

**EXPLANATORY MEMORANDUM TO  
THE STATEMENT OF CHANGES IN IMMIGRATION RULES  
PRESENTED TO PARLIAMENT ON 7 MARCH 2019 (HC 1919)**

**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 The main changes are to:

- Introduce new Start-up and Innovator categories for those coming to the UK to set up a business, replacing the Tier 1 (Graduate Entrepreneur) and Tier 1 (Entrepreneur) categories;
- Make reforms to the Tier 1 (Investor) category to protect better against financial crime and ensure investments are of greater benefit to the UK economy;
- Increase the initial period of leave for those who qualify for Stateless leave, and make clear that to qualify for stateless leave someone must show that they cannot acquire a nationality or a right to permanent residence in another country to which they may be entitled; and
- Provide for the full opening of the EU Settlement Scheme for resident EU citizens and their family members to obtain UK immigration status, alongside two negative procedure Statutory Instruments being laid before Parliament on 7 March 2019: the Immigration and Nationality (Fees) (Refund, Waiver and Amendment) (EU Exit) Regulations 2019, which provide for no application fee for the scheme, and the Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019, which, in part, make changes associated with the scheme to other secondary legislation.

**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 The EU Settlement Scheme – contained in Appendix EU to the Immigration Rules – provides the basis for resident EU citizens and their family members, and the family members of certain British citizens, to apply for UK immigration status, which they will require in order to remain here permanently after the UK's withdrawal from the European Union.

- 3.3 The scheme is consistent with the draft Withdrawal Agreement with the European Union, published on 14 November 2018,<sup>1</sup> as regards EU citizens resident here before the end of the planned post-exit implementation period on 31 December 2020, and their family members.
- 3.4 The EU Settlement Scheme will also be the basis on which EU citizens, resident in the UK by 29 March 2019 and their family members, will be able to obtain UK immigration status in order to remain here in the event of the UK leaving the EU without a deal. This was set out in the policy paper on citizens' rights in a 'no deal' scenario, published by the Government on 6 December 2018.<sup>2</sup>
- 3.5 Appendix EU to the Immigration Rules came into force on 28 August 2018, for the purposes of an initial private beta test phase of the EU Settlement Scheme. A second, expanded private beta test phase began from 1 November 2018 and ended on 21 December 2018, and a report on that phase was published on 21 January 2019.<sup>3</sup>
- 3.6 In light of the successful testing of the online application process during the private beta test phases, in which we received and processed more than 30,000 applications, a public beta test phase of the scheme began on 21 January 2019.<sup>4</sup> This phase is open to resident EU citizens (and their EU citizen family members) with a valid passport, and to their non-EU citizen family members with a valid biometric residence card. In this public beta phase, we received more than 120,000 applications by the end of February 2019, enabling us to test the system at a greater scale than previous phases. By the end of February 2019, more than 105,000 of these applications had been concluded, with 71 per cent granted settled status, the rest granted pre-settled status and none refused. 75 per cent of these applicants received their decision within three days and 80 per cent of those who provided feedback found the online application process easy, or fairly easy, to complete. A report on the public beta test phase will be published after its conclusion on 30 March 2019, and plans are currently being developed for the routine publication of official statistics on the scheme as it progresses.
- 3.7 This means that, since the opening of the initial private beta test phase on 28 August 2018, we had, by the end of February 2019, received more than 150,000 applications under the scheme, of which 135,000 (nearly 90 per cent) had already been concluded. Of these concluded cases, 71 per cent were granted settled status, with the rest granted pre-settled status and none refused.
- 3.8 The Government therefore intends, through this Statement of Changes in Immigration Rules, to go ahead, as planned, with the full opening of the EU Settlement Scheme for resident EU citizens and their family members from 30 March 2019. Through these changes in Immigration Rules, the scheme will also be open from that date, as planned, to resident citizens of the other European Economic Area (EEA) countries (Iceland, Liechtenstein and Norway) and of Switzerland, and their family members.

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/756374/14\\_November\\_Draft\\_Agreement\\_on\\_the\\_Withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756374/14_November_Draft_Agreement_on_the_Withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union.pdf)

<sup>2</sup> <https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brex>

<sup>3</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-private-beta-2>

<sup>4</sup> Statement of Changes in Immigration Rules HC 1849, 20 December 2018

*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)*

3.9 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](http://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 following sections shall take effect on 29 March 2019. In relation to those changes, if an application for entry clearance, leave to enter or leave to remain has been made before 29 March 2019, such applications will be decided in accordance with the Immigration Rules in force on 28 March 2019.

