
STATUTORY INSTRUMENTS

2006 No. 1294

HOUSING, ENGLAND

The Allocation of Housing and Homelessness
(Eligibility) (England) Regulations 2006

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| <i>Made</i> | - - - - | <i>11th May 2006</i> |
| <i>Laid before Parliament</i> | | <i>11th May 2006</i> |
| <i>Coming into force</i> | - - | <i>1st June 2006</i> |

The Secretary of State, in exercise of the powers conferred by sections 160A(3) and (5), 172(4), 185(2) and (3) and 215(2) of the Housing Act 1996⁽¹⁾ makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 and shall come into force on 1st June 2006.

(2) These Regulations apply to England only.

Interpretation

2.—(1) In these Regulations—

“the 1996 Act” means the Housing Act 1996;

“the Accession Regulations” means the Accession (Immigration and Worker Registration) Regulations 2004⁽²⁾;

“the EEA Regulations” means the Immigration (European Economic Area) Regulations 2006⁽³⁾;

“the Immigration Rules” means the rules laid down as mentioned in section 3(2) of the Immigration Act 1971⁽⁴⁾ (general provisions for regulation and control);

(1) 1996, c. 52; section 160A was added by section 14(2) of the Homelessness Act 2002 (c. 7). The functions of the Secretary of State under Parts 6 and 7 of this Act (except sections 186 and 187) 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 Homelessness Act 2002.

(2) S.I. 2004/1219.

(3) S.I. 2006/1003.

(4) 1971, c. 77.

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951⁽¹¹⁾, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967⁽¹²⁾; and

“sponsor” means a person who has given an undertaking in writing for the purposes of the Immigration Rules to be responsible for the maintenance and accommodation of another person.

(2) For the purposes of these Regulations—

- (a) “jobseeker”, “self-employed person”, and “worker” have the same meaning as for the purposes of the definition of a “qualified person” in regulation 6(1) of the EEA Regulations⁽⁵⁾; and
- (b) subject to paragraph (3), references to the family member of a jobseeker, self-employed person or worker shall be construed in accordance with regulation 7 of those Regulations.

(3) For the purposes of regulations 4(2)(d) and 6(2)(d) “family member” does not include a person who is treated as a family member by virtue of regulation 7(3) of the EEA Regulations.

Persons subject to immigration control who are eligible for an allocation of housing accommodation

3. The following classes of persons subject to immigration control are persons who are eligible for an allocation of housing accommodation under Part 6 of the 1996 Act—

- (a) Class A – a person who is recorded by the Secretary of State as a refugee within the definition in Article 1 of the Refugee Convention and who has leave to enter or remain in the United Kingdom;
- (b) Class B – a person—
 - (i) who has exceptional leave to enter or remain in the United Kingdom granted outside the provisions of the Immigration Rules; and
 - (ii) who 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 is habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland and whose leave to enter or remain in the United Kingdom is not subject to any limitation or condition, other than a person—
 - (i) who has been given leave to enter or remain in the United Kingdom upon an undertaking given by his sponsor;
 - (ii) who has been resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland for less than five years beginning on the date of entry or the date on which his sponsor gave the undertaking 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; and
- (d) Class D – a person who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.

⁽¹¹⁾ Cmd. 9171.

⁽¹²⁾ Cmnd. 3906.

⁽⁵⁾ See regulation 4 and regulation 6(2) to (4) of the Immigration (European Economic Area) Regulations 2006.

Other persons from abroad who are ineligible for an allocation of housing accommodation

4.—(1) A person who is not subject to immigration control is to be treated as a person from abroad who is ineligible for an allocation of housing accommodation under Part 6 of the 1996 Act if—

- (a) subject to paragraph (2), he is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, or the Republic of Ireland;
- (b) his only right to reside in the United Kingdom—
 - (i) is derived from his status as a jobseeker or the family member of a jobseeker; or
 - (ii) is an initial right to reside for a period not exceeding three months under regulation 13 of the EEA Regulations; or
- (c) his only right to reside in the Channel Islands, the Isle of Man or the Republic of Ireland is a right equivalent to one of those mentioned in sub-paragraph (b) which is derived from the Treaty establishing the European Community.

