

EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)
(ENGLAND) AND PERSONS SUBJECT TO IMMIGRATION CONTROL
(HOUSING AUTHORITY ACCOMMODATION AND HOMELESSNESS)
(AMENDMENT) REGULATIONS 2023

2023 No. 530

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) (England) Regulations 2006 (“the Eligibility Regulations”) and to the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (“the PSIC order”).
- 2.2 It enables Local Authorities in England to provide housing and homelessness assistance to a person who was 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; has been granted leave in accordance with the immigration rules; and who is not required to be supported without recourse to public funds.
- 2.3 This instrument will also exempt 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 housing and homelessness assistance if they are fleeing Sudan in the circumstances described above.
- 2.4 This legislation will come into effect from 15 May 2023.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 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 England and Wales. The territorial application of this provision is England only.
- 4.2 The territorial extent of regulation 3 is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of regulation 3(1) and 3(2) is England, Scotland and Northern Ireland. The territorial application of regulation 3(3) is Scotland and Northern Ireland.

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) (England) Regulations 2006 (“the Eligibility Regulations”), and the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (“the PSIC order”).

6.2 Sections 160ZA(2) and 185(2) of the Housing Act 1996 (“the 1996 Act”) provide that a local housing authority shall not allocate housing accommodation under Part 6 of the Act, or give homelessness assistance under Part 7 of the Act, to persons from abroad who are subject to immigration control unless they come within a class of persons prescribed in Regulations made by the Secretary of State.

6.3 Under sections 160ZA(4) and 185(3) of the 1996 Act, a person who is not subject to immigration control may be made ineligible by Regulations prescribed by the Secretary of State.

6.4 For these purposes, ‘person subject to immigration control’ has the meaning given in section 13(2) of the Asylum and Immigration Act 1996 (c. 49).

6.5 Regulations 3 and 5 of the Eligibility Regulations prescribe the classes of persons who, although subject to immigration control, are eligible for an allocation of housing accommodation and for homelessness assistance respectively.

6.6 Regulations 4 and 6 of the Eligibility Regulations prescribe the classes of persons who are not subject to immigration control but who are ineligible for an allocation of housing accommodation and for homelessness assistance respectively. This includes a requirement that, unless specifically exempted, persons must be habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, or the Republic of Ireland.

6.7 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.

6.8 Regulations 2(2) and 2(4) of this instrument amend Regulations 3 and 5(1) of the Eligibility Regulations respectively. They provide that a person who (a) was residing in Sudan before 15 April 2023, (b) left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan, (c) has been granted leave in accordance with the immigration rules, and (d) is not required to be supported without recourse to public funds, is in a class eligible for an allocation of housing accommodation and homelessness assistance respectively.

6.9 Regulations 2(3) and 2(5) of this instrument amend Regulations 4(2) and 6(2) of the Eligibility Regulations respectively. They make British Nationals and other persons not subject to immigration control, and who have left Sudan in connection with the

increase in violence on 15 April 2023, and who were residing in Sudan before 15 April 2023, eligible for allocation of housing accommodation and homelessness assistance without application of the Habitual Residence Test.

- 6.10 Section 118 of the Immigration and Asylum Act 1999 ("IAA 1999") prohibits housing authorities in England and Wales, Scotland and Northern Ireland from the granting of a tenancy of, or licence to occupy, housing accommodation under specified accommodation provisions to a person subject to immigration control unless the person is of a class specified by the Secretary of State by order. (This section does not apply in relation to an allocation of housing to which Part 6 of the Housing Act 1996 applies. It does however apply to provision of housing to which Part 7 of the Housing Act 1996 (homelessness: England) applies.)
- 6.11 Section 119 of the IAA 1999 provides that, in Scotland and Northern Ireland, a person subject to immigration control is not eligible for accommodation or assistance under specified homelessness provisions unless he is of a class specified in an order made by the Secretary of State.
- 6.12 The PSIC Order prescribes classes under sections 118 and 119 of the IAA 1999. Regulation 3 amends the PSIC Order to permit the provision of accommodation under the accommodation provisions in England, Scotland and Northern Ireland and accommodation or assistance under the homelessness provisions in Scotland and Northern Ireland to the class of persons mentioned in paragraph 6.8.