- Introduction – Paragraphs Intro3 and Intro4
- Part 5 – Paragraphs 5.1 and 5.2
- Part 6A – Paragraphs 6A.5 to 6A.34
- Part 8 – Paragraphs 8.1 to 8.5
- Appendix A – Paragraphs A1 to A13 and A15 to A39
- Appendix E – Paragraphs E1 to E4, E9 and E11 to E12
- Appendix V – Paragraph V2
- Appendix W – Paragraph W1

6.4 The changes to Appendix J, set out in paragraphs J1 to J5 of this statement, shall take effect on 30 March 2019. However, if an applicant has made an application for entry

clearance or leave to remain, using a Certificate of Sponsorship that was assigned to the applicant by their Sponsor before 30 March 2019, the application will be decided in accordance with the rules in force on 29 March 2019.

- 6.5 The changes associated with the EU Settlement Scheme – reflected in the changes to Parts 1 and 9, the substitution of a new Appendix EU and the insertion of the new Appendix EU (Family Permit) – shall, with two exceptions, take effect on 30 March 2019 at 0700 (the time of day at which the requisite technical changes in the online application process for the scheme can be delivered with the minimum of interruption in service to applicants). The exceptions concern applications under the scheme from outside the UK (for which the new Appendix EU shall take effect on 9 April 2019 at 0700) and applications under the scheme from those relying on a ‘derivative right’ to reside under EU law as the primary carer of a British citizen (‘Zambrano carers’, for which the relevant provisions of the new Appendix EU shall take effect on 1 May 2019). Applications made under Appendix EU before 0700 on 30 March 2019 will be decided in accordance with the Immigration Rules in force before 0700 on 30 March 2019.
- 6.6 The following sections shall take effect on 6 April 2019. In relation to those changes, if an application for entry clearance, leave to enter or leave to remain has been made before 6 April 2019, such applications will be decided in accordance with the Immigration Rules in force on 5 April 2019.
- Part 6A – Paragraphs 6A.58 to 6A.63
  - Part 14 – Paragraphs 14.1 to 14.9
  - Appendix A – Paragraph A14
  - Appendix C – Paragraphs C1 and C4 to C13
  - Appendix E – Paragraphs E5 to E8, E10 and E13
  - Appendix H – Paragraph H1
  - Appendix KoLL – Paragraph KoLL1
  - Appendix V – Paragraph V1
- 6.7 The changes to Part 7 set out in paragraphs 7.1 to 7.14 and Appendix V set out in paragraph V3 of this statement shall take effect on 6 April 2019.
- 6.8 The following sections shall take effect on 6 July 2019. In relation to those changes, if an application for entry clearance, leave to enter or leave to remain has been made before 6 July 2019, such applications will be decided in accordance with the Immigration Rules in force on 5 July 2019.
- Part 6A – Paragraph 6A.35
  - Appendix A – Paragraph A40
  - Appendix B – Paragraphs B1 and B2
  - Appendix C – Paragraphs C2 and C3
- 6.9 The changes to Appendix W set out in paragraphs W2 to W4 of this statement shall take effect on 1 August 2019. However, in relation to those changes, if an application has been made for entry clearance or leave to enter or remain before 1 August 2019, the

application will be decided in accordance with the Immigration Rules in force on 31 July 2019.

- 6.10 The other changes set out in this statement shall take effect on 30 March 2019. However, in relation to those changes, if an application has been made for entry clearance or leave to enter or remain before 30 March 2019, the application will be decided in accordance with the Immigration Rules in force on 29 March 2019.

## 7. Policy background

### *What is being done and why?*

#### *Introduction of new Start-up and Innovator categories*

- 7.1 These changes introduce two new categories, Start-up and Innovator, for people seeking to establish a business in the UK.
- 7.2 These new categories replace the existing Tier 1 (Graduate Entrepreneur) and Tier 1 (Entrepreneur) categories, which were the subject of a review by the independent Migration Advisory Committee (MAC) in 2015. The MAC recommended that:
- the Tier 1 (Graduate Entrepreneur) category, with its endorsement approach, was working well and should be expanded into a broader Start-up category;
  - the Tier 1 (Entrepreneur) category was in need of substantial reform, as it had a long tail of low quality projects which contributed little or nothing to the UK economy.
- 7.3 Central to both of the new categories will be endorsement of applicants by UK trusted bodies – such as business accelerators, seed competitions and government agencies, as well as higher education providers. These bodies will assess applicants’ business ideas for their innovation, viability and scalability.
- 7.4 The main features of the new categories are as follows:
- The **Start-up** category is an expanded version of the Tier 1 (Graduate Entrepreneur) category. It is for those starting a new business for the first time in the UK. Applicants will not need to be graduates and will not need to have secured any initial funding. Successful applicants will be granted 2 years’ leave (doubled from 1 year) and will be able to progress into the Innovator category to continue developing their businesses in the UK after that time.
  - The **Innovator** category is intended for more experienced businesspeople. As well as an endorsement, applicants will need £50,000 to invest in their business from any legitimate source (reduced from £200,000 for most applicants in the current Tier 1 (Entrepreneur) category). The funding requirement will be waived for those switching from the Start-up category who have made significant achievements against their business plans. The category may lead to settlement in the UK.
- 7.5 In both categories, endorsement for initial applications will be based on assessment whether applicants’ business ideas are innovative, viable and scalable.

