EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 3 NOVEMBER 2016 (HC 667)

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. The main purpose of these changes to the Immigration Rules is to:

- Implement the first of two phases of changes to Tier 2, announced by the Government on 24 March 2016 following a review by the independent Migration Advisory Committee.
- Introduce a new English language requirement at level A2 of the Common European Framework of Reference for Languages for applicants for further leave in the UK as a partner or parent, after completing 30 months here on a 5-year route to settlement under Appendix FM.
- Mandate the refusal of limited or indefinite leave where the applicant has been excluded under Article 1F from the Refugee Convention or under paragraph 339D from a grant of humanitarian protection or is a danger to the security of the UK or, having been convicted by final judgment of a particularly serious crime, is a danger to the community of the UK.
- Clarify when Dublin transfer, safe third country and first country of asylum rules apply and provide a definition of the third country concepts within the Immigration Rules.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

Other matters of interest to the House of Commons

3.2. As this Statement of Changes is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1. 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.

4.2. This Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules, which can be found under the visas

and immigration pages of the GOV.UK website at www.gov.uk/government/collections/immigration-rules where there are also copies of all the Statements of Changes in Immigration Rules issued since May 2003.

4.3. On 23 June 2016, the EU referendum took place and the people of the UK voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

4.4. Articles 25 to 27 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status ("the Procedures Directive") sets out the circumstances under which a Member State can, in addition to applying the Dublin Regulation (343/2003), apply first country of asylum or safe third country concepts.

4.5. The changes to Part 7 set out in paragraph 7.12 of this statement, to Part 8 set out in paragraphs 8.1 to 8.5, 8.7 to 8.12 and 8.14 to 8.16, to Appendix FM set out in paragraphs FM3, FM4, FM6 to FM12, FM16 to FM19, FM22 to FM28, FM30, FM32, FM34, FM36, FM40, FM41, FM44 and FM46, to Appendix FM-SE set out in paragraphs FM-SE1 to FM-SE13, FM-SE15, FM-SE19, FM-SE21 and FM-SE22, and to Appendix O set out in paragraph O1, shall take effect from 24 November 2016 and apply to all applications decided on or after that date.

4.6. The changes to Part 1 set out in paragraph 1.11 of this statement, to Part 3 set out in paragraphs 3.1 and 3.2, to Part 4 set out in paragraphs 4.1 and 4.2, to Part 5 set out in paragraphs 5.1 to 5.8, 5.10, 5.13, 5.14 and 5.21 to 5.29, to Part 6A set out in paragraphs 6A.1 and 6A.2, 6A.4 to 6A.10, 6A.12, 6A.17 , 6A.18, 6A.23, 6A.26, 6A.27, 6A.29, 6A.33, 6A.35, 6A.37 and 6A.38, to Part 7 set out in paragraphs 7.1 to 7.8, 7.11 and 7.13 to 7.17, to Part 8 set out in paragraphs 8.6, 8.13, 8.17, 8.18 and 8.21 to 8.25, to Part 14 set out in paragraphs 14.1 and 14.2, to Appendix Armed Forces set out in AF4 to AF11, to Appendix FM set out in paragraphs FM5, FM14, FM15, FM29, FM31, FM33, FM35, FM37, FM39, FM45, FM47 and FM48, to Appendix FM-SE set out in paragraph FM-SE23, and to Appendix V set in paragraph V.8, shall take effect from 24 November 2016, but will only apply to applications made on or after 24 November 2016.

4.7. The changes to Part 11 shall take effect from 24 November 2016. The changes set out in paragraphs 11.122 and 11.123 shall apply to all asylum claims made on or after 24 November 2016. All other changes to Part 11 shall apply to all decisions made on or after 24 November 2016.

4.8. The changes to Part 6A set out in paragraphs 6A.13 to 6A.16, 6A.19 to 6A.22 and 6A.25 of this statement, to Appendix A set out in paragraphs A32 to A53, to Appendix J set out in paragraphs J1 to J6, and to Appendix K set out in paragraphs K1 and K2, shall take effect from 24 November 2016. However, if an applicant has made an application for entry clearance or leave to remain using a Certificate of Sponsorship that was assigned to him by his Sponsor before 24 November 2016, the application will be decided in accordance with the Immigration Rules in force on 23 November 2016.

