

**EXPLANATORY MEMORANDUM TO**  
**THE PERSONS SUBJECT TO IMMIGRATION CONTROL (HOUSING**  
**AUTHORITY AND HOMELESSNESS) (AMENDMENT) ORDER 2006**

**2006 No. 2521**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 The Persons Subject to Immigration Control (Housing Authority and Homelessness) (Amendment) Order 2006 (the 2006 Order) sets out the classes of persons subject to immigration control who are eligible for a tenancy of, or licence to occupy, housing authority accommodation in England, Scotland and Northern Ireland under section 118 of the Immigration and Asylum Act 1999 and the classes of persons subject to immigration control who are eligible for accommodation or assistance under homelessness provisions in Scotland and Northern Ireland under section 119 of the Immigration and Asylum Act 1999.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Background**
  - 4.1 Section 118 of the Immigration and Asylum Act 1999 ensures that, other than where it is provided under arrangements made under Part VI (support for asylum seekers) of the 1999 Act, tenancies of and licences to occupy local authority housing may only be granted to persons subject to immigration control if they fall within a class specified in an order made by the Secretary of State.
  - 4.2 Section 119 ensures that persons subject to immigration control will only have access to accommodation or assistance under certain specified homelessness provisions in Scotland and Northern Ireland if they fall within a class of person specified in an order made by the Secretary of State. Similar provisions for England and Wales are contained in section 185 of the Housing Act 1996 (persons from abroad not eligible for housing assistance).
  - 4.3 S.I. 2000/706, the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (the 2000 Order), specifies classes of person subject to immigration control for the purposes of section 118 (articles 3 to 6) and section 119 (articles 7 to 9). The 2006 Order makes two amendments to the classes of person subject to immigration control and one consequential amendment.

## **5. Extent**

- 5.1 This instrument applies to England, Scotland and Northern Ireland. The provisions of this Order will be replicated in The Homelessness (Wales) Regulations 2006 and The Allocation of Housing (Amendment) (Wales) Regulations 2006.

## **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 EC Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the Qualification Directive), was adopted on 29<sup>th</sup> April 2004.
- 7.2 The main objective of this Directive is to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection and to ensure that a minimum level of benefits and services is available for persons granted refugee status or subsidiary protection. Member States are required to transpose the Qualification Directive by 10<sup>th</sup> October 2006. The Qualification Directive largely reflects UK practice in the field of asylum and Article 31 of the Qualification Directive introduces rules on the recognition of refugees and others in need of international protection and on the legal status given to such persons. It introduces a new category of protection known as ‘subsidiary protection’.
- 7.3 In order to comply with the Qualification Directive the Home Office will include the status of Humanitarian Protection within the immigration rules.
- 7.4 The 2006 Order will amend the 2000 Order to reflect these changes to the immigration rules. It inserts a new class (Class BA) that covers persons who have been granted humanitarian protection under the immigration rules. (Before 9<sup>th</sup> October 2006 persons qualifying for humanitarian protection were granted leave outside the immigration rules. From 9<sup>th</sup> October 2006 the status of humanitarian protection will be included within the immigration rules.) This Order will ensure that people granted Humanitarian Protection will continue to be eligible for a tenancy of, or licence to occupy, housing authority accommodation in England, Scotland and Northern Ireland under section 118 of the Immigration and Asylum Act 1999 and for accommodation or assistance under homelessness provisions in Scotland and Northern Ireland under section 119 of the Immigration and Asylum Act. The Housing Department for Social Justice and Regeneration, the National Assembly for Wales will be making similar amendments to relevant Welsh legislation.
- 7.5 In addition, the 2006 Order replaces one of the limbs of Class B to reflect changes to the process of and language used in the granting of leave outside

the immigration rules. Previously, exceptional leave was granted, but this has been replaced with leave outside the immigration rules.

## **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 This Order will have minimal impact on local authorities. Hitherto eligibility to housing and homelessness provision for people granted Humanitarian Protection has been met under the provisions of Class B (a person who has been granted by the Secretary of State exceptional leave to enter or remain in the United Kingdom outside the provisions of the immigration rules). The inclusion of Humanitarian Protection within the immigration rules serves to regularise one of the forms of leave outside of the rules.
- 8.3 There are no identifiable costs to local authorities arising from this Instrument.

## **9. Contact**

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