- 7.6 Endorsement for extension applications in the Innovator category will be based on assessment of whether applicants have made significant achievements against their business plans, and whether their businesses are trading. Applicants whose original business ideas did not succeed may re-apply, with a new business idea, for endorsement under the criteria for initial applications.
- 7.7 Endorsements for settlement applications will be made against a range of criteria – covering investment, innovation, business growth and job creation – which applicants may choose from in order to qualify for settlement. Applicants may apply for settlement as soon as their businesses satisfy at least two of these criteria, providing they have spent at least three years in the category.
- 7.8 An English language requirement is being set at upper intermediate (B2) level (up from intermediate (B1) under the previous categories) for both categories, to ensure that successful applicants have the good command of English they will need to interact with a variety of business organisations and potential customers.
- 7.9 Applicants will be asked to stay in contact with their endorsing body with checkpoints after 6, 12 and (for the Innovator category) 24 months. The endorsing bodies must be satisfied that applicants are continuing to work on their business ventures and have either demonstrated reasonable progress with their original ideas or are pursuing new business ideas that are also innovative, viable and scalable.
- 7.10 The new categories are set out in a new Appendix W to the Immigration Rules. They do not form part of the Points-Based System and do not include points-scoring tables. Appendix W is designed to be clearer and easier to read than existing rules for the Points-Based System. It is anticipated that other categories for workers will be added to this Appendix as the immigration system is reformed over time.
- 7.11 The new categories nevertheless include similar provisions to the Points-Based System regarding evidential flexibility, switching categories, English language and maintenance funds requirements, qualifying for settlement and the ability for dependants (partners and children under age 18) to apply.

***Changes relating to the Tier 1 (Graduate Entrepreneur) and Tier 1 (Entrepreneur) categories of the Points-Based System***

- 7.12 As stated above, the Tier 1 (Graduate Entrepreneur) and Tier 1 (Entrepreneur) categories are being replaced by the new Start-up and Innovator categories. These existing categories are being closed as the new categories are introduced.
- 7.13 Tier 1 (Graduate Entrepreneur) applicants apply on the basis of endorsement letters from Higher Education Institutions or the Department for International Trade. These letters are valid for three months and may continue to be issued until 5 April 2019. Tier 1 (Graduate Entrepreneur) applications can therefore continue to be made until 5 July 2019. Unlike the Tier 1 (Entrepreneur) category, there is no risk of an uncontrolled surge of Tier 1 (Graduate Entrepreneur) applications that would necessitate closing the category sooner, as a limit applies to the number of endorsement letters.

- 7.14 Further transitional arrangements are being applied to mitigate the impact of the changes on those already in these categories:
- Extension applications for Tier 1 (Entrepreneur) migrants will remain open until 5 April 2023, and settlement applications until 5 April 2025.
  - Tier 1 (Graduate Entrepreneur) migrants will be able to switch into the new Start-up route if they have not yet had their maximum two grants of leave under the Tier 1 (Graduate Entrepreneur) route. If their Start-up endorsement is from the same endorsing body as in their previous Tier 1 (Graduate Entrepreneur) application, their business ideas will not need to meet the new Start-up criteria in relation to innovation and scalability.
  - Tier 1 (Graduate Entrepreneur) migrants (including those who switch into the Start-up category as above) will continue to be able to switch into the Tier 1 (Entrepreneur) category until 5 July 2021. Tier 1 (Entrepreneur) extension applications will remain open for these individuals until 5 July 2025, and settlement applications until 5 July 2027.
- 7.15 As a result of these changes, many existing provisions are no longer needed and are being deleted. The main deletions relate to additional documents required:
- as evidence of venture capital funding in initial applications (these requirements are being moved to the rules for extension and settlement applications, where they are still required);
  - from those applying to switch from the Tier 1 (General) category.
- 7.16 The grant periods for Tier 1 (Entrepreneur) entry clearance applications do not take account of the possibility of making extension applications overseas. The current rules grant entry clearance for 3 years, 4 months for both initial and extension applications, whereas leave to remain is granted for 3 years for initial applications and 2 years for extension applications. The entry clearance grant period for extension applications is being changed to 2 years, 4 months, for consistency with leave to remain grants and the transitional arrangements above.
- 7.17 Changes are being made to provide greater assurance that Tier 1 (Entrepreneur) migrants are genuinely engaged in business. Applicants will be asked to provide an overview of their business's activity, details of their role within the business, and the job titles/descriptions for the settled worker employees for whom they are claiming points. The government has judged it proportionate to apply these changes to future extension and settlement applications by entrepreneurs already in the category.
- 7.18 The rules state that a transitional arrangement, relating to job creation, for applicants who entered the category under the rules in place before 6 April 2014, will close on 6 April 2019. This transitional arrangement is being removed from the rules in line with this closure.

