

2018 No. 223

HOUSING, ENGLAND

The Homelessness (Review Procedure etc.) Regulations 2018

Made - - - - *21st February 2018*

Laid before Parliament *22nd February 2018*

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 193B(7), 203(1), (2) and (7), and 213B(4) of the Housing Act 1996(a).

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Homelessness (Review Procedure etc.) Regulations 2018.

(2) This Part, and Parts 2, 3 and 5, come into force on 3rd April 2018.

(3) Part 4 comes into force on 1st October 2018.

(4) In these Regulations any reference to a section, save where the context otherwise appears, is to that section in the Housing Act 1996.

PART 2

Notices in cases of applicant's deliberate and unreasonable refusal to co-operate

Notice procedure

2. A local housing authority(b) must ensure that its procedure in connection with notices under section 193B(2) (Notices in cases of applicant's deliberate and unreasonable refusal to co-operate)—

(a) is in writing,

(b) is kept under review, and

(c) makes provision which complies with regulation 3.

(a) 1996 c.52. Sections 193B and 213B were inserted by sections 7 and 10 respectively of the Homelessness Reduction Act 2017 (c.13). See section 215(1) of the Housing Act 1996 ('the Act') for the definition of 'prescribed'.

(b) See section 230 of the Act, which in turn refers to section 1 of the Housing Act 1985 (c.68), for the definition of 'local housing authority'.

Decision to give notice

3.—(1) A local housing authority may not give a notice under section 193B(2) unless the decision to give the notice—

- (a) is made by an officer of that local housing authority, and
- (b) is authorised by an appropriate person.

(2) For the purposes of paragraph (1)(b)—

- (a) “appropriate person” means a person who—
 - (i) is at least as senior as the person mentioned in paragraph (1)(a),
 - (ii) works for that local housing authority or the local authority, and
 - (iii) was not involved in the decision to give the notice, and
- (b) a person works for a local housing authority or a local authority if the person—
 - (i) works under a contract of employment with that authority,
 - (ii) works under any other contract with that authority,
 - (iii) is supplied to that authority as an agency worker (within the meaning of regulation 3 of the Agency Workers Regulations 2010(a)), or
 - (iv) is seconded to work for that authority.

PART 3

Review of local housing authority decisions under section 202

Interpretation of this Part

4. In this Part—

“A” means the applicant(b);

“the authority” means the local housing authority who made the original decision;

“notified authority” means a local housing authority who receive a notification under section 198(A1) or (1)(c);

“notifying authority” means a local housing authority who give a notification under section 198(A1) or (1);

“original decision” means a decision of a local housing authority in relation to which a request for a review has been made;

“request for a review” means a request for a review made under section 202(d);

“the reviewer” means—

- (a) where the original decision falls within section 202(1)(d)—
 - (i) the notifying authority and the notified authority, where the review is carried out by those authorities,
 - (ii) the person appointed to carry out the review in accordance with regulation 6, where the case falls within that regulation,
- (b) where the original decision falls within any other sub-paragraph of section 202(1), the authority.

(a) S.I. 2010/93; regulation 3 was amended by S.I. 2011/1941.

(b) See section 183(2) of the Act for the definition of ‘applicant’.

(c) Section 198(A1) was inserted by section 5(8) of the Act.

(d) Section 202 was amended by section 8(2) of, and paragraph 16 of Schedule 1 to, the Homelessness Act 2002 (c.7); by paragraph 7(2) and (3) of Schedule 15, and paragraph 1 of Schedule 16, to the Housing and Regeneration Act 2008 (c.17); by section 149(9) of the Localism Act 2011 (c.20); and by section 9 of the Homelessness Reduction Act 2017.