4.9. The changes to Appendix A set out in paragraphs A54 to A61 of this statement shall take effect for applications for Certificates of Sponsorship under the Tier 2 (General) limit decided on or after 12 December 2016.

4.10. The changes to Part 6A set out in paragraphs 6A.30 and 6A.31 and to Appendix G set out in paragraph G1 of this statement shall take effect from 1 January 2017.

4.11. The changes to Appendix C set out in paragraph C4 and to Appendix E set out in paragraphs E1 to E3 of this statement shall take effect from 2 January 2017.

4.12. The changes to Appendix FM set out in paragraphs FM1, FM20, FM21, FM42 and FM43 of this statement, and to Appendix FM-SE set out in paragraphs FM-SE14, FM-SE16 to FM-SE18 and FM-SE20, shall take effect from 1 May 2017. However, if the expiry date of the applicant's leave pre-dates 1 May 2017, the application will be decided in accordance with the Immigration Rules in force on 30 April 2017.

4.13. The changes to Part 7 set out in paragraphs 7.9 and 7.10 of this statement, and to Appendix FM set out in paragraphs FM2, FM13 and FM38, shall take effect on the commencement of Schedule 10 to the Immigration Act 2016.

4.14. The other changes set out in this statement shall take effect from 24 November 2016. However, in relation to those changes, if an application has been made for entry clearance or leave to enter or remain or administrative review before 24 November 2016, the application will be decided in accordance with the Immigration Rules in force on 23 November 2016.

5. Extent and Territorial Application

5.1. The extent of this Statement of Changes is all of the United Kingdom.

Other matters of interest to the House of Commons

5.2. The territorial application of this Statement of Changes is all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy Background

What is being done and why

Changes relating to the entry clearance Rules

7.1. A change is being made to the entry clearance Rules to clarify that British nationals without the right of abode require entry clearance in order to enter the UK

for a purpose for which entry clearance is required. The Rules are also being clarified so that applications for visit visas can be made at any post in the world which is designated by the Secretary of State to accept such applications.

Changes to General Grounds for Refusal and suitability requirements

7.2. The Government's policy is that those who:

- Have been excluded under Article 1F from the Refugee Convention or under paragraph 339D from a grant of humanitarian protection; or
- Would have been so excluded but they have never made a protection claim or made an earlier protection claim which was refused without reference to Article 1F or paragraph 339D; or
- Are a danger to the security of the UK; or
- Having been convicted by final judgment of a particularly serious crime are a danger to the community of the UK,

will only be granted leave to remain in the UK where their deportation or administrative removal would breach their human rights. Where that is the case, such individuals will be granted leave to remain outside the Immigration Rules under the "restricted leave" policy.

7.3. Currently, applications for limited or indefinite leave to remain made under the Immigration Rules by those who fall within the scope of the restricted leave policy are refused on a discretionary basis (for example, under paragraph 322(5) in Part 9, or paragraph S-LTR.1.6. in Appendix FM).

7.4. The changes to Part 9, Appendix AF and Appendix FM clarify that applications from such individuals made under the Immigration Rules, whether for limited or indefinite leave to remain, should always be refused. This is for reasons of public interest and public protection and to uphold the rule of law internationally, because they are unwelcome in the UK and are a priority for deportation or removal if and when this is consistent with their human rights. Instead, limited leave will continue to be granted outside the Immigration Rules for as long as their human rights prevent deportation or removal.

7.5. It is only very rarely that individuals subject to the restricted leave policy will be able to show that they should be granted indefinite leave to remain after a long period of lawful residence in the UK because it will be difficult to demonstrate that they are now welcome here and that their individual circumstances outweigh the need to maintain the UK's international reputation as a country that will not provide a safe haven to those who have committed internationally repugnant acts and the need to deter others who have committed such acts from coming to the UK. Where it is appropriate to grant indefinite leave to remain, it will be given on a discretionary basis outside the Immigration Rules and pursuant to the restricted leave policy.

