

PARLIAMENTARY BUREAU: APPROVAL OF AFFIRMATIVE SCOTTISH STATUTORY INSTRUMENTS

Background

1. As part of its response to supporting those arriving in Scotland from Ukraine, the Scottish Government has laid two affirmative SSIs which it proposes come into force this week. This paper contains details of these instruments, and the proposed process for their consideration.
2. A letter from Gerard Hart, Chief Executive, Disclosure Scotland to the Convener of the Delegated Powers and Law Reform Committee, explaining why the Government are requesting an expedited approval process for the instruments is attached in the Annex. One of the SSIs referred to in the letter is a negative instrument (The Police Act 1997 (Criminal Records) (Scotland) (Homes for Ukraine Sponsorship Scheme) Amendment Regulations 2022), which does not require Parliamentary approval and can be considered by the relevant Committees in the usual way.
3. In his letter, he explains that the “three instruments laid today will work together to increase the options for safely housing Ukrainian people fleeing conflict. We seek to deliver these instruments urgently as significant numbers of displaced people are due to arrive in Scotland soon; applications are now turning into visas and people are on the move.” He also states that they will ensure the “appropriate level of disclosure check can be undertaken on all individuals who are being assessed as suitable to provide accommodation under the scheme.”

[The Private Landlord Registration \(Modification\) \(Scotland\) Order 2022 \(SSI 2022/draft\)](#)

4. This order was laid on Friday 6 May and the Scottish Government has requested that it subject to Parliamentary Approval on Wednesday 11 May for the reasons set out in the attached letter. [The Policy note for the order](#) explains that it will exempt people who offer their second homes for free as part of Homes for Ukraine Scheme, from having to register under Landlord Registration (£350 a month gift from the UK Government is not classed as rent). The purpose is to simplify the process and reduce administrative burdens and costs for those seeking to help, and increase the number of properties being offered through the scheme and so support more Ukrainians fleeing conflict.
5. The Delegated Powers and Law Reform Committee will consider the instrument at its meeting on Tuesday 10 May.
6. The Local Government, Housing and Planning Committee is content, given the urgent nature of the instrument, for the Bureau to recommend that the instrument go straight to the Chamber before it can be considered by the Committee.

[The Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Homes for Ukraine Sponsorship Scheme\) \(Scotland\) Amendment Order 2022 \(SSI 2022/draft\)](#)

7. This order was laid on Friday 6 May and the Scottish Government has requested that it is subject to Parliamentary Approval on Wednesday 11 May for the reasons set out in the attached letter. The [policy note explains that the order](#) amends the Rehabilitation of Offenders Act (Exclusions and Exceptions) (Scotland) Order 2013 SSI (2013/50) (“the 2013 Order”) to bring all individuals who are offering to provide accommodation (and those individuals over the age of 16 years where they, and the individual offering the accommodation, reside within the accommodation to be provided) to a person who has permission to enter into or to stay in the United Kingdom granted under immigration rules in relation to the Homes for Ukraine Sponsorship Scheme within the excluded circumstances set out in schedule 3 of the 2013 Order.
8. The Delegated Powers and Law Reform Committee will also consider this instrument at its meeting on Tuesday 10 May.
9. The Criminal Justice Committee is content, given the urgent nature of the instrument, for the Bureau to recommend that the instrument go straight to the Chamber before it can be considered by the Committee.

Decision

10. In order for the intended timescales to be met, the Bureau is invited to consider recommending to the Parliament that—
 - the instruments be referred to the Parliament and taken on Wednesday 11 May.
11. The Bureau is invited to approve of this expedited process for these SSIs.

Parliamentary Business Team May 2022

Annex: Letter from Gerard Hart, Chief Executive, Disclosure Scotland to the Convener of the Delegated Powers and Law Reform Committee

Dear Stuart McMillan MSP

- **THE POLICE ACT 1997 (CRIMINAL RECORDS) (HOMES FOR UKRAINE SPONSORSHIP SCHEME) (SCOTLAND) AMENDMENT REGULATIONS 2022**
- **THE REHABILITATION OF OFFENDERS ACT 1974 (EXCLUSIONS AND EXCEPTIONS) (HOMES FOR UKRAINE SPONSORSHIP SCHEME) (SCOTLAND) AMENDMENT ORDER 2022**

- **THE PRIVATE LANDLORD REGISTRATION (MODIFICATION) (SCOTLAND) ORDER 2022**

We have worked at pace over the past two months since the Ukraine sponsorship schemes were announced by the UK Government to understand what is needed and respond to novel issues arising whilst the scheme develops.

The three instruments laid today will work together to increase the options for safely housing Ukrainian people fleeing conflict. We seek to deliver these instruments urgently as significant numbers of displaced people are due to arrive in Scotland soon; applications are now turning into visas and people are on the move. The Scottish Government is determined to ensure safe accommodation options are in place for them.

These instruments are required to come into force urgently to ensure that the appropriate level of disclosure check can be undertaken on all individuals who are being assessed as suitable to provide accommodation under the scheme. This will ideally occur in advance of the matching of hosts to displaced people taking place. Bringing the instruments into force this week will ensure that agencies placing refugees with sponsors can access the right level of criminal history information and be better equipped to make appropriate placement decisions.

