EXPLANATORY MEMORANDUM TO

THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2021

2021 No. 254

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities, and Local Government and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These regulations make amendments to the Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006 (S.R. 2006/397).

2.2 They exempt those British and Irish nationals and some Commonwealth citizens with a right of abode in the UK who left Afghanistan in connection with the collapse of the Afghan government on 15 August 2021 from the Habitual Residence Test applicable in relation to eligibility for social housing and homelessness assistance in Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These regulations breach the 21 day rule. The Secretary of State believes that this is necessary because of the sudden and unexpected nature of the situation in Afghanistan and the immediate need to provide support to those arriving from Afghanistan. Delay in the legislation coming into force will cause potential delays in access to housing allocations and homelessness assistance.

4. Extent and Territorial Application

4.1 The territorial extent of these regulations is Northern Ireland.

4.2 The territorial application of these regulations is Northern Ireland.

5. European Convention on Human Rights

5.1 As these regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Article 22A of the Housing (Northern Ireland) Order 1981 (“1981 Order”) provides that the Northern Ireland Executive shall not allocate housing accommodation to, amongst other groups, those classes of person from abroad not subject to immigration control specified in regulations by the Secretary of State under article 22A(3).

6.2 Similarly article 7A of the Housing (Northern Ireland) Order 1988 ("1988 Order") provides that, amongst other groups, those classes of person from abroad not subject to immigration control specified in regulations by the Secretary of State under article 7A(2) are not eligible for housing assistance.

6.3 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 from abroad not subject to immigration control is to be treated from abroad who is ineligible for an allocation of housing accommodation / housing 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.

6.4 These regulations amend articles 3(2) and 4(2) of the 2006 Regulations in order to exempt persons not subject to immigration control who left Afghanistan in connection with the collapse of the Afghan government from the application of the Habitual Residence Test in relation to eligibility for an allocation of social housing or homelessness assistance in Northern Ireland.

7. Policy background

What is being done and why?

7.1 Since the collapse of the Afghan government on 15 August 2021 the UK Government has evacuated a number of UK nationals, Afghan nationals and family members to the UK.

7.2 This includes Afghan nationals who have assisted the UK in Afghanistan through the Afghan Relocation and Assistance Policy (ARAP) scheme, individuals considered vulnerable if they remained in Afghanistan through the Afghanistan Citizens Resettlement Scheme (ACRS), and other people who have left Afghanistan in connection with the collapse of the Afghan Government on 15 August 2021.

7.3 The Home Office has announced that those arriving in the UK under all three schemes will be granted Indefinite Leave to Remain, with the exception of initial arrivals under the ACRS who have been granted 6 months Leave Outside the Rules. Granting Indefinite Leave to Remain provides certainty and stability to those resettling in the UK. It provides the right to work and recourse to public funds, including eligibility for the allocation of social housing and homelessness assistance.

7.4 Under current eligibility rules in Northern Ireland (NI), UK nationals and other persons not subject to immigration control in NI need to meet the Habitual Residence Test before they can be eligible for the allocation of social housing or homelessness assistance in NI. This means that local authorities may require these individuals to be residing in the NI for around 1-3 months after their arrival before they consider them as eligible for support.

7.5 These Regulations will exempt persons not subject to immigration control who are arriving from Afghanistan due to the collapse of the Afghan government from the Habitual Residence Test in Northern Ireland. Separate regulations have been made to disapply the Habitual Residence Test in England and Scotland for all the above cohorts and in Northern Ireland for persons who are subject to immigration control.

Explanations

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

7.6 A person who is not subject to immigration control in Northern Ireland is generally required to meet the Habitual Residence Test to be eligible for the allocation of social housing and homelessness assistance. Its purpose is to ensure that social housing and homelessness assistance are offered to people with reasonably close ties to the UK and an intention to settle here.

7.7 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".

7.8 Before the changes to be made by this instrument the Habitual Residence Test would have applied to British nationals and other persons not subject to immigration control who left Afghanistan in connection with the collapse of the Afghan government.

Why is it being changed?

7.9 The law is being changed to ensure those persons not subject to immigration control arriving in the UK from Afghanistan due to the current situation do not have to satisfy the Habitual Residence Test to be eligible for social housing allocation and homelessness assistance.

What will it now do?

7.10 These Regulations will exempt persons who left Afghanistan in connection with the collapse of the Afghan government, from the Habitual Residence Test in Northern Ireland. This will mean they are eligible for the allocation of social housing and homelessness assistance.

8. European Union Withdrawal and Future Relationship

8.1 These regulations do not relate to withdrawal from the European Union.

9. Consolidation

9.1 These regulations do not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 No consultation has been carried out and these regulations have not been scrutinised by Local Authority Associations due to the urgency with which it needed to be made. 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 Northern Ireland Executive.

11. Guidance

11.1 Guidance will be issued to local authority staff and Local Authority 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 The impact of these regulations on the public sector is expected to be positive in operational and financial terms. These regulations will help to speed up the process by which Local Authorities can deliver housing assistance, meaning that people exempted from the Habitual Residence Test by these regulations can be moved from more expensive emergency accommodation to less expensive long-term accommodation more quickly. Regardless, it is not expected that everyone fleeing the Afghan crisis will require housing support in the long term.

12.3 A full Regulatory Impact Assessment has not been prepared for this instrument because the impact on business is not likely to be significant.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This legislation will be reviewed at an appropriate point in the next year to determine whether its effect is still required and proportionate.

15. Contact

15.1 Simon Denison at the Ministry of Housing, Communities, and Local Government email: simon.denison@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jane Everton, Deputy Director for Social Housing, at the Ministry of Housing, Communities, and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Jenrick, Secretary of State at the Ministry of Housing, Communities, and Local Government can confirm that this Explanatory Memorandum meets the required standard.