

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 11 May 2022 (HC 17)**

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 the provisions of Section 1(4) and Section 3(2) in 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 primarily deliver:

- a number of amendments as a result of the Nationality and Borders Act 2022, to implement the reformed asylum system.
- imposing a visa regime on nationals of El Salvador.
- expansion of the electronic visa waiver (EVW) scheme for nationals of Bahrain and Saudi Arabia.
- the introduction of a requirement for parental consent when joining a parent or legal guardian in the UK under the Homes for Ukraine Sponsorship Scheme

2.3 This instrument also makes a series of minor changes to other areas detailed (in paragraphs (7.38 and 7.40) in section 7 of this Explanatory Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The changes to impose a visa regime on nationals of El Salvador will come into effect at 1600 on 11 May 2022, and therefore depart 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 convention to be necessary and proportionate for reasons of safeguarding the operation of the national immigration system. It is anticipated that providing the customary 21-days' scrutiny period before implementing the visa regime would trigger a substantial increase in Salvadorans travelling to the UK and potentially claiming asylum on arrival, before the visa regime comes into force. This would place an unpredictable and potentially unmanageable strain upon the UK's Migration & Borders system. Controlling migration and tackling illegal migration are one of the Home Office's priorities, whilst continuing to respect our international obligations under the Refugee Convention. Requiring Salvadorian nationals to obtain a visa before visiting the UK does not contravene these obligations.

3.3 We will suspend an existing Visa Treaty (1962) between El Salvador and the UK, covering visa free travel between our countries. The treaty allows for an immediate suspension, “on grounds of public policy”.

3.4 The changes to paragraphs:

- 339C(iii)
- 339CA(iii)
- 339J(i) and (iv)
- 339O
- 339P
- 352G

will come into effect at 1600 on 11 May 2022, and therefore depart from the usual convention that changes to the Immigration Rules come into force no earlier than 21 days after their being laid in Parliament.

3.5 The Government considers this departure from convention to be necessary and proportionate to provide clarity to applicants on the circumstances in which they can lodge a claim for humanitarian protection, specifically that a claim can only be brought in relation to an applicant’s country of origin. This is necessary for the effective operation of the Migration and Economic Development Partnership with Rwanda prior to commencement of the other amendments in Part 11 of the Immigration Rules and preventing unnecessary delays to removals. Given the anticipated deterrent effect of the Partnership on people smuggling, this will help to quickly reduce the number of dangerous journeys and save lives. If individuals can make a humanitarian protection claim against country of return (which under the definition would include Rwanda) that would require an assessment of whether an individual is a refugee. That runs counter to the object and purpose of the Partnership, where responsibility for consideration of whether someone is a refugee is to be transferred to Rwanda. The change does not prevent individuals from raising safety concerns about their removal to Rwanda and it is intended that the specific circumstances of any individual will be considered before removal to ensure that removal is safe and meets the UK’s legal obligations.

3.6 The changes in relation to the Homes for Ukraine Sponsorship Scheme will come into effect at 1600 on 11 May 2022, and therefore depart from the usual convention that changes to the Immigration Rules come into force no earlier than 21 days after their being laid in Parliament.

3.7 The Government considers this departure from convention to be necessary and proportionate to respond to the urgent crisis in Ukraine, including by providing clarity on parental consent when a child is coming to the UK to join their parent or legal guardian. It is appropriate to commence the parental consent requirement for the Homes for Ukraine Sponsorship Scheme promptly to provide certainty for applicants and clarity for decision-makers on how to decide applications.

4. Extent and Territorial Application

- 4.1 The territorial extent of this Statement of Changes in Immigration Rules is all of the United Kingdom.
- 4.2 The territorial application 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 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.¹
- 6.3 These changes will be implemented on different dates starting from 6 May 2022 as detailed in the implementation section of the accompanying Statement of Changes.

7. Policy background

What is being done and why?

Changes relating to the Nationality and Borders Act 2022

Changes to implement the reformed asylum system

- 7.1 As a result of the Nationality and Borders Act 2022, a significant number of amendments have been required to the Immigration Rules to implement the reformed asylum system.
- 7.2 Apart from limited circumstances where changes are to take effect at 1600 on 11 May and apply to decisions made thereafter, these amendments will only apply to claims made on or after 28 June 2022. In practice, this will mean that any asylum applicant who has had their claim registered before, or was awaiting an appointment to register their asylum claim before, 28 June 2022, will be considered under the Immigration Rules in place on 27 June 2022.

