EXPLANATORY MEMORANDUM TO

THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (ENGLAND) AND PERSONS SUBJECT TO IMMIGRATION CONTROL (HOUSING AUTHORITY ACCOMMODATION AND HOMELESSNESS) (AMENDMENT) REGULATIONS 2025

2025 No. 891

1. Introduction

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

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

2. Declaration

2.1. Rushanara Ali MP, Parliamentary Under-Secretary of State for Homelessness and Democracy at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

2.2. James Rogers, Deputy Director for Homelessness and Rough Sleeping and Rebecca Perks, Deputy Director for Local Authority Housing at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1. Lucy Rees (Homelessness) and Daniel Ollerton (Social Housing) at the Ministry of Housing, Communities and Local Government can be contacted with any queries regarding the instrument lucy.rees@communities.gov.uk or daniel.ollerton@communities.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1. This legislation is made under emergency procedures (see paragraph 11.1) and amends the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (S.I. 2006/1294) ("the Eligibility Regulations") and the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (S.I. 2010/706) ("the PSIC Order"), to provide an exemption from the habitual residence requirement for persons who would otherwise be eligible for housing or homelessness assistance in England, and who are arriving from Israel or the Occupied Palestinian Territories ("OPTs") as a result of His Majesty's Government's ("HMG") evacuation operation from 23 June 2025, so long as that application is made within 6 months and therefore on or before 22 December 2025. This will mean that such persons are eligible for housing and homelessness assistance from arrival and will receive assistance subject to meeting any other conditions that apply to all eligible persons.

4.2. This new exemption will apply through the creation of a general class that will waive the habitual residence requirement for any person who would otherwise be eligible for housing or homelessness assistance in England, where they leave a country or territory when HMG publishes advice to British nationals to leave that country or territory or arranges an evacuation of British nationals from that country or territory, so long as the person makes their application for assistance within the period of 6 months, beginning with the date that HMG first published that advice or the first day of an HMG evacuation operation, whichever is later (the 6-month window). This will prevent MHCLG needing to lay emergency regulations for future crises.

4.3. The general provision will also provide an exemption to enable housing authorities in England, Scotland and Northern Ireland to grant a tenancy or licence, and in Scotland and Northern Ireland to provide homelessness assistance including accommodation, to persons subject to immigration control who would otherwise be eligible, where the circumstances above apply.

Where does the legislation extend to, and apply?

4.4. The extent of regulation 1 is England and Wales, Scotland and Northern Ireland.

4.5. The extent of regulation 2 is England and Wales. The territorial application of this provision is England only.

4.6. The extent of regulation 3(1) and (2) is England and Wales, Scotland and Northern Ireland. The extent of regulation 3(3) is Scotland and Northern Ireland.

4.7. 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. Policy Context

What is being done and why?

5.1. Eligibility for housing and homelessness assistance in England is dependent on a person's immigration status, and in some cases, whether they are habitually resident. Where a person is not a person subject to immigration control, in other words does not need immigration leave to enter or remain in the United Kingdom ("UK") (for example a British citizen), unless exempted by regulations, they need to be habitually resident before they are eligible for assistance. Where a person is subject to immigration control, in other words they need immigration leave to enter or remain the UK, they are only eligible for housing and homelessness assistance so long as their leave is not subject to a 'no recourse to public funds' condition, is not granted because of a maintenance undertaking which is still applicable, and in some instances (typically where leave is not granted for humanitarian purposes), and they are habitually resident.

5.2. A person is considered habitually resident for the purposes of housing and homelessness assistance in England if they have resided in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland (collectively the common travel area or "CTA") for an "appreciable period", which is typically 1-3 months. This requirement is sometimes referred to as the habitual residence test (HRT).

5.3. It is HMG's longstanding position that all migrants (including British nationals) should plan how they will support themselves before they arrive in the UK rather than move to the UK with the intention of accessing benefits or housing and homelessness

assistance immediately. It is therefore reasonable for the HRT to require that people live in the UK for an appreciable period before they can access social assistance here.

5.4. However, HMG recognises that some groups of people, such as British nationals abroad, may need to flee to the UK urgently due to a crisis or conflict with little or no time to plan, and for whom it would be appropriate to waive the HRT.

5.5. To date, HMG has provided an exemption from the HRT for such persons by laying emergency legislation for each particular crisis or conflict. Emergency legislation is now required to ensure that the circa 400 persons already evacuated from Israel and the OPTs between 23 and 29 June 2025 are eligible for housing and homelessness assistance in England, should they need it, without delay.

5.6. Previous legislation[1] providing an HRT waiver for otherwise eligible persons fleeing Israel and the OPTs only covers persons who were residing there immediately before the Hamas terrorist attack on 7 October 2023 and who fled as a consequence of that or the immediate escalation that followed. Therefore, persons arriving as a result of HMG's evacuation operation from 23 June 2025 would not necessarily be covered by that exemption and will rely on the new general class.

