

EXPLANATORY MEMORANDUM

THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (ENGLAND) AMENDMENT REGULATIONS 2006

2006 No. 2007

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government (“DCLG”) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations make provision for persons who are not subject to immigration control in the United Kingdom and who left Lebanon as a result of the armed conflict there to be eligible for an allocation of housing accommodation under Part 6 of the Housing Act 1996 (“the Act”) and for homelessness assistance under Part 7 of the Act.

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

3.1 These Regulations come into force on the day after they are made, in breach of the 21-day rule.

3.2 The Regulations come into force as soon as possible to address the emergency situation which has arisen as a result of the armed conflict in Lebanon. It is necessary to take immediate action to ensure that persons who are not subject to immigration control in the UK¹ and who have left Lebanon as a result of the conflict will have access to housing on their arrival in the UK. While many such evacuees will have their own resources and somewhere to stay in the UK, some will have had to leave behind their homes, and may have difficulties in accessing funds where their assets are based in Lebanon. Where this is the case, the Government considers that such persons should not suffer the further distress of uncertainty about their accommodation.

3.4 DCLG has advised the Local Government Association of its plans for securing accommodation for those evacuees who require it, and is notifying all local housing authorities in England of the arrangements.

3.5 DCLG recognises that the Committee will not have time to scrutinise the Regulations before they come into force, and apologises to the Committee for the fact that it has broken the “21-day rule”. The Government considers that the breach was necessary to ensure that persons caught up in the conflict who are evacuated to the UK can be provided with suitable accommodation by local housing authorities, if they need it.

¹ For these purposes, a person is subject to immigration control if he requires leave to enter or remain in the United Kingdom under the Immigration Act 1971 (whether or not such leave has been granted) - see sections 160A(3) and 185(2) of the Housing Act 1996, and section 13(2) of the Asylum and Immigration Act 1996.

4. Legislative Background

4.1 Part 6 of the Act makes provision about the procedures and principles which local housing authorities must follow in allocating housing accommodation (i.e. in selecting tenants for their own housing stock and nominating tenants of registered social landlords). Part 7 of the Act concerns the functions of such authorities as respects persons who are homeless or threatened with homelessness. In this Memorandum, Part 6 and Part 7 accommodation is referred to collectively as 'social housing'.

4.2 The effect of sections 160A and 185 of the Housing Act 1996 is that a local authority cannot provide social housing to a person from abroad who is not eligible. The Secretary of State can prescribe in regulations which persons from abroad are eligible or ineligible. Different eligibility provisions apply depending on whether or not the person from abroad is subject to immigration control. A person will not be subject to immigration control if he is: a British citizen; the national of a country in the European Economic Area who has a right to reside here; or a Commonwealth citizen with a right of abode in the UK.

4.3 The classes of person from abroad who are not subject to immigration control but who are ineligible for social housing are set out in regulations 4 and 6 of the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (S.I. 2006/1294) ("the Eligibility Regulations"). Under the Eligibility Regulations, a person who is not subject to immigration control will usually be ineligible for social housing unless he is habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland. However, regulations 4(2) and 6(2) of the Eligibility Regulations provide that certain classes of person are eligible for social housing even if they are not habitually resident.

4.4 These Regulations amend regulations 4(2) and 6(2) of the Eligibility Regulations to add to the classes of person who are exempt from the requirement to be habitually resident those persons who have left Lebanon on or after 12th July 2006 as a result of the armed conflict there. The exception from the habitual residence test ceases to have effect on 31st January 2007.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Government's general policy is that persons from abroad should not have access to social housing if they cannot demonstrate a genuine connection to the UK (or the wider common travel area including the Channel Islands, the Isle of Man and the Republic of Ireland). Consequently, eligibility for social housing is subject to a test of habitual residence, which requires the applicant to show a settled intention to reside here.

7.2 Around 2,300 people entitled to British protection have been evacuated to the UK from Lebanon as a result of the armed conflict there. Most of these people are likely to be able to make their own arrangements for housing. However, it is estimated that a small number of evacuees will need assistance in securing accommodation. This group includes both persons who are not subject to immigration control (e.g. British citizens) and persons who are entitled to British protection but subject to immigration control in the UK (e.g. British Overseas Citizens and British Protected Persons).

7.3 It is intended that where appropriate, persons arriving in the UK as a result of the armed conflict in Lebanon who are subject to immigration control will be granted exceptional leave to remain outside the immigration rules (which are the rules laid down under section 3(2) of the Immigration Act 1971) without restriction on their access to public funds. Where a person has been granted leave to enter or remain in the UK on that basis, he will be eligible for social housing under the existing Eligibility Regulations.

7.4 Those persons arriving in the UK from Lebanon who are not subject to immigration control, including British citizens, would usually have to satisfy the habitual residence test in order to be eligible for social housing. Generally, British citizens resident in the UK will readily satisfy this test. However, evacuees who are British citizens arriving in the UK may include persons who have not ever lived in the UK, or have not done so for a long period of time, and who may therefore have difficulty in satisfying the habitual residence test. The purpose of these Regulations is to ensure that all evacuees who are not subject to immigration control will be eligible for social housing.

7.5 In order to ensure that the Regulations benefit those persons who genuinely need emergency help because they had to leave Lebanon as a result of the armed conflict there, the exemption from the habitual residence test only applies during the period from when the Regulations come into force until 31st January 2007. A person who is not subject to immigration control and who applies for assistance after that date will still be eligible for social housing if he can show that he has become habitually resident in the UK.

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 effect of these Regulations is likely to be that a small number of additional people will be provided with housing assistance, and that this may have minor cost implications for local authorities. However, any costs arising should be containable within existing budgets.

9. Contact

Alan Edwards or Frances Walker at the Department for Communities and Local Government can answer any queries regarding the instrument. (Tel: 020 7944 3665, e-mail: alan.edwards@odpm.gsi.gov.uk or 020 7944 3666, e-mail: frances.walker@odpm.gsi.gov.uk).