

Explanatory Memorandum to the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2021

This Explanatory Memorandum has been prepared by the Education and Public Services Group and is laid before Senedd Cymru 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 Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Climate Change
21 September 2021

PART 1

1. Description

The Allocation of Housing and Homelessness (Eligibility) (Wales) 2014 Regulations (“the 2014 Regulations”) provide for certain categories of persons from abroad to be eligible or ineligible for an allocation of housing accommodation and/or for housing assistance (essentially, support for homelessness).

The 2014 Regulations are to be amended by the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2021 (“the 2021 Regulations”) to extend eligibility for an allocation of housing and housing assistance provided by local authorities to provide two new cohorts of people with eligibility to housing and housing assistance. These are:

- People with a Hong Kong British National (Overseas) (“BN(O)”) visa who become destitute and have obtained a change to their immigration status enabling them to access public funds.
- People entering the UK from Afghanistan under certain Home Office schemes/policies or who have recently left Afghanistan due to the collapse of the Afghan government (subject to certain conditions) (“the Afghan arrivals/ returnees cohort”) and who have leave to enter or remain in the UK or do not require such leave.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

Part 6 of the Housing Act 1996 gives the Welsh Ministers the power to make regulations to prescribe certain categories of persons from abroad to be eligible or ineligible for an allocation of housing accommodation. Similar provision is made in the Housing (Wales) Act 2014 in relation to the Welsh Ministers’ (and the Secretary of State’s) ability to make regulations in relation to the eligibility or ineligibility of certain categories of persons for housing assistance. The 2014 Regulations to be amended are regulations 3, 4, 5 and 6.

The 2021 Regulations are being made under the affirmative resolution procedure, as is required by section 142(3)(b)(ii) of Housing (Wales) Act 2014, in relation to amendments made under that Act. Regulations made under section 160A of the Housing Act 1996 are subject to the negative procedure. Section 40 of the Legislation (Wales) Act 2019 provides that regulations subject to different procedures can be combined.

4. Purpose and intended effect of the legislation

These Regulations amend the provisions of the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 which determine which persons from abroad, are eligible for an allocation of housing accommodation under Part 6 of the Housing Act 1996, or for housing assistance under Schedule 2 of the Housing (Wales) Act 2014.

The Regulations, through the amendments they make, will extend the eligibility rights of Hong Kong BN(O) visa holders, making them eligible for housing and homelessness assistance, subject to passing the habitual residence test and the removal of the no access to public funds condition on their visa¹.

The Regulations are required in light of the UK Government's decision to allow all Hong Kong BN(O) citizens who normally live in the UK, Islands² or Hong Kong, to come to the UK with their close family members for up to five years. The new immigration route for Hong Kong BN(O) citizens was introduced in response to the imposition by the Chinese Government of a national security law on Hong Kong. After five years of residence in the UK, Hong Kong BN(O) visa holders will be entitled to apply for settlement (also known as indefinite leave to remain), and after one further year of residence to apply for British citizenship.

Initially, the UK Government intended that that Hong Kong BN(O) visa holders would be free to work or study in the UK. They would also have access to most NHS services after paying an Immigration Health Surcharge, but in most circumstances would be ineligible to claim benefits, commonly known as having 'no recourse to public funds' (NRPF). The UK Government subsequently revised their position, allowing those with a Hong Kong BN(O) visa to be able to apply for a change of conditions to have their NRPF condition lifted in the event that they become destitute or are at imminent risk of destitution. This will mean that if a Hong Kong BN(O) visa holder falls into destitution or is at imminent risk of destitution they will have access to benefits and services. These changes came into force at the start of April 2021. The NRPF condition is attached to some classes of person subject to immigration control but not all; the condition is only removed if the required test is met.

A separate route to the UK, known as 'Leave outside the rules', was made available to BN(O) citizens, subject to the discretion of Border Force Officers. Commencing from July 2020 BN(O) citizens and their family members were able to come to the UK and remain for up to six months, before applying for the Hong Kong BN(O) visa which became available after January 2021. In quarter

¹ Removal of the condition would apply if there is satisfactory evidence that they are destitute or at imminent risk of destitution as defined in section 95 of the Immigration and Asylum Act 1999; or satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income or the visa holder is facing exceptional financial circumstances relating to a very low income.

² the Channel Islands, the Isle of Man or the Republic of Ireland.

1 of 2021, approximately 5,500 BN(O) citizens and their dependants were been granted 'Leave outside the rules' at the UK border³.

