

2012 No. 429

HOUSING

**Allocation of Housing and Homelessness (Eligibility)
(Amendment) Regulations (Northern Ireland) 2012**

Made - - - - *2nd December 2012*

Coming into operation - *14th January 2013*

To be laid before Parliament

The Secretary of State, makes the following Regulation in exercise of the powers conferred on her 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) (Amendment) Regulations (Northern Ireland) 2012 and shall come into operation on 14th January 2013.

Amendment of the Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006

2.—(1) The Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006(c) are amended as follows.

(2) After regulation 3(1)(b)(ii), insert—

“(iii) is a derivative right to reside to which he 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”.

(3) For regulation 3(1)(c) substitute—

“(c) his only right to reside in the Channel Islands, the Isle of Man or the Republic of Ireland—

(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. 2006 No. 397

- (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 on the Functioning of the European Union, in a case where the right to reside—
 - (a) in the Republic of Ireland arises because an Irish citizen, or
 - (b) 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.”.

(4) After sub-paragraph 4(1)(b)(ii), insert—

“(iii) is a derivative right to reside to which he 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 the rights attaching to the status of European Union citizen; or”.

(5) For regulation 4(1)(c) substitute—

“(c) his 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 on the Functioning of the European Union, in a case where the right to reside—

(a) in the Republic of Ireland arises because an Irish citizen, or

(b) 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.”.

Transition provisions

3. The changes 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 the coming into operation of these Regulations.

2nd December 2012

Theresa Villiers
One of Her Majesty’s Principal Secretaries of State
Northern Ireland Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations (“the Eligibility Amendment Regulations”) provide that certain persons from abroad are ineligible for an allocation of housing accommodation under the Housing (Northern Ireland) Order 1981 (“the 1981 Order”) or for housing assistance under Part II of the Housing (Northern Ireland) Order 1988 (“the 1988 Order”). These Regulations apply to Northern Ireland only.

By virtue of Article 22A(1) and (4) of the 1981 Order, the Northern Ireland Housing Executive must not allocate housing accommodation to persons who, although they are not subject to immigration control, are of a class prescribed by the Secretary of State as persons from abroad who are ineligible. Similarly, Article 7A(1) of the 1988 Order provides that a person is not eligible for housing assistance under Part II of the Order if he is a person from abroad who is ineligible for housing assistance and Article 7A(2) provides that the Secretary of State may make provision by regulations as to the descriptions of persons who, although not subject to immigration control, are to be treated as persons from abroad who are ineligible for housing assistance.

These Regulations take account of persons who have a right of residence in the United Kingdom by virtue of the Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 (“the EEA Amendment Regulations”). Those Regulations were made by the Secretary of State for the Home Office to give effect to the judgement of the Court of Justice of the European Union in the case of C-34/09 *Gerardo Ruiz Zambrano v Office national de l’emploi (ONEm)*. The EEA Amendment Regulations confer rights of residence and entry on the primary carer of a British citizen who is residing in the United Kingdom where the denial of such a right would prevent the British citizen from being able to reside in the United Kingdom or in an EEA State. The Eligibility Amendment Regulations add persons with this right of residence to the categories of persons who are ineligible for an allocation of housing accommodation or housing assistance under regulations 3 and 4 of the Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006.

A full impact assessment has not been produced for this rule as no impact on the private or voluntary sector is foreseen

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