Inadmissibility provisions

- 7.3 Part 11 of the Immigration Rules (at paragraphs 326C to 326F) currently define an “EU asylum application” and set out the circumstances in which such applications

¹ <https://www.gov.uk/guidance/immigration-rules>

may be declared inadmissible to the substantive asylum process, unless exceptional circumstances apply.

- 7.4 Strengthened inadmissibility provisions for EU asylum claims have been included in the Nationality and Borders Act 2022, rendering the Immigration Rules provisions redundant. As a consequence, these provisions will be deleted.
- 7.5 The current Immigration Rules construe any application for international protection as an asylum application. A consequence of this is that where the asylum claim is treated as inadmissible, so too is any humanitarian protection claim inferred to have been made with it. The addition at paragraph 327F is intended to preserve this position when the inadmissibility provisions relating to asylum claims are moved into primary legislation and deleted from the Immigration Rules.
- 7.6 The requirement that someone must register an application for asylum at a designated location has been transferred to primary legislation via the Nationality and Borders Act 2022. As a consequence, paragraphs 327B to 327D have been removed as they have become redundant. Paragraphs 327AB and 327AC provide clarification as to when an application for asylum will be accepted as being valid and when it will be rejected. Paragraph 327A has been deleted as who can make an asylum claim and how is now set out in paragraph 327AB.

Changes to improve clarity regarding humanitarian protection claims

- 7.7 The current Immigration Rules do not define a “claim for humanitarian protection”, therefore the Government’s definition of such a claim has clearly been outlined in paragraphs 327EA to 327EC. These additions clarify that a claim for humanitarian protection must meet the validity requirements for an asylum application outlined in paragraph 327AB, as well as explaining that a claim for humanitarian protection must, in the first instance, be treated as an asylum application; thus maintaining the current policy position. In light of these changes paragraph 327 has been amended to remove reference to requests for international protection but to include any humanitarian protection claim deemed to be an asylum claim as a result of paragraph 327EC.
- 7.8 The addition of paragraph 327F ensures that any associated claims for humanitarian protection (a claim made on the same facts as an asylum claim) will be deemed inadmissible where the application for asylum is declared inadmissible in accordance with section 15 or 16 of the Nationality and Borders Act 2022.
- 7.9 Paragraph 338A has been amended so that refugee status will be revoked where any of paragraphs 339A to 339-AC apply, in particular this requires decision-makers to revoke refugee status where paragraph 339AC applies. Changes have been made to paragraph 339AA as a result of the revocation of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, but the change will not have any effect in practice. The application of Article 1F is now dealt with in section 36 of the Nationality and Borders Act 2022. Paragraph 339AB has been updated to clarify that refugee status will only be revoked on the grounds of misrepresentation where the individual does not otherwise qualify for refugee status. Paragraphs 339BA to 339BB have been updated to reflect that the same process must be followed for

revoking refugee status and humanitarian protection, and also outlines the limited circumstances in which the process need not be followed.

- 7.10 Paragraph 339C has been updated as a result of the revocation of the Refugee and Persons in Need of International Protection (Qualification) Regulations 2006. Paragraph 339C has also been amended to say that eligibility for humanitarian protection will be considered in relation to an asylum applicant's return to their "country of origin" rather than their "country of return". Where we are seeking to remove an individual to a country which is not their country of origin, we will continue to comply with our international obligations by not removing them to a country where to do so would breach the UK's obligations under the Refugee Convention or the European Convention on Human Rights.
- 7.11 Paragraph 339D has been updated to align the exclusion criteria of humanitarian protection with that applicable to consideration of refugee status in the UK. Paragraphs 339DA and 339DB are relevant for the interpretation of paragraph 339D. Paragraph 339G has been amended to align with the position explained at 7.13 below for refugee status: humanitarian protection must be revoked by a decision-maker where any of paragraphs 339GA, 339GB or 339GD apply. Paragraph 339GB has been updated to reflect the updated 339D.
- 7.12 Substantive asylum interviews can be omitted in limited circumstances; these provisions have been updated to reflect that a personal interview can be omitted where refugee status or humanitarian protection can be granted, or when the applicant provides minimal evidence in support of their eligibility for refugee status and/or humanitarian protection and in consequence of other amendments to the Immigration Rules.
- 7.13 Section 12 of the Nationality and Borders Act 2022 introduces two groups of refugees. Each group of refugees will be granted a different form of permission to stay. Refugee permission to stay will be granted to Group 1 refugees, whilst temporary refugee permission to stay will be granted to Group 2 refugees. Separately, temporary humanitarian permission to stay will be granted to applicants who qualify for humanitarian protection. Dependants of individuals who are granted protection status and a form of permission to stay on a protection route will normally be granted permission to stay in-line with the asylum applicant. Paragraphs 33QA-339QE set out this new position on permission to stay on a protection route within the Immigration Rules.
- 7.14 Safe third country inadmissibility provisions are currently set out at paragraphs 345A to 345D of the Immigration Rules. They allow asylum applications to be declared inadmissible in defined circumstances, provided the claimant can be returned to a third country, where that country meets defined safety criteria.
- 7.15 Strengthened provisions for processing these cases have been included in the Nationality and Borders Act 2022. The existing provisions at paragraphs 345A to 345C will therefore be deleted, as they will be redundant. Paragraph 345D is amended but substantively retained, to continue to allow any cases that may be formally declared inadmissible to be admitted back into the substantive asylum process if it appears that removal is not likely within a reasonable timescale.

