



# What you need to know about new regulations on allocations and homelessness

New regulations came into effect on 30 October 2016 which change the eligibility for housing and homelessness assistance of certain people who have 'limited leave to remain' under the Immigration Rules. So far, similar changes have not been made in Wales or Scotland, so the changes apply only in England.

The new rules are [The Allocation of Housing and Homelessness \(Eligibility\) \(England\) \(Amendment\) Regulations 2016](#). They sort out the anomaly highlighted in court cases about those with leave to remain granted under Appendix FM to the Immigration Rules who are not subject to a 'no recourse to public funds' condition. Their eligibility for housing and homelessness assistance under Part VII of the Housing Act 1996 is confirmed. A number of appeals have been stayed pending the regulations, which should now be resolved.

These changes and any future ones will be included in detail on the CIH and BME National [housing rights website](#) which gives comprehensive guidance on eligibility for housing and for housing benefits, for different types of migrants in England, Wales and Scotland.

## Background to the changes

Until July 2012 those seeking leave to remain in the UK who relied on 'the right to respect for private and family life' under Article 8 of the European Convention on Human Rights, would typically have been granted leave outside the Immigration Rules. As such they would have been eligible for homelessness assistance, under class B, Regulation 5(1) of the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006, provided they were not subject to a 'no recourse to public funds' condition.

But in July 2012 the Home Office introduced a new Appendix FM to the Immigration Rules to deal with these cases. Thereafter most Article 8 applications were dealt with under this Appendix. But the Home Secretary retained discretion to grant leave outside the rules where their requirements were not met, but the grant of leave was still necessary to avoid a breach of Article 8. The unintended consequence of this change was that those in housing need who were granted leave to remain on Article 8 grounds outside the rules, were treated more favourably than those granted Article 8 leave within the rules. On a literal interpretation of class B the former were eligible for assistance whereas the latter were not, with no particular justification for this differential treatment.

## The changes in detail

The changes introduce a new class of people eligible for a housing allocation or for homelessness assistance. Under the main [Allocation of Housing and Homelessness \(Eligibility\) Regulations 2006](#), Regulations 3 and 4 set out who is eligible for a housing allocation and Regulations 5 and 6 do the same for homelessness assistance. Both of these have a new, identical class added to them, and the homelessness rules have a class deleted.

However the new classes do not have the same title. This is because until 30 October 2016 the homelessness regulations included a Class E of various types of asylum seeker who made their application for asylum before April 2000, and it is now obvious there are none of these left. The regulation change removes this class, but does not reorder the classifications, so Class F in the revised 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. From 2016 there is also a new homelessness Class G which is the same as Class F for the allocations regulations: various people granted limited leave to remain with no restrictions on recourse to public funds.

The new Class F under Regulation 3 (for allocations) and the new Class G in Regulation 5 (for homelessness assistance) therefore cover people who have been granted leave via specific parts of the Immigration Rules:

- Appendix FM – under which people are granted leave to remain on the basis of family or private life in the UK. This may include being the family member of a British or settled person or of a child who has lived seven years in the UK, or those granted leave on the basis of long residence in the UK.
- Paragraph 276BE (1) – which grants leave to the dependants of Afghan citizens (covered by the preceding class in each case).
- Paragraph 276DG – which grants limited leave to remain to people who would normally get indefinite leave to remain but have not got it because they cannot pass the English/life in the UK tests or because of minor criminal offences.

These categories are now eligible for both a housing allocation and for homelessness assistance.

### More information

There is [detailed guidance on the eligibility rules](#) on the housing rights website.

For discussion of the latest changes, see [this blog](#) by Connor Johnston of Garden Court Chambers.

### CIH views on the rule change

CIH welcomes the change but lobbied beforehand for a more comprehensive change. CIH argued that the current changes:

- exclude other groups similarly denied access to homelessness assistance and housing allocations, leaving them reliant on social services for accommodation if they need it. Examples of such groups are stateless people and some young people (mostly former separated child asylum seekers) leaving the care of social services.
- leave the regulations even more complicated than they were before: local authorities and users of our website already complain about their complexity.
- make it necessary to amend the regulations every time there is a relevant change to immigration rules and practice. These are often triggered by case law changes, but we are also entering a period in which we are likely to see a lot of changes to immigration law as a result of the EU negotiation process and consequent needs to revise relevant law and regulations.

Various organisations have proposed a much simpler change, which would mean that whether a person is granted leave within or outside the Immigration Rules, if they are not subject to a 'no recourse to public funds' condition then they would be eligible. If they are subject to such a condition they would not be eligible. It would remove the need to amend the regulations every time the Home Office creates a new category, and brings the housing and homelessness eligibility rules in line with the Home Office rules on recourse to public funds and eligibility for benefits.