EXPLANATORY MEMORANDUM TO

THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (ENGLAND) (AMENDMENT) REGULATIONS 2020

2020 No. 667

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 relevant to the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (S.I. 2006/1294) ("the Eligibility Regulations"). The 2006 Regulations prescribe the eligibility criteria for an allocation of housing accommodation under Part 6 of the Housing Act 1996 (c. 52) or housing assistance under Part 7 of that Act.

2.2 They make provisions for the following two new categories of people to be eligible for an allocation of social housing and homelessness assistance:

- family members of a person of Northern Ireland who have been granted limited leave to enter or remain in the United Kingdom under Appendix EU to the Immigration Rules[1]
- 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 (c).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument also corrects an error found in SI 2016/965 which was previously reported by the JCSI in its Thirteenth Report of Session 2016–17 (https://publications.parliament.uk/pa/jt201617/jtselect/jtstatin/68/6803.htm).

3.2 The Department has complied with the requirement stated in paragraph 4.7.6 of SIP to consult with the SI Registrar. The procedure for free issue will apply to this instrument.

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

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)

3.3 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.

4.2 The territorial application of this instrument is England only.

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 The Housing Act 1996 ("the 1996 Act") provides that a local housing authority shall not allocate social housing or give homelessness assistance to persons who are subject to immigration control unless they come within a class of persons prescribed in regulations made by the Secretary of State (sections 160ZA(2) and 185(2) of the 1996 Act).

6.2 Regulations 3 and 5(1) of the Eligibility Regulations prescribe the classes of person who, although subject to immigration control, are to be treated as persons from abroad who are eligible for an allocation of housing accommodation or for homelessness assistance respectively.

6.3 Regulation 3 of this instrument amends regulation 2 of the Eligibility Regulations to add "relevant person of Northern Ireland" to the list of defined terms.

6.4 Regulations 4 and 5 of this instrument amends Regulations 3 and 5(1) by introducing two additional classes of person who are eligible for an allocation of an allocation of housing or homelessness assistance under the 1996 Act

6.5 Regulation 4 amends regulation 3 of the Eligibility Regulations which relates to the eligibility of persons subject to immigration control for an allocation of housing accommodation under the 1996 Act.

6.6 The first new class prescribed by regulation 4 of this instrument is Class I which makes provision for persons who have limited leave to enter or remain in the United Kingdom as the family member of a person of Northern Ireland by virtue of Appendix EU to the Immigration Rules, and where the sponsor (a relevant person of Northern Ireland) would be considered eligible (as a worker or self-employed person) in accordance with regulation 4 and 6 of the Eligibility Regulations.

6.7 The second new class prescribed by regulation 4 to this instrument is Class J which makes provision for persons who are habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland 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 (c).

6.8 Regulation 4 also corrects a drafting error in regulation 3(f) of the Eligibility Regulations as reported by the JCSI in its Thirteenth Report of Session 2016/17, as above.

6.9 Regulation 5 of this instrument amends regulation 5(1) of the Eligibility Regulations which relates to the eligibility of persons subject to immigration control for homelessness assistance under the 1996 Act.

6.10 Regulation 5 of this instrument prescribes two additional classes of person who are eligible for such assistance; Class J - family members of a person of Northern Ireland and Class K - stateless persons (equivalent to Classes I and J, inserted by regulation 4, respectively).

6.11 In addition, regulation 5 to this instrument also corrects a drafting error which is in similar form to the error in regulation 3(f) and makes the equivalent correction to regulation 5(1)(g) of the Eligibility Regulations.

7. Policy background

What is being done and why?

7.1 The *New Decade, New Approach*[2] 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[3] bring their family members to the UK. This change will mean that eligible family members of the people of Northern Ireland can apply for immigration status on broadly the same terms as family members of Irish citizens in the UK. This change demonstrates in practical terms, the UK Government's unwavering commitment to the Belfast (Good Friday) Agreement, which affords the people of Northern Ireland the right to hold both British and Irish citizenship, and to identify as Irish or British or both. These changes reflect the unique history and circumstances of Northern Ireland.

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 person of Northern Ireland will be able to apply for immigration status under the EU Settlement Scheme (EUSS), on broadly the same terms as family members of an Irish citizen. The Home Office provisions apply to both EEA and non-EEA family members of a 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 the person of Northern Ireland.

7.3 Under the Home Office changes, eligible family members of a person of Northern Ireland will be granted leave under the EU Settlement Scheme with no conditions attached to their leave. The new Class I in regulation 3 and Class J in regulation 5(1) of the Eligibility Regulations will enable family members of a person of Northern Ireland to be eligible for an allocation of social housing or for housing assistance on broadly the same terms as the family members of an Irish citizen or another EEA

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

[3] A person of Northern Ireland is someone who is '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 Belfast (Good Friday) Agreement. Therefore, this person can choose to identify as British, Irish, or both.

national. Currently, the family members of an EEA national (including Irish citizens who rely on their rights 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 been granted permanent residency in line with the provisions in the EEA 2016 Regulations[4]. 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 job seeking.

7.4 These regulations also propose changes in relation to stateless people. The new Class J in regulation 3 and class K in regulations 5(1) of the Eligibility Regulations 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 their place of origin and live permanently there.

7.5 A specific category of leave was created within the Immigration Rules in 2013[5]. This is limited leave granted with recourse to public funds and lasts for 5 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 UN convention on statelessness, 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 relate to the withdrawal of the United Kingdom from the European Union.

9. Consolidation

9.1 There are no current plans to consolidate the Eligibility Regulations which these Regulations amend, although the Department will keep this under review.

10. Consultation outcome

10.1 The Government has not consulted on these amending Regulations because they do 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.

11. Guidance

11.1 The Government will write to local housing authorities with advice on the purpose and effect of the Regulations. This letter will be published on the GOV.UK website. We will revise current statutory guidance to reflect the amending Regulations when time allows.

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[4] The Immigration (European Economic Area) Regulations 2006

[5] Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843704/stateless-leave-guidance-v3.0ext.pdf

12. Impact

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

12.2 The impact on local 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 as follows: the Department collects data on new social housing lettings to households headed by a foreign national through CORE (the Continuous Recording of lettings) This information is published on the GOV.UK website. We also plan to use data on homelessness decisions in relation to applications by foreign nationals through the quarterly Homelessness Case Level Information Collection (H-CLIC) return. H-CLIC is a new data collection and currently published as Experimental. This means any conclusions drawn from the information will have to be made with caution. We will review the operation of these Regulations as appropriate.

15. Contact

15.1 Frances Walker, at the Ministry of Housing, Communities and Local Government, Telephone: 0303 444 3655 or email: frances.walker@communities.gov.uk can be contacted with any queries regarding the changes made to this instrument in relation to stateless persons.

15.2 Begona Vilaplana, at the Ministry of Housing, Communities and Local Government, Telephone: 0303 444 1699 or email: begona.vilaplana@communities.gov.uk can be contacted with any queries regarding the changes introduced to this instrument in relation to allocations.

15.3 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.

15.4 The Rt Hon Chris Pincher MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.