

EXPLANATORY MEMORANDUM TO

THE PERSONS SUBJECT TO IMMIGRATION CONTROL (HOUSING AUTHORITY ACCOMMODATION AND HOMELESSNESS) (AMENDMENT) ORDER 2018

2018 No. 729

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This measure relates to implementation of section 67 of the Immigration Act 2016 ('the Dubs amendment'). It gives access to homes, accommodation housing and homelessness support on an equivalent basis to refugees. To that end, the Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Order 2018 (the "2018 Order") amends The Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (the "2000 Order") to include, as a new class of persons specified under section 118 of the Immigration and Asylum Act 1999 (the "1999 Act"), those granted limited leave to remain under paragraph 352ZH of the Immigration Rules.
- 2.2 The 2018 Order also specifies the same class of persons under section 119 of the 1999 Act, in relation to eligibility for accommodation and homelessness assistance in Scotland and Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution 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 Section 118 of the 1999 Act provides that, other than where accommodation is provided under arrangements made under Part VI (support for asylum seekers) of the 1999 Act, tenancies of and licences to occupy local authority housing may only be granted to persons subject to immigration control if they fall within a class specified in an order made by the Secretary of State.
- 4.2 Section 119 provides that persons subject to immigration control will only have access to accommodation or assistance under certain specified homelessness provisions in Scotland and Northern Ireland if they fall within a class of person specified in an order made by the Secretary of State. Similar provisions for England and Wales are

contained in section 185 of the Housing Act 1996 (persons from abroad not eligible for housing assistance).

- 4.3 The 2000 Order, specifies classes of person subject to immigration control for the purposes of section 118 (articles 3 to 6) and section 119 (articles 7 to 9). The 2018 Order makes amendments to the classes of person subject to immigration control specified in the 2000 Order.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 5.2 The territorial application of this instrument is England, Scotland and Northern Ireland.
- 5.3 Article 2(2) of this Order applies to England, Scotland and Northern Ireland. Article 2(3) of this Order applies to Scotland and Northern Ireland.

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 Section 67 of the Immigration Act 2016 (the “2016 Act”) requires the Government to relocate to the UK and support a specified number of unaccompanied children from Europe. In line with this provision of the 2016 Act, and following consultation with local authorities, the Government set the specified number at 480.
- 7.2 The spirit of the Parliamentary debates at the time of the 2016 Act’s passage, and the Secretary of State’s statutory obligation towards these children – ‘to relocate and support’ – is interpreted as rationale for granting a bespoke form of leave to this cohort over that which is granted to asylum seeking children who arrive in the UK via other routes (e.g. clandestinely) who, following an assessment of their asylum claim, do not qualify for international protection in line with the 1951 Refugee Convention or humanitarian protection leave. Those who arrive in the UK via other routes (e.g. clandestinely) who do not qualify for international protection or humanitarian protection are normally granted Unaccompanied Asylum Seeking Children (UASC) leave for a period of 30 months or until the child is 17 ½ years of age, whichever is shorter.
- 7.3 The Government interprets the obligations under section 67 of the 2016 Act, due to the requirement to ‘relocate and support’, as being more akin to the requirements on the state for providing protection and support to those who are granted refugee leave in the UK. It is therefore laying Immigration Rules to create a new form of leave – ‘section 67 of the Immigration Act 2016 leave’ – for those children transferred under section 67 of the 2016 Act who do not qualify for leave under the current Immigration Rules (either as refugees or other protection-based leave). Individuals who qualify for section 67 of the Immigration Act 2016 leave will have the right to study, work, access public funds (claim benefits and housing support) and healthcare, and apply for indefinite leave to remain without paying a fee after five years.

- 7.4 To ensure individuals granted section 67 of the Immigration Act 2016 leave are able to access the services and public funds needed to establish themselves in the UK once they turn 18, this Order amends the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 to provide them with the same access to Housing Authority accommodation and homelessness support benefits as refugees.

Consolidation

- 7.5 There is no consolidation necessary.

8. Consultation

- 8.1 The changes in this Order have not been the subject of a formal public consultation, as this would be disproportionate given the nature of the regulations.

9. Guidance

- 9.1 Guidance relating to these rules changes will be updated and placed on the GOV.UK website.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
10.2 There is no impact on the public sector.
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 implementation of the provisions of these amendments will be subject to monitoring as appropriate.

13. Contact

- 13.1 Daniel Hobbs or email: Daniel.Hobbs@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.