

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 14 MAY 2020 (CP 232)**

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 changes will:

- Make adjustments to the EU Settlement Scheme;
- Make updates to the Start-up and Innovator categories;
- Implement a number of minor corrections and amendments to the rules

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 the 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 4 June 2020. If an application is supported by a Certificate of Sponsorship (CoS) or endorsement assigned before this date or an application for entry clearance, leave to enter or leave to remain is made before 4 June 2020, they will be decided in accordance with the Immigration Rules in force on 3 June 2020:
- Part 5 – Paragraphs 5.1 to 5.10
 - Part 6A – Paragraphs 6A.1 and 6A.2
 - Appendix W – Paragraph W1 to W41
- 6.4 The changes to Appendix EU and to Appendix EU (Family Permit) relating to access to the EU Settlement Scheme, and to the EU Settlement Scheme family permit and travel permit, for family members of the people of Northern Ireland shall take effect on 24 August 2020.
- 6.5 The other changes set out in this statement shall take effect on 4 June 2020.

7. Policy background

What is being done and why?

Changes to the EU Settlement Scheme (EUSS)

- 7.1 Some changes are being made to the Immigration Rules for the EU Settlement Scheme (EUSS), contained in Appendix EU, and for the EUSS family permit and travel permit, contained in Appendix EU (Family Permit). The EUSS 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 the UK left the EU. The EUSS family permit and travel permit enable certain non-EEA citizen family members of a resident EEA citizen to travel to the UK.
- 7.2 The main changes in respect of the EUSS and the EUSS family permit and travel permit are as follows:
- In line with ‘New Decade, New Approach’ published by the UK and Ireland on 9 January 2020 ahead of the restoration of devolved government in Northern

Ireland,¹ to bring family members of the people of Northern Ireland within the scope of the EUSS (and of the EUSS family permit and travel permit). This will mean that eligible family members of the people of Northern Ireland will be able to apply for UK immigration status, under the EUSS, on the same terms as the family members of Irish citizens in the UK. This immigration status will be available to the family members of all the people of Northern Ireland, no matter whether the person of Northern Ireland holds British or Irish citizenship or both, and no matter how they identify;

- To extend the scope for victims of domestic violence or abuse to apply for status under the EUSS. In line with the Withdrawal Agreement and the Free Movement Directive, this is currently limited to a former spouse or civil partner whose marriage or civil partnership has been legally terminated and who was a victim of domestic violence or abuse while the marriage or civil partnership was subsisting. Consistent with the Government's wider commitment to tackling domestic violence or abuse and protecting victims of it, the changes will mean that any family member within the scope of the EUSS (a spouse, civil partner, durable partner, child, dependent parent or dependent relative) whose family relationship with a relevant EEA citizen (or with a qualifying British citizen) has broken down permanently as a result of domestic violence or abuse will have a continued right of residence where this is warranted by domestic violence or abuse against them or another family member. They will be able to rely on this, together with their own continuous residence in the UK, in applying for status under the EUSS;
- To provide scope, consistent with the Free Movement Directive, for their children and other family members, as well as their spouse or civil partner, to have a continued right of residence in particular circumstances following the legal termination of the marriage or civil partnership of a relevant EEA citizen (or of a qualifying British citizen). Those circumstances will include where the marriage or civil partnership had lasted for at least three years prior to the initiation of proceedings for its termination and the couple had lived together in the UK for at least a year during its duration. The family member will be able to rely on this continued right of residence, together with their own continuous residence in the UK, in applying for status under the EUSS;
- To provide scope for a family member applying under the EUSS or for an EUSS family permit, where this is necessary for the purposes of deciding whether they meet the eligibility requirements, to be required to provide a certified English translation of (or a Multilingual Standard Form to accompany) a document submitted as required evidence of the family relationship (or as certain required evidence of qualification for an EUSS family permit) on which their application relies;

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf

- To refer to scope for an EUSS application made on a paper application form to be submitted by e-mail rather than by post, where a Home Office e-mail address is specified on the form; and
- To clarify the circumstances in which a continuous qualifying period of residence on which an applicant relies for their eligibility for status under the EUSS does not have to be continuing at the date of application.

Changes to the Start-up and Innovator categories

- 7.3 The Start-up and Innovator categories are for business founders who have been endorsed by approved bodies as having innovative, viable and scalable business ideas.
- 7.4 Changes are being made to make it clearer that, to be endorsed, applicants must be founders of their businesses and be relying on their own business plans. These changes also clarify that an Innovator applicant's business may be already trading, providing they were one of its founders.
- 7.5 A provision is being added for decision makers to request further information or evidence from applicants or their endorsing bodies, if they have concerns that an endorsement has been issued inappropriately, and to refuse applications if they are not satisfied the endorsement criteria have been met.
- 7.6 The "viability" criteria are being amended to also require that a business plan must be realistic and achievable based on the applicant's available resources.
- 7.7 The policy around applicants who wish to change their business venture, previously only set out in guidance for endorsing bodies, is being added to the Immigration Rules. This sets out that applicants may change business venture, providing their endorsing body is satisfied the new venture meets all of the criteria for endorsement. The applicant does not need to obtain a fresh endorsement or make a fresh application.
- 7.8 Related to 7.7 above, a provision is being added so that if an applicant has changed business venture in this way, it will not prevent them applying under the "same business" criteria in their next Innovator application. This is particularly important for applicants switching from Start-up to Innovator, as they would otherwise need to meet the £50,000 funding threshold for "new business" applications.
- 7.9 Changes are being made to the criteria for becoming endorsing bodies in both categories. The criteria for Start-up and Innovator endorsing bodies are being made consistent, the main effect of which is to enable Higher Education Providers to become Innovator endorsing bodies. A further change is being made to enable Government Departments to become endorsing bodies.
- 7.10 Drafting corrections are being made to the rules for the following:
- Grant periods for Start-up migrants who are switching endorsing body;
 - Verification of maintenance funds with financial institutions listed in Appendix P to the Immigration Rules;

- Clarifying that “average” salary refers to mean salary, in the job creation criteria relating to Innovator settlement applications.

