

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 24 OCTOBER 2019 (HC 170)**

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 Explanatory Memorandum contains information for the Committee on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 This instrument amends the Immigration Rules, which regulate entry to and stay in the UK, to reflect changes required if the United Kingdom leaves the European Union on 31 October 2019 without a deal. The detail of the changes being made is included in section 7 of this Explanatory Memorandum but, in summary, the changes will:

- Apply UK conduct and criminality thresholds to both the pre-exit and post-exit conduct of European Economic Area (EEA) citizens and their family members moving to the UK after Brexit, to increase security and better protect the public. Those thresholds will also apply to the post-exit conduct of EEA citizens living here before Brexit, and their family members, and to the pre-exit as well as post-exit conduct of EU citizens living here before Brexit, and their family members, where their conduct after exit results in a sentence of imprisonment;
- Provide access to the EU Settlement Scheme for certain categories of family members joining an EEA citizen resident here before Brexit, with applications by such family members able to rely on residence in the UK which began after Brexit, and to reflect the deadline by when applications by such family members will need to be made; and
- Establish the European Temporary Leave to Remain Scheme, for EEA citizens, and their close family members, moving to the UK after a 'no deal' Brexit and before the start of the new points-based immigration system from January 2021, to enable them to obtain a UK immigration status so that they can continue living and working here for a temporary period after 2020.

- 2.2 The changes affect EU, other EEA and Swiss citizens, and their family members. This Explanatory Memorandum uses 'EEA citizens' to refer also to Swiss citizens.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The main changes made by this statement will come into effect on 31 October 2019 rather than after the usual period of 21 days from the date the measure is laid before Parliament. The Government considers that this departure from normal practice is justified, because it was appropriate to await the outcome of the European Council

meeting on 17-18 October 2019 before laying further changes to the Immigration Rules in relation to Brexit.

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

- 3.2 The EU Settlement Scheme is contained in Appendix EU to the Immigration Rules, and it provides the basis for various groups to apply for UK immigration status, which they will require in order to remain here permanently after Brexit. In particular, the scheme provides the basis for resident EEA citizens and their family members, and the family members of certain UK nationals, to apply for UK immigration status.
- 3.3 The scheme is currently consistent with the draft Withdrawal Agreement with the European Union, reached on 17 October 2019, as regards EU citizens resident here before the end of the planned implementation period on 31 December 2020, and their family members. It is also consistent with the citizens' rights agreements reached with the other EEA countries (Iceland, Liechtenstein and Norway) and with Switzerland.
- 3.4 The EU Settlement Scheme will also be the basis on which EEA citizens, resident in the UK by exit 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 on 31 October 2019 without a deal. This was reflected, with reference to a possible 'no deal' Brexit on 29 March 2019, in the policy paper on citizens' rights in a 'no deal' scenario, published on 6 December 2018.¹
- 3.5 The European Temporary Leave to Remain Scheme for EEA citizens, and their close family members, moving to the UK after a 'no deal' Brexit on 31 October 2019 and before the start of the new points-based immigration system from January 2021, formed part of the immigration arrangements for EEA citizens in a 'no deal' scenario that were announced by the Government on 4 September 2019.²
- 3.6 The Government has today also laid before Parliament the Immigration (Amendment) (EU Exit) Regulations 2019, which will come into force on exit day in a 'no deal' scenario. That instrument addresses deficiencies that will arise in the Immigration (European Economic Area) Regulations 2016, which will be retained, for the time being, by the European Union (Withdrawal) Act 2018 from exit day in a 'no deal' Brexit.

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)

- 3.7 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.

¹ <https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brexit>

² <https://www.gov.uk/government/publications/no-deal-immigration-arrangements-for-eu-citizens-moving-to-the-uk-after-brexit>

4. Extent and Territorial Application

- 4.1 The territorial extent of this Statement of Changes in Immigration Rules is all of the United Kingdom.
- 4.2 The territorial application of this Statement of Changes in Immigration Rules is all of the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Immigration Rules, as laid before Parliament by the Secretary of State, constitute a statement of practice to be followed in the administration of the Immigration Act 1971 for regulating the entry into and stay of persons in the United Kingdom.
- 6.2 This Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules, which can be found on the GOV.UK website at www.gov.uk/government/collections/immigration-rules, where all the Statements of Changes in Immigration Rules issued since May 1994 are published.
- 6.3 The changes made by this statement to establish the European Temporary Leave to Remain Scheme to operate in the event of a ‘no deal’ Brexit shall take effect on or after 31 October 2019, with two exceptions. These concern the scope for non-EEA national close family members to apply under the scheme and for an applicant refused leave under the scheme to apply for an administrative review of that decision, for which the relevant changes shall take effect from 4 December 2019.
- 6.4 The other changes made by this statement shall take effect on 31 October 2019.