Request for a review and notification of review procedure

5.—(1) A request for a review must be made to the authority where the original decision falls within—

- (a) section 202(1)(a) (decision as to A’s eligibility for assistance),
- (b) section 202(1)(b) (decision as to what duty, if any, is owed to A under sections 189B to 193C and 195: duties to persons found to be homeless or threatened with homelessness),
- (c) section 202(1)(ba) (decision as to the steps they are to take under section 189B(2) or to give notice under section 189B(5) to bring to an end their duty to A under section 189B(2)),
- (d) section 202(1)(bb) (decision to give notice to A under section 193B(2): notice given to those who deliberately and unreasonably refuse to cooperate),
- (e) section 202(1)(bc) (decision as to the steps they are to take under section 195(2) or to give notice under section 195(5) bringing to an end their duty to A under section 195(2)),
- (f) section 202(1)(c) (decision to notify another authority under section 198(1): referral of cases),
- (g) section 202(1)(e) (decision under section 200(3) or (4): decision as to the duty owed to A whose case is considered for referral or referred),
- (h) section 202(1)(f) (decision as to the suitability of accommodation offered to A in discharge of their duty under any of the provisions mentioned in section 202(1)(b) or (e) or as to the suitability of accommodation offered to A as mentioned in section 193(7)),
- (i) section 202(1)(g) (decision as to the suitability of accommodation offered to A by way of a private rented sector offer within the meaning of section 193), or
- (j) section 202(1)(h) (decision as to the suitability of accommodation offered to A by way of a final accommodation offer or a final Part 6 offer within the meaning of section 193A or 193C).

(2) A request for a review must be made to the notifying authority where the original decision falls within section 202(1)(d) (decision under section 198(5) whether conditions are met for the referral of A’s case).

(3) Except in the case of a request for a review falling within regulation 6, the authority must—

- (a) notify A that A, or someone acting on A’s behalf, may make representations in writing to the authority in connection with the review,
- (b) in the case of a request for a review falling—
 - (i) within section 202(1)(ba)(i) or (bc), or
 - (ii) within section 202(1)(bb) where the effect of the notice given under section 193B(2) is to bring the authority’s duty to A under section 195(2) to an end,

notify A that any such representations must be made within two weeks beginning with the day on which A requested the review, or such longer period as A and the reviewer may agree in writing,

- (c) if they have not already done so, notify A of the procedure to be followed in connection with the review.

(4) In the case of a request for a review falling within regulation 6, the person appointed in accordance with that regulation must—

- (a) notify A that A, or someone acting on A’s behalf, may make representations in writing to that person in connection with the review, and
- (b) notify A of the procedure to be followed in connection with the review.

Initial procedure where the original decision was made under the Decisions on Referrals Order

6.—(1) Where the original decision under section 198(5) (whether the conditions are met for the referral of the case) was made under the Homelessness (Decisions on Referrals) Order 1998(a) (“the Decisions on Referrals Order”), a review of that decision must, subject to paragraph (2), be carried out by a person appointed by the notifying authority and the notified authority.

(2) If a person is not appointed in accordance with paragraph (1) within five working days beginning with the day on which the request for a review is made, the review must be carried out by a person—

- (a) from the panel constituted in accordance with paragraph 3 of the Schedule to the Decisions on Referrals Order (“the panel”), and
- (b) appointed in accordance with paragraph (3) below.

(3) The notifying authority must within five working days beginning with the end of the period specified in paragraph (2) request the chairman of the Local Government Association or their nominee (“the proper officer”) to appoint a person from the panel and the proper officer must do so within seven days of the request.

(4) The notifying authority and the notified authority must within five working days of the appointment of the person from the panel (“the appointed person”) provide the appointed person with the reasons for the original decision and the information and evidence on which that decision was based.

(5) The appointed person must—

- (a) send to the notifying authority and the notified authority any representations made under regulation 5, and
- (b) invite those authorities to respond to those representations.

(6) The appointed person must not be the same person as the person who made the original decision.

(7) For the purposes of this regulation “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(b) in England and Wales.

Procedure on a review

7.—(1) The reviewer must, subject to compliance with the provisions of regulation 9, consider—

- (a) any representations made under regulation 5 and, in a case falling within regulation 6, any responses to them, and
- (b) any representations made under paragraph (2).

(2) If the reviewer considers that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but is minded nonetheless to make a decision which is against the interests of A on one or more issues, the reviewer must notify A—

- (a) that the reviewer is so minded and the reasons why, and
- (b) that A, or someone acting on A’s behalf, may make representations to the reviewer orally or in writing, or both orally and in writing.

Decision on the review

8.—(1) Paragraph (2) applies where—

- (a) the reviewer is, or includes, the authority,

(a) S.I. 1998/1578.

