

EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING (QUALIFICATION CRITERIA FOR RIGHT TO
MOVE) (ENGLAND) REGULATIONS

2015 No. 967

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. Purpose of the instrument

These Regulations ensure that where a local housing authority uses a local connection requirement as a criterion to decide whether a class of persons are qualifying persons for an allocation of housing accommodation, they must not apply that criterion to certain persons. Specifically, it may not be applied to social tenants in England who

—have reasonable preference because of a need to move to the local authority’s district to avoid hardship, and

—need to move because the tenant works or has been offered work in the district of the authority and has a genuine intention to take up the offer.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 Section 159 of the Housing Act 1996 (“the Act”) provides, generally, that a local housing authority must comply with Part VI of the Act when allocating housing accommodation (s. 159(1)). An allocation takes place when a local housing authority

—selects or nominates someone to be a secure or introductory tenant, or

—nominates someone to be an assured tenant of housing accommodation held by a private registered provider (s. 159(2)).

4.2 Pursuant to subsections (4A) and (4B) (inserted by the Localism Act 2011) however, Part VI is not applicable to tenants who are already secure or introductory tenants or assured tenants of a private registered provider unless the allocation involves the transfer of accommodation for an applicant and the local housing authority is satisfied that the applicant is a person who is to be given reasonable preference under section 166A(3).

4.3 Section 160ZA of the Act provides that a local housing authority in England may only allocate housing to eligible and qualifying persons. Subsection (6) provides that a

local housing authority in England may allocate housing to any qualifying person who is not ineligible pursuant to subsection (1). Subsection (7) provides that a local housing authority may decide what classes of persons are, or are not, qualifying persons subject to any regulations made under subsection (8) which provides that the Secretary of State may by Regulations prescribe:

- classes of persons who are, or are not, to be treated as qualifying persons by local housing authorities in England (s. 160ZA(8)(a)), and
- criteria that may not be used by local housing authorities in England in deciding what classes of persons are not qualifying persons (s. 160ZA(8)(b)).

4.4 These Regulations prescribe criteria under section 160ZA(8)(b) of the Act.

5. Territorial Extent and Application

This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

7.1 These Regulations are part of a package of measures to deliver on a commitment in Autumn Statement 2013 to introduce a Right to Move for social tenants seeking to move for work related reasons. These measures are designed to meet concerns about the lack of mobility in the social rented sector and high levels of unemployment among working age social tenants when compared to similar households in the private rented sector and owner occupation. In 2013/14 there were 282,909 general needs social lettings. Of these, 119,690 (42%) were to existing social tenants. 9% (10,721) of lettings to existing social tenants involved a move across local authority boundaries. Of these cross boundary moves, 'to move nearer to work' was given as the main reason for the move in 3% (280) of cases.

7.2 The Regulations ensure that local housing authorities may not apply a local connection criterion such as residence, employment or family associations to disqualify members of the groups set out in paragraph 2 above. This will benefit those moving to be closer to work who would be disadvantaged if an authority applies a residency test and those moving to take up a job offer who would be disadvantaged even if a wider local connection test including an employment element is used.

7.3 The allocation provisions inserted in the Housing Act 1996 by the Localism Act 2011, which came into force in June 2012, give local housing authorities the power to set their own rules determining who qualifies or does not qualify for social housing. In

December 2013, the Department issued statutory guidance¹ to encourage local housing authorities to use their new qualification power to apply a residency test for social housing. This guidance referred to the Government's intention to introduce a Right to Move. It made clear that, in the meantime, the Government expected local authorities to ensure that their residency requirements enable social tenants to move across local authority boundaries for work related reasons, so as not to impede labour mobility.

7.4 The Government consulted on options to introduce the Right to Move. These proposals included regulations to prevent local authorities applying residency requirements. However, the Department is concerned there is a risk that local authorities might seek to apply other local connection requirements (for example, employment or family associations) to exclude tenants who have been offered but not yet taken up work in the district. This would undermine the Government's policy intention. For this reason, the Regulations have been broadened to refer to a local connection criterion, rather than residency.

