

Appendix 1

The current regulations

Wales

The Homelessness (Wales) Regulations 2006.

The Allocation of Housing (Wales) Regulations 2003.

England

The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (as amended).

The regulations in Wales are in need of updating.

Summary of main provisions of proposed new regulations for Wales:

When a local housing authority proposes to allocate accommodation under Part 6 of the Housing Act 1996 or provide assistance with homelessness under Part 7 of that Act, it must establish whether the applicant is eligible for an allocation. 'Eligibility' relates, under the statutory framework, to issues concerning an applicant's immigration status and the nature of his or her residence in the UK.

For ease of administration and due to the cross-border movement of people between England and Wales we wish to make new provisions which broadly reflect the current provisions of the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006.

The proposed new Welsh regulations will not affect the eligibility of persons who are currently applying for or accessing social housing or homelessness assistance; the changes will only apply to future applications.

Proposed Regulations

The eligibility criteria for housing allocation and homelessness assistance are split into two categories of people, persons subject to immigration control and other persons from abroad (generally European Economic Area (EEA) citizens). As a general rule persons subject to immigration control are ineligible for housing allocation and homelessness assistance unless they are listed in regulations.

Other persons from abroad

The Welsh Government proposes to split the test for eligibility into two parts; firstly a person must be habitually resident in the UK, Channel Islands, Isle of Man or the Republic of Ireland, and secondly, **their only right to reside must not be:**

- derived from that person's status as a jobseeker, or family member of a jobseeker
- an initial right to reside; or
- a derivative right to reside.

In relation to the habitual residence test, there are certain categories of persons who are exempt from having to show that they are habitually resident. As an overview these are generally people who are working or self-employed, and family members of those working or self employed. Specific exemptions are also made for Croatian nationals who are working in accordance with their worker authorisation and their family members. There are also exemptions for certain groups of people who are in the UK for humanitarian reasons. We would wish to amend the Welsh regulations to bring them in line with those of England for reasons of consistency and clarity.

Persons subject to immigration control

The Housing Act 1996 provides that a person subject to immigration control is not eligible for housing allocation or homelessness assistance unless that person is of a class prescribed in regulations.¹ Keeping broadly in line with the current Regulations, we propose that the following classes of persons be **eligible** for housing allocation and homelessness assistance:

- Refugees who have leave to enter and remain in the UK;
- A person who has exceptional leave to remain in the UK and is not subject to a condition to maintain and accommodate themselves, and any person who is dependant on them, without recourse to public funds;
- A person who is habitually resident in the UK, Channel Islands, Isle of Man or the Republic of Ireland and whose leave to enter or remain is not subject to any limitation or condition, other than a person whose leave to enter or remain has been given upon an undertaking from a sponsor, who has been resident for less than 5 years (either from date of entry or from date of undertaking, whichever is later) and whose sponsor is still alive;
- A person who has humanitarian protection granted under the Immigration Rules;
- In relation to homelessness assistance only: a person who is an asylum seeker whose claim was made before the 3rd April 2000 and in certain circumstances (see draft Regulations for details).

The Welsh Government is proposing to remove the provision in both of the Welsh Regulations so that a person who is a national of a State which has ratified the European Convention on Social and Medical Assistance will no longer be eligible. This is being updated because the majority of nationals from those states are now European Economic Area nationals and fall under the category of 'other persons from abroad'.

In addition, the eligibility criteria for homeless applications for housing assistance in Wales currently includes: a person who is on income based jobseekers allowance or income related employment and support allowance in certain circumstances. We are proposing to remove this class of people from being eligible to reflect the situation in England and to maintain consistency of approach.

¹ Sections 160A(3) and 185 of the Housing Act 1996

Glossary of terms

Habitual Residence

The term 'habitual residence' is intended to convey a degree of permanence in the person's residence in the UK, Channel Islands, Isle of Man or the Republic of Ireland; it implies an association between the individual and the country. The Welsh Government's *Code of Guidance for Local Authorities: Allocation of Accommodation and Homelessness* 2012 suggests that 'when deciding whether an applicant is habitually resident, local authorities should take account of the applicant's period of residence and its continuity; the applicant's employment prospects; the applicant's reason for coming to the UK; the applicant's future intentions'.

Initial Right to Reside

Regulation 13 of the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations") provides for an initial right of residence for all EEA nationals and their family members to reside in the UK for a period of 3 months, provided they do not become an unreasonable burden on the social security system. This initial right to reside was introduced in 2004 in Council Directive 2004/38.

Derivative Right to Reside

A derivative right to reside was added to the 2006 Regulations in 2012 to reflect the European Court of Justices' decision in *Zambrano*. In that case, the court ruled that a third country national (Mr Zambrano), who had been living and working in Belgium without a work permit, had a right of residence and right to work so that his Belgian national children were not forced to leave the EU and thereby prevented from exercising their rights as EU citizens.

Regulation 15A of the 2006 Regulations reflects this decision and provides that a person who is a third country national has a derivative right to reside in the UK for as long as they are the primary carer of a person under the age of 18, who is residing in the UK as a self sufficient person, and who would be unable to remain in the UK (or another EEA state) if he/she were required to leave.