

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 11 OCTOBER 2018 (HC 1534)**

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Committee on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 This is the latest in the regular, half-yearly series of changes to the Immigration Rules.
- 2.2 The main purposes of the changes are to:
- Implement the next phase of the roll-out of the EU Settlement Scheme for resident EU citizens and their family members to obtain UK immigration status.
 - Introduce a form of leave to remain for those children transferred to the UK as part of the Calais camp clearance to reunite with family between 17 October 2016 and 13 July 2017 and who do not qualify for international protection (i.e. refugee status or humanitarian protection).
 - Support the operation of the new application process in UK Visas and Immigration (UKVI) by amending the Rules on the requirements for a valid application.
 - Specify evidence for medical exemption from Knowledge of Language and/or Life in the UK (KoLL) requirements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters of special interest to the Committee on the UK's exit from the European Union

- 3.2 Appendix EU to the Immigration Rules provides the basis for the EU Settlement Scheme for resident EU citizens and their family members, and the family members of certain British citizens, to apply for the UK immigration status which they will require in order to remain in the UK beyond the end of the planned post-exit implementation period on 31 December 2020. As regards EU citizens and their family members, this is consistent with Articles 17 and 17a of the draft Withdrawal Agreement with the European Union published on 19 March 2018.¹
- 3.3 Appendix EU to the Immigration Rules came into force on 28 August 2018, for the purposes of an initial test (or 'private beta') phase of the EU Settlement Scheme. This involved the participation on a voluntary basis of persons on the payroll of 12 NHS

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/691366/20180319_DRAFT_WIT_WITHDRAWAL_AGREEMENT.pdf

Trusts and three universities, and enrolled students of those universities, in north-west England, as specified in the Statement of Changes in Immigration Rules presented to Parliament on 20 July 2018 (Cm 9675).

- 3.4 This first private beta phase has successfully proved some of the functionality and processes of the EU Settlement Scheme in a live environment. The Minister of State for Immigration at the Home Office has written today to the Chair of the Home Affairs Select Committee with the early findings from the first private beta phase; a copy of that letter will be placed in the Library. The Government will continue to monitor the findings from the first phase and will publish a report on those findings, including how they will inform the scheme's development, as we move into a second private beta phase in November.
- 3.5 The first private beta phase has tested components of the online application process. Overall, the technology performed well, with some minor improvements identified to improve the overall customer experience, and feedback from applicants on the speed and ease of the application process has been positive. The Government now needs to test that online process as an integrated, end-to-end process.
- 3.6 The Government is therefore moving ahead with a second private beta phase, as set out in this Statement of Changes in Immigration Rules. In this second phase, the Government will also significantly scale up the testing, including, on a voluntary basis and with the agreement of the Devolved Administrations, staff in the higher education, health and social care sectors across the UK. This phase will also include some vulnerable individuals – being supported by a small number of local authorities and community groups – in order to test the operation of the scheme for those with support needs. The Government intends to publish a report on the second private beta phase in December 2018, but this will not contain all the data collected during the first phase owing to changes in the systems being used.
- 3.7 Currently, the Government anticipates that the further phased implementation of the EU Settlement Scheme will be secured through further Immigration Rules changes to be laid before Parliament in December 2018 (for implementation in January 2019), and in early March 2019, so that the scheme will be fully open by 30 March 2019.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.8 As this statement of changes in Immigration Rules is subject to the procedure set out under section 3(2) of the Immigration Act 1971, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 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, 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 1994.
- 6.3 The changes to Appendix 6, set out in paragraph A6.1 of this statement, shall take effect on 1 January 2019 and will only apply to any decisions made on or after that date, save that, where an applicant is required to provide a certificate in accordance with Appendix 6 – and has submitted with their application a certificate which they requested from the Foreign and Commonwealth Office (FCO) before 1 January 2019 (the date on which the Joint Academic Coding System (JACS) codes change to Common Aggregation Hierarchy (CAH) codes and the FCO updates the list of courses which require a certificate) – the old course codes, in force on 31 December 2018, will be treated as valid on the certificate.
- 6.4 The changes to Appendix A set out in paragraphs A52 and A59, Appendix C set out in paragraphs C2 and C5, Appendix E set out in paragraph E1, Appendix EU set out in paragraphs EU1 to EU9, and Appendix KoLL set out in paragraphs KoLL1, KoLL2, KoLL7, KoLL3, KoLL8 and KoLL11 of this statement shall take effect on 1 November 2018. However, in relation to those changes, if an application has been made for entry clearance or leave to enter or remain before 1 November, the application will be decided in accordance with the Immigration Rules in force on 31 October 2018.
- 6.5 The changes to Part 1, and the insertion of Appendix AR (EU), made by paragraphs 1.2 to 1.17 and paragraph AR(EU)1, and the change to Appendix SN made by paragraph SN1 of this statement, which make provision for administrative review of eligible decisions under the EU Settlement Scheme, shall take effect on 1 November 2018 and will apply in respect of applications made under Appendix EU on or after that date.
- 6.6 The other Immigration Rules changes set out in this statement shall take effect on 5 November 2018.

