EXPLANATORY MEMORANDUM TO

THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (ENGLAND) AND PERSONS SUBJECT TO IMMIGRATION CONTROL (HOUSING AUTHORITY ACCOMMODATION AND HOMELESSNESS) (AMENDMENT) REGULATIONS 2022

2022 No. 339

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, persons who left Ukraine as a result of the Russian invasion on 24th February 2022 and had resided in Ukraine immediately before 1st January 2022 and who have been granted leave in accordance with Immigration rules made under section 3(2) of the Immigration Act 1971.

2.3 This instrument will also exempt British nationals and all those not subject to immigration control who are usually subject to a habitual residence test, from that test if they are fleeing Ukraine in the circumstances described above. Once this instrument comes into force it will provide eligibility for the allocation of social housing and homelessness assistance, thus aligning with the policy objectives of the Ukraine Family Scheme and 'Homes for Ukraine' Scheme. A separate instrument makes provision in respect of Northern Ireland for the cohorts of persons not subject to immigration control to make them exempt from the Habitual Residence Test.

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 24th February 2022. Delay to the legislation coming into force will cause further issues in eligibility for housing allocations and homelessness assistance for those in need.

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 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. This includes a requirement that, unless specifically exempted, persons must be habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, or the Republic of Ireland;

6.7 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.

6.8 Regulations 2(2) and 2(4) of this instrument amend Regulations 3 and 5(1) of the Eligibility Regulations respectively. They make the following persons eligible for allocation of housing accommodation and homelessness assistance: certain persons in the United Kingdom who were residing in Ukraine immediately before 1st January 2022, who left Ukraine in connection with the Russian invasion which took place on 24th February 2022 and who have been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971 (c.77).

6.9 Regulations 2(3) and 2(5) of this instrument amend Regulations 4(2) and 6(2) of the Eligibility Regulations respectively. They make persons not subject to immigration control who left Ukraine as a result of the Russian invasion on 24th February 2022 and residing in Ukraine immediately before 1st January 2022 eligible for an allocation of housing accommodation and for homelessness assistance without application of the Habitual Residence Test.

6.10 Under section 118(1) and 119(1) of the Immigration and Asylum Act 1999 housing authorities in the United Kingdom may not provide housing accommodation 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).

6.11 Regulation 3 amends the PSIC Order to permit the provision of housing accommodation and assistance to certain persons in the United Kingdom who were residing in Ukraine immediately before 1st January 2022, who left Ukraine in connection with the Russian invasion which took place on 24th February 2022 and who have been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971 (c.77).

7. Policy background

What is being done and why?

7.1 The UK Government has established two new schemes to support those leaving Ukraine in the UK:

(a) The 'Ukraine Family Scheme'. 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 the immediate family member of a Ukrainian national who is applying to the scheme and have been residing in Ukraine on or immediately before 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.

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. The Home Office will amend their Immigration Rules shortly to reflect this.

7.3 Under current rules, people who are subject to immigration control are only eligible if they are listed as an eligible class in the Eligibility Regulations. People who are not subject to immigration control must meet the Habitual Residence Test before they can

be eligible for an allocation of social housing or homelessness assistance unless they are of a class of persons who have been exempted from this requirement. The Habitual Residence Test means that Local Authorities would, without these Regulations, require these individuals to show they are habitually resident in the UK which will usually mean they will need to be resident for at least 1-3 months before they consider them as eligible for support.

7.4 Prior to the new immigration rules coming into force British nationals and others not subject to immigration control, who are fleeing Ukraine will still be subject to the Habitual Residence Test. This instrument will provide immediate 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 those arriving from Ukraine due to the Russian invasion on 24th February 2022 who were residing in the Ukraine immediately before 1st January 2022 from the Habitual Residence Test in England. Separate provision will be made to disapply the Habitual Residence Test in Northern Ireland. Wales's powers have been formally devolved to the Senedd and they are legislating separately.

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 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 The law before the instrument is made will bar those who have left Ukraine in connection with the Russian invasion on 24th February 2022 and are subject to immigration control unless they are added as a class. In addition, the Habitual Residence Test would have been applied to British Nationals, Irish citizens, and Commonwealth citizens with right to abode.

Why is it being changed?

7.9 The law is being changed so that those arriving in the UK from Ukraine who have been granted leave in accordance with immigration rules can access housing allocation and homelessness assistance. Also, so that those who are not subject to immigration control and who are arriving in the UK from Ukraine as a result of the Russian invasion do not have to satisfy the Habitual Residence Test to be eligible for a social housing allocation and homelessness assistance.

What will it now do?

7.10 These Regulations will make those arriving in the UK from Ukraine in connection with the Russian invasion who have been granted leave in accordance with immigration rules eligible for social housing allocations and homelessness assistance. In addition, it will also exempt persons not subject to immigration control who left Ukraine as a result of the Russian invasion on 24th February 2022 and were residing in the Ukraine immediately before 1st January 2022 from the Habitual Residence Test in

England. Separate provision will be made to disapply the Habitual Residence test in Northern Ireland for those not subject to immigration control.

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 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.

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 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 Local Authorities with regards to housing or homelessness assistance.

12.2 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. The Instrument will also disapply the Habitual Residence Test for those not subject to immigration control such as British Nationals, Irish citizens and Commonwealth citizens with right to abode, but the impact of these groups is expected to be minimal.

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 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.