

## **Additional provisions prescribing classes of person who are to be considered eligible for housing and housing assistance**

1. This note has been prepared to outline changes that have been made to the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 ('the Eligibility Regulations') over recent years. It should be read alongside the Code of Guidance for Local Authorities on the Allocation and Accommodation and Homelessness (March 2016) ('the Code').
2. Persons subject to immigration control within the meaning of the Asylum and Immigration Act 1996<sup>1</sup> ('the 1996 Act') are not eligible for an allocation of housing or housing assistance, under the Housing Act 1996 and the Housing (Wales) Act 2014, unless they come within a class of person prescribed in regulations made by the Welsh Ministers. Paragraph 7.8 of the Code lists the classes of persons prescribed, at the time the Code was published. However, local authorities are required to provide information, advice and assistance in accessing help to anyone in its area, who present to them for assistance, including people who are ineligible (see paragraph 7.5 of the Code).
3. A person subject to immigration control requires leave to enter or remain in the UK and conditions will usually be attached to that leave. The term "person subject to immigration control" is defined in section 13(2) of the 1996 Act. Under section 160A(3) of the Housing Act 1996 and Schedule 2 to the Housing (Wales) Act 2014, the Welsh Ministers have prescribed classes of person who are to be considered eligible in the Eligibility Regulations.
4. This note only outlines changes to eligibility under the part 6 (Allocations) of the Housing Act 1996 and Part 2 (Homelessness) of the Housing (Wales) Act 2014.
5. Where persons subject to immigration control are not eligible to housing or housing assistance, local authorities may still have duties to accommodate these individuals. Separate Guidance<sup>2</sup> has been developed by the Welsh Government on this matter.
6. Recent amendments to the Eligibility Regulations have been made through:
  - The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2019
  - The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No 2) Regulations 2019
  - The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (henceforward referred to as the 'Consequential SI')<sup>3</sup>;
  - The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (henceforward referred to as the 'Grace Period SI');
  - The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (henceforward referred to as the 'Frontier Workers SI') and

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<sup>1</sup> <https://www.gov.uk/hmrc-internal-manuals/child-benefit-technical-manual/cbtm10120>  
[No recourse to public funds \(NRPF\): guidance \[HTML\] | GOV.WALES](#)

<sup>3</sup> Subject to Parliamentary approval of the regulations following the 'made affirmative procedure'.

- The Immigration (Citizen’s Rights etc) (EU Exit) Regulations 2020
- The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2021
- The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2021
- The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2022
- The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2023

### **Unaccompanied asylum-seeking children**

7. In July 2018 an amendment was made to section 67 of the Immigration Act 2016, which required the Home Secretary to make arrangements to relocate to the UK, and support, a specified number of unaccompanied refugee children from other countries in Europe. This created a new form of immigration leave for unaccompanied asylum-seeking children, who would not otherwise qualify for international protection.
8. The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2019 and the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No 2) Regulations 2019 amended the Eligibility Regulations to reflect these changes. Two additional classes of persons were added to the list of persons eligible for housing and housing assistance despite them being subject to immigration control. These two additional groups are:
  - unaccompanied refugee children who are entitled to relocation and support, who have limited leave to remain under paragraph 352ZH of the Immigration Rules and who are habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland; and
  - those granted “Calais leave” to remain under paragraph 352J of the Immigration Rules and who are habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland.

### **Changes affecting EEA nationals**

9. The provisions of section 7(1) of the Immigration Act 1988 and the Asylum and Immigration Act 1996 have been saved for the purpose of housing legislation to protect the rights of EEA nationals, and their family members, who have citizens’ rights pursuant to the Withdrawal Agreement.
10. This ensured that EEA nationals, and their family members, who:
  - 1) acquired limited leave to enter and remain in the UK (also known as pre-settled status) by virtue of Appendix EU of the Immigration Rules (“the EU Settlement Scheme”);
  - 2) were frontier working in the UK prior to 31 December 2020; or

- 3) lawfully residing in the UK by 31 December 2020, but had still to apply to, or acquire status under, the EU Settlement Scheme before the deadline of 30 June 2021, and covered by the Grace Period SI<sup>4</sup>

continue to be treated as 'persons not subject to immigration control' in the instances where they would previously have been, so that their eligibility for the allocation of social housing or housing assistance can be judged on the basis of regulation 4 (allocation of housing) or regulation 6 (housing assistance) of the Eligibility Regulations as was the case prior to 31 December 2020.

