practice that already exists in local areas across England and ensure that services are working together to prevent homelessness. The duty will create a more joined up public service approach, increasing opportunities for prevention and relief and resulting in cost-savings across public services. Evidence suggests that there are approximately 58,000 homeless people with complex needs accessing a range of homelessness, criminal justice and health services at an estimated cost £4.3bn a year.
- 7.7 This instrument specifies key public authorities that are likely to have the most contact with individuals who are homeless or at risk of homelessness including: social service authorities, prisons and youth offender institutions, secure training centres and secure colleges, youth offending teams, probation services (including community rehabilitation companies), Jobcentre Plus offices, emergency departments, hospitals in their capacity of providing in-patient treatment and urgent treatment centres. Urgent

treatment centres include services locally designated as such, and all other providers of community and primary urgent care, including services locally designated as urgent care centres, minor injury units, minor injury services and walk in centres. The Secretary of State for Defence is also subject to the duty to refer in relation to members of the regular forces. The regular forces are the Royal Navy, the Royal Marines, the regular army and the Royal Air Force.

8. Consultation outcome

- 8.1 The Government has undertaken broad stakeholder engagement, including with charities, LHAs, and various sector bodies between May and October 2017 during which policy relating to this instrument was discussed. Between May – July 2017 the Government held a series of meetings with a working group which included homelessness charities, LHAs and representative bodies such as the Local Government Association and London Councils, who all inputted key ideas including that of an expedited review process. During May to October 2017 the Government engaged with different sector organisations on the duty to refer. These discussions informed the design of the regulations and guidance.
- 8.2 After the initial phase of focused engagement with the homelessness sector, the Government shared proposals for the content of the regulations with over 250 local authorities through a series of regional events in October 2017. Of the attendees 137 provided feedback of which 98 responses included comments on the regulation proposals:
- Sixty eight respondents addressed the regulatory procedure for non-cooperation, 87% of whom were either supportive of the provisions or noted that they were unlikely to issue notices, instead focusing on encouraging engagement from the applicant.
 - Forty nine respondents addressed the review regulations and 47% of these were supportive of a shorter timeframe for certain decisions, feeling that this was a fairer and clearer process for applicants. 30% of the responses relating to the review regulations did not address the proposals but set out concerns regarding a potential overall increase in the number of reviews.

9. Guidance

- 9.1 The Government has updated the statutory Code of Guidance on homelessness for local housing and social services authorities in England. This includes guidance on the provisions in this instrument. The new Code of Guidance will be published on gov.uk and a link will be circulated to interested parties.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is positive for LHAs as the Government estimates that the measures in the 2017 Act will lead to an increase in homelessness prevention and thus a reduction in more costly acceptances to the main housing duty, which will eventually lead to overall savings for local authorities. The Government estimates that within three years of implementation there will be a 30% reduction in statutory homelessness acceptances.

- 10.3 The Government expects any additional costs as a result of the duty to refer to be minimal. The prevention or relief of homelessness for the clients of other public services is likely to lead to overall savings. For example, evidence shows that having suitable accommodation reduces the risk of re-offending. There may be some implementation costs to prepare for the new duty, but the Government expects these to be minimal as in many cases public services are already referring homeless households in need of support to local authorities.
- 10.4 An Impact Assessment has not been prepared for this instrument.
- 11. Regulating small business**
- 11.1 The legislation does not apply to activities that are undertaken by small businesses.
- 12. Monitoring & review**
- 12.1 The ministry has committed to reviewing the implementation of the 2017 Act concluding no later than two years from the date the Act comes into force.
- 13. Contact**
- 13.1 Aimee Hardy at the Ministry of Housing, Communities and Local Government can answer any queries regarding the instrument. Telephone: 0303 444 0000 or email: aimee.hardy@communities.gsi.gov.uk.