(b) 1971 c.80.

- (b) the original decision was made by an officer of the authority, and
- (c) the decision on the review is to be made by an officer of the authority.

(2) Where this paragraph applies, the officer making the decision on the review must be someone who—

- (a) was not involved in the original decision, and
- (b) is more senior than the officer who made the original decision.

Notification of the decision on a review

9.—(1) Notice of the decision on a review under section 203(3) must be given to A—

- (a) where the original decision falls within—
 - (i) section 202(1)(ba)(i) or (bc), or
 - (ii) section 202(1)(bb) and the effect of the notice given under section 193B(2) is to bring the authority's duty to A under section 195(2) to an end, three weeks beginning with the day on which the request for the review is made or, where A makes representations under regulation 7, beginning with the day on which those representations are received,
- (b) where the original decision falls within—
 - (i) section 202(1)(a), (b), (ba)(ii), (c), (d), (e), (f), (g), or (h), or
 - (ii) section 202(1)(bb) and the effect of the notice given under section 193B(2) is to bring the authority's duty to A under section 189B(2)(a) to an end, eight weeks beginning with the day on which the request for the review is made,
- (c) where the original decision falls within section 202(1)(d) and the review is carried out by the notifying authority and the notified authority, ten weeks beginning with the day on which the request for the review is made,
- (d) in a case falling within regulation 6, twelve weeks beginning with the day on which the request for the review is made,

or within such longer period as A and the reviewer may agree in writing.

(2) In a case falling within regulation 6, the appointed person must notify their decision on the review and the reasons for it, in writing, to the notifying authority and the notified authority—

- (a) within a period of eleven weeks beginning with the day on which the request for the review is made, or
- (b) where a longer period has been agreed in accordance with paragraph (1), by no later than one week before the expiry of that longer period.

PART 4

Duty to refer

Specified public authorities

10. The public authorities set out in the Schedule are specified for the purposes of section 213B (Duty of public authority to refer cases in England to local housing authority)(b).

(a) Section 189B was inserted by section 5(2) of the Homelessness Reduction Act 2017.

(b) See section 213B(5) of the Act for the definition of 'public authority'.

PART 5

Revocation

Revocation and transitional provision

11.—(1) Subject to paragraph (2), the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999(a) are revoked.

(2) The Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 continue in force in relation to any request for a review under section 202 made prior to the coming into force of this Part.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Heather Wheeler

Parliamentary Under Secretary of State

21st February 2018

Ministry of Housing, Communities and Local Government

SCHEDULE

Regulation 10

Specified public authorities

- 1.** The governor of a prison within the meaning given in section 53(1) of the Prison Act 1952(b).
- 2.** The director of a contracted out prison within the meaning given in section 84(4) of the Criminal Justice Act 1991(c).
- 3.** The governor of a young offender institution provided under section 43(1)(a) of the Prison Act 1952(d).
- 4.** The governor of a secure training centre provided under section 43(1)(b) of the Prison Act 1952.
- 5.** The director of a contracted out secure training centre within the meaning given in section 15 of the Criminal Justice and Public Order Act 1994.
- 6.** The principal of a secure college provided under section 43(1)(c) of the Prison Act 1952.
- 7.** A youth offending team established under section 39(1) of the Crime and Disorder Act 1998(e).
- 8.** A provider of probation services.
- 9.** An officer, designated by the Secretary of State for Work and Pensions for the purposes of section 213B, employed by the Secretary of State at an office known as a Jobcentre Plus office.
- 10.** A social services authority(f).

(a) S.I. 1999/71; revoked in relation to Wales by S.I. 2015/1266.

(b) 1952 c.52.

(c) 1991 c.53; section 84 was substituted by section 96 of the Criminal Justice and Public Order Act 1994 (c.33). By virtue of section 91(1) of the Criminal Justice Act 1991 (c.53), “contracted out prison” includes a contracted out young offender institution.

(d) Section 43(1) was substituted by section 38(1) of the Criminal Justice and Courts Act 2015 (c.2).

(e) 1998 c.37.

(f) See section 217(1) for the definition of ‘social services authority’.

