



EU migrants: entitlement to housing assistance (England)

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Section Social Policy Section

The aim of the first part of this note (section 1) is to give a broad overview of the law governing the rights of EU migrants to access social housing in England. The second part of the note (section 2) 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.

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](#) (note that the Code was last updated in July 2006), in annexes 2-4 of [Allocation of accommodation: Guidance for local housing authorities in England](#) (2012) and on the website of the Chartered Institute of Housing (CIH). The Institute, with the Housing Associations’ Charitable Trust (HACT) participated in the Opening Doors project which brought together housing providers to develop and implement different solutions to issues raised by migration. Guidance on the housing rights of migrants can be found on the [Opening Doors](#) website. The CIH and HACT have also developed a [Housing Rights website](#) specifically aimed at answering housing rights queries in regard to new migrants. Constituents seeking specific advice on their eligibility for housing assistance may be best referred for professional legal help.

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 (Part 7 of the *1996 Housing Act* (as amended)). The Government published additional statutory guidance for local authorities 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 the needs of their local residents and their local communities.”

Information on the rights of persons from abroad (non-EEA) to access social housing can be found in Library note SN/SP/5433 [Entitlement to social housing: persons from abroad \(non-EEA\)](#). Other notes that may be useful include SN/SP/5972 [EEA nationals: the ‘right to reside’ requirement for benefits](#) and SN/SP/416 [The Habitual Residence Test](#).

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1 Determining eligibility for housing: EEA nationals

When a 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) 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).¹

A number of persons from abroad are not subject to immigration control, these are primarily European Economic Area (EEA) nationals² and British nationals who have been living abroad. EEA nationals do not require leave to enter or remain in the UK if they have a right to reside in the UK that derives from EC law.³ The question of whether an EEA national (or family member) has a particular right to reside in the UK will depend on their circumstances, particularly the economic status of the EEA national (e.g. whether he or she is a worker, self-employed, a student, or economically inactive). There is also a growing body of case-law

¹ Section 13(2) of the *1996 Asylum and Immigration Act*

² This includes all EU countries plus Iceland, Liechtenstein, Switzerland and Norway.

³ EEA nationals who are not exercising EC Treaty rights to reside, and their family members, will not acquire a right of residence under the *Immigration (European Economic Area) Regulations 2006* (SI 2006/1003) “the EEA Regulations”. These people still require leave to enter or remain and fall to be treated as PISCs. These Regulations have been amended by *The Immigration (European Economic Area) (Amendment) Regulations 2012* (2012/1547) and *The Immigration (European Economic Area) (Amendment) (No.2) Regulations 2012*.

that must be taken into account when reaching a decision on who has a right to reside in the UK.

Thus the existence or otherwise of a person's right to reside in the UK is the starting point in establishing their eligibility for housing.

On 17 May 2012 the 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).

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.⁴

On 16 March 2011 the Supreme Court handed down its [judgment](#) in the *Patmalniece* case concerning the right-to-reside test. The Court held that while the right to reside test was indirectly discriminatory on the basis of nationality, the discrimination was justified as a proportionate response to the legitimate aim of protecting the public purse. However, the European Commission has concluded that the test is discriminatory, contrary to EU law, and on 26 April 2012 gave the UK two months in which comply with EU rules on the free movement of EU citizens:

Brussels, 26 April 2012 – The European Commission has given the United Kingdom two months to comply with European Union rules on the free movement of EU citizens and their families across the EU or face an EU court case. The Commission's request takes the form of a reasoned opinion (the second step in the three-step EU infringement process). The Free Movement Directive ([2004/38/EC](#)) aims to ensure that EU citizens can fully enjoy their rights to freely travel, live and work anywhere in the European Union. The Commission may refer countries that are not fulfilling their obligations to the Court of Justice of the EU.⁵

This issue is covered in detail in Library note SN/SP/5972 [EEA nationals: the 'right to reside' requirement for benefits](#).

1.1 Ineligible EEA nationals

The Secretary of State has prescribed that certain persons from abroad who are not subject to immigration control are also ineligible for housing assistance by virtue of sections

⁴ HC Deb 17 May 2012 c247W

⁵ [European Commission Press Release](#), 26 April 2012

160ZA(5) and 185(3) of the 1996 Act (as amended). Regulations 4 and 6 of *The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006* (SI 2006/1294)⁶ “the eligibility Regulations” determine which persons from abroad who are not subject to immigration control are nonetheless ineligible for housing assistance in respect of applications made on or after 1 June 2006.⁷ Jan Luba QC, in *Housing Allocation and Homelessness Law and Practice*, described the primary function of these provisions as: “to confine homelessness assistance to the ordinary residents of the UK, i.e. those habitually resident here, and to EEA nationals exercising Treaty rights.”⁸

Broadly, EEA nationals are excluded from housing assistance if they fall into the following categories:

- Those who are not habitually resident⁹ in the Common Travel Area (CTA)¹⁰ unless they are workers or self employed EEA nationals, or family members of such EEA nationals.
- A person whose only right to reside in the UK:
 - i) is derived from his/her status as a jobseeker¹¹ or the family member of a jobseeker; or
 - ii) is an initial right to reside for a period not exceeding three months under regulation 13 of the EEA Regulations;¹² or
- A person whose only right to reside in the CTA is a right equivalent to one of those mentioned in i) or ii) above which is derived from the Treaty establishing the European Community.

