EXPLANATORY MEMORANDUM TO

THE ALLOCATION OF HOUSING (QUALIFICATION CRITERIA FOR ARMED FORCES) (ENGLAND) (AMENDMENT) REGULATIONS 2024

2024 No. 1225

1. Introduction

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

2. Declaration

2.1 Matthew Pennycook MP, Minister of State (Housing and Planning) at the Ministry of Housing, Communities & Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Becky Perks, Deputy Director for Local Authority Housing and Right to Buy, at the Ministry of Housing, Communities & Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Patrick Whitehead at the Ministry of Housing, Communities & Local Government Telephone: 0300 444 9127 Email: Patrick.whitehead@communities.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012 (S.I. 2012/1869)) prescribe criteria to ensure that where a local housing authority imposes a local connection test when deciding whether a class of persons are qualifying persons for an allocation of social housing, they must not apply that test to certain persons in or connected to the armed forces. Specific criteria are set in connection to the regular armed forces which currently prevents local housing authorities from applying a local connection test to persons who are serving in the regular armed forces or who have done so in the five years preceding their application for an allocation of social housing. This statutory instrument will amend those regulations to remove the five year time limit and exempt all former members of the regular armed forces from a local connection test where imposed, regardless of when they last served.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

What is being done and why?

5.1 Local housing authorities are responsible for drawing up and operating their own housing allocation scheme within a framework of legislation. They are only permitted to allocate social housing to those who are eligible and qualify. Local housing authorities have the power to determine who does or does not qualify for an allocation of social housing, subject to the eligibility requirements and any regulations made by the Secretary of State. As part of its qualification criteria, many local housing authorities have adopted a local connection test (sometimes referred to as residency test), which requires applicants to have a well-established local association or to have lived in its area for a certain period before they can qualify for an allocation of social housing. Local housing authorities decide the period of time required for a local connection so this can vary. At 31 March 2023, 89% of local authorities had a local connection or residency test. Of those with a residency test, 33 local authorities confirmed the time period required to meet the test was 5 years or more (One year: 38, two years: 48, three or four years: 36[1]). However, the Secretary of State has the power to prescribe, by regulations, the circumstances when a local connection test cannot be applied.

5.2 The Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012 (S.I. 2012/1869)) prescribes criteria to ensure that where a local housing authority imposes a local connection test when deciding whether a class of persons are qualifying persons for an allocation of social housing, they must not apply that test to certain persons in or connected to the armed forces. In terms of service personnel connected to the regular armed forces, a local connection test cannot be applied to persons who are serving in the regular armed forces or those who have done so in the five years preceding the date of their application for an allocation of housing.

5.3 On 24 September 2024, the Prime Minister announced an ambition to house all veterans in housing need. As a first step to assist with this ambition, this instrument exempts all former members of the regular armed forces from local connection tests where they are imposed by local housing authorities, irrespective of how long it has been since they left service. This will facilitate access to social housing for former members of the regular armed forces in England indefinitely without locality restrictions. Some former members of the regular armed forces may not present for or need housing assistance until several years after discharge as a result, for example, of needing to move to specific areas in order for children to complete education, to undertake resettlement courses or for specialist rehabilitation treatment or support. Some armed forces personnel therefore move frequently in the years after discharge and are not able to spend sufficient time in a place to meet local connection requirements. This is particularly acute where a local authority imposes a longer local connection requirement of more than five years as it is unlikely to be possible for a former member of the armed forces to meet within five years of discharge. Removing the local connection test for all former members of the regular armed forces will mean that they are no longer disadvantaged due to their service to the country, when making social housing applications.

5.4 The policy does not give any further priority to former members of the regular armed forces ahead of other cohorts than already exists. At present, Regulations mean that local authorities must give additional preference (high priority) to certain members of the armed forces community, where they fall within one or more of the reasonable preference (priority) categories and have urgent housing needs. It is also the case that some local

[1] Local Authority Housing Statistics 2022-23 Section C: Local authority housing data - GOV.UK

authorities already exempt former members of the regular armed forces beyond the five years from discharge in recognition of the factors set out in the preceding paragraph. This change will create consistency across England. It may mean that some former members of the regular armed forces get priority or additional priority and are subsequently allocated social housing, in an area where they would not have met the local connection requirements.

What was the previous policy, how is this different?

5.5 Delivering on the Armed Forces Covenant, protections were introduced in 2012 to ensure that certain persons serving in, or connected to, armed forces community were not disadvantaged in accessing social housing because of the requirements and demands of military life, and in particular, the time it takes to resettle.

