

**EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)
(ENGLAND) REGULATIONS 2006**

2006 No. 1294

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. Description

2.1 These Regulations prescribe the classes of person from abroad who are ineligible or 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 None.

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.

4.2 A housing authority cannot allocate housing accommodation or provide homelessness assistance to a person from abroad who is not eligible. There are two types of person from abroad for these purposes.

4.3 Firstly, persons who are subject to immigration control will not be eligible for social housing or homelessness assistance unless they come within a class of persons prescribed in regulations by the Secretary of State (sections 160A(1) and (3) and 185(2) of the Act). The term ‘person subject to immigration control’ means a person who requires leave to enter or remain in the United Kingdom, whether or not such leave has been given (section 13(2) of the Asylum and Immigration Act 1996).

Broadly speaking, the term covers:

- nationals of countries which are outside the European Economic Area¹ and Switzerland; and
- those nationals of countries in the European Economic Area and Switzerland (referred to in this memorandum as “EEA nationals”) who do not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland derived from EU law.

4.4 Secondly, a person who is not subject to immigration control will be eligible for an allocation of social housing or homelessness assistance unless he comes within

¹ I.e. The area made up of the European Union plus Norway, Liechtenstein and Iceland.

a class of persons who are to be treated as persons from abroad by virtue of regulations made by the Secretary of State (sections 160A(1) and (5) and 185(3) of the Act).

4.5 These Regulations prescribe the classes of persons who will be eligible or ineligible for an allocation of housing accommodation or for homelessness assistance. In the main, they consolidate the provisions of the Regulations which they revoke, but there are also some amendments, notably in relation to EEA nationals (see further at paragraphs 7.4 and 7.5).

4.6 Regulations 3 and 5 prescribe the classes of persons who, although subject to immigration control, will be eligible for an allocation of social housing or for homelessness assistance respectively. These provisions broadly re-enact the provisions of regulation 4 of the Allocation of Housing (England) Regulations 2002 and regulation 3 of the Homelessness (England) Regulations 2000 (which are revoked by these Regulations).

4.7 Regulations 4 and 6 prescribe the classes of persons who are not subject to immigration control but who are to be treated as persons from abroad who are ineligible for an allocation of housing accommodation or for homelessness assistance respectively. Broadly speaking, these classes affect the eligibility of British nationals returning from a period of residence abroad or coming to the United Kingdom for the first time, and of EEA nationals who have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland derived from EU law.

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 policy in relation to persons subject to immigration control is that such persons should not have access to social housing or homelessness assistance except where such access accords with the Government's immigration and asylum policy. The policy relating to persons subject to immigration control is not changed by these Regulations, which largely re-enact the provisions which they replace. Broadly, this means that a person subject to immigration control will be eligible for social housing and homelessness assistance only if he has been granted leave to enter or remain in the UK and this leave is not conditional on him having no recourse to public funds.

7.2 As an exception to the general policy set out in paragraph 7.1, provision is made for certain persons subject to immigration control to continue to be eligible for homelessness assistance (but not housing allocation) if they claimed asylum before 3 April 2000 and fall within specified circumstances. These provisions in effect provide "reserved rights" for such persons to the system of asylum support in place prior to the implementation of the National Asylum Support Service on 3 April 2000. The number

of persons affected is considered to be very small. This provision re-enacts provisions previously contained in the Homelessness (England) Regulations 2000 (now revoked).

7.3 In relation to EEA nationals, the Government welcomes such persons who wish to come to the UK and work or otherwise support themselves and their family. That welcome is extended to nationals of the 10 countries who acceded to the EU in 2004². However, the Government's policy is that EEA nationals should not be able to come to the UK with no intention of supporting themselves and then be able to gain access to social housing and homelessness assistance funded by the UK taxpayer.

7.4 The provisions of these Regulations dealing with EEA nationals and British nationals mainly re-enact the provisions of the Regulations they replace. However, they do make some changes to the eligibility of such persons. These changes principally reflect the implementation of Directive 2004/38/EC of the European Parliament and Council of 29th April 2004 ("the Directive") by the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations"), and are consistent with the policy outlined at paragraph 7.2. In particular, EEA nationals will not be eligible for an allocation of housing or homelessness assistance if their only right to reside:

- is an initial right to reside for up to 3 months from arrival provided they do not become an unreasonable burden on the social assistance system of the host member State (a new right introduced by the Directive); or
- is for the period during which a jobseeker has a genuine prospect of finding employment.

7.5 There are also some new classes of British nationals and of EEA nationals with a right to reside who are eligible for an allocation or for homelessness assistance. EEA nationals who already have a right to reside in the United Kingdom may acquire a permanent right to reside under the EEA Regulations in some circumstances. Where the permanent right to reside has arisen out of their status as a worker or self-employed person who has retired, or as the family member of a worker or self-employed person who has died, they continue to be exempt from the requirement to be habitually resident when they acquire permanent residence. A further new category of eligibility concerns persons who are in the United Kingdom as a result of being deported, expelled or otherwise removed from another country to the United Kingdom. This latter class aligns the eligibility provisions for allocations and for homelessness assistance with eligibility for housing benefit.

7.6 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. The regulations broadly consolidate the current provisions and make some changes. The main changes take account of the implementation of the Directive by the EEA Regulations. As in the case of the provisions which are revoked, these Regulations broadly align with housing benefit regulations made by the Secretary of State for Work and Pensions.

8. Impact

² I.e. Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Czech Republic, Slovakia, and Slovenia. Special arrangements were made in S.I. 2004/1219 to establish a registration scheme for workers from these countries (except Malta and Cyprus).

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 These Regulations give effect to the Government's policy of minimising the impact on the public sector of persons from abroad who do not have leave to enter or remain in the UK, and who come to the UK with no intention of supporting themselves and then seek access to social housing and homelessness assistance.

9. Contact

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