
STATUTORY INSTRUMENTS

2012 No. 2588

HOUSING

**The Allocation of Housing and Homelessness
(Eligibility) (England) (Amendment) Regulations 2012**

<i>Made</i>	- - - -	<i>11th October 2012</i>
<i>Laid before Parliament</i>		<i>17th October 2012</i>
<i>Coming into force</i>	- -	<i>8th November 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 160ZA(4), 172(4), 185(3) and 215(2) of the Housing Act 1996⁽¹⁾:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012 and come into force on 8th November 2012.

(2) These Regulations apply in relation to England only.

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

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

(2) After regulation 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 their rights as a European Union citizen; or”.

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

(1) 1996 c. 52; section 160ZA was inserted by s146(1) of the Localism Act 2011 (c. 20).

(2) S.I. 2006/1294. Regulations 4 and 6 have been amended by S.I. 2006/3340, 2006/2007 and 2009/358. Other amendments have been made to S.I. 2006/1294 which are not relevant to these Regulations. The EEA Regulations referred to in regulation 2(2) are the Immigration (European Economic Area) Regulations 2006, S.I. 2006/1203, most recently amended by S.I. 2012/2560.

- “(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-paragraphs (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 therewould otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen.”.
- (4) After sub-paragraph 6(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 6(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 therewould otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen.”.

Transitional provision

3. The amendments made by these Regulations do not have effect in relation to an application for—

- (a) an allocation of housing accommodation under Part 6 of the Housing Act 1996; or
- (b) housing assistance under Part 7 of the Housing Act 1996

which was made before the coming into force of these Regulations.

Signed by authority of the Secretary of State for Communities and Local Government

11th October 2012

Mark Prisk
Minister of State
Department for Communities and Local
Government

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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 Part 6 of the Housing Act 1996 (“the Act”) or for housing assistance under Part 7 of the Act. These Regulations apply in relation to England only.

By virtue of subsections 160ZA(1) and (4) of the Act, a local housing authority must not allocate housing accommodation under Part 6 of the Act 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, section 185(1) of the Act provides that a person is not eligible for housing assistance under Part 7 of the Act if he is a person from abroad who is ineligible for housing assistance; and section 185(3) of the Act 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 UK 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 Department to give effect to the judgment 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 4 and 6 of the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006.

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