Changes relating to applications and validity

7.6. The rules relating to specified forms and procedures for applications or claims in connection with immigration, previously A34-34I, were complicated and difficult

to interpret in places. They had been iteratively updated and required a wholesale review to make them understandable and user friendly. They have now been redrafted and simplified, and renamed 'How to make a valid application for leave to remain in the UK'. The changes are as follows.

7.7. An application for leave to remain in the UK will, as a result of these changes, now only be valid (subject to some exceptions set out in the Immigration Rules) when the applicant:

- Completes the mandatory sections of the application form.
- Provides any applicable fee (including the Immigration Health Surcharge).
- Provides a valid passport (or other proof of identity) or, where permitted, a valid national identity card or their most recent passport or national identity card, or a valid travel document.
- Provides passport photographs.
- Provides biometric information.

7.8. There is no longer a provision to provide mandatory documents as specified in the Immigration Rules; there were no mandatory documents for the purpose of validation of applications set out under the Immigration Rules and so this requirement is unnecessary.

7.9. The previous rules distinguished between 'online' and 'specified' forms. The reference to 'specified' has been changed to reflect that a specified form is one which has been posted on the visa and immigration pages of the GOV.UK website. Specified forms can be online or paper forms.

7.10. Paragraph 34G has also been redrafted to better reflect how different methods of submitting an application affect the date of application.

7.11. Paragraph 34I has been substituted by 34(1)(c) and included in the rules on how to make a valid application to clarify when a previous version of an application form can be used.

7.12. Paragraph 34H has been deleted as this provision is no longer required.

7.13. Paragraph 34O of the Immigration Rules specifies the method by which an administrative review application must be made. This is by reference to either paragraph 34U, which specifies the online application process, or paragraph 34V, which specifies the postal application process. The online application process is not available for administrative review of entry clearance decisions. However, administrative review applications in respect of eligible entry clearance decision can be submitted by a variety of other methods, including by email. Therefore paragraph 34O has been amended and a new paragraph, 34VA, is being inserted to set out the methods by which an administrative review of an entry clearance decision must be submitted. There is no change to the method by which an application for administrative review of an eligible decision made in the UK or at the border must be made.

7.14. A minor clarification has been made to paragraph 34V(2)(e) because the application form may not specify any mandatory documents which must accompany the application. Some missing words have been added to paragraph 34Q(c) to clarify that the rule is referring to eligible decisions on applications for entry clearance.

Changes relating to the Points-Based System

7.15. Points-Based System applications are normally decided on the basis of the information provided by the applicant before the case is considered. Paragraph 245AA of the Immigration Rules sets out the limited circumstances in which a decision maker may write out to request further evidence from the applicant.

7.16. A change has been made to clarify in what circumstances a document will be considered to be missing from a sequence for the purposes of paragraph 245AA(b)(i) and so may be requested from the applicant. A document will only be considered to be missing from a sequence where the documents at the beginning and the end of a sequence have both been provided and the missing document is within that sequence.

7.17. When further documents have been requested under evidential flexibility, the time period the applicant has to provide the required document has been changed from 7 working days to 10 working days. This is to align it with the time period for responding to a request made under the current paragraph 34C (paragraph 34B from 24 November 2016) of the Immigration Rules.

Changes relating to Tier 1 of the Points-Based System

7.18. Tier 1 of the Points-Based System caters for high value migrants, and currently consists of four active categories: Tier 1 (Exceptional Talent), Tier 1 (Entrepreneur), Tier 1 (Investor) and Tier 1 (Graduate Entrepreneur). It also includes the Tier 1 (General) category, which was closed to new applicants in April 2011 but remains open for settlement applications.

<u>Tier 1 (Entrepreneur)</u>

7.19. The Tier 1 (Entrepreneur) category caters for applicants coming to the UK to set up, take over, or be involved in the running of a business in the UK. The following minor technical changes are being made to this category to clarify various evidential requirements and to correct minor drafting errors:

- An amendment to clarify that applicants supplying third party evidence do not need to meet the requirement for their bank statements to cover a consecutive 90-day period of time.
- An amendment to make clear that applicants who are also accountants cannot sign-off their own accounts and/or funding evidence.
- Making a provision to allow applicants with funding from an endorsed Seed Funding Competition to provide a letter from an authorised official of the fund as confirmation that money is being made available for investment (rather than a letter from an accountant as at present). This brings the provision for funding from endorsed Seed Funding Competitions into line

with the provisions for funding from UK and Devolved Government Departments.
- A clarification that the company's register of members must come from Companies House.
- In response to queries from external stakeholders, minor clarifications are being made to existing Immigration Rules around job creation and evidence to demonstrate Pay As You Earn (PAYE) reporting to HM Revenue and Customs (HMRC).

