

## **Explanatory Memorandum the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2022**

This Explanatory Memorandum has been prepared by the Climate Change and Rural Affairs Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Julie James MS  
Minister for Climate Change  
8 April 2022

## **PART 1**

### **1. Description**

The Allocation of Housing and Homelessness (Eligibility) (Wales) 2014 Regulations (“the 2014 Regulations”) provide for certain categories of persons from abroad to be eligible or ineligible for an allocation of housing accommodation and/or for housing assistance (essentially, support for homelessness).

The 2014 Regulations are to be amended by the Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2022 (“the 2022 Regulations”) to extend eligibility for an allocation of housing and housing assistance provided by local authorities to people falling within three new immigration routes for those affected by the Russian invasion of Ukraine on 24 February 2022. These routes are:

- The Ukraine Family Scheme, which will allow immediate and extended family members of British citizens, UK settled persons and others to come from Ukraine to, or stay in, the UK.
- The Homes for Ukraine Sponsorship Scheme, which will allow Ukrainian nationals and their immediate family to come to the UK where they have an Approved sponsor who has agreed to provide accommodation.
- The Ukraine Extension Scheme, which will allow Ukrainian nationals with their partners and children in the UK with permission on 18 March 2022 (including those who have overstayed by a short period) to stay in the UK.

The three new immigration routes are referred to collectively as the Ukraine Schemes and are set out in Appendix Ukraine Scheme of the Immigration Rules. On 29 March 2022 the Home Office laid before Parliament a statement of changes to the Immigration Rules which includes the new Appendix Ukraine Scheme.

The statement of changes also brings forward a new Appendix Relationship with a Partner which will provide greater consistency in the way applicants prove a relationship with a partner. Initially, it applies only to the Ukraine Schemes, The instrument also makes a series of minor changes to other areas of the Immigration Rules.

The changes in relation to the Ukraine Family Scheme, the Homes for Ukraine Sponsorship Scheme and the minor technical changes came into effect on 30 March 2022. The changes in relation to the Ukraine Extension Scheme will come into effect on 3 May 2022.

The 2022 Regulations 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 as a consequence of the military conflict.

## **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

None.

## **3. Legislative background**

Part 6 of the Housing Act 1996 gives the Welsh Ministers the power to make regulations to prescribe certain categories of persons from abroad to be eligible or ineligible for an allocation of housing accommodation. Similar provision is made in the Housing (Wales) Act 2014 in relation to the Welsh Ministers' (and the Secretary of State's) ability to make regulations in relation to the eligibility or ineligibility of certain categories of persons for housing assistance. The 2014 Regulations to be amended are regulations 3, 4, 5 and 6.

The 2022 Regulations are being made under the affirmative resolution procedure, as is required by section 142(3)(b)(ii) of Housing (Wales) Act 2014, in relation to amendments made under that Act. Regulations made under section 160A of the Housing Act 1996 are subject to the negative procedure. Section 40 of the Legislation (Wales) Act 2019 provides that regulations subject to different procedures can be combined.

## **4. Purpose and intended effect of the legislation**

These Regulations amend the provisions of the 2014 Regulations which determine which persons from abroad, are eligible for an allocation of housing accommodation under Part 6 of the Housing Act 1996, or for housing assistance under Schedule 2 of the Housing (Wales) Act 2014.

The Regulations, through the amendments they make, will add to the 2014 Regulation a new Class of persons from abroad who are subject to immigration control who will be eligible for housing and homelessness assistance and exempt from the habitual residence test. This new Class of persons will apply to persons affected by the conflict in Ukraine following the Russian invasion which took place on 24 February 2022 and who have been granted leave to enter or remain in the United Kingdom in accordance with Appendix Ukraine Scheme in the Immigration Rules.

The Ukraine Family Scheme allows a UK-based sponsor to sponsor family members of Ukrainian nationals to come from Ukraine to, or stay in, the UK. Family members include immediate family, extended family and the immediate family of the extended family.

