

Explanatory Memorandum to the Prevention of Social Housing Fraud (Detection of Fraud) (Wales) Regulations 2014

This Explanatory Memorandum has been prepared by the Housing Policy Division of the Welsh Government 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 Prevention of Social Housing Fraud (Detection of Fraud) (Wales) Regulations 2014. I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM

Minister for Housing and Regeneration

11 December 2013

Description

1. The Prevention of Social Housing Fraud (Detection of Fraud) (Wales) Regulations 2014 (“the Regulations”) make provision for investigations into social housing fraud offences, such as making fraudulent applications for social housing or unlawfully subletting social housing. The Regulations enable local authorities to require the provision of information in relation to those offences. They also create offences and enable penalties to be imposed in connection with these requests for information.
2. A recent Audit Commission report on housing fraud in England estimated that around 4 per cent of social housing stock in London and 2 per cent in the rest of the UK may be subject to tenancy fraud and ‘unlawfully occupied’. If the same percentage (2 per cent) is applied to socially rented dwellings in Wales, this would mean an estimated 4,470 properties may be subject to tenancy fraud. It should be noted, however, that this is an indicative figure only and the actual number may well be higher or lower than the estimated figure shown

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. None.

Legislative background

4. The Regulations are made under powers in sections 7,8 and 9 of the Prevention of Social Housing Fraud Act 2013. They are modelled on existing provisions in Part 6 of the Social Security Administration Act 1992 which makes provision for investigatory powers, offences and penalties in relation to social security benefits.

Purpose and intended effect

5. This instrument provides powers required for local authorities to be able to compel “specified persons” to provide them with information for social housing fraud investigation purposes.
6. The Prevention of Social Housing Fraud Act 2013 (“the Act”) is intended to help reduce the number of social homes that are unlawfully occupied (currently estimated at 4,470 in Wales). The current law enables social landlords to recover properties that are unlawfully sublet but this has proved to be an inadequate deterrent to tenants, who only risk losing the tenancy of a property they do not occupy. The Act creates additional deterrents, including introducing new offences for unlawful subletting and creating orders that will enable landlords to recover any profit the tenant has made.

7. Social housing fraud investigators often cite their lack of access to data as a significant obstacle that prevents them detecting as many unlawfully occupied social homes as they otherwise could. The Act gives Welsh Ministers the power to make regulations that give local authorities the power to require organisations to provide information that relates to social housing fraud investigations. Currently, Welsh Ministers can *ask* data-holders for information they hold but they cannot compel it to be provided. This often means that holders of key data refuse such requests. By compelling organisations to respond to such requests, the Regulations will enable social housing fraud investigators to obtain more information to help them investigate and prosecute the offences under the Act and other acts of fraud. This includes fraudulent applications for social housing. It will bring the powers of social housing fraud investigators in line with those currently enjoyed by investigators of social security and council tax fraud. The powers for social security fraud have been in place for more than a decade and have proved to be invaluable in detecting fraud.
8. Regulation 3 enables local authorities to authorise individuals to exercise the powers in Regulation 4. Under Regulation 4, the authorised officer has the power to require banks, buildings societies and other providers of credit, telecommunications providers and utilities companies to provide such information as is reasonably required for the purpose of preventing, detecting and securing evidence of the commission of offences of social housing fraud as defined by section 7(7) of the Act.
9. When conducting social housing fraud investigations, it is important to be able to link the tenant to another address, which can provide evidence that, for example, the tenant is sub-letting the social home they have been allocated, or that they own a home that they did not declare when applying for social housing. The organisations captured by Regulation 4 hold information that can indicate that the named tenant has an account registered at another address. In the case of banks and building societies, account statements can provide evidence of receipt of payments suggesting they are sub-letting for money, and of expenditure suggesting the tenant is making monthly mortgage payments, thereby denoting they own a property.
10. Regulation 5 creates an offence relating to the delay or obstruction of authorised officers in exercising their powers to require information, or a failure or refusal to provide information when required to do so. Regulation 6 applies where the offence is committed by a body corporate.