Tier 1 (Exceptional Talent)

7.20. The Tier 1 (Exceptional Talent) category is for talented individuals in the fields of science, humanities, engineering, the arts and digital technology to work in the UK without the need to be sponsored for employment in a specific post. The following minor technical changes are being made to this category:

- It has been agreed with the Isle of Man Government that the UK Designated Competent Bodies will consider endorsement applications for this category in the Isle of Man. An amendment is being made to specify that the Tier 1 (Exceptional Talent) limit of 1,000 places includes applicants who successfully apply under the equivalent Tier 1 (Exceptional Talent) route in the Isle of Man.
- An amendment which clarifies that evidence originating from the Isle of Man will be acceptable for the purposes of obtaining an endorsement from a Designated Competent Body under these Rules.
- The list of acceptable awards within the film, television, animation, post-production and visual effects industry, for endorsement under the Arts Council England criteria, has been updated.

Changes relating to Tier 2 of the Points-Based System

7.21. Tier 2 of the Points-Based System caters for migrant workers with an offer of a skilled job from a licensed employer. There are four overall categories: General, Intra-Company Transfer (ICT), Minister of Religion, and Sportsperson.

7.22. The Government announced changes to Tier 2 (General) and Tier 2 (ICT) on 24 March 2016 following a review published by the independent Migration Advisory Committee (MAC) on 19 January 2016. The Government announced that the changes would be introduced in two stages, in autumn 2016 and April 2017. This Statement includes the changes announced for autumn 2016, and additional minor changes.

7.23. The changes to each specific category are set out below. In addition, the time given to applicants and sponsors to respond to requests for further information in relation to genuineness assessments in both categories is being reduced from 28 calendar days to 10 working days, for consistency with other similar requirements elsewhere in the Immigration Rules. Minor changes are also being made across both these categories to clarify appropriate rate requirements and replace outdated references to the UK Border Agency.

Tier 2 (General)

7.24. The Tier 2 (General) category is for migrant workers with an offer of a skilled job from a licensed employer which cannot be filled by a resident worker.

7.25. The following changes are being made following the review of Tier 2 by the MAC:

- The salary threshold for experienced workers has been increased to £25,000 for the majority of new applicants (the salary threshold for new entrants has been held at £20,800). An exemption from this increase will apply for nurses, medical radiographers, paramedics and secondary school teachers in mathematics, physics, chemistry, computer science, and Mandarin. The exemption will end in July 2019. For clarity, the salary thresholds are being set out in a new table.
- As a transitional arrangement, the £25,000 threshold will not apply to workers sponsored in Tier 2 (General) before 24 November 2016, if they apply to extend their stay in the category. The Government intends to increase the threshold to £30,000 in April 2017; there will be no such transitional arrangement for workers sponsored in Tier 2 (General) between 24 November 2016 and April 2017 – they will need to satisfy the £30,000 threshold in any future application.
- UK graduates who have returned overseas have been weighted more heavily in the monthly allocation rounds under the Tier 2 limit. Graduates who apply in the UK continue to be exempt from the limit.
- A change is being made to facilitate changes of occupation for applicants sponsored in graduate training programmes. This enables them to change occupation within the programme or at the end of the programme, without their sponsor needing to carry out a further Resident Labour Market Test or for them to make a new application.

