

**EXPLANATORY MEMORANDUM TO**  
**THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY)**  
**(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2022**

**2022 No. 128**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This Instrument makes amendments to the Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006 (S.R. 2006/397).
- 2.2 The instrument enables Northern Ireland Housing Executive to treat as eligible for housing and homelessness assistance persons not subject to immigration control who left Ukraine in connection with the Russian invasion on 24th February 2022 and had resided in Ukraine immediately before 1st January 2022. This instrument disapplies the Habitual Residence Test for the above class.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument breaches the 21-day rule. The Secretary of State believes that this is necessary because of the sudden and unexpected need to provide support to those leaving Ukraine as a result of the Russian invasion on 24<sup>th</sup> February 2022. Delay to the legislation coming into force will cause further issues in eligibility for social housing allocations and homelessness assistance for those in need.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of regulation 2 is Northern Ireland. The territorial application of this provision is Northern Ireland only.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 This Instrument makes amendments to the Allocation of Housing and Homelessness (Eligibility) (Northern Ireland) Regulations 2006 (“the Eligibility Regulations”).
- 6.2 Article 22A of the Housing (Northern Ireland) Order 1981 (“1981 Order”) provides that the Northern Ireland Housing Executive shall not allocate social housing or give homelessness assistance to, amongst other groups, those classes of person from abroad

not subject to immigration control specified in regulations by the Secretary of State under article 22A(3).

- 6.3 Similarly, article 7A of the Housing (Northern Ireland) Order 1988 (“1988 Order”) provides that, amongst other groups, those classes of person from abroad not subject to immigration control specified in regulations by the Secretary of State under article 7A(2) are not eligible for social housing allocations and homelessness assistance.
- 6.4 Regulations 3(1) and 4(1) of the Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006 (S.R. 2006/397) (“2006 Regulations”) make provision under article 22A(3) of the 1981 Order and article 7A(2) of the 1988 Order respectively. They provide that a person not subject to immigration control is to be treated as ineligible for social housing allocations and homelessness assistance if, among other things, the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland. Articles 3(2) and 4(2) of the 2006 Regulations set out exceptions to those provisions.
- 6.5 Regulations 2(2) and (3) of this instrument amend regulations 3(2) and 4(2) of the 2006 Regulations respectively. They make the following persons eligible for social housing allocations and homelessness assistance without application of the Habitual Residence Test: British Nationals and Non-British Nationals not subject to immigration control such as Irish citizens and Commonwealth citizens, who were resident in Ukraine immediately before 1st January 2022 and left Ukraine as a result of the Russian invasion on 24th February 2022

## **7. Policy background**

### *What is being done and why?*

- 7.1 The UK Government has established a new scheme to relocate those leaving Ukraine in the UK:
- (a) The ‘Ukraine Family Scheme’. Home Office have established an extended family scheme so that those leaving Ukraine who have settled Ukrainian family members in the UK can join them. Government has extended the definition of family members to include a wider bracket of people including grandparents. Applicants must have one Ukrainian National family member and have been resident in Ukraine before 1 Jan 2022.
- (b) The ‘Homes for Ukraine’ scheme. The Home Office and Department for Levelling Up Housing and Communities have established a sponsorship scheme which allows individuals, charities, community groups and businesses in the UK to bring Ukrainians to safety – including those with no family ties to the UK.
- 7.2 The Home Office has announced that those arriving in the UK under the above schemes will be granted 36 months limited leave to remain, with the exception of those who have been initially granted leave outside the rules in the interim before new immigration rules come into force. The application will be fee-free and will not require minimum income or English language proficiency. Granting 36 months limited leave to remain provides certainty and stability to those needing to find safe harbour in the UK. It provides the right to work and recourse to public funds, including eligibility for the allocation of social housing and homelessness assistance.
- 7.3 Under current eligibility rules in Northern Ireland (NI), UK nationals and other persons not subject to immigration control in NI need to meet the Habitual Residence Test before they can be eligible for social housing allocations and homelessness assistance in NI. This means that Northern Ireland Housing Executive may require these

individuals to be resident in the NI for around 1-3 months after their arrival before they consider them as eligible for support.

