

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 7 SEPTEMBER 2023 (HC 1780)**

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of His 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 changes to the EU Settlement Scheme and changes to Appendix Electronic Travel Authorisation.
- 2.3 This instrument also makes a series of minor changes to other policy areas, detailed in paragraphs 7.27 to 7.41 of section 7 of this Explanatory Memorandum.

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 None.

4. Extent and Territorial Application

- 4.1 The extent of this Statement of Changes in Immigration Rules (that is, the jurisdiction(s) which the statement forms part of the law of) is all of the United Kingdom.
- 4.2 The territorial application of this Statement of Changes in Immigration Rules (that is, where the statement produces a practical effect) 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 The changes represent a further step in implementing the Law Commission recommendations on Simplifying the Immigration Rules. Simplification is an ongoing process; we intend to publish further simplified rules and hope to consolidate the Immigration Rules in 2024.
- 6.4 The changes will be implemented on various dates from 28 September 2023 as detailed in the implementation section of the accompanying Statement of Changes.

7. Policy background

What is being done and why?

EU Settlement Scheme (EUSS) and EUSS family permits

- 7.1 The Citizens' Rights Agreements (CRAs) require that the UK provides judicial redress for decisions to refuse or remove status under the EUSS, which enables EEA and Swiss citizens resident in the UK by the end of the transition period on 31 December 2020, and their family members, to obtain immigration status. This is provided through the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.
- 7.2 Since 1 November 2018, applicants to the EUSS who are refused on eligibility grounds, or granted pre-settled rather than settled status, have had an additional right of administrative review. There is also currently a right of administrative review against a decision to cancel EUSS status on certain grounds. Dual avenues of redress by way of both appeal and administrative review are not required under the CRAs and are not reflected in other immigration routes.
- 7.3 The changes in respect of Appendix AR and Appendix AR (EU) remove the right of administrative review for all decision types where it currently applies for the EUSS, the EUSS family permit and the S2 Healthcare Visitor visa. The right of appeal against those decisions will be maintained as the mechanism for meeting our obligations under the CRAs. The changes will apply to all relevant decisions made on or after 5 October 2023.
- 7.4 Some minor technical amendments are also being made to the Immigration Rules for the EUSS in Appendix EU to clarify the existing policy position that where a dependent parent or child has already been granted limited leave under Appendix EU, they will not need to evidence dependency for any further applications under Appendix EU. Changes are also being made to the definition of 'required date' in Annex 1 of Appendix EU to clarify that the required date specified in sub-paragraphs (a)(viii) and (ix) of that definition does not apply to applicants relying on being either a person with a Zambrano right to reside or a family member of a qualifying British citizen.

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

Amendments to the list of public funds in the Immigration Rules

- 7.5 Paragraph 6.2 of the Immigration Rules defines which benefits are a public fund for immigration purposes. A person with a condition on their permission which says they cannot access public funds (NRPF- NO RECOURSE TO PUBLIC FUNDS) is restricted from accessing the benefits included in this list. Public and parliamentary engagement has reinforced the need to ensure a clear and consistent approach to migrants' access to benefits across the UK. The amendments to the list of public funds will include new Social Security Scotland benefits and clarify existing DWP and DLUHC benefits.

Enhancements to the Youth Mobility Scheme (YMS)

- 7.6 The Youth Mobility Scheme (YMS) route implements the international commitments we have made to provide cultural exchange programmes for young people.
- 7.7 The UK's existing reciprocal, bilateral arrangements with Australia and Canada have been enhanced – the age range is being expanded from 18-30 to 18-35 and the length of stay is being increased from 2 to 3 years. The Rules changes bring these enhancements into effect.
- 7.8 A minor technical edit is also being made to clarify the limitations on self-employment on this route.
- 7.9 The UK has negotiated a YMS arrangement with Andorra. Therefore it will be added to the list of countries and territories participating in this route and the Rules will be amended to reflect the requirements for Andorran citizens coming to the UK.

