EXPLANATORY MEMORANDUM TO

THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (ENGLAND) (AMENDMENT) (NO.2) REGULATIONS 2006

2006 No. 3340

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government ("the Department") and is laid before Parliament by Command of Her Majesty.

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

2. Description

2.1 These Regulations concern the eligibility of workers from Romania and Bulgaria for an allocation of housing accommodation under Part 6 of the Housing Act 1996 or for housing assistance under Part 7 of that Act.

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

3.1 These Regulations will come into force less than 21 days after being laid, in breach of the 21-day rule. The Department considers that it is necessary to breach the rule in order to bring the Regulations into force in time for the accession of Bulgaria and Romania to the European Union ("EU") on 1st January 2007. The Department apologises to the Committee that it was necessary to breach the 21-day rule.

3.2 These Regulations are dependent for their full meaning on the Accession (Immigration and Worker Authorisation) Regulations 2006 ("the Accession Regulations"), and therefore could not be made until the Accession Regulations had been made. The Accession Regulations are subject to the affirmative resolution procedure. They were laid in draft by the Home Office on 21st November 2006, and made on 13 December 2006.

3.3 As a consequence of waiting until the Accession Regulations were made, the Department was unable to lay its Regulations 21 days before 1st January 2007. However, if the Department had brought the Regulations into force later in order to comply with the 21-day rule, it would have put local housing authorities at risk of breaching EU law (see further at paragraph 4.4).

3.4 The Department accepts that it would have been preferable for these Regulations to be made more than 21 days before coming into force. However, the date of making of the Accession Regulations was outside the Department's control.

4. Legislative Background

4.1 These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 ("the Eligibility Regulations") to take account of the accession of Romania and Bulgaria to the EU. To the extent that

nationals of Romania and Bulgaria enjoy the same rights of residence in the UK as nationals of other countries in the EU, no amendment is necessary to the Eligibility Regulations. However, the Eligibility Regulations need to make specific provision for Romanian and Bulgarian nationals subject to worker authorisation under the new scheme introduced by the Accession Regulations.

4.2 Part 6 of the Housing Act 1996 ("the 1996 Act") makes provision about the procedures and principles which local housing authorities must follow in allocating housing accommodation (i.e. in selecting tenants for their own housing stock and nominating tenants of registered social landlords). Part 7 of the Act concerns the functions of such authorities as respects persons who are homeless or threatened with homelessness. A local housing authority cannot allocate housing accommodation or provide housing assistance to a person from abroad who is not eligible. The classes of persons from abroad who will be eligible or ineligible for social housing or housing assistance are set out in the Eligibility Regulations, which are amended by these Regulations.

4.3 Regulations 4 and 6 of the Eligibility Regulations concern those persons from abroad who are not subject to immigration control[1]. This group includes EEA nationals who have a right of residence in the UK derived from EU law. The Eligibility Regulations provide that in order to be eligible for an allocation of housing accommodation or for housing assistance, such a person must be habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland ("the Common Travel Area"). However, certain classes of person are exempted from the requirement to be habitually resident.

4.4 An EEA national who has a right to reside here as a worker in accordance with the Immigration (European Economic Area) Regulations 2006 is exempted by regulations 4(2)(a) and 6(2)(a) of the Eligibility Regulations from the requirement to be habitually resident. This reflects the fact that an EEA national who is living in another member state while exercising his right of free movement as a worker under Article 39 of the EC Treaty is entitled to enjoy all the rights and benefits accorded to national workers in matters of housing (Article 9.1 of EEC Regulations 1612/68). However, subject to certain exceptions, a Romanian and Bulgarian national is only treated as a worker if he or she is authorised to work, and is working, in accordance with the Accession Regulations (see regulations 4 and 6 of the Accession Regulations). Consequently, the amendments made by these Regulations are needed to add authorised Romanian and Bulgarian workers to the categories of persons exempted from the habitual residence test.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

[1] For these purposes, a person is 'subject to immigration control' if he requires leave to enter or remain in the United Kingdom under the Immigration Act 1971, whether or not such leave has been given (s.13(2) of the Asylum and Immigration Act 1996).

7. Policy background

7.1 Bulgaria and Romania will accede to the EU on 1st January 2007. Under the terms of the Accession Treaty for Bulgaria and Romania signed in Luxembourg on 25th April 2005, the UK (and all other Member States) are entitled to regulate access to their labour market by nationals of Bulgaria and Romania during a transitional period. It is intended that this will be done (amongst other things) by provisions in the Accession Regulations.

7.2 The Government's policy is that EEA nationals working lawfully in the UK should have access to an allocation or to housing assistance, in accordance with their rights under EU law. In pursuance of that policy, the objective of these (housing) Regulations is to provide that nationals of Bulgaria and Romania who are working in the UK in accordance with the Accession Regulations will be exempted from the requirement to be habitually resident in the Common Travel Area in order to be eligible for an allocation or housing assistance.

7.3 The Accession Regulations will limit the number of Bulgarian and Romanian nationals who may work lawfully in the UK during the transitional period. Consequently, it is anticipated that the number of persons affected by the provisions in these Regulations will be small.

7.4 The Government has not formally consulted on these Regulations because the changes they make are minor and technical, and do not reflect any significant change in Government policy. These regulations will maintain the Government's broad policy position that EEA nationals who are working lawfully in England should be exempted from the requirement to be habitually resident in the Common Travel Area. However, a draft of these Regulations was sent to every local housing authority in England on 21st November 2006 with an explanatory letter. A copy of the final Regulations was also sent to every authority in England when they were made.

7.5 There are no current plans to consolidate the *Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006* (which these Regulations amend), although the Department will keep this under review.

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 The impact on the public sector is not expected to be significant. The number of nationals of Bulgaria and Romania who will be allowed to work lawfully in the UK will be small, and it is estimated that only a very small proportion of these are likely to have priority for an allocation or have a priority need for housing assistance (and therefore that few will access settled social housing or accommodation provided under the homelessness legislation). Local authority data shows that the proportion of EEA nationals who are allocated social housing is well under 1% of applicants, and that the number of those accepted as owed a main homelessness duty was around 1% of acceptances.

9. Contact

9.1 Frances Walker (housing allocation) and Alan Edwards (housing assistance) at the Department for Communities and Local Government can answer any queries regarding the instrument.(Tel: 020 7944 3666, e-mail: frances.walker@communities.gsi.gov.uk ; 020 7944 3665, e-mail: alan.edwards@communities.gsi.gov.uk or).