7.19 A transitional arrangement, relating to investments through directors' loans, for applicants who entered the category under the rules in place before 19 November 2015, will shortly no longer be needed as these applicants will have had sufficient time to qualify for settlement. A change is being made to give notice and close this transitional arrangement from 19 November 2021.

***Changes relating to the Tier 1 (Investor) category of the Points-Based System***

7.20 The Tier 1 (Investor) category is for high net worth individuals making an investment of at least £2 million in the UK.

7.21 Changes are being made in this statement to supplement previous changes made in 2014 (HC 693) and 2015 (HC 1025) and address concerns that have been raised about the character and conduct of applicants using the route and the sources of their funds:

- Currently applicants must provide evidence that they have held the funds that they will invest in the UK for at least 90 days or, if they have not held them for 90 days, provide evidence of the source of those funds. This 90-day requirement is being extended to a 2-year requirement, to provide greater assurance of the provenance of applicants' funds.
- Applicants are currently required to open a UK bank account for the purpose of making their investment before making a Tier 1 (Investor) application. This requirement is being tightened to make explicit that the bank must carry out all required due diligence checks and Know Your Customer enquiries, and confirm that these have been done.

7.22 Additional changes are being made to increase the economic benefits of qualifying investments to the UK:

- Investment in UK government bonds is being excluded, to incentivise Tier 1 (Investor) migrants towards other forms of investment which have greater need to attract additional investment funds.
- To increase transparency and demonstrate better where applicants are ultimately investing their funds, rules are being tightened around the use of intermediary vehicles. These include a requirement for any intermediary vehicles to be regulated by the Financial Conduct Authority (FCA), and a requirement to provide evidence of the final investment destination and how the funds are transferred there, regardless of how long any chain of intermediary vehicles is.
- The definition of "active and trading" companies is being strengthened so that there must be stronger evidence that such companies are trading in the UK.
- A clarification is being made to confirm that "price of the investments" means the price the applicant paid for the investments, not the face value (which does not in itself demonstrate that an applicant has invested £2 million in the UK, as required by the rules).

- New provision is being made to allow investment in pooled investments which also receive funding from a UK or devolved government department or one of its agencies, such as the British Business Bank or the Scottish Investment Bank. This is because such vehicles will have been assessed as being of benefit to the UK economy by the department or agency providing the funding. The exclusion of other types of pooled investment vehicles remains, as the Home Office cannot be satisfied that the applicant’s funds are being invested to the benefit of the UK economy.
- 7.23 Transitional arrangements are being applied to ensure the above changes regarding 2-year source of funds checks, investment in UK government bonds, FCA regulation of intermediary vehicles and the definition of “active and trading” companies do not have an adverse impact on investors who entered the category under the rules in place before 29 March 2019. These transitional arrangements will continue until 5 April 2023 for extension applications and 5 April 2025 for settlement applications. The other changes above do not alter the requirements of the category substantively, and it is considered proportionate to apply them to future extension and settlement applications by investors already in the category.
- 7.24 As for Tier 1 (Entrepreneur) applications, the entry clearance grant period for extension applications is being changed to 2 years, 4 months for consistency with leave to remain grants.
- 7.25 The rules for initial Tier 1 (Investor) applications do not allow leave to be granted if the decision maker has reasonable grounds to believe that:
- the applicant is not in control of the investment funds;
  - the funds were obtained unlawfully (or by means which would be unlawful if they happened in the UK); or
  - the character, conduct or associations of a party providing the funds mean that approving the application is not conducive to the public good.
- 7.26 The above test is being extended to cover circumstances where there are reasonable grounds to believe that the funds have been, or will be, transferred internationally by means which are unlawful in any of the countries involved. The overall test is also being extended to extension and settlement applications, for the sake of clarity and consistency, to make clear that subsequent applications may be refused if evidence showing the above has come to light since the initial application was granted. This supplements the existing provisions that require such applicants to remain in control of their funds, and not fail under the General Grounds for Refusal.
- 7.27 Transitional arrangements, for applicants who entered the category under the rules in place before 13 December 2012 or 6 November 2014, will shortly no longer be needed as these applicants will have had sufficient time to qualify for settlement. Changes are being made to give notice and close these arrangements from 6 April 2020, and 6 April 2022 in the case of settlement applications relating to the 2014 transitional arrangement.

### ***Changes relating to family members of the Points-Based System***

- 7.28 Changes are being made to the provisions for family members of relevant Points-Based System migrants to include the same provisions for family members of migrants in the new Start-up and Innovator categories in Appendix W (see above).
- 7.29 As with most Points-Based System categories, the partners and children (under age 18) will be able to apply as dependants of Start-up and Innovator applicants. They will have the same requirement to show they have maintenance funds and will have the same ability to work without needing to have a sponsoring employer.