- 7.4 Prior to the new immigration rules coming into force UK nationals and all those not subject to immigration control, including those who are fleeing Ukraine as defined by the Home Office's immigration regulations will still be subject to the Habitual Residence Test. We therefore want to pass emergency legislation now to provide day one eligibility for the allocation of social housing and homelessness assistance to this group of people, thus aligning with the policy objectives of the Ukraine Family Scheme or 'Homes for Ukraine' Scheme.
- 7.5 These Regulations will exempt persons not subject to immigration control who have left Ukraine in connection with the Russian invasion of 24<sup>th</sup> February 2022 and were residing in the Ukraine immediately before 1<sup>st</sup> January 2022 from the Habitual Residence Test in Northern Ireland. Separate regulations have been made to disapply the Habitual Residence Test in England, Wales, and Scotland for all the above cohorts and in Northern Ireland for persons who are subject to immigration control.

### ***Explanations***

#### *What did any law do before the changes to be made by this instrument?*

- 7.6 A person who is not subject to immigration control in Northern Ireland may be required to meet the Habitual Residence Test to be eligible for social housing allocations and homelessness assistance. Its' purpose is to ensure that social housing and homelessness assistance are offered to people with reasonably close ties to the UK and an intention to settle here.
- 7.7 Case law has established that, to establish habitual residence, a person must (i) have a settled intention to reside, and (ii) have been resident for an "appreciable period of time".
- 7.8 Before the changes to be made by this instrument the Habitual Residence Test would have applied to British nationals and other persons not subject to immigration control (I.e., Irish citizens and Commonwealth citizens with right of abode) who left Ukraine as a result of the Russian invasion would not have been eligible for social housing or homelessness assistance.

#### *Why is it being changed?*

- 7.9 The law is being changed to ensure those persons not subject to immigration control arriving in the UK from Ukraine as a result of the Russian invasion on 24<sup>th</sup> February 2022 and residing in the Ukraine immediately before 1<sup>st</sup> January 2022 do not have to satisfy the Habitual Residence Test to be eligible for social housing allocation and homelessness assistance.

#### *What will it now do?*

- 7.10 These Regulations will exempt persons who are not subject to immigration control (British Nationals, Irish citizens and Commonwealth Citizens with right of abode) but who left Ukraine as a result of the Russian invasion on 24<sup>th</sup> February 2022 and were residing in the Ukraine immediately before 1<sup>st</sup> January 2022 from the Habitual Residence Test in Northern Ireland.

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

9.1 This instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

## **10. Consultation outcome**

10.1 No consultation has been carried out and the instrument has not been scrutinised by the Northern Ireland Housing Executive due to the urgency with which it needed to be made. Letters have been exchanged with Northern Ireland Housing Executive and members of relevant Parliamentary committees to inform them of these changes.

10.2 Drafts have been shared with the Northern Ireland Executive.

## **11. Guidance**

11.1 Guidance will be issued to Northern Ireland Housing Executive staff and decision makers to ensure that they are aware of this new exception and how to apply them.

## **12. Impact**

12.1 Ukrainians arriving in the UK under both schemes will be granted 36 months leave to remain, with entitlement to work, and access benefits and public services. While we expect the majority of people fleeing Ukraine to be joining their settled family members or being accommodated by a sponsor, for those whose families cannot house them or where sponsorship fails there may be extra financial burdens on the Northern Ireland Housing Executive with regards to housing or homelessness assistance.

12.2 A full Regulatory Impact Assessment has not been prepared for this instrument because the impact on business is not likely to be significant.

## **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

14.1 This legislation will be reviewed at an appropriate point in the next year to determine whether its effect is still required and proportionate.

## **15. Contact**

15.1 Sian Pratley and Lucy Rodger at the Department for Levelling Up, Housing and Communities can be contacted with any queries regarding the instrument. Sian.Pratley@levellingup.gov.uk or Lucy.Rodger@levellingup.gov.uk

15.2 Ruhena Ahmed, Deputy Director for Social Housing, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Eddie Hughes MP at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.