The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012 (2012/2588) extended the categories of *ineligible* EEA nationals (with effect from 8 November 2012) to include persons who have a right of residence in the UK by virtue of the *Immigration (European Economic Area) (Amendment) (No.2) Regulations 2012* (2012/2560).¹³ The EEA Amendment Regulations conferred rights of residence and entry on the primary carers of British citizens residing in the UK where the denial of such a right would prevent the British Citizen from being able to reside in the UK or in an EEA state. These “Zambrano carers” have no right of residence and therefore no habitual residence in the UK for purpose of claiming housing and other benefits.¹⁴

⁶ These Regulations have been amended by the *Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2006* (2006/2007), the *Allocation of Housing and Homelessness (Miscellaneous Provisions) (England) Regulations 2006* (2006/2527), the *Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (No2) Regulations 2006* (2006/3340) and the *Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012* (2012/2588).

⁷ Applications for assistance made before 1 June 2006 are determined according to the *Homelessness (England) Regulations 2000* (SI 2000/701), as amended by SI 2004/1235 and SI 2006/1093.

⁸ Luba and Davies, *Housing Allocation and Homelessness Law and Practice*, 2006. Chapter 10.77

⁹ Habitual residence is not defined in legislation -guidance on habitual residence can be found in Annex 10 to the *Homelessness Code of Guidance for Local Authorities* (CLG, July 2006). See also section 1.3 of this note.

¹⁰ UK, the Channel Islands, Isle of Man and the Republic of Ireland.

¹¹ As defined by *The Immigration (European Economic Area) Regulations 2006* (SI 2006/1003) “the EEA Regulations”, Regulation 6(4)

¹² SI 2006/1003

¹³ These Regulations gave effect to the Court of Justice of the European Union in C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi*.

¹⁴ *The Social Security (Habitual Residence) (Amendment) Regulations 2012* (2012/2587)

An applicant who is ineligible for housing may still obtain advice and information about homelessness and the prevention of homeless from the local authority free of charge.¹⁵

1.2 Eligible EEA nationals

EEA nationals who are **not** habitually resident in the UK *may* be eligible for housing assistance if they are in the UK and have a right to reside because they are:

- A worker;
- A self employed person;
- [A person who is an accession state worker¹⁶ requiring registration who is treated as a worker for the purposes of regulation 6(1) of the 2006 EEA Regulations,¹⁷ as amended];¹⁸
- A person who is a family member of a person referred to above;
- A person with a right to reside permanently in the UK by virtue of Regulation 15 of the 2006 EEA Regulations (as amended).
- A person who left the territory of Montserrat after 1 November 1995 because of the effect on that territory of a volcanic eruption; and
- Here as a result of his/her deportation, expulsion or other removal by compulsion of law from another country to the UK.

Even if an EU migrant is eligible for housing, if they are applying for assistance under Part 7 of the *1996 Housing Act* (the homelessness provisions) they must also be unintentionally homeless and fall into a priority need category, as defined by section 189 of the 1996 Act, before they can qualify for assistance.¹⁹ Section 185(4) of the 1996 Act had required authorities to disregard ineligible family members when reaching a decision over whether an applicant has a priority need for accommodation. Thus if a dependent child was ineligible, even though his/her parents were eligible, the family was treated as not being in priority need and no statutory duty to house the family arose (but see below).

The Court of Appeal deemed that section 185(4) was incompatible with Article 14 (the prohibition of discrimination) of the European Convention on Human Rights.²⁰ Subsequently the Labour Government tabled amendments to the *2008 Housing and Regeneration Act* during its passage through parliament to remedy this declaration of incompatibility across the UK.²¹ With effect from 2 March 2009, section 314 and Schedule 15 of the 2008 Act amended the *1996 Housing Act* and the *1999 Immigration and Asylum Act* so that the requirement to disregard ineligible household members when considering whether an eligible applicant is homeless or has a priority need for accommodation, no longer applies.²²

¹⁵ Sections 179(1) & 183(3) of the *1996 Housing Act*

¹⁶ Workers from the 2004 EU accession states of Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary and Slovenia (often referred to as the 'A8' countries).

¹⁷ Pursuant to the *Accession (Immigration and Worker Registration) Regulations 2004* – note that from 1 May 2011 EEA nationals from the A8 countries have been treated in the same way as all other non-accession nationals.

¹⁸ This requirement ceased to apply from 1 May 2011 - see section 1.5 of this note.

¹⁹ The priority need categories include having a dependent child or a member of the family who is pregnant.