### ***Changes relating to visitors resulting from the closure of Tier 1 (Entrepreneur)***

- 7.30 A change is being made to the provision for prospective entrepreneurs, to reflect the closure of the Tier 1 (Entrepreneur) category and bring the provision into line with the new Start-up and Innovator categories. At present, visitors who can show support from a designated funding source (approved seed competitions, venture capital firms or government departments) can come to the UK for discussions to secure funding from that source.
- 7.31 Under the new provision, visitors who can show support from an endorsing body in either of the new categories will be permitted to come to the UK for discussions to secure funding from a wider variety of sources than before. Visitors undertaking this permitted activity as prospective entrepreneurs will be able to apply to switch into either of the new categories within the UK.

### ***Changes relating to Tier 1 (Exceptional Talent) of the Points-Based System***

- 7.32 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. Applicants must be endorsed by a Designated Competent Body.
- 7.33 At the request of Arts Council England, evidential requirements have been added, to bring this in line with requirements that their sub-endorsers impose on applicants and ensure clarity.

### ***Changes relating to Tier 2 of the Points-Based System***

- 7.34 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 categories: General, Intra-Company Transfer (ICT), Minister of Religion and Sports person.
- 7.35 The Tier 2 (General) category is the main immigration route for UK employers seeking to recruit non-EEA skilled workers. It is subject to an annual limit of 20,700 places, divided into monthly allocations.
- 7.36 Following a review published by the independent Migration Advisory Committee (MAC) on 19 January 2016, the Home Office increased the minimum salary threshold for Tier 2 to £30,000. In the Statement of Changes to the Immigration Rules dated

3 November 2016 (HC 667), an exemption from this increase was introduced for nurses, medical radiographers, paramedics and secondary school teachers in mathematics, physics, chemistry, computer science, and Mandarin. The exemption was due to end in July 2019 but is being extended and will be reviewed as part of the introduction of the future border and immigration system.

- 7.37 Updates are being made to the appropriate salary rates in the codes of practice in Appendix J, using the latest available salary data for each occupation. The appropriate rates in Appendix J were last updated in April 2017.
- 7.38 As in previous years, an annual uplift in line with wage inflation is being applied to the earnings threshold for Tier 2 (General) and Tier 2 (Sportsperson) settlement applications, based on Average Weekly Earnings data published for the Office for National Statistics. The uplifted thresholds will apply to settlement applications made from 6 April 2023 and from 6 April 2024.
- 7.39 Changes are being made to amend the points table at Table 11D, used for allocating places to Sponsors under the Tier 2 (General) limit. This technical change is intended to maximise the monthly allocation of Tier 2 places within the annual limit. Under the current system, all monthly applications for Tier 2 places are awarded points based on attributes including on the level of salary – with priority given to applications with the highest salaries.
- 7.40 Salaries over £45,000 received 5 points for each £5,000 of salary. Wide bands, such as these, increased the chance that many applications would score the same number of points. If the limit was oversubscribed, this could result in Tier 2 applications being refused, despite there still being places available (as all applications with the same points must receive equal treatment and therefore must all be granted, or all refused).
- 7.41 To address this issue, the Government has removed the bands and instead awarded one point for each £1,000 of gross annual salary. The effect of this change will mean more applications could be awarded within a monthly allocation, reducing potential refusals.
- 7.42 These changes ensure that the overall prioritisation remains the same. Occupations which appear on the Shortage Occupation List in Appendix K, and PhD level occupations listed in Appendix J, will continue to attract additional points to ensure priority if the limit is reached. These changes do not alter the overall size of the limit (which remains at 20,700 places per year).
- 7.43 The following other minor changes are being made to Tier 2 (General):
- Amend incorrect references to the Objective Structured Clinical Examination (OSCE) in Part 6A and Appendix A;
  - Amend an obsolete reference to the UK Border Agency in Appendix K.

***Changes to Tier 4 of the Points-Based System: Refresh of Appendix H – reduced documentary requirements for low risk nationalities***

7.44 The list of countries in Appendix H, which sets out Tier 4 documentary requirements, is being updated following the latest annual review of which countries meet the criteria for inclusion. Brazil, Kazakhstan, Mauritius, Oman, Peru and Tunisia have met the criteria for inclusion. Argentina, the Maldives, and Trinidad and Tobago are being removed from the list.

***Minor technical changes to Tier 4 of the Points-Based System***

7.45 Tier 4 of the Points-Based System is the route used by non-EEA nationals wishing to study in the UK. Tier 4 is comprised of two categories: Tier 4 (General) and Tier 4 (Child).

7.46 A clarification is being made to the time limits for study at degree level or above to confirm that time spent studying below the age of 18 will not count towards the limit.

