
WELSH STATUTORY INSTRUMENTS

2021 No. 1147 (W. 282)

HOUSING, WALES

**The Allocation of Housing and Homelessness (Eligibility)
(Wales) (Amendment) (No. 2) Regulations 2021**

Made - - - - 13 October 2021

Coming into force - - 15 October 2021

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 160A(3) and (5) and 172(4)(1) of the Housing Act 1996(2) and section 142(2)(a) and (b) of, and paragraph 1(2) and (4) of Schedule 2 to, the Housing (Wales) Act 2014(3).

In accordance with section 142(3)(b)(ii) of the Housing (Wales) Act 2014, a draft of these Regulations has been laid before and approved by a resolution of Senedd Cymru(4).

Title and commencement

1. The title of these Regulations is the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2021 and they come into force on 15 October 2021.

Amendment of the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014

2. The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014(5) are amended as follows.

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- (1) The functions of the Secretary of State under sections 160A(3) and (5) and 172(4) of the Housing Act 1996 (c. 52) were, 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 (S.I. 1999/672), article 2 and the entry in relation to that Act in Schedule 1, as read in accordance with section 17(1) of the Homelessness Act 2002 (c. 7). Those functions were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (2) 1996 c. 52. Section 160A inserted by the Homelessness Act 2002, section 14(2); subsections (3) and (5) amended by the Localism Act 2011 (c. 20), section 146(2)(d) and (e) respectively.
- (3) 2014 anaw 7.
- (4) See also section 40 of the Legislation (Wales) Act 2019 (anaw 4) for provision about the procedure that applies to this instrument.
- (5) S.I. 2014/2603 (W. 257) (as saved and modified by S.I. 2015/1272 (W. 88) (C. 73), article 5), amended by S.I. 2017/698 (W. 164), 2019/1041 (W. 183), 2019/1149 (W. 199), 2020/1309 regulation 76, amended by 2020/1372 regulation 26 and amended by 2021/353 (W. 105).

Amendments to regulation 3

3. In regulation 3 (persons subject to immigration control who are eligible for an allocation of housing accommodation)—

- (a) omit the “and” after paragraph (h);
- (b) at the end of paragraph (i), for “.” substitute “;”;
- (c) after paragraph (i) insert—
 - “(j) Class J – a person—
 - (i) who has limited leave to enter or remain in the United Kingdom by virtue of Appendix Hong Kong British National (Overseas) of the Immigration Rules⁽⁶⁾;
 - (ii) whose leave to enter or remain is not subject to a condition requiring that person to maintain and accommodate themselves, and any person who is dependent on that person, without recourse to public funds; and
 - (iii) who is habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland; and
 - (k) Class K – a person—
 - (i) who is granted leave to enter or remain in the United Kingdom in accordance with the Immigration Rules⁽⁷⁾, where such leave is granted by virtue of—
 - (aa) the Afghan Relocations and Assistance Policy; or
 - (bb) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme); or
 - (ii) with leave to enter or remain in the United Kingdom not coming within sub-paragraph (i), who left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021, but excluding a person (P)—
 - (aa) who is subject to a condition requiring P to maintain and accommodate themselves, and any person who is dependent on P, without recourse to public funds; or
 - (bb) who has been given leave to enter or remain in the United Kingdom upon an undertaking given by P’s sponsor and 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 P’s sponsor gave the undertaking in respect of P, whichever date is the later, and whose sponsor or, where there is more than one sponsor, at least one of whose sponsors, is still alive.”

Amendments to regulation 4

4. In regulation 4(2) (other persons from abroad who are ineligible for an allocation of housing accommodation)—

- (a) omit the “and” after sub-paragraph (g);
- (b) at the end of sub-paragraph (h), for “.” substitute “; and”;

(6) Laid before Parliament on 23 May 1994 (HC 395), as amended. Appendix Hong Kong British National (Overseas) was laid before Parliament on 22 October 2020 (HC 813) and was subsequently amended by the statement of changes to the Immigration Rules: HC 1248 which was laid before Parliament on 4 March 2021.

(7) See Part 7 of the Immigration Rules. The scheme is contained in Rules 276BA1- 276BS2.

(c) after sub-paragraph (h) insert—

“(i) a person who left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021.”

