

**EXPLANATORY MEMORANDUM TO**  
**THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)**  
**(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2013**

**2013 No. 189**

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. **Purpose of the statutory rule**

These Regulations concern the eligibility of Croatian nationals subject to the worker authorisation scheme for an allocation of housing under the Housing (Northern Ireland) Order 1981 or for homelessness assistance under the Housing (Northern Ireland) Order 1988. These amendments are being made in order to ensure equal treatment, required by European Union (“EU”) law, between Croatian workers and UK workers.

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

3.1 As an immigration-related matter, the eligibility of persons who are subject to immigration control for benefits and services in the UK is a Home Office responsibility. The housing entitlement of other persons from abroad who are not subject to immigration control is not seen as an “immigration” matter and, in England, this falls within the housing remit of the Department for Communities and Local Government. However, the housing entitlement of non-British citizens is an “excepted” matter under the Northern Ireland Act 1998 and Northern Ireland departments are not in a position to make regulations in this area. On the basis that the housing entitlements of persons from abroad should as far as possible be aligned throughout the UK, Northern Ireland housing legislation enables the Secretary of State to specify classes of persons from abroad, other than those subject to immigration control, who are ineligible for an allocation of housing accommodation or for homelessness assistance in Northern Ireland.

4. **Legislative Context**

4.1 *The Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006* (“the Eligibility Regulations”) provide that a person is ineligible for an allocation of housing accommodation or for homelessness assistance in Northern Ireland if they are not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland (“the Common Travel Area”). A person is treated as not

habitually resident if they do not have a right to reside in the Common Travel Area or if their right to reside is of a specified type.

4.2 These Regulations amend the Eligibility Regulations to take account of the accession of Croatia to the EU. To the extent that nationals of Croatia enjoy the same rights of residence in the United Kingdom (“UK”) as nationals of other countries in the EU, no amendment is necessary to the Eligibility Regulations. However, the Eligibility Regulations need to make specific provision for Croatian nationals subject to worker authorisation under the new scheme introduced by *The Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013* (“the Accession Regulations”).

4.3 Article 22A of the Housing (Northern Ireland) Order 1981 provides that the Northern Ireland Housing Executive shall not allocate housing accommodation to a person from abroad who is ineligible for such an allocation by virtue of regulations made by the Secretary of State. Similarly, Article 7A of the Housing (Northern Ireland) Order 1988 provides that a person is not eligible for homelessness assistance if they are a person from abroad who is ineligible for such assistance by virtue of regulations made by the Secretary of State. The classes of persons from abroad who are not subject to immigration control and are ineligible for an allocation of housing accommodation or homelessness assistance are set out in the Eligibility Regulations. To be eligible for an allocation of housing accommodation or for homelessness assistance in Northern Ireland, European Economic Area (“EEA”) nationals who have a right of residence in the UK derived from EU law must be habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland (“the Common Travel Area”). However, certain classes of person are exempted from the requirement to be habitually resident.

4.4 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 4(2)(a) and 6(2)(a) of the 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 45 of the Treaty on the Functioning of the EU, is entitled to enjoy all the rights and benefits accorded to national workers in matters of housing (Article 9 of Regulation (EU) No. 492/2011). However, subject to certain exceptions, a Croatian national is only 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 Croatian workers to the categories of persons exempted from the habitual residence test.

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

5.1 This rule applies to Northern Ireland only.

5.2 The rule reflects equivalent provision made for England in *The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2013*.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 Croatia acceded to the EU on 1<sup>st</sup> July 2013. Under the terms of the Accession Treaty for Croatia signed in Brussels on 9<sup>th</sup> December 2011, the UK (and all other Member States) are entitled to regulate access to their labour market by nationals of Croatia during a transitional period.

7.2 The Government's policy is that EEA nationals working lawfully in the UK should be eligible for an allocation of housing accommodation or homelessness assistance in accordance with their rights under EU law. In pursuance of that policy, the objective of these Regulations is to provide that nationals of Croatia 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 or homelessness assistance in Northern Ireland.

7.3 The Accession Regulations are intended to limit the number of Croatian nationals who may work lawfully in the UK during the transitional period. Consequently, it is anticipated that the number of persons affected by the provision in these Regulations will be small.

7.4 Due to the urgent need to make this rule, the Eligibility Regulations are not being consolidated at this stage although the Department will keep this under review.

## **8. Consultation outcome**

8.1 There has been no formal consultation on this rule because the changes it makes are minor and technical, and do not reflect any significant change in Government policy.

## **9. Guidance**

9.1 The Department will amend its guidance to the Northern Ireland Housing Executive to reflect the procedures for dealing with applications from Croatian nationals for social housing and homelessness assistance.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is not expected to be significant. The number of Croatian nationals who will be allowed to work lawfully in the UK will be small, and

very few (if any) of these would have sufficient priority for an allocation of housing accommodation or homelessness assistance in Northern Ireland.

10.3 An Impact Assessment has not been prepared for this rule.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Department will ask the Northern Ireland Housing Executive to record applications for social housing and homelessness assistance from Croatian nationals. The information will be reviewed twelve months after the regulations come into operation.

## **13. Contact**

**Stephen Baird** at the Department for Social Development (Housing Division) (Tel: 028 90 829277 or e-mail: [stephen.baird@dndni.gov.uk](mailto:stephen.baird@dndni.gov.uk)) can answer any queries regarding the rule.