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STATUTORY INSTRUMENTS

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**2006 No. 1294**

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

**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(1);

“the EEA Regulations” means the Immigration (European Economic Area) Regulations 2006(2);

“the Immigration Rules” 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” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951(10), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(11); 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(4); 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.

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(1) S.I.2004/1219.

(2) S.I. 2006/1003.

(3) 1971, c. 77.

(10) Cmd. 9171.

(11) Cmnd. 3906.

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

**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.

**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<sup>(5)</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 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—
  - (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

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

(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<sup>(6)</sup> (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<sup>(7)</sup>; or
- (b) regulation 10(6) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>(8)</sup>,

as modified in both cases by paragraph 6 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006<sup>(9)</sup>.

### **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;

<sup>(6)</sup> S.I. 1987/1971; amended by S.I. 1996/30; there are other amending instruments, but none is relevant.

<sup>(7)</sup> S.I. 2006/213.

<sup>(8)</sup> S.I. 2006/214.

<sup>(9)</sup> S.I. 2006/217.

- (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

*Yvette Cooper*  
Minister of State  
Department for Communities and Local  
Government

11th May 2006