

EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)
(ENGLAND) (AMENDMENT) REGULATIONS 2018

2018 No. 730

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

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. They make provision for persons who have been transferred to the United Kingdom under section 67 of the Immigration Act 2016 and have limited leave to remain under paragraph 352ZH of the Immigration Rules to be eligible for an allocation of social housing and homeless assistance if they are habitually resident.

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 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 or give homelessness assistance to persons who are subject to immigration control 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).
- 4.2 Regulations 3 and 5 of the Eligibility Regulations prescribe the classes of persons who are subject to immigration control but who are to be treated as persons who are eligible for an allocation of housing accommodation or for homelessness assistance respectively.
- 4.3 The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2018 amend regulations 3 and 5 of the Eligibility Regulations. They make provision for persons who have been transferred to the United Kingdom under section 67 of the Immigration Act 2016 and have limited leave to remain under paragraph

352ZH of the Immigration Rules to be eligible for an allocation of social housing and homeless assistance if they are habitually resident.

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 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 Government is laying Immigration Rules to create a new form of leave – “section 67 of the Immigration Act leave” – for those children transferred under section 67 who do not qualify for leave under the current Immigration Rules (either refugee status or humanitarian protection leave).
- 7.3 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 a 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. Under the existing rules, those unaccompanied children 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, after which time the Government would seek to return them.
- 7.4 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.
- 7.5 Individuals who qualify for section 67 of the Immigration Act 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 (settlement) without paying a fee after five years.
- 7.6 These Regulations will ensure that this cohort are eligible for an allocation of social housing and homelessness assistance once they are considered to be habitually resident in the United Kingdom, which is generally after three months.
- 7.7 These Regulations will align with housing benefit regulations.

- 7.8 Those who then successfully apply for settlement will continue to be eligible for an allocation of social housing or homelessness assistance under regulations 3(c) and 5(c) of the Eligibility Regulations provided they meet the relevant conditions.

Consolidation

- 7.9 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 subject to immigration control.

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. The number of people relocated to the UK under section 67 of the Immigration Act 2016 is finite with the number specified as 480. Only those who do not qualify for international protection will be granted limited leave to remain under paragraph 352ZH of the Immigration Rules.
- 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 P1E return. This information is published on the GOV.UK website. We will review the operation of these Regulations as appropriate.

13. Contact

- 13.1 Liz Laurence at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 4638 or email: liz.laurence@communities.gsi.gov.uk can answer any queries regarding the instrument.