

EXPLANATORY MEMORANDUM TO

THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2023

2023 No. 79

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This Instrument makes amendments to the Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006 (S.R. 2006/397).
- 2.2 This instrument exempts British nationals and others not subject to immigration control from the habitual residence test that they would otherwise be required to satisfy to be eligible for an allocation of housing and homelessness assistance if they were residing in Sudan before 15 April 2023 and left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan.
- 2.3 This legislation will come into effect from 15 May 2023.

3. Matters of special interest to Parliament

- 3.1 This instrument is being made under emergency procedures and breaches the 21-day rule. This is necessary because of the sudden and unexpected nature of the situation in Sudan and the immediate need to provide support to those arriving from Sudan. Delay in the legislation coming into force will cause potential delays in access to housing support.

4. Extent and Territorial Application

- 4.1 The territorial extent of regulation 2 is Northern Ireland. The territorial application of this provision is Northern Ireland 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 This Instrument makes amendments to the Allocation of Housing and Homelessness (Eligibility) (Northern Ireland) Regulations 2006 (“the Eligibility Regulations”).
- 6.2 Article 22A of the Housing (Northern Ireland) Order 1981 (“1981 Order”) provides that the Northern Ireland Housing Executive shall not allocate social housing to, amongst other groups, any person from abroad not subject to immigration control specified in regulations by the Secretary of State under article 22A(3).

- 6.3 Similarly, article 7A of the Housing (Northern Ireland) Order 1988 (“1988 Order”) provides that, amongst other groups, any person from abroad not subject to immigration control specified in regulations by the Secretary of State under article 7A(2) is not eligible for homelessness assistance.
- 6.4 Regulations 3(1) and 4(1) of the Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006 (S.R. 2006/397) (“2006 Regulations”) make provision under article 22A(3) of the 1981 Order and article 7A(2) of the 1988 Order respectively. They provide that a person not subject to immigration control is ineligible for an allocation of housing and homelessness assistance if, among other things, the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland. Articles 3(2) and 4(2) of the 2006 Regulations set out exceptions to those provisions.
- 6.5 To establish ‘Habitual Residence’ an applicant must demonstrate a degree of permanence in their residence in one of those places. Habitual Residence implies an association between the individual and the place of residence and relies substantially on fact.
- 6.6 Regulations 2(2) and (3) of this instrument amend regulations 3(2) and 4(2) of the 2006 Regulations respectively. They make British Nationals and other persons not subject to immigration control eligible for an allocation of housing accommodation and homelessness assistance without application of the Habitual Residence Test if they were resident in Sudan immediately before 15 April 2023 and left Sudan in connection with the violence which rapidly escalated on 15 April 2023.

7. Policy background

What is being done and why?

- 7.1 Under current eligibility rules in Northern Ireland (NI), British nationals and other persons not subject to immigration control need to meet the Habitual Residence Test before they can be eligible for an allocation of housing accommodation and homelessness assistance in NI. This means that such persons coming to NI from abroad who are not resuming a previous period of habitual residence will usually need to be resident in the NI for around 1-3 months after their arrival before they are eligible for support. This means that many such persons who have left Sudan in connection with the escalation in violence on 15th April are not immediately eligible for housing assistance.
- 7.2 We are therefore making emergency legislation to provide, from commencement of this instrument, day one eligibility for the allocation of housing accommodation and homelessness assistance to this group of people, thus aligning with the policy objectives to support individuals' arrival in the United Kingdom in such exceptional circumstances.
- 7.3 These Regulations will exempt persons not subject to immigration control who are arriving from Sudan due the increase in violence on 15 April 2023 and were residing in Sudan before 15 April 2023 from the Habitual Residence Test in Northern Ireland. Separate regulations are being made to disapply the Habitual Residence Test in England and Wales for the above cohort. Those regulations will also provide that persons arriving from Sudan in those circumstances and who are subject to immigration control will also have immediate eligibility for housing assistance in England, Wales, Scotland and Northern Ireland provided that they are not required to

be supported without recourse to public funds. In Scotland, persons not subject to immigration control are not subject to the Habitual Residence Test.

What did any law do before the changes to be made by this instrument?

- 7.4 As set out above, under the 1981 and 1988 Orders, a person from abroad who is not subject to immigration control in Northern Ireland is required to meet the Habitual Residence Test to be eligible for social housing allocations and homelessness assistance. This is to make sure that access to public funds is not a determining reason to migrate to the United Kingdom.
- 7.5 Case law has established that, to establish habitual residence, a person must (i) have a settled intention to reside, and (ii) have been resident for an “appreciable period of time”.
- 7.6 People fleeing Sudan in connection with the escalation in violence will be subject to the Habitual Residence Test and may be barred from accessing social housing and homelessness assistance until they can demonstrate they are habitually resident.

Why is it being changed?

- 7.7 The law is being changed so that those arriving in the United Kingdom from Sudan can more rapidly access homelessness assistance and be eligible for an allocation of social housing. This is necessary because of the sudden and unexpected nature of the situation in Sudan and the immediate need to provide support to those arriving from Sudan.

What will it now do?

- 7.8 These Regulations will mean that those who are not subject to immigration control and who are arriving in the United Kingdom from Sudan do not have to satisfy the Habitual Residence Test to be eligible for housing and homelessness assistance.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 This instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 Due to the urgency of the regulations no consultation has been carried out and the instrument has not been scrutinised by the Northern Ireland Housing. Letters have been exchanged with Northern Ireland Housing Executive and members of relevant Parliamentary committees to inform them of these changes.
- 10.2 Drafts have been shared with the Northern Ireland Executive.

11. Guidance

- 11.1 Guidance will be issued to Northern Ireland Housing Executive staff and decision makers to ensure that they are aware of this new exception and how to apply it.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because there is no impact on businesses.

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 Department for Levelling Up, Housing and Communities is firmly committed to evaluating and monitoring the impact of its policies. These are emergency measure intended to help people leaving Sudan as a result of the escalation in violence on 15 April 2023, and as such the department will continue to review these provisions in response to developments in Sudan.
- 14.2 The regulations do not contain a statutory review clause.

15. Contact

- 15.1 Freya Cullinane and Edward Lowe at the Department for Levelling Up, Housing and Communities can be contacted with any queries regarding the instrument.
Freya.Cullinane@levellingup.gov.uk or Edward.Lowe@levellingup.gov.uk.
- 15.2 Victoria Latham, Deputy Director for Social Housing, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Felicity Buchan MP at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.