

Draft Regulations laid before Senedd Cymru under section 142(3)(b)(ii) of the Housing (Wales) Act 2014, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2023 No. (W.)

HOUSING, WALES

**The Allocation of Housing and
Homelessness (Eligibility) (Wales)
(Amendment) (No. 2) Regulations
2023**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under section 160A(3) of the Housing Act 1996 (c. 52) (“the 1996 Act”), a person who is subject to immigration control is ineligible for an allocation of housing accommodation by a local authority unless they come within a class of persons prescribed in regulations made by the Welsh Ministers. Under section 160A(5) the Welsh Ministers can prescribe classes of persons who, whilst not subject to immigration control, are ineligible for an allocation of housing accommodation.

Under paragraph 1(2) of Schedule 2 to the Housing (Wales) Act 2014 (anaw 7) (“the 2014 Act”), a person who is subject to immigration control is ineligible for housing assistance under Chapter 2 of Part 2 of that Act unless they come within a class of persons prescribed in regulations by the Welsh Ministers (or the Secretary of State). Under paragraph 1(4) the Welsh Ministers (or the Secretary of State) can prescribe classes of persons who, whilst not subject to immigration control, are ineligible for housing assistance.

These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (S.I. 2014/2603 (W. 257)) (“the 2014 Regulations”) which make provision for which persons, subject to immigration control, are eligible for an allocation of housing accommodation and for housing assistance. The 2014 Regulations also make provision in regard to persons who are not subject to

immigration control but are ineligible for an allocation of housing accommodation and housing assistance.

Regulation 3 amends regulation 3 of the 2014 Regulations which relates to the eligibility of persons subject to immigration control for an allocation of housing accommodation under the 1996 Act. It prescribes an additional class of persons (“Class N”) subject to immigration control who are eligible for an allocation of housing accommodation under the 1996 Act.

Class N applies to certain persons who were residing in Sudan before 15 April 2023, who left Sudan in connection with the violence which rapidly escalated in Khartoum and across Sudan on that date. Such persons will be eligible if they have been given leave to enter or remain in the United Kingdom granted in accordance with the Immigration Rules made under section 3(2) of the Immigration Act 1971 (c. 77), provided that their leave is not subject to the condition that there must be ‘no recourse to public funds’ and that their leave was not granted because of a maintenance undertaking which is still applicable.

Regulation 4 amends regulation 4(2) of the 2014 Regulations to provide that certain persons who are not subject to immigration control but would be ineligible for an allocation of housing accommodation due to not being habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland are eligible for an allocation of housing accommodation. The persons to whom this amendment applies are those who were residing in Sudan before 15 April 2023 and left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan.

Regulation 5 amends regulation 5(1) of the 2014 Regulations which relates to the eligibility of persons subject to immigration control for housing assistance under the 2014 Act. It prescribes an additional class of persons (“Class O”) who are eligible for such assistance. This class is equivalent to Class N inserted by regulation 3.

Regulation 6 amends regulation 6(2) of the 2014 Regulations so that certain persons who are not subject to immigration control, but would be ineligible for housing assistance due to not being habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, are eligible. The persons to whom this amendment applies are the same as those inserted by regulation 4.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to

the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ and on the Welsh Government's website at www.gov.wales.

Draft Regulations laid before Senedd Cymru under section 142(3)(b)(ii) of the Housing (Wales) Act 2014, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2023 No. (W.)

HOUSING, WALES

**The Allocation of Housing and
Homelessness (Eligibility) (Wales)
(Amendment) (No. 2) Regulations
2023**

Made

Coming into force

8 June 2023

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 160A(3) and (5) and 172(4) of the Housing Act 1996⁽¹⁾ and section 142(2)(a) and (b) of, and paragraph 1(2) and (4) of Schedule 2 to, the Housing (Wales) Act 2014⁽²⁾.

In accordance with section 142(3)(b)(ii) of the Housing (Wales) Act 2014, a draft of these

-
- (1) 1996 c. 52. Section 160A was inserted by section 14(2) of the Homelessness Act 2002 (c. 7); subsections (3) and (5) were amended by section 146(2)(d) and (e) respectively of the Localism Act 2011 (c. 20). The functions of the Secretary of State under sections 160A(3) and (5) and 172(4) of the Housing Act 1996 (c. 52) were, 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) and the entry in relation to that Act in Schedule 1 to S.I. 1999/672, as read in accordance with section 17(1) of the Homelessness Act 2002. Those functions were subsequently transferred to the Welsh Ministers by virtue of section 162(1) of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
- (2) 2014 anaw 7. See section 99 for the definition of “prescribed”.