11. EEA nationals, and their family members, granted indefinite leave to enter or remain (also known as settled status) under the EU Settlement Scheme, do not need the savings to apply to them. Their eligibility should be judged on the basis of Class C of regulation 3 (allocation of housing) or Class C of regulation 5 (housing assistance) of the Eligibility Regulations, as is the case for persons subject to immigration control who have been granted indefinite leave to remain. In general, they should be eligible provided they can demonstrate habitual residence in the Common Travel Area.
12. For the purpose of this guidance references to "the Withdrawal Agreement" in this note are to the "Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01)". Equivalent provisions are to be found in separation agreements relating to the European Economic Area/European Free Trade Agreement and the EU/Swiss Free Movement of Persons Agreement, which are also given effect in domestic law by the European Union (Withdrawal Agreement) Act 2020.

#### Other persons from abroad who may be ineligible for an allocation of housing or housing assistance

13. By virtue of regulation 4 (allocation of housing) and regulation 6 (housing assistance) of the Eligibility Regulations, a person who is not subject to immigration control and who falls within one of the following descriptions is to be treated as a person from abroad who is ineligible for an allocation of housing or housing assistance:
  - i. a person who is not habitually resident in the Common Travel Area (subject to certain exceptions - see paragraph 15 below);
  - ii. a person whose only right to reside in the UK is derived from his status as a jobseeker (or his status as the family member of a jobseeker). 'Jobseeker' has the same meaning as in regulation 6(1) of the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052) ('the EEA Regulations');
  - iii. a person whose only right to reside in the UK is an initial right to reside for a period not exceeding three months under regulation 13 of the EEA Regulations;

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<sup>4</sup> These regulations make provision for those EU and EEA EFTA citizens who are within scope of the Citizens' Rights Agreements to also be lawfully resident until their application is finally determined.

- iv. a person whose only right to reside in the UK is a derivative right to reside to which they are entitled under regulation 16(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 16(5) of those Regulations;
- v. a person whose only right to reside in the Common Travel Area is a right equivalent to one of those mentioned in sub-paragraph (ii) to (iv) above.

14. For the purposes of determining eligibility for an allocation of social housing or housing assistance, a person who is not subject to immigration control and who falls within categories (ii) or (iii) in paragraph 13 above should be treated as ineligible. This is regardless of whether such person has been granted limited leave to enter or remain in the UK by virtue of Appendix EU of the Immigration Rules; or a family permit issued under the EU Settlement Scheme granting them limited leave to enter the UK by virtue of the Immigration (Leave to Enter and Remain) Order 2000.

#### Persons exempted from the requirement to be habitually resident

15. The following persons from abroad are eligible for an allocation of accommodation or housing assistance even if they are not habitually resident in the Common Travel Area:

- i. an EEA national who has been granted pre-settled status or has temporary protection<sup>5</sup> and who is in the UK as a worker (which has the same meaning as in regulation 6(1) of the EEA Regulations);
- ii. an EEA national who has been granted pre-settled status or has temporary protection and who is in the UK as a self-employed person (which has the same meaning as in regulation 6(1) of the EEA Regulations);
- iii. a person who has been granted pre-settled status or who has temporary protection and 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 of Croatia (Immigration and Worker Authorisation) Regulations 2013 (as amended), (right of residence of an accession State national subject to worker authorisation);
- iv. a person who has been granted pre-settled status or who has temporary protection and is a family member of a person referred to in (i) to (iii) above;
- v. a person with a right to reside permanently in the UK by virtue of regulation 15(c), (d) or (e) of the EEA Regulations;
- vi. a person who is in the UK as a result of their deportation, expulsion or other removal by compulsion of law from another country to the UK;
- vii. a person who is in the United Kingdom as a frontier worker for the purpose of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (SI 2020/1213) (including those who retain their worker or self-employed status under regulation 4 of these regulations); and

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<sup>5</sup> By temporary protection, the guidance means protection for pending or late applications to the EUSS and by joining family members, which is provided by the Grace Period SI and [statement](#) to this effect made by the Home Office on 6 August 2021.

