

EXPLANATORY MEMORANDUM TO

THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (ENGLAND) AND PERSONS SUBJECT TO IMMIGRATION CONTROL (HOUSING AUTHORITY ACCOMMODATION AND HOMELESSNESS) (AMENDMENT) (NO. 2) REGULATIONS 2022

2022 No. 601

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) (England) Regulations 2006 and to the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000.
- 2.2 It enables Local Authorities in England to treat as eligible for housing and homelessness assistance those who have limited leave to remain granted in accordance with Appendix Ukraine Scheme of the immigration rules pursuant to an application made by that person from within the United Kingdom.
- 2.3 Once this instrument comes into force it will provide eligibility for housing and homelessness assistance, thus aligning with the policy objectives of the Ukraine Extension Scheme and Ukraine Family Scheme.

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 need to provide support to those unable to return to Ukraine due to the Russian invasion of 24 February 2022, who are granted leave to remain via the Appendix Ukraine Scheme of the immigration rules. Delay to the legislation coming into force will prevent those in need within this cohort from being eligible for housing and homelessness assistance.

4. Extent and Territorial Application

- 4.1 The territorial extent of regulation 2 is England and Wales. The territorial application of this provision is England only.
- 4.2 The territorial extent of regulation 3 is England and Wales, Scotland and Northern Ireland.
- 4.3 The territorial application of regulation 3(1) and 3(2) is England, Scotland and Northern Ireland. The territorial application of regulation 3(3) is Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to the 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) (England) Regulations 2006 (“the Eligibility Regulations”), and the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (“PSIC order”).
- 6.2 Sections 160ZA(2) and 185(2) of the Housing Act 1996 (“the 1996 Act”) provide that a local housing authority shall not allocate housing accommodation under Part 6 of the Act or give homelessness assistance under Part 7 of the Act, to persons from abroad who are subject to immigration control unless they come within a class of persons prescribed in Regulations made by the Secretary of State.
- 6.3 Under sections 160ZA(4) and 185(3) of the 1996 Act, a person who is not subject to immigration control may be made ineligible by Regulations prescribed by the Secretary of State.
- 6.4 For these purposes, ‘person subject to immigration control’ has the meaning given in section 13(2) of the Asylum and Immigration Act 1996 (c. 49).
- 6.5 Regulations 3 and 5 of the Eligibility Regulations prescribe the classes of persons who, although subject to immigration control, are to be treated as persons from abroad who are eligible for an allocation of housing accommodation or for homelessness assistance respectively.
- 6.6 Regulations 4 and 6 of the Eligibility Regulations prescribe the classes of persons who are not subject to immigration control but who are ineligible for an allocation of social housing or for homelessness assistance respectively.
- 6.7 Regulations 2(2) and 2(3) of this instrument amend Regulations 3 and 5(1) of the Eligibility Regulations respectively. They make the following persons eligible for housing and homelessness assistance: a person in the United Kingdom who has limited leave granted in accordance with Appendix Ukraine Scheme of the immigration rules pursuant to an application made by that person from within the United Kingdom.
- 6.8 Under sections 118(1) and 119(1) of the Immigration and Asylum Act 1999 housing authorities in the United Kingdom may not provide housing or homelessness assistance under defined housing provisions unless the person to which the accommodation or assistance is provided is within a class specified by order (or another exception, not relevant to this instrument, applies).
- 6.9 Regulations 3(2) and 3(3) amend the PSIC Order to permit the provision of housing accommodation and assistance to a person in the United Kingdom who has limited leave to remain granted in accordance with Appendix Ukraine Scheme of the immigration rules pursuant to an application made by that person from within the United Kingdom.

7. Policy background

What is being done and why?

- 7.1 The UK Government has established three new schemes to support those leaving or unable to return to Ukraine as a result of the Russian invasion beginning on 24 February 2022 in the UK:
- (a) The ‘Ukraine Family Scheme’. The Home Office have established an extended family scheme for Ukrainians who left in connection with the Russian invasion to join settled family members in the UK. The Government has extended the definition of family members to include a wider bracket of people including grandparents and grandchildren. Applicants must be Ukrainian or a family member of a Ukrainian national who is applying to the scheme and either have been residing in Ukraine on or immediately before 1 January 2022, or residing in the UK with permission prior to 18 March 2022 or if their last permission ended after 1 January 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.
 - (c) The ‘Ukraine Extension Scheme’. The Home Office have established an extension scheme for Ukrainian nationals who had permission to stay in the UK on or before 18 March 2022. Their partner and children can also apply if they’re already in the UK as their ‘dependants’. If they previously had permission to stay in the UK but it has expired since 1 January 2022, they will also be eligible to apply.
- 7.2 The Home Office has announced that those arriving or remaining in the UK under the above schemes will be granted 36 months limited leave to remain. 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. The schemes provide the right to work and recourse to public funds, including eligibility for housing and homelessness assistance.

Explanations

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

- 7.3 The Housing Act 1996 (160ZA) states that ‘A person subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is ineligible for an allocation of housing accommodation by a local housing authority in England unless he is of a class prescribed by regulations made by the Secretary of State’.
- 7.4 The Allocation of Housing and Homelessness (Eligibility) (England) and Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Regulations 2022 added an eligibility class making eligible for housing and homelessness assistance a person in the UK who left Ukraine in connection with the Russian invasion on 24 February 2022 and had resided in Ukraine immediately before 1 January 2022, and who has been granted leave in accordance with Immigration rules made under section 3(2) of the Immigration Act 1971. This makes eligible people who have left Ukraine in connection with the

Russian invasion and who have secured the relevant leave under the immigration rules, but it does not cover people who were already in the UK and who cannot return to Ukraine due to the Russian invasion.

- 7.5 The law before the instrument is made will bar persons who have limited leave to remain granted in accordance with Appendix Ukraine Scheme of the immigration rules but who applied for that leave from within the United Kingdom, from being eligible for housing and homelessness assistance, unless they are added as a new class.

Why is it being changed?

- 7.6 The law is being changed so that persons in the UK who have limited leave to remain granted in accordance with Appendix Ukraine Scheme of the immigration rules and who applied for that leave from within the United Kingdom can access housing and homelessness assistance. This is to bring the group in line with access to benefits and services for others from Ukraine who applied from outside the UK.

What will it now do?

- 7.7 These Regulations will make eligible for housing and homelessness assistance, a person in the United Kingdom who has limited leave to remain granted in accordance with Appendix Ukraine Scheme of the immigration rules pursuant to an application made by that person from within the United Kingdom, but excluding a person (P) who is subject to a condition requiring P to maintain and accommodate themselves, and any person who is dependent on P, without recourse to public funds.

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 Local Authorities due to the urgency with which it needed to be made. Letters have been exchanged with Local Authorities and members of relevant Parliamentary committees to inform them of these changes.
- 10.2 Drafts have been shared with the Welsh and Scottish Governments, as well as the Northern Ireland Executive.

11. Guidance

- 11.1 Guidance will be issued to local authority staff and Local Authority decision makers to ensure that they are aware of this new exception and how to apply it.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is on local authorities where we are expecting particular pressures resulting from an influx of new arrivals. We have identified a

large diaspora of settled Ukrainians in Nottingham, London, Bradford and Manchester, and so will work closely with these Local Authorities especially.

- 12.3 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 Freya Cullinane at the Department for Levelling Up, Housing and Communities can be contacted with any queries regarding the instrument. Sian.Pratley@levellingup.gov.uk or Freya.Cullinane@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.