



## Eligibility to apply for social housing: persons from abroad (non-EEA)

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Author: Wendy Wilson  
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This note gives a broad overview of the rights of migrants from outside the EEA (European Economic Area) to access social housing in England. In November 2009 the Labour Minister, Ian Austin, said:

We have strengthened the regulations on access to social housing for foreign nationals. As a result, most foreign nationals who have recently come to England are not eligible for social housing.

The rules on eligibility for housing assistance in relation to persons from abroad are extremely complex. Additional guidance can be found in chapter 9 and annexes 11-13 of the [Homelessness Code of Guidance for Local Authorities](#) (last updated in July 2006). The Chartered Institute of Housing (CIH) and BMENational run a [Housing Rights website](#) specifically aimed at answering housing eligibility queries in regard to new migrants. Constituents seeking specific advice on their eligibility for housing assistance may be best referred for professional legal help.

It is worth noting at the outset that there is no general entitlement to social housing for anyone in England, including British citizens. It should also be noted that even those people from abroad who may be eligible for housing assistance still have to qualify for assistance in line with an authority's housing allocation scheme, or meet the criteria under which a statutory duty arises to households that are homeless.

Information on the eligibility of EU migrants to apply for social housing can be found in Library note [SN/SP/4737](#). The note also considers whether there is any evidence to suggest that EU migrants are able to "jump the queue" to access social housing more quickly than other applicants. Government action to limit migrants' access to benefits, including Housing Benefit, is covered in other Library notes including: [EEA nationals: the 'right to reside' requirement for benefits](#); [SN/SP/416 The Habitual Residence Test](#); [SN/SP/6889 Measures to limit migrants' access to benefits](#); and [SN/SP/6847 People from abroad: what benefits can they claim?](#)

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## 1 Eligibility for social housing

This note focuses on the legal framework within which local housing authorities in England allocate their housing stock. Housing associations are independent organisations - the HACT website provides [a helpful overview of the legal differences between associations and local authorities when housing new migrants](#).

When an English housing authority proposes to allocate accommodation under Part 6 or Part 7 of the *Housing Act 1996* (the parts that govern the general allocation of social housing and the eligibility of homeless applicants for housing assistance) it must decide whether the applicant is *eligible* for an allocation. This decision rests on an assessment, under the statutory framework, of issues primarily concerning an applicant's immigration status and the nature of his or her residence in the UK.

Under sections 160ZA(1), 160ZA(2) and 185(2) of the *1996 Housing Act* (as amended) a person from abroad who is subject to immigration control (PSIC) **cannot** be allocated social housing and is **ineligible** for housing assistance, unless s/he is of a class prescribed in regulations made by the Secretary of State. A PSIC is defined as someone who requires leave to enter or remain in the UK (whether or not such leave has been given).<sup>1</sup>

Persons from abroad who are not subject to immigration control will also be **ineligible** for social housing if they are prescribed in regulations.

On 17 May 2012 the then Housing Minister, Grant Shapps summarised which foreign nationals might be eligible to apply social housing in response to a parliamentary question tabled by Rt Hon Frank Field:

**Grant Shapps** [*holding answer 14 May 2012*]: The information is as follows:

### *Allocation of social housing*

Foreign nationals are eligible for an allocation of social housing if:

in the case of European economic area nationals, they have a relevant right to reside, for example, if they are working, self-sufficient, or have a permanent right of residence in the UK (after five years lawful residence in the UK),

in the case of other foreign nationals, they have been granted leave to enter or remain in the UK with recourse to public funds (for example, people granted refugee status or humanitarian protection).

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<sup>1</sup> Section 13(2) of the *1996 Asylum and Immigration Act*

Where foreign nationals are eligible, they would have their housing needs considered on the same basis as other applicants in accordance with the local authority's allocation scheme.<sup>2</sup>

## 1.1 The Regulations

*The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006* (SI 2006 No.1294, as amended) set out which classes of persons from abroad are eligible or ineligible for housing assistance.

Persons subject to immigration control (PISCs) are **not eligible** for housing assistance unless they fall within a class of persons prescribed in regulation 3 (eligibility to go on the housing register) or 5 (eligibility for assistance as a homeless person) of these Regulations. Persons who are not subject to immigration control (including UK nationals returning from living abroad) may be eligible for housing assistance unless they fall within a description of persons who are to be treated as persons from abroad who are ineligible for assistance by virtue of regulation 6.