- viii. a person who is a family member of a person referred to in (vii) above and has a right to reside by virtue of having been granted limited leave to enter or remain in the United Kingdom, or has temporary protection as a family member of a relevant EEA national, under the Immigration Act 1971 by virtue of Appendix EU to the Immigration Rules made under section 3 of that Act.
16. A person who is no longer working or no longer in self-employment will retain his or her status as a worker or self-employed person in certain circumstances. A person who is no longer working does not cease to be treated as a 'worker' for the purpose of regulation 6(1)(b) of the EEA Regulations, if he or she:
- a. is temporarily unable to work as the result of an illness or accident; or
  - b. is recorded as involuntarily unemployed after having been employed in the UK, provided that he or she has registered as a jobseeker with the relevant employment office, and:
    - i. was employed for one year or more before becoming unemployed, or
    - ii. has been unemployed for no more than 6 months, or
    - iii. can provide evidence that he or she is seeking employment in the UK and has a genuine chance of being engaged; or
  - c. is involuntarily unemployed and has embarked on vocational training; or
  - d. has voluntarily ceased working and embarked on vocational training that is related to his or her previous employment.
17. EEA nationals who have established citizens' rights in accordance with Part 2 of the Withdrawal Agreement can be joined by close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) who live in a different country at any point in the future, if the relationship existed before/on 31 December 2020 and still exists when the family member wishes to join the EEA national in the UK. The family member has 3 months from their date of arrival, or the end of the Grace Period on 30 June 2021, to apply to the EU Settlement Scheme (whichever is later). If the family member was a third country national, they could apply for an EU Settlement Scheme family permit or EEA family permit. Information relevant to this can be found at: <https://www.gov.uk/family-permit/>.
18. It should be noted that 'family member' as referred to in paragraph 15 (iv) does not include a person who is an extended family member who is treated as a family member by virtue of regulation 7(3) of the EEA Regulations. When considering the eligibility of a family member, housing authorities should consider whether the person has acquired indefinite leave to remain in the UK in their own right, for example, a family member at the point they are eligible and are granted settled status under the EU Settlement Scheme.

### **Stateless people**

19. Stateless persons are individuals who are not, under the law, considered as a national of any State and are unable to live permanently in any other country. They derive their status from the 1954 and 1961 UN conventions on statelessness. The 1954 convention, ratified by the UK, requires stateless

persons to have access to housing on terms that are ‘not less favourable than that accorded to aliens generally in the same circumstances’.

20. A specific category of limited leave, ‘stateless leave’, was created within the Immigration Rules in 2013. The rules are set out in Part 14 of the Immigration Rules: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons>. As matters stand generally, leave is granted with recourse to public funds, and lasts for five years, after which individuals may apply for settlement.
21. In order to take account of the changes to the Immigration Rules in relation to stateless people, referred to above, the Eligibility Regulations were amended by the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2021, introducing an additional class of person who are eligible for an allocation of housing or housing assistance under the 1996 Act and 2014 Act. These are persons who are habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland and who have been granted leave to remain as a stateless person under the Immigration Act 1971, by virtue of paragraph 405 of the Immigration Rules. Stateless people granted immigration leave in this way will be classed alongside those defined within the Code of Guidance as persons subject to immigration control prescribed as eligible (paragraph 7.8 of the Code of Guidance).

## **Hong Kong British National (Overseas) and Afghan arrivals and returnees**

### Hong Kong BN(O) citizens

22. On 22 October 2020 the UK Government announced, through a Ministerial Statement, that it would allow all British National (Overseas) (“BN(O)”) citizens who normally live in the UK, Islands<sup>6</sup> or Hong Kong, to come to the UK with their close family members for up to five years. The immigration route for Hong Kong BN(O) citizens was introduced in response to the imposition by the Chinese Government of a national security law on Hong Kong.
23. Hong Kong BN(O) visa holders are free to work or study in the UK, have access to most NHS services after paying the Immigration Health Surcharge, but in most circumstances are ineligible to claim benefits, commonly known as having ‘no recourse to public funds’ (NRPF).
24. Subsequent to the October 2020 announcement, the Home Office made a further Statement of changes to the Immigration Rules<sup>7</sup>, which created a mechanism to allow those with a Hong Kong BN(O) visa to apply for a ‘change of conditions’, to have their NRPF condition lifted in the event that they became destitute or were at imminent risk of destitution. This means that if a Hong Kong BN(O) visa holder falls into destitution or is at imminent risk of destitution they have access to benefits and services, including housing and housing assistance. The NRPF

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<sup>6</sup> the Channel Islands, the Isle of Man or the Republic of Ireland.

