

**EXPLANATORY MEMORANDUM TO**  
**THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)**  
**(AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019**

**2019 No. 86**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Communities on behalf of the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the regulations**

- 2.1 These regulations amend the Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 397) (“the Northern Ireland Eligibility Regulations”) which prescribe the eligibility criteria for an allocation of housing accommodation under the Housing (Northern Ireland) Order 1981 (S.I. 1981/156 (N.I. 3)), or for homelessness assistance under Part II of the Housing (Northern Ireland) Order 1988 (S.I. 1988/1990 (N.I. 23)).
- 2.2 The purpose of the legislation is to clarify that the eligibility criteria continue to apply to persons who are granted limited leave to enter or remain (also referred to as ‘pre-settled status’) in the United Kingdom under the EU Settlement Scheme<sup>1</sup>.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As these regulations are subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent and application of these regulations is Northern Ireland only.

**5. European Convention on Human Rights**

- 5.1 As these regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The Housing (Northern Ireland) Order 1981 (“the 1981 Order”) provides that the Northern Ireland Housing Executive (“NIHE”) shall not allocate housing accommodation to a person who is subject to immigration control and who is

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<sup>1</sup> Pursuant to Appendix EU of the Immigration rules, made in accordance with section 3 of the Immigration Act 1971 (c. 77).

ineligible for such an allocation by virtue of section 118 of the Immigration and Asylum Act 1999 (c. 33). The Housing (Northern Ireland) Order 1988 (“the 1988 Order”) makes similar provision in relation to the provision of homelessness assistance. Under Article 22A(3) of the 1981 Order, a person from abroad who is not subject to immigration control may be made ineligible for an allocation of social housing by regulations prescribed by the Secretary of State. Article 7A(2) of the 1988 Order makes similar provision in relation to the provision of homelessness assistance.

- 6.2 For these purposes, ‘person subject to immigration control’ has the meaning given in sections 118 and 119 of the Immigration and Asylum Act 1999<sup>2</sup>. A person from abroad with a right to reside derived from EU law is not a person subject to immigration control.
- 6.3 Regulations 3 and 4 of the Northern Ireland Eligibility Regulations prescribe the classes of persons who are not subject to immigration control but who are ineligible for an allocation of housing accommodation or for homelessness assistance respectively. This includes the following persons with rights to reside derived from EU law if their only right to reside in the United Kingdom, or in the Channel Islands, the Isle of Man or the Republic of Ireland is because they are a new EEA<sup>3</sup> jobseeker, an EEA national in their initial three months’ residence, or a non-United Kingdom and non-EEA national who is the primary carer of a British citizen child/dependent adult where such child/dependent adult would be forced to leave the EEA if their carer left the UK (“a Zambrano right”). These rights to reside will remain applicable following the UK’s withdrawal from the EU as the relevant provisions form part of retained EU law within the meaning of section 6 of the European Union (Withdrawal) Act 2018 (c. 16).
- 6.4 Regulations 3(a) and 4(a) of these regulations amend those provisions. The effect of the amendments is to clarify that the existing rules on access to social housing and homelessness assistance remain in place for those residing in the UK with the above rights even if they also hold pre-settled status granted under the EU Settlement Scheme.
- 6.5 Regulations 3(b) and 4(b) of these regulations simply correct an erroneous cross-reference to the EEA Regulations which occurs in the Northern Ireland Eligibility Regulations.

## 7. Policy background

### *What is being done and why?*

- 7.1 The EU Settlement Scheme provides the means for EU<sup>4</sup>, EEA EFTA and Swiss (hereafter referred to as EEA) nationals and their family members, including those with a derivative EU right to reside, to obtain the UK immigration status they will

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<sup>2</sup> According to section 118(6) of the Immigration and Asylum Act 1999 (c.33), a “Person subject to immigration control” means a person who under the [Immigration Act 1971]... requires leave to enter or remain in the United Kingdom (whether or not such leave has been given).’

<sup>3</sup> European Economic Area nationals are nationals of any EU member state (except the UK), and nationals of Iceland, Norway, Liechtenstein and Switzerland.

<sup>4</sup> Irish citizens do not need to apply to the EU Settlement Scheme to protect their rights in the UK, though they are able to do so if they wish. Non-Irish family members of Irish citizens will need to apply to the EU Settlement Scheme if they wish to remain in the UK after 31 December 2020.

require in order to remain in the UK following the UK's withdrawal from the European Union. This includes those with a derivative EU right to reside<sup>5</sup>.

