**EXPLANATORY MEMORANDUM TO**

**THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (ENGLAND) (AMENDMENT) REGULATIONS 2012**

**2012 No. 2588**

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

## 2. Purpose of the instrument

2.1 The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012 make certain persons from abroad ineligible for an allocation of housing accommodation under Part 6, and for homelessness assistance under Part 7 of the Housing Act 1996 ("the 1996 Act"). The persons who will become ineligible as a result of these regulations are those who have recently acquired a right of residence in the UK because of new regulations issued by the Home Office (the Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012).

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

3.1 None

## 4. Legislative Context

4.1 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 social housing or homelessness assistance unless they come within a class of person prescribed in regulations 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 social housing or homelessness assistance are set out in the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006 No.1294) ("the Eligibility Regulations"). Regulations 4 and 6 prescribe the classes of persons who are not subject to immigration control but who are to be treated as persons from abroad who are ineligible for an allocation of housing accommodation or for homelessness assistance respectively.

4.3 The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012 amend regulations 4 and 6 of the Eligibility Regulations. They make provision for persons who have rights of residence in the UK as a result of regulation 15A (1) and (4A) of the Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012, or who have a right derived from Article 20 of the Treaty on the Functioning of the European Union, in a case where rights of residence arise because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen. They also make provision for persons who have equivalent rights of residence in the Channel Islands, the Isle of Man or the Republic of Ireland. These amending regulations make such persons ineligible for an allocation of social housing or for homelessness assistance under Parts 6 and 7 of the 1996 Act.

## 5. Territorial Extent and Application

5.1 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 These regulations have been made following the Court of Justice of the European Union case known as Zambrano (C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)*). As a consequence of that case the Secretary of State for the Home Offic*e* has regulated to allow a national from a non EEA country, who is resident in the UK and is the primary carer of a British citizen, to be granted a right of residence in the UK where not doing so would mean that the British citizen would have to leave the European Union.

7.2 It is the Government's policy that non EEA nationals who are normally subject to immigration control, should only have access to social housing or homelessness assistance if it accords with the Government's immigration and asylum policy. Broadly, this means that a person subject to immigration control will be eligible for social housing and homelessness assistance only if granted leave to enter or remain in the UK and this leave is not conditional on the person having no recourse to public funds.

7.3 These Regulations maintain the Government's policy on housing eligibility in relation to non EEA nationals by ensuring that people with a *Zambrano* right of residence are not eligible for social housing or homelessness assistance.

- Consolidation

7.2 Not applicable

## 8. Consultation outcome

8.1 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 made by the Secretary of State for Work and Pensions.

## 9. Guidance

9.1 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 Department's website.

## 10. Impact

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

10.2 There is no impact on the public sector as these Regulations exclude people with a Zambrano type right of residence in the UK from eligibility for social housing or homelessness assistance.

10.3 An Impact Assessment has not been prepared for this instrument

## 11. Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & review

12.1 The Department collects data on social housing lettings to households headed by a foreign national through CORE (the COntinuous REcording of lettings) and this information is published annually on the DCLG website. We will review the operation of these Regulations as appropriate.

## 13. Contact

Frances Walker at the Department of Communities and Local Government (tel:03 03 444 3655 or email: frances.walker@communities.gsi.gov.uk) can answer any queries regarding the instrument.