

EXPLANATORY MEMORANDUM TO
THE HOMELESSNESS (SUITABILITY OF ACCOMMODATION) (AMENDMENT)
(ENGLAND) ORDER 2022

2022 No. 521

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.

2. Purpose of the instrument

2.1 The purpose of this instrument is to help local authorities manage an increase in homelessness pressures as a result of two recent humanitarian crises.

2.2 This instrument makes amendments and modifications to The Homelessness (Suitability of Accommodation) (England) Order 2003 and modifications to The Homelessness (Suitability of Accommodation) (England) Order 2012.

2.3 This instrument takes effect from 1 June 2022 and will expire on 1 June 2023

2.4 This instrument amends, the Homelessness (Suitability of Accommodation) (England) Order 2003 ('the 2003 Order') adding an exemption to the definition of B&B of "accommodation that is provided in a private dwelling," to make clear that accommodation in private homes, where facilities are shared, such as those being provided under the Homes for Ukraine Scheme, should not be automatically considered unsuitable.

2.5 This instrument also modifies the 2003 Order for one year, to exempt those who have arrived in the UK in the 2 years prior to their homelessness application and who have not had settled accommodation in the UK in the 3 years prior to their arrival from the maximum period of 6 weeks during which a local housing authority can accommodate a person with family commitments in B&B accommodation. This enables local authorities in England to use B&B accommodation for households who have recently arrived in the UK for longer than 6 weeks.

2.6 Article 2 of The Homelessness (Suitability of Accommodation) (England) Order 2012 ('the 2012 Order') sets out the factors a local authority must consider before placing household out of area. This instrument modifies the 2012 Order for a period of one year to exempt those who have arrived in the UK in the previous 2 years and who have not had settled accommodation in the UK in the previous 3 years from Article 2. This instrument adds a new article, Article 2A which specifies that when placing newly arrived households out of area local authorities must consider the significance of any disruption which would be caused by the location of the accommodation to any caring responsibilities of the person or members of the person's household for persons with whom there are family associations. This enables local authorities in England to place affected households out of area without taking the matters in Article 2 into account when determining whether accommodation is suitable for a person apart from the significance of any disruption which would be caused by the location of the accommodation to caring responsibilities in respect of family associations.

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 application of the regulations are England only.

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 Under Part 7 of the Housing Act 1996 local authorities have various duties to secure, and help secure accommodation, for eligible homelessness households. This includes (temporary) accommodation secured under interim accommodation duties or the main housing duty as well as settled accommodation which would bring the prevention, relief or main housing duty to an end.
- 6.2 Section 206 provides that where a housing authority discharges its functions to secure that accommodation is available for an applicant the accommodation must be suitable. Section 210 of the 1996 Act sets out matters a housing authority must have regard to when determining suitability. Section 210(2) provides for the Secretary of State to specify by order the circumstances in which accommodation is or is not to be regarded as suitable for someone, and matters to be taken into account or disregarded in determining whether accommodation is suitable.
- 6.3 This Instrument makes an amendment to The Homelessness (Suitability of Accommodation) (England) Order 2003 and modifies The Homelessness (Suitability of Accommodation) (England) Order 2012 and 2003 Order.
- 6.4 The Homelessness (Suitability of Accommodation) (England) Order 2003 specifies that B&B accommodation is not suitable for families and pregnant women and can only be used where no other accommodation is available and for a maximum of 6 weeks. The Order defines B&B as privately owned/managed accommodation which is not self-contained, and which involves sharing a toilet, washing facilities or cooking facilities with one or more other households.
- 6.5 The Homelessness (Suitability of Accommodation) (England) Order 2012 sets out the matters a local authority must take into account in determining whether privately rented accommodation is suitable for a person. This includes (a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority; (b) the significance of any disruption which would be caused by the location of the employment, caring responsibilities or education of the person or members of the person's household; (c) the proximity and accessibility of the accommodation to medical facilities and other support which – i) are currently used or provided to the person or members of the person's household; and ii) are essential to the well-being of the person or members of the person's household; and d) the proximity and accessibility of the accommodation to local services, amenities and transport.

7. Policy background

What is being done and why?

