

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 12 MARCH 2020 (HC 120)**

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Immigration Rules that are used to regulate people's entry to and stay in the United Kingdom. The detail of the changes being made is included in section 7 of this Explanatory Memorandum but, in summary, the main changes will:

- Make adjustments to the EU Settlement Scheme following the United Kingdom's exit from the European Union on 31 January;
- Implement a freeze on salary thresholds for settlement following a recommendation by the Migration Advisory Committee;
- Implement a number of minor corrections and amendments to the rules; and
- Update the Youth Mobility Scheme partner countries and places available.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 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 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 people's entry into and stay 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 following sections shall take effect on 6 April 2020. In respect of the following changes, if an application for entry clearance, leave to enter or leave to remain is made before 6 April 2020, it will be decided in accordance with the Immigration Rules in force on 5 April 2020:
- Part 3 – Paragraph 3.1
 - Appendix G – Paragraph G1 to G4
 - Appendix V – Paragraph V1
- 6.4 The following changes shall take effect on 6 April 2020. For administrative review applications made before 6 April 2020, the Immigration Rules in force on 5 April 2020 will apply:
- Appendix AR – Paragraph AR1
- 6.5 The other changes set out in this statement shall take effect on 6 April 2020.

7. Policy background

What is being done and why?

Annual update to Permit Free Festival list

- 7.1 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 2020/21.

Changes to the EU Settlement Scheme

- 7.2 Some changes are being made to the Immigration Rules for the EU Settlement Scheme (EUSS), contained in Appendix EU, following the UK's exit from the EU on 31 January. The scheme enables EU, other European Economic Area (EEA) and Swiss citizens living in the UK (and referred to collectively here as 'EEA citizens'), and their family members, to obtain the UK immigration status they need to remain in the UK, with the same rights to work, study and access benefits and services as they had before we left the EU.

7.3 The main changes in respect of the EUSS are as follows:

- In line with the Withdrawal Agreement and the citizens' rights agreements with the other EEA countries and Switzerland, to reflect relevant developments in case-law concerning free movement rights. In particular, they reflect the Supreme Court judgment in *SM (Algeria)* concerning the range of extended family members who can reside with an EEA citizen. The changes mean that applications to the EUSS will now be able to be made by those with a relevant document issued under the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations) as an extended family member on the basis that they are a child under the age of 18 who is subject to a non-adoptive legal guardianship order in favour of an EEA citizen; they are the relative of the spouse or civil partner of an EEA citizen; or they are a child under the age of 18 of the durable partner of an EEA citizen;
- To confirm, in respect of access to the EUSS for the family members of UK nationals returning from an EEA Member State or Switzerland, in line with the announcement on such access for these so-called 'Surinder Singh' cases made on 4 April 2019,¹ that the relevant conditions in regulation 9 of the 2016 Regulations need to be satisfied before the end of the transition period on 31 December 2020 as well as immediately before the UK national and the family member return to the UK. In light of the Supreme Court judgment in *SM (Algeria)*, the changes also make additional provision, equivalent to that referred to above in respect of EEA citizens, for the extended family members of UK nationals returning from an EEA Member State or Switzerland;
- To bring within the scope of the EUSS certain non-EEA nationals issued with a residence document under transitional provisions in the 2016 Regulations as the family member of a British citizen with dual UK/EEA nationality. The Court of Justice of the European Union judgment in *McCarthy* found that a person who holds the nationality of the host Member State (regardless of whether or not they hold dual nationality with another EEA Member State) and has never exercised their right of free movement does not benefit, and nor do their family members, from rights of residence under the Free Movement Directive. Transitional provisions were made in 2012 to enable certain family members affected by the judgment to retain or obtain a residence document enabling them to remain in the UK. It is appropriate that they should be able to rely on those provisions to obtain status under the EUSS;
- To enable a durable partner or dependent relative applying to the EUSS – who is required to have been documented for the relevant period in that category under the 2016 Regulations – to rely on a document which has expired, where, before it did so, they applied for a further residence document under the 2016 Regulations based on the same family relationship and that further document was issued after the first had expired. The changes also ensure that, in line with the citizens' rights agreements, a person who has an application for a residence document under the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792710/Citizens_Rights_-_UK_nationals_in_the_EU.pdf

2016 Regulations outstanding at the end of the transition period can rely on that document (if issued to them) in applying to the EUSS;

- To provide for the refusal of an EUSS application where the applicant has been or would be excluded from refugee or humanitarian protection, or Article 33(2) of the Refugee Convention applies or would do so, as they are a danger to the security of the UK, or applies as, having been convicted of a particularly serious crime, they are a danger to the community. This is consistent with the Withdrawal Agreement, as the provision requires that conduct before the end of the transition period on 31 December 2020 must be assessed in line with the EU public policy, public security or public health test; and
- To delete the provision for a ‘no deal’ scenario previously made in Appendix EU, Appendix EU (Family Permit), Appendix AR (EU) and Part 9 of the Immigration Rules.