²⁰ *R (on the application of Sylviane Pierrette Morris) v Westminster City Council* [2005] EWHC 1184 (CA)

²¹ HL Deb 23 June 2008 cc520-25

²² [CLG Guidance on the amendments](#), February 2009

The amendments have not created a level playing field for formerly ineligible family members in terms of the homelessness legislation. Describing the effect of the amendments, the then Minister, Iain Wright said:

...in summary the issue at stake is what help British citizens whose household includes members with different immigration status should get if they become homeless. The amendments will ensure that in future, households in those circumstances will be provided with suitable accommodation, while continuing to ensure that people from abroad with no claim to UK public resources cannot confer entitlement to long-term social housing.²³

Thus the entitlement of homeless households in this position is to an offer of suitable private rented accommodation and not a social housing tenancy.²⁴

Amendments to the right to reside

The Immigration (European Economic Area) (Amendment) Regulations 2012 (2012/1547) came into force on 16 July 2012. These Regulations amended the 2006 EEA Regulations to give effect to a number of rulings of the Court of Justice of the European Union (CJEU) concerning EU citizens and their right to reside in the UK, including:

- the right of entry and residence for the primary carer of an EEA national who is (a) under 18 years old and (b) residing in the UK as a self-sufficient person where the denial of such a right would prevent the EEA child from exercising his/her right of residence. This has given effect to the CJEU judgment in *Chen*;²⁵
- the right of entry and residence for (a) a child of an EEA national who is in education and who had begun residing in the UK when his/her EEA national parent was residing in the UK as a worker, and (b) the primary carer of a child of an EEA national where requiring the primary carer to leave the UK would prevent that child from being able to continue his/her education in the UK as decided in *Harrow LBC v Ibrahim and Secretary of State for the Home Department* C-310/08 and *Teixeira v Lambeth LBC and Secretary of State for the Home Department* C-480/08;²⁶
- residence undertaken in accordance with previous EU law instruments concerning free movement can be counted for the purposes of acquiring permanent residence save in cases where there has been an absence from the UK of more than two years before the right to permanent residence was acquired or where the period of lawful residence was followed by a period of more than two years in which the person in question was not residing in accordance with the relevant EU law instrument. This gives effect to the CJEU judgment in *Lassal and Dias*;²⁷
- providing that time spent in a Member State under domestic legislation before a Union citizen's country acceded to the European Union counts for the purposes of acquiring permanent residence, provided that such pre-accession residence would

²³ HC Deb 21 July 2008 c610

²⁴ Provisions in the Localism Bill, which is currently before Parliament, will enable local authorities to discharge their duty towards all unintentionally homeless households in priority need by offering a tenancy of private rented housing.

²⁵ *Chen* (C-200/02)

²⁶ The DWP issued guidance on the impact of *Teixeira* and *Ibrahim* cases in relation to Housing and Council Tax Benefit applications in May 2010: [HB/CTB Circular A10/2010](#).

²⁷ C-162/09 and C-325/09

have been in accordance with the 2006 Regulations had they been in force and applied to the person in question at the relevant time. This gives effect to *Ziolkowski and Others*,²⁸ and

- *McCarthy*²⁹ determined that a person who holds the nationality of the host Member State and has never exercised their right of free movement and residence does not benefit from the terms of the Free Movement Directive. Transitional provisions were included to provide for the continuation of rights for those who have already placed reasonable reliance on the pre-McCarthy position which enabled British citizens to fall within the definition of EEA national for the purposes of the Regulations where they held another EEA nationality.

Additional amendments to address transposition issues and practical matters concerning the operation of the 2006 EEA Regulations are explained in the [Explanatory Memorandum to SI 2012/1547](#).

The Department for Work and Pensions issued [DMG Memo 34/12](#) in September 2012 which provides guidance on the changes to the 2006 EEA Regulations.

1.3 EEA nationals and habitual residence

Some EEA nationals will be persons from abroad who have not been specifically included as eligible for housing assistance under Regulation 6(2) of the 2006 eligibility Regulations but who nonetheless are eligible because they satisfy all elements of the Habitual Residence Test.

The Habitual Residence Test was first introduced in 1994 in response to concerns about “benefits tourism”. Habitual residence is not defined in legislation – until December 2013 there were two requirements that needed to be met for habitual residence to be established:

- An appreciable time must have elapsed before a person could be considered to be habitually resident.
- The claimant had to have a settled intention to reside in the UK.³⁰

As part of a wider package of measures on migrants’ access to benefits announced by the Government earlier in 2013, a “new, stronger, more robust” test was rolled out across the UK in December 2013. A DWP press release explained:

Migrants are only entitled to claim benefits if they can prove both that they are legally allowed to be here, and that they have sufficient ties to this country to show they are ‘habitually resident’.

The improved test will see the bank of available questions increase by more than 100, while the intelligent IT system will ensure that the number and type of questions asked are tailored to each individual claimant and their personal circumstances.

Migrants wanting to claim benefits will have to provide more comprehensive evidence at the point of their claim. This might include what measures they have taken to establish themselves in the UK by looking at their housing and family situation or by

²⁸ C-424/10 and C-425/10

²⁹ C-434/09

³⁰ Guidance on habitual residence can be found in Annex 10 to the [Homelessness Code of Guidance for Local Authorities](#) (CLG, July 2006)

looking at what ties they still have abroad. They will also have to provide more evidence that they are doing everything they can to find a job.³¹

There are a number of categories of persons from abroad who have a right to reside under Directive 2004/38/EC and *The Immigration (European Economic Area) Regulations 2006* (as amended) who are neither excluded by Regulation 6(1)(b) and (c) of the *2006 eligibility Regulations* nor included by Regulation 6(2). These persons must satisfy the Habitual Residence Test under Regulation 6(1)(a) in order to be eligible for assistance. Fundamentally these include non-economically active people such as students as family members of EEA students.