Changes to the long residence rules

- 7.10 In April 2023 the definition of 'lawful residence' for the purposes of long residence was changed to exclude time spent on immigration bail, as a visitor, short-term student, or seasonal worker. The rules are being changed to clarify that this exclusion extends to time spent on previous versions of immigration bail (temporary admission and temporary release) and previous visitor, short-term student visa, or seasonal worker routes.

Introduction of Appendix Children

- 7.11 We are introducing a cross-cutting Appendix Children that will include common requirements for both children applying as dependants of a lead applicant, and children applying in their own right. Common requirements for dependent children relate to age, independent life, care, and relationship requirements. A common parental consent requirement will apply where a child is applying for entry clearance or permission to stay in their own right. No policy changes have been made to these requirements, but this approach will provide clarity and consistency.
- 7.12 Initially this Appendix will apply to the following routes:
- Appendix Child Student

- Appendix Domestic Workers in a Private Household
- Appendix Global Business Mobility – Senior or Specialist Worker
- Appendix Global Business Mobility – Graduate Trainee
- Appendix Global Business Mobility – UK Expansion Worker
- Appendix Global Business Mobility – Service Supplier
- Appendix Global Business Mobility – Secondment Worker
- Appendix Global Talent
- Appendix Graduate
- Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997
- Appendix High Potential Individual
- Appendix Innovator Founder
- Appendix International Sportsperson
- Appendix Representative of an Overseas Business
- Appendix Scale-up
- Appendix Short-term Student (English language)
- Appendix Skilled Worker
- Appendix Start-up
- Appendix Student
- Appendix Temporary Work – Creative Worker
- Appendix Temporary Work – Religious Worker
- Appendix Temporary Work - Charity Worker
- Appendix Temporary Work – International Agreement
- Appendix Temporary Work – Government Authorised Exchange
- Appendix T2 Minister of Religion
- Appendix UK Ancestry

7.13 In future it will be extended to other routes.

Changes to Appendix Electronic Travel Authorisation

7.14 The Government’s main priority is keeping the UK safe. The UK is therefore launching an Electronic Travel Authorisation (ETA) scheme to strengthen the security of our border. The ETA scheme will be launched in October 2023 in a phased manner on a nationality basis and will ultimately apply to all those passengers visiting the UK or transiting through the UK who do not currently need a visa for short stays and do not have any other immigration status before travelling. At present, non-visa nationals (including EEA citizens) coming to the UK for up to six months as visitors (and in limited other categories) can travel to the UK solely on the basis of their nationality, evidenced by their passport or other travel document.

7.15 At present, Appendix Electronic Travel Authorisations stipulate that an application for an ETA may be refused if an applicant has failed to pay charges under relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £500.

- 7.16 This policy change will remove NHS debt as a ground for refusal of an ETA application. The ETA application is intended to be a light touch application, that is processed quickly for the traveller. The current systems in use are not capable of processing information on NHS debt quickly enough to deliver an ETA decision at the required speed. A successful ETA application does not guarantee that an applicant will be granted permission to enter at the UK border. As such, travellers seeking permission to enter the UK who have outstanding NHS debts, and who do not take the necessary steps to settle their debts in advance of travel, may be refused entry at the UK border on arrival.
- 7.17 At present, Appendix Electronic Travel Authorisations stipulates that an applicant who is lawfully resident in Ireland and is travelling to the UK from elsewhere in the Common Travel Area (CTA) does not need to obtain an ETA.
- 7.18 This policy change will clarify that the ETA exemption for applicants lawfully resident in Ireland, who are travelling within the CTA, will require a person aged 16 or over to demonstrate residency in Ireland, if required by a UK official, in order to benefit from this exemption. On 20 July 2023, the Home Office published guidance detailing which documents can be used to demonstrate residency for the purpose of this exemption, including a Permanent Residence Certificate, European Health Insurance Card, Irish driving licence/learner permit, Medical card and GP visit card, National Age card and Irish Residence Permit. The guidance can be accessed here: Electronic Travel Authorisation – Irish resident exemption - GOV.UK (www.gov.uk).