5.7. This new class is a general provision which will prevent the need for MHCLG to legislate for any such future emergency separately. It will waive the HRT for all applications for housing or homelessness assistance in England which are made on or after the regulations come into force on 18 July 2025, for any person who would otherwise be eligible and who was residing in a country or territory and left that country or territory in the circumstances set out in paragraph 4.2, if their application is made in the 6-month window. Where an evacuation is the trigger point, a person need not have been evacuated to rely on the exemption.

5.8. The general class will therefore apply to any person who meets the criteria arriving from Israel or the OPTs so long as they apply for assistance on or before 22 December 2025. It will also apply to any person who meets the criteria who is arriving from South Sudan, so long as they apply for assistance on or before 26 September 2025 (HMG published advice to British nationals to leave South Sudan on 27 March 2025). MHCLG chose not to legislate for South Sudan at the time it published advice to leave as the number of British nationals arriving from the country was very low.

5.9. Unlike crisis-specific exemptions, a general class provision must strike a balance between responsiveness and control and cannot be left open-ended, as this can risk disproportionate or unnecessary application. The 6-month window therefore places a time limit on the application of the HRT waiver.

5.10. The policy intention for this measure is to support such persons that have fled to the UK in response to the first advice for British nationals to leave or actions of HMG to first evacuate British nationals, with little time to plan how they will support themselves on arrival. The exemption is designed to facilitate MHCLG's immediate response to those emergencies arising overseas as part of HMG's broader response for the persons in scope. This is why support for each such emergency is time limited to 6 months. Once an exemption applies, MHCLG will work with other relevant areas of Government to identify whether any further legislation is needed to provide a more tailored approach to the particular emergency in the longer term. The general class is not intended to support a particular emergency indefinitely.

[1] https://www.legislation.gov.uk/nisr/2023/182/contents

5.11. British nationals should make every effort to leave a country or territory quickly if HMG has advised them to do this or has arranged an evacuation. If a person decides to remain in the country or territory and leave at a later stage, they have acted against HMG's advice.

5.12. Where advice to leave is the trigger event, the exemption will apply only if HMG has provided public information to advise to British nationals to leave an entire country or territory. It will not apply if HMG has published advice to leave part of a country or territory because the expectation is that British nationals will move to a safer area within a country or territory rather than returning to the UK. If HMG considers an exemption should be provided in those instances separate legislative provisions will be made.

5.13. A consistent initial response is essential to ensure immediate support can be provided in the wake of sudden and unexpected crises, enabling HMG and local agencies to then develop a proportionate, longer-term response where necessary, tailored to the specific context and needs of those affected.

5.14. The need for a general class to respond to future emergencies is supported by evidence in the National Risk Register 2025[2]. The Register assesses that in the next five years there is a 5-25% likelihood of a crisis overseas necessitating the arrival and reception of a large number of destitute or vulnerable British nationals, and a higher likelihood of lower impact emergencies. This general class improves on MHCLG's previous approach by enabling it to provide an immediate initial response. As noted, it will not be exhaustive for all scenarios which may require a longer-term crisis response tailored to the specific context and needs of those affected.

5.15. The exemptions are not designed to make more people eligible for an allocation of social housing or for homelessness assistance. They will only make those who would otherwise be eligible, if it were not for the habitual residence requirement, eligible sooner. As noted above, this typically means 1-3 months sooner, as that is typically the amount of time taken to meet the HRT. Where a person is eligible for homelessness assistance, they will be entitled to advice and assistance as a minimum. Depending on their circumstances they might also be owed other duties, in particular, if they are in a priority need category, they might be entitled to accommodation. Even if a person is eligible for an allocation of social housing, this does not guarantee an allocation will be made as other qualification and criteria and prioritisation will continue to apply as they would ordinarily.

5.16. Separate provision will be made to disapply the HRT 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 which is legislating separately. In Scotland, persons not subject to immigration control are not subject to the HRT.

5.17. The Department for Work and Pensions has laid equivalent legislation amending the entitlement conditions for income-related, disability, and carer benefits.

What was the previous policy, how is this different?

5.18. As set out above, previously MHCLG enacted emergency legislation for each individual crisis or conflict, which involved avoidable administrative burden and procedural delays. This slows local authority capacity to deliver timely assistance to

[2] https://assets.publishing.service.gov.uk/media/67b5f85732b2aab18314bbe4/National_Risk_Register_2025.pdf

those fleeing the crisis as some may arrive and need support before the legislation comes into force.

6. Legislative and Legal Context

How has the law changed?