The Welsh Government has decided to make the Regulations in recognition of the special relationship the UK has with Hong Kong citizens and their families who were present during the period in which Hong Kong was a British Dependent Territory. This relationship and our close ties with Hong Kong citizens also extend to Wales as a nation of the UK, aligning with the aims of the Welsh Government to promote Wales as a globally responsible nation, through its International Strategy, which also includes an aspiration to become a Nation of Sanctuary committed to human rights and promoting peace.

The Afghan arrivals/returnees cohort will be provided with similar eligibility for housing and homelessness assistance as the Hong Kong BN(O) cohort, but will not be required to demonstrate they are habitually resident within the UK. This is a reflection of the emergency situation which has developed in Afghanistan.

The two new immigration routes for Afghan citizens and their families created by the UK Government are:

- The 'Afghan Relocations and Assistance Policy' (ARAP), directed towards Afghans who worked with the British military and UK Government in Afghanistan. This has similarities to the previous scheme for locally employed Afghan staff (sometimes referred to as the "ex-gratia scheme"), people with leave under this previous scheme will also be made eligible.
- The 'Afghan Citizens Resettlement Scheme' (ACRS) provides for Afghan citizens considered most at risk of human rights abuses by the new Taliban regime, in particular women and girls.

Those granted leave under ACRS will already come within a class of those eligible for assistance under the 2014 Regulations so do not need to be added by the 2021 Regulations. The 2021 Regulations will extend eligibility to those with leave under ARAP or the previous scheme for locally employed Afghan staff. They will also extend eligibility to other persons where they have been granted leave to enter or remain in the United Kingdom and they left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021, but such persons will be excluded from eligibility if they are subject to a sponsorship or maintenance undertaking. Persons coming within this new class, depending on the exact nature of their leave are likely, once they are "habitually resident", to fall within one of the other classes already made eligible by the 2014 Regulations, however the 2021 Regulations will ensure that they do not need to satisfy the habitual residence test such that they are eligible from day one.

³ [How many people come to the UK each year \(including visitors\)? - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/how-many-people-come-to-the-uk-each-year-including-visitors)

The 2021 Regulations also make eligible those who are not persons subject to immigration control but who have recently arrived from Afghanistan where they left in connection with the collapse of the Afghan government. Persons in this group would usually need to wait to be eligible as they would not immediately satisfy the habitual residence test, due to the amendments they will not be required to satisfy this test and they too will be eligible from day 1.

The opening of resettlement schemes for the Afghan arrivals/returnees cohort follows the withdrawal of UK forces and Government officials from Afghanistan leading up to 31 August 2021. The UK Government has confirmed that it intends to resettle 5,000 people during the next year, with up to 20,000 Afghan citizens eventually coming to the UK. The numbers anticipated to arrive through the alternative route (provided under Classes K (ii) persons (in relation to Reg 3) and L(ii) persons (in relation to Reg 5)) cannot be predicted with certainty and present an unknown level of impact on public services. Although the numbers settling in Wales are likely to be relatively low.

The decision to make provision of eligibility for housing and homelessness assistance to the Afghan arrivals/ returnees cohort within the Regulations is based on the special relationship the UK has with Afghanistan and its citizens, in particular those who supported its work following the 2001 invasion of the country. The Welsh Government is also concerned about the vulnerability of women and girls, whose human rights and individual freedoms are now at considerable risk. The Regulations will demonstrate the Welsh Government's commitment to promote Wales as a globally responsible nation and that of a nation of sanctuary for Afghans coming to Wales.

The Regulations support the Welsh Government's objective of ending homelessness in Wales. Without the regulations in place, any Hong Kong BN(O) living in Wales who were at risk or became destitute and the Afghan arrivals/returnees cohort would be prevented from receiving housing or housing assistance from a local authority. This would contradict current homelessness policy and the Welsh Government's ambition of ending homelessness in Wales and when that is not possible ensure that it is brief, rare and non-recurring.

5. Consultation

As the Regulations in respect of the Hong Kong BN(O) provide a limited amendment, affecting a small number of individuals, a formal public consultation was not considered appropriate. The speed of the restoration of the Taliban regime in Afghanistan and the development at pace of the UK Government's settlement schemes for the Afghan arrivals/returnees cohort also means there has not been time to consult on this aspect of the Regulations.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

The Welsh Government has considered two options to address the needs of Hong Kong BN(O) visa holders who succeeded in lifting the NRPF condition to their immigration status and the Afghan arrivals/returnees cohort.