Amendments to regulation 5

5. In regulation 5(1) (persons subject to immigration control who are eligible for housing assistance)—

(a) omit the “and” after sub-paragraph (i);

(b) at the end of sub-paragraph (j), for “.” substitute “;”;

(c) after sub-paragraph (j) insert—

“(k) Class K – a person—

(i) who has limited leave to enter or remain in the United Kingdom by virtue of Appendix Hong Kong British National (Overseas) of the Immigration Rules;

(ii) whose leave to enter or remain is not subject to a condition requiring that person to maintain and accommodate themselves, and any person who is dependent on that person, without recourse to public funds; and

(iii) who is habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland; and

(l) Class L – a person—

(i) who is granted leave to enter or remain in the United Kingdom in accordance with the Immigration Rules, where such leave is granted by virtue of—

(aa) the Afghan Relocations and Assistance Policy; or

(bb) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme); or

(ii) with leave to enter or remain in the United Kingdom not coming within paragraph (i), who left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021, but excluding a person (P)—

(aa) who is subject to a condition requiring P to maintain and accommodate themselves, and any person who is dependent on P, without recourse to public funds; or

(bb) who has been given leave to enter or remain in the United Kingdom upon an undertaking given by P’s sponsor and 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 P’s sponsor gave the undertaking in respect of P, whichever date is the later, and whose sponsor or, where there is more than one sponsor, at least one of whose sponsors, is still alive.”

Amendments to regulation 6

6. In regulation 6(2) (other persons from abroad who are ineligible for housing assistance)—

(a) omit the “and” after sub-paragraph (g);

(b) at the end of sub-paragraph (h), for “.” substitute “; and”;

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(c) after sub-paragraph (h) insert—

“(i) a person who left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021.”

13 October 2021

Julie James
Minister for Climate Change, one of the Welsh
Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under section 160A(3) of the Housing Act 1996 (c. 52) (“the 1996 Act”), a person who is subject to immigration control is ineligible for an allocation of housing accommodation by a local authority unless they come within a class of persons prescribed in regulations made by the Welsh Ministers. Under section 160A(5) the Welsh Ministers can prescribe classes of persons who, whilst not subject to immigration control, are ineligible for an allocation of housing accommodation.

Under paragraph 1(2) of Schedule 2 to the Housing (Wales) Act 2014 (anaw 7) (“the 2014 Act”), a person who is subject to immigration control is ineligible for housing assistance under Chapter 2 of Part 2 of that Act unless they come within a class of persons prescribed in regulations by the Welsh Ministers (or the Secretary of State). Under paragraph 1(4) the Welsh Ministers (or the Secretary of State) can prescribe classes of persons who, whilst not subject to immigration control, are ineligible for housing assistance.

These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (S.I. 2014/2603 (W. 257)) (“the 2014 Regulations”) which make provision for which persons, subject to immigration control are eligible for an allocation of housing accommodation and for housing assistance. The 2014 Regulations also make provision in regard to persons who are not subject to immigration control but are ineligible for an allocation of housing accommodation and homelessness assistance.

Regulation 3 amends regulation 3 of the 2014 Regulations which relates to the eligibility of persons subject to immigration control for an allocation of housing accommodation under the 1996 Act. It prescribes two additional classes of persons (“Class J” and “Class K”) subject to immigration control who are eligible for an allocation of housing accommodation under the 1996 Act.

Class J applies to certain persons with limited leave to enter or remain in the United Kingdom under Appendix Hong Kong British National (Overseas) of the Immigration Rules where the person does not have a “no recourse to public funds” condition attached to their form of leave and where the person is habitually resident in the ‘Common Travel Area’ (the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland). Class K applies to persons who have been granted leave under certain schemes or policies that relate to Afghanistan. It also applies to certain persons in the United Kingdom who left Afghanistan because of the collapse of the Afghan government.

Regulation 4 amends regulation 4(2) of the 2014 Regulations to provide that certain persons who are not subject to immigration control but would be ineligible for an allocation of housing accommodation due to not being habitually resident in the Common Travel Area are eligible for an allocation of housing accommodation. The persons to whom this amendment applies are those who left Afghanistan because of the collapse of the Afghan government.

Regulation 5 amends regulation 5(1) of the 2014 Regulations which relates to the eligibility of persons subject to immigration control for housing assistance under the 2014 Act. It prescribes two additional classes of persons (“Class K” and “Class L”) who are eligible for such assistance. These classes are equivalent to Class J and Class K inserted by regulation 3.

Regulation 6 amends regulation 6(2) of the 2014 Regulations so that certain persons who are not subject to immigration control, but would be excluded from housing assistance due to not being habitually resident in the Common Travel Area, are eligible. The persons to whom this amendment applies are the same as those inserted by regulation 4.

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The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ and on the Welsh Government's website at www.gov.wales.