- 7.16 Paragraphs 352AB and 352DA have been added to clarify that Group 2 refugees, granted temporary refugee permission to stay, will be unable to sponsor their family members unless a refusal would breach the UK's international obligations.
- 7.17 The addition of paragraphs 352DB and 352FGA make provision on exceptional circumstances which will cover a range of scenarios currently experienced, or which might expect to be seen in the future that may warrant a grant of leave to enter or remain in the UK for an adult child seeking to join their refugee parent, where the current requirement of the Rules is not satisfied. Leave to enter or remain granted as a result of exceptional circumstances will be the same duration as their refugee parent.
- 7.18 Additions have been made to paragraph 352G to define the terms: 'refugee permission to stay', 'temporary refugee permission to stay' and 'temporary humanitarian permission to stay'. The definitions of 'country of return' and 'Dublin Regulation' have been deleted as they are no longer referenced in Part 11 of the Immigration Rules.

Changes to the settlement protection route

- 7.19 Amendments have been made to Appendix Settlement Protection to make it clear which individuals can apply on the settlement protection route. The changes state that individuals granted refugee status and humanitarian protection following asylum applications made before 28 June 2022 can apply on the settlement protection route after they have had permission to stay on a protection route for five years. For individuals who make asylum applications on or after 28 June 2022, only those granted refugee status and refugee permission to stay can apply on the settlement protection route, after they have had refugee permission to stay for five years.

Minor policy or technical changes on asylum

- 7.20 Changes have been made to the definitions of key terms referenced in Part 11 of the Immigration Rules, for example 'refugee status' and 'humanitarian protection' in order to provide greater clarity. Definitions of 'refugee permission to stay', 'temporary refugee permission to stay' and 'temporary humanitarian permission to stay' have been added to the introductory section of the Rules.
- 7.21 Paragraph 326B has been updated to reflect changes being made to the Immigration Rules relating to Private Life considerations under Article 8 of the European Convention on Human Rights.
- 7.22 Paragraph 329 has been amended to reflect the changes made to section 77 of the Nationality Immigration and Asylum Act 2002 by the Nationality and Borders Act 2022.
- 7.23 Paragraphs 333A has been revised to clarify that an asylum applicant will only be notified of a delay to consideration of their claim and provided with information relating to the timeframe within which a decision is likely to be made where a specific request is made for an update.

- 7.24 Paragraph 334 has been updated to reflect changes made by the Nationality and Borders Act 2022, for example the revocation of the Refugee and Persons in Need of International Protection (Qualification) Regulations 2006 and the redefinition of a ‘particularly serious crime’ for the purposes of Article 33(2) of the Refugee Convention.
- 7.25 Paragraph 335 has been updated to clarify that permission to stay will not be varied following a grant of refugee status if the asylum applicant already has indefinite permission to stay.
- 7.26 Paragraph 339O has been amended consequentially as a result of Section 35 of the Nationality and Borders Act 2022.

Changes to provide clarity and set out some examples of the exceptional circumstances which may lead to a grant of leave to a child seeking to join refugee family in the UK

- 7.27 The Government made a commitment during the passage of the Immigration and Social Security Coordination (EU Withdrawal) Act 2020 to review the safe and legal routes, including refugee family reunion. The subsequent Act Paper, published on 22 July 2021, set out the Government’s commitment to provide additional clarity within the Immigration Rules on the exceptional circumstances which may lead to a grant of permission to a child seeking to join a relative in the UK.
- 7.28 The amendment makes such provision by adding new Rules on exceptional circumstances which include examples of a range of scenarios that may warrant a grant of permission to enter or stay in the UK for a child seeking to join their refugee relative (not immediate family member), where the current requirement of the Rules is not satisfied.
- 7.29 Permission to enter or stay granted as a result of exceptional circumstances will be the same duration as their refugee family member sponsor.