- Option 1: Business as usual – Maintain the status quo, meaning that BN(O) visa holders who have succeeded in lifting the NRPF condition on their immigration and the Afghan arrivals/returnees cohort will have to manage without access to housing or housing assistance.
- Option 2: Make the legislation (the preferred option)

7. Costs and benefits

Option 1: Business as usual

This is the baseline option and as such there are no additional direct costs or benefits associated with this option. However, as the UK Government has made it possible for Hong Kong BN(O) visa holders who have lifted the NRPF condition and the Afghan arrivals/returnees cohort to obtain benefits, this policy option could be found to be unfair to both groups living in Wales given its application in other parts of the UK.

Option 2: Make the legislation

The UK government has estimated⁴ that 5.4 million Hong Kong residents will be eligible to come to the UK under the new route⁴, and after six years' residence acquire UK citizenship. This would entitle 72% of Hong Kong's 7.5 million population to come to the UK. The estimate shows:

- 2.9 million BN(O)s living in Hong Kong;
- 2.3 million dependants of Hong Kong BN(O)s; and
- 187,000 18–23-year-olds who are not considered to be the dependants of BNOs (in view of being adults), but have at least one BN(O) parent and are a part of the same household.

The UK government has taken the position that the cohort listed above and their close family members will be eligible to come to the UK in order to keep families together⁵.

At the end of August 2020, only 400,000 'live' BN(O) passports were in circulation, with approximately 200,000 applications for BN(O) passports being processed⁶. Holding a 'live' BN(O) passport is not essential to apply for a visa,

⁴ [Hong Kong British National \(Overseas\) Visa RPC Opinion: N/A \(legislation.gov.uk\) – \(page 3\)](#)

⁵ [Hong Kong British National \(Overseas\) Visa RPC Opinion: N/A \(legislation.gov.uk\) – \(page 3\)](#)

⁶ [Q&A: The new Hong Kong British National \(Overseas\) visa - Migration Observatory - The Migration Observatory \(ox.ac.uk\)](#)

but not having one may delay the decision to grant one⁷. Therefore, the low number of passports in circulation may not provide an indicator of the eventual number of people who decide to migrate to the UK via the BN(O) route.

After the first two months after the launch of the BN(O) route 34,300 BN(O) applicants⁸ and their dependents had arrived within the UK⁹. The UK Government's current 'central' published estimate shows 122,600 applicants and their dependents coming to the UK in the first year of applications, increasing to 257,200¹⁰.

Given the complexity of the situation in Hong Kong, it is difficult to predict with confidence the intentions of people who hold a BN(O) visa. Alternative migration options will be available and despite the factors which would push individuals to move to the UK, many will wish to remain in Hong Kong. Estimating migratory patterns and how that will apply to Wales is therefore uncertain. No data has been collected by the UK Government on the preferred or intended destinations to which Hong Kong BN(O) visa holders wish to move and the Explanatory Memorandum can only speculate where they may end up.

The 2011 Census identified there were 3,517 people born in Hong Kong living in Wales. The 2011 Census also showed that there were 6,296 people born in the China living in Wales¹¹. Across England and Wales 102,241 people were born in Hong Kong and 152,498 people were born in China. The Hong Kong diaspora in Wales is therefore small compared to certain regions in England, where in London and south east England, larger communities with ties to Hong Kong live. For that reason the BN(O) visa cohort may not be drawn to Wales in particularly large numbers. What ultimately informs decisions is unknown.

Crude calculations based on Wales' population compared to the rest of the UK¹² and based on the estimated numbers of Hong Kong BN(O) the UK Government consider may adopt this route, could mean that 5,762 Hong Kong BN(O) visa holders move to Wales in 2021, increasing to 12,088 by the end of 2025. However, for the purpose of the Regulations, the relevant calculation is the proportion of the visa holders who become destitute that then require housing or housing assistance. Welsh Government data on homelessness outcomes for 2019-20¹³ showed that the number of people provided with preventative assistance or relief, in accordance with duties under the Housing (Wales) Act 2014 were 14,175, representing 0.4% of Wales' population. If that proportion us

⁷ [British National \(Overseas\) visa: Documents you'll need to apply - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/british-national-overseas-visa#documents-youll-need-to-apply)

⁸ [How many people come to the UK each year \(including visitors\)? - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/how-many-people-come-to-the-uk-each-year-including-visitors)

⁹ These are separate to people granted Leave Outside the Rules

¹⁰ [Hong Kong British National \(Overseas\) Visa RPC Opinion: N/A \(legislation.gov.uk\) – \(page 8\)](https://www.legislation.gov.uk/hkopt/2017/1/1/visarpc/opinion/n/a)