The *Jobseeker's Allowance (Habitual Residence) Amendment Regulations 2013 (SI 2013/3196)* were laid before Parliament on 18 December and came into force on 1 January 2014.³² The Regulations introduced a new requirement that people coming to the UK have to satisfy in order to be deemed "habitually resident." A person arriving in the UK now has to serve a three month period before they can be treated as habitually resident for Jobseeker's Allowance purposes. This means that someone coming to the UK to look for work will not normally be able to make a claim for income-based JSA (and Housing Benefit, since income-based JSA "passports" someone to HB), until they have been in the UK for three months:

This new requirement applies to migrants from all EEA countries coming here to look for work - including British nationals returning to the UK after a period living abroad. There is also a six month cut-off point for Jobseeker's Allowance for EEA nationals who come to the UK to look for work, unless the person can provide compelling evidence that they have a genuine prospect of work.³³

See also Library note SN/SP/416 *The Habitual Residence Test*.

1.4 Accession state nationals (A8)

Nationals of the 'A8' accession states (Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary and Slovenia) who entered the UK as workers were required (with certain exceptions³⁴) under the *Accession (Immigration and Worker Registration) Regulations 2004* (SI 2004/1219) to register their employment with the Home Office until they had accrued a period of 12 months' continuous employment. If they remained both registered and in work for 12 months they were treated as having a right to reside and therefore could be eligible for housing assistance.

To demonstrate eligibility for housing assistance accession state workers requiring registration had to be able to:

- provide a valid worker registration card and a valid worker registration certificate showing their current employer; or
- where the worker had applied to register but had not yet received a certificate, provide a copy of their application to register; or

³¹ DWP, *Improved benefit test for migrants launched*, 13 December 2013

³² This negative SI will remain in force unless it is "prayed against" within 40 days.

³³ [UK Border Agency website](#) (accessed 6 January 2014)

³⁴ For example, self employed workers and those working with permission in the UK for their current employer since before 1 May 2004. A full list of exemptions can be found in Annex 13 to the *Homelessness Code of Guidance for Local Authorities*

- show they had been working for their current employer for less than one month.³⁵

While looking for work (or between jobs) these nationals had a right to reside that was conditional on them being self-sufficient and not imposing an unreasonable burden on the UK social assistance system. Thus while looking for work they were ineligible for housing assistance. These conditions ceased to apply once they had worked in the UK continuously for 12 months.

Since 1 May 2011 the UK has not been allowed to treat A8 nationals any differently from non-accession nationals. From this date A8 nationals have been able to access benefits on the same basis as other EEA nationals as outlined in the previous sections of this note.

The AIRE Centre produced some [FAQs](#) on the rights of migrant workers affected by the change that took place on 1 May 2011.

1.5 Bulgarian & Romanian nationals (A2)

On 1 January 2007 Bulgaria and Romania joined the European Union. The UK decided to impose restrictions on the right of these 'A2' nationals to work in the UK after accession. These restrictions went considerably further than those initially imposed on nationals of the A8 states. A Home Office press notice explained:

The UK has decided to limit access to its labour market following the European Commission's recommendation to permit Bulgaria and Romania to join the EU on 1 January 2007. From that date Romanians and Bulgarians will have the right to travel throughout the EU.

In the UK low-skilled workers from Romania and Bulgaria will be restricted to existing quota schemes to fill vacancies in the agricultural and food processing sectors. There will be no net increase in these existing schemes and workers will be required to have an authorisation document.

Skilled workers will be able to work in the UK - as now - if they get a work permit or qualify under the Highly Skilled Migrant Programme, if they are a student, are self employed or as their dependents.

These new arrangements will be reviewed within 12 months and the Government's proposed new Migration Advisory Committee will assist in this process taking account of the needs of our labour market, the impact of the A8 accession and the positions adopted by other EU countries.

Employers and employees will have a duty to abide by the new rules and there will be controls in place for rogue employers and illegal workers, including fixed penalty notices.³⁶

These restrictions on attaining worker status had an impact on the ability of A2 nationals to attain a right to reside in the UK and thus attain eligibility for housing assistance. The *Allocation of Housing and Homelessness (Eligibility) (England) (No.2) Regulations 2006* (SI 2006/3340) came into force on 1 January 2007. These regulations provided that nationals

³⁵ See Annex 13 to the [Homelessness Code of Guidance for Local Authorities](#) for information on the Workers Registration Scheme.

³⁶ Home Office press notice, *Controlled access to UK labour market for new accession countries*, 24 October 2006

of Bulgaria and Romania who were treated as a 'worker' for the purposes of the 2006 EEA Regulations (as modified) were exempted from the requirement to be habitually resident in the UK (or wider Common Travel Area) in order to be eligible for an allocation of accommodation under Part 6 of the *1996 Housing Act* or for homelessness assistance under Part 7 of the 1996 Act.

The Department of Communities and Local Government (DCLG) issued a note to the Chief Officers of all local authorities in England on the position of A2 nationals in respect of housing assistance in December 2006, the contents of which are reproduced below:

This note outlines the effect of the Amendment Regulations on eligibility for an allocation or for homelessness assistance. It is not a substitute for legislation, and local authorities will still need to keep up to date with developments in the law in this area.