Regulatory Impact Assessment (RIA)

10. Latest estimates suggest that there are around 98,000 unlawfully occupied social homes in England and some 4,470 in Wales. This prevents social landlords from allocating them to those people in genuine need. There is currently a lack of adequate deterrent to tenants to abuse their tenancy, and social landlords have inadequate powers of investigation, often finding it hard to detect and prosecute social housing fraudsters.

11. Government intervention is needed to increase both the penalties for social housing fraud and social landlords' investigatory powers.
12. The overarching objective is to deter people from engaging in social housing fraud in order to reduce the number of unlawfully occupied social homes and free up more social housing for those in genuine need. This would be achieved by deterring people from engaging in social housing fraud, incentivising those already committing fraud to stop and making it easier for social landlords to detect and evict those who continue to commit fraud.
13. It will also ensure that an assured tenant of a Registered Social Landlord permanently loses their assured status when they sub-let or part with possession of the whole of their property.

Options

14. The following options have been considered:

(i) Option 1 - Do nothing' – leave the legislative framework unchanged

(ii) Option 2 - Make the unauthorised sub-letting of social housing a criminal offence.

(iii) Option 3 - Make the unauthorised sub-letting of social housing a criminal offence and give enhanced data access powers to local authorities for social housing fraud investigation purposes.

15. Option 3 is preferred as it is considered to be most effective. It will allow landlords to recover the greatest number of social homes for reallocation to those on the waiting list.

Costs and Benefits

16. There is little firm evidence on the exact extent of unlawful occupation although as stated earlier, the total number is estimated at 4,470 in Wales.

17. The profit made by an individual involved in social housing fraud depends on a number of factors, such as what other benefits they are receiving. If they are not receiving other benefits such as housing benefit, the profit would be the difference between the social rent and the market level rent. If the tenant is also claiming housing benefit, the profit could be as much as 100 per cent of market rent. The real cost will be to local authorities. They may be currently housing people in expensive temporary accommodation whilst waiting for a social home to become available.

18. The benefits of creating a new criminal offence and introducing a mandatory gateway for increased data sharing can be seen in the

estimated number of tenants that might be deterred or incentivised to stop committing social housing fraud and the savings to housing benefit.

19. The aim is to create a situation where the benefits of committing social housing fraud are outweighed by the potential repercussions of being caught, e.g. the potential criminal conviction and/or fine that could be handed down to an individual would deter them from committing the crime to begin with. The objective is to be achieved by introducing stronger sanctions and raising the likelihood of being detected.

Option 1 - Do nothing

20. The first option is for Government to take no further action beyond what is already being done to encourage local authorities and housing associations to crack down on unlawful occupation. Social landlords would essentially continue with the resources and powers they currently have. In essence this would maintain the status quo.
21. In addition to there being few sanctions against unauthorised sub-letting, social landlords would continue to be unable to access data from many organisations that enable them to detect, tackle and prosecute cases of social housing fraud.
22. In light of this, it is reasonable to expect that under this option, a large number of social homes would continue to be unlawfully occupied. This would prevent social housing being allocated to households in need and increase UK Government expenditure on housing benefit. In addition, it would prevent the best use being made of limited housing supply at a time when the demand for affordable housing is high.

Option 2 - Make the unauthorised sub-letting of social housing a criminal offence.

23. There may be costs to both social and private landlords in the form of void costs or lost rental income due to the time involved in installing new tenants when existing ones leave. Voids can occur due to tenants who have decided to hand in their tenancies voluntarily when challenged, those who are deterred and those detected and evicted. For social and private landlords the void costs are assumed to be a one-off 4 week rental cost for each dwelling. Finally, there would also be an impact on the justice system.
24. There may be circumstances in which evicted tenants need to be re-housed, thereby incurring costs, but these cases would be extremely rare as authorities are within their rights to refuse tenancies to those who have made themselves intentionally homeless.
25. Landlords would incur legal costs by bringing prosecutions, although there is the possibility that in some cases they may be awarded costs and be awarded the profit the tenant has made from sub-letting.

