

**2006 No. 397**

**HOUSING**

**The Allocation of Housing and Homelessness (Eligibility)  
Regulations (Northern Ireland) 2006**

*Made* - - - - - *28th September 2006*

*To be laid before Parliament*

*Coming into operation* - - - - - *1st November 2006*

The Secretary of State makes the following regulations in exercise of the powers conferred on him by Article 22A(3) of the Housing (Northern Ireland) Order 1981(a) and Article 7A(2) of the Housing (Northern Ireland) Order 1988(b):

**Citation and commencement**

1. These Regulations may be cited as the Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006 and shall come into operation on 1st November 2006.

**Interpretation**

2.—(1) In these Regulations—

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

“the EEA Regulations” means the Immigration (European Economic Area) Regulations 2006(d).

(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(e); 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 3(2)(d) and 4(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.

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(a) S.I. 1981/156 (N.I. 3); Article 22A was inserted by Article 124 of S.I. 2003/412 (N.I. 2)

(b) S.I. 1988/1990 (N.I. 23); Article 7A was inserted by Article 137 of S.I. 2003/412 (N.I. 2)

(c) S.I. 2004/1219

(d) S.I. 2006/1003

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

### **Persons from abroad who are ineligible for an allocation of housing accommodation**

3.—(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 the Housing (Northern Ireland) Order 1981 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<sup>(a)</sup>;
- (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 from abroad who are ineligible for housing assistance**

4.—(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 II of the Housing (Northern Ireland) Order 1988 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;

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

- (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**

5. Subject to regulation 6, the Regulations specified in column (1) of the Schedule are revoked.

**Transitional provisions**

6. 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 the Housing (Northern Ireland) Order 1981; or
- (b) housing assistance under Part II of the Housing (Northern Ireland) Order 1988,

was made before 1st November 2006.

*Peter Hain*  
One of Her Majesty’s Principal Secretaries of State  
Northern Ireland Office

28th September 2006

**SCHEDULE**

Regulation 5

**Revocation schedule**

<i>(1)</i> <i>Regulations Revoked</i>	<i>(2)</i> <i>References</i>
The Allocation of Housing Regulations (Northern Ireland) 2004	S.R. 2004 No. 198
The Homelessness Regulations (Northern Ireland) 2004	S.R. 2004 No. 199

## EXPLANATORY NOTE

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

These Regulations make provision for persons, not subject to immigration control, to be treated as persons from abroad and ineligible for an allocation of housing accommodation under the Housing (Northern Ireland) Order 1981 (“the 1981 Order”) and for housing assistance under Part II of the Housing (Northern Ireland) Order 1988 (“the 1988 Order”).

Article 22 of the 1981 Order provides that the Northern Ireland Housing Executive (“the Executive”) shall comply with a scheme, approved by the Department for Social Development, for the allocation of housing accommodation. Article 22A of the 1981 Order provides that the Executive shall not allocate housing accommodation to a person from abroad who is ineligible for such an allocation (paragraph (1), sub-paragraph (b)) and that the Secretary of State has power to specify, by regulations, classes of persons who are ineligible (paragraph (3)).

Part II of the 1988 Order imposes on the Executive duties in relation to persons who are found to be homeless or threatened with homelessness. Article 7A of the 1988 Order provides that a person is not eligible for assistance under Part II if he is a person from abroad who is ineligible for that assistance (paragraph (1)) and that the Secretary of State has power to make provision, by regulations, as to other descriptions of persons who are to be treated as persons from abroad who are ineligible for that assistance (paragraph (2)).

These Regulations, which come into operation on, contain provisions similar to those of the Allocation of Housing Regulations (Northern Ireland) 2004 and the Homelessness Regulations (Northern Ireland) 2004 which are revoked by these Regulations. The main changes take account of the implementation of Directive 2004/38/EC of the European Parliament and 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:

- 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; and
- the introduction of a permanent right of residence in a host member State for some EU citizens.

Regulations 3 and 4 of these Regulations prescribe those classes of persons who are not subject to immigration control but 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 3(1) and 4(1), such persons will be ineligible for an allocation of social housing or for homelessness assistance if:

- 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 3(2) and 4(2)); or
- their only right to reside in the United Kingdom, Channel Islands, Isle of Man or Republic of Ireland is a right derived from the Treaty establishing the European Community to reside in another member State for an initial period of up to 3 months after arrival or as a jobseeker.

Regulation 5 revokes the provisions which are replaced by these Regulations and regulation 6 makes transitional provisions in relation to applications for an allocation of housing accommodation or housing assistance before 1st November 2006.

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