"The EEA Regulations" means *Immigration (European Economic Area) Regulations 2006*

"The Accession Regulations 2006" means the *Accession (Immigration and Worker Authorisation) Regulations 2006*

"The Eligibility Regulations" means the *Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006*

"The Amendment Regulations" means the *Allocation of Housing and Homelessness (Eligibility) (England) (No.2) Regulations 2006*

Under the terms of the Accession Treaty for Bulgaria and Romania signed in Luxembourg on 25 April 2005, the UK (and all other Member States) are entitled to regulate access to their labour market by nationals of Bulgaria and Romania during a transitional period.

For a transitional period, the Government proposes to allow Bulgarian and Romanian nationals access to the UK labour market only in limited circumstances. Broadly, access will be limited to those who are already working here lawfully, those who qualify to come here under the Highly Skilled Migrant Programme, and low skilled workers who obtain authorisation to work in the food processing or agriculture employment sectors (and are working in accordance with that authorisation).

The Government's policy is that EEA nationals who are working lawfully in the UK should have access to an allocation of accommodation under Part 6 of the Housing Act 1996 and to homelessness assistance under Part 7 of the 1996 Act, in accordance with their rights under EU law.

Under the EEA Regulations, those Bulgarian and Romanian nationals who have already worked lawfully in the UK for 12 months on 1 January 2007, or who enter the UK under the Highly Skilled Migrants programme, will have the same rights as other workers from the countries in the European Economic Area ("the EEA"). Such persons will be eligible for an allocation of accommodation or for homelessness assistance on 1 January by virtue of regulations 4(2)(a) and 6(2)(a) of the Eligibility Regulations.

However, the Accession Regulations 2006 modify worker status under the EEA Regulations for those nationals of Bulgaria and Romania requiring authorisation to undertake low skilled work. Consequently, the Amendment Regulations provide that those nationals of Bulgaria and Romania who are subject to worker authorisation and

who are working lawfully in the UK in accordance with the Accession Regulations will also be exempted from the requirement to be habitually resident in the Common Travel Area in order to be eligible for an allocation or for homelessness assistance.

Since the number of Bulgarian and Romanian nationals who will be allowed to work lawfully in the UK during the transitional period will be limited, it is anticipated that the number of persons affected by the Amendment Regulations will be small.

From 1 January 2007, the Eligibility Regulations will apply to nationals of Bulgaria and Romania who come here in some other economic capacity (e.g. self employed or self-sufficient) in the same way as they apply to all other EEA nationals (subject to the modifications for workers outlined above).³⁷

On 31 October 2007 the then Government announced that restrictions on A2 nationals in terms of working in the UK would remain in place at least until the end of 2008.³⁸ The restrictions continued up to 31 December 2013. After 31 December 2011 a Member State could only continue with restrictions against A2 nationals for a further period of two years and had to show evidence that labour flows had been seriously disrupting (or were threatening to seriously disrupt) the UK labour market. Thus the restrictions on A2 nationals ended on 31 December 2013.

As explained in section 1.3 of this note, the ending of restrictions on A2 nationals was accompanied by Regulations to provide that no migrant from an EEA country can satisfy the Habitual Residence Test until they have been resident for three months:

Exercising treaty rights as a job seeker from 1 January 2014

Romanian and Bulgarian nationals have the right to reside in the UK as a job seeker if they are actively seeking work and have a genuine chance of getting a job. These conditions and the relevant requirements of the Immigration (European Economic Area) Regulations 2006 must be met.

In addition, from 1 January 2014, only people who have been resident in the UK for three months will be able to satisfy the Habitual Residence Test, and so access Jobseeker's Allowance.

This new requirement applies to migrants from all EEA countries coming here to look for work - including British nationals returning to the UK after a period living abroad. There is also a six month cut-off point for Jobseeker's Allowance for EEA nationals who come to the UK to look for work, unless the person can provide compelling evidence that they have a genuine prospect of work.³⁹

For additional information see Library note SN/HA/6606, [Ending of transitional restrictions for Bulgarian and Romanian workers](#).

1.6 Croatian nationals

Croatia acceded to the European Union on 1 July 2013. As explained above, under the terms of the accession treaty (Art.18, Annex 5) EU Member States are entitled to impose transitional arrangements for up to five years, *inter alia*, restricting access to state support. *The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment)*

³⁷ CLG, December 2006

³⁸ Home Office Press Release, 'Restrictions on accession immigration will continue', 31 October 2007

³⁹ [UK Border Agency website](#) (accessed 6 January 2014)

Regulations 2013 (SI 2013/1467) provide that a Croatian who applies for an allocation of housing (Part 6, Housing Act 1996) or homelessness assistance (Part 7, Housing Act 1996) is only eligible if s/he is a “worker” within the meaning of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (SI 2013/1460) i.e. s/he must be registered as such pursuant to a worker registration scheme.

This is similar to the position that applied to Bulgarians and Romanians up to 31 December 2013 (described in section 1.5 of this note). The Government sent a [letter](#) to all Chief Housing Officers in England outlining the effect of these reforms in June 2013.

The restrictions on Croatians will apply up to 30 June 2018 and are likely to be extended to 2020.