7. Policy background

What is being done and why?

- 7.1 As set out above, eligibility for the provision of housing and homelessness assistance by a local authority is dependent on a person's immigration status. Where a person is not subject to immigration control, regulations provide that a person is not generally eligible if they are not habitually resident in the UK, the Channel Islands, the Isle of Mann or the Republic of Ireland. Where a person is subject to immigration control, they are not eligible unless they are within a prescribed class. Many such prescribed classes, including that for persons who have indefinite leave to enter or remain, incorporate the Habitual Residence Test. This means that many individuals who have left Sudan in connection with the increase in violence on 15 April 2023 will not be eligible for housing and homelessness assistance because they cannot satisfy the habitual residence test (which generally requires residence for around 1-3 months if a person is not resuming a previous period of residence).
- 7.2 We are therefore making emergency legislation to provide, from commencement of this instrument, day one eligibility for the provision of housing and homelessness assistance to persons who were residing in Sudan before 15 April 2023 and left due to the increase in violence on that date, thus aligning with the policy objectives to support individuals' arrival in the United Kingdom in such exceptional circumstances. They do this by exempting persons not subject to immigration control from the Habitual Residence Test in England, and by adding a new class of persons subject to immigration control who are eligible that is not subject to this test in England, Scotland and Northern Ireland (see para 6.8 for a description of the class).
- 7.3 Separate provision will be made to disapply the Habitual Residence Test in Northern Ireland for persons not subject to immigration control. In respect of Wales, the Secretary of State's powers have been transferred to the Senedd who are legislating

separately. In Scotland, persons not subject to immigration control are not subject to the Habitual Residence Test.

- 7.4 The speed of the escalation in violence has forced those residing in Sudan to flee their homes and the country, in some cases with little or no belongings. In order to support individuals' arrival in the UK in such exceptional circumstances, the exemption to the residency tests and eligibility for housing and homelessness assistance will include all those arriving from Sudan including fleeing UK nationals and those with immigration leave who are not required to be supported without recourse to public funds. Many will be returning as family units where each family member ought to be provided the same support in the United Kingdom.

Explanations

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

- 7.5 As set out above, under both the Housing Act 1996 and the Immigration and Asylum Act 1999,- a person who is subject to immigration control is not eligible for housing or homelessness assistance unless within a prescribed class. Under sections 160ZA(4) and 185(3) of the 1996 Act, a person who is not subject to immigration control may be made ineligible by Regulations prescribed by the Secretary of State. Regulations 4 and 6 of the Eligibility Regulations prescribe the classes of persons who are not subject to immigration control but who are ineligible for an allocation of housing and for homelessness assistance respectively, including a requirement that, unless specifically exempted, persons must be habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, or the Republic of Ireland. This is to make sure that access to public funds is not a determining reason to migrate to the United Kingdom.
- 7.6 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”.
- 7.7 Before the changes to be made by this instrument many such persons feeling Sudan in connection with the escalation in violence on 15th April may be barred from accessing housing and homelessness assistance until they can demonstrate they are habitually resident.

Why is it being changed?

- 7.8 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?

- 7.9 These Regulations will make eligible for provision of housing and homelessness assistance those arriving in the United Kingdom from Sudan in connection with the increase in violence on 15 April 2023, who have been granted leave in accordance with immigration rules and who are not required to be supported without recourse to public funds. The law is also being changed so 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 an allocation of housing accommodation 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. Letters have been exchanged with Local Authorities and members of relevant Parliamentary committees to inform them of these changes.

10.2 Drafts have been shared with the Welsh and Scottish Governments, as well as the Northern Ireland Executive.

11. Guidance

11.1 Guidance will be issued to Local Authority staff to ensure that they are aware of these new exceptions and how to apply them.

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 measures 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.