7.47 A change is being made to Appendix C to make provision for Tier 4 (General) students, who are using funds from a financial institution which are being provided to them in the form of a loan, to meet the maintenance requirements. A further provision is being made for Tier 4 (Child) students to confirm funds are held or being provided to them by a foster carer or close relative.

7.48 A change is being made to Appendix E to make clear that dependants of Tier 4 applicants, who rely on student loans or funds from official financial sponsors, are not required to demonstrate that the funds have been held for a period of 28 consecutive days.

7.49 A further change is being made to Appendix E, to clarify that both the dependant and main Tier 4 applicant must hold a nationality listed in Appendix H, in order for the dependant to qualify for the reduced documentary requirements. The main applicant and dependant do not need to be of the same Appendix H nationality.

7.50 Amendments are being made to the rules in Appendix C and E to make them gender neutral.

***Changes to Tier 5 (Government Authorised Exchange) of the Points-Based System – Jamaican nurse exchange***

7.51 The ‘Jamaican Nursing Exchange’ scheme has been added to the list of approved Government Authorised Exchange schemes. This scheme supports the Jamaican government's objective to improve the capability and capacity of its nursing workforce and supports the government’s international development objectives. It provides practical opportunities for Jamaican nurses to work in a high-quality healthcare setting in the UK, while nurses from the UK offer training support in Jamaica. This scheme is a pilot and, if successful, could be broadened to other countries and Trusts, pending future Immigration Rules changes.

### ***Changes relating to Tier 5 (Youth Mobility Scheme) of the Points-Based System***

- 7.52 To move Hong Kong from the list of countries without deemed sponsorship status to the list of countries with deemed sponsorship status, having now completed the required five-year qualifying period.

### ***Changes to definitions used in the Points-Based System***

- 7.53 The definition of “Employment as a Doctor in Training” is being updated to replace the reference to the “Postgraduate Medical Education and Training Board” with a reference to the “General Medical Council”, as the former was merged with the latter in 2010. The title of the definition is being changed to clarify that it also applies to dentists in training.
- 7.54 We have amended the definition of ‘Professional Sportsperson’ in paragraph 6 making it clear when the rule does not apply to a professional sportsperson or coach playing in a charity match, to make it explicit that this rule applies to professional sportspersons.

### ***Changes to stateless leave provisions***

- 7.55 The Home Office operates a stateless leave policy, reflected in Part 14 of the Immigration Rules, to assist those who are stateless and do not have a right of residence in any other country. Those who qualify for leave on this route are currently granted 30 months’ limited leave, can apply to extend their leave and become eligible for settlement after five years’ lawful residence.
- 7.56 The changes being introduced increase the initial period of leave for those who qualify from 30 months to five years’ limited leave, after which they can apply for settlement. That is because stateless persons who have no right to reside in any other country are likely to qualify for settlement (subject to security and criminality checks) after completing a period of five years’ limited leave. As such, an application for further limited leave after 30 months is unnecessary. By removing this requirement, the Government is making it easier for customers and cutting unnecessary bureaucracy, so that casework operations can focus on considering initial stateless leave applications and make decisions more quickly. Minor changes have also been made to update the provisions in respect of family members.
- 7.57 In addition, further changes have been made to make clear that, to qualify for stateless leave, someone must show that they cannot acquire a nationality or a right to permanent residence in another country to which they may be entitled. These changes are designed to reflect the policy intention better, and to deter abusive applications from those who deliberately renounce their citizenship, or refuse to take reasonable steps to acquire a nationality or right to permanent residence to which they can reasonably expect to be entitled if they registered with the relevant national authorities. Applications for stateless leave will be refused where a person does not provide sufficient evidence that they have taken such steps, even if they are technically ‘stateless’ because they do not hold a nationality at the time of their application.

### *Changes relating to visitors*

- 7.58 Appendix 5 to Appendix V comprises a list of events that are Permit Free Festivals. Permit Free Festivals are events that are assessed as contributing to the cultural heritage of the UK and at which performers can, exceptionally, be paid for their participation as visitors. Visitors cannot normally receive payment from a UK source for any permitted activities they undertake here. The list has been updated for 2019-20.
- 7.59 A minor change is being made to the definition of a “UK Higher Education Institution”, in Appendix 1 to Appendix V, to replace an outdated reference to the ‘Higher Education Funding Council for England’ with a reference to the ‘Office for Students’. The latter superseded the former body in 2018.

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

- 7.60 Rule 2.2(a)(v) of Appendix KoLL is a residual rule that should have been removed upon cessation of the Points-Based System (PBS) calculator to determine the validity of degree level qualifications. These changes remove that rule.

