

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 11 DECEMBER 2018 (HC 1779)**

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 The main changes:
- Introduce a new seasonal workers scheme; and
 - Expand protection offered to victims of domestic abuse, to include partners of refugees who have not yet gained indefinite leave to remain, as a result of the judgment in the case of *A v Secretary of State for the Home Department* (2017).

3. Matters of special interest to Parliament

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)

- 3.1 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 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 under the visas and immigration pages of the GOV.UK website at

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 changes to Appendix G take effect on 1 January 2019. However, in relation to those changes, if an application has been made for entry clearance or leave to enter or remain before 1 January 2019, the application will be decided in accordance with the Immigration Rules in force on 31 December 2018.
- 6.4 The following sections shall take effect on 1 August 2019:
- Introduction - paragraphs Intro6, Intro8
 - Part 3 - paragraphs 3.1, 3.2
 - Part 6A - paragraphs 6A.2, 6A.3, 6A.4, 6A.6, 6A.16 to 6A.27, 6A.29 to 6A.43
 - Part 8 - paragraphs 8.2, 8.3
 - Part 15 - paragraph 15.1
 - Appendix A - paragraphs A1 to A8, A13, A14, A20 to A27
- 6.5 The other changes set out in this statement shall take effect on 10 January 2019. However, in relation to those changes, if an application has been made for entry clearance or leave to enter or remain before 10 January 2019, the application will be decided in accordance with the Immigration Rules in force on 9 January 2019.

7. Policy background

What is being done and why?

Changes relating to Tier 1 of the Points-Based System

- 7.1 Tier 1 of the Points-Based System caters for high value migrants and consists of four active categories: Tier 1 (Exceptional Talent), Tier 1 (Investor), Tier 1 (Entrepreneur) and Tier 1 (Graduate Entrepreneur).

Tier 1 (Exceptional Talent)

- 7.2 The Tier 1 (Exceptional Talent) category is for talented individuals in the fields of science, humanities, engineering, the arts and digital technology to work in the UK without the need to be sponsored for employment in a specific post. Applicants must be endorsed by a Designated Competent Body. The following changes are being made to this category:
- The endorsement of arts applicants is being widened to include those in the field of architecture. These applicants will be assessed by the Royal Institute for British Architects operating within the endorsement remit of Arts Council England;
 - For consistency, the grant periods for entry clearance applications have been amended to include an additional 4-month period for each potential grant of leave. This provides applicants with extra time to meet the qualifying period

for settlement and reduces the likelihood that they would have to apply for further extension applications. Currently only applicants who request 5 years' leave qualify for the additional 4-month period;

- Other changes are being made to the criteria for endorsement by each Designated Competent Body, at those bodies' requests. These include changes to the evidential requirements for digital technology applicants who, as a result of the Tech Nation online application form, are no longer required to supply paper copies of their specified evidence to the Home Office; and amendments within Arts Council England rules to ensure consistency across its sub-endorsers.

Changes relating to Tier 2 of the Points-Based System (PBS)

7.3 Tier 2 of the Points-Based System caters for migrant workers with an offer of a skilled job from a licensed employer. There are four categories: General, Intra-Company Transfer (ICT), Minister of Religion and Sportsperson. The following changes are being made:

- A change is being made to include the Academic Technology Approval Scheme (ATAS) requirement for Tier 2 (ICT) applicants extending leave in the United Kingdom. Applicants in all PBS routes are required to obtain an ATAS certificate before studying a postgraduate qualification in certain sensitive subjects, knowledge of which could be used in programmes to develop weapons of mass destruction (WMDs) or their means of delivery. The requirement for ICT extension applications had previously been excluded in error;
- Remove references to 'Universal Jobmatch' from the Rules covering the Resident Labour Market Test (RLMT). Universal Jobmatch (UJM) was replaced by the 'Find A Job' service on 14 May 2018, with UJM permanently closing on 17 June 2018;
- Changes to fix incorrect cross references in paragraph 78C(g) relating to inward investment requirements, and in table 11B, relating to the RLMT for creative occupations;
- Including reference to the appropriate salary to be paid to nurses or midwives who are undertaking the Observed Structured Clinical Examination (OSCE) to obtain Nursing and Midwifery Council registration.