6.1. This Instrument makes amendments to the Eligibility Regulations and the PSIC Order.

6.2. Sections 160ZA(2) and 185(2) of the Housing Act 1996 (c. 52) ("the 1996 Act") provide that a local housing authority shall not allocate housing accommodation under Part 6 of the 1996 Act, or give homelessness assistance under Part 7 of the 1996 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. Some of those classes including a requirement that persons must be habitually resident in the CTA.

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, such persons must be habitually resident in the CTA to be eligible.

6.7. To establish 'habitual residence' an applicant must demonstrate a degree of permanence in their residence in the CTA. Habitual residence implies an association between the individual and the place of residence and relies substantially on fact.

6.8. Regulation 2(2) and 2(4) of this instrument concerns persons subject to immigration control and amends regulations 3 and 5(1) respectively of the Eligibility Regulations. They provide that a person is eligible for an allocation of housing accommodation or homelessness assistance whether or not they satisfy the HRT, who (a) was residing in a country or territory, (b) left that country or territory when HMG provided public information to advise British nationals to leave that country or territory, or arranged an evacuation of British nationals from that country or territory, (c) made an application for an allocation of housing (under Part 6 of the 1996 Act) or for homelessness assistance (under Part 7 of the 1996 Act), within the period of 6 months beginning with the date HMG first provided public information to advise British nationals to leave that country or territory or the first day of an HMG evacuation operation of British nationals, whichever is later, and (d) has been granted leave in accordance with the immigration rules under Section 3(2) of the Immigration Act 1971 (c. 77), and that leave is not subject to the condition that there must be 'no recourse to public funds' and was not granted because of a maintenance undertaking which is still applicable.

6.9. Regulation 2(3) and 2(5) of this instrument concerns persons not subject to immigration control and amends regulations 4(2) and 6(2) respectively of the Eligibility Regulations. They make British nationals and other persons not subject to immigration control who (a) were residing in a country or territory, (b) left that

country or territory when HMG provided public information to advise British nationals to leave that country or territory or arranged an evacuation of British nationals from that country or territory, and (c) made an application for an allocation of housing (under Part 6 of the 1996 Act) or homelessness assistance (under Part 7 of the 1996 Act) within the 6 month period beginning with the day HMG first provided public information to advise British nationals to leave that country or territory or the first day of an HMG evacuation operation of British nationals, whichever is later, are eligible for allocation of housing accommodation and homelessness assistance without application of the HRT.

6.10. Section 118 of the Immigration and Asylum Act 1999 (c. 33) (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 1996 Act applies (housing accommodation). It does apply to provision of housing to which Part 7 of the 1996 Act (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 the person is of a class specified in an order made by the Secretary of State.

6.12. The PSIC Order prescribes classes eligible 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 persons falling under the general class set out in paragraph 6.8.

Why was this approach taken to change the law?

6.13. The existing eligibility requirements are set out in statute. There is no existing class which provides an HRT exemption for persons evacuated from Israel and the OPTs between 23 and 29 June 2025 and others who might return as a result. A new class is therefore required and is made as general provisions to avoid the need to lay emergency regulations each time such a crisis occurs.

7. Consultation

Consultation Summary of consultation outcome and methodology

7.1. Due to the urgency of the Regulations, no consultation has been carried out. The legislation generalises the approach we have taken to previous scenarios where we have introduced emergency legislation on a case-by-case basis. Letters have been exchanged with local authorities and members of relevant Parliamentary committees to inform them of these changes.

7.2. We have liaised with the Welsh and Scottish Governments, as well as the Northern Ireland Executive.

8. Applicable Guidance

8.1. Guidance will be issued to local authority staff in England to ensure that they are aware of these new exceptions and how to apply them. The Homelessness Code of Guidance and Social Housing Allocations Guidance (for England) will be updated

accordingly. MHCLG will notify local authorities in England when there is a new cohort that will be in scope for the general class created by these regulations.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1. A full Impact Assessment has not been prepared for this instrument because there is no impact on businesses.

Impact on businesses, charities and voluntary bodies

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

9.3. This legislation does not impact small or micro businesses.

9.4. This legislation does not have a significant impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1. MHCLG is firmly committed to evaluating and monitoring the impact of its policies. These are emergency measures intended to help those returning or evacuated from Israel and the OPTs and will also apply for future such crises. This legislation is designed to facilitate MHCLG's immediate response to a crisis that causes HMG to advise British nationals to leave a country or to evacuate British nationals. Where a future crisis falls within scope of the legislation, MHCLG will work with other relevant areas of Government to identify whether any longer-term legislative framework is needed to enable affected persons to access additional support.

10.2. The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1. This instrument is being made under emergency procedures and breaches the 21-day rule. This is necessary because of the evacuations of British nationals from Israel and the OPTs that started on 23 June 2025, and the immediate need to provide support to those arriving. Delay in the legislation coming into force will cause potential delays in access to housing or homelessness support for those who need it.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1. This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").