EXPLANATORY MEMORANDUM TO

THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (AMENDMENT) (NO. 2) REGULATIONS (NORTHERN IRELAND) 2023

2023 No. 182

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 His 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 No. 397) ("the Eligibility Regulations").

2.2 This instrument exempts British nationals and others not subject to immigration control from the habitual residence test that they would otherwise be required to satisfy to be eligible for an allocation of housing and homelessness assistance if they were residing in Israel, or the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights (referred to below as the Occupied Palestinian Territories) or Lebanon immediately before 7th October 2023, who left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon in connection with the Hamas terrorist attack in Israel on 7th October 2023 or the violence which rapidly escalated in the region following the attack.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is being made under emergency procedures and breaches the 21-day rule. This is necessary because of the sudden and unexpected nature of the violence which rapidly escalated in the region following the Hamas attack in Israel on 7th October 2023 and the immediate need to provide support to those arriving from there. Delay in the legislation coming into force will cause potential delays in access to housing support.

4. Extent and Territorial Application

4.1 The extent and territorial application of this instrument is Northern Ireland.

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 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 to, amongst other groups, any 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, any person from abroad not subject to immigration control specified in regulations by the Secretary of State under article 7A(2) is not eligible for homelessness assistance.

6.4 Regulations 3(2) and 4(2) of the Eligibility 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 ineligible for an allocation of housing 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 Eligibility Regulations set out exceptions to those provisions.

6.5 To establish 'habitual residence' an applicant must demonstrate a degree of permanence in their residence in one of those places. Habitual residence implies an association between the individual and the place of residence and relies substantially on fact.

6.6 Regulation 2(2) and (3) of this instrument amends regulations 3(2) and 4(2) respectively of the Eligibility Regulations. They make British nationals and other persons not subject to immigration control eligible for an allocation of housing accommodation and homelessness assistance without application of the habitual residence test if they were residing in Israel, the Occupied Palestinian Territories or Lebanon immediately before 7th October 2023, and left there in connection with the Hamas terrorist attack on 7th October 2023 or violence which rapidly escalated in the region following the attack.

7. Policy background

What is being done and why?

7.1 Under current eligibility rules in Northern Ireland, British nationals and other persons not subject to immigration control need to meet the habitual residence test before they can be eligible for an allocation of housing accommodation and homelessness assistance in Northern Ireland. This means that such persons coming to Northern Ireland from abroad who are not resuming a previous period of habitual residence will usually need to be resident in Northern Ireland for around 1-3 months after their arrival before they are eligible for support. This means that many such persons who have left Israel, the Occupied Palestinian Territories or Lebanon in connection with the Hamas terrorist attack on 7th October 2023 or the violence which rapidly escalated in the region following the attack are not immediately eligible for housing assistance.

7.2 We are therefore making emergency legislation to provide, from commencement of this instrument, day one eligibility for the allocation of housing accommodation and homelessness assistance to this group of people, thus aligning with the policy objectives to support individuals' arrival in the United Kingdom in such exceptional circumstances.

7.3 These Regulations will exempt persons not subject to immigration control who are arriving from Israel, the Occupied Palestinian Territories or Lebanon in connection with the Hamas terrorist attack on 7th October 2023 or the violence which rapidly escalated in the region following the attack from the habitual residence test in Northern Ireland. Separate regulations are being made to disapply the habitual residence test in England for the above cohort. Those regulations will also provide that those persons arriving from Israel, the Occupied Palestinian Territories or Lebanon in those circumstances who are subject to immigration control will also have immediate eligibility for housing assistance in England, Scotland and Northern Ireland, provided that they are not required to be supported without recourse to public funds and that their leave was not granted because of a maintenance undertaking which is still applicable, whether or not they satisfy the habitual residence test. In Scotland, persons not subject to immigration control are not subject to the habitual residence test.

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

7.4 As set out above, under the 1981 Order and the 1988 Order, a person from abroad who is not subject to immigration control in Northern Ireland is required to meet the habitual residence test to be eligible for social housing allocations and homelessness assistance. This is to make sure that access to public funds is not a determining reason to migrate to the United Kingdom.

7.5 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".

7.6 People fleeing Israel, the Occupied Palestinian Territories or Lebanon in connection with the Hamas terrorist attack on 7th October 2023 or the violence which rapidly escalated in the region following the attack will be subject to the habitual residence test and may be barred from accessing social housing and homelessness assistance until they can demonstrate they are habitually resident.

Why is it being changed?

7.7 The law is being changed so that those arriving in the United Kingdom from Israel, the Occupied Palestinian Territories or Lebanon can more rapidly access homelessness assistance and be eligible for an allocation of social housing. This is necessary because of the sudden and unexpected nature of the situation in the region and the immediate need to provide support to those arriving from Israel, the Occupied Palestinian Territories and Lebanon.

What will it now do?

7.8 These Regulations will mean that those who are not subject to immigration control and who are arriving in the United Kingdom from Israel, the Occupied Palestinian Territories or Lebanon do not have to satisfy the habitual residence test to be eligible for housing and homelessness assistance.

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 Due to the urgency of the Regulations, no consultation has been carried out and the instrument has not been scrutinised by the Northern Ireland Housing Executive. Letters have been exchanged with the Northern Ireland Housing Executive and members of relevant Parliamentary committees to inform them of these changes.

10.2 We have liaised 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 it.

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 A full Impact Assessment has not been prepared for this instrument because there is no impact on businesses.

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 Department for Levelling Up, Housing and Communities is firmly committed to evaluating and monitoring the impact of its policies. These are emergency measure intended to help people leaving Israel, the Occupied Palestinian Territories or Lebanon in connection with the Hamas terrorist attack on 7th October 2023 or the violence which rapidly escalated in the region following the attack, and as such the Department will continue to review these provisions in response to developments in Israel, the Occupied Palestinian Territories and Lebanon.

14.2 The Regulations do not contain a statutory review clause.

15. Contact

15.1 Freya Cullinane and Edward Lowe at the Department for Levelling Up, Housing and Communities can be contacted with any queries regarding the instrument. Freya.Cullinane@levellingup.gov.uk or Edward.Lowe@levellingup.gov.uk.

15.2 Richard Chapman, Deputy Director for Homelessness and Rough Sleeping at the Department for Levelling Up, Housing and Communities, can confirm that this Explanatory Memorandum meets the required standard.

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