

2002 No. 3264

HOUSING, ENGLAND

The Allocation of Housing (England) Regulations 2002

Made - - - - - *18th December 2002*

Laid before Parliament *10th January 2003*

Coming into force - - *31st January 2003*

The Secretary of State, in exercise of the powers conferred upon him by sections 160(4), 160A(3) and (5) and 172(4) of the Housing Act 1996(a) hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Allocation of Housing (England) Regulations 2002 and shall come into force on 31st January 2003.

(2) These Regulations apply in England only.

Interpretation

2. In these Regulations—

“the Act” means the Housing Act 1996;

“the Common Travel Area” means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland collectively; and

“the immigration rules” means the rules laid down as mentioned in section 3(2) of the Immigration Act 1971(b) (general provisions for regulation and control).

Cases where the provisions of Part 6 of the Act do not apply

3.—(1) The provisions of Part 6 of the Act about the allocation of housing accommodation do not apply in the following cases.

(2) They do not apply where a local housing authority secures the provision of suitable alternative accommodation under section 39 of the Land Compensation Act 1973(c) (duty to rehouse residential occupiers).

(3) They do not apply in relation to the grant of a secure tenancy under sections 554 and 555 of the Housing Act 1985(d) (grant of tenancy to former owner-occupier or statutory tenant of defective dwelling-house).

(a) 1996 c. 52; section 160A was added by section 14(2) of the Homelessness Act 2002 (c. 7). The function of the Secretary of State under sections 160, 160A and 172(4) are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672, to which there are amendments not relevant to these Regulations) and section 17(1) of the Homeless Act 2002.

(b) 1971 c. 77.

(c) 1973 c. 26; section 39 was amended by Part 1 of Schedule 2 to the Land Compensation (Scotland) Act 1973 (c. 56), paragraph 40 of Schedule 13 to the Housing Act 1974 (c. 44), paragraph 10 of Schedule 7 to the Development of Rural Wales Act 1976 (c. 75), Part 1 of Schedule 1 and paragraph 24 of Schedule 2 to the Housing (Consequential Provisions) Act 1985 (c. 71), Part 2 of Schedule 12 to the Local Government and Housing Act 1989 (c. 42), and paragraph 29 of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11).

(d) 1985 c. 68; section 554 was amended by paragraph 61 of Schedule 17 to the Housing Act 1988 (c. 50) and S.I. 1996/2325.

Classes prescribed under section 160A(3) who are eligible persons

4. The following are classes of persons subject to immigration control prescribed for the purposes of section 160A(3) of the Act (persons prescribed as eligible for an allocation of housing accommodation by a local housing authority)—

- (a) Class A—a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951^(a) as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967^(b);
- (b) Class B—a person—
 - (i) who has been granted by the Secretary of State exceptional leave to enter or remain in the United Kingdom outside the provisions of the immigration rules; and
 - (ii) whose leave is not subject to a condition requiring him to maintain and accommodate himself, and any person who is dependent on him, without recourse to public funds;
- (c) Class C—a person who has current leave to enter or remain in the United Kingdom which is not subject to any limitation or condition and who is habitually resident in the Common Travel Area other than a person—
 - (i) who has been given leave to enter or remain in the United Kingdom upon an undertaking given by another person (his “sponsor”) in writing in pursuance of the immigration rules to be responsible for his maintenance and accommodation;
 - (ii) who has been resident in the United Kingdom for less than five years beginning on the date of entry or the date on which the undertaking was given in respect of him, whichever date is the later; and
 - (iii) whose sponsor or, where there is more than one sponsor, at least one of whose sponsors, is still alive;
- (d) Class D—a person who is habitually resident in the Common Travel Area and who—
 - (i) is a national of a state which has ratified the European Convention on Social and Medical Assistance done at Paris on 11th December 1953^(c) or a state which has ratified the European Social Charter done at Turin on 18th October 1961^(d) and is lawfully present in the United Kingdom; or
 - (ii) before 3rd April 2000 was owed a duty by a housing authority under Part 3 of the Housing Act 1985^(e) (housing the homeless) or Part 7 of the Act (homelessness) which is extant, and who is a national of a state which is a signatory to the European Convention on Social and Medical Assistance done at Paris on 11th December 1953 or a state which is a signatory to the European Social Charter done at Turin on 18th October 1961.

