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STATUTORY INSTRUMENTS

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**1998 No. 139**

**HOUSING, ENGLAND AND WALES**

**The Housing Accommodation and Homelessness (Persons subject to Immigration Control) (Amendment) Order 1998**

<i>Made</i>	- - - -	<i>26th January 1998</i>
<i>Laid before Parliament</i>		<i>27th January 1998</i>
<i>Coming into force</i>	- -	<i>4th February 1998</i>

The Secretary of State, in exercise of the powers conferred on him by section 9(1) of the Asylum and Immigration Act 1996(1), and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation, commencement, extent and interpretation**

1. (1) This Order may be cited as the Housing Accommodation and Homelessness (Persons subject to Immigration Control) (Amendment) Order 1998 and shall come into force on 4th February 1998.

(2) This Order does not extend to Scotland.

(3) In this Order, “the 1996 Order” means the Housing Accommodation and Homelessness (Persons subject to Immigration Control) Order 1996(2).

**Amendment of article 2 of the 1996 Order**

2. (1) Article 2 of the 1996 Order (interpretation) is amended as follows.

(2) After the definition of “the 1971 Act”, insert—

““the 1985 Act” means the Housing Act 1985(3);

“asylum-seeker” means a person who has made a claim for asylum which—

(a) has been recorded by the Secretary of State as having been made; and

(b) has not been recorded by the Secretary of State as having been finally determined or abandoned;

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(1) 1996 c. 49; section 9, in so far as it extends to England and Wales, was amended by paragraph 3 of Schedule 16 and Parts VII and VIII of Schedule 19 to the Housing Act 1996 (c. 52). See also section 231(4)(c) of the 1996 Act (extent).  
(2) S.I.1996/1982; S.I. 1997/628 is a relevant amending instrument.  
(3) 1985 c. 68.

“child in need” has the same meaning as in section 17 of the Children Act 1989(4) (provision of services for children in need, their families and others);”.

(3) After the definition of “the Convention”, insert—

““family” has the same meaning as in section 17 of the Children Act 1989;”.

### **Amendment of article 3 of the 1996 Order**

3. In the 1996 Order, at the end of article 3 (classes specified under section 9(1)), add—

“Class DA—an asylum-seeker who is owed a duty under section 21 of the National Assistance Act 1948(5) (duty of local authorities to provide accommodation);

Class DB—an asylum-seeker who is a child in need or a member of the family of such a child;

Class DC—a person who—

(i) is owed a duty under section 63(1) (interim duty to accommodate in case of apparent priority need), 65(2) or (3) (duties to persons found to be homeless) or 68(1) or (2) (duties to persons whose applications are referred) of the 1985 Act(6); and

(ii) falls within Class E or F specified in article 4 of this Order;

Class DD—a person—

(i) who is owed a duty under section 188(1) (interim duty to accommodate in case of apparent priority need), 190(2) (duties to persons becoming homeless intentionally), 193(2) (duty to persons with priority need who are not homeless intentionally), 195(2) (duties in case of threatened homelessness) or 200(1), (3) or (4) (duties to applicant whose case is considered for referral or referred) of the Housing Act 1996; or

(ii) in respect of whom a local housing authority are exercising their power under section 194(1) (power exercisable after minimum period of duty under section 193) of that Act,

and who falls within Class B, C, D or H prescribed in regulation 3 of the Homelessness Regulations 1996(7);

Class DE—a person who is—

(i) a national of a state which is a signatory to the European Convention on Social and Medical Assistance (done in Paris on 11th December 1953) or a state which is a signatory to the Council of Europe Social Charter (signed in Turin on 18th October 1961)(8); and

(ii) habitually resident in the Common Travel Area;

Class DF—a person who has a secure tenancy within the meaning of section 79 of the 1985 Act.”.

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(4) 1989 c. 41.

(5) 1948 c. 29.

(6) The repeal of Part III of the Housing Act 1985, which includes sections 63, 65 and 68 and which was commenced by the Housing Act 1996 (Commencement No. 5 and Transitional Provisions) Order 1996 (S.I. 1996/2959 (C.88)), does not, by virtue of paragraph 1 of the Schedule to that Order, apply to applicants under Part III of that Act whose applications were made before 20th January 1997.

(7) S.I. 1996/2754; S.I. 1997/631 is a relevant amending instrument.

(8) The Convention and the Charter are numbered 14 and 35 respectively in the Council of Europe European Treaties Series.

Signed by authority of the Secretary of State

26th January 1998

*Hilary Armstrong*  
Minister of State,  
Department of the Environment, Transport and  
the Regions

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Section 9(1) of the Asylum and Immigration Act 1996 requires a local housing authority, so far as practicable, to secure that no tenancy of, or licence to occupy, housing accommodation provided under Part II of the Housing Act 1985 (provision of housing accommodation), other than accommodation allocated under Part VI of the Housing Act 1996 (allocation of housing accommodation), is granted to a person subject to immigration control unless he is of a class specified in an order made by the Secretary of State.

This Order amends the Housing Accommodation and Homelessness (Persons subject to Immigration Control) Order 1996 by specifying six additional classes of persons under section 9(1). The additional classes are—

Class DA—asylum-seekers owed a duty under section 21 of the National Assistance Act 1948 (duty of local authorities to provide accommodation);

Class DB—asylum-seekers who are children in need or members of the family of such children;

Class DC—asylum-seekers owed a duty under Part III of the Housing Act 1985 (homelessness);

Class DD—asylum-seekers and persons on income support or jobseeker's allowance owed a duty under Part VII of the Housing Act 1996 (homelessness);

Class DE—persons who are nationals of states which are signatories to the European Convention on Social and Medical Assistance or the Council of Europe Social Charter and are habitually resident in the Common Travel Area; and

Class DF—persons who have secure tenancies.