By virtue of regulation 3, the following categories of PISCs **are eligible** to apply on a local authority's housing register:

- Those granted refugee status (Class A).
- Those granted exceptional leave to remain which is not subject to restrictions on recourse to public funds (Class B).
- Those with settled status (Class C) (indefinite leave to remain, residence), except:
  - those who do not pass the [habitual residence test](#)
  - those who arrived as sponsored immigrants subject to an undertaking and the undertaking or the arrival was less than five years ago unless the sponsor has died (in which case they have the same rights as other settled people).
- A person who has humanitarian protection granted under the Immigration Rules (Class D).
- A person who has limited leave in the UK via the Afghan resettlement programme and who is habitually resident (Class E).<sup>3</sup>

Regulation 5 defines who is eligible for homelessness assistance by duplicating the rules in regulations 3 and 4, but with the addition a different Class E of applicants that are subject to immigration control but who are eligible for assistance. Class E covers various types of asylum seeker who made their application for asylum before 3 April 2000 and who have not received a decision.<sup>4</sup> Class F in the homelessness eligibility regulations is the same as Class E in the allocations regulations: a person who has limited leave in the UK via the Afghan resettlement programme and who is habitually resident.

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<sup>2</sup> HC Deb 17 May 2012 c247W

<sup>3</sup> Added by *the Allocation of Housing and Homelessness Eligibility (England) (Amendment) Regulations 2014* (SI 2014/435) from 31 March 2014. It is estimated that around 600 Afghan nationals will be eligible under the resettlement scheme.

<sup>4</sup> It is possible that there are no people left in this Class. Asylum seekers who have applied for asylum since 3 April 2000 are not eligible for social housing and are covered by an independent support system.

Regulations 4 and 6 of the 2006 Regulations prescribe those classes of persons from abroad who are not subject to immigration control but who are nevertheless to be treated as persons from abroad who are **ineligible** for an allocation of housing accommodation (under Part 6 of the 1996 Act) and for housing assistance (under Part 7 of the 1996 Act) respectively. These classes relate principally to: British nationals; and to those EU citizens and nationals of Norway, Iceland, Liechtenstein and Switzerland who are not subject to immigration control. Under regulations 4(1) and 6(1), such persons are **ineligible** for an allocation of social housing or for homelessness assistance if:

(a) they are not habitually resident in the United Kingdom, Channel Islands, Isle of Man or Republic of Ireland (unless exempted from the requirement to be habitually resident by regulations 4(2) or 6(2)); or

(b) if their only right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland is a right derived from the Treaty establishing the European Community to reside in another member State either for an initial period of up to 3 months after arrival or as a jobseeker.

## 1.2 Policy responses

Ian Austin, then Parliamentary Under Secretary of State at Communities and Local Government, issued the following response to a PQ from Caroline Spelman on the subject of foreign nationals' access to social housing in November 2009:

We have strengthened the regulations on access to social housing for foreign nationals. As a result, most foreign nationals who have recently come to England are not eligible for social housing.

Foreign nationals from countries outside the European Economic Area (EEA) are only eligible for social housing in limited circumstances, e.g. if they have indefinite leave to remain in the UK or if they have leave to remain in the UK because they have been granted refugee status or humanitarian protection as it would not be safe for them to return to their own country.

**Provisions in the Borders, Citizens and Immigration Act 2009 (which comes into force in July 2011), mean that (non-EEA) economic migrants and those on the family route will only receive full access to benefits by becoming a British Citizen or permanent resident.** This policy upholds the principle that the rights and benefits of British Citizenship and permanent residence in the UK should be matched by responsibilities and contributions to the UK; and means that in practice most migrants will have to wait longer to access benefits and social housing.

[...]

Foreign nationals who apply for social housing will have their housing needs considered against those of all other eligible applicants in accordance with the local housing authority's allocation scheme. Foreign nationals do not get any extra priority.

Independent research undertaken for the Equality and Human Rights Commission by the Institute of Public Policy Research found that migrants who had recently arrived in the UK are overwhelmingly housed in the private rented sector and not in social housing, and that they make up only a small proportion of those in social housing.<sup>5</sup>

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<sup>5</sup> DEP2009-2960

The Labour Government issued new statutory guidance for councils on housing allocations in December 2009, *Fair and flexible: Statutory guidance on social housing allocations for local authorities in England*. This guidance strengthened the freedoms councils have to prioritise housing needs specific to their local area:

Published today, new statutory guidance makes clear that those in greatest housing need must be given priority. But it also gives councils more freedom to allocate their homes according to needs specific to their local area.

