

EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)
(ENGLAND) (AMENDMENT) REGULATIONS 2014

2014 No. 435

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

2.1 These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006/1294) (“the Eligibility Regulations”) in order to make a new category of persons eligible for an allocation of social housing and homelessness assistance. This category consists of certain Afghan citizens who were employed by the UK government in Afghanistan and have since been granted limited leave to remain in the UK.

2.2 The Regulations also remove redundant provisions dealing with the worker authorisation requirements for Bulgarian and Romanian nationals which expired on 1 January 2014. In addition, they remove provisions introduced to deal with housing eligibility for those affected by natural disasters and other international situations which are no longer needed because they were time limited or are no longer relevant.

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

None

4. Legislative Context

4.1 The Housing Act 1996 (“the 1996 Act”) provides that a local housing authority shall not allocate housing (s160ZA(1)(a)) or give homelessness assistance (s185(1)) to persons from abroad who are not eligible. There are two types of person from abroad for these purposes. Firstly, persons who are subject to immigration control who will not be eligible for an allocation of housing or for homelessness assistance unless they come within a class of person prescribed in regulations made by the Secretary of State (sections 160ZA(2) and 185(2) of the 1996 Act). Secondly, other persons from abroad who will be eligible for an allocation of social housing or homelessness assistance unless they come within a class of person prescribed as ineligible by virtue of regulations made by the Secretary of State under sections 160ZA(4) and 185(3).

4.2 The classes of persons from abroad who are eligible or ineligible for an allocation of housing accommodation or homelessness assistance are set out in the Eligibility Regulations. Regulations 3 and 5 prescribe the classes of persons who are subject to

immigration control but who are to be treated as persons from abroad who are eligible for an allocation of housing accommodation or for homelessness assistance respectively. Regulations 4 and 6 prescribe the classes of person from abroad who are not subject to immigration control but are treated as persons from abroad who are ineligible for an allocation of housing accommodation or homelessness assistance. They provide that such persons should only be eligible for an allocation of housing accommodation or homelessness assistance if they are habitually resident in the UK, Channel Islands, the Isle of Man or the Republic of Ireland (the Common Travel Area). However, certain categories of person are exempted from this requirement set out at regulations 4(2) and 6(2).

4.3 The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2014 amend regulations 3 and 5 of the Eligibility Regulations. They make provision for certain Afghan nationals directly employed by the UK Government in Afghanistan who have been granted limited leave to remain in the UK to be eligible for an allocation of social housing and homelessness assistance if they are habitually resident.

4.4 These Regulations also amend regulations 4 and 6 of the Eligibility Regulations to remove redundant provisions dealing with worker authorisation requirements for Bulgarian and Romanian nationals which expired on 1 January 2014. The worker authorisation scheme was introduced by the Accession (Immigration and Worker Authorisation) Regulations 2006 (S.I 2006/3317).

4.5 They also remove provisions which are no longer relevant due to the passage of time. These provisions disappplied the habitual residence requirement in relation to certain groups who came to the UK as a result, for example, of conflicts or natural disasters overseas which are now some time in the past.

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

- What is being done and why

7.1 In recognition of their unique and exceptional service to this country, the Government has decided to offer the opportunity to resettle in the United Kingdom to certain locally engaged staff in Afghanistan who have worked in particularly dangerous

and challenging roles in Helmand. The offer is open to Afghan citizens aged 18 or over; employed in Afghanistan directly by the Ministry of Defence, the Foreign and Commonwealth Office or the Department for International Development; made redundant on or after 19 December 2012; who qualify for the resettlement redundancy package described in the written Ministerial Statement of the Secretary of State for Defence of 4 June 2013.

7.2 The Government estimates that 600 locally engaged staff will be eligible for resettlement, although the number of people relocating under the scheme could be 3,000 taking into account family members. Arrivals to the United Kingdom will be phased throughout 2014 and 2015. In order to help those relocating to adjust to life in the United Kingdom, the Government is liaising with local authorities to provide them with accommodation and support for the first three months, funded by central Government.

7.3 The Home Office has made changes to the Immigration Rules to provide for eligible applicants to be granted 5 years limited leave with recourse to public funds. This will also apply to their spouse or partner and any minor dependent children.

7.4 These Regulations will ensure that those Afghan citizens who have the relevant form of leave are also eligible for social housing and homelessness assistance once they are considered to be habitually resident in the United Kingdom, which is generally after three months.

7.5 Broadly, the Government's policy in relation to persons from abroad who are not subject to immigration control is that they should only have access to social housing and homelessness assistance if they can demonstrate a genuine connection to the UK (or the wider Common Travel Area) and for that reason eligibility is subject to a test of habitual residence. However, certain persons from abroad are exempt from the habitual residence requirement under the Eligibility Regulations where this is in line with Government policy or the requirements of EU law. These Regulations also make minor changes to the Eligibility Regulations to remove a number of redundant and outdated provisions which dis-apply the habitual residence test to persons from abroad in certain specific cases.

7.6 The first change relates to nationals of Bulgaria and Romania required to be authorised to work by the Home Office under the Accession (Immigration and Worker Authorisation) Regulations 2006. The worker authorisation requirements ceased to apply from 1 January 2014 when the transitional controls regulating access to the UK labour market by nationals of Bulgaria and Romania came to an end. The second relates to persons who left Montserrat after 1st November 1995 because of the volcanic eruption there. Given the length of time that has elapsed since the volcanic eruption, it is considered that this exemption from the habitual residence test is no longer necessary to deliver the Government's policy. The third relates to people who left the Lebanon on or after 25 July 2006 to escape the armed conflict there. This exemption was time limited and came to an end in January 2007. The last relates to people who left Zimbabwe and arrived in Great Britain between February 2009 and March 2011 under a Government

scheme open to those over 70 years of age or with health or social care needs. This provision is now redundant.

Consolidation

7.7 There are no current plans to consolidate the Eligibility Regulations which these Regulations amend, although the Department will keep this under review.

8. Consultation outcome

The Government has not consulted on these amending Regulations because they do not reflect a change in the Government's overall policy regarding access to social housing and homelessness assistance for persons from abroad. These Regulations broadly align with housing benefit regulations.

9. Guidance

The Government does not propose to issue statutory guidance to accompany the regulations but will write to local housing authorities with advice on the purpose and effect of the regulations and this letter will be published on the GOV.UK website.

10. Impact

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

10.2 The impact on the public sector is not expected to be significant. The number of Afghan nationals who are enabled to relocate to the UK under the Government scheme will be small, and it is considered that only a very small proportion of these are likely to have priority for an allocation of housing accommodation or a priority need for homelessness assistance. This means that few will access settled social housing or accommodation provided under the homelessness legislation.

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 to households headed by a foreign national through CORE (the Continuous Recording of lettings) and data on homelessness decisions in relation to applications by foreign nationals through the quarterly P1E return. This information is published on the GOV.UK website. We will review the operation of these Regulations as appropriate.

13. Contact

Frances Walker at the 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