

2014 No. (W.)

HOUSING, WALES

**The Allocation of Housing and
Homelessness (Eligibility) (Wales)
Regulations 2014**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for which persons from abroad will be eligible or ineligible 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 relation to Wales 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 Welsh Ministers. 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 the Welsh Ministers, or by the Secretary of State.

By virtue of section 160A(1) and (5) of the Act, the Welsh Ministers may prescribe other classes of persons from abroad who (whilst not subject to immigration control) are ineligible for an allocation of housing accommodation under Part 6 of the Act. Similarly, section 185(3) of the Act provides that the Welsh Ministers, or the Secretary of State, may make provision by regulations as to the descriptions of persons who (whilst not subject to immigration control) are to be treated as persons from abroad who are ineligible for housing assistance under Part 7 of the Act.

By regulations 3 and 5 of these Regulations, the Welsh Ministers prescribe those classes of person subject to immigration control who are eligible for an allocation of housing accommodation, or for housing assistance, respectively.

By regulations 4 and 6 of these Regulations, the Welsh Ministers prescribe the classes of person who (whilst not subject to immigration control) are to be treated as persons from abroad who are ineligible for an allocation of housing accommodation, or for housing assistance, respectively.

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 the commencement of these Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

2014 No. (W.)

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**The Allocation of Housing and
Homelessness (Eligibility) (Wales)
Regulations 2014**

Made ***

Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers make the following Regulations in exercise of the powers conferred on the Secretary of State by sections 160A(3) and (5), 172(4), 185(2) and (3) and 215(2) of the Housing Act 1996⁽¹⁾, and which are now vested in the Welsh Ministers⁽²⁾:

Title, commencement and application

1.—(1) The title of these Regulations is the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 and they come into force on **** 2014.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

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- (1) 1996 c. 52. Section 160A was added by section 14(2) of the Homelessness Act 2002 (c. 7) and amended by the Localism Act 2011 (c. 20). Section 185 was amended by section 18(1) of, and paragraphs 2 and 7(1) of Schedule 1 to the Homelessness Act 2002 and by section 314 of, and paragraphs 1 and 4 of Schedule 15 to the Housing and Regeneration Act 2008 (c. 17).
- (2) The functions of the Secretary of State under Part 6 and Part 7 of the Housing Act 1996 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 Schedule 1, and section 17(1) of the Homelessness Act 2002. 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). The functions under section 185 are exercisable concurrently with the Secretary of State.

“the 1996 Act” (“*Deddf 1996*”) means the Housing Act 1996;

“the Accession Regulations 2013” (“*Rheoliadau Ymaelodaeth 2013*”) means the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013(1);

“the EEA Regulations” (“*Rheoliadau yr AEE*”) means the Immigration (European Economic Area) Regulations 2006(2);

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

“the Refugee Convention” (“*y Confensiwn ynglŷn â Ffoaduriaid*”) means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31 January 1967; and

“sponsor” (“*noddwr*”) 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” (“*ceisiwr gwaith*”), “self-employed person” (“*person hunangyflogedig*”), and “worker” (“*gweithiwr*”) have the same meaning as for the purposes of the definition of a “qualified person” in regulation 6(1) of the EEA Regulations(4); and
- (b) subject to paragraph (3), references to the family member of a jobseeker, self-employed person, or worker are to 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” (“*aelod o deulu*”) 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—

(1) S.I. 2013/1460.

(2) S.I. 2006/1003.

(3) 1971 (c. 77).

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

- (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 that person to maintain and accommodate themselves, and any person who is dependant on that person, 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 the person's 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 on the date on which the undertaking was given in respect of the person, 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 has humanitarian protection granted under the Immigration Rules; and
- (e) Class E – a person who is habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland and who has limited leave to enter the United Kingdom as a relevant Afghan citizen under paragraph 276BA1 of the Immigration Rules.

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), the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, or the Republic of Ireland;
- (b) the person's only right to reside in the United Kingdom—
 - (i) is derived from the person's status as a jobseeker or a 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⁽¹⁾; or
 - (iii) is a derivative right to reside to which the person is entitled under regulation 15A(1) of the EEA Regulations, but only in a case where the right exists under that regulation because the applicant satisfies the criteria in regulation 15A(4A) of those Regulations⁽²⁾; or
 - (iv) is derived from Article 20 of the Treaty on the Functioning of the European Union, in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen; or
- (c) the person's only right to reside in the Channel Islands, the Isle of Man or the Republic of Ireland—
 - (i) is a right equivalent to one of those mentioned in sub-paragraph (b)(i), (ii) or (iii) which is derived from the Treaty on the Functioning of the European Union; or
 - (ii) is derived from Article 20 of the Treaty of the Functioning of the European Union in a case where the right to reside—
 - (aa) in the Republic of Ireland arises because an Irish citizen; or
 - (bb) in the Channel Islands or the Isle of Man arises because a British citizen also entitled to reside there, would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen.

