

EXPLANATORY MEMORANDUM TO THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (WALES) (AMENDMENT) REGULATIONS 2017

This Explanatory Memorandum has been prepared by the Housing Policy Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and 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) (Amendment) Regulations 2017.

Carl Sargeant AM

Cabinet Secretary for Communities and Children, one of the Welsh Ministers

18 May 2017

1. Description

1.1 These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (S.I. 2014/2603) (W.257) ('the 2014 Regulations') to provide for a new category of persons eligible for an allocation of housing accommodation and homelessness assistance. This category consists of persons granted leave on family or private life grounds under Article 8 of the European Convention on Human Rights.

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

None.

3. Legislative Background

3.1 Part 6 of the Housing Act 1996 makes provision regarding the procedures and principles which local housing authorities must follow in allocating housing accommodation. Part 2 of the Housing (Wales) Act 2014 concerns the functions of such authorities in relation to people who are homeless or threatened with homelessness.

3.2 A local housing authority cannot allocate housing or provide homelessness assistance to persons from abroad who are not eligible. Eligibility for persons from abroad is determined by the 2014 Regulations which prescribe a number of classes of persons considered eligible.

3.3 Regulations 3 and 5 of the 2014 Regulations prescribe the classes of persons who, although subject to immigration control but who are to be treated as persons from abroad who are eligible for an allocation of housing accommodation or for homelessness assistance respectively.

3.4 These Regulations insert a new 'Class F' in regulation 3 and a new 'Class G' in regulation 5 of the 2014 Regulations. These make a person who is subject to immigration control eligible for social housing or homelessness assistance if he or she has leave to enter or remain in the UK on family or private life grounds under Article 8 of the Convention, granted under paragraph 276 BE(1) or 276DG of, or under Appendix FM, to the Immigration Rules, where this leave is not subject to a condition of 'no recourse to public funds'.

3.5 The Regulations also amend regulation 5 of the 2014 Regulations to remove provisions relating to certain categories of asylum seekers whose claim for asylum was made before 3 April 2000, that are no longer required.

3.6 The Regulations also amend regulation 6(2) of the 2014 Regulations to provide that those listed at regulation 6(2)(a) to (f) are not to be treated as persons from

abroad who are ineligible for housing assistance as proposed to housing accommodation pursuant to regulation 6(1)(a) of the 2014 Regulations.

3.7 These Regulations will be made pursuant to powers under paragraph 1(2) and (4) of Schedule 2 to the Housing (Wales) Act 2014. Section 142(3)(b) of the Housing (Wales) Act 2014 (as subsequently amended by means of correction slip), provides that the Regulations are subject to the affirmative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 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.

4.2 Only certain classes of persons subject to immigration control are eligible for social housing and homelessness assistance under the 2014 Regulations. These include people granted leave 'exceptionally' outside the Immigration Rules, provided it is with recourse to public funds (Regulation 3 and 5(1)). This form of leave is known as Discretionary Leave. Prior to the 9 July 2012 changes to the Immigration Rules, family and private life cases were generally granted Discretionary Leave and were therefore eligible for social housing and homelessness assistance. Following the 2012 changes, most family and private life cases were given a new form of leave within the Immigration Rules, although those cases which did not meet the requirements of the Immigration Rules could still be provided with leave 'exceptionally' outside the Rules. The result has been that family and private life cases granted leave within the Immigration Rules were no longer eligible for social housing and homelessness assistance, because the 2014 Regulations were not updated to specify this form of leave. By contrast those granted leave outside the Rules continued to be eligible under Regulation 3 and 5(1).

4.3 These amending Regulations are intended to:

- Restore eligibility to those granted family and private life leave within the Immigration Rules, provided they have recourse to public funds and
- Ensure that those granted family and private life leave inside and outside the Immigration Rules are treated on the same basis.

4.4 The Regulations insert a new class 'Class F' in Regulation 3 and a new 'class G' in Regulation 5 in order to make a person subject to immigration control eligible for social housing or homelessness assistance if he or she has leave to enter or remain the UK on family or private life grounds under Article 8 of the Convention, granted

under paragraph 276 BE(1) or 276DG of, or under Appendix FM to, the Immigration Rules, where this leave is not subject to a condition of 'no recourse to public funds'.

4.5 In addition, these Regulations make minor changes to the 2014 Regulations to remove redundant provision relating to certain categories of asylum seekers. Generally speaking asylum seekers are not eligible for social housing or homelessness assistance. Instead they are accommodated by the Home Office under the arrangements provided for in Part 6 of the Immigration and Asylum Act 1999 ('the 1999 Act'). For a period after Part 6 of the 1999 Act come into force, transitional provisions allowed for certain categories of asylum seekers already accommodated by local authorities to continue to be supported by their local authority. These transitional provisions ceased to apply from April 2006 and, as a result, the provisions in the 2014 Regulations which make these categories of asylum seekers eligible for homelessness assistance are no longer required.

4.6 In October 2016, the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2016 made the same legislative amendments as proposed in these regulations. Given the numbers of individuals affected by the change in England is expected to be small, it is anticipated that the impact to services in Wales will be negligible.

5. Consultation

5.1 As the Regulations provide for a technical amendment which does not reflect a change in the Welsh Government's policy, a formal public consultation did not take place.

6. Regulatory Impact Assessment

6.1 As a result of the negligible impact the amendment to the 2014 Regulations on services in Wales, a Regulatory Impact Assessment has not been undertaken. The Regulations have no impact on the statutory duties within sections 77 to 79 of the Government of Wales Act 2006 or in respect of statutory partners pursuant to sections 72 to 75 of the Government of Wales Act 2006.