

HOUSING (WALES) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 Standards for Social Housing

Section 111 – Standards

207. The Welsh Ministers may set standards for housing that is provided by a local housing authority. The local housing authority must meet the standards. Standards may be set in any or all of three areas. The areas, which are set out in subsection (1) are the quality of accommodation, the rent charged and service charges for the accommodation.
208. Standards may include rules with which the authority must comply. Relevant rules may make provision about the minimum or maximum levels of rent or service charges chargeable by local housing authorities; provision may also be made about maximum or minimum levels of increases or decreases in the amount of such rent or service charges.
209. The Welsh Ministers may revise or withdraw standards by issuing further standards. Standards may also be withdrawn by way of notice. The Welsh Ministers must publish all standards and notices given under this section.

Section 112 – Guidance

210. Guidance may be given by the Welsh Ministers which relates to, and expands upon, a standard set under section 111. In assessing whether a local housing authority has met a standard, the Welsh Ministers may have regard to the guidance. The Welsh Ministers may revise or withdraw guidance by issuing further guidance under this section. Guidance may also be withdrawn by way of notice. The Welsh Ministers must publish all guidance and notices given under this section.

Section 113 – Consultation on standards and guidance

211. Before making, revising or withdrawing standards set under section 111 or guidance given under section 112, the Welsh Ministers must consult: bodies that represent the interests of local housing authorities; bodies representing the interests of tenants; and any other persons the Welsh Ministers think it appropriate to consult.

Section 114 – Information on compliance with standards

212. A local housing authority must comply with any request from the Welsh Ministers for information relating to compliance with the standards set under section 111.

Section 115 – Powers of entry

213. This applies where a local housing authority may be failing to maintain or repair premises in accordance with a quality of accommodation standard set under section 111 or guidance given under section 112. The Welsh Ministers may authorise a person, in writing, to enter such premises in order to carry out a survey and examination. A copy

of the survey must be given to the local housing authority which may be required to pay costs related to the survey.

214. The authorised person must give at least 28 days' notice to the local housing authority of his or her intention to enter the relevant premises; and, in turn, the authority must give at least 7 days' notice to an occupier, of the date of the inspection. An occupier of the premises being inspected or an agent of the occupier has the right to see the written authorisation of the person conducting the inspection.

Section 116 – Exercise of intervention powers

215. The intervention powers of the Welsh Ministers and related matters are set out in sections 117 to 127. In deciding whether to exercise an intervention power, which power and how it should be exercised, the Welsh Ministers must consider two factors. First, if the failure or likely failure to meet a standard is, or is likely to be, a one off or repeated incident. Second, the speed with which any non-compliance needs to be remedied.

Section 117 – Grounds for intervention

216. The grounds for intervention are that a local housing authority has failed, or is likely to fail, to meet a quality of accommodation standard, which is set under section 111.

Section 118 – Warning notice

217. Where the Welsh Ministers are satisfied that the grounds for intervention exist in relation to a local housing authority, a warning notice may be given to the authority. The Welsh Ministers must specify in any notice their reasons for believing the grounds exist, the remedial action required within a timescale and the likely action Ministers will take if the authority fails to act.

Section 119 – Power of Welsh Ministers to intervene

218. The power to intervene conferred upon the Welsh Ministers by this Part may be exercised after a warning notice has been given and if remedial action has not been undertaken within the specified timescale. The circumstances giving rise to the power to intervene must be monitored. Where the Welsh Ministers are satisfied that the grounds for intervention have been addressed or that exercising powers would be inappropriate for any other reason, they must notify the local housing authority in writing. Until any such notice is given, the power to intervene continues in effect. Where the Welsh Ministers have the power to intervene under this Part they are not limited to taking the action stipulated in a warning notice (given under section 118).

Section 120 – Power to require local housing authority to obtain advisory services

219. When the Welsh Ministers choose to exercise their power to intervene, they may do so by directing the local housing authority to enter into a contract or other arrangement with a person or class of person specified in the direction for the purpose of obtaining advice.