- 7.2 Under the EU Settlement Scheme, all EEA nationals in the UK before a specified date must apply in order to regularise their immigration status in the UK. A person with a derivative right to reside, such as a Zambrano carer, will also need to apply, to be granted their UK immigration status and have their rights protected. Those with less than five years' continuous residence in the UK will be granted limited leave to enter or remain (also referred to as pre-settled status). Those with five or more years' continuous residence will be granted indefinite leave to enter or remain (also referred to as settled status). More information on the EUSS can be found on GOV.UK at: <https://www.gov.uk/government/collections/eu-settlement-scheme-applicant-information>.
- 7.3 Having acquired leave under the EU Settlement Scheme an EEA national or a person with a derivative right to reside, such as a Zambrano right, will have both a right to reside under domestic immigration rules (under the EU Settlement Scheme) and a right to reside pursuant to their existing rights under EU law.
- 7.4 The Government's agreed policy intent is that those granted pre-settled status under the EU Settlement Scheme will be subject to the existing eligibility rules for accessing benefits and services broadly on the same basis as now. This includes the rules in relation to allocation of social housing and homelessness assistance:

“EU citizens arriving before the specified date, who do not have five years' residence at the time of the UK's exit but who remain legally in the UK on a pathway to settled status will continue to be able to access the same benefits that they can access now – broadly equal access for workers/the self-employed and limited access for those not working. It is our intention that this benefits regime – which is not the regime UK nationals and those with settled status will be subject to – will remain in place for those on the pathway until they achieve settled status but no element of this will be more generous than the approach taken for those EU nationals with settled status. If these individuals go on to acquire settled status, they will then be able to access benefits on the same terms as comparable UK residents.”

Para 41, Policy Paper – [The United Kingdom's exit from the European Union: safeguarding the position of EU citizens living in the UK and UK nationals living in the EU](#)

- 7.5 The changes made by these regulations will amend the existing Northern Ireland Eligibility Regulations in order to clarify that the current rules on access to social housing and homelessness assistance remain in place for EEA nationals and Zambrano carers granted pre-settled status under the EU Settlement Scheme. They will also maintain the restrictions on access to social housing and homelessness assistance for those residing in the UK on the basis of rights as a Zambrano carer, whilst they hold pre-settled status. As such it will not alter a person's EU law based rights.

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<sup>5</sup> A “derivative right to reside” applies when refusal to allow a right to remain in an EU Member State to someone who has a child/dependent would impact on the child/dependent's ability to exercise their free movement rights, or would affect a child/dependent from effective enjoyment of their right to EU citizenship and force the child/dependent to leave the member state of their birth.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018, but relates to the withdrawal of the United Kingdom from the European Union because it relates to the EU Settlement Scheme.

## **9. Consolidation**

- 9.1 There are no current plans to consolidate the Northern Ireland Eligibility Regulations which these regulations amend, although the Department for Communities will keep this under review.

## **10. Consultation outcome**

- 10.1 The Government has not consulted on these amending Regulations because they do not reflect a change in the Government's overall policy regarding eligibility to access social housing and homelessness assistance.

## **11. Guidance**

- 11.1 The Department for Communities will write to the NIHE with advice on the purpose and effect of the Regulations – this letter will be published on the Department for Communities' website. We will revise current guidance to reflect the amending Regulations when time allows.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is not expected to be significant as these regulations will maintain the current rules on access to social housing and homelessness assistance for those persons who have been granted pre-settled status under the EU Settlement Scheme.
- 12.3 In 2017/18, social housing allocations in Northern Ireland totalled 7,373 with 3.6% (figure has been rounded up) of those made to EEA migrants<sup>6</sup>.
- 12.4 From 1 January to 31 March 2018 there was a total of 5,080 households who presented as homeless to the NIHE. Of 3,563 households accepted as statutorily homeless, 122 (3.4%) were recorded as EEA nationals, other than of Irish or British nationality. Of the 1,517 households not accepted as statutorily homeless, 137 (9%) were recorded as EEA nationals, other than Irish or British nationality.
- 12.5 An Impact Assessment has not been prepared for these regulations for the reasons set out above.

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<sup>6</sup> All statistics in this section sourced from NIHE (<http://www.nihe.gov.uk>). It should be noted that while it is mandatory for the NIHE to record the nationality of an applicant as part of their equality monitoring obligations the applicant may ask them not to record this and therefore such cases are not reflected in the above numbers. It should also be noted that the above figures have been extracted from a live system in February 2019 and, therefore, may differ from previously published figures. Allocations data is a rolling 12 month total and is for applicants only and nationality is self-reported by the applicant during the application process and attributed to the entire household.

**13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

**14. Monitoring & review**

14.1 NIHE collects data on social housing allocations. We will monitor this data and review the operation of these regulations as appropriate.

**15. Contact**

15.1 Stephen Baird at the Department for Communities in Northern Ireland, telephone 028 90 515211 or email: [Stephen.Baird@communities-ni.gov.uk](mailto:Stephen.Baird@communities-ni.gov.uk), can be contacted with any queries regarding the Regulations.

15.2 Paul Price, Director of Social Housing Policy and Oversight at the Department for Communities, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kit Malthouse MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.