Changes relating to Tier 4 of the Points-Based System

7.4 Tier 4 of the Points-Based System is the route used by non-EEA nationals wishing to study in the UK. Tier 4 is comprised of two categories: Tier 4 (General) and Tier 4 (Child).

7.5 The definitions of "degree level study", "foundation degree" and "post-graduate level study" are being updated to replace the references to the "National Qualifications

Framework" with "Regulated Qualifications Framework" as the latter is now the framework used to determine levels of study in the UK.

- 7.6 A definition of a “higher education provider” is being added to the introduction section of the rules to reflect the changes to Tier 4 arising from the higher education reform in England, including the introduction of the Office for Students, and so that institutions in the Devolved Administration have the same ability to offer privileges to their students as institutions in England. Accordingly, references to “higher education institutions”, where appropriate, are being changed to “higher education provider”.
- 7.7 A definition of a “track record of compliance” is being added to the introduction section of the rules. Changes are being made to Parts 6A and 8 of the Immigration Rules, to set out when a student who is sponsored by a higher education provider with a track record of compliance will receive conditions of leave which entitle them to work, apply for further Tier 4 leave in the UK, and bring dependants. These changes will come into effect on 1 August 2019 and are being made in support of the changes to Tier 4 arising from the higher education reform in England.
- 7.8 A change is being made to Appendix C to make clear that Tier 4 applicants, who rely on student loans or funds from official financial sponsors, are not required to demonstrate that the funds have been held for a period of 28 consecutive days. A minor change is being made to clarify that a Tier 4 migrant must have the funds available to them on the date of application, except where the funds are being provided as a financial loan and the student separately confirms when the funds will be available to them.
- 7.9 In Appendix C, a change is being made to clarify that if the applicant is a Tier 4 (Child) Student the specified documents submitted with their application must confirm who is providing the maintenance funds for their use in studying and living in the UK and that the funds will remain available to them unless used to pay for course fees and living costs.
- 7.10 Amendments are being made to the rules in Appendix C to make them gender neutral.

Changes relating to Tier 5 of the Points-Based System

Annual youth mobility scheme quota update

- 7.11 Updating the annual quotas for the Youth Mobility Scheme partner countries to enable the continuation of the scheme.
- 7.12 Introducing a paragraph ensuring that in the event of a future delay in setting the annual quotas, a portion will automatically become available to partner countries, ensuring that the route continues to function.

Introduction of a cooling off period for charity and religious workers

- 7.13 The Immigration Rules currently permit Tier 5 Religious Workers to fill roles which ‘may include preaching, pastoral work and non-pastoral work’. This allows a migrant

to come to the UK and fill a role as a Minister of Religion without demonstrating an ability to speak English.

- 7.14 This change will prevent migrants from using the Tier 5 Religious Worker route to fill positions as Ministers of Religion, and instead direct them towards the appropriate (existing) category of Tier 2.
- 7.15 The Immigration Rules set out a pre-existing definition of a Minister of Religion. The new requirement for Tier 5 Religious Workers will prohibit employers from assigning a certificate of sponsorship, when the role is that of a Minister of Religion. This will ensure that the needs of religious establishments are still catered for within Tier 2, whilst drawing a clear distinction between the two routes and ensuring that no loophole exists within Tier 5.
- 7.16 The ‘cooling off’ period will ensure Tier 5 Religious workers and Charity Workers spend a minimum of 12 months outside the UK before returning in either category. This will prevent migrants from applying for consecutive visas, thereby using the routes to live in the UK for extended periods, so as to reflect the temporary purpose of the routes better.

Updates to list of Tier 5 (Government Authorised Exchange) schemes (Appendix N)

- 7.17 In Appendix N, the list of organisations permitted to directly sponsor researchers under the ‘UKRI – Science, Research and Academia’ scheme has been expanded.
- 7.18 In Appendix N, the descriptor for the ‘Sponsored Researchers’ scheme has been amended to describe more accurately the activities permitted under this scheme.