Councils have said they will use this extra flexibility to prioritise families with local connections, those seeking local employment and to tackle overcrowding and under-occupation in their communities.

This includes:

- Manchester City Council, who are planning to prioritise those who are working, volunteering or taking up training and educational opportunities;
- the London Borough of Newham, who plan to use revised allocation policies to tackle overcrowding;
- Bournemouth Borough Council, who plan to use the flexibilities to reduce the number of under-occupied homes; and
- Test Valley Borough Council, who are looking at the possibility of setting a quota for a proportion of their housing stock to be available to those with a connection to the local area.

The guidance also gives councils the responsibility to tackle the myths and misunderstanding surrounding allocations. Councils will be expected to consult their local communities on changes to their allocation policies, and inform local people about who is getting housing, ensuring allocation policies are better understood and have greater local legitimacy.

John Healey said:

"People must be given confidence that council homes in their area are allocated fairly. Councils must make sure people can see more clearly how homes are being allocated in their area.

"I'm giving councils greater leeway to do this. While priority will still be given to those in greatest housing need, they will now also be able to allocate according to needs specific to their local area.

"And with these greater freedoms, I expect councils to take greater responsibility in consulting with their communities, and explaining their allocation policies, to combat the myths and misunderstandings that often develop around council housing."<sup>6</sup>

On 30 November 2010 the Coalition Government issued a consultation paper, *Local decisions: a fairer future for social housing*, in which it set out proposals to increase local authorities' flexibility in relation to housing allocation policies. The paper stated:

Under the current allocation legislation, local authorities are required to operate so called 'open' waiting lists. This means that, with certain limited exceptions, anyone is

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<sup>6</sup> CLG Press Notice, *Greater council freedom on housing allocations*, 4 December 2009

eligible to apply for and to be allocated social housing – and they may apply to any local authority, not just the one they currently reside in. The exceptions are:

- certain persons from abroad specified in regulations
- persons whom an authority decides to treat as ineligible because they (or a member of their household) have been guilty of unacceptable behaviour serious enough to make them unsuitable to be a tenant of the authority.

Otherwise, provided that an application for social housing is in line with any procedural requirements in the allocation scheme, the local authority must consider the application and treat the applicant as eligible for social housing. In practice, this means that they must accept the applicant onto their housing waiting list.<sup>7</sup>

Measures in the *Localism Act 2011* have amended certain aspects of the statutory framework for social housing allocations.<sup>8</sup> The stated policy aim behind the amendments is to “give back to local authorities the freedom to determine who should qualify to go on their housing waiting list.”<sup>9</sup> The rules governing which persons from abroad are eligible/ineligible to apply for social housing are still centrally determined but there is an expectation that authorities will frame their housing allocation policies to focus on those people with a “local connection.”

The then Housing Minister, Grant Shapps, said:

Through the Localism Act we have given back to councils the freedom to manage their own waiting lists. They will be able to decide who should qualify for social housing in their area, and to develop solutions which make best use of limited social housing stock.<sup>10</sup>

New statutory guidance on social housing allocations for local authorities in England was published in May 2012: [Allocation of accommodation: guidance for local housing authorities in England](#).

On 25 March 2013 the Prime Minister announced plans to limit non-UK nationals’ access to benefits and “introduce an expectation” on local authorities to use local residence tests:

The Government will introduce an expectation on councils to introduce a local residency test in determining who should qualify for social housing. This would mean someone would have to live in an area for say 2 or 5 years before they could even go on the waiting list.

This will stop someone from turning up and immediately gaining access to social housing. To ensure UK nationals are protected when they are moving for genuine reasons - for example for work or because of family breakdown - local authorities will have the ability to set exceptions (e.g. in relation to work mobility, armed services personnel, for people escaping domestic violence etc).<sup>11</sup>

Additional statutory guidance for local authorities was published in December 2013, [Providing social housing for local people](#), the purpose of which is “to assist housing authorities to make full use of the flexibilities within the allocation legislation to better meet

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<sup>7</sup> CLG, [Local decisions: a fairer future for social housing](#), November 2010

<sup>8</sup> For additional information see Library Research paper 11/03.

