

EXPLANATORY MEMORANDUM TO
THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)
(ENGLAND) (AMENDMENT) (NO. 2) REGULATIONS 2018

2018 No. 1056

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.

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”) in order to make a new category of persons eligible for an allocation of social housing and homelessness assistance. They make provision for persons who have limited leave to remain under paragraph 352J of the Immigration Rules (‘Calais leave’) to be eligible for an allocation of social housing and homelessness assistance if they are habitually resident in the Common Travel Area.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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)

- 3.2 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 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 of the Eligibility Regulations prescribe the classes of persons who are subject to immigration control but are eligible for an allocation of housing accommodation or for homelessness assistance respectively.
- 6.3 The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (No. 2) Regulations 2018 amend regulations 3 and 4 of the Eligibility Regulations. They make provision for persons who have limited leave to remain under paragraph 352J of the Immigration Rules ('Calais leave') to be eligible for an allocation of social housing and homelessness assistance if they are habitually resident in the Common Travel Area (the UK, the Channel Islands, the Isle of Man and the Republic of Ireland).

7. Policy background

What is being done and why?

- 7.1 As part of the Calais migrant camp clearance in 2016, the Government transferred 769 unaccompanied asylum seeking children from France to the UK. Of these, 220 were brought over under the arrangements provided for in section 67 of the Immigration Act 2016 (which requires the Government to relocate to the UK and support a specified number of unaccompanied children from Europe). The remaining 549 were brought to the UK to reunite with family members. Of those transferred to the UK to reunite with family members, the majority have already been granted a form of protection leave. However, approximately 115 would fall to be refused under existing asylum and immigration rules.
- 7.2 In the Government's view all the 549 children transferred from Calais to the UK to reunite with family should be able to remain here with their family members. In keeping with the Government's commitments to family unity, we do not consider that it would be in their best interests to separate any of these children from their families, having received significant support from the UK authorities to reunite and integrate.
- 7.3 Accordingly, the Government is laying Immigration Rules to create a new form of leave – 'Calais leave' – for those children transferred to the UK who do not qualify for leave under the current rules.
- 7.4 The intention to introduce the new form of leave was announced via a Home Office Written Ministerial Statement on 13 September 2018.
- 7.5 Individuals who qualify for 'Calais leave' will have the right to study, work, access public funds (claim benefits and housing support) and healthcare, and apply for indefinite leave to remain (settlement) after ten years.
- 7.6 These Regulations will ensure that this cohort are eligible for an allocation of social housing and homelessness assistance if they are habitually resident in the United Kingdom or elsewhere in the Common Travel Area. The habitual residence test can generally be satisfied after three months residence in the Common Travel Area.
- 7.7 These Regulations will align with housing benefit regulations.
- 7.8 Those who then successfully apply for settlement will continue to be eligible for an allocation of social housing or homelessness assistance under regulations 3(c) and 5(1)(c) of the Eligibility Regulations provided they meet the relevant conditions.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

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 access to social housing and homelessness assistance for persons subject to immigration control.

11. Guidance

11.1 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 GOV.UK website. We will revise current statutory guidance to reflect the amending Regulations when time allows

12. Impact

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

12.2 The impact on the public sector is not expected to be significant. The number of people who will be given Calais leave is small and finite with the number estimated as approximately 115. Only those who do not qualify for international protection or other form of relevant leave will be granted limited leave to remain under paragraph 352J of the Immigration Rules.

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 social housing lettings to households headed by a foreign national through CORE (the Continuous Recording of lettings) and data on homelessness decisions in relation to applications by foreign nationals through the quarterly HCLIC return. This information is published on the GOV.UK website. 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: 03 03 444 3655 or email: frances.walker@communities.gsi.gov.uk, can be contacted with any queries regarding the instrument.

- 15.2 Jane Everton at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rishi Sunak MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.