



Ministry of Housing,
Communities &
Local Government

**Ministry of Housing, Communities & Local
Government**

3rd Floor, Fry Building
2 Marsham Street
London
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02 July 2020

To:
All Chief Executives, Chief Housing Officers
and Chief Officers for Children's Services of
Local Authorities in England

Dear Chief Executive, Chief Housing Officer and Chief Officer for Children's
Services,

**ELIGIBILITY FOR AN ALLOCATION OF SOCIAL HOUSING UNDER PART 6 AND
HOMELESSNESS ASSISTANCE UNDER PART 7 OF THE HOUSING ACT 1996:**

**FAMILY MEMBERS OF A PERSON OF NORTHERN IRELAND WITH LEAVE
UNDER THE EU SETTLEMENT SCHEME AND PERSONS WITH STATELESS
LEAVE**

***This letter notifies local authorities that The Allocation of Housing and
Homelessness (Eligibility) (England) (Amendment) Regulations 2020 (SI
2020/667) will come into force on 24 August 2020.***

Family members of a person of Northern Ireland

The *New Decade, New Approach* deal to restore the devolved government in Northern Ireland was published on 9 January 2020. As part of the deal, it includes a commitment by the UK Government to change the rules governing how the people of Northern Ireland bring their family members to the UK. This change will mean that eligible family members of the people of Northern Ireland can apply for immigration status on broadly the same terms as family members of Irish citizens in the UK. This change demonstrates the UK Government's commitment to the Belfast (Good Friday) Agreement, which affords the people of Northern Ireland the right to hold both British and Irish citizenship, and to identify as Irish or British or both. These changes reflect the unique history and circumstances of Northern Ireland.

To implement the Government's commitment, [the Home Office introduced changes to Appendix EU to the immigration rules](#) on 14 May 2020 (to come into force on 24 August 2020). Under these changes, eligible family members of a person of Northern Ireland will be able to apply for immigration status under the EU Settlement Scheme (EUSS), on broadly the same terms as family members of an Irish citizen. Where a person is a family member of 'a relevant person of Northern Ireland', as defined in

the Appendix EU to the Immigration Rules, and that family member has been resident in the UK, and a family member, for at least five years, the family member will be granted settled status (indefinite leave to remain) under the EU Settlement Scheme. Where a person is a family member of a person of Northern Ireland and that family member has been resident in the UK, or a family member, for less than five years, the family member will generally be granted pre-settled status (limited leave to remain) under the EU Settlement Scheme, but will be able to apply for settled status after five consecutive years of residence in the UK. The people of Northern Ireland must have been resident in the UK by 31 December 2020 and the family relationship must have existed by that date. These criteria mirror those for family members of EEA (including Irish) citizens.

The Home Office provisions apply to both EEA and non-EEA family members of a person of Northern Ireland. However, EEA nationals residing in the UK by 31 December 2020 are already able to apply to the EU Settlement Scheme in their own right without relying on a family relationship with the person of Northern Ireland.

Having acquired leave under the EU Settlement Scheme, the family member of a person of Northern Ireland will be able to access benefits and services on broadly the same terms as the family members of EEA nationals (including Irish) citizens. This means those granted settled status will be given the same access to benefits and services as UK nationals, while those granted pre-settled status will only have access to benefits and services if the person of Northern Ireland is in an equivalent position to an Irish citizen exercising treaty rights in the UK¹.

Stateless Leave

Stateless persons are third country nationals who cannot be admitted to reside permanently in any other country. They derive their status from the 1954 and 1961 UN conventions on statelessness. The 1954 convention – ratified by the UK – requires stateless persons to have access to housing on terms that are ‘not less favourable than that accorded to aliens generally in the same circumstances’.

