



Department for Communities and Local Government

To: Chief Housing Officers of Local
Authorities in England

Dear Chief Housing Officer

This letter notifies local housing authorities that The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012 (SI 2012/2588) will come into force on 8 November 2012.

These regulations (the Eligibility Amendment Regulations) are made by the Secretary of State under sections 160ZA(4), 172(4), 185(3) and 215(2) of the Housing Act 1996 (the 1996 Act) and were laid in Parliament today.

They amend regulations 4 and 6 of *The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006* (SI 2006 No. 1294) (the Eligibility Regulations). Regulations 4 and 6 prescribe the classes of persons who are not subject to immigration control but who are to be treated as persons from abroad who are ineligible for an allocation of housing accommodation or for homelessness assistance under Parts 6 and 7 of the 1996 Act respectively.

Specifically, the Eligibility Amendment Regulations amend regulations 4 and 6 of the Eligibility Regulations to provide that the following persons are ineligible for an allocation of housing accommodation or homelessness assistance:

- Persons who have rights of residence in the UK as a result of regulation 15A(1) and (4A) of the Immigration (European Economic Area) (Amendment) (No 2) Regulations 2012 (the EEA Amendment Regulations)
- Persons who have a right derived from Article 20 of the Treaty on the Functioning of the European Union, in a case where rights of residence arise because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen

The Eligibility Amendment Regulations also make provision for persons who have equivalent rights of residence in the Channel Islands, the Isle of Man or the Republic of Ireland (the Common Travel Area).

The Government is making these amendments to the Eligibility Regulations following the ruling of the Court of Justice of the European Union in the case known as *Zambrano* (C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)*). In that case, the Court ruled that a third country national (Mr Zambrano), who had been living and working in Belgium without a work permit, had a right of residence and right to work so that his Belgian national children were not forced to leave the EU and thereby prevented from exercising their rights as EU citizens.

Regulation 15A(1) and (4A) of the EEA Amending Regulations give effect to the *Zambrano* right by providing for a national from a non EEA country, who is resident in the UK and is the primary carer of a British citizen, to be granted a right of residence in the UK where not doing so would mean that the British citizen would have to leave the European Union.

The effect of the Eligibility Amendment Regulations is to maintain the Government's policy that non EEA nationals who are normally subject to immigration control should only have access to social housing or homelessness assistance if it accords with the Government's immigration and asylum policy, which broadly means only if they have been granted leave to enter or remain in the UK and this leave is not conditional on the person having no recourse to public funds.

The Department for Work and Pensions and HM Revenue and Customs are making similar amendments to regulations governing income-related benefits and tax credits which also come into force on 8 November.

The Eligibility Amendment Regulations are published by the Stationery Office and are available on the OPSI website at:

<http://www.legislation.gov.uk/2012/2588>

Inquiries about the Eligibility Amendment Regulations should be addressed to Frances Walker, by telephone on 0303 444 3655 or by e-mail to:

frances.walker@communities.gsi.gov.uk

A copy of this letter and the draft regulations is also being sent, by e-mail, to the homelessness strategy contact in each authority.

Yours sincerely,



Frances Walker



John Bentham