

EXPLANATORY MEMORANDUM TO
THE HOUSES IN MULTIPLE OCCUPATION (ASYLUM-SEEKER
ACCOMMODATION) (ENGLAND) REGULATIONS 2023

2023 No. [XXXX]

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 provision to exempt accommodation provided by the Home Office for asylum-seekers from licensing requirements. It achieves this by modifying the definition of “house in multiple occupation” (“HMO”) for the purposes of Part 2 of the Housing Act 2004. This exemption applies to HMOs which begins use as asylum accommodation between the day the regulations come into force and 30 June 2024. It provides for an exemption for a two-year period following the date the accommodation begins use as asylum accommodation.

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 extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

- 5.1 Felicity Buchan MP, Parliamentary Under Secretary of State in the Department for Levelling Up, Housing and Communities has made the following statement regarding Human Rights:

“In my view the provisions of the Houses in Multiple Occupation (Asylum-Seeker Accommodation) (England) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Part 2 of the Housing Act 2004 provides for local housing authorities in England and Wales to license HMOs in their areas. Under section 55 of the Act, it is mandatory for all HMOs of a prescribed description to be licensed. Section 55(2)(b) also permits local housing authorities to introduce licensing of other HMOs through additional licensing. Under Part 2, a licence may only be granted if the licence holder is a “fit and proper” person, the management standards are satisfactory and the HMO is

suitable, or can be made suitable, for the specified number of occupiers, including shared amenity standards. Section 67 of the Act provides that a local housing authority may impose licence conditions relating to the management, use and occupation of the HMO and its condition and contents. Section 72 sets out licensing offences, including that it is an offence to manage or have control of an HMO that is required to be licensed, without a licence being in force.

- 6.2 Separately, the Secretary of State for the Home Department has a statutory power to provide accommodation to failed asylum seekers and their dependants under section 4 of the Immigration and Asylum Act 1999. The Secretary of State has a statutory duty to provide accommodation to asylum seekers and their dependants who would otherwise be destitute under sections 95 and 98 of the same Act, when read with regulation 5 of the Asylum Seekers (Reception Conditions) Regulations 2005.

7. Policy background

What is being done and why?

- 7.1 The Home Office is seeking to house more asylum seekers across local authorities, and more quickly in appropriate and cost-effective accommodation. Asylum Accommodation Service Contract (AASC) providers (who act on behalf of the Home Office to discharge the functions of the Secretary of State under section 4, 95 or 98 of the Immigration and Asylum Act 1999), have raised concerns that HMO licensing regulation is posing a barrier to acquiring such properties. Much of the dispersed asylum accommodation (especially for single individuals) is provided through Houses in Multiple Occupation (HMOs) – there currently are approximately 6000 HMO properties accommodating 28000 asylum seekers.
- 7.2 There are mandatory licensing conditions which must be attached to all HMO licences. Local authorities can also include additional conditions and set higher minimum room sizes. Some local authorities include additional conditions and set higher minimum room sizes for non-cohesive groups (i.e. people who do not know each other), including for supported asylum seekers. The Home Office is concerned that asylum seekers accommodated at taxpayer expense should not be entitled to more spacious accommodation than the national standard that applies to everyone else. The concern is that more generous standards, particularly around room sizes and facilities, limit supply by restricting the number of people that can be housed in each property and drive the cost to the taxpayer.
- 7.3 This temporary exemption is being introduced to remove barriers that may cause a delay or challenge to acquire more sustainable and cost-effective accommodation for asylum seekers particularly given the pressure on estate, and alternative regulation via standards in the AASC. This will mean that any HMOs procured by an AASC provider for sole or principal occupation by asylum-seekers or members of the household of asylum-seekers on or before 30 June 2024 would not require to be licensed under Part 2 of the Housing Act 2004 for a period of two years. Any amendments made by regulation 2 will be repealed on 1 July 2026.

Explanations

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

- 7.4 Prior to this instrument, asylum accommodation provided by the Home Office that met the definition of an HMO as set out by Sections 254 to 257 of the Act would be

required to be licenced under section 55 of the Act, unless a temporary exemption notice is in force under section 62, or an interim or final management order under Chapter 1 of Part 4 of the Act. This instrument introduces an exemption for up to two years for asylum accommodation which is provided in defined period.

Why is it being changed?

- 7.5 This is being changed to temporarily remove barriers that cause a delay or challenge in acquiring sustainable and cost-effective contingency accommodation for asylum seekers.

What will it now do?

- 7.6 This instrument modifies the definition of an HMO for the purposes of Part 2 of the Housing Act 2004 in order to exempt HMOs which begins use as asylum accommodation between the day the regulations come into force and 30 June 2024 from licensing requirements. These HMOs will be exempt for a two-year period following the date the accommodation begins use as asylum accommodation.

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 is no consolidation.

10. Consultation outcome

- 10.1 No formal consultation has taken place due to the urgency with which the statutory instrument needed to be made.

11. Guidance

- 11.1 Guidance is not required.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 This change will have an impact on local authorities. During the period of the temporarily exemption, local authorities will no longer licence HMOs used as asylum accommodation so will no longer receive licensing fees in respect of these properties. The change may also impact demand for other local authority services. The Home Office will provide funding to local authorities in recognition of the costs associated with accommodating asylum seekers in their area.

13. Regulating small business

- 13.1 This legislation applies to activities that are undertaken by small businesses. The legislation will temporarily exempt landlords (predominately operating as small businesses) who provide accommodation for asylum seekers from licencing their properties and paying the associated fees.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation will be via regular meetings held by the Home Office with DLUHC and Local Authorities to ascertain the impact and ensure alternative regulation of housing quality standards.

15. Contact

- 15.1 Tahira Shah and Paul Bilbao (Tahira.Shah40@homeoffice.gov.uk and Paul.Bilbao3@homeoffice.gov.uk) at the Home Office or Matthew Abbott and Alice Davis-Digges (Matt.Abbott@levellingup.gov.uk and Alice.Davis-Digges@levellingup.gov.uk) at the Department for Levelling Up, Housing and Communities can be contacted at with any queries regarding the instrument.
- 15.2 Stephanie Kvam, Deputy Director for the Private Rented Sector, 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.