The Scottish Parliament previously considered and approved the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022 and the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022. These came into force on 24 March 2022. These instruments provided for Enhanced Disclosure checks with suitability information for individuals offering to provide accommodation within their own homes (that is, accommodating displaced people in the same dwelling that they themselves reside in). These checks were for the host and for all individuals over the age of 16 years also residing within the accommodation. This was done with urgency as there was no provision in disclosure legislation to carry out Enhanced Disclosure checks in such circumstances yet displaced people were already being matched with unchecked hosts under the Homes for Ukraine scheme commenced by the United Kingdom government.

The policy position has since developed. Alongside those offering to host in their own family dwellings, a second type of host has emerged; those with separate properties that can be voluntarily given over to accommodate displaced Ukrainians. However, using these properties under the Homes for Ukraine Sponsorship Scheme will not confer upon the displaced persons the status of a tenant nor any of the protections that accompany that status. Therefore individuals offering whole properties under the scheme could conceivably enter these homes at will, even whilst displaced persons were living in the property. The Scottish Government therefore considers that there is a risk that this could attract individuals who are seeking to exploit this opportunity to gain access to vulnerable people for improper purposes and intentions.

Allowing enhanced disclosure checks with suitability information for individuals offering such accommodation under the scheme will help screen out those with an inappropriate background and therefore protect displaced Ukrainian people. Those

arriving in Scotland are predominantly women, children and older people. Many will be vulnerable due to trauma, displacement and having insufficient support networks.

The Police Act 1997 (Criminal Records) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Regulations 2010 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Homes for Ukraine Sponsorship Scheme) Scotland Amendment Order 2022 are required to change disclosure requirements in this domain.

The disclosure regime in Scotland has two broadly aligned parts: self disclosure and state disclosure. The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”) regulate the self-disclosure obligation that is placed on an individual to admit to previous convictions, if asked to, in certain prescribed circumstances. State disclosure serves to verify that duty of self-disclosure. Disclosure Scotland is an Executive Agency of the Scottish Ministers. It carries out functions on behalf of the Scottish Ministers under the Police Act 1997 (“the 1997 Act”) and the Protection of Vulnerable Groups (Scotland) Act 2007 in relation to the disclosure of conviction information and other criminal history.

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Order 2022 will bring all individuals seeking to provide accommodation to persons with permission to enter into or to stay in the United Kingdom (granted under immigration rules in relation to the Homes for Ukraine Sponsorship Scheme) within the excluded circumstances which require self-disclosure as set out in schedule 3 of the 2013 Order. This is so that the appropriate level of vetting checks may be conducted in relation to individuals who are offering to provide accommodation (and those individuals over the age of 16 years where they, and the individual offering accommodation, reside within the accommodation to be provided) under the Homes for Ukraine Sponsorship Scheme.

Connected amendments to the statutory framework in relation to state disclosure are being made by the Police Act 1997 (Criminal Records) (Scotland) (Homes for Ukraine Sponsorship Scheme) Amendment Regulations 2022. This extends the categories of individual of whom may be asked an exempted question for the purpose of carrying out an Enhanced Disclosure check with suitability information relating to children and adults. The categories will now include individuals who are offering to provide accommodation (and those individuals over the age of 16 years where they, and the individual offering accommodation, reside within the accommodation to be provided) under the Homes for Ukraine Sponsorship Scheme.

The SSI amending Private Landlord Registration will exempt people offering their second homes for free as part of Homes for Ukraine Scheme from having to register under Landlord Registration (the £350 a month ‘thank you’ payment from the UK Government is not classed as rent). The purpose here is to simplify the process and reduce administrative burdens and costs of registering as a landlord for those simply seeking to help. Doing so may increase the number of properties being offered through the scheme and therefore support more Ukrainians fleeing conflict. The original regulations introduced a couple of weeks ago were paused whilst we

undertook further examination of how the instrument worked with disclosure checks. If it had gone ahead there would have been no legal basis to carry out a disclosure checks on the people offering whole properties through the Homes for Ukraine Scheme, potentially risking vulnerable people from being targeted through the scheme. This is why we have refined the policy to provide for this important aspect.

Enhanced Disclosure is appropriate as there is a risk that those with bad intentions could come forward to offer accommodation under the false pretence of supporting displaced people. As stated above, there will be no lease terms in place that would in most cases prohibit a landlord from accessing property with a sitting tenant. There is emerging evidence that those risks are actually materialising in other parts of the UK, and information of concern has already been identified by Disclosure Scotland in checks already underway on those offering accommodation within family homes. The optimal position is that everyone who wants to host displaced Ukrainian people should have an Enhanced Disclosure carried out.

In summation, we deem that these instruments must come into force urgently because displaced Ukrainians are now arriving in Scotland and in significant numbers. We must- move quickly to get all housing options quickly in place. We must be able to discourage inappropriate accommodation providers from operating to the detriment of these people.

These instruments will increase safe housing options within the Homes for Ukraine Scheme by:

- enabling enhanced disclosure checks with suitability information for individuals offering accommodation (and those individuals over the age of 16 years where they, and the individual offering accommodation, reside within the accommodation to be provided) under the Homes for Ukraine scheme.
- exempting second property owners who have no intention of becoming a professional landlord in order to attract more such properties into the scheme.

Gerard Hart
Chief Executive, Disclosure Scotland