2 Do EU migrants jump the social housing queue?

An oft cited claim is that “migrants jump the queue” for social housing. The issue attracted substantial publicity in May 2007 after Margaret Hodge, then Minister at the Department for Trade and Industry, wrote an article for the *Observer* newspaper in which she said:

We prioritise the needs of an individual migrant family over the entitlement others feel they have. So a recently arrived family with four or five children living in a damp and overcrowded, privately rented flat with the children suffering from asthma will usually get priority over a family with less housing need who have lived in the area for three generations and are stuck at home with the grandparents.

We should look at policies where the legitimate sense of entitlement felt by the indigenous family overrides the legitimate need demonstrated by the new migrants.

We should also look at drawing up different rules based on, for instance, length of residence, citizenship or national insurance contributions which carry more weight in a transparent points system used to decide who is entitled to access social housing. There are a small number of confirmed refugees who, of course, would receive the same entitlements as British citizens. However, most new migrant families are economic migrants who choose to come to live and work here. If you choose to come to Britain, should you presume the right to access social housing?⁴⁰

The article prompted Nancy Kelly, head of international and UK policy at the Refugee Council to stress that asylum seekers are not entitled to council housing and that EU migrants from the accession states had restricted access to public resources, including housing. A number of MPs moved to distance themselves from Margaret Hodge’s remarks.⁴¹

In response to suggestions that migrants are “queue jumping” access to social housing, the Equality and Human Rights Commission (EHRC), in conjunction with the Local Government Association (LGA), commissioned research from the Institute of Public Policy Research (IPPR) to look at the facts behind these suggestions. The research, launched in November 2007, posed three questions:

- Who is entitled to social housing?
- Who receives social housing?
- Do some groups have unfair access to social housing?

⁴⁰ *Observer*, “A message to my fellow immigrants”, 20 May 2007

⁴¹ See EDM 1521 of session 2006-07

The IPPR's interim findings were published in April 2008. Announcing the findings, the EHRC said:

Neither the qualitative analysis of local authorities' policies, nor the examination of the patterns of tenure offer any evidence to support the hypothesis that recent migrants are given preferential access to social housing.

The key findings included:

- New migrants to the UK over the last five years (up to 2008) made up around three per cent of the total UK population but were less than two per cent of the total of those in social housing.
- 90 per cent of those in social housing were UK born.
- Most new migrants to the UK over the five years up to 2008, particularly from the new European Union member states such as Poland, were ineligible to claim entitlement to social housing.
- There was no evidence in the research of any abuse of the system including 'queue jumping' to the significant detriment of any group, including white families.
- 11 per cent of new migrants had been allocated social housing. The comparable figure for UK born residents was 17 per cent, and for all foreign born UK residents, 18 per cent, indicating that though some migrants had benefited from social housing, they were unlikely to do so until they had been settled for several years and become British citizens; and that they were not significantly more likely to benefit than other residents.
- More than 60 per cent of new migrants to the UK over the five years up to 2008 were housed in private rented accommodation.
- In an LGA survey of housing managers, two out of three said that they attributed the shortage of social housing in their area to high house prices. 6 per cent said that the reason for shortages was new migration.
- Perceptions that migrants displace UK-born social housing applicants may arise from the fact that much of the private rented housing which is now home to many newly arrived immigrants is former social housing stock. Local residents may believe it is still 'owned by the council' despite it now being in the private sector.⁴²

The next stage of the research, [Social Housing Allocation and Immigrant Communities](#), was published in July 2009. This study concluded:

Analysis of social housing allocation policies showed no evidence that social housing allocation favours foreign migrants over UK citizens. But there is a small amount of evidence which suggests that they may, unintentionally, discriminate against ethnic minority communities who may also have less understanding than white groups, of their housing rights and housing allocation.⁴³

The EHRC's report focused on what needed to be done to change the public perception of the allocation of social housing:

Much of the public concern about the impact of migration on social housing has, at its roots, the failure of social housing supply to meet the demands of the population. More social housing and affordable private housing is needed, and the potential for housing shortages to remain a focus for community tensions should be recognised. Negative

⁴² IPPR's interim findings, April 2008

⁴³ EHRC, [Social Housing Allocation and Immigrant Communities](#), 2009

attitudes towards migrants are bound up with fears of diversity and change. As a way forward, public policy interventions should focus on changing the nature of debates about migration, and enable British society to accommodate better the greater diversity brought about by international migration, giving greater focus to local interventions. Similarly, public concerns about the effects of migration on the housing market and social housing allocation policies need to be addressed at the *local* level, as does greater discussion of immigration issues by providing local political space and leadership.⁴⁴

Additional work carried out by the Chartered Institute of Housing (CIH) on behalf of the LGA (2008) also concluded that “all evidence points to very limited use of social housing by accession states’ migrants. There are only very small numbers entering the social housing system – usually concentrated in particular areas.”⁴⁵

It was accepted that demand for social housing, particularly from accession state (A8) nationals, could grow if these people decided to stay in England in the longer-term. As noted in section 1 of this note, up to 1 May 2011, once they had worked continuously for 12 months they could become eligible to apply for social housing.⁴⁶ The CIH study (2008) found that “very small but growing” numbers of accession state nationals were being accepted as statutorily homeless under Part 7 of the *1996 Housing Act* by local authorities.⁴⁷ The CIH noted:

In practice, while people who came to Britain years ago become eligible for and get allocated social housing, most recent migrants are either ineligible or aren’t in sufficient need to qualify for housing or homelessness help. At least three quarters of recent migrants are in private rented accommodation.⁴⁸

In August 2011 the Migration Observatory at the University of Oxford published a briefing paper, *Migrants and Housing in the UK: Experiences and Impacts*. The key points from this research are reproduced below (updated findings were published in January 2013 – details are provided on page 15 of this note):

- The foreign-born population has significantly lower ownership rates (46% were homeowners in 2010) than the UK-born (71%).
- The foreign-born population is three times as likely to be in the private rental sector (36% were in this sector in 2010), compared to the UK-born (12%).
- Recent migrants (i.e. those who have been in the UK for five years or less) are more than twice as likely to be renters (75% were in the private rental sector in 2010), compared to all migrants. Those migrants who have been in the UK longer tend to have accommodation similar to that of the UK-born.
- UK-born individuals and foreign-born individuals have similar levels of participation in social housing (about 17% were in social housing in each group during 2010).

⁴⁴ *ibid*

⁴⁵ CIH, *Allocation of social housing to recent migrants*, May 2008

⁴⁶ Since 1 May 2011 the restrictions placed on nationals from the A8 countries have ceased to apply, though those on nationals from the A2 countries continue.

⁴⁷ *ibid*

⁴⁸ CIH, *Migration, Asylum & Refugees*, 8 May 2012

- Less than 10% of all existing social housing households in England have a foreign citizen as the household reference person. However, this share increases for new tenants.
- There is little systematic evidence on the impact of immigration on house prices and rents in the UK. Some evidence suggests that the housing shortage in the UK would continue even with zero net-migration.⁴⁹

The Joseph Rowntree Foundation (JRF), as part of its work on the [Housing and Migration Network](#), has identified the following issues associated with new migrants:

- New migrants often [enter the UK housing market](#) in the least desirable housing – frequently in disadvantaged areas or where demand for housing is lowest.
- With [increased migration](#) resulting from the expansion of the European Union (EU), more new migrants have been seeking housing in or around rural areas, where employment in agriculture, tourism and related industries has been available to them.
- They often depend on [housing tied to their employment](#) and the private rented sector, where they may experience overcrowding, poor conditions and insecurity.
- Increased migration to the UK also coincides with a shortage of – and high demand for – affordable housing.
- Poor housing, competition for housing and high levels of population 'churn' have a detrimental impact on [relationships at local level between different groups](#), particularly in areas not used to such change.
- Highly politicised and negative debates about migration can result in whole groups of people, such as asylum seekers and migrants from EU accession states, experiencing discrimination. These debates are often not based on evidence – there is a lack of basic information about new migrants, their numbers, their housing and economic circumstances, their status and their rights.

JRF published a briefing, [UK Migration: the leadership role of housing providers](#), in August 2011 in which the role that housing providers could play in building community cohesion and integration is considered. Another JRF report published in December 2011, [Community Cohesion: the views of white working class communities](#), involved interviews with 79 people in Aston (Birmingham), Canley (Coventry) and Somers Town (London) – this research found strongly held perceptions around access to social housing:

A strongly held view was that local government officers were supporting minority interests in policy areas such as housing, over and above the needs of white working-class communities.

April 2012 saw the publication of [UK migrants and the private rented sector](#) by the JRF. This report explores the needs and experience of new migrants who live in the private rented sector. It provides evidence that they are not only more likely to live in this sector than any other, but also that there is a greater likelihood that they are living in properties of a poor standard.

⁴⁹ Migration Observatory, *Migrants and Housing in the UK: Experiences and Impacts*, August 2011

The CIH, on behalf of the Migration Network, published *Housing and migration: a UK guide to issues and solutions* in June 2012. This guide emphasises the need for housing providers to understand the impact of migration within their localities in order that they can provide leadership to promote understanding and integration.

In January 2013 the Migration Observatory at the University of Oxford updated its briefing paper, *Migrants and Housing in the UK: Experiences and Impacts*. The key points from this research are reproduced below:

- The foreign-born population has significantly lower ownership rates (44% were homeowners in 2011) than the UK-born (70%).
- The foreign-born population is three times as likely to be in the private rental sector (37% were in this sector in 2011), compared to the UK-born (13%).
- Recent migrants (i.e. those who have been in the UK for five years or less) are more than twice as likely to be renters (76% were in the private rental sector in 2011), compared to other migrants. Those migrants who have been in the UK longer tend to have accommodation similar to that of the UK-born.
- UK-born individuals and foreign-born individuals have similar levels of participation in social housing (about 17% of UK-born individuals and 18% of foreign-born individuals were in social housing during 2011).
- A foreign citizen was reported as the household reference person in less than 10% of all new general needs social housing lettings with available information.
- There is little systematic evidence on the impact of immigration on house prices and rents in the UK. Some evidence suggests that the housing shortage in the UK would continue even with zero net-migration.⁵⁰