¹¹

https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/2011censusquickstatisticsforenglandandwalesonnationalidentitypassportsheldandcountryofbirth/r24ewrtableqs213ewladv1_tcm77-304916.xls

¹² Wales' population was estimated as of mid-2019 to be 3,152,879, representing 4.7% of the UK's population of 66,796,807 [National level population estimates by year, age and UK country \(gov.wales\)](https://www.gov.uk/government/statistics/national-level-population-estimates-by-year-age-and-uk-country)

¹³ [Households for which assistance has been provided by outcome and household type \(gov.wales\)](https://www.gov.uk/government/statistics/households-for-which-assistance-has-been-provided-by-outcome-and-household-type)

applied to the Hong Kong BN(O) cohort who may end up in Wales and subsequently becoming destitute and requiring assistance, 23 individuals arriving in the first year may be affected, increasing to 48 individuals by 2025.

The cost of applying for a BN(O) visa is relatively low, £250 to apply to stay for five years, as opposed to a standard UK work visa lasting more than three years, which costs £1,220. However, BNOs and their family members will be required to pay an up-front immigration health surcharge of £624 per adult (£470 per child) for each year of stay, amounting to £3,120 per adult¹⁴. The additional costs of seeking indefinite leave to remain and the route to citizenship amount to almost £7,000 per adult¹⁵. In addition, those applying for the BN(O) visa route will need to be able to show that they can support themselves and their family members in the UK for six months. These combined costs suggest that individuals and families coming to the UK will already have substantial savings and should present a relatively low risk of becoming homeless. However, to mitigate the risk of the UK Government's decision to lift the NRPF condition, the Ministry for Housing, Communities and Local Government has set aside £16 million for local authorities for targeted support funding to manage and cover costs where BN(O) visa holders are at risk of destitution. A proportion of that funding is expected to be available to Welsh local authorities.

Estimates with the Explanatory Memorandum for the Housing (Wales) Act 2014 calculated costs to local authorities providing homelessness services to applicants for the 2015-16 period. These costs have been uprated to reflect inflation during the intervening period and are used in this RIA to estimate the cost a local authority might incur if any person granted stateless leave were to apply for housing or housing assistance.

This provision of homelessness services would involve an initial assessment for those applicants that are either not homeless or ineligible for assistance. The cost of this assessment was assumed to be £428.40 per "ineligible" applicant and £214.20 for an individual who was considered as "not homeless". When fulfilling the prevention duty as prescribed by the 2014 legislation, costs were estimated to be £1,112 per applicant.

There is a duty to relieve homelessness to applicants for whom prevention fails or who are deemed to be homeless upon presentation. The duty to relieve homelessness is assumed to have no additional cost for those applicants who have already been through the prevention duty.

For cases in which the duty to relieve homelessness is not successful, applicants who may be considered as "eligible, homeless, in priority need and unintentionally homeless" and for whom action to relieve homelessness is unsuccessful, will be entitled to a full duty at a cost of £2,274 per applicant (£2,702.40 less the cost of an assessment of £428.40).

¹⁴ [British National \(Overseas\) visa: How much it costs - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/british-national-overseas-visa-how-much-it-costs)

¹⁵ [Apply for citizenship if you have British nationality: You've lived in Hong Kong - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/apply-for-citizenship-if-you-have-british-nationality-youve-lived-in-hong-kong)

Estimated cost to local authorities for the Hong Kong BN(O) cohort

	23 applicants per year	48 applicants per year
£428.40 per “ineligible” applicants	£9,853	£20,563
£214.20 per applicant considered as “not homeless”	£4,927	£10,282
£1,112 per applicant eligible to assistance in accordance with the prevention duty	£25,576	£53,376
£2,274 per applicant who may be considered as “eligible, homeless, in priority need and unintentionally homeless”	£5,302	£109,152

Should a BN(O) visa holder make an application for social housing, then the costs to a local authority would be lower. Based upon general estimates calculated by reviewing management data, local authority colleagues have indicated that the processing of a housing application would range from £400-£800. If the same criteria of applications for social housing is made as for housing assistance (23 to 48 applications across Wales), then the total cost for local authorities could range from £9,200 to £38,400.