(2) The following are not to be treated as persons from abroad who are ineligible for an allocation of housing accommodation pursuant to paragraph (1)(a)—

- (a) a worker;
- (b) a self-employed person;
- (c) a person who is an accession state worker requiring registration who is treated as a worker for the purpose of the definition of “qualified person” in regulation 6(1) of the EEA Regulations pursuant to regulation 5 of the Accession Regulations⁽⁶⁾;
- (d) a person who is the family member of a person specified in sub-paragraphs (a)-(c);
- (e) a person with a right to reside permanently in the United Kingdom by virtue of regulation 15(c), (d) or (e) of the EEA Regulations;
- (f) a person who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption; and
- (g) a person who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

Persons subject to immigration control who are eligible for housing assistance

5.—(1) The following classes of persons subject to immigration control are persons who are eligible for housing assistance under Part 7 of the 1996 Act—

- (a) Class A – a person who is recorded by the Secretary of State as a refugee within the definition in Article 1 of the Refugee Convention and who has leave to enter or remain in the United Kingdom;
- (b) Class B – a person—
 - (i) who has exceptional leave to enter or remain in the United Kingdom granted outside the provisions of the Immigration Rules; and
 - (ii) whose leave to enter or remain 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 is habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland and whose leave to enter or remain in the United Kingdom is not subject to any limitation or condition, other than a person—

⁽⁶⁾ Regulation 5 of the Accession Regulations was substituted by the Immigration (European Economic Area) Regulations 2006, Schedule 5, paragraph 7(5).

- (i) who has been given leave to enter or remain in the United Kingdom upon an undertaking given by his sponsor;
 - (ii) who has been resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland for less than five years beginning on the date of entry or the date on which his sponsor gave the undertaking 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 left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption; and
- (e) Class E – a person who is an asylum-seeker whose claim for asylum is recorded by the Secretary of State as having been made before 3rd April 2000 and in the circumstances mentioned in one of the following paragraphs—
- (i) on arrival (other than on his re-entry) in the United Kingdom from a country outside the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland;
 - (ii) within three months from the day on which the Secretary of State made a relevant declaration, and the applicant was in Great Britain on the day on which the declaration was made; or
 - (iii) on or before 4th February 1996 by an applicant who was on 4th February 1996 entitled to benefit under regulation 7A of the Housing Benefit (General) Regulations 1987(7) (persons from abroad).
- (2) For the purpose of paragraph (1)(e)—
- (a) “asylum-seeker” means a person who is at least 18 years old, who is in the United Kingdom, and who has made a claim for asylum;
 - (b) “claim for asylum” means a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom;
 - (c) “relevant declaration” means a declaration to the effect that the country of which the applicant is a national is subject to such a fundamental change of circumstances that the Secretary of State would not normally order the return of a person to that country; and
 - (d) subject to paragraph (3), a person ceases to be an asylum-seeker when his claim for asylum is recorded by the Secretary of State as having been decided (other than on appeal) or abandoned.
- (3) For the purposes of paragraph (1)(e)(iii), a person does not cease to be an asylum-seeker as mentioned in paragraph (2)(d) while he is eligible for housing benefit by virtue of—
- (a) regulation 10(6) of the Housing Benefit Regulations 2006(8); or
 - (b) regulation 10(6) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(9),
- as modified in both cases by paragraph 6 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006(10).

(7) S.I. 1987/1971; amended by S.I. 1996/30; there are other amending instruments, but none is relevant.

(8) S.I. 2006/213.

(9) S.I. 2006/214.

(10) S.I. 2006/217.

Other persons from abroad who are ineligible for housing assistance

6.—(1) A person who is not subject to immigration control is to be treated as a person from abroad who is ineligible for housing assistance under Part 7 of the 1996 Act if—

- (a) subject to paragraph (2), he is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, or the Republic of Ireland;
- (b) his only right to reside in the United Kingdom—
 - (i) is derived from his status as a jobseeker or the family member of a jobseeker; or
 - (ii) is an initial right to reside for a period not exceeding three months under regulation 13 of the EEA Regulations; or
- (c) his only right to reside in the Channel Islands, the Isle of Man or the Republic of Ireland is a right equivalent to one of those mentioned in sub-paragraph (b) which is derived from the Treaty establishing the European Community.

(2) The following are not to be treated as persons from abroad who are ineligible for housing assistance pursuant to paragraph (1)(a)—

- (a) a worker;
- (b) a self-employed person;
- (c) a person who is an accession state worker requiring registration who is treated as a worker for the purpose of the definition of “qualified person” in regulation 6(1) of the EEA Regulations pursuant to regulation 5 of the Accession Regulations;
- (d) a person who is the family member of a person specified in sub-paragraphs (a)-(c);
- (e) a person with a right to reside permanently in the United Kingdom by virtue of regulation 15(c), (d) or (e) of the EEA Regulations;
- (f) a person who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption; and
- (g) a person who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

Revocation

7. Subject to regulation 8, the Regulations specified in column (1) of the Schedule are revoked to the extent mentioned in column (3) of the Schedule.

