

**EXPLANATORY MEMORANDUM TO**  
**THE DOMESTIC ABUSE SUPPORT (RELEVANT ACCOMMODATION AND**  
**HOUSING BENEFIT AND UNIVERSAL CREDIT SANCTUARY SCHEMES)**  
**(AMENDMENT) REGULATIONS 2021**

**2021 No. 991**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 Section 57(2) of the Domestic Abuse Act 2021 (“the Act”) provides that ‘relevant accommodation’ means accommodation of a description specified by the Secretary of State in regulations. Part 1 of the instrument contains the introductory provisions (citation, commencement, extent, and application). Part 2 of this instrument provides the descriptions of the types of accommodation within which accommodation-based support can be provided by local authorities under Part 4 of the Act. Part 3 of this instrument introduces an exception to the rules governing the maximum housing support available to Housing Benefit and Universal Credit claimants in the social rented sector whose home has been adapted under a sanctuary scheme. Those who qualify for the exception will not have a deduction applied to their housing support if they are under-occupying their home.

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

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

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales for Part 2 and for Part 3 England, Wales, and Scotland.
- 4.2 The territorial application of this instrument is for Part 2 England only and for Part 3 England, Wales, and Scotland.

**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**

*Provision of accommodation-based support*

- 6.1 Section 57 of the Act places duties on relevant local authorities (county councils, unitary district councils, the Greater London Authority, and the council of the Isles of

Scilly) in England relating to the provision of accommodation-based support to victims of domestic abuse and their children who reside in relevant accommodation. In Section 57 subsection (2) ‘relevant accommodation’ is defined as accommodation of a description specified in regulations made by the Secretary of State (in practice, the Secretary of State for the Ministry of Housing, Communities and Local Government). This instrument provides descriptions of the types of accommodation which constitute ‘relevant accommodation’ for the purposes of Part 4 of the Act.

#### ***Housing Benefit and Universal Credit: Sanctuary schemes***

- 6.2 The Housing Benefit Regulations 2006 (S.I. 2006/213) and Universal Credit Regulations 2013 (S.I. 2013/376) each set out the circumstances in which housing support is reduced for claimants in the social rented sector who are considered to under-occupy their home, amongst other things, it incentivises claimants to downsize. Claimants who have a shortfall between their housing support and their housing costs can apply for a discretionary housing payment from the local authority.
- 6.3 In *JD & A v UK* the European Court of Human Rights found that the availability of discretionary housing payments did not remove the conflict between the housing support reduction which incentivises claimants to move and sanctuary schemes which support victims to remain safely in their own home. This instrument amends both sets of regulations to remove the conflict between the policies.

## **7. Policy background**

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

#### ***Provision of accommodation-based support***

- 7.1 Having established the new duties on relevant local authorities within Part 4 of the Act, relating to the provision of support to victims of domestic abuse and their children residing in relevant safe accommodation, the instrument describes the types of safe accommodation appropriate for the purposes of the duty. The descriptions encompass a broad range of safe accommodation types in recognition of the diversity of housing in which victims of domestic abuse and their children may live including, refuge accommodation, specialist safe accommodation, dispersed accommodation, sanctuary schemes and second stage accommodation. The purpose of Part 2 of the instrument is to describe the types of relevant safe accommodation and which have been specified because they constitute appropriate accommodation providing a safe place for victims of domestic abuse and their children. The reason for using secondary legislation is that it will allow for the descriptions to be revised when necessary to reflect that the types of safe accommodation that are being used to house victims of domestic abuse could change over time.

#### ***Housing Benefit and Universal Credit: Sanctuary schemes***

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

- 7.2 Since 2013<sup>1</sup> the maximum amount of housing support available to working age claimants living in the social rented sector has been reduced where the household is deemed to under-occupy the property. Based on the number of bedrooms in a claimant’s property and details of people resident, size criteria are used to assess whether a claimant is under-occupying their accommodation. Where a claimant is

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<sup>1</sup> Introduced by the Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040)

deemed to be under-occupying, a reduction of 14% if there is one spare bedroom and 25% if there are two or more is applied to the eligible rent.

- 7.3 The policy was introduced as part of the welfare reforms to contain rising benefit expenditure, encourage mobility within the social rented sector, strengthen work-incentives and make better use of available social housing.
- 7.4 Claimants who have been supported to remain in their home by the installation of security measures under a sanctuary scheme, would previously have had a deduction applied to their claim if they were under-occupying a social rented sector tenancy. If they needed further financial support to cover their housing costs and enable them to remain in their home, they could apply for a discretionary housing payment from their local authority.

