

**2004 No. 1235**

**HOUSING, ENGLAND**

**The Allocation of Housing and Homelessness (Amendment)  
(England) Regulations 2004**

<i>Made</i> - - - -	<i>29th April 2004</i>
<i>Laid before Parliament</i>	<i>30th April 2004</i>
<i>Coming into force</i> - -	<i>1st May 2004</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 160A(5), 172(4), 185(3) and 215(2) of the Housing Act 1996(a), hereby makes the following Regulations:

**Citation, commencement and application**

- 1.—(1) These Regulations may be cited as the Allocation of Housing and Homelessness (Amendment) (England) Regulations 2004 and shall come into force on 1st May 2004.
- (2) These Regulations apply in relation to England only.

**Allocation of housing**

2. In the Allocation of Housing (England) Regulations 2002(b), for regulation 5 (classes prescribed under section 160A(5) who are ineligible persons) substitute—

**“Classes of persons from abroad who are ineligible for a housing allocation**

5.—(1) The following are classes of persons from abroad (not being persons subject to immigration control) prescribed for the purposes of section 160A(5) of the Act (persons prescribed as ineligible for an allocation of housing accommodation)—

- (a) Class E - subject to paragraphs (2) and (3), a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland;
- (b) Class F - a person whose right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland is derived solely from Council Directive No. 90/364/EEC(c) or Council Directive No. 90/365/EEC(d) .

(2) The following persons shall not, however, be ineligible pursuant to paragraph (1)(a)—

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(a) 1996 c.52; section 160A was added by section 14(2) of the Homelessness Act 2002 (c.7). The functions of the Secretary of State under Parts 6 and 7 of this Act (except sections 186 and 187) are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672, to which there are amendments not relevant to these Regulations) and section 17(1) of the Homelessness Act 2002.

(b) S.I. 2002/3264.

(c) OJ No. L.180, 13.7.90, p.26.

(d) OJ No. L.180, 13.7.90, p.28.

- (a) a person who is a worker for the purposes of Council Regulation (EEC) No. 1612/68(a) or (EEC) No. 1251/70(b);
- (b) 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 5(1) of the Immigration (European Economic Area) Regulations 2000(c) pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(d);
- (c) a person with a right to reside pursuant to the Immigration (European Economic Area) Regulations 2000, which is derived from Council Directive No. 68/360/EEC(e), No. 73/148/EEC(f) or No. 75/34/EEC(g);
- (d) a person who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.

(3) A person shall not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland for the purposes of paragraph (1) (a) if he does not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.”

### Homelessness

3. In the Homelessness (England) Regulations 2000(h), for regulation 4 (descriptions of persons who are to be treated as persons from abroad ineligible for housing assistance) substitute—

**“Description of persons who are to be treated as persons from abroad ineligible for housing assistance.**

4.—(1) The following are descriptions of persons, other than persons who are subject to immigration control, who are to be treated for the purposes of Part 7 of the 1996 Act (homelessness) as persons from abroad who are ineligible for housing assistance—

- (a) subject to paragraphs (2) and (3), a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland;
- (b) a person whose right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland is derived solely from Council Directive No. 90/364/EEC or Council Directive No. 90/365/EEC.

(2) The following persons shall not, however, be treated as persons from abroad who are ineligible pursuant to paragraph (1)(a)—

- (a) a person who is a worker for the purposes of Council Regulation (EEC) No. 1612/68 or (EEC) No. 1251/70;
- (b) 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 5(1) of the Immigration (European Economic Area) Regulations 2000 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004;
- (c) a person with a right to reside pursuant to the Immigration (European Economic Area) Regulations 2000, which is derived from Council Directive No. 68/360/EEC, No. 73/148/EEC or No. 75/34/EEC;

(a) OJ No. L.257, 19.10.68, p.2, Special Edition 1968(II) p.475, to which there are amendments not relevant to these Regulations.

(b) OJ No. L.142, 30.6.70, p. 24 Special Edition 1970 (II) p.402.

(c) S.I. 2000/2326; amended by S.I. 2001/865, 2003/549 and 2004/1219.

(d) S.I. 2004/1219.

(e) OJ No. L.257, 19.10.68, p.13, Special Edition 1968 (II) p.485, to which there are amendments not relevant to these Regulations.

(f) OJ No. L.172, 28.6.73, p.14.

(g) OJ No. L.014, 20.01.75, p.10.

(h) S.I. 2000/701.

(d) a person who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.

(3) A person shall not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland for the purposes of paragraph (1)(a) if he does not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.”

**Transitional**

4. The amendments 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 Housing Act 1996; or
- (b) assistance under Part 7 of that Act,

was made before 1st May 2004.

Signed by authority of the First Secretary of State

29th April 2004

*Keith Hill*  
Minister of State,  
Office of the Deputy Prime Minister

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Regulation 5 of the Allocation of Housing (England) Regulations 2002 (“the 2002 Regulations”) and regulation 4 of the Homelessness (England) Regulations 2000 (“the 2000 Regulations”) make provision in respect of the ineligibility of persons from abroad who are not subject to immigration control for, respectively, an allocation of housing accommodation under Part 6 of the Housing Act 1996 and housing assistance under Part 7 of that Act.

These Regulations, which come into force on 1st May 2004, substitute a new regulation 5 in the 2002 Regulations and a new regulation 4 in the 2000 Regulations.

The new regulations provide that, with certain specified exceptions, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland is not eligible for an allocation of housing accommodation or housing assistance. They further provide that a person shall not be treated as habitually resident if he has no right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland. In addition, they provide that a person is ineligible if his right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland derives solely from Council Directive 90/364/EEC (on the right of residence of nationals of Member States who do not enjoy this right under other provisions of Community law) or 90/365/EEC (on the right of residence for employees and self-employed persons who have ceased their occupational activity).

These amendments do not have effect in relation to an application for an allocation or for housing assistance made before 1st May 2004 (regulation 4).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

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