EXPLANATORY MEMORANDUM TO

THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (ENGLAND) AND PERSONS SUBJECT TO IMMIGRATION CONTROL (HOUSING AUTHORITY ACCOMMODATION AND HOMELESSNESS) (AMENDMENT) (NO. 4) REGULATIONS 2022

2022 No. 1371

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.

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, qualifying victims of Human Trafficking or Slavery who have limited leave to remain granted in accordance with Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery of the Immigration Rules.

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 regulation 2 is England and Wales. The territorial application of this provision is England only.

4.2 The territorial extent and application of regulation 3(2) is England, Scotland and Northern Ireland.

4.3 The territorial extent and application of regulation 3(3) is Scotland and 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 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 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).

6.4 Regulations 3 and 5 of the Eligibility Regulations prescribe the classes of persons who, although subject to immigration control, are eligible for an allocation of social housing accommodation and for homelessness assistance respectively.

6.5 Regulations 2(2) and 2(3) of this instrument amends Regulations 3 and 5(1) of the Eligibility Regulations respectively. These amendments make the following persons eligible for allocation of social housing accommodation and homelessness assistance: persons in receipt of limited leave to remain granted under Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery of the Immigration Rules ("the Appendix"). The Appendix refers to limited leave to remain as temporary permission to stay ("TPS").

6.6 Under section 118(1) of the Immigration and Asylum Act 1999 housing authorities in the United Kingdom may not provide housing accommodation 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). Section 119(1) provides that a person subject to immigration control is not eligible for homelessness assistance in Scotland and Northern Ireland unless they are of a class specified in an order made the Secretary of State.

6.7 Regulations 3(2) and 3(3) amend Articles 3 and 7 of the PSIC order, to permit the provision of housing authority accommodation in England, Scotland and Northern Ireland and homelessness assistance in Scotland and Northern Ireland to persons granted TPS under the Appendix.

7. Policy background

What is being done and why?

7.1 Home Office are commencing Section 65 of the Nationality and Borders Act 2022 ("NABA") on 30 January 2023. This states that victims of Human Trafficking or Slavery who have a positive conclusive grounds decision, who are not British Citizens and do not have other leave to remain must be granted limited leave to remain in the United Kingdom where it is necessary for the purpose of assisting the person in their recovery from any physical or psychological harm arising from the relevant exploitation, enabling the person to seek compensation in respect of the relevant exploitation or enabling the person to co-operate with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation. Further detail pertaining to the grant of leave is set out in the Immigration Rules, under the Appendix.

7.2 The Government currently grants some victims of Human Trafficking or Slavery discretionary leave ("DL") which is a type of leave outside the rules, where they are eligible and conclusively recognised as victims through the National Referral Mechanism (NRM). While a person will not normally qualify for DL solely because they have been identified as a victim of Human Trafficking or Slavery, this leave is utilised when it is determined that they need to stay in the UK due to personal

circumstance, helping police with enquires, or pursuing compensation as victims of human trafficking, and this provision applies across the UK.

7.3 A person with DL is within Class B in regulations 3 and 5 of the Eligibility Regulations, which results in eligibility for housing and homelessness assistance. In the PSIC, Class B in articles 3 and 7 provides persons with DL eligibility for housing authority accommodation in England, Scotland and Northern Ireland, and homelessness assistance in Scotland and Northern Ireland.

7.4 From 30 Jan 2023, DL will no longer be offered to victims of Human Trafficking or Slavery, as they will be granted TPS under the Appendix. The Appendix will cover broadly the same cohort, with tighter eligibility criteria for those who may be able to seek compensation from their home country, those who are a threat to public order or those who have claimed to be a victim in bad faith.

7.5 This statutory instrument ensures that victims of Human Trafficking or Slavery who are granted TPS under the Appendix will have eligibility for housing and homelessness assistance. This change will mean that qualifying victims with TPS will be able to access the same level of housing and homelessness support they are currently entitled to under DL.

Explanations

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

7.6 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'.

7.7 Section 118(1) of Immigration and Asylum Act 1999 states that housing authority accommodation in the United Kingdom may not be provided for those subject to immigration control unless they are in a class specified in an order made by the Secretary of State, or an exclusion which is not relevant here. Section 119(1) prevents homelessness accommodation or assistance in Scotland and Northern Ireland to persons subject to immigration control unless they are in a class specified in an order made by the Secretary of State.

7.8 The law before the instrument is made does not include persons granted TPS under the Appendix. As a result, victims who are granted TPS under the Appendix will not be eligible for the housing provisions previously mentioned above unless they are added as a class into the Eligibility Regulations and PSIC.

Why is it being changed?

7.9 Section 65 of the NABA provides that confirmed victims of Human Trafficking or Slavery must be granted limited leave to remain in certain circumstances as set out. The Appendix establishes a route for confirmed victims to be considered for stay and the circumstances in which Temporary Permission to Stay will be granted. The law is being changed so that those being granted TPS under the Appendix will be eligible for housing and homelessness support.

7.10 TPS under the Appendix will give those qualifying victims 30 months of leave, or 12 months if pursuing compensation, with the possibility of an extension. It gives recourse to public funds, which includes housing and homelessness assistance. We must amend

the Eligibility Regulations and PSIC to allow this cohort continued access to housing allocations, homelessness assistance and housing authority accommodation.

What will it now do?

7.11 These regulations will make qualifying victims of Human Trafficking or Slavery eligible for social housing allocations and homelessness assistance. It will ensure that there is parity with Home Office and Department for Work and Pensions on the recourse to public funds aspect of this leave type.

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 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 Authority Associations 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. The Welsh Government is legislating separately to match the intent of this legislation.

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 class of persons who are eligible and how to apply it and will be published when the SI comes into force on 30th January 2023.

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 because the cohort covered by this new form of leave, Temporary Permission to Stay, is currently covered by Discretionary Leave so there will be no additional burden.

12.3 A full 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 Home Office already monitor those being granted this form of leave and hold responsibility for immigration legislation, including who is granted leave. We will consider reviewing this legislation if Home Office decide to change or review the rules regarding Temporary Permission to Stay.

15. Contact

15.1 Sian Pratley and Robyn Quigley at the Department for Levelling Up, Housing and Communities can be contacted with any queries regarding the instrument. Sian.Pratley@levellingup.gov.uk or Robyn.Quigley@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 Felicity Buchan MP at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.