Section 121 – Power to require performance of functions by other persons on behalf of authority

220. When the Welsh Ministers choose to exercise their power to intervene, they may do so by directing the local housing authority or any of its officers as they consider appropriate, to ensure that the functions to which the grounds for intervention relate are discharged effectively on the local housing authority's behalf by a person specified in the direction.

Section 122 – Power to require performance of functions by Welsh Ministers or nominee

221. When the Welsh Ministers choose to exercise their power to intervene, they may direct that the functions of the local housing authority to which the grounds of intervention relate may be exercised by either the Welsh Ministers or a person nominated by them. The local housing authority must comply with the instructions of the person exercising functions in accordance with a direction given under this section.

Section 123 – Power to direct exercise of other local housing authority functions

222. If they consider it expedient to do so, the Welsh Ministers may issue a direction under section 121 or 122 which relates to the performance by a local housing authority of functions in addition to the functions to which the grounds for intervention relates. In deciding whether to apply a direction to these additional functions, the Welsh Ministers may have regard to financial and other considerations.

Section 124 – General power to give directions and take steps

223. If the Welsh Ministers consider it appropriate in order to deal with the grounds for intervention, they may give directions to the local housing authority or any of its officers or taking other steps they consider appropriate.

Section 125 – Directions

224. A local housing authority to which, or any of its officers to whom, a direction or instruction is given must comply with it. Directions or instructions may be given in respect of powers or duties which are normally exercisable subject to the authority's opinion or the opinion of its officers. For example, a power conferred on an authority may be exercisable only if the authority is satisfied that its exercise is likely to achieve a particular outcome. If an authority were directed to exercise the power by Ministers, it would have to exercise of the power irrespective of its opinion about the likelihood of achieving the outcome in question. Directions given under this Part can be varied or revoked by a later direction and are enforceable by the Welsh Ministers applying for a mandatory order.

Section 126 – Duty to co-operate

225. A local housing authority must provide as much assistance as it can reasonably give to the Welsh Ministers and any person mentioned in subsection (2) when they exercise their functions under this Part.

Section 127– Powers of entry and inspection

226. The powers available under this section may be exercised by any of the persons mentioned in subsection (2). But the power to enter premises of a local housing authority does not include a right of entry to a dwelling.
227. These powers give a person mentioned in subsection (2) the right to inspect and take copies of any information recorded in any form kept by the authority and any other documents if the person considers the information relevant to the exercise of his or her functions under this Part. This includes a right of access to any computer and any associated apparatus or material on which information may be stored. The person or someone assisting them can require a person who has used a computer, someone who operates it on his or her behalf, or someone in charge of such equipment or material, to provide reasonable assistance.

*These notes refer to the Housing (Wales) Act 2014 (c.7)
which received Royal Assent on 17 September 2014*

Section 128 – Exemption from offences relating to service charges for social housing

228. Section 25 of the Landlord and Tenant Act 1985 is amended to exempt social landlords from criminal offence provisions where a landlord has failed to comply with certain duties in relation to providing tenants with information relating to service charges. Previously a local authority landlord had been exempted whereas a registered social landlord was subject to being penalised. Both types of social landlord are now required to comply with any standards issued by the Welsh Ministers which relate to service charges, and it is not necessary for there to be additional criminal sanctions.

Section 129 – Application of duties relating to service charges to local authority tenancies

229. This amends section 26(1) of the Landlord and Tenant Act 1985 so that the provision only applies to a local authority in England. Sections 18 to 25 of that Act relate to limitations on service charges and requests for information about costs, and these provisions apply in relation to all local authority tenancies in Wales.

Section 130 – Consequential amendments

230. Amendments to the Housing Act 1985 and Housing Act 1996 made in consequence of the provision made by this Part are set out in Part 3 of Schedule 3.