

EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)
(ENGLAND) (AMENDMENT) REGULATIONS 2013

2013 No. 1467

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**

These Regulations concern the eligibility of Croatian nationals subject to the worker authorisation scheme for an allocation of housing accommodation or for homelessness assistance. These amendments are being made in order to ensure equal treatment, required by EU law, between Croatian workers and UK workers.

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

3.1 These Regulations will come into force less than 21 days after being laid, in breach of the 21-day rule. The Department considers that it is necessary to breach the rule in order to bring the Regulations into force in time for the accession of Croatia to the European Union (“EU”) on 1st July 2013. The Department apologises to the Committee that it was necessary to breach the 21-day rule.

3.2 These Regulations are dependent for their full meaning on the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013¹ (“the Accession Regulations”), and therefore could not be made until the Accession Regulations had been made. The Accession Regulations are subject to the affirmative resolution procedure. They were laid in draft by the Home Office on 8th May 2013, and made on 12th June 2013.

3.3 As a consequence of waiting until the Accession Regulations were made, the Department was unable to lay its Regulations 21 days before 1st July 2013. However, if the Department had brought the Regulations into force later in order to comply with the 21-day rule, it would have put local housing authorities at risk of breaching EU law (see further at paragraph 4.4).

3.4 The Department accepts that it would have been preferable for these Regulations to be made more than 21 days before coming into force. However, the date of making of the Accession Regulations was outside the Department’s control.

¹ SI 2013/1460.

4. Legislative Context

4.1 These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (“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 Regulations.

4.2 The Housing Act 1996 (“the 1996 Act”) provides that a local housing authority shall not allocate housing accommodation (section 160ZA(1)(a)) or provide homelessness assistance (section 185(1)) to persons from abroad who are not eligible. The classes of persons from abroad who are eligible or ineligible for an allocation of housing accommodation or homelessness assistance are set out in the Eligibility Regulations.

4.3 Regulations 4 and 6 of the Eligibility Regulations concern those persons from abroad who are not subject to immigration control². This group includes European Economic Area (“EEA”) nationals who have a right of residence in the UK derived from EU law. The Eligibility Regulations provide that, in order to be eligible for an allocation of housing accommodation or for homelessness 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, 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.

² 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).

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Croatia will accede to the EU on 1st July 2013. Under the terms of the Accession Treaty for Croatia signed in Brussels on 9th 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. It is intended that this will be done by provisions in the Accession Regulations.

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.

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 There are no current plans to consolidate the Eligibility Regulations which these Regulations amend, although the Department will keep this under review.

8. Consultation outcome

The Government has not formally consulted 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 the Government's broad policy position that EEA nationals who are working lawfully in England should be exempted from the requirement to be habitually resident in the Common Travel Area.

9. Guidance

The Government does not propose to issue statutory guidance to accompany the regulations but will write to local housing authorities with advice on the

purpose and effect of the regulations and this letter will be published on the GOV.UK website.

10. Impact

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

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 it is considered that only a very small proportion of these are likely to have priority for an allocation of housing accommodation or a priority need for homelessness assistance (and therefore that few will access settled social housing or accommodation provided under the homelessness legislation).

10.3 An Impact Assessment has not been prepared for this instrument

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department collects data on social housing lettings to households headed by a foreign national through CORE (the Continuous Recording of lettings) and data on homelessness decisions in relation to applications by foreign nationals through the quarterly PIE return. This information is published on the GOV.UK website. We will review the operation of these Regulations as appropriate.

13. Contact

Frances Walker at the Department for Communities and Local Government
Tel: 0303 444 3655 or email: frances.walker@communities.gsi.gov.uk can answer any queries regarding the instrument.