<sup>9</sup> CLG, [Localism Bill: Media Background Note](#), December 2010

<sup>10</sup> HC Deb 17 May 2012 c247-8W

<sup>11</sup> [Prime Minister's speech on immigration](#), 25 March 2013

the needs of their local residents and their local communities.” There is no statutory requirement on authorities to restrict allocations of social housing to people with a local connection but the guidance states:

The Secretary of State believes that including a residency requirement is appropriate and strongly encourages all housing authorities to adopt such an approach. The Secretary of State believes that a reasonable period of residency would be at least two years.<sup>12</sup>

The *Immigration Act 2014* will, when the provisions are brought into force, introduce a requirement on private landlords to check the immigration status of new tenants:

Government will introduce a new legal requirement for landlords to check the migration status of new tenants, so they are not renting to an illegal immigrant. Landlords/letting agents will be expected to demand suitable evidence from tenants (passport/valid visa/Biometric Residence Permit) and to keep a record. For UK nationals proving their status will be straightforward - simply showing a passport, driving licence or birth certificate in most cases.

Rogue landlords who flout the rules and fail to take sufficient checks will face tough consequences, which could include a fine.<sup>13</sup>

More information can be found in a [Government factsheet](#) on the relevant provisions (note that the references to clauses in the Bill are now out of date).

Government action to limit migrants’ access to benefits, including Housing Benefit, is covered in other Library notes including: [EEA nationals: the ‘right to reside’ requirement for benefits](#); SN/SP/416 [The Habitual Residence Test](#); SN/SP/6889 [Measures to limit migrants’ access to benefits](#); and SN/SP/6847 [People from abroad: what benefits can they claim?](#)

### **1.3 Social housing lettings to foreign nationals**

There has been a good deal of interest in the number of foreign nationals who have become social housing tenants.

DCLG live table 754 (now discontinued) shows that in 2010/11 91.3% of new social housing lettings (council and housing association) in England were let to households with a “household reference person” (HRP) who was a UK national. 4.6% were let to households with an HRP from another country (excluding those let to A8<sup>14</sup> or A2<sup>15</sup> nationals and those from another EEA country). The equivalent figures for 2012/13 show 92% of new social housing lettings in England went to households with an HRP who is a UK national. 4% were let to households with an HRP from another country (excluding A8, A2 and other EEA nationals).<sup>16</sup>

In May 2012 the then Housing Minister responded to a parliamentary question on the proportion of social housing in London occupied by foreign nationals:

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<sup>12</sup> DCLG, [Providing social housing for local people](#), December 2013, para 13

<sup>13</sup> *ibid*

<sup>14</sup> The ‘A8’ accession states are Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary and Slovenia.

<sup>15</sup> Bulgaria and Romania.

<sup>16</sup> DCLG, [Social housing lettings in England: April 2012 to March 2013 - tables](#), see table 3d, 3 October 2013

### **Estimates of allocations to foreign nationals**

Based on data from the English Housing Survey data for 2009-10, it is estimated that around 20% of 'household reference persons' (the modern definition for 'head' of household) in the social rented sector in London did not identify themselves as British or Irish in the survey; there is uncertainty around the precise figure due to sampling effects. Figures for 2008-09 present a similar picture.

### **Recording of social housing allocations**

The Continuous Recording of Lettings and Sales (CORE) collects data on new social lettings and tenants rather than applicants, including information on the nationality of the household reference person. The Department is continuing to work with social housing providers to improve the quality of the CORE data, especially local authorities.

In particular, London lettings data is less complete, with 75% of London local authority general needs lettings containing nationality information in 2010-11 (around 19% were marked 'refused' and 6% were missing). As an initial step, I am writing to a number of local authorities on this issue. While mindful of the need to reduce unnecessary data reporting burdens on local authorities, I recognise there is a strong public interest in this particular information.<sup>17</sup>

## **2 Habitual residence**

As noted in the section 1.1, certain people who are not subject to immigration control who arrive from abroad, **including returning British nationals**, may not be entitled to social housing if they cannot establish "[habitual residence](#)."

Guidance on the habitual residence test can be found in Library note SN/SP/416 [The Habitual Residence Test](#).

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<sup>17</sup> HC Deb 17 May 2012 c247-8W