Transitional provisions

8. The revocations made by these Regulations shall not have effect in relation to an applicant whose application for—

- (a) an allocation of housing accommodation under Part 6 of the 1996 Act; or
- (b) housing assistance under Part 7 of the 1996 Act,

was made before 1st June 2006.

Signed by authority of the Secretary of State

11th May 2006

Yvette Cooper
Minister of State
Department for Communities and Local
Government

SCHEDULE

Regulation 7

Revocation schedule

| <i>(1)</i> <i>Regulations Revoked</i> | <i>(2)</i> <i>References</i> | <i>(3)</i> <i>Extent of revocation</i> |
|---|---------------------------------|---|
| The Homelessness (England) Regulations 2000 | SI 2000/701 | The whole Regulations |
| The Allocation of Housing (England) Regulations 2002 | SI 2002/3264 | Regulations 4 and 5 |
| The Allocation of Housing and Homelessness (Amendment) (England) Regulations 2004 | SI 2004/1235 | The whole Regulations |
| The Allocation of Housing and Homelessness (Amendment) (England) Regulations 2006 | SI 2006/1093 | The whole Regulations |

EXPLANATORY NOTE*(This note is not part of the Regulations)*

These Regulations make provision for which persons from abroad will be ineligible or eligible for an allocation of housing accommodation under Part 6 of the Housing Act 1996 (“the Act”) and for housing assistance under Part 7 of the Act. These Regulations apply in England only.

By virtue of section 160A(1) and (3) of the Act, a local housing authority must not allocate housing accommodation under Part 6 of the Act to persons from abroad who are subject to immigration control (within the meaning of the Asylum and Immigration Act 1996 (c. 49)) unless they are of a class prescribed by the Secretary of State. Similarly, section 185(2) of the Act provides that such persons are not eligible for housing assistance under Part 7 of the Act unless they are of a class which is so prescribed.

By virtue of section 160A(1) and (5) of the Act, a local housing authority must not allocate housing accommodation under Part 6 of the Act to other persons who, although they are not subject to immigration control, are of a class prescribed by the Secretary of State as persons from abroad. Similarly, section 185(3) of the Act provides that the Secretary of State may make provision by regulations as to the descriptions of person who, although not subject to immigration control, are to be treated as persons from abroad who are ineligible for housing assistance.

These Regulations contain similar provisions to those in regulations 4 and 5 of the Allocation of Housing (England) Regulations 2002 and the Homelessness (England) Regulations 2000, as amended (which are revoked by these Regulations). The main changes are to take account of the implementation of Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004 by the Immigration (European Economic Area) Regulations 2006. Directive 2004/38 makes some changes to the rights of free movement of citizens of the European Union (EU) and their family members, in particular by:

Status: This is the original version (as it was originally made).

- (a) the introduction of an initial right of residence of 3 months in a host member State for EU citizens and their family members provided they do not become an unreasonable burden on the social assistance system of the host member State – this right of residence is not conditional on the EU citizen being, for example, a worker or self-employed, as was previously the case under EU law;
- (b) the introduction of a permanent right of residence in a host member State for some EU citizens.

Regulations 3 and 5 of these Regulations prescribe the classes of person subject to immigration control who are eligible for an allocation of housing accommodation and for housing assistance respectively.

Regulations 4 and 6 of these Regulations prescribe those classes of person who are not subject to immigration control but who are to be treated as persons from abroad who are ineligible for an allocation of housing accommodation and for housing assistance respectively. These classes relate principally to: British nationals; and to those EU citizens and nationals of Norway, Iceland, Liechtenstein and Switzerland who are not subject to immigration control. Under regulations 4(1) and 6(1), such persons will be ineligible for an allocation of social housing or for homelessness assistance if:

- (a) they are not habitually resident in the United Kingdom, Channel Islands, Isle of Man or Republic of Ireland (unless exempted from the requirement to be habitually resident by regulations 4(2) or 6(2)); or
- (b) if their only right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland is a right derived from the Treaty establishing the European Community to reside in another member State either for an initial period of up to 3 months after arrival or as a jobseeker.

Regulation 7 revokes the provisions which are replaced by these Regulations, and regulation 8 makes transitional provisions in relation to applications for an allocation of housing accommodation or housing assistance before 1st June 2006.