The Homes for Ukraine Sponsorship Scheme is entirely different in that it allows a Ukrainian national and their immediate family who may not have family ties in the United Kingdom, to come to the UK where there is a sponsorship match with individuals, charities, businesses, and community groups who are approved UK sponsors. It is on the basis of this Scheme that the Welsh Government is providing homes to people from Ukraine as a Super Sponsor. The Ukraine Extension Scheme allows a Ukrainian national, their married, civil

or durable partner or child who had permission to be in the UK on 18 March (including those who have overstayed by a short period) to stay in the UK. All three routes are fee-free and successful applicants under these schemes will be granted permission for up to 36 months with the right to work, study and access to public funds.

The UK Government has indicated that up to 100,000 people could travel to the UK through the Ukraine Family Scheme. They will be able to access public funds and services, including housing and homelessness assistance<sup>1</sup>. The numbers of people travelling to the UK via the Homes for Ukraine Sponsorship Scheme are not yet known, but given the scale of the military conflict, the UK could see many thousands of applications from Ukrainian nationals. Little information is currently known about Ukrainian nationals in the UK who will benefit from the Ukraine Extension Scheme.

The 2022 Regulations also make eligible for housing and homelessness assistance those persons who are not subject to immigration control but who have arrived from Ukraine where they left in connection with the Russian invasion on 24 February 2022. Persons in this group would usually need to wait to be eligible as they would not immediately satisfy the habitual residence test. Due to the amendments they not be required to satisfy this test and they too will be eligible from day one.

The Regulations will support the Welsh Government's commitment to promote Wales as a globally responsible nation and that of a nation of sanctuary, through its International Strategy. The human rights and individual freedoms of the people in Ukraine are now at considerable risk because of the war and whilst many other European countries are offering support, the numbers in need of sanctuary require a Welsh response too. The Welsh Government is also concerned about the vulnerability of those who may come to Wales, as most, at least initially, will be women and children, which differs from traditional cohorts of refugees and asylum seekers who tend to be men. Consequently, people from Ukraine may face greater risk of exploitation without access to housing and homelessness assistance.

The Regulations support the Welsh Government's objective of ending homelessness in Wales. Without the regulations in place, people coming to the Wales from Ukraine, and those from Ukraine currently in Wales without eligibility for housing and homeless assistance, will be at greater risk of becoming homeless. This would contradict current homelessness policy and the Welsh Government's ambition of ending homelessness in Wales and when that is not possible ensure that it is brief, rare and non-recurring.

## **5. Consultation**

Due to the speed at which the Ukraine Schemes have been established there has not been time to consult on this aspect of the Regulations. However, as the Ukraine Schemes are a product of reserved UK Government policy

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<sup>1</sup> [Home Secretary statement on humanitarian support for Ukrainians - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/home-secretary-statement-on-humanitarian-support-for-ukrainians)

(immigration), it would not be possible to undertake a meaningful consultation on alternative approaches, as the effect of the 2022 Regulations is to ensure consistency between Welsh housing law and immigration law.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **6. Options**

The Welsh Government has considered two options to address the needs of people coming to Wales via the Ukraine Schemes. However, it should be noted that due to the very low number of people anticipated to be affected, we have not undertaken analysis on the costs and benefits for those who come to Wales who:

- are not subject to immigration control and fall outside the Ukraine Schemes, or
- form part of the cohort of people who benefit from the Ukraine Extension Scheme.

Option 1: Business as usual – Maintain the status quo, meaning that people coming to, or who are already in Wales, via the Ukraine Schemes, and also those not subject to immigration control who fall outside the Ukraine schemes will have to manage without access to housing or housing assistance.

Option 2: Make the legislation (the preferred option)

### **7. Costs and benefits**

Option 1: Business as usual

This is the baseline option and as such there are no additional direct costs or benefits associated with this option. However, as the UK Government has made it possible for people coming to Wales via the Ukraine Schemes to obtain benefits, this policy option could be found to be unfair given its application in other parts of the UK.

Option 2: Make the legislation

As outlined in section 4 of Part 1, the UK Government has not placed a cap on the number of people who can come to the UK through the Ukraine Schemes. However, they have indicated that 100,000-200,000 people may travel to the UK in order to flee the war in Ukraine. The Ukraine Schemes will allow them to access public funds and services, including housing and homelessness assistance<sup>2</sup>.