*Why is it being changed?*

- 7.5 The incentive to move created by the reduction in housing support where the property is under-occupied conflicts with the intention of the sanctuary scheme to support victims of domestic abuse to safely remain in their home, should they wish to. The amendments in Part 3 of this instrument remove that conflict, providing housing support based on the full eligible rent to support those in need of the security of a sanctuary scheme to remain in their home.

*What will it now do?*

- 7.6 From 1 October 2021, subject to qualifying criteria, claimants whose home has had additional security installed under a sanctuary scheme will be exempt from a deduction in housing support which would otherwise apply due to them under-occupying a social rented sector property. The qualifying criteria are that:
- the claimant lives in the social rented sector in a property which has had additional security installed under a sanctuary scheme due to an ongoing threat of domestic abuse against a member of the household,
  - the perpetrator of the abuse does not live at the property – except where they are a qualifying young person who is a dependent of a member of the household,
  - the claimant provides written evidence from a person acting in an official capacity that the victim’s circumstances are consistent with those of a person who has had domestic violence inflicted upon or threatened against them and the victim has made contact with the person acting in an official capacity in relation to such an incident.

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

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

## **9. Consolidation**

- 9.1 Part 3 of this instrument amends other instruments. Informal consolidated text of instruments is available to the public free of charge via the ‘National Archive’ website: [www.legislation.gov.uk](http://www.legislation.gov.uk)

## **10. Consultation outcome**

### *Provision of accommodation-based support*

- 10.1 The Act includes new duties on relevant Local Authorities in England relating to the provision of accommodation-based support for victims of domestic abuse and their children who reside in relevant safe accommodation. Statutory Guidance and Regulations will accompany the commencement of Part 4 of the Act to support all local authorities in meeting the new duties. A public consultation on the Statutory Guidance and Regulations was launched on 15 June 2021 and was open for a period of six weeks closing on 27 July 2021. 133 responses were received – the majority of consultees were in agreement with the contents of the draft regulations. We have made changes to the definitions of Sanctuary Schemes and Specialist Safe Accommodation to reflect the comments from the consultation.

### *Housing Benefit and Universal Credit: Sanctuary schemes*

- 10.2 The Department for Work and Pensions presented the draft Regulations to the Social Security Advisory Committee (SSAC) on 21 July 2021. The Committee did not take the regulations on formal reference.
- 10.3 As required by section 176(1) of the Social Security Contributions and Benefits Act 1992, Local Authority Associations have been consulted in relation to the provisions of regulation 3 of this instrument.
- 10.4 As required by section 29(7) of the Scotland Act 2016, the Scottish Ministers have been consulted in relation to the provisions of regulations 4 and 5 of this instrument.

## **11. Guidance**

### *Provision of accommodation-based support*

- 11.1 Under Section 60 of the Act the Secretary of State is required to issue Statutory Guidance relating to the exercise by local authorities of their functions under Part 4 of the Act. The Secretary of State is also required under subsection (4) to consult on the Statutory Guidance before issuing. A draft version of the Statutory Guidance was first published in January 2021. <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-overarching-documents> and later consulted on. <https://www.gov.uk/government/consultations/domestic-abuse-support-within-safe-accommodation-statutory-guidance-and-regulations-consultation>. The Statutory Guidance will include the descriptions of relevant accommodation from the instrument. MHCLG is carefully considering the responses to the consultation and will publish a final version of the Statutory Guidance by 1<sup>st</sup> October 2021.

### *Housing Benefit and Universal Credit: Sanctuary schemes*

- 11.2 Guidance will be issued to local authority and DWP staff to reflect the amendments to Housing Benefit and Universal Credit, respectively. Communications will also be sent to stakeholders who support victims of domestic abuse. The benefit guidance pages on gov.uk will be updated once the change comes into force.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no impact is foreseen on the private, charity or voluntary sectors.

**13. Regulating small business**

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

**14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is:
- 14.2 MHCLG will monitor the implementation of Part 4 of the Act and will review the definitions of relevant accommodation as required.
- 14.3 DWP will continue to monitor the effects of the change in Part 3 and the wider policy through claimant contacts and regular stakeholder engagement.

**15. Contact**

- 15.1 Miranda Abrey at the Ministry of Housing, Communities and Local Government email: [miranda.abrey@communities.gov.uk](mailto:miranda.abrey@communities.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Cathy Page, Deputy Director for Housing with Care and Support, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Eddie Hughes, Minister for Rough Sleeping and Housing at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.