Regulations has been laid before, and approved by a resolution of, Senedd Cymru(1).

Title and coming into force

1. The title of these Regulations is the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No. 2) Regulations 2023 and they come into force on 8 June 2023.

Amendment of the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014

2. The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014(2) are amended as follows.

Amendments to regulation 3

3. In regulation 3 (persons subject to immigration control who are eligible for an allocation of housing accommodation)—

- (a) omit the “and” after paragraph (l);
- (b) at the end of paragraph (m), for “.” substitute “; and”;
- (c) after paragraph (m) insert—
 - “(n) Class N – a person who—
 - (i) was residing in Sudan before 15 April 2023;
 - (ii) left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan;
 - (iii) has leave to enter or remain in the United Kingdom given in accordance with the Immigration Rules(3);
 - (iv) is not a person whose leave is subject to a condition requiring that person to maintain and

-
- (1) The reference in section 142(3) to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006. See also section 40 of the Legislation (Wales) Act 2019 (anaw 4) for provision about the procedure that applies to this instrument.
 - (2) S.I. 2014/2603 (W. 257) as saved and modified by article 5 of S.I. 2015/1272 (W. 88) (C. 73) and amended by S.I. 2017/698 (W. 164), S.I. 2019/1041 (W. 183), S.I. 2019/1149 (W. 199), regulation 76 of S.I. 2020/1309, regulation 26 of S.I. 2020/1372, S.I. 2021/353 (W. 105), S.I. 2021/1147 (W. 282), S.I. 2022/485 (W. 121) and S.I. 2023/76 (W. 14).
 - (3) Laid before Parliament on 23 May 1994 (HC 395), as amended.

accommodate themselves, and any person who is dependent on that person, without recourse to public funds; and

- (v) is not a person (P)—
 - (aa) who has been given leave upon an undertaking given by P’s sponsor;
 - (bb) who has been resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland for less than five years beginning on the date of entry or the date on which P’s sponsor gave the undertaking in respect of P, whichever date is the later; and
 - (cc) whose sponsor or, where there is more than one sponsor, at least one of whose sponsors, is still alive.”

Amendments to regulation 4

4. In regulation 4(2) (other persons from abroad who are ineligible for an allocation of housing accommodation)—

- (a) omit the “and” after sub-paragraph (i);
- (b) at the end of sub-paragraph (j), for “.” substitute “; and”;
- (c) after sub-paragraph (j) insert—
 - “(k) a person who was residing in Sudan before 15 April 2023 and left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan.”

Amendments to regulation 5

5. In regulation 5(1) (persons subject to immigration control who are eligible for housing assistance)—

- (a) omit the “and” after sub-paragraph (m);
- (b) at the end of sub-paragraph (n), for “.” substitute “; and”;
- (c) after sub-paragraph (n) insert—
 - “(o) Class O – a person who—
 - (i) was residing in Sudan before 15 April 2023;
 - (ii) left Sudan in connection with the violence which rapidly escalated

on 15 April 2023 in Khartoum and across Sudan;

- (iii) has leave to enter or remain in the United Kingdom given in accordance with the Immigration Rules;
- (iv) is not a person whose leave is subject to a condition requiring that person to maintain and accommodate themselves, and any person who is dependent on that person, without recourse to public funds; and
- (v) is not a person (P)—
 - (aa) who has been given leave upon an undertaking given by P's sponsor;
 - (bb) who has been resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland for less than five years beginning on the date of entry or the date on which P's sponsor gave the undertaking in respect of P, whichever date is the later; and
 - (cc) whose sponsor or, where there is more than one sponsor, at least one of whose sponsors, is still alive."

Amendments to regulation 6

6. In regulation 6(2) (other persons from abroad who are ineligible for housing assistance)—

- (a) omit the "and" after sub-paragraph (i);
- (b) at the end of sub-paragraph (j), for "." substitute "; and";
- (c) after sub-paragraph (j) insert—
 - “(k) a person who was residing in Sudan before 15 April 2023 and left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan.”

Name
Minister for Climate Change, one of the Welsh
Ministers
Date