Classes prescribed under section 160A(5) who are ineligible persons

5. The following is a class of persons, not being persons subject to immigration control, prescribed for the purposes of section 160A(5) of the Act (persons prescribed as ineligible for an allocation of housing accommodation)—

Class B—a person who is not habitually resident in the Common Travel Area other than—

- (a) a worker who for the purposes of Council Regulation (EEC) No. 1612/68^(f) or (EEC) No. 1251/70^(g);

(a) Cmnd. 9171.

(b) Cmnd. 3906.

(c) Cmnd. 9512.

(d) Cmnd. 2643.

(e) 1985 c. 68. The repeal of Part 3, which was commenced by the Housing Act 1996 (Commencement No. 5 and Transitional Provisions) Order 1996 (S.I. 1996/2959 (c. 78)), does not, by virtue of paragraph 1 of the Schedule to that Order, apply to applicants under Part 3 of that Act whose applications were made before 20th January 1997.

(f) OJ No. L. 257, 19.10.68, p. 2, Special Edition 1968(II) p. 475, to which there are amendments not relevant to these Regulations.

(g) OJ No. L 142, 30.6.70, p. 24 Special Edition 1970 (II) p. 402.

- (b) a person with a right to reside in the United Kingdom pursuant to the Immigration (European Economic Area) Order 2000(a) and derived from Council Directive No. 68/360/EEC(b) or No. 73/148/EEC(c);
- (c) a person who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.

Revocation

- 6. The Allocation of Housing (England) Regulations 2000(d) are revoked.

Signed by authority of the First Secretary of State

18th December 2002

Jeff Rooker
Minister of State
Office of the Deputy Prime Minister

(a) S.I. 2000/2326.

(b) OJ No. L 257, 19.10.68, p. 13, Special Edition 1968 (II) p. 485, to which there are amendments not relevant to these Regulations.

(c) OJ No. L 172, 28.6.73, p. 14.

(d) S.I. 2000/702.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and re-enact with changes the Allocation of Housing (England) Regulations 2000 to take account of the changes to Part 6 of the Housing Act 1996 (“Part 6”) made by the Homelessness Act 2002. These Regulations apply in England only.

Regulation 3 makes provision for cases where the provisions of Part 6 about the allocation of housing accommodation by local housing authorities do not apply.

By virtue of section 160A(1) and (3) of the 1996 Act, a local housing authority must not allocate housing accommodation to persons from abroad who are subject to immigration control within the meaning of the Asylum and Immigration Act 1996 (c. 49) unless otherwise prescribed. Regulation 4 prescribes classes of persons subject to immigration control who are eligible for an allocation of housing accommodation.

Persons from abroad not subject to immigration control who are eligible for an allocation of housing accommodation may be prescribed as ineligible under Part 6.

Regulation 5 prescribes a class of persons who are ineligible under that Part. Regulation 6 revokes the Allocation of Housing (England) Regulations 2000.

These Regulations, with minor drafting changes, contain similar provisions to those in the Allocation of Housing (England) Regulations 2000. Those Regulations which have not been re-enacted relate to the restrictions on the allocation to existing tenants and to the requirements to establish, maintain and operate a housing register, which have now been repealed.

Command Papers 2643, 3906, 9171 and 9512, referred to in these Regulations, are out of print but photocopies of these documents can be obtained by The Stationery Office from the British Lending Library Division (BLLD). Customers, unless already registered with BLLD, should order photocopies from The Photocopying Unit, The Stationery Office, Nine Elms Lane, London SW8 5DR, enclosing the appropriate payment for the copies required. The current cost of each complete copy of Command Paper 2643, 3906 or 9512 is £6.00 and the current cost of each complete copy of Command Paper 9171 is £12.00. Cheques should be made payable to “The Stationery Office”.

£1.75

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under the authority and superintendence of Carol Tullo, Controller of
Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.
E1908 1/2003 121908 19585

ISBN 0-11-044464-7



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