7.4 Other changes being made in connection with the EUSS include:

- A change to Appendix AR to allow new evidence to be submitted in an application for administrative review of a decision to cancel EUSS status at the border under paragraph 321B of the Immigration Rules (on grounds of deception), in line with other provisions for administrative review of decisions to cancel leave at the border on those grounds;
- An addition to Part 9 of the Immigration Rules (the general grounds for refusal) to allow for the cancellation of leave to enter granted by virtue of having arrived in the UK with an entry clearance that was granted under Appendix EU (Family Permit) where there has been a material change in circumstances since the family permit was granted. A cancellation decision on those grounds is also added to Appendix AR (EU) so that administrative review of such a decision will be available in accordance with that appendix;
- An addition to Appendix EU to disapply the returning resident provisions in Part 1 of the Immigration Rules for Indefinite Leave to Remain (ILR) holders returning to the UK after a lengthy absence abroad. Those provisions are inconsistent with the citizens’ rights agreements, under which settled status (ILR under the EUSS) remains valid for an absence of up to five years (four years for Swiss citizens and their family members) rather than two years for non-EUSS ILR under those Part 1 provisions; and
- Other minor changes and clarifications to the Rules, including in light of feedback from caseworkers.

Global Talent

7.5 The Global Talent category is for talented and promising individuals in the fields of science, digital technology and arts and culture wishing to work in the UK. ‘Talent’ applicants are already leaders in their respective field, while ‘promise’ applicants have shown the potential to become leaders in their field.

- 7.6 Amendments are being made to Annex 1 and Annex 2 in Appendix W to ensure the list of organisations which are recognised by the endorsing bodies for this route are accurately reflected.
- 7.7 Additionally, a small number of grammatical changes and clarifications have also been made.

Tier 2 changes

- 7.8 The salary threshold for indefinite leave to remain under Tier 2 (General) is being amended to enable the existing level to be maintained for applications made on or after 6 April. This change is being made following recommendations made by the independent Migration Advisory Committee (MAC) in its report on a Points-Based System and salary thresholds published on 28 January 2020.
- 7.9 Minor amendments are being made to Appendix K to ensure the Shortage Occupation List reflects the recommendations of the MAC. To this end we are adding Archaeologists to the list in line the MAC’s recommendation.
- 7.10 We are also removing occupation code 2127 from the list for Scotland only as ‘Production and process engineers’ are already included in the UK wide list.
- 7.11 A minor amendment is also being made to Appendix J to reflect that ‘Overhead linesworkers’ are no longer included on the Shortage Occupation List.

Changes relating to short-term study

- 7.12 A change is being made to the definition of an “accredited institution”, in paragraph A57B, to remove the references to the ‘Bridge Schools Inspectorate’ and ‘Schools Inspection Service’. Both these inspection bodies have now closed.

Changes relating to visitors

- 7.13 A change is being made to the definition of an “accredited institution”, in Appendix 1 to Appendix V, to remove the references to the ‘Bridge Schools Inspectorate’ and ‘Schools Inspection Service’. Both these inspection bodies have now closed.

TIER 5: Administrative updates to Appendix M and Appendix N

Changes to Appendix M

- 7.14 In Appendix M, an amendment is being made to the list of sports governing bodies to refer to “Grand National Archery Society” (GNAS) as “Archery GB”, at GNAS’ request.
- 7.15 In Appendix M, the list of approved governing bodies permitted to endorse professional sportspersons, has been updated to include “Tennis & Rackets Association”.

Changes to Appendix N

- 7.16 In Appendix N, the ‘NHS Tayside International Staff Exchange Scheme’ and the ‘Royal Pharmaceutical Society international pre-registration scheme’ GAE schemes have been deleted from the Immigration Rules, because they are no longer in operation.
- 7.17 In Appendix N, the list of organisations endorsed by UK Research and Innovation (UKRI) to directly sponsor researchers under the ‘UKRI – Science, Research and Academia’ scheme is being expanded and sorted alphabetically, at UKRI’s request.

TIER 5 (Appendix G): Update to the Youth Mobility Scheme partner countries and places available

- 7.18 To update to this year’s allocation with the year and number of places available. The Tier 5 Youth Mobility Scheme has a quota for each participating country that limits the number of places available. This is updated annually.

TIER 5 (Appendix G): Update to list of invitation to apply arrangements and addition of bullet points for reading ease

- 7.19 To add Hong Kong to the list under the heading “Invitation to apply arrangements”, and for the list to be bullet pointed.
- 7.20 Hong Kong allocates its places using a ballot and it appears to have been missed off the list. Bullet points will make the section easier to read.

Representative of an Overseas Business: Update to English Language Requirements

- 7.21 An amendment is being made to Part 5 to remove reference to Appendix O, which was deleted from the Immigration Rules by the changes laid on 9 September 2019.

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 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.

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.

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 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 in the UK.

13. Regulating small business

13.1 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 Richard Short 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 Tim Rymer at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 Kevin Foster MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.