2.1 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 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. 3.1% were let to households with an HRP from an A8 or A2 country while households with an HRP from another EEA country accounted for 0.9% of lettings. In relation to existing social lettings, 95.5% had an HRP who was a UK national compared to 96.2% in 2007/08. The equivalent figures for 2011/12 show 91% of new social housing lettings in England to households with an HRP who is a UK national. 3.9% were let to households with an HRP from an A8 or A2 country while households with an HRP from another EEA country accounted for 1.1% of new lettings.⁵¹

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

⁵⁰ Migration Observatory, *Migrants and Housing in the UK: Experiences and Impacts*, January 2013

⁵¹ Table 754: general needs social lettings made by housing association and local authority landlords, 2007 to 2008 - 2010 to 2012, England: nationality of household reference person

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.⁵²

A further PQ (January 2013) focused on the provision of CORE data:

Mr Frank Field: To ask the Secretary of State for Communities and Local Government (1) which local authorities are currently not participating in the recording of data on new social housing lets; and what steps he will take to ensure future participation; (2) in what proportion of local authority new social housing lets made in London for the financial year 2011-12 the nationality of the tenant has been recorded; (3) for what reason the question on the nationality of the new tenant in the CORE survey on social housing lets is optional; and if he will make that question compulsory.

Mr Prisk*[holding answer 17 December 2012]:* In 2011-12, there were six local authorities who were not participating in recording data on new social housing lettings. These were: Birmingham city council, Portsmouth city council, London borough of Hackney, London borough of Newham, London borough of Lambeth and the London borough of Greenwich. The previous Minister for Housing, my right hon. Friend the Member for Welwyn Hatfield (Grant Shapps), wrote to the Leaders in May to highlight the importance of participation, and five of these local authorities are now actively providing, or finalising internal and database systems to provide, data. Importantly, this means that all London local authorities should be providing data from April 2013. Portsmouth city council is the remaining non-participating local authority. We will continue to monitor local authorities and provide continued practical support to Portsmouth and others to enable them to participate effectively.

Within the Continuous Recording of Lettings (CORE) data, tenant nationality data was recorded for 68% of reported social lettings in London in 2011-12. A further 19 % responded to this question but refused to give their nationality.

The question on tenant nationality is voluntary. Local authorities may not be able to obtain this information about the tenant as they may not carry out tenant interviews to complete CORE and, when asked, some tenants do not wish to divulge their nationality. We are open to representations on this matter.

⁵² HC Deb 17 May 2012 c247-8W

Most foreign nationals who have recently come to England are not eligible for an allocation of social housing. Broadly speaking, European economic area nationals are eligible if they are working, self-sufficient, or have a permanent right of residence in the UK (after five years lawful residence in the UK). Other foreign nationals are not eligible for social housing unless 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).

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

In this context, the Localism Act gives back to councils the freedom to manage their own waiting list. 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.⁵³

3 Government responses

In August 2009 the Labour Government announced a review into authorities' housing allocation systems to ensure that those in greatest need "are the first priority" and to "give local authorities more flexibility". *Fair and flexible: statutory guidance on social housing allocations for local authorities in England* was published in December 2009. This guidance, in addition to encouraging authorities to use the flexibilities available to meet local housing needs, emphasised the important role that authorities could play in dispelling "myths and misperceptions" around the allocation of social housing:

Policies which are fair and considered to be fair

31. There are widespread perceptions that the current allocation system is unfair and favours certain groups (such as the unemployed or migrants). An Ipsos MORI survey carried out for Communities and Local Government in 2008 showed that less than a quarter (23%) of the public agreed that the way social housing is allocated is fair. One in three (32%) did not agree that it is fair. Just under a half (45%) said they did not know if it is fair or were unwilling to give an opinion and opted for 'neither agree nor disagree'. While these perceptions may not always be founded on fact, we recognise that they are strongly felt.

32. It is important that local authorities engage fully with their local community in developing their allocation priorities and drawing up their allocation scheme; and in providing regular, accurate, and generalised information on how housing is being allocated, working actively to dispel any myths and misperceptions which may arise. Policies which are easily understood and sensitive to local needs and local priorities are more likely to achieve acceptance across the wider community and to be, not just fair, but seen to be fair.⁵⁴

On 30 November 2010 the new 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

⁵³ HC Deb 29 January 2013 c700-1W

⁵⁴ CLG, *Fair and flexible: statutory guidance on social housing allocations for local authorities in England*, 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.⁵⁵

Measures in the *Localism Act 2011* have amended certain aspects of the statutory framework for social housing allocations.⁵⁶ 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.”⁵⁷ 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.⁵⁸

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).⁵⁹

The Government published additional statutory guidance for local authorities 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

⁵⁵ CLG, [Local decisions: a fairer future for social housing](#), November 2010

⁵⁶ For additional information see Library Research paper 11/03.

⁵⁷ CLG, [Localism Bill: Media Background Note](#), December 2010

⁵⁸ HC Deb 17 May 2012 c247-8W

⁵⁹ [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.⁶⁰

The *Immigration Bill*, which is currently progressing through Parliament, will 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.⁶¹

See Library Research Paper 13/59: [Immigration Bill](#) for more information.

⁶⁰ DCLG, [Providing social housing for local people](#), December 2013, para 13

⁶¹ *ibid*