7.5 To meet concerns and comments expressed in response to consultation, the Regulations exclude work which is short-term or marginal or which is ancillary to work in another district. The reference to 'ancillary' is intended to meet the situation where a person works occasionally in one local authority district but their main place of work is elsewhere. Accompanying guidance gives examples of the factors that we would expect local authorities to take into account in determining whether work is 'short-term', 'marginal' and 'ancillary'. This has been addressed in guidance, rather than in the Regulations, to give local authorities the flexibility to set policies that reflect local circumstances and local priorities.

7.6 The Department has already made a similar provision for certain members of the Armed Forces community by regulating to prevent local authorities from applying a local connection requirement to disqualify them. Those Regulations (SI 2012/1869) give effect to the Government's commitment that those who serve in the regular and reserve Armed Forces are not disadvantaged in their access to social housing by the need to move from base to base.

- Consolidation

7.7 Not applicable.

8. Consultation outcome

8.1 On 10 September 2014 the Department published a consultation paper setting out options for a Right to Move to increase opportunities for social tenants in England to move within the social rented sector for work-related reasons. These options included a

¹ *Providing social housing for local people: Statutory guidance on social housing allocations for local authorities in England*, <https://www.gov.uk/government/publications/allocation-of-accommodation-guidance-for-local-housing-authorities-in-england>

proposal to introduce regulations to remove a residency requirement for social tenants moving across local authority boundaries to be closer to work, or to take up a job offer, apprenticeship, or work related training. The six week consultation period closed on 22 October 2014; a summary of the responses to the consultation and the way forward was published on 9 March. The consultation paper and summary of responses/way forward are on the Department's website at: <https://www.gov.uk/government/consultations/right-to-move-consultation>

8.2 Not all consultees responded directly in relation to this proposal and some responses were ambiguous. A small majority of respondents supported the proposal, some on the grounds that it would ensure a consistent approach across the country, and others as it was in line with their existing allocation policy. Local authorities outside London and housing associations were more likely to be supportive.

8.3 Some, while supporting the proposal generally, did not think it should be extended to job offers, temporary work, or job related training. However, others suggested that the proposal should be extended to all tenants who need to move.

8.4 Some respondents called for accompanying guidance to ensure a standard approach, for example, to what constitutes a need to move for work, but others thought it should be for local authorities to decide how to implement the regulations.

8.5 While most responses were positive, there were concerns that this would add to the pressure on already long waiting lists, be unpopular with local residents, and could raise expectations which would be difficult to manage. Some were of the view that this should be locally determined, rather than centrally prescribed.

8.6 A few respondents expressed the view that the needs of tenants seeking to move across the country were adequately served by existing mobility schemes or the private rented sector.

8.7 In light of the response to consultation, the Department has decided that the Regulations will not apply to those tenants who wish to move for work related training, taking into account respondents' concerns about the temporary nature of such training and the fact that it may not lead to a person taking up work in the same area. To address concerns in relation to job offers, the Regulations require that a local authority must be satisfied that there is a genuine intention of taking up the offer of work; and in relation to temporary work, they provide that work must not be short-term. The requirement that work should not be marginal reflects concerns expressed by respondents, particularly around work which is economically insignificant. For the same reasons, voluntary work is also excluded.

8.8 The Regulations have been broadened so that, where a relevant need to move applies, authorities will not be able to use any requirement for a local connection to the district. This is to ensure that authorities do not take account of connections to the district

other than residency (for example, employment or family associations) when setting their qualification criteria, which could undermine the purpose of the Regulations.

9. Guidance

The Department proposes to issue short statutory guidance to accompany the Regulations. A copy of the guidance is attached.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The Regulations could lead to some minor impacts for some local authorities in terms of the number of applications to be processed and the size of the waiting list. However, the impact on the public sector generally is expected to be minimal.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The Department collects data on social housing lettings through CORE (the Continuous Recording of lettings). This includes information on lettings to social tenants who move across local authority boundaries to be nearer to work. CORE lettings data are published annually on the Gov.UK website. We will review the operation of these Regulations as appropriate.

13. Contact

Frances Walker, Department for Communities and Local Government - Tel: 0303 444 3655 or email: frances.walker@communities.gsi.gov.uk - can answer any queries regarding the instrument.