

EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING AND HOMELESSNESS (MISCELLANEOUS
PROVISIONS) (ENGLAND) REGULATIONS 2006

2006 No. 2527

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 relate to the allocation of housing accommodation under Part 6 of the Housing Act 1996 (“the Act”) and the provision of 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. Accommodation provided under Part 6 or Part 7 of the Act is referred to as ‘social housing’ in this Memorandum.

4.2 These Regulations make provision in relation to: firstly, eligibility for social housing by persons from abroad; and secondly, the conditions under which a local housing authority can refer an application for homelessness assistance to another authority on the basis of local connection.

4.3 Regulation 2 concerns eligibility for social housing. Under sections 160A(3) and 185(2) of the Act, a person from abroad who is subject to immigration control is not eligible for social housing unless he or she comes within a class of persons prescribed in regulations. 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). The prescribed classes of persons are to be found in the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006/1294) (“the Eligibility Regulations”).

4.4 Prior to these amendments, a person subject to immigration control was eligible for social housing under Class D of regulations 3 and 5 of the Eligibility Regulations if he was a person who had left Montserrat after 1st November 1995

because of the effect on that territory of a volcanic eruption. That class of eligibility is now removed.

4.5 The Regulations insert a new “Class D” in regulations 3(d) and 5(1)(d) of the Eligibility Regulations which makes a person who is subject to immigration control eligible for social housing if he has humanitarian protection granted under the Immigration Rules (which are the rules laid before Parliament under section 3(2) of the Immigration Act 1971). Humanitarian protection is a form of leave granted to asylum seekers who do not qualify for refugee status but who would face a real risk of suffering serious harm if returned to their state of origin. Before 9 October 2006, humanitarian protection was one of the forms of exceptional leave to enter or remain in the United Kingdom granted outside the provisions of the Immigration Rules. Such persons 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, from 9 October 2006, humanitarian protection is to be granted under paragraphs 339C-344C of the Immigration Rules. It is therefore necessary to amend the Eligibility Regulations to reflect this change.

4.6 Regulation 3 relates to the conditions which must be met in order for a local housing authority to refer an application for homelessness assistance to another authority under section 198(4) of the Act. In general, an authority can only refer an application to another authority where the applicant has a local connection (e.g. residence or employment ties) to that other authority’s area, and no connection to area of the authority he is applying to. However, under section 198(4), the conditions for referral of a homelessness application are also met if the applicant was placed in accommodation in the district of the authority he is now applying to in order to discharge a homelessness duty owed by another authority, provided that the previous application made to the other authority was made within a prescribed period of the current application. Regulation 3 prescribes that period.

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 except where such access accords with immigration and asylum policy. Broadly, this means that a person subject to immigration control will be eligible for social housing only if he has been granted leave to enter or remain in the United Kingdom and this leave is not conditional on him having no recourse to public funds. The policy relating to persons subject to immigration control is not changed by these amending regulations.

7.2 The first change to the Eligibility Regulations made by these Regulations is to remove the classes of eligibility relating to persons subject to immigration control who left Montserrat after 1st November 1995 because of the volcanic eruption there. These

provisions are no longer necessary to deliver the Government's policy, which is that citizens of Montserrat who left their country following the eruption should be eligible for social housing, and should not be required to be habitually resident in the United Kingdom (or wider Common Travel Area). The Eligibility Regulations already deliver this policy, since they exempt from the habitual residence requirement applicants who are not subject to immigration control who left Montserrat because of the volcanic activity. Citizens of Montserrat are no longer subject to immigration control because they were granted British citizenship by virtue of the British Overseas Territories Act 2002. Accordingly, the Regulations remove these unnecessary provisions.

7.3 As set out at paragraph 4.5, it is necessary to amend the Eligibility Regulations so that persons granted humanitarian protection status will continue to be eligible for social housing. Previously, humanitarian protection was a form of exceptional leave to remain granted outside the Immigration Rules, but from 9 October 2006 it will be brought within the Rules in order to implement Directive 2004/83/EC¹ ("the Asylum Qualification Directive"). The amendments made by these Regulations are therefore consequential on the amendments to the Immigration Rules.

7.4 Regulation 3 relates to the period within which a local housing authority can refer a homelessness application to another authority under section 198(4) of the 1996 Act. This period was formerly prescribed by regulation 6 of the Homelessness (England) Regulations 2000 (S.I. 2000/701), which was revoked by the Eligibility Regulations in error. These Regulations restore the period as previously prescribed (i.e. 5 years plus the period between the date of the application and the date the applicant was first placed in accommodation in the other district). This ensures that authorities can refer applicants back to the placing authority in the face of a fresh application for homelessness assistance, and so discourages authorities from using out-of-area placements in an attempt to pass responsibility for a household accepted as homeless to another authority.

7.5 The Government has not consulted on the provisions to remove the class of eligibility relating to persons subject to immigration control from Montserrat, or on the prescribed period for referral of a homelessness application under section 198(4) of the Act, because these do not reflect any change in the Government's policy. The changes to the Immigration Rules in relation to persons granted humanitarian protection were consulted on in 'The European Union Asylum Qualification Directive: A Public Consultation' (Home Office, June 2006), which explained the need to revise the Eligibility Regulations. None of the consultation responses raised any concerns with this proposal, which makes no change to the substantive position of persons granted humanitarian protection status.

8. Impact

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 have no impact on local authorities as they maintain the existing policy position.

¹ Official Journal L 304, 30/09/2004, pp. 12-23.

9. Contact

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