(2) The following are not to be treated as persons from abroad who are ineligible for an allocation of

⁽¹⁾ Regulation 13 was amended by S.I. 2012/1547.

⁽²⁾ Regulation 15A was added by S.I. 2012/1547 and has been amended by regulation 2 of, and the Schedule to S.I. 2012/2560.

housing accommodation pursuant to paragraph (1)(a)—

- (a) a worker;
- (b) a self-employed person;
- (c) a person 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 2013 (right of residence of an accession State national subject to worker authorisation);
- (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(1)(c), (d) or (e) of the EEA Regulations; and
- (f) a person who is in the United Kingdom as a result of the person’s 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 that person to maintain and accommodate themselves, and any person who is dependant on that person, 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 the person's 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 on the date on which the undertaking was given in respect of the person, 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 has humanitarian protection granted under the Immigration Rules;
- (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 3 April 2000 and in the circumstances mentioned in one of the following paragraphs—
 - (i) on arrival (other than on the person's 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 4 February 1996 by an applicant who was on 4 February 1996 entitled to benefit under regulation 7A of the Housing Benefit (General) Regulations 1987(1) (persons from abroad); and
- (f) Class F – a person who is habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland and who has limited leave to enter the United Kingdom as a relevant Afghan citizen under paragraph 276BA1 of the Immigration Rules.
- (2) For the purpose of paragraph (1)(e)—
 - (a) “asylum-seeker” (“*ceisiwr lloches*”) 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” (“*hawliad lloches*”) means a claim that it would be contrary to the United

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

Kingdom's obligations under the Refugee Convention for the claimant to be removed from, or required to leave the United Kingdom;

- (c) "relevant declaration" (*"datganiad perthnasol"*) means a declaration to the effect that the country of which the applicant is a national is subject to such 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⁽¹⁾; or
- (b) regulation 10(6) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁽²⁾,

as modified in both cases by paragraph 6 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006⁽³⁾.

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), the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, or the Republic of Ireland;
- (b) the person's only right to reside in the United Kingdom—
 - (i) is derived from the person's status as a jobseeker or a 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

⁽¹⁾ S.I. 2006/213.

⁽²⁾ S.I. 2006/214.

⁽³⁾ S.I. 2006/217.

- (iii) is a derivative right to reside to which the person is entitled under regulation 15A(1) of the EEA Regulations, but only in a case where the right exists under that regulation because the applicant satisfies the criteria in regulation 15A(4A) of those Regulations; or
- (iv) is derived from Article 20 of the Treaty on the Functioning of the European Union in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen; or
- (c) the person's only right to reside in the Channel Islands, the Isle of Man or the Republic of Ireland—
 - (i) is a right equivalent to one of those mentioned in sub-paragraph (b)(i), (ii) or (iii) which is derived from the Treaty on the Functioning of the European Union; or
 - (ii) is derived from Article 20 of the Treaty of the Functioning of the European Union in a case where the right to reside—
 - (aa) in the Republic of Ireland arises because an Irish citizen; or
 - (bb) in the Channel Islands or the Isle of Man arises because a British citizen also entitled to reside there, would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen.

(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 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 2013 (right of residence of an accession State national subject to worker authorisation);
- (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(1)(c), (d) or (e) of the EEA Regulations; and

- (f) a person who is in the United Kingdom as a result of the person's deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

Revocations

7. Subject to regulation 8, the following Regulations are revoked—

- (a) the Allocation of Housing (Wales) Regulations 2003⁽¹⁾;
- (b) the Homelessness (Wales) Regulations 2006⁽²⁾;
- (c) the Allocation of Housing (Wales) (Amendment) Regulations 2006⁽³⁾; and
- (d) the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2009⁽⁴⁾.

Transitional provisions

8. The revocations made by these Regulations do 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 the coming into force of these Regulations.

Carl Sargeant

Minister for Housing and Regeneration, one of the
Welsh Ministers

Date

(1) S.I. 2003/239 (W. 36) as amended by S.I. 2006/2645 (W. 226) and S.I. 2009/393 (W. 42).

(2) S.I. 2006/2646 (W. 227) as amended by S.I. 2008/1879, S.I. 2009/393 (W. 42) and S.I. 2013/1778 (W. 178).

(3) S.I. 2006/2645 (W. 226).

(4) S.I. 2009/393 (W. 42).