

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 20 JULY 2018 (CM 9675)**

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 This Statement of Changes in Immigration Rules introduces a new Appendix EU to the Rules to provide for applications by resident EU citizens and others for leave to remain in the United Kingdom under the EU Settlement Scheme. In parallel, Parliament has before it an affirmative procedure measure on biometric enrolment¹ and – laid in parallel today – The Immigration and Nationality (Fees) (Amendment) (EU Exit) Regulations 2018, which will specify fees for applications under Appendix EU and provide for exceptions in respect of those fees. Together these measures align with the Government's Statement of Intent on the EU Settlement Scheme, published on 21 June 2018.²

3. Matters of special interest to Parliament

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

- 3.1 Appendix EU to the Immigration Rules will provide a basis on which resident EU citizens and their family members, and the family members of certain British citizens, can apply for leave to remain in the UK under UK immigration law. Where resident EU citizens and their family members are concerned, this is in line with the draft Withdrawal Agreement with the European Union published on 19 March 2018³ and will not affect their existing rights derived from EU law.
- 3.2 A draft of Appendix EU was published on 21 June 2018 as part of the Statement of Intent on the EU Settlement Scheme. The scheme will provide the mechanism for resident EU citizens and their family members, and the family members of certain British citizens, to apply on a voluntary basis for the UK immigration status which they will require to remain in the UK beyond the end of the planned post-exit implementation period on 31 December 2020. As regards EU citizens and their family members, this is consistent with Articles 17 and 17a of the draft Withdrawal Agreement. As the law currently stands, an individual who is entitled to remain in the UK under EU law is not required to have leave to remain (see section 7(1) of the Immigration Act 1988). Appendix EU will enable individuals to apply for leave to

¹ The Immigration (Provision of Physical Data) (Amendment) (EU Exit) Regulations 2018 laid on 2 July 2018.

² <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/691366/20180319_DRAFT_WITHDRAWAL_AGREEMENT.pdf

remain, but any leave granted under Appendix EU shall have no effect on existing rights under EU law.

- 3.3 Appendix EU to the Immigration Rules has been laid before Parliament under section 3(2) of the Immigration Act 1971, and is available at:
<https://www.gov.uk/government/collections/immigration-rules-statement-of-changes#statement-of-changes-to-the-immigration-rules:-2018>
- 3.4 Appendix EU to the Immigration Rules will come into force on 28 August 2018, for the purposes of an initial test phase of the EU Settlement Scheme, as described in paragraph 3.6, below. The Immigration and Nationality (Fees) (Amendment) (EU Exit) Regulations 2018 will also come into force on 28 August 2018. Once Appendix EU is in effect, it will be available at: <https://www.gov.uk/guidance/immigration-rules>
- 3.5 As set out in paragraph 1.20 of the Statement of Intent on the EU Settlement Scheme, the scheme will be rolled out on a phased basis from late 2018. The scheme will be fully open by 30 March 2019.
- 3.6 The first phase of the implementation of the EU Settlement Scheme will begin on 28 August 2018, involving the participation on a voluntary basis of persons on the payroll of the 12 NHS Trusts and enrolled students and persons on the payroll of the three Universities specified in the Statement of Changes in Immigration Rules. This will enable the Home Office to test the relevant processes and ensure that they work effectively before we open the scheme more widely. We will set out over the summer further details of the planned phased implementation of the EU Settlement Scheme.

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.

4. Extent and Territorial Application

- 4.1 The 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 not subject to the affirmative 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:
<https://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 change to Part 9 set out in paragraph 1, and the change in paragraph 2 inserting Appendix EU, shall take effect from 28 August 2018 and will apply to all applications under Appendix EU made on or after that date from those eligible to make an application, as referred to in this Statement of Changes and in paragraph 3.6, above.

7. Policy background

What is being done and why?

