

**EXPLANATORY MEMORANDUM TO  
THE STATEMENT OF CHANGES IN IMMIGRATION RULES  
PRESENTED TO PARLIAMENT ON 10 DECEMBER 2020 (HC 1043)**

**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:

- Clarify the places and circumstances in which an asylum application may be properly made.
- Enhance our capacity to treat as inadmissible to the UK asylum system asylum claims made by those who have passed through or have connections with a safe third country.
- Amend the Visitor rules to allow international drivers to perform cabotage operations (collecting and delivering goods and passengers within the UK as part of an international journey) and allow payment from a UK source for doing this activity.

**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 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. This can be found on the GOV.UK website at [www.gov.uk/government/collections/immigration-rules](http://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 to the Rules on Place of Claim and Inadmissibility are being laid as part of the ambition to overhaul our approach to asylum and illegal migration, delivering a firm but fair system. These measures will support our efforts to intensify the response to small boats and clandestine entry and lay the groundwork for new legislation next year.

6.4 The following sections shall take effect at 2300 on 31 December 2020. In relation to an application for asylum made before 2300 on 31 December 2020, these changes shall not apply:

- Part 11 - Paragraphs 11.1, 11.2, 11.3 and 11.4

6.5 The other changes set out in this statement shall take effect at 2300 on 31 December 2020 and will apply to all decisions made on or after that time.

## **7. Policy background**

*What is being done and why?*

### **Changes to the place of claim**

7.1 The Immigration Rules do not presently set out an exhaustive list of the places and circumstances in which asylum claims can be properly made. The changes proposed address this shortcoming and reinforces the longstanding principle of designated places of claim.

### **Changes to the third country inadmissibility rules**

7.2 In broad terms, paragraphs 345AC-345D, as will apply from 1 January 2021 if we make no changes, provide a means to treat as inadmissible to the UK asylum system the claim of someone who has travelled through or has a connection to a safe third country; this will include individuals coming from EU Member States.

- 7.3 However, as currently drafted, they allow claims to be treated as inadmissible only if the asylum applicant is accepted for readmission by the third country through which they have travelled or have a connection. A stronger approach to disincentivise individuals is needed to deter claimants leaving safe third countries such as EU Member States, from making unnecessary and dangerous journeys to the UK.
- 7.4 The changes separate the readmission requirement from the inadmissibility decision, allowing us to treat applicants as inadmissible based solely on whether they have passed through one or more safe countries in order to come to the UK as a matter of choice. They will allow us to pursue avenues for their removal not only to the particular third countries through which the applicant has travelled, but to any safe third country that may agree to receive them.

### **Changes to Appendix V and Appendix Visitor: Permitted Activities**

- 7.5 This instrument amends the Immigration Rules that are used to regulate people's entry and stay in the United Kingdom. These amendments enable activities which will be permitted in retained EU law (Regulation (EC) 1072/2009 and Regulation (EC) 1073/2009).
- 7.6 Changes are being made to the Introduction to insert additional definitions which help clarify the new road transport provisions. Changes are also being made to Appendix V: Visitor to enable payment from a UK source for road transport operators.
- 7.7 Appendix Visitor: Permitted Activities is being amended to enable activities allowed in retained EU law. This will allow visitors who are international drivers to perform cabotage operations (collecting and delivering goods and passengers within the UK as part of an international journey).
- 7.8 In addition to the existing permitted activities for Visitors, drivers for international road transport operators will also be able to do cabotage in the UK as well as international point to point services.

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because we will no longer be subject to the Dublin Regulation after the transition period has ended.

## **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.

Designated places of claim are a long-standing principle of our asylum process, these Rules changes merely seek to clarify the accepted locations for claiming asylum. The principle of third country inadmissibility is also a long-standing principle to support the first country of asylum principle. Under the existing Rules, any claimant who travelled through a safe country before claiming asylum in the UK could expect their claim to be considered inadmissible and therefore it is considered reasonable for them to expect this. For these reasons, changes to the Rules on place of claim and third country inadmissibility have not been subject to formal public consultation.

## **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.
- 12.3 An Equality Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **13. Regulating small business**

- 13.1 There is no, or no significant, impact on activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The review clauses at the beginning of this Statement of Changes require the Secretary of State to review the operation and effect of all of the relevant Immigration Rules, including any rules amended or added by the changes in this Statement, and lay a report before Parliament within five years of 6 April 2017 and within every five years after that. Following each review, the Secretary of State will decide whether the relevant Immigration Rules should remain as they are, be revoked or be amended. A further Statement of Changes would be needed to revoke or amend the relevant rules.

## **15. Contact**

- 15.1 Specific written queries relating to this Statement of Changes should be directed to Richard Short at [StatementofChanges@homeoffice.gov.uk](mailto: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 James Brady 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.