7.26. The following additional changes to Tier 2 (General) are being made:

- From April 2017 a change to the Rules around advertising via a milkround will be introduced to close a loophole in which a sponsor can offer a job to a migrant 4 years after carrying out a milkround, without the need for a further recruitment search. Sponsors can continue to rely on a milkround which ended up to 4 years prior to assigning a Certificate of Sponsorship, but only providing the migrant was offered the job within 6 months of that milkround taking place.
- Following a separate review by the MAC on nursing shortages, nurses are being retained on the Shortage Occupation List, but a change is being made to require a Resident Labour Market Test to have been carried out before a nurse is assigned a Certificate of Sponsorship. The rules regarding pre-registration nurses are also being consolidated into a new paragraph 77K in Appendix A.
- To prevent abuse, changes are being made to prevent switching from Tier 4 to Tier 2 where the applicant is relying on a qualification obtained via supplementary study and clarify that an applicant switching from Tier 4

must have studied their course at a UK recognised body or a body in receipt of public funding as a higher education institution.

Tier 2 (Intra-Company Transfer (ICT))

7.27. The Tier 2 (ICT) category supports inward investment and trade by allowing multinational employers to transfer key company personnel from overseas to their UK branch.

7.28. As with Tier 2 (General), a number of changes are being made in response to the review of Tier 2 by the MAC, and have been previously announced. The changes include:

- The salary for short term ICT applicants has been increased to £30,000 for new applicants. A transitional arrangement applies for those already in the UK under the short term route.
- The closure of the Skills Transfer sub-category to new applicants.
- Changes to the Graduate Trainee sub-category. The salary threshold has been reduced from £24,800 to £23,000 and the number of places a sponsor can use has been increased from 5 to 20 per year. As with Tier 2 (General), the salary thresholds are being set out in a new table for clarity.

7.29. In addition, a redundant paragraph relating to time spent working in the UK for the Sponsor is being removed, and amendments are being made to the evidential requirements to more accurately reflect the criteria relating to previous working for a business linked to the Sponsor.

Changes relating to English language requirements for Points-Based System applicants

7.30. A change is being made to Appendix B to be clear that an applicant must provide official documentation produced by UK NARIC to confirm any assessment of their degree by UK NARIC.

Changes relating to the Department for International Trade in the requirements for Points-Based System applicants

7.31. Changes are being made to references to UK Trade and Investment (UKTI), to reflect that UKTI is now a part of the Department for International Trade, and that funding for its global graduate entrepreneur programme is now provided by an external supplier.

Changes relating to Tier 4 of the Points-Based System

7.32. Tier 4 of the Points-Based System is the visa route used by non-EEA students wishing to study in the UK. Tier 4 is comprised of two categories: Tier 4 (General) and Tier 4 (Child). The following changes are being made in Tier 4:

- A minor change is being made to the definition of a UK Recognised Body to reflect a change in ownership of the Tier 4 Postgraduate Doctor and Dentist

Programme from the UK Foundation Programme Office to Health Education South London, and from 1 November 2016 to Health Education England.

- A minor change is being made to replace the name of the law conversion course in Northern Ireland to a Masters in Law following a course name change.
- Under current Tier 4 rules, applicants applying to study a postgraduate qualification in certain sensitive subjects, knowledge of which could be used in programmes to develop weapons of mass destruction or their means of delivery, must apply for an Academic Technology Approval Scheme certificate before they can study in the UK. This requirement also applies to those studying whilst in the UK under work routes. An amendment is being made so that if the dependant of a Points Based Migrant wishes to undertake such a course, they must also obtain such a certificate.
- An amendment is being made to clarify that where an applicant is using as evidence a degree qualification that has been obtained within the UK, this must be a Bachelor's, Master's or PhD qualification, not a qualification equivalent to one of these.
- Under the Tier 4 (General) route, courses must, except in the case of a pre-sessional course, lead to an approved qualification. The definition of an approved qualification, as set out in the Immigration Rules, is being amended to include aviation licences, ratings and certificates issued in accordance with EU legislation by the UK's Civil Aviation Authority. This change is being made to ensure that UK flight schools holding a Tier 4 licence can sponsor international students and deliver courses to them through the Tier 4 system.
- Amendments are being made so where a student is relying on one or more qualifications from one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Ireland; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; or the USA; in support of their application, they must provide original documentation produced by UK NARIC which confirms the assessment of that qualification's equivalent level in the UK.
- Currently applicants applying to undertake a role as a student union sabbatical officer; on the Doctorate Extension Scheme; or as a postgraduate doctor or dentist on a recognised Foundation Programme must demonstrate academic progression. Applicants are exempt if they are applying to re-sit an examination or repeat a module but not exempt if they are applying to extend their leave if they have previously done this. The academic progression rule is being amended to reflect the policy intention that applicants applying in these circumstances should all be exempt from demonstrating academic progression.
- An amendment is being made to allow students to move to a higher level course, and extend their leave from within the UK, where they are studying either an integrated Masters course or an integrated Masters and PhD programme, and are progressing from the lower to higher level qualification.
- Currently a Doctorate Extension Scheme (DES) applicant must show they have up to two months of maintenance funds available. An amendment is being made to simplify this maintenance requirement so that they will always need to demonstrate that they have two months of funds available to