<sup>7</sup> <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1248-4-march-2021>

condition is attached to some classes of person subject to immigration control but not all; the condition is only removed if the required test is met.

### Afghan arrivals/returnees

25. Following the withdrawal of UK forces and Government officials from Afghanistan leading up to 31 August 2021, the UK Government introduced two new immigration routes specifically for Afghan citizens and their families (known as Afghan returnees/arrivals).

- The ‘Afghan Relocations and Assistance Policy’ (ARAP), directed towards Afghans who had worked with the British military and UK Government in Afghanistan. This has similarities to the previous scheme for locally employed Afghan staff (sometimes referred to as the “ex-gratia scheme”).
- The ‘Afghan Citizens Resettlement Scheme’ (ACRS) provides for Afghan citizens considered most at risk of human rights abuses by the Taliban regime, in particular women and girls.

26. Afghan returnees/arrivals who apply to the ARAP and ACRS have a different type of eligibility to those in the UK as a ‘relevant Afghan citizen’<sup>8</sup>, that category of person having been made eligible for homelessness and housing assistance through earlier amendments to the Eligibility Regulations. This means that an Afghan returnee/arrival who has come to the UK through the ARAP and ACRS does not need to demonstrate they are habitually resident in the UK.

27. The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2021 (“the 2021 Regulations”), which came into force on 15 October 2021, extend eligibility for an allocation of housing and housing assistance provided by local authorities to the following:

- People with a Hong Kong British National (Overseas) (“BN(O)”) visa who become destitute and have obtained a change to their immigration status enabling them to access public funds.
- People entering the UK from Afghanistan under certain Home Office schemes/policies or who have left Afghanistan due to the collapse of the Afghan government (subject to certain conditions) (described as “Afghan arrivals/ returnees”) and who have leave to enter or remain in the UK or do not require such leave.

### Ukraine Schemes

28. The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2022 (“the 2022 Regulations”) extended eligibility for an allocation of housing and housing assistance provided by local authorities to people falling

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<sup>8</sup> 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

within three new immigration routes for those affected by the Russian invasion of Ukraine on 24 February 2022. These routes are:

- The Ukraine Family Scheme, which allow immediate and extended family members of British citizens, UK settled persons and others to come from Ukraine to, or stay in, the UK.
- The Homes for Ukraine Sponsorship Scheme, which allow Ukrainian nationals and their immediate family to come to the UK where they have an Approved sponsor who has agreed to provide accommodation.
- The Ukraine Extension Scheme, which allow Ukrainian nationals with their partners and children in the UK with permission on 18 March 2022 (including those who have overstayed by a short period) to stay in the UK.

29. The changes in relation to the Ukraine Family Scheme, the Homes for Ukraine Sponsorship Scheme came into effect on 30 March 2022. The changes in relation to the Ukraine Extension Scheme came into effect on 3 May 2022. The 2022 Regulations will also exempt British nationals and all those not subject to immigration control who are usually subject to a habitual residence test, from that test if they are fleeing Ukraine as a consequence of the military conflict.

### **Victims of slavery and human trafficking**

30. The UK Government has established a form of temporary leave to remain in the UK for victims of slavery or human trafficking, known as ‘temporary permission to stay’ (TPS), through section 65 of the Nationality and Borders Act 2022<sup>9</sup>. TPS is available to:

- assist the person in their recovery from any physical or psychological harm caused by their exploitation;
- enable the person to seek compensation because of their exploitation, or
- enable the applicant to co-operate with a public authority in connection with an investigation or criminal proceedings in respect of their exploitation.

31. Victims of slavery and human trafficking have historically been able to access housing and housing assistance through discretionary powers (leave outside the rules) granted by the Home Office. The TPS will replace the use of discretionary powers for victims of slavery and human trafficking so that leave is granted within rather than outside the Immigration Rules. Successful applicants under the TPS will be able to remain in the UK for up to 30 months and are provided with the right to work, study and access to public funds.

32. The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2023 (“the 2023 Regulations”), which came into force on 30 January 2023, amend the Eligibility Regulations to extend eligibility for an allocation of housing and housing assistance provided by local authorities to people who have TPS.

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<sup>9</sup> [Nationality and Borders Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)