7. Policy background

What is being done and why?

Overview

- 7.1 In a ‘no deal’ Brexit, free movement as it currently stands under EU law will end when the UK leaves the EU. However, Parliament has provided that much of the free movement framework will remain in place under the European Union (Withdrawal) Act 2018 until Parliament passes primary legislation to repeal it. Ahead of that, in a ‘no deal’ scenario, the Government will introduce some appropriate changes, reflecting the fact that the UK is no longer part of the EU. The Immigration (Amendment) (EU Exit) Regulations 2019, which the Government has also laid before Parliament today, will come into force on exit day in a ‘no deal’ Brexit to make those changes.
- 7.2 Those changes include the application of UK thresholds on conduct and criminality, to increase security and better protect the public. This statement reflects those changes in

the Immigration Rules applicable, after a ‘no deal’ Brexit, to EEA citizens and their family members.

- 7.3 In a ‘no deal’ Brexit, changes also need to be made to the EU Settlement Scheme (EUSS), to enable applications to be made by certain categories of family members joining EEA citizens resident here before Brexit, and Immigration Rules changes are needed to establish the European Temporary Leave to Remain (Euro TLR) Scheme, for EEA citizens, and their close family members, moving to the UK after a ‘no deal’ Brexit and before the start of the new points-based immigration system from January 2021.

Criminality rules

- 7.4 It is appropriate that, in a ‘no deal’ scenario, when we leave the EU, we better protect the public by applying UK conduct and criminality thresholds in considering the refusal of entry, deportation and exclusion of EEA citizens and their family members, and when considering the cancellation and curtailment of leave granted to EEA citizens and their family members. In particular, the UK criminality thresholds provide that such decisions may be made where this is conducive to the public good. The changes therefore:

- Apply current UK conduct and criminality thresholds to EEA citizens and their family members moving to the UK after Brexit, and to Turkish workers, business persons and their family members whose applications for leave under the European Communities Association Agreement (ECAA) are decided after Brexit. This is reflected in changes to Part 9 of the Immigration Rules (general grounds for refusal), and in the suitability provisions for Euro TLR, set out in Part 2 of Appendix EU;
- Apply those thresholds to the post-exit conduct of EU citizens living in the UK immediately before Brexit or who have EUSS leave, and their family members, and of Turkish workers, business persons and their family members granted leave under the ECAA before exit, and to their pre-exit conduct where their conduct after exit results in a sentence of imprisonment. This is reflected in changes to Part 9 of the Immigration Rules, and to the suitability provisions for the EUSS, set out in Part 1 of Appendix EU, and for the EUSS family permit, set out in Appendix EU (Family Permit). Otherwise, their pre-exit conduct will continue to be considered under the EU law public policy tests (in the case of EU citizens, Turkish workers and their family members), or applying UK criminality thresholds subject to the ECAA standstill provision (in the case of Turkish business persons and their family members); and
- Apply various provisions in Part 9 of the Immigration Rules in order to ensure that, for Turkish workers, business persons and their family members, applications for entry clearance or limited leave by virtue of the ECAA can be refused, and limited leave granted by virtue of the ECAA can be cancelled or curtailed, on the grounds of conduct committed after exit day, or before exit day where the relevant person has received a sentence of imprisonment based on post-exit conduct or did not have entry clearance or limited leave by virtue of the ECAA immediately before exit day. This reflects amendments made to the ECAA

by the Nationality, Immigration and Asylum Regulations 2019 (S.I. 2019/745) and the Immigration (Amendment) (EU Exit) Regulations 2019.

7.5 In line with the citizens' rights agreements reached with the other (non-EU) EEA countries (Iceland, Liechtenstein and Norway) and with Switzerland, the pre-exit conduct of citizens of those countries and their family members resident in the UK before Brexit will continue in all cases to be considered under the EU law public policy tests.

EU Settlement Scheme

7.6 The changes amend the Immigration Rules for the EUSS, contained in Part 1 of Appendix EU, in two main ways, for a 'no deal' Brexit:

- To reflect the fact that applications by certain categories of family members who, after Brexit, join EEA citizens resident here before Brexit will need to be able to rely on residence in the UK and Islands³ which began after Brexit; and
- To reflect the policy published on 6 December 2018 (and updated on 28 March 2019)⁴ about the deadline by when applications by such family members will need to be made:

- by 29 March 2022, where the relationship existed before Brexit and continues to exist when the application is made, in the case of spouses, civil partners, durable partners, children, parents and grandparents, and of children born overseas after Brexit; and

- by 31 December 2020, where the relationship as a spouse, civil partner or durable partner was formed after Brexit and continues to exist when the application is made, or from other dependent relatives.

