

## **EXPLANATORY MEMORANDUM TO THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (WALES) REGULATIONS 2014**

This Explanatory Memorandum has been prepared by the Housing Policy Division and is laid before the National Assembly for Wales in accordance with Standing Order 27.1

### Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014.

Lesley Griffiths

Minister for Communities and Tackling Poverty, one of the Welsh Ministers

24 September 2014

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## 2014 No.

1. This Explanatory Memorandum has been prepared by the Housing Policy Division and is laid before the National Assembly for Wales in accordance with Standing Order 27.1

## 2. Purpose of the instrument

2.1 These Regulations prescribe the classes of person from abroad who are ineligible or eligible for an allocation of housing accommodation under Part 6 of the Housing Act 1996 (“the Act”) and for homelessness assistance under Part 7 of the Act.

## 3. Matters of special interest to the Constitutional and Legislative Affairs Committee.

None

## 4. Legislative Context

4.1 Part 6 of the Act makes provision about the procedures and principles which local housing authorities must follow in allocating housing accommodation. Part 7 of the Act concerns the functions of such authorities in relation to people who are homeless or threatened with homelessness.

4.2 A local housing authority cannot allocate housing or provide homelessness assistance to a person from abroad who is not eligible. There are two types of person from abroad for these purposes.

4.3 Firstly, persons who are subject to immigration control will not be eligible for an allocation of housing or for homelessness assistance unless they come within a class of person prescribed in regulations made by the Welsh Ministers (sections 160A(1) and (3) and 185(2) of the Act<sup>1</sup>). The term ‘person subject to immigration control’ means a person who requires leave to enter or remain in the United Kingdom, whether or not such leave has been given (section 13(2) of the Asylum and Immigration Act 1996). Broadly speaking, the term covers:

- nationals of countries which are outside of the European Economic Area<sup>2</sup> and Switzerland; and

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<sup>1</sup> Functions are conferred on the Secretary of State and subsequently, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 and section 17(1) of the Homelessness Act 2002. Those functions were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. Functions under section 185 of the Act are exercisable concurrently with the Secretary of State.

<sup>2</sup> i.e. The area made up of the European Union, plus Norway, Liechtenstein and Iceland.

- those nationals of countries in the European Economic Area and Switzerland (referred to in this memorandum as “EEA Nationals”) who do not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland derived from EU law

4.4 Secondly, a person who is not subject to immigration control will be eligible for an allocation of social housing or homelessness assistance unless they come within a class of person prescribed as ineligible by virtue of regulations made by the Welsh Ministers under sections 160A(1) and (5) and 185(3). Broadly speaking, these classes affect the eligibility of British nationals returning from a period of residence abroad or coming to the United Kingdom for the first time, and of EEA nationals who have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland which is derived from EU law.

4.5 The classes of persons from abroad who are eligible or ineligible for an allocation of housing accommodation or homelessness assistance are set out in these Regulations. In the main, these Regulations consolidate the provisions of the Regulations they revoke, but there are also some amendments, notably removing obsolete provisions and updating provisions relating to EEA nationals.

4.6 Regulations 3 and 5 prescribe the classes of persons 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. These provisions broadly re-enact, with amendments, the provisions of regulation 4 of the Allocation of Housing (Wales) Regulations 2003 and regulation 3 of the Homelessness (Wales) Regulations 2006 (which are revoked by these Regulations).

4.7 Regulations 4 and 6 prescribe the classes of person from abroad who are not subject to immigration control but are treated as persons from abroad who are ineligible for an allocation of housing accommodation or for homelessness assistance respectively. They provide that such persons should only be eligible for an allocation of housing accommodation or for homelessness assistance if they are habitually resident in the UK, Channel Islands, the Isle of Man or the Republic of Ireland. However, certain categories of person are exempted from this requirement set out at regulations 4(2) and 6(2).

## 5. Territorial Extent and Application

5.1 This instrument applies in relation to Wales.

## 6. European Convention on Human Rights

6.1 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 UK Government's policy in relation to persons subject to immigration control is that such persons should not have access to social housing or homelessness assistance except where such access accords with the Government's immigration and asylum policy. Broadly, this means that a person subject to immigration control will be eligible for social housing and homelessness assistance only if that person has been granted leave to enter or remain in the UK and this leave is not conditional on that person having no recourse to public funds. The Welsh Government wishes to amend Welsh Regulations to bring them in line with those of England for reasons of consistency and clarity and to ensure they are in keeping with immigration policy.

7.2 As an exception to the general policy set out in paragraph 7.1, provision is made for certain persons subject to immigration control to continue to be eligible for homelessness assistance (but not housing allocation) if they claimed asylum before 3 April 2000 and fall within specified circumstances. These provisions in effect provide "reserved rights" for such persons to the system of asylum support in place prior to the implementation of the National Asylum Support Service on 3 April 2000. The number of persons affected is considered to be very small.

7.3 Broadly, the Welsh Government's policy relation to persons from abroad who are not subject to immigration control is that they should only have access to social housing and homelessness assistance if they can demonstrate a genuine connection to the UK (or the Channel Islands, the Isle of Man or the Republic of Ireland) and for that reason eligibility is subject to a test of habitual residence. However, certain persons from abroad are exempt from the habitual residence requirement under the Eligibility Regulations where this is in line with Government policy or the requirements of EU law.

7.4 The provisions of these Regulations dealing with EEA nationals and British nationals update the provisions which they replace, and ensure that there is cross-border consistency with England. These changes principally reflect the implementation of Directive 2004/38/EC of the European Parliament and Council of the 29 April 2004 ("the Directive") by the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations"), and subsequent relevant case law. In particular, the European case known as *Zambrano (C-34/09 Gerardo Ruiz Zambrano v Office national del'emploi (ONEm))* caused the Secretary of State to regulate to allow a national from a non EEA country, who is resident in the UK and is the primary carer of a British citizen, to be granted a right of residence in the UK where not doing so would mean that the British citizen would have to leave the European Union. These Regulations are consistent with the Welsh Government's policy on housing eligibility in relation to non EEA nationals by ensuring that people with a Zambrano right of residence are not eligible for social housing or homelessness assistance.

7.5 In addition, certain provisions from the previous Regulations have been removed as they are no longer relevant due to the passage of time. These provisions applied to certain groups who came to the UK as a result, for example, of conflicts or natural disasters overseas which are now some time in the past. These Regulations also make new provision for certain Afghan nationals directly employed by the UK Government in Afghanistan, and who have been granted limited leave to remain in the UK, to be eligible for an allocation of social housing and homelessness assistance if they are habitually resident.

## 8. Consolidation

8.1 The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 consolidate, with amendments, the Homelessness (Wales) Regulations 2006 and the Allocation of Housing (Wales) Regulations 2003.

## 9. Consultation outcome

9.1 The Welsh Government has carried out an 8 week consultation with relevant stakeholders on these Regulations because they are very technical in nature. The consultation period came to a close on the 9 May 2014 and six responses were received.

## 10. Guidance

10.1 The Welsh Government does not propose to issue 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 Welsh Government website. The Welsh Government will also up-date the Code of Guidance on Allocation and Homelessness to Local Authorities 2012.

## 11. Impact

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

## 12. Regulating small business

12.1 The legislation does not apply to small business.

## 13. Equality Impact Assessment

13.1 An Equality Impact Assessment was carried out in relation to the proposed consolidated Regulations as was a Children's Rights Impact Assessment. It was deemed that no discrimination is taking place. Vulnerable people will still be assisted. Advice agencies will be informed and anyone affected will be told what assistance they can obtain.

## Contact

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