- 7.1 In line with the draft Withdrawal Agreement with the EU, the Immigration Rules for the EU Settlement Scheme contained in Appendix EU provide, initially for the purposes of the first phase of the implementation of the scheme described in paragraph 3.6, above, that:
- EU citizens and their family members who, by 31 December 2020, have been continuously resident in the UK for five years will be eligible for ‘settled status’ (indefinite leave to remain in the UK).
 - EU citizens and their family members who arrive by 31 December 2020, but will not by then have been continuously resident in the UK for five years, will generally be eligible for ‘pre-settled status’ (five years’ limited leave to remain in the UK), enabling them to stay until they have reached the five-year threshold. They can then also apply for settled status.
 - Close family members (a spouse, civil partner, durable partner, dependent child or grandchild, and dependent parent or grandparent) living overseas will be able to join an EU citizen resident here after 31 December 2020, where the relationship existed on that date and continues to exist when the person wishes to come to the UK. Provision for future children will be made, in line with the draft Agreement.
- 7.2 In addition, the Government has decided, as a matter of domestic policy, that a family member of a British citizen who is lawfully resident in the UK by 31 December 2020 by virtue of regulation 9 of the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052) (“the EEA Regulations”), will be eligible to apply for status under the EU Settlement Scheme contained in Appendix EU.
- 7.3 The requirements set out in the Immigration Rules for the EU Settlement Scheme contained in Appendix EU are in accordance with the conditions agreed under the draft Withdrawal Agreement, except where the UK is applying more favourable criteria (for example, in deciding that the main eligibility requirement for status to be granted under the scheme will be residence in the UK, generally in line with current free movement rules on the continuity of that residence). There will not be any further discretion to refuse a valid application made under the scheme beyond the conditions agreed under the draft Withdrawal Agreement, and administrative burdens will be minimised by not requiring more information than is necessary to determine whether the requirements set out in Appendix EU have been met.
- 7.4 Within the new Appendix EU inserted in the Immigration Rules by paragraph 2 of this Statement of Changes:
- Paragraphs EU2 to EU8 set out the overall requirements for indefinite leave to remain or five years’ limited leave to remain to be granted under it, and the procedure for granting that leave.

- Paragraph EU9 sets out the requirements for making a valid application under Appendix EU.
- Paragraph EU11 sets out the eligibility requirements for indefinite leave to remain ('settled status') for EU citizens and their family members, and paragraph EU12 does so for the family members of certain British citizens, as referred to in paragraph 7.2, above.
- Paragraph EU14 sets out the eligibility requirements for five years' limited leave to remain ('pre-settled status').
- Paragraphs EU15 and EU16 set out the basis on which an application under Appendix EU will or may be refused on grounds of serious criminality, other public policy considerations or deception, as reflected in the draft text of the Withdrawal Agreement.

7.5 In essence, Appendix EU provides a self-contained set of Immigration Rules for the EU Settlement Scheme, and the provision made by it, including the definitions in its Annex 1, will, for the purposes of applications under Appendix EU, displace any provision made elsewhere in the Immigration Rules which would otherwise apply, e.g. in Part 1 (leave to enter or stay in the UK). Paragraph 1 of this Statement of Changes disapplies Part 9 (general grounds for refusal) of the Immigration Rules for the purposes of applications under Appendix EU, with the exception of paragraph 323(ii), which provides scope for leave to remain to be curtailed if the person ceases to meet the requirements of the Immigration Rules under which that leave was granted.

7.6 The draft Withdrawal Agreement with the EU does not cover the citizens of the non-EU European Economic Area states (Iceland, Liechtenstein and Norway) and Switzerland, but the Government has been clear that it wants to secure a similar deal for citizens of these states living in the UK, and for UK nationals living there. Talks with all four states are progressing and, pending final agreement being reached with each on the detail of the arrangements, the Government intends that the settlement scheme set out in Appendix EU will, subject to a further Statement of Changes in Immigration Rules, be made available to other EEA citizens and Swiss citizens (and their family members) on a similar basis as for EU citizens.

7.7 Irish citizens enjoy a right of residence in the UK that is not reliant on the UK's membership of the EU. They will not be required to apply for status under Appendix EU (but may do so if they wish), and their eligible family members (who are not Irish citizens or British citizens) will be able to obtain status under it on their own account, without the Irish citizen doing so.

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 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 Home Office has not undertaken a full public consultation on the EU Settlement Scheme, but the policy has been discussed with its 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 The Government will publish guidance on the EU Settlement Scheme and continue to liaise with partnership groups and organisations representing EU citizens and their family members through stakeholder events and communications and publications on GOV.UK.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies, but the EU Settlement Scheme provides clarity for employers and others as to the basis on which resident EU citizens and their family members can remain here.
- 12.2 There is no, or no significant, impact on the public sector.

13. Regulating small business

- 13.1 The changes will have no, or no significant, impact on the regulation of 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 Queries should be directed to the Home Office as per the ‘Contact UKVI’ section on the visas and immigration pages of the GOV.UK website at:
<https://www.gov.uk/government/organisations/uk-visas-and-immigration>
- 15.2 Specific written queries relating to this Statement of Changes should be directed to Clive Peckover at StatementofChanges@homeoffice.gsi.gov.uk. Please note that this mailbox is only for Parliamentary use and 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 will not receive a response.

- 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. Caroline Nokes MP, Minister of State for Immigration at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