7.7 The deadline in a 'no deal' scenario for applications by existing family members overseas at Brexit, who wish to rely on pre-exit residence in the UK and Islands in applying for status under the EUSS, will be 31 December 2020 (which will also be the deadline, in that scenario, for applications by those in the UK at Brexit), with scope in any case for a late application by a person with reasonable grounds for missing the deadline. Otherwise, they may be able to return to the UK by 29 March 2022 and apply then, based on post-exit residence, for status under the scheme.

7.8 The changes also amend the Immigration Rules for the EUSS family permit, contained in Appendix EU (Family Permit), to reflect the fact that, after a 'no deal' Brexit, there will need to be scope for relevant non-EEA national family members to apply for an EUSS family permit to join an EEA citizen here with EUSS status, where the relevant family relationship was formed after Brexit as well as where it was formed before.

³ The Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man.

⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790570/Policy_Paper_on_citizens_rights_in_the_event_of_a_no_deal_Brexit.pdf

European Temporary Leave to Remain Scheme

7.9 The changes introduce the Immigration Rules for the European Temporary Leave to Remain Scheme, in Part 2 of Appendix EU, which will become operative on a ‘no deal’ Brexit. The scheme will enable EEA citizens, and their close family members, moving to the UK after a ‘no deal’ Brexit and before the start of the new points-based immigration system from January 2021, to obtain a UK immigration status so that they can continue to work or study here as they do now, for a temporary period. It will provide EEA citizens who move to the UK after a ‘no deal’ Brexit, and their employers, with greater certainty during that transitional period, and will ensure that they have a secure UK immigration status before the introduction of the new system.

7.10 The main features of the Euro TLR scheme will be as follows:

- Applications will be made within the UK, will be free of charge and will involve a simple online process and identity, security and criminality checks;
- EEA citizens applying under the scheme by 31 December 2020 will, if their application is successful, be granted a period of 36 months’ limited leave to remain in the UK, running from the date the leave is granted;
- Non-EEA national close family members (spouses, partners and children under the age of 18) who are in the UK lawfully (other than as a visitor) may, from 4 December 2019, apply for Euro TLR and, if their application is successful, they will be granted limited leave to remain for the remaining duration of the Euro TLR held by the relevant EEA citizen. From 1 January 2021, EEA citizen close family members will be able to apply for Euro TLR on that basis;
- Euro TLR will not be extendable. Euro TLR holders wishing to stay in the UK after their Euro TLR leave expires will need to make a further application and qualify under the new points-based immigration system. If they do, and this is in a route under the new system which leads to settlement (indefinite leave to remain) in the UK, their period of Euro TLR will count towards the qualifying residence period for settlement under that route;
- Where an individual who holds Euro TLR does not meet the requisite criteria under the new points-based immigration system or otherwise have a right to remain in the UK, they will be expected to leave the UK when their Euro TLR expires; and
- An applicant refused Euro TLR on the basis of an application made from 4 December 2019 will be able to apply under Appendix AR (EU) for an administrative review of that decision.

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

and, in a ‘no deal’ scenario, implements the European Temporary Leave to Remain Scheme for EEA citizens moving to the UK after exit.

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 Government has not undertaken a public consultation on the EU Settlement Scheme or the European Temporary Leave to Remain 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.

11. Guidance

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

12. Impact

12.1 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 website. 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 and Swiss citizens and their family members can remain here.

12.2 An impact assessment on the European Temporary Leave to Remain Scheme will be published on the GOV.UK website. No, or no significant, impacts on business, charities or voluntary bodies have been identified. Relative to the baseline indirect impacts, introducing Euro TLR may also provide greater certainty for employers and landlords around entitlement of those in scope to work or rent property after the end of 2020.

12.3 For all other changes there is no, or no significant, impact on business, charities or voluntary bodies.

12.4 There is no, or no significant, impact on the public sector.

13. Regulating small business

13.1 No, or no significant impact on activities undertaken by small businesses have been identified.

13.2 For all other changes, there is no, or no significant, impact on activities 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 Specific written queries relating to this Statement of Changes should be directed to Clive Peckover at StatementofChanges@homeoffice.gov.uk. Please note that this mailbox is only for Parliamentary use in relation to specific technical queries regarding the drafting of this Statement of Changes. It is not a contact point for general enquiries. Queries to this e-mail address from outside Parliament about other immigration issues, including how these changes affect applications, will not receive a response.

15.2 More general queries should be directed to the Home Office as per the ‘Contact UKVI’ section on the visas and immigration pages of GOV.UK website 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 Nicola Smith at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.5 Rt. Hon. Brandon Lewis MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.