support themselves financially before their salaried full-time work commences.

Changes relating to Tier 5 of the Points-Based System

7.33. Tier 5 of the Points-Based System encompasses the Tier 5 (Youth Mobility Scheme) and Tier 5 (Temporary Worker) categories. The following changes are being made in Tier 5:

- The Immigration Rules are amended to specify new allocations of places to participating countries for 2017 in the Tier 5 (Youth Mobility Scheme) category. The allocations are based on previous levels of take up by British citizens of equivalent schemes offered by participating countries.
- The Rules are amended to provide for the operation of arrangements to manage the allocation of places under the Tier 5 (Youth Mobility Scheme) allocation for Japan, where demand is expected to significantly exceed supply.
- Deemed sponsorship status is conferred upon Taiwan.
- The provisions of the Immigration Rules in respect of maintenance requirements are amended to bring them in line with the equivalent provisions for Tier 2 migrants, providing A-Rated Tier 5 sponsors with the option of certifying maintenance in respect of a Tier 5 migrant by confirming that that they will maintain and accommodate the migrant for the first month of their stay. The rules are also amended to enable a Tier 5 sponsor to certify maintenance in respect of the dependants of a Tier 5 migrant.
- Remove four schemes from the list of Government Authorised Exchange Schemes at Appendix N to the Immigration Rules.

Changes relating to overseas domestic workers

7.34 The Immigration Rules are amended to:

- Remove the upper age limit currently applied to those applying in the Overseas Domestic Worker in Private Household category.
- Clarify the meaning of full-time employment in the context of extension applications made in respect of those admitted in the Overseas Domestic Worker in Private Household category where they were admitted under the Rules in force prior to April 2012.
- Provide for those admitted as an overseas domestic worker to qualify for a grant of leave as a domestic worker who is the victim of slavery or human trafficking where they have been granted discretionary leave immediately following a positive conclusive grounds decision under the National Referral Mechanism.
- Amend the conditions of stay applied to a person granted leave to enter or remain as a Tier 5 (Temporary Worker) where they are a private servant in a diplomatic household.

Safe third country and first country of asylum concepts

7.35. EU law, as set out in the Procedures Directive (2005/85/EC), supports the principles and allows for applications for asylum to be treated as inadmissible where the applicant could safely be returned to a non-EU state that can be considered either a 'first country of asylum' or a 'safe third country'. A first country of asylum is a country where an individual has refugee status or otherwise benefits from protection. A safe third country is a country to which an asylum seeker can safely and reasonably be returned on the basis of some connection to it, e.g. they have resided there.

7.36. The Rules are being clarified so it is clear that where a non-EU third country agrees to take an individual who has an association with that country and the individual will have sufficiency of protection in that third country, the UK will not consider their asylum application. There has been no change to how the Dublin Regulation is implemented but due to the changes required to implement first country of asylum and safe third country concepts Dublin Transfers are part of the new Rule. The revised policy will provide a clear framework of which concept to apply.

The current policy

7.37. The current policy allows for but does not clearly set out within the Rules what first country of asylum or safe third country concepts are. The new Rules and associated guidance will provide clear guidance of the concepts.

Changes relating to administrative review

7.38. Appendix AR to the Immigration Rules sets out the Rules for administrative review including the decisions that are eligible for review.

7.39. The purpose of an administrative review is to assess whether the original decision maker made a case working error in deciding the application. The review is ordinarily based on the evidence originally supplied with the application. Additional evidence may only be submitted in the circumstances set out in paragraph AR2.4 of Appendix AR, with reference to certain sub-paragraphs of AR2.11. Two minor amendments have been made to these Rules.

