

**EXPLANATORY MEMORANDUM TO**

**THE PERSONS SUBJECT TO IMMIGRATION CONTROL (HOUSING  
AUTHORITY ACCOMMODATION AND HOMELESSNESS) (AMENDMENT)  
ORDER 2020**

**2020 No. 825**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This Order amends the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (S.I. 2000/706) (“the 2000 Order”).

2.2 It makes provisions for the following two new categories of people to be eligible for housing authority accommodation and homelessness assistance:

- family members of relevant People of Northern Ireland who have been granted limited leave to enter or remain in the United Kingdom under Appendix EU to the Immigration Rules<sup>1</sup>;
- persons who are habitually resident in the United Kingdom or the Common Travel Area and who have been granted leave to remain as a stateless person under the Immigration Act 1971, by virtue of paragraph 405 of the Immigration Rules.

**3. Matters of special interest to Parliament**

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

3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England, Scotland and Northern Ireland.

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<sup>1</sup> Pursuant to Appendix EU to the Immigration Rules, made in accordance with section 3(2) of the Immigration Act 1971 (c.77).

## **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 Under sections 118 and 119 of the Immigration and Asylum Act 1999, a person who is subject to immigration control is ineligible for an allocation of housing by a local authority (as defined in section 118(2)) or for housing assistance, unless they come within a class of persons specified in an Order made by the Secretary of State. The 2000 Order makes such provision.
- 6.2 This Order amends the 2000 Order to specify two additional classes of person who are eligible for such assistance: Class FB – family members of a relevant person of Northern Ireland and Class FC – persons who are stateless, as inserted into article 3.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The New Decade, New Approach<sup>2</sup> deal to restore the devolved government in Northern Ireland was published on 9 January 2020. It includes a commitment by the UK Government to change the rules governing how the people of Northern Ireland<sup>3</sup> bring their family members to the UK. This change will mean that eligible family members of people of Northern Ireland can apply for immigration status on broadly the same terms as family members of Irish citizens in the UK.
- 7.2 To implement the Government's commitment, the Home Office introduced changes to Appendix EU to the Immigration Rules on 14 May 2020 (to come into force on 24 August 2020). Under these changes, eligible family members of a relevant person of Northern Ireland will be able to apply for immigration status under the EU Settlement Scheme (EUSS), on broadly the same terms as a family member of an Irish citizen. The Home Office provisions apply to both EEA and non-EEA family members of a relevant person of Northern Ireland. However, EEA nationals residing in the United Kingdom by 31 December 2020 are already able to apply to the EU Settlement Scheme in their own right without relying on a family relationship with a person of Northern Ireland.
- 7.3 Under the Immigration Rules changes, eligible family members of a relevant person of Northern Ireland will be granted leave to enter or remain under the EUSS with no conditions attached to their leave. The new Class FB inserted into the 2000 Order will enable family members of a relevant person of Northern Ireland to be eligible for an allocation of social housing or for homelessness assistance on broadly the same terms as the family members of an Irish citizen or another EEA national. Currently, the family members of an EEA national (including Irish citizens who rely on their rights

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<sup>2</sup> Available at: <https://www.gov.uk/government/news/deal-to-see-restored-government-in-northern-ireland-tomorrow>

<sup>3</sup> 'The people of Northern Ireland' means 'all persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or is otherwise entitled to reside in Northern Ireland without any restriction on their period of residence'. This definition is drawn from Annex 2 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, done on 10 April 1998

as an EEA national) are eligible and do not need to demonstrate habitual residence if the EEA national is a worker, self-employed, or has a right of permanent residence in line with the provisions in the Immigration (European Economic Area) Regulations 2016<sup>4</sup>. Family members of an EEA national are not eligible if the EEA national is in the initial three months of residence in the UK, or is looking for work, self-sufficient or a student.

7.4 This Order also makes changes in relation to stateless people. The new Class FC inserted into the 2000 Order will make eligible for an allocation of social housing and homelessness assistance a small group of third country nationals who are stateless and have limited leave on this basis under the Home Office's Immigration Rules. Stateless persons are those who through no fault of their own are unable to return to any other country for purposes of residence there.

7.5 A specific category of leave for stateless persons was created within the Immigration Rules in 2013<sup>5</sup>. This is limited leave granted with recourse to public funds and is granted for five years, after which beneficiaries of this leave can apply for settlement.

7.6 This change will align our eligibility rules with those for access to welfare benefit, as well as assist to meet the requirements of the 1954 Convention relating to the Status of Stateless Persons, which the UK has ratified.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018, as it does not specifically relate to the withdrawal of the United Kingdom from the European Union.

## **9. Consolidation**

9.1 There are no current plans to consolidate the 2000 Order, which this Order amends, although the Department will keep this under review.

## **10. Consultation outcome**

10.1 The Government has not consulted on this amending Order because it does not reflect a change in the Government's overall policy regarding eligibility to access social housing and homelessness assistance for persons subject to immigration control. The changes form part of the commitment made under 'The New Decade, New Approach' and correct a gap in relation to those granted stateless leave.

## **11. Guidance**

11.1 Once the eligibility criteria have been amended, the devolved administrations of Scotland and Northern Ireland will be responsible for formulating their own guidance.

## **12. Impact**

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

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<sup>4</sup>[The Immigration \(European Economic Area\) Regulations 2016](#)

<sup>5</sup> Available at <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons>

- 12.2 The impact on housing authorities is not expected to be significant as this statutory instrument will extend the existing eligibility rules to the additional categories of people made eligible under this instrument.
- 12.3 An impact Assessment has not been prepared for this instrument for the reasons set out above.

**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 approach to monitoring of this legislation is that an internal review will be carried out after 12 months and the legislation may be amended accordingly.
- 14.2 The Order does not include a statutory review clause. The measures in question have negligible costs to business and there are no other reasons to consider a statutory review clause to be appropriate.

**15. Contact**

- 15.1 Lindsay Scott at the Home Office Telephone: 07824 551689 or email: [Lindsay.Scott8@homeoffice.gov.uk](mailto:Lindsay.Scott8@homeoffice.gov.uk) can answer any queries regarding the instrument.
- 15.2 Alison Samedi at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Immigration Minister, Kevin Foster MP, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.