

**EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)
REGULATIONS (NORTHERN IRELAND) 2006**

2006 No. 397

1. This explanatory memorandum has been prepared by the Department for Social Development on behalf of the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 These Regulations prescribe classes of persons from abroad, other than those subject to immigration control, who are ineligible for an allocation of housing accommodation under the Housing (Northern Ireland) Order 1981 (“the 1981 Order”) or for homelessness assistance under Part II of the Housing (Northern Ireland) Order 1988 (“the 1988 Order”).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The housing entitlements of persons subject to immigration control in Northern Ireland are covered by a Home Office order (The Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (S.I. 2000 No.706)). While the Department for Communities and Local Government has made regulations (The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (S.I. 2006 No. 1294)) to prescribe the housing entitlements, in England, of persons from abroad including those who are *not* subject to immigration control, the entitlements of non-UK citizens are an “excepted” matter under the Northern Ireland Act 1998 and Northern Ireland departments would not normally be in a position to regulate this area.
- 3.2 With the agreement of the Secretary of State for Northern Ireland, Orders-in-Council can be made under the Northern Ireland Act 1998 which are “ancillary” to reserved and excepted matters. On the basis that the housing entitlements of persons from abroad should be aligned throughout the UK, the Housing (Northern Ireland) Order 2003 included a power, vested in the Secretary of State, to make statutory rules which provide that certain descriptions of persons from abroad who are not subject to immigration control are ineligible for an allocation of housing accommodation or for homelessness assistance in Northern Ireland.
- 3.3 These Regulations reflect, for Northern Ireland, those provisions of S.I. 2006 No. 1294 which refer to persons who are not subject to immigration control.

4. **Legislative Background**

- 4.1 The 1981 Order makes provision concerning the procedures and principles which the Northern Ireland Housing Executive must follow in allocating housing accommodation (i.e. in selecting persons to be tenants of housing stock owned by the

Executive or by registered housing associations). Part II of the 1988 Order concerns the functions of the Housing Executive in respect of persons who are homeless or threatened with homelessness.

4.2 The Housing Executive cannot allocate housing accommodation or provide homelessness assistance to a person from abroad who is not eligible for these services. For eligibility purposes, there are two types of ‘person from abroad’:

- *Persons who are subject to immigration control.* Such persons are not eligible for social housing or homelessness assistance unless they fall within a class of persons prescribed in Regulations made by the Home Secretary (sections 118 and 119 of the Immigration and Asylum Act 1999). The term ‘person subject to immigration control’ means a person who requires leave to enter or remain in the UK, whether or not such leave has been given (section 13(2) of the Asylum and Immigration Act 1996). Broadly speaking, the term covers:
 - i. nationals of countries other than those in the European Economic Area (comprising the EU member states, Norway, Liechtenstein and Iceland) or Switzerland; and
 - ii. those nationals of the countries in the European Economic Area and Switzerland (referred to in this memorandum as “EEA nationals”) who do not have a right to reside in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland derived from EU law.
- *Persons who are not subject to immigration control.* Such persons are eligible for an allocation of social housing or homelessness assistance unless they come within a class of persons who, by virtue of regulations made by the Secretary of State for Northern Ireland, are to be treated as persons from abroad who are ineligible (Article 22A(3) of the 1981 Order and Article 7A(2) of the 1988 Order).

4.4 These Regulations prescribe the classes of persons not subject to immigration control who are ineligible for an allocation of housing accommodation or for homelessness assistance in Northern Ireland. They consolidate the provisions of the Regulations which they revoke, with some amendments, notably in relation to EEA nationals (see further at paragraphs 7.1 and 7.2)

4.5 Regulations 3 and 4 prescribe the classes of persons who are to be treated as persons from abroad who are ineligible for an allocation of housing accommodation or for homelessness assistance respectively. Broadly speaking, these classes affect the eligibility of British nationals returning from a period of residence abroad or coming to the UK for the first time, and of EEA nationals who have a right to reside in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland which is derived from EU law.

4.6 The reason for making these Regulations is to ensure that the entitlement to public housing and homelessness assistance of persons from abroad who are not subject to immigration control remains the same in Northern Ireland as it is in England.

5. Extent

5.1 This rule applies to Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Government welcomes EEA nationals who wish to come to the UK and work or otherwise support themselves and their families. On the same terms, that welcome is extended to nationals of the 10 countries who acceded to the EU in 2004. However, the Government's policy is that EEA nationals should not be able to come to the UK with no intention of supporting themselves but with the expectation of gaining access to social housing and homelessness assistance funded by the UK taxpayer.

7.2 These Regulations mainly re-enact the provisions of the Regulations they replace. However, they do make some changes to the eligibility of such persons. These changes principally reflect the implementation of Directive 2004/38/EC of the European Parliament and Council of 29th April 2004 ("the Directive") by The Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations"), and are consistent with the policy outlined at paragraph 7.1. In particular, EEA nationals will not be eligible for an allocation of housing or homelessness assistance if their only right to reside in the UK:

- is an initial right to reside for up to 3 months from arrival, provided they do not become an unreasonable burden on the social assistance system of the host member State (a new right introduced by the Directive); or
- is for the period during which a jobseeker would have a genuine prospect of finding employment.

7.3 There has been no consultation on these amending Regulations because they do not reflect a change in the Government's overall policy regarding access to social housing and homelessness assistance for persons from abroad. The Regulations broadly consolidate the current provisions and make some changes which take account of the implementation of the Directive by the EEA Regulations. As in the case of the provisions which are revoked, these Regulations broadly align with housing benefit regulations.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector will be to minimise the resource implications of persons from abroad coming to Northern Ireland with no intention of supporting themselves and then seeking access to social housing and homelessness assistance.

9. Contact

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