5.6 One of the protections was to prevent local housing authorities from applying a local connection test to certain persons in or connected to the armed forces. Specifically: (a) *persons who are currently serving in the regular armed forces or who have done so in the 5 years preceding their application for an allocation of social housing;(b)bereaved spouses or civil partners of a deceased member of the regular armed forces who has recently ceased, or will cease to be entitled, to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner and where death was attributable (wholly or partly) to that service; or (c) a person is serving or has served in the reserve forces and who is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service.*

5.7 This statutory instrument will remove the five year limit as set out for cohort (a) above to ensure that no former member of the regular armed forces will need to meet a local connection test regardless of when they last served. It is necessary to remove the existing five year limit due to the unique resettlement issues former members of the regular armed forces can face which may hamper their ability to meet local connection requirements within five years of discharge.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 160ZA of the Housing Act 1996 (c. 52) provides that a local housing authority in England shall only allocate housing to eligible and qualifying persons. Section 160ZA(7) gives local housing authorities the power to decide what classes of persons are, or are not, qualifying persons. This is subject to a power exercisable by the Secretary of State under section 160ZA(8)(a) to prescribe classes of persons who the local authority must or must not treat as qualifying persons, and 160ZA(b) which prescribes criteria when a local authority cannot disqualify persons made under the power in section 160ZA(8)(b). The Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012 (S.I. 2012/1869) prescribe criteria in regulation 3 to ensure that where a local housing authority imposes a local connection test when deciding whether a class of persons are qualifying persons for an allocation of housing, they must not apply that test to certain persons in or connected to the armed forces. Regulation 3(3)(a) sets specific criteria in relation to existing and former members of the regular armed forces. As originally made, it ensures that local housing authorities do not apply a local connection test to persons who are serving in the regular armed forces or have done so in the five years preceding their application for an allocation of housing. These Regulations remove the requirement that a former member of the regular armed forces has served within the preceding five years in order to be exempt from a local connection test. Their effect is that where a local housing authority imposes a local connection test

when deciding whether a class of persons are qualifying persons for an allocation of housing, that test cannot be applied to persons who are, or have ever, served in the regular armed forces.

Why was this approach taken to change the law?

6.2 The allocation of social housing is governed by law so amending the existing legal instrument is the only possible way to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 These changes have been made following engagement with stakeholders representing veterans' interests and local government stakeholders. The feedback on these proposals was supportive and welcomed by stakeholders. No concerns were raised about implementation of the changes.

8. Applicable Guidance

8.1 Existing statutory guidance for local authorities will be updated once the regulations come into force.

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 or limited impact on businesses, charities and public bodies. The primary impact will be on local housing authorities (who are public sector bodies) who will need to take the revised criteria into account when determining if a former member of the regular armed forces qualifies for an allocation of social housing.

9.2 It has a minimal impact because local housing authorities already need to conduct an assessment to determine if an applicant is eligible and qualifies for social housing. It is also already open to all former members of the regular armed forces, irrespective of when they left service, to apply for social housing. This instrument means that those who left regular service more than five years before making an application are not restricted to making an application where they can meet the relevant local housing authority's local connection test. Acceptance of an application does not guarantee an allocation of social housing but provides the possibility of an allocation at a later date. Local housing authorities remain responsible for operating their own allocation scheme and prioritising allocations of social housing in accordance with local needs and statutory criteria. It is presently the case that certain members, or former members, of the armed forces must be given a reasonable preference and an additional preference where certain criteria are met. Many local housing authorities do not apply a local connection test to former members of the regular armed forces even if it is more than five years since they left service.

9.3 The impact on business, charities or voluntary bodies is limited to those who provide accommodation under a nomination agreement (local authorities may nominate households from their waiting list to a vacancy in another local housing authority, or to a housing association in another district, depending on the terms of any nomination agreement they have in place with that other organisation) which is primarily housing associations. However, these changes do not require the provision of additional housing. The changes enable a local housing authority to make a referral for a former member of

the regular armed forces that has left the service more than five years ago to a vacancy in a housing association.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This legislation will be reviewed at an appropriate point to determine whether its effect is still required and proportionate. The Ministry for Housing, Communities and Local Government will continue to collect and publish figures on former and current members of the armed forces in social housing. We will keep the impact of this instrument under review and the Government will consider any further changes necessary.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Minister of Housing and Planning has made the following statement:

"This instrument does not include a statutory review clause as a review would be disproportionate when taking into account that there will be no economic impact since the changes relate to whether an induvial can qualify to go onto a local authority waiting list (if applicable) for social housing and does not guarantee an allocation of a social home."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State (Housing and Planning) has made the following statement regarding Human Rights:

"In my view the provisions of The Allocation of Housing (Qualification Criteria for Armed Forces) (England) (Amendment) Regulations 2024 are compatible with the Convention rights."

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").