11. A person who performs a function of a local authority pursuant to a direction under section 497A(4) or (4A) of the Education Act 1996(a) (which confers power on the Secretary of State to secure the proper performance of local authority education functions, and is applied to social services functions relating to children by section 50 of the Children Act 2004(b) and to functions relating to childcare by section 15 of the Childcare Act 2006(c)).

12.—(1) An NHS trust and an NHS foundation trust, but only in connection with the provision of the following NHS health services—

- (a) emergency department and urgent treatment centres,
- (b) in-patient treatment.

(2) For the purposes of paragraph (1)—

“emergency department and urgent treatment centres” includes—

- (a) accident and emergency services provided in a hospital,
- (b) services known as urgent treatment centres(d),
- (c) any other providers of community and primary urgent care services,

“NHS foundation trust” has the meaning given in section 30 of the National Health Service Act 2006(e),

“NHS health services” means any kind of health services provided as part of the health service continued under, and for the purposes of, section 1(1) of the National Health Service Act 2006(f), and

“NHS trust” means an NHS trust established under section 25 of the National Health Service Act 2006.

13. The Secretary of State for Defence, but only in relation to members of the regular armed forces(g).

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Housing Act 1996 (‘the Housing Act’) sets out, in Part 7, local housing authority functions in relation to persons who are homeless, or are threatened with homelessness.

Part 2 of these Regulations requires every local housing authority to adopt a written procedure to be followed in connection with the giving of notices under section 193B of the Housing Act (which is inserted by the Homelessness Reduction Act 2017 (‘the 2017 Act’)). Where a local housing authority are satisfied that an individual is homeless (or threatened with homelessness) and eligible for assistance, the authority must assess the individual’s case. The authority must try to agree with them any steps that the individual, and the authority, are to take in order to secure or retain suitable accommodation for the individual. If the individual subsequently deliberately and unreasonably refuses to take any required step, the authority may serve a notice under section 193B, the effect of which is that some of the authority’s duties under the Housing Act to help the individual to secure or retain suitable accommodation, come to an end. Regulation 3 requires that, in particular, the decision to give such a notice is authorised by a second officer of the authority.

Part 3 sets out the procedure to be followed by a local housing authority in relation to reviews requested under section 202 of the Housing Act. Where a person (the ‘applicant’) applies to a local

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- (a) 1996 c.56; section 497A was inserted by section 8 of the School Standards and Framework Act 1998 (c.31); subsection (4) was substituted, and subsection (4A) was inserted, by section 60(6) and (7) respectively of the Education Act 2002 (c.32).
 - (b) 2004 c.31; section 50 was amended by section 194(6) of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), by section 33(1) of the Children and Social Work Act 2017(c.16) and by S.I. 2010/1158.
 - (c) 2006 c.21; section 15 was amended by section 33(2) of the Children and Social Work Act 2017 and by S.I. 2010/1158.
 - (d) Urgent treatment centres include, for example, urgent care centres, minor injury units, minor injury services and walk-in centres.
 - (e) 2006 c.41; section 30 was amended by section 159(1) of the Health and Social Care Act 2012 (c.7).
 - (f) Section 1 was substituted by section 1 of the Health and Social Care Act 2012.
 - (g) See section 179(5) of the Act, which in turn refers to section 374 of the Armed Forces Act 2006 (c.52), for the definition of ‘regular armed forces’.

housing authority for accommodation, or for assistance in obtaining accommodation, section 202 provides the applicant with a right to request a review of certain local housing authority decisions (for example a decision as to the applicant's eligibility for assistance, or as to the suitability of accommodation offered to the applicant). The 2017 Act amended section 202 to add further rights of review. These Regulations revoke and replace the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 which made provision for reviews under section 202, and also make new provision in relation to new rights of review introduced by the 2017 Act.

Part 4 specifies the public authorities that are subject to the duty under section 213B of the Housing Act (inserted by the 2017 Act) to notify a local housing authority where they consider that an individual is, or is at risk of becoming, homeless. The specified public authorities include, for example, governors of prisons and secure training centres, social services authorities, and NHS Trusts in so far as they provide certain services.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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£6.00

UK201802211031 02/2018 19585

<http://www.legislation.gov.uk/id/uksi/2018/223>

ISBN 978-0-11-116605-5



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