Improving consistency and clarity in Part 9: grounds for refusal

- 7.19 Part 9 sets out general grounds for refusal and currently states that a 10-year re-entry ban applies if someone ‘was deported or removed from the UK’ at public expense. However, the 10-year re-entry ban for those who have been deported was removed from Part 13 as part of the Spring 2023 Rules changes. Therefore paragraph 9.8.7(e) of Part 9 is being amended so that it aligns with Part 13.
- 7.20 Following the Spring 2023 Rules changes, the Rules do not specify an amount of time (10 years or otherwise) following which consideration will not be given to applications for entry clearance or permission to enter. There is no minimum period provided in the Rules for the maintenance of the deportation order and therefore having a minimum 10-year period for refusing entry clearance or permission to enter in Part 9 is inconsistent with the new Part 13.

Changes to improve clarity and consistency

- 7.21 We are adding an ‘Appendix Returning Resident’ to the Immigration Rules. This appendix replaces paragraphs 18, 18A, 19, 19A and 20 in Part 1 of the Immigration Rules. These changes provide clarity and consistency on the requirements for entry clearance as a Returning Resident.
- 7.22 We are updating paragraph A34 to set out which routes remain subject to paragraph 34A and 34B.

- 7.23 We are updating Appendix English Language to allow an applicant in an additional 6 routes to demonstrate they meet the English Language requirement if they have a GCSE, A level, Scottish National Qualification at level 4 or 5 or Scottish Higher or Advanced Higher in English. The 6 additional routes are Appendix Representative of an Overseas Business, Appendix T2 Minister of Religion, Appendix UK Ancestry, Appendix Global Talent, Appendix Domestic Workers in a Private Household and Appendix Hong Kong British National (Overseas).
- 7.24 We are replacing rules A39, B39 and C39, and Appendix T with a new Appendix Tuberculosis, which provides greater clarity and consistency on the TB requirement, and are making associated consequential changes to individual routes where the new Appendix Tuberculosis will apply in place of the current rules.

Bringing the 2009 concession for pre-1997 Gurkhas into the Immigration Rules and extending it to cover a new route for members of Hong Kong military units, and their families, to settle in the UK.

- 7.25 The 2009 concession enabling settlement applications from pre-1997 Gurkhas will be brought into the Rules and at the same time extended to cover pre-1997 members of Hong Kong military units as announced in March 2023.
- 7.26 In March 2023, the Government announced that it intended to enable former members of Hong Kong military units discharged before 1 July 1997 to settle in the UK. This will be done by extending the provisions of the settlement concession that already exists for former Gurkhas and their families to Hong Kong military unit veterans and their families; bringing both cohorts under the Rules provides greater transparency on these routes.

Minor policy or technical changes to the Rules

Government Authorised Exchange (GAE)

- 7.27 A minor amendment is being made to Appendix Government Authorised Exchange to correct a drafting error in GAE 6.1(b).
- 7.28 Updates to Appendix Government Authorised Exchange schemes that will:
- Remove the ‘Scottish Government Interchange Scheme’ that is now redundant.
 - Update the sponsor for the ‘Chevening and Marshall Sherfield Fellowships Programmes’ to British Council.

Appendix International Sportsperson

- 7.29 An update is being made to Appendix Sports Governing Bodies to add “British American Football Association” as the governing body for American Football in England, Scotland, and Wales.
- 7.30 An update is being made to Appendix International Sportsperson to clarify the wording around governing body endorsements.