Appendix W – all categories

7.11 A change has been made to the requirement for students sponsored for their studies in the UK by a government or international scholarship agency, to obtain written consent from the relevant organisation. The change ensures that the requirement applies to both entry clearance and leave to remain applications in any of the categories in Appendix W.

Global Talent

7.12 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.

7.13 Applicants who already hold leave under Tier 1 (Exceptional Talent) who want to extend their stay must apply under the extension requirements for the Global Talent category, rather than obtaining a new endorsement from an Endorsing Body. Changes have been made to the Immigration Rules to clarify this.

7.14 The criteria for consideration by the Producers Alliance for Cinema and Television (PACT) allows some applicants to provide evidence of awards from the 10 years before the date of application. An erroneous requirement limiting evidence to being from the last five years has therefore been removed.

7.15 At the request of the endorsing bodies, letters of recommendation have been restricted to three sides of A4, excluding the credentials of the author. This prevents applicants providing lengthy letters of recommendation to circumvent other restrictions on the amount of evidence which can be provided and ensures that evidence focuses on the key skills and contributions of applicants to aid consideration of applications. The requirement is being applied to all endorsing bodies for consistency.

7.16 A small number of technical changes applying to digital technology applicants have been made at the request of Tech Nation, including increasing the length of documents allowed to demonstrate key and qualifying criteria from two A4 sides to three A4 sides. This ensures consistency with the maximum length of a curriculum vitae.

7.17 Two amendments have been made at the request of UK Research and Innovation (UKRI), adding a further acceptable host organisation under its endorsed funder route, and clarifying that the confirmation of the award must come from the endorsed funder rather than the host organisation.

7.18 An amendment has been made at the request of the Royal Society, British Academy and Royal Academy of Engineering, to clarify that research experience equivalent to a PhD, includes industrial and clinical research for both exceptionally talented and exceptionally promising applicants.

7.19 A number of technical changes applying to arts and culture applicants, including fashion design, have been made at the request of Arts Council England and their sub-endorser, the British Fashion Council. This includes clarification that the British Fashion Council consider applications specifically for those involved in fashion design rather than the wider industry, and minor amendments to the evidential criteria for letters of support.

Technical amendment to update Appendix M

7.20 An administrative amendment is being made to the list of sports governing bodies to confirm that the Home Office is permitted to endorse on behalf of all sports which are not included in Appendix M to the Immigration Rules.

Tier 2 Intra-company transfer – Removal of transitional settlement provisions

7.21 An amendment is being made that relates to the implementation of the April 2010 policy change that ended settlement for intra-company transferees. A transitional measure ensured that migrants sponsored as a Tier 2 (Intra-company Transfer) migrant prior to 6 April 2010 could still qualify and apply for indefinite leave to remain. As more than nine years has passed since the change in policy, all migrants eligible for this transitional arrangement have now either gained settlement or left the UK. Consequently, the transitional rules have been deleted.

Representative of an Overseas Business

7.22 The Representative of an Overseas Business category is for employees of overseas businesses which do not have a presence in the UK, to be sent to establish a branch or wholly-owned subsidiary of the overseas business in the UK. The following changes are being made in this category:

- An amendment is being made to prevent an overseas business sending a representative to facilitate their entry to the UK when there is no genuine intention for them to establish a branch or subsidiary in the UK;
- Clarification is being added to reflect that overseas businesses must be active and trading and intend to maintain their principal place of business outside the UK;
- An amendment is being made to reflect that applicants must have the skills, experience, knowledge and authority to represent the overseas business in the UK;
- Clarification is being added to reflect that applicants must be senior employees and cannot engage in their own business or represent any other business in the UK;
- An amendment is being made to reflect that the ownership of overseas businesses is not limited to businesses that issue shares;
- An amendment is being made to prevent majority owners from entering as the dependent spouse, civil partner, unmarried or same-sex partner of a representative of their own business. This will prevent owners circumventing the rules intended to prevent them relocating their business to the UK under this route.

- An amendment is being made to the extension criteria to clarify that the branch or subsidiary must have been established in the UK, and not overseas.

Changes relating to family life

- 7.23 A technical amendment to clarify that leave as a fiancé(e) or proposed civil partner is to enable the marriage or civil partnership to take place in the UK.
- 7.24 Clarification that the spent period at the leave to remain stage for applicants under the family rules who have been convicted and sentenced to a period of imprisonment for a period between 12 months to four years is 10 years. This is to coincide with spent periods that are stipulated at the entry clearance and indefinite leave to remain stages respectively.
- 7.25 To include provisions for 10 different accounting organisations where membership enables the accountant to provide evidence under the rules. Four of the organisations are members of a UK supervisory body. The other six organisations are not but have previously satisfied the requirements for suitable supervision of their member accountants. The current Appendix FM-SE is more prescriptive than the rules set out in Appendix A, as it limits accountancy bodies to the UK Supervisory Body and currently only allows an exception of the Institute of Financial Accountants. This change has been made to incorporate the other five organisations.

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 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 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

13. Regulating small business

13.1 There is no, or no significant, impact on activities 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.