EXPLANATORY MEMORANDUM TO

THE PERSONS SUBJECT TO IMMIGRATION CONTROL (HOUSING AUTHORITY ACCOMMODATION AND HOMELESSNESS) (AMENDMENT) ORDER 2008

2008 No. 1768

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Order 2008 (the 2008 Order) sets out the classes of persons subject to immigration control who are eligible under section 118 of the Immigration and Asylum Act 1999 (the 1999 Act) for a tenancy of, or licence to occupy, housing authority accommodation in England, Scotland and Northern Ireland and the classes of persons subject to immigration control who are eligible under section 119 of the 1999 Act for accommodation or assistance under certain specified homelessness provisions in Scotland and Northern Ireland.

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

3.1 None

4. Legislative Background

4.1 Section 118 of the 1999 Act provides that, other than where accommodation is provided under arrangements made under Part VI (support for asylum seekers) of the 1999 Act, tenancies of and licences to occupy local authority housing may only be granted to persons subject to immigration control if they fall within a class specified in an order made by the Secretary of State.

4.2 Section 119 provides that persons subject to immigration control will only have access to accommodation or assistance under certain specified homelessness provisions in Scotland and Northern Ireland if they fall within a class of person specified in an order made by the Secretary of State. Similar provisions for England and Wales are contained in section 185 of the Housing Act 1996 (persons from abroad not eligible for housing assistance).

4.3 The Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 S.I. 2000/706, (the 2000 Order), specifies classes of person subject to immigration control for the purposes of section 118 (articles 3 to 6) and

section 119 (articles 7 to 9). The 2008 Order makes amendments to the classes of person subject to immigration control specified in the 2000 Order.

5. Territorial Extent and Application

5.1 This instrument applies to England, Scotland and Northern Ireland.

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

7.1 The Government's policy on access to public funds for people subject to immigration control is that those seeking to enter or remain in the United Kingdom must be able to accommodate and maintain themselves without recourse to public funds (including housing and homelessness assistance). In the case of EEA nationals, the Government's policy is that nationals of member states who come to the United Kingdom and who do not have a right to reside here should not be eligible to access public funds.

7.2 EC Council Directive 2004/38/EC sets out the rights of citizens of the European Union and their family members to move and reside freely within the territory of member states. This Directive consolidates all legislation on the right of entry and residence for European Union citizens. The Immigration (European Economic Area) Regulations 2006 (SI 2006/1003) which transpose the EC Directive provisions into domestic law came into force on 30th April 2006.

7.3 Under the EC Directive, many EEA nationals will have a right to reside in the United Kingdom as long as they are a 'qualified person' such as a worker, a self-employed person, a student or a self-sufficient person. EEA nationals who are not exercising Treaty rights as a 'qualified person' will not have a right to reside in the United Kingdom. This is in accordance with the United Kingdom income related benefit regulations which require that a person must have a right to reside and be habitually resident (unless they fall into an exemption category) before they can access benefits. The rules on access to benefits (including housing and homelessness assistance) were amended in May 2004 as part of a package of measures across Government to tighten up access to public support.

7.4 In a Court of Appeal judgment in the case of London Borough of Barnet v Abdi and Ismail handed down on 6th April 2006, it was held that EEA nationals who are not 'qualified persons' and therefore have no right to reside under EC law, are subject to immigration control and are ineligible for local authority housing and homelessness assistance in England. The effect of the judgment is that economically inactive EEA nationals, who are currently excluded from accessing benefits (including housing and homelessness assistance) because they have no right to reside, need to be treated in accordance with regulations that apply to persons subject to immigration control.

7.5 The 2000 Order specifies the classes of persons subject to immigration control who are eligible for housing and homelessness assistance. The prescribed classes include:

> (a) for housing authority accommodation purposes, a national of a state which is a signatory to the European Convention on Social and Medical Assistance (ECSMA) and/or the European Social Charter (ESC) and they are lawfully present in the United Kingdom and habitually resident in the Common Travel Area; and
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> (b) for homelessness assistance purposes, where a person is on income-based jobseeker's allowance or in receipt of income support and is eligible for that benefit other than because (i) he has limited leave to enter or remain in the United Kingdom which was given in accordance with the relevant immigration rules and he is temporarily without funds because remittances to him from abroad have been disrupted, or (ii) he has been deemed by regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005 to have been granted leave to enter or remain in the United Kingdom exceptionally for the purposes of the provision of means of subsistence.

7.6 Most countries within the EEA have ratified the ECSMA and/or the ESC. EEA nationals who are not exercising treaty rights and are persons subject to immigration control establish eligibility for housing and homelessness assistance by virtue of being nationals of one of such countries. In addition, the provision at 7.5(b) relating to persons who are on income-based jobseekers allowance or in receipt of income support applies to some EEA nationals without a right to reside because they were in receipt of those benefits prior to changes in the benefits rules in May 2004.

7.7 In relation to England, the Allocation of Housing and Homelessness (Amendment) (England) Regulations 2006 (S.I. 2006/1093) removed the references to the prescribed classes of persons set out at 7.5(a) and (b) above. These Regulations were then consolidated and revoked by the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (S.I. 2006/1294) which came into force on 1 June 2006.

7.8 The 2008 Order will amend the 2000 Order by removing reference to the prescribed classes of persons set out at 7.5(a) and (b) above, so that EEA nationals who are not exercising treaty rights, have no right to reside and who are persons subject to immigration control are not entitled to access to housing authority accommodation in England, Scotland and Northern Ireland and homelessness assistance in Scotland and Northern Ireland.

7.9 The Secretary of State has consulted the Department for Communities and Local Government (CLG) who support these changes, and the corresponding administrations in Scotland and Northern Ireland. The Scottish Parliament and the Northern Ireland Assembly have given written agreement to these proposed changes. The Welsh Assembly has also been informed of these proposals. No wider consultation was considered necessary because this is bringing the eligibility for Housing and Homelessness Assistance in Scotland and Northern Ireland more closely into line with existing legislation in England and corrects a particular anomalous situation.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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