

EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)
(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2012

2012 No. 429

1. This explanatory memorandum has been prepared by the Department for Social Development on behalf of the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the statutory rule**

2.1 The purpose of this rule is to ensure that persons from abroad whose right to reside in the UK is derived from certain Home Office regulations (*The Immigration (European Economic Area) Regulations 2006* as amended by *The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012*) are not eligible for an allocation of housing under the Housing (Northern Ireland) Order 1981 or for homelessness assistance under the Housing (Northern Ireland) Order 1988.

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

3.1 As an immigration-related matter, the eligibility of persons who are subject to immigration control for benefits and services in the UK is a Home Office responsibility. The housing entitlement of other persons from abroad who are not subject to immigration control is not seen as an “immigration” matter and, in England, this falls within the housing remit of the Department for Communities and Local Government. However, the housing entitlement of non-British citizens is an “excepted” matter under the Northern Ireland Act 1998 and Northern Ireland departments are not in a position to make regulations in this area. On the basis that the housing entitlements of persons from abroad should as far as possible be aligned throughout the UK, Northern Ireland housing legislation enables the Secretary of State to specify classes of persons from abroad, other than those subject to immigration control, who are ineligible for an allocation of housing accommodation or for homelessness assistance in Northern Ireland.

4. **Legislative Context**

4.1 Article 22A of the Housing (Northern Ireland) Order 1981 provides that the Northern Ireland Housing Executive (“the Executive”) shall not allocate housing accommodation to a person from abroad who is ineligible for such an allocation by virtue of regulations made by the Secretary of State. Similarly, Article 7A of the Housing (Northern Ireland) Order 1988 provides that a person is not eligible for homelessness

assistance if they are a person from abroad who is ineligible for such assistance by virtue of regulations made by the Secretary of State.

4.2 *The Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006* (“the principal regulations”) provide that a person is ineligible for an allocation of housing accommodation or for homelessness assistance in Northern Ireland if they are not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland (“the Common Travel Area”). A person is treated as not habitually resident if they do not have a right to reside in the Common Travel Area or if their right to reside is of a specified type.

4.3 A ruling of the Court of Justice of the European Union (CJEU) in the case of *Zambrano* (C-34/09) stated that a non-EEA national (Mr Zambrano), who had been living and working in Belgium without a work permit, had a right to reside and to work in Belgium so that his children, who have Belgian nationality, would not be forced to leave the territory of the EU and thereby prevented from exercising their rights as EU citizens. The Home Office has therefore made regulations that recognise the right of entry, the right to reside and the right to work of non-EEA nationals who are the primary carers of dependent British citizens where this is necessary to ensure that such British citizens are not forced to leave the UK and prevented from exercising their rights as EU citizens. *The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012* came into force on 8 November 2012.

4.4 Social security regulations have been amended to provide that persons with the *Zambrano* right to reside are not entitled to income-related benefits in Great Britain or Northern Ireland.

4.5 To ensure that the legislation governing the housing entitlement of persons from abroad in Northern Ireland continues to be aligned with the legislation which operates in other parts of the UK, this statutory rule amends the principal regulations to provide that a person who relies on the *Zambrano* right to live and work in the UK shall be treated as a person from abroad who is ineligible for an allocation of housing accommodation or for homelessness assistance in Northern Ireland.

5. Territorial Extent and Application

5.1 This rule applies to Northern Ireland only.

5.2 The rule reflects equivalent provision made for England in the *Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012*.

6. European Convention on Human Rights

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

7. Policy background

7.1 Most non-EEA nationals who have a right of residence in the UK have an immigration status that gives no recourse to public funds. While Government departments in Great Britain including the Home Office, the Department of Work and Pensions, the Department for Communities and Local Government and Her Majesty's Revenue & Customs are agreed that, because the *Zambrano* judgment gives a right to work, people with this right to reside should also be entitled to claim contribution-based benefits if they have paid sufficient national insurance contributions and met the other entitlement criteria, departments also agree that a *Zambrano* right to reside should not confer any entitlement to means-tested benefits, child benefit, child tax credit, social housing or homelessness assistance. This is considered a proportionate means of achieving the Government's legitimate aim of encouraging migrants who can make a valuable contribution to the economy, while delivering fairness to the taxpayer by maintaining the current level of benefits and services provided to the general population. This rule therefore ensures that persons from abroad who rely on the *Zambrano* right to reside are not eligible for social housing or homelessness assistance in Northern Ireland.

7.2 This rule represents the third amendment of the principal regulations. If any further amendments are required, the amendments shall be consolidated.

8. Consultation outcome

8.1 There has been no formal consultation on this rule because the changes it makes are minor and technical, and do not reflect any significant change in Government policy. A draft of the rule was sent to the Northern Ireland Housing Executive on 10 October 2012 with an explanatory letter and a copy of the final rule was sent to the Executive when it was made.

9. Guidance

9.1 The Department will amend its guidance to the Northern Ireland Housing Executive to reflect the procedures for dealing with applicants for social housing and homelessness assistance whose right to reside is based on the *Zambrano* decision.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is not expected to be significant. The number of persons claiming a *Zambrano* right who have applied for social housing and homelessness assistance in Northern Ireland to date has been minimal.

10.3 An Impact Assessment has not been prepared for this rule.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department will ask the Northern Ireland Housing Executive to record applications for social housing and homelessness assistance from persons claiming the *Zambrano* right to reside. The information will be reviewed twelve months after the regulations come into operation.

13. Contact

Stephen Baird at the Department for Social Development (Housing Division) (Tel: 028 90 829277 or e-mail: stephen.baird@dndni.gov.uk) can answer any queries regarding the rule.