

EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)
(ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 665

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.
- 1.2 This explanatory memorandum contains information relevant to 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 (S.I. 2006/1294) (“the Eligibility Regulations”) in order to make a new category of persons eligible for an allocation of housing accommodation under Part 6 of the Housing Act 1996 (c. 52) or homelessness assistance under Part 7 of that Act.
- 2.2 They make provision for persons who have limited leave to remain in the United Kingdom under Appendix Hong Kong British National (Overseas) of the Immigration Rules to be eligible for an allocation of housing accommodation or homelessness assistance, if they are habitually resident in the Common Travel Area, and their leave to enter or to remain within the United Kingdom is not subject to a condition requiring them to maintain and accommodate themselves without recourse to public funds.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument also corrects an error which appears in regulation 5(1)(g) of the Eligibility Regulations, in relation to the position of the word “who”.
- 3.2 The Department has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar. In light of this defect and in the interests of transparency, the procedure for free issue will apply to this instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Housing Act 1996 (“the 1996 Act”) provides that a local housing authority shall not allocate housing accommodation under Part 6 of that Act, or give homelessness assistance under Part 7 of that Act, to persons from abroad who are subject to immigration control unless they come within a class of persons prescribed in regulations made by the Secretary of State (sections 160ZA(2) and 185(2) of the 1996 Act).
- 6.2 Regulations 3 and 5(1) of the Eligibility Regulations prescribe the classes of persons who, although subject to immigration control, are to be treated as persons from abroad who are eligible for an allocation of housing accommodation or for homelessness assistance respectively.
- 6.3 Regulations 4 and 5 of this instrument amend regulations 3 and 5(1) of the Eligibility Regulations, respectively. They make provision for persons who have limited leave to enter or remain in the United Kingdom under Appendix Hong Kong British National (Overseas) of the Immigration Rules to be eligible for an allocation of housing accommodation or homelessness assistance if they are habitually resident in the Common Travel Area (the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland), and provided their leave is not subject to a condition requiring them to maintain and accommodate themselves, or any person who is dependent on them, without recourse to public funds.
- 6.4 In addition, regulation 5 of this instrument also corrects a drafting error in regulation 5(1)(g) of the Eligibility Regulations, in relation to the position of the word “who”.

7. Policy background

What is being done and why?

- 7.1 The Government has introduced a new immigration route for Hong Kong British National (Overseas) citizens. This follows the imposition by the Chinese Government of a national security law on Hong Kong that restricts the rights and freedoms of the people of Hong Kong, in breach of the Sino-British Joint Declaration. The new immigration route applies to British National (Overseas) citizens, together with certain family members who remain part of the same household where eligible under the Immigration Rules.
- 7.2 The status of British National (Overseas) was created in 1986 in preparation for Hong Kong being handed back to China on 1 July 1997, for those who would lose their British Dependent Territories citizenship but wanted to retain a form of British nationality beyond that date. British National (Overseas) status had to be applied for by 30 September 1997 at the latest and is valid for life, but cannot be passed on to a spouse or children.
- 7.3 The Government has created a new form of limited leave within the Immigration Rules for British National (Overseas) (“BN(O)”) citizens - ‘Appendix Hong Kong British National (Overseas)’ - which came into force on 31 January 2021:
<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-hong->

[kong-british-national-overseas](#). BN(O) citizens who qualify for the new form of leave have the right to work and study in the United Kingdom and apply for indefinite leave to remain (settlement) after 5 years. However, the leave is subject to a no recourse to public funds (NRPF) condition, which means that the BN(O) citizens will not normally have the right to claim welfare benefits and housing support.

- 7.4 On 4 March 2021 the Government made a change to the Immigration Rules¹ which came into force on 6 April 2021 and allows BN(O) citizens with Appendix Hong Kong British National (Overseas) leave to apply to the Home Office to have their no recourse to public funds condition lifted where they are able to demonstrate that they are destitute or at imminent risk of destitution. This change will provide this cohort of BN(O) citizens with eligibility for key welfare benefits, subject to passing the habitual residence test. The habitual residence test can generally be satisfied after three months residence in the Common Travel Area.
- 7.5 The Government estimates that the number of BN(O) citizens who may be able to take advantage of the change in relation to destitution would be between 2,400 and 15,000 in the first 5 years.
- 7.6 These Regulations will ensure that this cohort of BN(O) citizens, whose no recourse to public funds condition is lifted due to destitution or threat of destitution, is also eligible for an allocation of social housing and homelessness assistance if they are habitually resident in the United Kingdom or elsewhere in the Common Travel Area. Persons subject to immigration control, such as this cohort of BN(O) citizens, are ineligible for an allocation of housing by local housing authorities or homelessness assistance unless specifically provided for in regulations.
- 7.7 These Regulations will align access to social housing and homelessness assessment with Housing Benefit and the housing element of Universal Credit.
- 7.8 BN(O) citizens who then successfully apply for settlement will continue to be eligible for an allocation of social housing or for homelessness assistance under regulations 3(c) and 5(1)(c) of the Eligibility Regulations provided they meet the relevant conditions.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018, as it does not relate to the withdrawal of the United Kingdom from the European Union.

9. Consolidation

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

¹ See paragraph APP HK18 on page 97 of the Statement of changes to the Immigration Rules: HC 1248, 4 March 2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966644/CCSO01_CCS0221107260-001_Statement_of_changes_in_Immigration_Rules_Web_Accessible_.pdf

10. Consultation outcome

- 10.1 The Government has not consulted on these amending Regulations because they do not reflect a change in the Government's overall policy regarding eligibility for social housing and homelessness assistance for persons subject to immigration control.

11. Guidance

- 11.1 The Government will write to local housing authorities with advice on the purpose and effect of the Regulations. This letter will be published on the GOV.UK website. We will revise current statutory guidance to reflect the amending Regulations when time allows.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on local authorities is not expected to be significant as the number of people affected by these changes is likely to be relatively small.
- 12.3 An impact Assessment has not been prepared for this instrument for the reasons set out above.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is as follows: the Department collects data on new social housing lettings to households headed by a foreign national through CORE (the Continuous Recording of lettings)². This information is published on the GOV.UK website. We also plan to use data on homelessness decisions in relation to applications by foreign nationals through the quarterly Homelessness Case Level Information Collection (H-CLIC) return. We will review the operation of these Regulations as appropriate.

15. Contact

- 15.1 Frances Walker, at the Ministry of Housing, Communities and Local Government, email: frances.walker@communities.gov.uk, can be contacted with any queries regarding the changes made to this instrument in relation to the allocation of social housing.
- 15.2 Lucy Rodger, at the Ministry of Housing, Communities and Local Government, email: lucy.rodger@communities.gov.uk, can be contacted with any queries regarding the changes introduced to this instrument in relation to homelessness assistance.
- 15.3 Jane Everton, Deputy Director for Social Housing, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Eddie Hughes MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

² <https://core.communities.gov.uk/>