

EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING (QUALIFICATION CRITERIA FOR
ARMED FORCES) (ENGLAND) REGULATIONS 2012

2012 No. 1869

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

2. **Purpose of the instrument**

2.1 The purpose of the Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012 is to ensure that where a local housing authority uses a local connection requirement as a criterion to decide whether a class of persons are qualifying persons for an allocation of housing accommodation, they must not apply that criterion to certain persons who are in or connected to the armed forces. Specifically, it may not be applied to persons who are serving in the regular forces or have done so in the five years preceding their application; to members or former members of the reserve forces who are suffering from a serious injury, illness, or disability which is wholly or partly attributable to their service; or to bereaved spouses or civil partners leaving Ministry of Defence accommodation following the death of their spouse or partner where the death is wholly or partly attributable to the spouse or partner's service.

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

3.1 None.

4. **Legislative Context**

4.1 The Housing Act 1996, as amended by the Localism Act 2011, provides that a local housing authority in England shall only allocate housing to qualifying persons. Section 146 of the Localism Act 2011 inserts into the Housing Act 1996 s160ZA which gives local housing authorities the power to decide what classes of persons are, or are not, qualifying persons. Section 160ZA(8)(b) gives the Secretary of State the power to set out in regulations criteria which local housing authorities may not use to decide what classes of persons are not qualifying persons.

4.2 The Allocation of Housing (Qualification Criteria for Armed Forces)(England) Regulations 2012 prescribe the criterion set out in regulation 3(2) for the purposes of s160ZA(8)(b). The criterion is that a relevant person (defined in regulation 3(3) in terms of their service in, or other connection to the armed forces) must have a "local connection" to the district of a local housing authority. Accordingly, a local housing authority may not use that

criterion as a means of excluding any class of persons from the category of “qualifying persons” for allocations of social housing under Part VI of the Housing Act 1996. “Local connection” is defined in section 199 of that Act.

4.3 In practical terms, this means that if a local housing authority elects to use local connection as a factor disqualifying persons from being “qualifying persons” under its allocation scheme, it may not adopt the same approach in relation to armed forces personnel and related persons who fall within regulation 3(3). Those persons cannot be excluded from being “qualifying persons” due to the absence of a local connection.

5. Territorial Extent and Application

5.1 This instrument applies in relation to England only.

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 policy is to ensure that those who serve in the regular and reserve armed forces, and their families, are not disadvantaged in their access to social housing by the requirements of their service. This is in line with the Government’s Armed Forces Covenant.

7.2 The allocation provisions in the Localism Act 2011, which came into force on 18 June 2012, give local housing authorities the power to set their own rules determining who qualifies or does not qualify for social housing. Previously, they were required to maintain ‘open’ waiting lists, meaning that (with limited exceptions) anyone could apply to any local housing authority in England and be accepted on to their waiting list.

7.3 These Regulations ensure that local housing authorities cannot apply a local connection criterion to disqualify members of the groups set out in paragraph 2.1 above. The Government takes the view that a local connection criterion is likely to disadvantage those who have been discharged from the armed forces, as well as serving personnel because of the requirements to move from base-to-base. This could impact most severely on those whose last posting was overseas or those who have had to move to another area to access treatment or undergo rehabilitation after leaving the services. The Regulations recognise that bereaved spouses and civil partners of service personnel are likely to experience similar issues to former service personnel and their families when leaving military accommodation. Finally, they recognise that members of the reserve forces who suffer from a serious illness, injury or disability as a result of their service may find that their current accommodation is no longer suitable for their needs or affordable, or they may have to move to access care or support.

7.4 The Government consulted on draft regulations which were framed to prevent local authorities from applying residency requirements, rather than a local connection criterion, in relation to members of the regular armed forces. This is because responses to consultation on the proposals to introduce the new qualification power (*Local decisions: a fairer future for social housing*, November 2010) indicated that many local housing authorities were likely to impose residency requirements as part of their qualification criteria; and such criteria might require applicants to have lived in the area for several years before they qualify for social housing. However, the response to consultation on the draft regulations (see 8.3) indicated that, if authorities were prevented from applying residency requirements, they might seek to apply other local connection requirements (for example, employment or family association). This would have undermined the Government's policy intention. For this reason, we have broadened the Regulations to refer to a local connection criterion, rather than residency.

8. Consultation outcome

8.1 On 5 January 2012 the draft regulations were published for consultation on the department's website, together with draft new statutory social housing allocations guidance. The consultation ran until 30 March 2012. A summary analysis of the responses to the draft regulations and guidance has been made and is available from the department's website at: www.communities.gov.uk/publications/housing/allocationaccommodationresponses

8.2 The draft regulations on which the Government consulted related only to members of the Armed Forces and were intended to prevent local housing authorities applying residency requirements to disqualify serving personnel and former personnel within 5 years of leaving the Armed Forces.

8.3 The vast majority of respondents agreed that members of the armed forces and former service personnel should not be disqualified on grounds of residency. However, while accepting that residency grounds should not be taken into account, a number of local authority respondents considered it important for former service personnel to demonstrate a connection to the area where they had chosen to apply for social housing, through, for example, employment or family ties to the area.

8.4 Most respondents considered that 5 years from the date of discharge was an appropriate length of time for the restriction to apply, although a significant minority considered it too long, and suggested that two or three years would be sufficient to allow a reasonable period for transition and resettlement, and to establish a local connection to a particular area.

8.5 A few respondents did not support the draft regulations, taking the view that local housing authorities should have the flexibility to set their own residency restrictions in relation to former service personnel. Some

commented that this was necessary to balance the needs of everyone in their community; others that each case should be assessed on its merits.

8.6 A number of voluntary and community organisations highlighted other groups who might have difficulty in meeting residency requirements and suggested that local authorities should be encouraged not to disqualify these groups. Examples given included those escaping violence, or leaving care or prison.

8.7 Following consultation, the Regulations have been extended to apply to bereaved spouses and civil partners of service personnel when they leave service families accommodation following the death of their spouse or partner and members of the reserve forces who are suffering a serious illness, injury or disability as a result of their service.

8.8 In addition, following consultation, the Regulations have been broadened so that authorities will not be able to use any requirement for a local connection to the district. This is because responses suggested that some authorities might take account of connections to the district other than residency (for example, employment or family associations) when setting their qualification criteria, which could undermine the purpose of the Regulations.

9. Guidance

9.1 On 29 June a revised consolidated code of statutory guidance for local housing authorities on social housing allocations was issued by the Secretary of State under s.169 of the Housing Act 1996. This guidance advises local housing authorities of the Government's intention to make these Regulations. A draft of the code was issued for consultation on 5 January alongside the draft regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The Regulations could lead to some minor and localised impacts, in terms of the number of applications to be processed and the size of the waiting list. However, the impact on the public sector generally is expected to be minimal.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department collects data generally on the operation of housing waiting lists through the annual Housing Strategy Statistical Appendix and

social housing lettings through CORE (the COntinuous REcording of lettings). The CORE system has been revised specifically to record lettings to former and serving Service personnel. We will review the operation of these Regulations as appropriate.

13. Contact

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