7. Policy background

What is being done and why?

- 7.1 This Statement of Changes:
- (i) Makes provision for the next, expanded private beta test phase of the EU Settlement Scheme;
 - (ii) Gives security to children relocated to the UK from Calais, in the period from 17 October 2016 to 13 July 2017, but who do not qualify for international protection;

(iii) Supports the operation of the new application process in UKVI by amending the Rules on the requirements for a valid application;

(iv) Makes minor technical and simplification amendments in relation to the Rules governing some applications by students; and

(v) Improves the approach on medical exemption in relation to Knowledge of Language and/or Life in the UK requirements.

Changes to the EU Settlement Scheme

7.2 As well as changes to the implementation provisions for the EU Settlement Scheme to reflect the second private beta phase of the scheme described in paragraph 3.5, above, the following changes are being made to the Immigration Rules for the scheme contained in Appendix EU:

- Changes to paragraphs EU11 to EU14 to align the basis on which the family members of certain British citizens will be eligible to apply for status under the scheme with that of family members of resident EU citizens. These are the family members of British citizens who have returned to the UK having exercised their free movement rights in the EU, where the family members are lawfully resident in the UK by virtue of regulation 9 of the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052). As set out in paragraph 6.12 of the Statement of Intent on the EU Settlement Scheme published on 21 June 2018,² the Government has decided, as a matter of domestic policy, that such family members will in due course be eligible to apply for status under the scheme.
- Changes to Annex 1, in particular to reflect the basis of operation of the second private beta phase. Under this phase, an EU citizen will be required to prove their identity and nationality by using their passport (and a non-EU citizen by using their biometric residence card) with the identity verification app for the scheme. This will check the document and confirm their identity remotely, and will be an integrated part of the online application process being tested during this phase. The applicant will be able to submit the document by post if the digital app is unable to read the relevant information in the document's biometric chip because this is damaged or defective. This is a specific element of the second private beta phase: the other means by which applicants can prove their identity and nationality, set out in the current definition in Annex 1, will be restored in the next Immigration Rules changes for the scheme, which the Government currently anticipates laying before Parliament in December 2018 (for implementation in January 2019).

7.3 In addition, this Statement of Changes makes provision, in changes to Part 1 of and Appendix SN to the Immigration Rules and in a new Appendix AR (EU), for an applicant to request an administrative review of a decision (i) to refuse them leave under the EU Settlement Scheme on eligibility grounds, or (ii) to grant them limited leave to remain under the scheme rather than indefinite leave to remain. The

² <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>

administrative review will be able to consider any information and evidence submitted with the application for the review, including information and evidence that was not before the original decision-maker. Under the Immigration and Nationality (Fees) (Amendment) (EU Exit) (No. 2) Regulations 2018 (SI 2018/999),³ the existing fee for administrative review of £80 will be payable. It will be refunded if the reviewer decides that the original decision was incorrect, based on the information available to the original decision-maker.

Calais leave

- 7.4 As part of the clearance of the Calais camp in October 2016, the Government transferred 769 unaccompanied children to the UK, 549 of whom were transferred to reunite with family here. All of those children claimed asylum on arrival in the UK. Now, after careful consideration, a number of these cases would fall to be refused under existing asylum and immigration rules.
- 7.5 Further to the Written Ministerial Statement made on 13 September 2018,⁴ paragraphs 352I to 352W are being inserted into Part 11 of the Immigration Rules to enable those transferred to the UK, between 17 October 2016 and 13 July 2017 as part of the Calais camp clearance in order to reunite with family, and who do not qualify for international protection (i.e. refugee status or humanitarian protection), to remain in the UK long term. This is subject to exclusions based on the grounds of security and criminality or on deception or omission of information relevant to acceptance under Calais leave.
- 7.6 This new form of leave will only be available to those who transferred to the UK from the Calais camp between 17 October 2016 and 13 July 2017. The Government takes the welfare of unaccompanied asylum-seeking and refugee children extremely seriously. It acted decisively, upon the invitation to the UK to exercise powers on the territory of another Member State, to remove vulnerable children from a dangerous situation where they were at risk of violence and abuse.
- 7.7 Those granted Calais leave, or dependants of those granted Calais leave, will receive a Residence Permit with a validity of five years. At the end of the five-year period, if the person's Calais leave has been renewed, they will be issued with another Residence Permit, valid for a further period of five years. A person may apply for Indefinite Leave to Remain after a period 10 years' continuous leave in the UK. The Government may revoke a Residence Permit if Calais leave is revoked. Those granted Calais leave will be entitled to a travel document if they can demonstrate that they are unable to obtain a national passport or other identity document that enables them to travel.

