

EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)
(ENGLAND) (AMENDMENT) REGULATIONS 2016

2016 No. 965

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006/1294) ('the Eligibility Regulations'), in order to make a new category of persons eligible for an allocation of social housing and homelessness assistance. This category consists of persons granted leave on family or private life grounds under Article 8 of the European Convention on Human Rights ('the Convention').
- 2.2 The Regulations also remove provisions dealing with asylum seekers that are now redundant.

3. Matters of special interest to Parliament

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Housing Act 1996 ('the 1996 Act') provides that a local housing authority shall not allocate housing (s160ZA(1)(a)) or give homelessness assistance (s185(1)) to persons from abroad who are not eligible. Persons from abroad who are subject to immigration control are not be eligible for an allocation of housing or homelessness assistance unless they come within a class of person prescribed in regulations made by the Secretary of State (sections 160ZA(2) and 185(2) of the 1996 Act). For these purposes, '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).
- 4.2 Regulations 3 and 5 of the Eligibility Regulations prescribe the classes of person who are subject to immigration control but who are to be treated as persons from abroad who are eligible for an allocation of housing accommodation or homelessness assistance respectively.

- 4.3 The Regulations insert a new ‘Class F’ in regulation 3 and a new ‘Class G’ in regulation 5 of the Eligibility Regulations. These make a person who is subject to immigration control eligible for social housing or homelessness assistance if he or she has leave to enter or remain in the UK on family or private life grounds under Article 8 of the Convention, granted under paragraph 276 BE(1) or 276DG of, or under Appendix FM to, the Immigration Rules (laid before Parliament under section 3(2) of the Immigration Act 1971), where this leave is not subject to a condition of ‘no recourse to public funds’. Before 9 July 2012 leave on family or private life grounds was one of the forms of Discretionary Leave granted outside the provisions of the Immigration Rules. Persons with this form of leave were eligible for an allocation of housing accommodation and for homelessness assistance by virtue of regulations 3(b) and 5(1)(b) of the Eligibility Regulations respectively. However, under changes made to the Immigration Rules from 9 July 2012, leave on family or private life grounds has largely been granted under the Immigration Rules. These Regulations amend the Eligibility Regulations to reflect this change.
- 4.4 The Regulations also amend regulation 5 of the Eligibility Regulations to remove provisions relating to certain categories of asylum seekers whose claim for asylum was made before 3 April 2000, that are no longer required.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is 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

What is being done and why

- 7.1 From 9 July 2012, the Home Office made changes to the Immigration Rules to provide a clear basis for considering family and private life cases in compliance with Article 8 of the Convention (the right to respect for private and family life). These are set out in the Statement of Changes in Immigration Rules, HC 194 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284574/hc194.pdf). In particular, the new Immigration Rules reflect the qualified nature of Article 8, setting requirements which balance the individual right to respect for private or family life with the public interest in safeguarding the economic well-being of the UK by controlling immigration, and in protecting the public from foreign criminals.
- 7.2 To meet the Government’s aim that those seeking to remain in the UK on the grounds of their family or private life should not impose a burden on the taxpayer, leave granted under the Immigration Rules on the grounds of family or private life, or outside the Rules on Article 8 grounds in exceptional circumstances, will normally have a condition of no recourse to public funds. The exceptions are: where the applicant is destitute; there are particularly compelling reasons relating to the welfare of a child on account of the child’s parent’s very low income; or there are exceptional circumstances relating to their financial circumstances

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/452912/Family_Life_as_a_Partner_or_Parent_and_Private_Life_-_10-year_routes_guidance_August_2015.pdf).

7.3 Only certain classes of persons subject to immigration control are eligible for social housing and homelessness assistance under the Eligibility Regulations. These include people granted leave ‘exceptionally’ outside the Immigration Rules, provided it is with recourse to public funds (Regulation 3(b) and 5(1)(b)). This form of leave is known as Discretionary Leave. Prior to the 9 July 2012 changes to the Immigration Rules, family and private life cases were generally granted Discretionary Leave and were therefore eligible for social housing and homelessness assistance. Following the 2012 changes, most family and private life cases were given a new form of leave within the Immigration Rules, although those cases which did not meet the requirements of the Immigration Rules could still be provided with leave ‘exceptionally’ outside the Rules. The result has been that family and private life cases granted leave within the Immigration Rules were no longer eligible for social housing and homelessness assistance, because the Eligibility Regulations were not updated to specify this form of leave. By contrast those granted leave outside the Rules continued to be eligible under Regulation 3(b) and 5(1)(b). These amending Regulations are intended to:

- Restore eligibility to those granted family and private life leave within the Immigration Rules, provided they have recourse to public funds and
- Ensure that those granted family and private life leave inside and outside the Immigration Rules are treated on the same basis.

7.4 These Regulations also make minor changes to the Eligibility Regulations to remove redundant provisions relating to certain categories of asylum seekers. Generally speaking asylum seekers are not eligible for social housing or homelessness assistance in line with the Government’s wider immigration policy. Instead they are accommodated by the Home Office under the arrangements provided for in Part 6 of the Immigration and Asylum Act 1999. For a period after Part 6 of the 1999 Act came into force, transitional provisions allowed for certain categories of asylum seekers already accommodated by local authorities to continue to be supported by their local authority. These transitional provisions ceased to apply from April 2006 and, as a result, the provisions in the Eligibility Regulations which make these categories of asylum seekers eligible for homelessness assistance are no longer required.

Consolidation

7.5 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

8.1 The Government has not consulted on these amending Regulations because they do not reflect a change in the Government’s overall policy regarding access to social housing and homelessness assistance for persons from abroad. These Regulations broadly align with housing benefit regulations.

9. Guidance

- 9.1 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 as the number of people affected by these changes is likely to be small.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

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

- 13.1 John Bentham (leading on homelessness) or Frances Walker (leading on social housing allocations) at the Department for Communities and Local Government can answer any queries regarding the instrument. Their contact details are:

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