Changes to impose a visa regime on nationals of El Salvador.

- 7.30 Salvadoran nationals have been able to visit the UK without obtaining a visit visa before travel. Salvadorian nationals currently make up the highest number of asylum claims at port amongst non-visa nationals. There were 38 asylum claims made by Salvadoran nationals in 2017. This figure has increased by 1750% to reach 703 in 2021.
- 7.31 Considering the increasing levels of asylum claims, a visa regime is being imposed on El Salvador.
- 7.32 This change includes a transition period for Salvadoran nationals travelling to the UK without a visa. This transition period will commence at the same time as the visa regime is imposed on 11 May 2022, until four weeks after the imposition date, on 8 June 2022. During this period, Salvadorians who hold a confirmed booking to the UK made before 16:00 BST on 11 May 2022, and where arrival in the UK is no later than 8 June 2022, will be exempt from the visa requirement. Those booking on or after 12 May, or due to arrive in the UK on or after 9 June will require a visa.

- 7.33 This transition period will prevent operational difficulties, general unfairness, and ensure that people who arranged travel before this announcement do not lose money. The length of the period (four weeks) has been chosen to give Salvadorans enough time to book and receive a visa. The current service-level agreement for processing times for visit visas is approximately 15 working days.

Changes to allow the citizens of Bahrain and Saudi Arabia access to the electronic visa waiver (EVW).

- 7.34 An EVW is used to make a single-entry, flight-specific trip to the UK. It needs to be completed before each trip and is only applicable for stays of six months or less.
- 7.35 This policy change brings the status of Bahrain and Saudi Arabia in line with other Gulf states (Oman, Kuwait, UAE and Qatar), who already benefit from EVW status.

Introduction of a requirement for parental consent when joining a parent or legal guardian in the UK under the Homes for Ukraine Sponsorship Scheme

- 7.36 A requirement for parental consent for a child applying to join a parent or legal guardian under the Homes for Ukraine Sponsorship Scheme is being introduced. It applies where a child is travelling to the UK without their parent(s) or legal guardian to join a parent or legal guardian in the UK. The consent of the parent or legal guardian in the UK will be required.
- 7.37 The written consent must confirm support for the child’s application, that the child will live with the parent or legal guardian in the UK and the child’s travel to and reception arrangements in the UK.

Minor policy or technical changes to the Rules

- 7.38 A small technical amendment is being made to correct a drafting error to the final three paragraph numbers in “Appendix Global Business Mobility – Service Supplier”.
- 7.39 Minor technical amendments to the Ukraine Extension Scheme in Appendix Ukraine to clarify that a person whose permission expired after 1 January 2022 did not need to be in the UK at that point, and to clarify when children born in the UK can qualify.
- 7.40 Finally, this statement includes small technical amendments to the Statement of Changes to the Immigration Rules (HC 1118) laid on 15 March 2022.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act.
- 8.2 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 Rules changes relating to the Nationality and Borders Act 2022 have not been the subject of a public consultation, as this would be disproportionate given the nature of the changes. Furthermore, the majority of these changes have been made in order to implement the Government's New Plan for Immigration which was publicly consulted on in 2021. Responses to this consultation were considered in policy development, including the drafting of these Immigration Rules.
- 10.2 The other 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.

11. Guidance

- 11.1. Guidance relating to these Rules changes will be updated and placed on the GOV.UK website on the dates these changes take effect.

12. Impact

- 12.1 The shift to EVW for Bahrain and Saudi Arabia will have a positive impact on business, charities or voluntary bodies as it will encourage increased business opportunities.
- 12.2 The imposition of a visa regime on El Salvador will have a positive effect on the public sector as it will significantly reduce the costs of the asylum system.
- 12.3 For all other changes there is no, or no significant, impact on business, charities or voluntary bodies.
- 12.4 For all other changes there is no, or no significant, impact on the public sector.
- 12.5 These Immigration Rules changes implement the provisions in Part 2 of the Nationality and Borders Act 2022. A full Impact Assessment will be published on the Nationality and Borders Act 2022 in due course which will also apply to these Rules changes.

13. Regulating small business

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

14. Monitoring & review

- 14.1 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.

14.2 A review provision is included in the instrument.

15. Contact

- 15.1 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.
- 15.2 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.²
- 15.3 A copy of this Statement of Changes can be found on the visa and immigration pages of the GOV.UK website.³
- 15.4 Sally Weston, Head of Simplification and Systems Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 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.

² Available at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>

³ Available at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>