Alternative migration options will be available and despite the factors which would push individuals to move to the UK, many will wish to remain in Ukraine, or within a neighbouring country, as has been demonstrated by the numbers of Ukrainian people who have fled the war to Poland, Hungary, Slovakia, Romania and Moldova, as well as other European countries<sup>3</sup>. Estimating migratory patterns and how that will apply to Wales is therefore uncertain. No data has been collected yet by the UK Government on the preferred or intended

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<sup>2</sup> [Home Secretary statement on humanitarian support for Ukrainians - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/home-secretary-statement-on-humanitarian-support-for-ukrainians)

<sup>3</sup> <https://data2.unhcr.org/en/situations/ukraine/location?secret=unhcrrestricted>

destinations to which applicants will wish to move and the Explanatory Memorandum can only speculate where they may end up.

The Ukrainian diaspora within England and Wales is relatively small. Pre-released 2021 Census data<sup>4</sup> found that 530 people living in Wales reported as being born in Ukraine; that number is 37,530 for England and Wales. London and south east England have larger numbers of people born in Ukraine and the cohort coming through the Ukraine Schemes may not be drawn to Wales in as many numbers as those other regions. However, what ultimately informs decisions is unknown.

A simple calculation based on Wales' population compared to the rest of the UK<sup>5</sup> and based on the 100,000-200,000 people the UK Government consider may come to the UK, could mean that between 5,000-10,000 people move to Wales in 2022. However, for the purpose of the Regulations, the relevant calculation is the proportion of the people who then require housing or homelessness assistance.

Welsh Government data on homelessness outcomes for 2020-21<sup>6</sup> showed that the 12,708 people were provided with preventative assistance or relief, in accordance with duties under the Housing (Wales) Act 2014, representing 0.4% of Wales' population. If that proportion is applied to the Ukraine cohort who may end up in Wales and subsequently requiring assistance, 200-400 individuals arriving may be affected. However, the Ukraine cohort, having come to Wales from a place of war are particularly vulnerable to becoming homeless despite the anticipated welcome they should receive. Many will arrive, potentially disorientated from the trauma of leaving their homes, family members and support networks, having to start new lives in unfamiliar settings and circumstances. They could also have few possessions beyond what is carried in suitcases and funds potentially limited to savings, which given the differences of income<sup>7</sup> between the UK and Ukraine, will have less value than in Ukraine. With a large number of families having been separated, there will be a reliance on benefits and few may find employment immediately. The Welsh Government and partners involved with supporting individuals and families will seek to mitigate these factors, but doing so will be challenging given the nature of the crisis. Consequently, a worst case estimate of 600-1200 individuals requiring homelessness assistance is provided at Table 1 of costs which may be incurred.

Estimates within the Explanatory Memorandum for the Housing (Wales) Act 2014 calculated costs to local authorities providing homelessness services to applicants for the 2015-16 period. These costs have been updated to reflect

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<sup>4</sup> [CT21\\_0001 - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

<sup>5</sup> Wales' population was estimated as of mid-2019 to be 3,152,879, representing 4.7% of the UK's population of 66,796,807. This is rounded up to 5% for this assessment: National level population estimates by year, age and UK country

<https://stats.wales.gov.wales/Catalogue/Population-and-Migration/Population/Estimates/nationallevelpopulationestimates-by-year-age-ukcountry>

<sup>6</sup> [Households for which assistance has been provided by outcome and household type \(gov.wales\)](https://gov.wales)

<sup>7</sup> [GDP per capita, 2020 \(ourworldindata.org\)](https://ourworldindata.org)

inflation during the intervening period and are used in this RIA to estimate the cost a local authority might incur if any coming to Wales through the new immigration route were to apply for housing or housing assistance.

This provision of homelessness services would involve an initial assessment for those applicants that are either not homeless or ineligible for assistance. The cost of this assessment was assumed to be £428.40 per “ineligible” applicant and £214.20 for an individual who was considered as “not homeless”. When fulfilling the prevention duty as prescribed by the 2014 legislation, costs were estimated to be £1,112 per applicant.

There is a duty to relieve homelessness to applicants for whom prevention fails or who are deemed to be homeless upon presentation. The duty to relieve homelessness is assumed to have no additional cost for those applicants who have already been through the prevention duty.