Changes to the Student and Graduate routes

- 7.31 Technical amendments are being made to the validity section of the rules for Student dependants and Graduate main applicants and dependants to clarify the intention that where an applicant has held permission which relied on scholarship or sponsorship by a government or international scholarship agency, they must obtain consent from that government or agency to extend their permission.
- 7.32 The amendments to ST 28.3 and GR 9.3 will bring the clauses in line with comparable clauses relating to main applicants in Appendix Student and Appendix Child Student. The amendments will make clear that the rule's scope should include dependants who have held permission for which they had applicable sponsorship in the 12 months before the date on which their Student or Graduate application was made.
- 7.33 The amendment to GR 1.5 of Appendix Graduate will bring the clause in line with comparable clauses in Appendix Student and Appendix Child Student. The amendment will make clear that the rule's scope should include students who have held permission for which they had applicable sponsorship in the 12 months before their Graduate application where the sponsorship or scholarship began more than 12 months before the date on which the Graduate application was made.

Minor amendment to Appendix FM-SE

- 7.34 We are removing the requirement to provide "a current Appointment Report from Companies House" in paragraph 9(b)(vi) of Appendix FM-SE. This is because the Companies House Direct (CHD) and WebCheck services that provide the Current Appointment report are closing on 30 November 2023. Users are directed to use "Find and update company information service" instead.

Minor amendment to Appendix FM-SE

- 7.35 Changes to provide that information provided by the applicant on "Evidence of registration with the Registrar of Companies at Companies House" can be used by decision makers to search for the directors of a specified limited company.

Changes to Appendix Finance

- 7.36 Minor update to Appendix Finance to clarify that Short-Term Students (English language) can rely on funds in the account of a parent or legal guardian.

Global Talent

- 7.37 Minor changes to the wording of the Global Talent criteria for science, engineering, humanities, social science and medicine, to add clarity for applicants. These changes have been made at the request of the endorsing bodies to reduce queries and inappropriate applications.

Changes to the Skilled Worker route

- 7.38 Prison service officers are being made eligible for the Skilled Worker route. This occupation meets the skills threshold, and workers can be sponsored where the Civil Service nationality requirements are met.

Updates to the Seasonal Worker Route

- 7.39 A minor technical correction is being made to clarify the minimum 32 hours pay per week requirement for the Seasonal Workers working in Horticulture and seasonal poultry workers.

Minor drafting changes and corrections

- 7.40 Introduce minor drafting changes to improve clarity and ensure consistency of wording within the various routes.
- 7.41 Correct minor drafting errors including those made in the Statement of Changes in Immigration Rules (HC 1496) laid on 17 July 2023.²

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it supports further implementation of the EUSS.
- 8.2 For all other changes, 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.

11. Guidance

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

² <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1496-17-july-2023>

12. Impact

- 12.1 The changes to the Youth Mobility Scheme are likely to have a limited impact on the public sector and no, or no significant, direct impact on businesses, charities or voluntary bodies. As such, an Impact Assessment has not been produced. The new YMS with Andorra and enhancements to the Australia and Canada arrangement are likely to increase volumes, though caps on volumes indicate this increase is likely to be small in the context of the wider immigration system. However, there are likely to be small impacts on the public sector in the form of increased visa fee and Immigration Health Surcharge (IHS) revenue and increased visa processing costs from additional applications.
- 12.2 The changes to the EUSS are estimated to have no, or no significant, direct or indirect impacts on business, charities or voluntary bodies. Removing the right of administrative review (AR) may have impacts on the public sector through a reduction in revenue from ARs lodged and a reduction in costs to process ARs. The reform may result in an increase in volumes of appeals, having impacts on the public sector in the form of increased processing costs associated with appeals.
- 12.3 A full Impact Assessment has not been prepared for the remaining changes in this instrument because:
- There is no, or no significant, impact on business, charities or voluntary bodies, and
 - There is no, or no significant, impact on the public sector.

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 or 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.³
- 15.3 A copy of this Statement of Changes can be found on the visa and immigration pages of the GOV.UK website.⁴
- 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 Rt Hon Robert Jenrick MP, Minister of State (Minister for Immigration) at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

³ Available at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>

⁴ Available at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>