7.40. Firstly, a change has been made to paragraph AR2.4 to clarify that the reviewer may consider evidence that was not before the original decision maker where either sub-paragraph (a) or (b) applies. There is no need for both sub-paragraphs to apply. This was always the policy intention and the Rule has in practice been interpreted in this way.

7.41. Secondly, a change has been made to remove the reference to paragraph V.9.2 in paragraph AR2.11(a)(iii). Where a person arrives in the UK with leave to enter or remain (including a visit visa) this can be cancelled at the border on grounds which include a change of circumstances since the leave to enter or remain was issued. The effect of including reference to paragraph V9.2 of Appendix V to the Immigration Rules in paragraph AR2.11 is that additional evidence can be considered at administrative review to rebut the finding that there had been a change of circumstances in the case of a visitor. This was an oversight. Passengers other than

visitors whose leave is cancelled on the basis of a change of circumstances are not able to produce additional evidence. The change aligns the treatment of administrative reviews for all those whose leave to enter or remain, or visit visa, is cancelled due to a change of circumstances.

Changes relating to Family and Private Life

7.42. The following changes and clarifications are being made to the Immigration Rules relating to family and private life:

- Include in the transitional provisions in paragraphs A277B and A227C of Part 8 of the Immigration Rules access to the provisions of the child rules under Appendix FM.
- Confirm that a letter confirming the issuing of a Certificate of Eligibility to adopt is required when an entry clearance application involves an inter-country adoption subject to section 83 of the Adoption and Children Act 2002 or the equivalent legislation in Scotland or Northern Ireland.
- Clarify when those who have made false representations or failed to disclose any material fact in a previous application will normally be refused on grounds of suitability.
- Reduce the level of NHS debt from £1000 to £500 as a discretionary basis for refusal on grounds of suitability.
- Introduce from 1 May 2017 a new English language requirement at level A2 of the Common European Framework of Reference for Languages for applicants for further leave in the UK as a partner or parent, after completing 30 months here on a 5-year route to settlement under Appendix FM.
- Clarify that a child is only eligible to apply for entry clearance or leave to enter or remain in the UK under Appendix FM when their parent is applying for or has leave under Appendix FM, and that, where applicable, the minimum income threshold has to be met in respect of all relevant dependent children.
- Clarify the specified evidence required in respect of the minimum income threshold:
  - to reflect the gross business profit which can be counted towards the requirement, and to demonstrate ongoing self-employment.
  - for a self-employed sponsor overseas who is transferring that self-employment to the UK.
  - to include a police disability pension as a source of income.
  - to calculate the gross level of annual income of a person in non-salaried employment.
- Clarify that specified evidence from a government department can be provided from a body performing an equivalent function.
- Remake some minor changes in Appendix FM-SE, originally made by Statement of Changes in Immigration Rules HC 877, to evidential requirements for the minimum income requirement so that they apply to all applications decided from 24 November 2016 and not only to those applications made on or after 6 April 2016.
- Clarify specified evidence requirements for an applicant seeking to meet an A1 or A2 English language requirement using an academic qualification.

- Add the new IELTS Life Skills A2 speaking and listening test to the list in Appendix O of English language tests approved by the Home Office.
- Make other minor changes and clarifications.

Changes relating to sports governing bodies

7.43. A change is being made to the list of sports governing bodies who may endorse Tier 2 (Sportsperson) and Tier 5 (Temporary Worker – Creative and Sporting) applications. British Water Ski no longer wishes to provide endorsements and is removed from Appendix M.

Changes to the visitor rules

7.44. Part V3 of Appendix V to the Immigration Rules sets out the suitability requirements for visitors. This includes that applications for a visit visa, leave to enter and leave to remain will be refused if the applicant has previously breached the UK immigration laws. The Rule is being clarified where the applicant is outside the relevant re-entry ban period and has been permitted to return to the UK, they will not automatically be refused leave to remain as a visitor.