### *Changes relating to dependants of Afghan locally engaged staff*

- 7.61 There are two separate schemes designed to help locally engaged staff (LES) in Afghanistan, which recognise the contribution they made to securing a more prosperous and stable Afghanistan and the dangers they faced whilst working for HM Armed Forces. The ex-gratia redundancy scheme caters for those made redundant as a direct consequence of the UK military drawdown in Afghanistan, providing they worked directly for HM Government on 1 May 2006 (the date the UK assumed responsibility for Helmand province) and served more than 12 months. This provides a range of in-country packages of assistance and, for those who meet the criteria, relocation to the UK with their immediate family members.
- 7.62 The Intimidation Policy, introduced in 2010, is designed to support LES whose safety is threatened in Afghanistan due to their work with the UK. The policy is open to all staff who were employed directly by HM Government in Afghanistan since 2001, regardless of their role, job, length of service or reason for leaving. An expert team based in Kabul investigates all intimidation claims. Where there is evidence of a threat due to their work with the UK, appropriate mitigation measures are put in place, which range from providing security advice to financial assistance to relocate staff and their families to a safer part of the country or, in the most serious cases, relocation to the UK.
- 7.63 The Immigration Rules until now required family members who qualified for relocation to the UK to travel at the same time as the LES, which was made clear to LES before they relocated here. There are some family members who chose to remain in Afghanistan and did not travel at the same time. Where family members wish to join LES who have already relocated, they have not qualified under the relocation scheme and instead needed to apply under the family migration rules and meet the requirements, including the minimum income threshold and English language. Whilst there is provision to grant visas in exceptional circumstances, this would have been outside the Immigration Rules.

7.64 As part of the Home Secretary's announcement on 3 May 2018, introducing a new route to settlement for Afghan LES, a commitment was also made to look again at what more could be done for family members who stayed in Afghanistan when the LES relocated. The changes make provision in the rules for pre-existing dependents, who would otherwise qualify for relocation, to travel to the UK after the LES has already relocated.

### *Changes relating to the EU Settlement Scheme*

7.65 This Statement of Changes in Immigration Rules makes provision for the full opening of the EU Settlement Scheme. The Immigration Rules for the scheme contained in the new Appendix EU substituted by this Statement of Changes include the following changes to the scope of the scheme and the application process:

#### *Scope of the scheme*

- Resident citizens of the other EEA countries (Iceland, Liechtenstein and Norway) and of Switzerland, and their family members, will also be able to apply for UK immigration status under the scheme, in line with the citizens' rights agreements reached with those countries;
- EEA and Swiss citizens and certain family members will be able to apply under the scheme from outside the UK, so that they can obtain status, without needing to travel here in order to make an online application, based on their previous residence in the UK. Their family members will also be able to do so where, if they are non-EEA/Swiss citizens, they hold a valid biometric residence card issued by the UK under the Immigration (EEA) Regulations 2016;
- The scheme will be open to the family members of British citizens who were exercising their free movement rights under EU law before returning to the UK ('Surinder Singh' cases, including extended family members in light of the Court of Justice of the European Union judgment in Banger) and to the family members of certain dual British/EU citizens ('Lounes' cases), as set out in the Statement of Intent on the EU Settlement Scheme published on 21 June 2018;<sup>5</sup>
- The scheme will also be open to others lawfully resident in the UK by virtue of a 'derivative right' to reside, based on wider EU law. These are 'Chen carers' (the primary carer of a self-sufficient EEA citizen child) and 'Ibrahim and Teixeira' cases (a child of a former EEA citizen worker who is in education in the UK and their primary carer), which are protected by the draft Withdrawal Agreement with the EU in terms of their current rights, and 'Zambrano carers' (the primary carer of a British citizen child or dependent adult). The Government has decided that, in light of the particular circumstances of these cases, it is appropriate that their long-term status in the UK should be protected by bringing them within the scope of the EU Settlement Scheme;

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<sup>5</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>

- Residence in the Crown Dependencies (Guernsey, Jersey and the Isle of Man) will be counted as UK residence for the purposes of the scheme, consistent with the wider operation of the Common Travel Area;
- EEA and Swiss citizens previously resident in the UK will be able to count, as UK residence for the purposes of the scheme, time spent on an overseas posting as a Crown servant (working for the UK Government, for one of the Devolved Administrations or for the British Council), as will a partner or child of any nationality accompanying such a person or accompanying a member of HM Forces on an overseas posting. Such EEA and Swiss citizens have made a strong commitment to the UK by serving overseas in this way, or by accompanying someone who is doing so, and this should not disadvantage them under the scheme;
- Consistent with the basis on which the EU Settlement Scheme will operate in the event of the UK leaving the EU without a deal,<sup>6</sup> provision is made for the ‘specified date’ - by which EEA and Swiss citizens will need to be continuously resident in the UK and certain relevant family relationships will need to be formed - to be 29 March 2019 in that scenario rather than 31 December 2020;