The main reasons for ‘statelessness’ include, for example, gaps in nationality laws, movement of borders, the creation of new states, and lack of effective administrative systems in the country of origin, such as the lack of a system to formally register a person’s birth. Statelessness is distinct from asylum, in that asylum is granted on the basis of *fear* of returning to one’s place of origin, whereas statelessness is the *inability* to return to and live permanently there as a resident.

A specific category of limited leave, ‘stateless leave’, was created within the Immigration Rules in 2013. The rules are set out in Part 14 of the Immigration Rules: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons>. Leave is granted with recourse to public funds, and lasts for 5 years, after

¹ This means the person of Northern Ireland must be a worker, self-employed, self-sufficient, a student or the equivalent of a person who has acquired the right of permanent residence. A right of permanent residence is usually acquired after five years’ continuous residence as a worker, self-employed person, self-sufficient person, student, or any combination thereof, but in certain circumstances it can be acquired in shorter time.

which individuals may apply for settlement. There are currently less than 200 people with stateless leave in the UK.

Persons with 'stateless leave' are already eligible for Housing Benefit and Universal Credit subject to passing the habitual residence test.

Changes to Regulations 3 and 5

In order to take account of the changes to the Immigration Rules in relation to the two categories of people referred to above, the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (S.I. 2006/1294) ("the Eligibility Regulations") are amended by The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2020 ("the Amendment Regulations"). The Amendment Regulations were laid on 2 July and will come into force on 24 August 2020.

The Amendment Regulations are made by the Secretary of State under sections 160ZA(2) and 185(2) of the Housing Act 1996 ("the 1996 Act"). They amend Regulations 2(interpretation) by adding a new defined term, and regulations 3 and 5(1) of the Eligibility Regulations which prescribe the classes of persons subject to immigration control who are to be treated as eligible for an allocation of housing accommodation or for homelessness assistance respectively.

Regulations 4 and 5 of this instrument amend regulations 3 and 5(1) by introducing two additional classes of person who are eligible for an allocation of housing or homelessness assistance under the 1996 Act.

- **People of Northern Ireland:** The first new class introduced under regulation 3 (Class I) and regulation 5 (Class J) makes provision for persons who have limited leave to enter or remain in the United Kingdom as the family member of a person of Northern Ireland by virtue of Appendix EU to the Immigration Rules, and where the sponsor (a relevant person of Northern Ireland) would be considered eligible (as a worker or self-employed) in accordance with regulation 4 and 6 of the eligibility rules. Currently, the family members of an EEA national (including Irish citizens who rely on their rights as an EEA national) are eligible and do not need to demonstrate habitual residence if the EEA national is a worker or self-employed person. Family members of an EEA national (including Irish citizens who rely on their rights as an EEA national) are not eligible if the EEA national is in the initial three months of residence in the UK, or is job seeking.
In applying for an allocation of social housing or housing assistance, the family member will need to identify and evidence that their sponsor family member is a relevant person of Northern Ireland as defined.
- **Stateless persons:** The second class introduced under regulation 3 (Class J) and regulation 5(1) (Class K) makes provision for persons who are habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland and who have been granted leave to remain as a stateless

person under the Immigration Act 1971, by virtue of paragraph 405 of the immigration rules.

The Amendment Regulations are published by the Stationery Office and are available at <http://www.legislation.gov.uk/id/uksi/2020/667>.

Enquiries about the Amendment Regulations should be addressed to:

- Changes introduced to this instrument in relation to family members of people of Northern Ireland: Begona Vilaplana, regarding by telephone on 0303 444 1699 or by email to: begona.vilaplana@communities.gov.uk
- Changes introduced to this instrument in relation to stateless persons: Frances Walker, regarding by telephone on 0303 444 3655 or by email to: frances.walker@communities.gov.uk

Yours sincerely,

A handwritten signature in black ink, written in a cursive style, that reads "Begona Vilaplana". The signature is written over a horizontal line.

Begona Vilaplana

A handwritten signature in black ink, written in a cursive style, that reads "Frances Walker".

Frances Walker