Afghan arrivals/ returnees cohort

Through the ARAP 16 families, representing approximately 62 people, have been housed in Wales, with 40 more families expected soon, bringing the total number of individuals up to 244. Eventually, the Home Office hope to direct 100 families for resettlement in Wales in this first phase. For the purpose of the Explanatory Memorandum an assumption is made that 100 families will represent between 500-600 individuals. To assist with the settlement process and wherever possible, individuals and families are being matched to areas with whom they have a connection via Welsh or Welsh based troops.

The 2011 Census identified there were 562 people born in Afghanistan living in Wales¹⁶. Across England and Wales 62,723 people were born in Afghanistan. The Afghan diaspora in Wales is smaller than all other regions of England, with more than half the total population living in London. Although the resettlement process for the Afghan arrivals/returnees cohort is being organised across all parts of the UK, Afghans may not be drawn to Wales in particularly large numbers given the small size of the current community. Given these factors the settlement

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https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/2011censusquickstatisticsforenglandandwalesonnationalidentitypassp ortsheldandcountryofbirth/r24ewrttablegs213ewladv1_tcm77-304916.xls

of the Afghan arrivals/returnees cohort is not expected to have a significant detrimental impact on local authorities and other applicants of social housing or homelessness. However, as with the Hong Kong BN(O) cohort, the factors which may affect decisions and where individuals and families settle are largely unknown.

The situation for the Afghan arrivals/returnees cohort differs from the Hong Kong BN(O) cohort because all are being housed temporarily until such time as individuals and families are able to access Universal Credit. This support is being made akin to the relief duties under the Housing (Wales) Act 2014. However, the costs to local authorities in Wales of those arriving under the ARAP and the predecessor scheme are being met by the UK Government which means an estimate of those costs is not relevant to this Explanatory Memorandum. Given the rapidity of the development of this area of policy, it is not yet possible to confirm if costs for those coming to the UK through alternate routes will be met by the UK Government or fall to local authorities. However, once it is possible to draw on benefits, such as Universal Credit, some families may be able and decide to look for a home within the private rented sector, whilst others might apply for social housing. It is difficult to predict the preferred choices that individuals will take at this stage.

Having settled successfully within Wales, if the same crude calculation used for the Hong Kong BN(O) is applied to the Afghan arrivals/returnees cohort who settle in Wales, this would mean that a relatively low number may require homelessness assistance in the future. The actual figure may vary depending on those coming to the UK through alternate routes, but given the uncertainty on actual numbers we cannot provide an estimate for this assessment.

Cost to local authorities from the Afghan arrivals/returnees cohort who are provided with social housing are difficult to predict given uncertainty over the type of housing tenure they may need and the type of immigration status they are granted. Many of the cohort are likely to have been eligible under the existing classes in the 2014 Regulations once habitual residence is established, with the 2021 Regulations only removing the requirement for them to be habitually resident. However, assuming that a large proportion (75%-90%) of the estimated 100 families seek social housing, those costs might range from £30,000 to £72,000. We cannot yet predict the costs of those coming via alternate routes. Applicants for housing or homelessness assistance who are not subject to immigration control will not need to demonstrate they are habitually resident within the UK, this will mean that they will be able to access support earlier than they would have otherwise been able to do, as such the additional costs implications will be minimal.

Benefits

Section 4 of Part 1 of the Explanatory Memorandum outlines the justification for making the Regulations. The Welsh Government considers that the extending eligibility to housing and housing assistance for BN(O) visa holders who have had their NRPF condition lifted and to the Afghan arrivals/returnees cohort will

help reduce this risk or homelessness, and should it occur, ensure that it is brief, rare and non-recurring.

The benefits of preventing homelessness extend well beyond the actual, additional, costs of helping people who are homeless, for example, the cost of providing them temporary accommodation. Effective homelessness services can provide benefits that may last someone's lifetime. They include better health and well-being, child development and education, and adults' participation in the labour market. As a result, the demands on some services, local authority homelessness services and the NHS and social care services for example, can be reduced.

Benefits of effective action will contribute to the achievement of several Welsh Government Acts, such as the Social Services and Well-being (Wales) Act 2014, Well-being of Future Generations (Wales) Act 2015, and the Ending Violence against Women and Domestic Abuse (Wales) Act 2015.

The anticipated numbers of visa holders who become destitute is likely to be very low and we anticipate the same for the Afghan arrivals/returnees cohort once they have settled in Wales. However, the safeguard provided by the Regulations will help demonstrate Wales' reputation as a safe and welcoming country.

8. Consultation

Not applicable – see section 5 of Part 1.

9. Competition Assessment

Not applicable.

10. Post implementation review

Not applicable.