For cases in which the duty to relieve homelessness is not successful, applicants who may be considered as “eligible, homeless, in priority need and unintentionally homeless” and for whom action to relieve homelessness is unsuccessful, will be entitled to a full duty at a cost of £2,274 per applicant (£2,702.40 less the cost of an assessment of £428.40). Estimated costs are shown in Table 1.

Table 1: Estimated cost to local authorities from homelessness services

	600 applicants per year	1,200 applicants per year
£428.40 per “ineligible” applicants	£257,040	£514,080
£214.20 per applicant considered as “not homeless”	£128,520	£257,040
£1,112 per applicant eligible to assistance in accordance with the prevention duty	£667,200	£1.334m
£2,274 per applicant who may be considered as “eligible, homeless, in priority need and unintentionally homeless”	£1.364m	£2.728m

People coming to the UK through the Ukraine Schemes are likely to be housed temporarily by family members or a sponsor and where needed will be able to access public funds such as benefits. As applicants for housing or homelessness assistance coming via the Ukraine Schemes will not need to demonstrate they are habitually resident within the UK, they will be able to access support earlier than they would have otherwise been able to do.

Given the rapidity of the development of this area of policy, it is not yet possible to confirm if costs for those coming to the UK will be met by the UK Government or fall to local authorities. However, once it is possible to draw on benefits, such as Universal Credit, some families may be able and decide to look for a home within the private rented sector, whilst others might apply for

social housing. It is difficult to predict the preferred choices that individuals will take at this stage.

A proportion, not yet known, of people coming to Wales will be in family groups. Typically, Ukrainian households are similar in size (2.5 members/household) to most European countries to traditional European households, for example, the average size for the UK is 2.3 members/household<sup>8</sup>. Assuming that 50-75% of the 5,000-10,000 people coming to Wales are families, 2,500-7,500 homes may be required.

Based upon general estimates calculated by reviewing management data, local authority colleagues have indicated that the processing of a housing application would range from £400-£800. Assuming that a large proportion (75%-90%) of the estimated 2,500-7,500 homes required are provided through social housing, those costs might range from £750,000 to £5.4m. We cannot yet predict the costs of those who apply to the Homes for Ukraine Sponsorship Scheme and Ukraine Extension Scheme.

With between 1.06% and 3.2% of the total social housing stock in Wales<sup>9</sup> potentially required for people arriving from Ukraine, impacts will be experienced for those already in housing need. The Welsh Government is working actively with housing partners to identify how to maximise the use of existing housing and increase the volume where this is possible.

Table 2: Estimated costs from social housing applications

2,500 homes needed	Lowest cost (£400)	Highest cost (£800)	7,500 homes needed	Lowest cost (£400)	Highest cost (£800)
75% or 1,875 applications	£750,000	£1.5m	75% or 5,625 applications	£2.25m	£4.5m
90% or 2,250 applications	£900,000	£1.8m	90% or 6,750 applications	£2.7m	£5.4m

## Benefits

Section 4 of Part 1 of the Explanatory Memorandum outlines the justification for making the Regulations. The Welsh Government considers that the extending eligibility to housing and homelessness assistance people coming to Wales from Ukraine will help reduce this risk or homelessness, and should it occur, ensure that it is brief, rare and non-recurring. The safeguard provided by the Regulations will help demonstrate Wales' reputation as a safe and welcoming country.

<sup>8</sup> [household size and composition around the world 2017 data booklet.pdf](#)

<sup>9</sup> <https://statswales.gov.wales/Catalogue/Housing/Social-Housing-Stock-and-Rents/TotalSocialHousingStock-by-Area-ProviderType>

The benefits of preventing homelessness extend well beyond the actual, additional, costs of helping people who are homeless, for example, the cost of providing them temporary accommodation. Effective homelessness services can provide benefits that may last someone's lifetime. They include better health and well-being, child development and education, and adults' participation in the labour market. As a result, the demands on some services, local authority homelessness services and the NHS and social care services for example, can be reduced.

Benefits of effective action will contribute to the achievement of several Welsh Government Acts, such as the Social Services and Well-being (Wales) Act 2014, Well-being of Future Generations (Wales) Act 2015, and the Ending Violence against Women and Domestic Abuse (Wales) Act 2015.

## **8. Competition Assessment**

Not applicable.

## **9. Post implementation review**

Not applicable.