26. The main benefit of this policy is that we expect a greater number of social homes to become available for allocation to those on the waiting list. This would enable local authorities and housing associations to better manage stock, house more households in genuine need and tackle issues such as overcrowding and under occupation. Also, the detection of unauthorised sub-letting could also lead to detection of housing benefit fraud.

Option 3 - Make the unauthorised sub-letting of social housing a criminal offence and give enhanced data access powers to local authorities to detect social housing fraud.

27. There may be costs to both social and private landlords in the form of void costs or lost rental income due to the time involved in installing new tenants when existing ones leave. Voids can occur due to tenants who have decided to hand in their tenancies voluntarily when challenged, those who are deterred and those detected and evicted. For social and private landlords the void costs are assumed to be a one-off 4 week rental cost for each dwelling, as in option 2. There would be limited administration costs to data providers when complying with data requests from landlords. Consultation indicated that housing providers would welcome these powers and the minimal investigative costs were worthwhile if they resulted in illegal tenancies being able to be terminated.

28. There may be circumstances in which evicted tenants need to be re-housed, thereby incurring costs, but these cases would be extremely rare as authorities are within their rights to refuse tenancies to those who have made themselves intentionally homeless.

29. Landlords would incur legal costs by bringing prosecutions, although there is the possibility that in some cases they would be awarded costs and be awarded the profit the tenant has made from sub-letting.

30. The effect of this proposal would be to free up social housing. This would lead to a reduction of the UK Government housing benefit bill as tenants are re-housed in social properties. These housing benefit gains are, in principle, offset by the loss of the illegal profit made by those unlawfully subletting. However, as this loss to fraudsters is not included in the costs they account for a net benefit. We also expect fewer civil cases to be taken to court (as the result of the threat of a criminal sanction), which will be a saving for the landlord.

31. The main benefit of this policy is that we expect a greater number of social homes to become available for allocation to those on the waiting list. This would enable local authorities and housing associations to better manage stock, house more households in genuine need and tackle issues such as overcrowding and under occupation. Also, the detection of social housing fraud could also lead to detection of housing benefit fraud.

Consultation

32. There has been a consultation on the proposed powers. Between 25 May and 17 August 2012, the Welsh Government consulted on strengthening powers that landlords have to tackle tenancy fraud. This was following a similar consultation by the Department of Communities and Local Government as part of a Private Members Bill supported by the UK Government (Richard Harrington's Prevention of Social Housing Fraud Bill).
33. The purpose and focus of the consultation paper was to:
- a. Seek views on the proposed new powers to tackle social housing fraud
 - b. Consult with a wide range of partner organisations.
 - c. Determine whether or not to adopt this legislation in Wales
34. There were 26 responses. Respondents included local authorities, housing associations, Community Housing Cymru, South Wales Police, CIFAS (Fraud Prevention Service) and Welsh Tenants among others. Below is a breakdown of the respondents.
- Local authorities – 7
 - Registered Social Landlords – 9
 - Other representative organisations – 8
 - Individuals - 2
35. The consultation exercise in Wales showed support for the Bill. There was general support for the introduction of power to tackle fraud in social housing and the definition as outlined in the consultation document.
36. Many of the respondents felt that the penalties for social housing fraud should either be as outlined in the consultation document or be similar to those for Housing Benefit fraud.
37. In all, 95 per cent of respondents agreed with the introduction of restitutionary payments and many believed this would incentivise landlords to tackle social housing fraud. Over 80 per cent of respondents felt that restitutionary payments should be available in both Criminal and Civil courts. 95 per cent of respondents felt that there should be no difference in tenancy status between secure and assured tenancies where the whole property has been sublet and a number of people thought this could be covered as part of the wider tenure reform debate.

7. Competition Assessment

38. The issues that are considered within a competition assessment are not of relevance to these Regulations.