Changes to reform the periods within which applications for further leave can be made by overstayers

7.45. While applications for further leave to remain for many rules-based applications are expected to be made in time, i.e. before any existing leave expires, any period of overstaying for 28 days or less is not a ground for refusal as far as those applications are concerned. This 28 day period was originally brought in so that people who had made an innocent mistake were not penalised, but retaining it sends a message which is inconsistent with the need to ensure compliance with the United Kingdom's immigration laws.

7.46. The 28-day period is therefore to be abolished. However, an out of time application will not be refused on the basis that the applicant has overstayed where the Secretary of State considers that there is a good reason beyond the control of the applicant or their representative, given in or with the application, why an in time application could not be made, provided the application is made within 14 days of the expiry of leave.

7.47. Additionally, for those who have been present on 3C leave (leave extended by section 3C of the Immigration Act 1971), the 28-day period is to be reduced to 14 days from the expiry of any leave extended by section 3C. Without this arrangement, the abolition of the 28-day period would mean that any further application made by persons in this position would be out of time.

7.48. For those whose previous application was in-time but decided before their leave expired, or was made out of time but permitted by virtue of the provision outlined in paragraph 7.56, the 28-day period will be reduced to within 14 days of:

- The refusal of the previous application for leave.

- The expiry of the time-limit for making an in-time application for administrative review or appeal (where applicable).
- Any administrative review or appeal being concluded, withdrawn or abandoned or lapsing.

This is to ensure that individuals to whom these circumstances apply also have 14 days to make a further application.

7.49. Changes have also been made to the requirements for applicants for indefinite leave to remain to have completed a period of continuous lawful residence in the UK. These ensure that the Secretary of State will disregard any period of overstaying between periods of leave which, at the time the further application was made, fell to be disregarded under the previous 28 day period or the exceptions identified above. This is for reasons of fairness.

Changes to the rules relating to NHS debt

7.50. Reduce the threshold for NHS debt from £1000 to £500 in Appendix FM and Appendix Armed Forces as a discretionary ground for refusal of an application made under those Rules.

8. Consultation

8.1. The changes to Tier 2 are being made in response to recommendations by the independent Migration Advisory Committee (MAC). The MAC consulted extensively before arriving at its recommendations. Its report is available on the GOV.UK website at https://www.gov.uk/government/publications/migration-advisory-committee-mac-review-tier-2-migration.

8.2. There was an informal consultation on the administrative review Immigration Rules as laid in October 2014. There has not been any further consultation since then.

8.3. Otherwise 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.

9. Guidance

9.1. Guidance relating to these rules changes will be updated and placed on the GOV.UK website, including amended guidance relating to Safe Third Countries.

10. Impact

10.1. The changes to Tier 2 will have an impact on businesses which are Tier 2 sponsors. The substantial changes are based on the MAC's advice (see above). An impact assessment of these changes will be published on the GOV.UK website. The changes are, in part, designed to influence employer behaviour by incentivising businesses to reduce their reliance on migrant workers.

10.2. Other changes will have limited or no impact on business, charities, the public sector or voluntary bodies, such that an impact assessment is unnecessary.

11. Regulating small business

11.1. As above, the changes to Tier 2 will have an impact on small businesses which are Tier 2 sponsors.

11.2. Other changes will have limited or no impact on small businesses.

12. Monitoring and review

12.1. The review clauses at the beginning of this Statement of Changes require the Secretary of State to review the operation and effect of all of the relevant Immigration Rules, including any Rules amended or added by the changes in this Statement, and lay a report before Parliament within five years of 6 April 2012 and within every five years after that. Following each review the Secretary of State will decide whether the relevant Immigration Rules should remain as they are, be revoked or be amended. A further Statement of Changes would be needed to revoke or amend the relevant Rules.

13. Contact

13.1. Queries should be directed to the Home Office as per the 'Contact UKVI' section on the visas and immigration pages of GOV.UK website at https://www.gov.uk/government/organisations/uk-visas-and-immigration.

13.2. Specific written queries relating to this Statement of Changes should be directed to StatementofChanges@homeoffice.gsi.gov.uk. Please note that this mailbox is only for Parliamentary use and 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.

13.3. A copy of this Statement of Changes can be found on the visa and immigration pages of the GOV.UK website at https://www.gov.uk/government/collections/immigration-rules-statement-of-changes.