EXPLANATORY MEMORANDUM TO

THE REHABILITATION OF OFFENDERS ACT 1974 (EXCEPTIONS) (AMENDMENT) (ENGLAND AND WALES) ORDER 2022

2022 No. 1212

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 ("the 1975 Order") to enable any current or potential sponsor on the Homes for Ukraine (HfU) scheme to be eligible for the highest level of criminal record check undertaken by the Disclosure and Barring Service (DBS), namely an Enhanced criminal record certificate with Barred List checks.

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 this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 The Minster of State for Prisons and Probation, the Right Honourable Stuart Andrew MP, has made the following statement regarding Human Rights:

5.2 "In my view the provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2022 are compatible with the convention Rights."

6. Legislative Context

6.1 Eligibility for DBS checks is set out in legislation: To be eligible for the highest level of check, the enhanced DBS check with a check of the barred list(s), the position or role must be included in both the Rehabilitation of Offenders Act (Exceptions) Order 1975 and in the Police Act 1997 (Criminal Records) Regulations 2002, and the Police Act 1997 (Criminal Records) (No. 2) Regulations 2009. The latter is to ensure eligibility to check the appropriate barred lists.

6.2 The Rehabilitation of Offenders Act (Exceptions) Order 1975 disapplies certain provisions in the Rehabilitation of Offenders Act 1974 which would otherwise prevent a person from having to disclose a spent conviction or caution. The general effect of the disapplication of these provisions is that, in specified circumstances, questions about spent conviction and cautions are permitted to be asked. We are amending the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, to allow

a relevant body to consider an individual's full criminal history, including both spent and unspent convictions and cautions, as part of their application to be a sponsor under the Homes for Ukraine scheme.

6.3 This will be done alongside a required corresponding amendment to the Police Act 1997 (Criminal Records) Regulations 2002, which will add a new 'prescribed purpose' relating to considering an individual's suitability to be a sponsor in the Homes for Ukraine scheme. This is necessary because an application to the DBS for an enhanced criminal record check must be accompanied by a statement by the registered person (defined in s.120 as a person who is listed in a register to be maintained by DBS) that the certificate "is required for the purposes of an exempted question asked for a prescribed purpose.".

6.4 Section 113B(2)(b) of the Police Act 1997 requires that an application to the DBS for an enhanced criminal record check must be accompanied by a statement by the registered person (defined in s.120 as a person who is listed in a register to be maintained by DBS) that the certificate "is required for the purposes of an exempted question asked for a prescribed purpose." Section 125(1) of the Act states that this shall be prescribed by regulations made by the Secretary of State in accordance with the negative procedure. These are set out in the Police Act 1997 (Criminal Records) Regulations 2002 and subsequent amendment regulations.

6.5 An amendment will also be made to the Police Act 1997 (Criminal Records) (No. 2) Regulations 2009, to include the sponsoring role so that it would be prescribed for the purposes of s.113BA and s.113BB of the Police Act 1997, which will enable the adult and child barred list check to be undertaken.

6.6 The amendments would mean that the role of a sponsor in the HfU scheme would be a 'prescribed purpose' in its own right and not require the activities to be undertaken by the sponsor to fit a definition of 'regulated activity' under the Safeguarding Vulnerable Groups Act 2006 ('the SVGA 2006') in order to warrant an enhanced DBS check (with check of the barred list(s)). This would also mean that eligibility would not be affected by the provisions in the SVGA 2006 which prevent checks being carried out where a 'family relationship' exists between sponsor and beneficiary.

7. Policy background

What is being done and why?

7.1 Since the launch of the Homes for Ukraine (HfU) scheme in March 2022, local authorities (LAs) have carried out DBS checks on sponsors to inform their decision on whether the sponsor is suitable to host an applicant. This is in addition to security checks carried out by the Home Office on sponsors and applicants as part of the visa decision-making process. Currently, LAs can legally undertake the highest-level DBS check (enhanced with barred list check) when a sponsor's guests include a child under 18 not related to the sponsor or in the rare circumstance when a sponsor is providing additional services to an unrelated guest adult with needs due to age, disability or illness. In all other circumstances, LAs can undertake only a basic DBS check. Enhanced with barred list checks disclose more information than basic checks: spent convictions, police information, any conviction for a serious offence or in respect of which a custodial sentence was imposed, and whether someone is barred from regulated activity with children or adults.

7.2 These changes to eligibility for DBS checks on sponsors are being introduced due to the unique and evolving nature of the Homes for Ukraine scheme, which for example now includes eligible minors. These changes will allow Local Authorities to have sufficient flexibility to undertake the highest level of DBS check on sponsors of children and/or of adults who have additional needs (due to age, disability or illness), regardless of whether they are related to the sponsor, and in limited additional circumstances, where Local Authorities assess this to be appropriate and proportionate.

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 No consolidation is planned.

10. Consultation outcome

10.1 Due to timing constraints, a full public consultation has not been carried out. The Department for Levelling Up, Housing and Communities have engaged informally with the Local Government Association, the Local Authority operations group, the Association of Adult Social Services (ADASS) and the Association of Directors of Children's Services (ADCS), who were broadly supportive of this change.

11. Guidance

11.1 Homes for Ukraine Guidance from the Department for Levelling Up, Housing and Communities to Councils and sponsors regarding the checks to be carried out by Councils to inform their suitability decision on potential sponsors, will be updated to reflect the expanded use of the 'DBS enhanced with barred list' checks for sponsors.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 With the cost of enhanced DBS checks higher than that for basic checks, there may be an increase of cost for Councils who are required to cover the cost of the checks from the £10,500 per person funding given to them by the Government to enable them to provide support for beneficiaries to settle in. This additional cost may be offset by enhanced checks of the same type/workforce being available through the DBS' Update service at a lower cost, where the sponsor is signed up to the Update service and gives their permission.

12.3 A full Impact Assessment has not been prepared for this instrument because the costs only impact the public sector and because there is a low impact for each council, within existing funding provision.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There are no plans to monitor or review this SI.

15. Contact

15.1 Yasmin N'Jai at the Ministry of Justice, email: Yasmin.NJai@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Adam Bailey, Deputy Director for Prisoner Outcomes, Resettlement and Reoffending at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Edward Argar at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.