- 7.1 The Government remains committed to supporting families to access safe and settled homes. We have a moral obligation to support those fleeing the Russian invasion of the 24 February 2022 in need of safety and housing in the face of war and a humanitarian crisis. The Government's Ukraine Family Scheme, Ukraine Extension Scheme and Homes for Ukraine Scheme have the potential to help tens if not hundreds of thousands of Ukrainians fleeing war.
- 7.2 The Government also continues to play a pivotal role in Afghan Resettlement. As part of the response to the crisis in Afghanistan. The UK Government has established the Afghan Resettlement Scheme (ACRS), which aims to resettle up to 20,000 over the next few years, and the Afghan Relocations and Assistance Policy (ARAP) open to any current or former staff employed by HMG in Afghanistan since 2001.
- 7.3 Households who arrive in the UK from these schemes are eligible for homelessness assistance should the need arise. For example, we recognise that some households who have recently arrived in the UK via the Ukraine Family Scheme may not necessarily be able to be accommodated by family members. There also may be cases where the Homes for Ukraine sponsorship arrangements breakdown, and alternative arrangements are necessary. In such cases, the household may approach their local authority for homelessness assistance.
- 7.4 In order to support the maximum number of people we need to manage pressures on public services to ensure they have capacity to support the new arrivals. The Suitability Orders are being amended for a time-limited period to open-up a greater supply of temporary accommodation and make it easier for local authorities to support households that become homeless. The Government considers these changes to be appropriate and proportionate.
- 7.5 The Homelessness (Suitability of Accommodation) (England) Order 2003 is being amended with "accommodation that is provided in a private dwelling" added to the list of exclusions to the Order. This is to clarify that accommodation provided within a private home such as the sponsorship arrangements in place for Homes for Ukraine where a household shares facilities with a host family, is not in scope of the Order and is suitable, if the property meets all other suitability requirements.
- 7.6 Households who are newly or recently arrived in the UK in the 2 years prior to their homelessness application, and who have not had settled accommodation in the UK 3 years prior to arrival, will also be exempt from the maximum period set out in the 2003 Order during which a local housing authority can accommodate a person with family commitments in B&B accommodation. This will allow local authorities to place these households in B&B accommodation for more than 6 weeks and will enable local authorities to access a broader range of temporary accommodation for accommodating homeless families arriving from Ukraine, Afghanistan and other new arrivals, including returning British nationals.
- 7.7 This cohort will also be exempt from Article 2 of The Homelessness (Suitability of Accommodation) (England) Order 2012. Local authorities will not be required to consider any of the factors detailed in Article 2 of the order, apart from consideration of the significance of any disruption which would be caused by the location of the accommodation to any caring responsibilities of the person or members of the

person's household for persons with whom there are family associations, which is added to the Order by a new Article 2A. This will reduce the factors that local authorities have to consider relating to location when placing newly arrived households out of area, which is of particular importance to areas of high demand.

- 7.8 The provisions set out in paragraphs 7.6 and 7.7 above will be time limited from commencement, for a period of one year. The provision described at paragraph 7.5 is not time limited.

Explanations

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

- 7.9 The Homelessness (Suitability of Accommodation) (England) Order 2003 makes it unlawful for local authorities to place families and pregnant women in B&B accommodation, unless there is no other accommodation available, and in those cases for a maximum of 6 weeks. The Order defines B&B accommodation as privately owned/managed accommodation which is not self-contained, and which involves sharing a toilet, washing facilities or cooking facilities with one or more other households.
- 7.10 The Homelessness (Suitability of Accommodation) (England) Order 2012 sets out the matters a local authority must take into account in determining whether privately rented accommodation is suitable for a person before making a placement out of area. This includes a number of factors in respect of location including education and work.

Why is it being changed?

- 7.11 The law is being changed to open up a broader supply of accommodation which local authorities can use to discharge their homelessness duties and reduce the administrative burden on local authorities when making out of area placements, in order to cope with pressures from recent arrivals following on from two international humanitarian crises in quick succession.

What will it now do?

- 7.12 These Regulations will mean that local authorities will be able to house those who have recently arrived in the UK in B&B accommodation for more than 6 weeks, and it will mean that they will not consider accommodation that is provided in a private dwelling, as B&B accommodation. In addition, it will mean that for newly arrived households, local authorities will not be required to consider most factors before placing a household out of area (apart from caring responsibilities in respect of family associations) reducing the burden on local authorities facing the greatest pressures and who are most likely to need to place households out of area.

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.

11. Guidance

- 11.1 Guidance will be issued to local authority staff and local authority decision makers to ensure that they are aware of these changes and how to apply them through updates to the Homelessness Code of Guidance.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is on local authorities where we are expecting particular pressures resulting from an influx of new arrivals. These are areas which already have settled communities from Ukraine and Afghanistan; those with ports of entry for new arrivals; and those with existing high levels of homelessness. This includes for example, London, Manchester, Birmingham, Nottingham, Bradford.
- 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 has will be reviewed on 1 June 2023 to determine whether its effect is still required and proportionate.

15. Contact

- 15.1 Lucy Rodger at the Department for Levelling Up, Housing and Communities can be contacted with any queries regarding the instrument.
Lucy.Rodger@levellingup.gov.uk
- 15.2 Richard Chapman, Deputy Director for Homelessness and Rough Sleeping, 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.