EXPLANATORY MEMORANDUM TO

THE ALLOCATION OF HOUSING AND HOMELESSNESS (ELIGIBILITY) (ENGLAND) AND PERSONS SUBJECT TO IMMIGRATION CONTROL (HOUSING AUTHORITY ACCOMMODATION AND HOMELESSNESS) (AMENDMENT) REGULATIONS 2024

2024 No. 647

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. Declaration

2.1 Felicity Buchan, Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

2.2 Richard Chapman, Deputy Director for Homelessness and Rough Sleeping, and Rebecca Perks, Deputy Director for Local Authority Housing and Right to Buy, at the Department for Levelling Up, Housing and Communities confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Patrick Whitehead at the Department for Levelling Up, Housing and Communities patrick.whitehead@levellingup.gov.uk and Emily Jones at the Department for Levelling Up, Housing and Communities emily.jones3@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes amendments to the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (S.I. 2006/1294) ("the Eligibility Regulations") and to the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (S.I. 2000/706) ("the PSIC Order").

4.2 It enables local authorities in England to provide housing and homelessness assistance to victims of transnational marriage abandonment (TMA) from the point they present for support, so long as they meet all other relevant tests. TMA is a form of domestic abuse involving controlling and coercive behaviour. It refers to the practice whereby the sponsoring partner or their family members, abandons or strands their visa dependent partner abroad, usually without financial resources or immigration documents, with the aim of preventing their return to the UK. This means that they have been prevented from residing habitually in the UK through no fault of their own.

4.3 It also enables local authorities in England to provide housing and homelessness assistance to individuals whose no recourse to public funds (NRPF) has been lifted by the Home Office (HO), from the point they present for support, so long as they meet all other relevant tests.

4.4 People subject to immigration control (those who need leave to enter or remain in the United Kingdom) are only eligible for an allocation of social housing or homelessness assistance if they do not have a no recourse to public funds (NRPF) condition attached to their immigration status and no other person or organisation is responsible for providing or funding their accommodation. A NRPF condition means that a person cannot access homelessness and housing assistance.

4.5 Equivalent changes are also made to the PSIC Order, which enables housing authorities in England, Scotland, and Northern Ireland to provide housing to victims of TMA and those who have had their NRPF condition lifted. The changes also enable housing authorities in Scotland and Northern Ireland to provide homelessness assistance to these cohorts. The Welsh Government is responsible for laying their own legislation to apply these changes.

4.6 It removes redundant provisions which refer to the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 because the accession period has come to an end.

4.7 Finally, in relation to the PSIC Order, it prevents individuals who are subject to a deportation order but have not yet had their refugee status revoked from accessing housing or homelessness assistance.

Where does the legislation extend to, and apply?

4.8 The extent of regulation 1 is England and Wales, Scotland, and Northern Ireland.

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

4.10 The extent of regulation 3 is England and Wales, Scotland, and Northern Ireland. The territorial application of regulation 3(1), 3(2) and 3(3) is England, Scotland, and Northern Ireland. The territorial application of regulation 3(4) is Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 Following a High Court ruling[1] in October 2022, the Government legislated to establish a new visa route for victims of TMA. This came into force on 31 January 2024. These regulations are necessary to ensure that victims of TMA arriving under the new route are eligible for an allocation of social housing and homelessness assistance from the point they present to a local authority, so long as they meet all other relevant tests.

5.2 Following a separate successful legal challenge, the HO has also updated caseworker guidance to reflect that there is discretion to lift the NRPF condition to persons on any immigration route in certain circumstances (such as destitution, welfare of a relevant child, or exceptional financial circumstances). Previously, the HO only applied this discretion to individuals with leave under the (ECHR) Article 8 (private or family life) and Hong Kong British National Overseas (BNO) routes. Current Regulations only

1 AM, R (On the Application Of) v Secretary of State for the Home Department [2022] EWHC 2591 (Admin) (14 October 2022) (bailii.org)

make eligible persons with Article 8 or Hong Kong BNO leave. These regulations are necessary to enable people who have had their NRPF condition lifted on any other route to access homelessness assistance and be eligible for an allocation of social housing. For Article 8 cases, in certain circumstances the HO can disapply the NRPF condition at the point leave is granted, as well as lift it at a later date. This is not possible for other forms of leave where a NRPF condition is applied. For BNO leave cases, there are specific residency requirements before the NRPF condition is lifted which do not apply for other forms of leave. Both classes will therefore continue to apply and the new class will apply for persons whose NRPF condition has been lifted on all other routes. The new route will also expressly exclude both existing classes (Article 8 and BNO) as in some cases, persons on either route might fit both the existing class and the new class. Where that is the case, the existing class should continue to apply.

5.3 A historic misalignment has also been identified in regulations regarding HO policy and the treatment of refugees. A situation could occur where an individual's leave to enter or remain has been revoked because of a deportation order, but their refugee status has yet to be revoked. We are therefore updating the PSIC Order to prevent any refugees who are subject to a deportation order, but have not yet had their refugee status revoked, from accessing an allocation of social housing or homelessness assistance. This will bring the misalignment in line with the Eligibility Regulations.

5.4 We are also removing redundant provisions which refer to the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013, because the accession period has come to an end.

What was the previous policy, how is this different?

