

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 17 FEBRUARY 2022 (CP 632)**

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Immigration Rules, made under sections 1(4) and 3(2) of the Immigration Act 1971, that are used to regulate people's entry to, and stay in, the United Kingdom.
- 2.2 The changes being made deliver closure of the Tier 1 (Investor) immigration route to new applications.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments OR the Select Committee on Statutory Instruments OR the Sifting Committees]

- 3.1 This Statement of Changes in Immigration Rules has immediate effect and therefore departs from the usual convention that changes to the Immigration Rules come into force no earlier than 21 days after their being laid in Parliament.
- 3.2 The Government considers this departure from that convention to be necessary and proportionate for reasons of national security and the operation of the immigration system, and to be consistent with the purpose of the closure of the Tier 1 (Investor) route to new applicants. It is anticipated that closure of the route with 21-days' notice, or less, would trigger a "closing down sale" effect, involving a very substantial upturn in application levels in advance of closure. It is, moreover, anticipated that this effect would be most likely to feature a high proportion of applications from individuals that represent some degree of potential harm. A similar "closing down sale" effect was triggered by anticipated reforms in the wake of a Migration Advisory Committee report in 2014.

4. Extent and Territorial Application

- 4.1 The territorial extent of this Statement of Changes in Immigration Rules is all of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As this Statement of Changes in Immigration Rules is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Immigration Rules, as laid before Parliament by the Secretary of State, constitute a statement of practice to be followed in the administration of the Immigration Act 1971 for regulating the entry into, and stay of, persons in the United Kingdom.
- 6.2 This Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules. This can be found on the GOV.UK website, where all the Statements of Changes in Immigration Rules issued since May 1994 are published.
- 6.3 These changes will be implemented from 1600 on 17 February 2022 as detailed in the implementation section of the accompanying Statement of Changes.

7. Policy background

- 7.1. The effect of this Statement of Changes in Immigration Rules is to close the Tier 1 (Investor) Migrant route, as set out in Part 6A of the Immigration Rules, to new applications. These changes preserve the ability of those who already have leave to enter or remain as a Tier 1 (Investor) Migrant to extend their stay in the route, including an applicant's ability to make an application for entry clearance outside the UK if they have held leave as a Tier 1 (Investor) Migrant in the 12 month period preceding the date of application, and to apply for settlement. The Statement of Changes in Immigration Rules also makes consequential changes to Appendix A of the Immigration Rules, which concerns the awarding of points for the purposes of applications under this route.
- 7.2 The Tier 1 (Investor) Migrant route is being closed to new applications because the Government considers the economic benefit of the route to the United Kingdom to be small, and because any economic benefit that does accrue to the United Kingdom from the operation of the route is not sufficient to mitigate longstanding concerns that the route has been vulnerable to exploitation by those seeking to transfer illicitly obtained wealth to the United Kingdom and by those accessing complex investment schemes apparently in order to circumvent the genuine investment requirements of the route.
- 7.3 The economic benefits of the route have been the subject of a report by the Migration Advisory Committee, which found that any economic benefits arising from the route accrued principally to those granted entry and stay under the route, rather than to the United Kingdom as a whole. While the minimum investment threshold for the route was subsequently increased from £1m to £2m, Home Office analysts have reviewed a sample of Tier 1 extension applications granted in 2019, which suggested that only a very small minority of cases could be classified as contributing to Foreign Direct Investment, the form of inward investment thought to provide the most direct positive contribution to the UK economy.
- 7.4 The association between the route and the movement of illicitly obtained wealth to the United Kingdom has been the subject of ongoing Parliamentary and media scrutiny, including the Intelligence and Security Committee's Russia report. While there have been reforms to the route aimed at reducing this exposure, including a requirement

that funds relied upon for the purposes of applications under the route are the subject of due diligence by UK banks, it is not judged that these are sufficient to address the risk of the route being used to transfer illicitly obtained wealth.

- 7.5 In addition, it remains an ongoing concern that the route is vulnerable to exploitation by those marketing complex investment arrangements in order to facilitate entry under the route without making any genuine investments in the UK.
- 7.6 The Government intends to make future alternative provision for investment-related migration through reforms to the existing Innovator immigration route. This will make more targeted provision for investment-related migration, offering a route for entry and stay for overseas nationals with a track record of investment activity overseas and credible plans to engage in such activity. It is expected that these new arrangements will be delivered through further changes to the Immigration Rules in Autumn 2022.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Government has committed to the consolidation of the Rules as part of its response to the Law Commission recommendations on simplifying the Immigration Rules.

10. Consultation outcome

- 10.1 The changes in this Statement have not been the subject of a formal public consultation, as this would be disproportionate given the nature of the changes. Furthermore, as outlined above the Government has not wished to signal closure of the route.
- 10.2 Temporary guidance relating to these Rules changes will be updated and placed on the GOV.UK website on 17th February 2022, when these changes take effect, and full guidance will be updated as soon as possible.

11. Impact

- 11.1 There is no, or no significant, impact on business, charities or voluntary bodies. As outlined above, the operation of the Tier 1 (Investor) route is of marginal impact in terms of foreign direct investment in the UK economy. The Home Office has self-certified that the direct impacts to British business and the government do not meet the threshold for a regulatory impact assessment.

11.2 There is no, or no significant, impact on the public sector.

12. Regulating small business

12.1 There is no, or no significant, impact on activities that are undertaken by small businesses.

13. Monitoring & review

13.1 The approach to the monitoring of these changes is to review the operation and effect of all of the relevant Immigration Rules, including any Rules amended or added to by the changes in this Statement, and lay a report before Parliament within five years of 6 April 2017, and within every five years after that. Following each review, the Secretary of State will decide whether the relevant Immigration Rules should remain unchanged, be revoked or amended. A further Statement of Changes would be needed to revoke or amend the relevant Rules.

13.2 A review provision is included in the instrument.

14. Contact

14.1 Specific written queries relating to this Statement of Changes should be directed to Robert Hayes-Walters at StateofChanges@homeoffice.gov.uk. Please note that this mailbox is only for Parliamentary use in relation to specific technical queries regarding the drafting of this Statement of Changes. It is not a contact point for general enquiries. Queries to this e-mail address from outside Parliament about other immigration issues, including how these changes affect applications, will not receive a response.

14.2 More general queries should be directed to the Home Office as per the ‘Contact UKVI’ section on the visas and immigration pages of GOV.UK website.¹

14.3 A copy of this Statement of Changes can be found on the visa and immigration pages of the GOV.UK website.²

14.4 Della McVay, Head of Points-Based System and Economic Migration Policy at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

14.5 Kevin Foster MP, Parliamentary Under Secretary of State (Minister for Safe and Legal Migration) at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

¹ Available at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>

² Available at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>