#### *Application process*

- There will be no application fee under the scheme, as the Prime Minister announced on 21 January 2019;
- An application under the scheme will be made on a paper application form rather than through the online application process, where this is (i) mandated on gov.uk (for example, for ‘derivative right’ cases in which the applicant will need to provide additional information to that generally required under the scheme); or (ii) approved on an individual basis in light of the exceptional circumstances of the case, with such scope complementing the assisted digital support widely available for those applicants who need help to complete the online application process;
- Applicants under the scheme will be able to rely on a wider range of documents as proof of their identity and nationality (including, in the UK, their valid national identity card for an EEA or Swiss citizen, as well as their valid passport, and their valid passport or biometric residence permit for a non-EEA/Swiss citizen family member, as well as their valid biometric residence card). Non-EEA/Swiss citizen family members applying within the UK, who do not hold a valid biometric residence card, will need to enrol their biometrics at one of the relevant locations for this across the country;
- As an alternative where relevant to using the identity verification app, or visiting one of the locations at which they can be helped to use this, there will be scope for applicants to submit their identity document by post to be checked and returned to them quickly; and

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<sup>6</sup> <https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brex-it>

- There will also be scope for the Secretary of State to accept alternative evidence of identity and nationality where the applicant is unable to provide the required document due to circumstances beyond their control, or due to compelling practical or compassionate reasons.

7.66 This Statement of Changes in Immigration Rules makes the following other provision associated with the EU Settlement Scheme:

- Consistent with the draft Withdrawal Agreement with the EU, the new Appendix EU (Family Permit) provides for a non-EEA/Swiss citizen, who is the family member of an EEA/Swiss citizen with status granted under the EU Settlement Scheme, to apply for an entry clearance to join that EEA/Swiss citizen in the UK, or to accompany them here, whether for a short stay or to make an application under the scheme in the UK;
- Changes to Part 1 and Part 9 of the Rules to ensure that the grounds for the revocation of an entry clearance granted under Appendix EU (Family Permit), the refusal or cancellation of leave to enter held by virtue of a person having arrived in the UK with such an entry clearance, and the cancellation or curtailment of leave to enter or remain granted under Appendix EU are consistent the EU law public policy tests for conduct committed before 31 December 2020 (or before 29 March 2019 in a ‘no deal’ scenario) and with UK suitability provisions for conduct thereafter; and
- Scope for an application under Appendix AR (EU) for administrative review of a decision under the scheme to be made outside the UK as well as within the UK.

## **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 it 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 Changes in this Statement have been informed by reviews of the Tier 1 (Entrepreneur) and Tier 1 (Investor) categories carried out by the Migration Advisory Committee (MAC) in 2014 and 2015. The MAC carried out a full public call for evidence in the course of both reviews.

10.2 The changes relating to entrepreneurs and investors in this Statement have not been the subject of further public consultation, as this would be disproportionate and would likely trigger a surge in applications ahead of the reforms being introduced. Selected industry bodies have been consulted, where relevant, to ensure suitable endorsing bodies are in place for the new Start-up and Innovator categories.

- 10.3 The Government has not undertaken a public consultation on the EU Settlement Scheme, but the overall policy and approach have been discussed with 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.
- 10.4 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 GOV.UK website.

## **12. Impact**

- 12.1 The closure of the Tier 1 (Entrepreneur) category and launch of the new Innovator category will have some impact on future businesses whose directors might have qualified under the former category but not the new category. The impacts are considered to be justified given that the purpose of the changes is to focus provision on innovative businesses which are most likely to make a significant economic contribution to the UK, and the Migration Advisory Committee's findings that the category contains a long tail of poor quality applications which add little or nothing to the UK economy.
- 12.2 The EU Settlement Scheme has no, or no significant, impact on business, charities or voluntary bodies, but it provides clarity for employers and others as to the basis on which resident EEA/Swiss citizens and their family members can remain here. There is no, or no significant, impact on the public sector.
- 12.3 An impact assessment on the EU Settlement Scheme was published on 20 July 2018 to support the Immigration and Nationality (Fees) (Amendment) (EU Exit) Regulations 2018. This was updated and published on 7 March 2019 to support the Immigration and Nationality (Fees) (Refund, Waiver and Amendment) (EU Exit) Regulations 2019, and is available alongside that measure on the [legislation.gov.uk](https://www.legislation.gov.uk) website.
- 12.4 There is no, or no significant, impact on business, charities or voluntary bodies, or on the public sector, for the other changes in this statement.

## **13. Regulating small business**

- 13.1 There is no, or no significant, impact on activities that are undertaken by small businesses, other than the aforementioned impact on future businesses whose directors might otherwise have qualified under the closed Tier 1 (Entrepreneur) category.

## **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 Specific written queries relating to this Statement of Changes should be directed to Richard Short at [StatementofChanges@homeoffice.gsi.gov.uk](mailto:StatementofChanges@homeoffice.gsi.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 at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>.
- 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 at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