Current policy on eligibility and access to benefits and services

5.5 Eligibility is the first stage of various tests for the provision of housing and homelessness assistance by a local authority and is dependent on a person's immigration status. Generally, persons subject to immigration control are only entitled to homelessness and social housing assistance if they do not have a NRPF condition attached to their immigration status and no other person or organisation is responsible for providing or funding their accommodation.

5.6 In addition, persons arriving in the United Kingdom from abroad, whether a person subject to immigration control or not, are also required to pass the habitual residence test (HRT) unless expressly exempt. To meet the HRT a person must show they are living in the Common Travel Area (UK, the Channel Islands, the Isle of Man or the Republic of Ireland) and have a settled intention to continue living there. The HRT is typically satisfied once a person has been resident in the UK for between one to three months. We have waived the HRT for certain classes of persons who arrive in crisis and/or with immediate support needs.

Changes to policy for certain cohorts

5.7 Previously, victims of TMA may have been granted Leave Outside the Rules. The current regulations provide that people with Leave Outside the Rules are eligible for homelessness assistance and social housing and are exempt from the HRT. However, as Government has introduced a new visa route for victims of TMA, we need to update regulations to ensure victims of TMA arriving on this new route will continue to be eligible for homelessness assistance and social housing and be exempt from the HRT.

5.8 In addition, previously, a person subject to immigration control with a form of leave which typically has a NRPF condition could only apply for it to be lifted if they had leave on the Article 8 route (family life or private life grounds) or the Hong Kong BNO route. Persons with leave on Article 8 grounds could also apply to not have the NRPF condition applied from the onset of their leave. These regulations make a person on either of these two forms of immigration leave eligible so long as there is no NRPF condition. However, now the HO has updated guidance to reflect that the NRPF condition can be lifted for persons on any immigration route in certain circumstances, we need to update regulations to ensure such persons are eligible for homelessness assistance or social housing. As the NRPF condition would only be lifted in such circumstances, these persons will also be exempt from the HRT. We are retaining the existing eligibility class for individuals on the Article 8 and Hong Kong British National Overseas routes who have had their NRPF condition lifted, and we therefore have excluded them from falling into the new eligibility class to prevent duplication.

5.9 Finally, there is currently a misalignment between the PSIC Order and HO policy and the Eligibility Regulations regarding the treatment of refugees. A situation could occur where refugees leave to enter or remain has been revoked by a deportation order, but their refugee status has yet to be revoked. We are updating the PSIC Order so that we prevent any individuals who are subject to a deportation order but have not yet had their refugee status revoked, from accessing housing or homelessness assistance.

6. Legislative and Legal Context

How has the law changed?

6.1 This Instrument makes amendments to the Eligibility Regulations and the PSIC Order.

6.2 Part 6 of the Housing Act 1996 sets out the conditions that must be met for a person to be entitled to an allocation of social housing in England. Part 7 sets out the conditions that must be met for a person to be entitled to homelessness assistance in England. The first stage for both is eligibility, which is determined by a person's immigration status. A person subject to immigration control is only eligible if listed as a class of person made eligible in the Eligibility Regulations. Persons not subject to immigration control are generally eligible unless they are made ineligible by the Eligibility Regulations, which is the case for persons from abroad.

6.3 The PSIC Order has equivalent provisions which enable housing authorities in England, Scotland, and Northern Ireland to provide housing accommodation under the accommodation provisions in section 118 of the Immigration and Asylum Act 1999 to certain classes of person from abroad who are subject to immigration control. It also enables housing authorities in Scotland and Northern Ireland to provide homelessness assistance to such classes of persons.

6.4 Regulation 2 of these Regulations makes a number of changes to the Eligibility Regulations.

6.5 Regulation 2(2), (4) and (6) omit references to the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 which are redundant now that the accession period has come to an end.

6.6 The purpose of regulation 2(3) and (5) is to add two new classes of persons subject to immigration control, who are eligible for an allocation of housing and homelessness assistance respectively. The first new class makes eligible a person who is a victim of

TMA. The second new class makes eligible a person whose leave would ordinarily have a NRPF condition attached to their leave, but that condition has been lifted by the HO, other than persons on the Article 8 or Hong Kong BNO route. Persons in both new classes will be eligible, irrespective of whether they satisfy the HRT.

6.7 Regulation 3 makes equivalent changes to regulations 2(3) and (5) above in the relevant provisions in the PSIC Order. Regulation 3 additionally amends Class A in the PSIC Order to bring it into line with Class A in the Eligibility Regulations. The amendment changes the class to include that a refugee must have leave to enter or remain. The effect of the change is to prevent individuals who are subject to a deportation order which has revoked their leave to enter or remain, but have not yet had their refugee status revoked, from accessing housing or homelessness assistance.

Why was this approach taken to change the law?

6.8 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation has been carried out. No policy decisions have been made. These changes are technical and have been made in partnership to the HO's policy changes. We have liaised with the Welsh and Scottish Governments and the Northern Ireland Executive.

8. Applicable Guidance

8.1 Guidance will be issued to local authorities in England to ensure that they are aware of these new exceptions and how to apply them once the Eligibility Regulations and PSIC Order come into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the impact on business is not likely to be significant.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the size of the cohort is very small.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the size of the cohort is very small.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Department for Levelling Up, Housing and Communities is firmly committed to evaluating and monitoring the impact of its legislation and policies. These measures are intended to ensure those who are eligible can access homelessness and housing support.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Not required as the instrument will be subject to negative procedure.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).