

**EXPLANATORY MEMORANDUM TO**  
**THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)**  
**(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2007**

**2007 No. 34**

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 concern the eligibility of workers from Romania and Bulgaria 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 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. 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 for Northern Ireland, 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. The *Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006* (“the NI Eligibility Regulations”), which were made by the Secretary of State on 28th September 2006, reflected similar provision then in force in England.

- 3.2 These Regulations, which amend the NI Eligibility Regulations to take account of the accession of Romania and Bulgaria to the EU on 1<sup>st</sup> January 2007, are dependent for their full meaning on the *Accession (Immigration and Worker Authorisation) Regulations 2006* (“the Accession Regulations”), and therefore could not be made until the Accession Regulations had been made. The Accession Regulations, which are subject to the affirmative resolution procedure, were laid in draft by the Home Office on 21st November 2006 and made on 13th December 2006.

- 3.3 As a consequence of waiting until the Accession Regulations had been made, it was not possible to make and lay these Regulations before 1st January 2007 when the Accession Regulations took effect. In order to avoid breaching the 21-day rule, these Regulations will not come into operation until 1st March 2007.

## 4. Legislative Background

4.1 These Regulations, which reflect equivalent provision made for England in the *Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (No. 2) Regulations 2006*, amend the NI Eligibility Regulations to take account of the accession of Romania and Bulgaria to the EU. To the extent that nationals of Romania and Bulgaria enjoy the same rights of residence in the UK as nationals of other countries in the EU, no amendment is necessary to the NI Eligibility Regulations. However, it is necessary to make specific provision for Romanian and Bulgarian nationals subject to worker authorisation under the new scheme introduced by the Accession Regulations.

4.2 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 in Northern Ireland) and Part II of the 1988 Order concerns the functions of the Executive in respect of persons who are homeless or threatened with homelessness. The Executive cannot allocate housing accommodation or provide homelessness assistance to a person from abroad who is not eligible for these services. While persons who are not subject to immigration control\* would normally be eligible for social housing and housing assistance, the classes of persons within this group who are not eligible are set out in the NI Eligibility Regulations.

4.3 Persons from abroad who are not subject to immigration control will include nationals of the European Economic Area (“the EEA”)\*\* who have a right of residence in the UK derived from EU law. The NI Eligibility Regulations provide that, in order to be eligible for an allocation of social housing or for housing assistance, such a person must be habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland (“the Common Travel Area”). However, an EEA national who has a right to reside in the UK as a worker in accordance with the *Immigration (European Economic Area) Regulations 2006* is exempted by regulations 3(2)(a) and 4(2)(a) of the NI Eligibility Regulations from the requirement to be habitually resident. This reflects the fact that an EEA national who is living in another member State while exercising his right of free movement as a worker under Article 39 of the EC Treaty is entitled to enjoy all the rights and benefits accorded to workers who are nationals of that State in matters of housing (Article 9.1 of EEC Regulations 1612/68). However, subject to certain exceptions, a Romanian or Bulgarian national will only be treated as a worker if he or she is authorised to work, and is working, in accordance with the Accession Regulations. Consequently, the amendments made by these Regulations are needed to add authorised Romanian and Bulgarian workers to the categories of persons exempted from the habitual residence test.

\*For these purposes, a person is ‘subject to immigration control’ if he requires leave to enter or remain in the UK under the Immigration Act 1971, whether or not such leave has been given (s.13(2) of the Asylum and Immigration Act 1996). The housing entitlement in Northern Ireland of persons subject to immigration control is covered in a Home Office order (the *Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000*).

\*\* For these purposes, EEA nationals means nationals of the EU member States plus Norway, Liechtenstein, Iceland and Switzerland.

## **5. Territorial Extent and Application**

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 Bulgaria and Romania acceded to the EU on 1<sup>st</sup> January 2007. Under the terms of the Accession Treaty for Bulgaria and Romania signed in Luxembourg on 25<sup>th</sup> April 2005, the UK and all other member States are entitled to regulate access to their labour market by nationals of Bulgaria and Romania during a transitional period. This is being done (amongst other things) by provisions in the Accession Regulations.

7.2 The Government's policy is that EEA nationals working lawfully in the UK should have access to public housing or to homelessness assistance in accordance with their rights under EU law. In pursuance of that policy, the objective of these (housing) Regulations is to provide that nationals of Bulgaria and Romania who are working in the UK in accordance with the Accession Regulations will be exempted from the requirement to be habitually resident in the Common Travel Area in order to be eligible for an allocation of housing or for homelessness assistance in Northern Ireland.

7.3 The Accession Regulations limit the number of Bulgarian and Romanian nationals who may work lawfully in the UK during the transitional period. Consequently, it is anticipated that the number of persons affected by the provisions in these Regulations will be small.

7.4 There has been no formal consultation on these Regulations because the changes they make are minor and technical, and do not reflect any significant change in Government policy. These regulations will maintain, in Northern Ireland, the Government's broad policy position that EEA nationals who are working lawfully should be exempted from the requirement to be habitually resident in the Common Travel Area. A draft of these Regulations was sent to the Northern Ireland Housing Executive on 28th November 2006 with an explanatory letter and a copy of the final Regulations was sent to the Executive when they were made.

7.5 As mentioned above, these Regulations will not come into operation until 1st March 2007. While it is possible that some nationals of Bulgaria or Romania who have been authorised as workers under the Accession Regulations may apply to the Northern Ireland Housing Executive for housing accommodation or homelessness assistance before that date, there should not be any undue delay in providing such housing services as those applicants may be entitled to.

## **8. Impact**

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

8.2 The impact on the public sector is not expected to be significant. The number of nationals of Bulgaria and Romania who will be allowed to work lawfully in the UK will be small, and it is estimated that only a very small proportion of these are likely to be in a position to access social housing or accommodation provided under the homelessness legislation in Northern Ireland. Data collected by the Northern Ireland Housing Executive shows that the proportion of applicants allocated social housing in Northern Ireland last year who were EU nationals was approximately 0.25 %, and that a similar percentage of homeless applicants accepted as being owed the full homelessness duty were EU nationals.

## **9. Contact**

Stephen Baird at the Department for Social Development (Housing Division) (Tel: 028 90 819586 or e-mail: [stephen.baird@dsdni.gov.uk](mailto:stephen.baird@dsdni.gov.uk)) can answer any queries regarding the rule.