Changes supporting the operation of the new application process in UK Visas and Immigration (other than for applications under the EU Settlement Scheme)

Application process

- 7.8 Changes to the Immigration Rules are required in order to permit UKVI's transformed application process. The ambition is that most applicants will apply online, with

³ <http://www.legislation.gov.uk/ukxi/2018/999/introduction/made>

⁴ HCWS961/ HLWS929

assisted digital support where necessary. A process will also remain for receiving applications on paper for routes where there is no online application form. The Rules changes set out the requirements for making a valid application under the new application process in relation to the applicant making an appointment to attend in person to enrol their biometrics and submitting the required documents in support of their application.

Fee waiver

- 7.9 The changes will also protect the position of applicants seeking a fee waiver as part of an online application for leave to remain.
- 7.10 Where an application for leave to remain is made online, an applicant who wishes to apply for a fee waiver as part of that application will have to submit that fee waiver request before the application for leave, and this will be considered first. The applicant will be notified of a decision on the request for a fee waiver, and will have 10 working days from the date they receive this notification to submit an application for leave. If the application is made in time, i.e. within 10 working days, the date of application will be the date the fee waiver request was submitted. This is important because it protects an applicant's continuing leave whilst they make their application for further leave. If the fee waiver request is granted, the applicant will be able to submit an application for leave without an accompanying application fee. If the fee waiver request is refused, the applicant may still submit an application accompanied by the relevant fee.
- 7.11 If an applicant does not submit an application for leave within 10 working days, their application will normally be rejected.

Request for passport return/Travel outside Common Travel Area

- 7.12 The Rules changes clarify the position where the applicant requests the return of their passport for travel outside the Common Travel Area (CTA), or where the applicant's passport has been returned to them pending a decision on their application. Where the application is pending, travel outside the CTA will mean that statutorily extended leave will lapse.

Evidential requirements

- 7.13 The Rules changes are also aimed at helping applicants to meet the evidential requirements in the Rules. To support the new application process as it can be difficult for applicants to obtain original documents, especially if they need to be obtained from overseas, the requirement to provide original documents is being removed and copies can be provided. If there are doubts about whether a document is genuine, verification rules will apply.

Evidential flexibility

- 7.14 The changes provide for a more generous approach to evidential flexibility. The policy previously allowed for a caseworker to write once, in very precise circumstances, to request further information where an applicant had failed to provide the evidence required. These changes provide more flexibility to caseworkers regarding whether and

when they may write to applicants to ask for any missing documents required, to be provided within a reasonable timeframe.

Changes relating to Tier 4 of the Points Based System

- 7.15 Appendix 6 to the Immigration Rules lists the academic subjects that require a certificate from the Foreign and Commonwealth Office (FCO) to be included in an application to study that subject in the UK. The Higher Education Statistics Authority (HESA) is changing the way that academic courses in the UK are recorded. Courses formerly allocated a Joint Academic Coding System (JACS) code will now be allocated a Common Aggregation Hierarchy (CAH) code. In addition, the FCO is updating the list of courses which require a certificate. Appendix 6 is therefore being updated to reflect these changes, which the FCO and HESA will introduce on 1 January 2019.
- 7.16 References in Appendices A, C and E to nationals who are subject to different documentary requirements under Tier 4 of the Points Based System (in Appendix H) being required to apply from their country of nationality are being amended, to reflect that they are now able to apply from the country where they are living. These changes will also apply to their dependent family members, provided they are also of a nationality set out in Appendix H and are applying at the same time and location as the main applicant. This is to align with Rules changes made in the Statement of Changes laid before Parliament on 15 June 2018 (HC 1154).

Changes relating to Knowledge of Language and Life in the UK (KoLL)

- 7.17 The Rules change provides clarity on what is expected of someone requesting an exemption, on medical grounds, from the KoLL requirement for settlement.
- 7.18 The change aims to reduce the potential for abuse and exploitation by requiring requests to be supported by a specified type of medical professional. In many cases currently, the evidence supplied is already from a type of professional from the proposed specified list, such as the applicant's GP. However, where the specified medical professional is not the primary treatment or care provider, evidence from another practitioner will be considered where that person is a specified practitioner. Specifying the format of the request in a template provides an opportunity for the specified medical professional to understand better the nature of the test the migrant would be expected to take. This will assist medical professionals in making judgements as to whether they can support exemptions.
- 7.19 The Government anticipates that this change will also improve customer service through reducing the need for multiple write out requests by caseworkers seeking documents required for exemption requests.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This Statement of Changes in Immigration Rules 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 implementation of the EU Settlement Scheme.

9. Consolidation

9.1 The Immigration Rules were last consolidated in 1994. Consideration will be given in due course to the nature and timing of any further consolidation.

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 their nature but, in respect of the EU Settlement Scheme, the policy has been discussed with the Home Office's internal and external stakeholders, such as groups representing EU citizens in the UK, Consulates and community organisations, and account has been taken of those discussions.

11. Guidance

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

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 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 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 2017 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.

15. Contact

15.1 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>.

15.2 Specific written queries relating to this Statement of Changes should be directed to Richard Short at 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.

15.3 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>.

15.4 Emily Weighill at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.5 Rt Hon Caroline Nokes MP, Minister of State for Immigration at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