Introduction of the new seasonal workers scheme

- 7.19 On 6 September the Home Secretary placed a Written Ministerial Statement (HCWS940) before the House, announcing the introduction a new pilot scheme for 2019, to enable non-EEA migrant workers to come to the UK to undertake seasonal employment in the horticultural sector. These amendments set out the legislative framework for introducing this pilot.
- 7.20 This small-scale pilot will test the effectiveness of the UK’s immigration system in alleviating seasonal labour shortages during peak production periods, whilst maintaining robust immigration control and ensuring there are minimal impacts on local communities and public services.
- 7.21 The organisations chosen to fill the role of scheme operators for this pilot have been selected following a fair and open selection process, undertaken by the Department of the Environment, Food and Rural Affairs.
- 7.22 The formal date of implementation for this pilot will be announced in due course.

Changes relating to UK ancestry

- 7.23 We are deleting an erroneous reference to specified documents in the UK ancestry rule.

Cross cutting changes

- 7.24 Obsolete references to “the UK Border Agency” have been replaced with “The Home Office” within the introduction to the Immigration Rules.
- 7.25 Changes have been made to paragraph 323AA (prohibited changes of employment) to allow Tier 2 and Tier 5 migrant workers to engage in lawful strike action and take unpaid parental leave without their immigration status being affected. Other minor drafting amendments have been made to paragraph 323AA to improve clarity.
- 7.26 The definition of ‘professional sports person’ has been updated. This update sets out more explicitly the indicators that will be considered when assessing whether a migrant is playing sport in a capacity, other than that of an ‘amateur’.
- 7.27 A code of practice has been inserted into Table 8, Appendix J of the Immigration Rules. This code of practice sets out the criteria for sponsors looking to sponsor individual migrants. Home Office officials have worked in collaboration with Industry representatives and the British Fashion Council, to agree a code of practice for models which aligns with existing provisions for other areas of the creative sector. This includes a set of criteria to which sponsors must adhere when recruiting new faces and reduces the potential for exploitation of the route.

Changes to the EVW (Electronic visa waiver) wording

- 7.28 Appendix 2 to Appendix V sets out the Visa National list, detailing those required to obtain a visa in advance of travel to the UK, as well as exceptions to the Visa National list. These exceptions include the Electronic Visa Waiver (EVW) scheme, which enables nationals of Oman, Qatar, United Arab Emirates (UAE) and Kuwait to travel to the UK visa free for up to six months where there is no mandatory entry clearance requirement.
- 7.29 The reference to “passport holder”, in the current wording of the EVW eligibility criteria, leaves the meaning and intent of the EVW requirements in the Immigration Rules ambiguous. The change introduced by these rules will clarify that a person must be a citizen or national of the UAE, Qatar, Kuwait or Oman to be eligible for the EVW scheme.

Visitors – minor housekeeping changes

- 7.30 Updating two definitions in Appendix 1 in line with the introduction to the Immigration Rules. Minor spelling and grammatical corrections and clarifications are being made, which will help understanding but do not alter the meaning of the Rules.

Changes to domestic violence provisions

- 7.31 The Secretary of State makes special provision to grant indefinite leave to remain, for victims of abuse who are in the UK by virtue of a partner visa or sponsorship by a

British citizen or settled person. Where an individual's relationship has broken down with their sponsor as a result of domestic abuse, they will be granted indefinite leave to remain.

- 7.32 The case of *A v the Secretary of State for the Home Department* ruled that the definition of 'settled person' in Appendix FM should be expanded, for the purposes of domestic abuse policy, to include people with refugee status who have not yet completed the five year period required to be granted indefinite leave to remain. The judge held that because 95% of refugees gain indefinite leave to remain following the end of the five year period, indefinite leave to remain can be considered a legitimate expectation. The effect is that a sponsored partner should have the same expectation of settlement and therefore of protection under domestic abuse provisions.
- 7.33 As a result, the eligibility for indefinite leave to remain, as a victim of domestic abuse under paragraph E-DVILR.1.2 and 1.3, is being clarified to include partners of people with refugee status who have not yet been granted ILR. E-DVILR.1.2 is also being amended to include partners granted leave under paragraph 352A where their sponsor has not yet gained indefinite leave to remain.
- 7.34 To clarify, only one grant of leave can be made under paragraph 352A. There is therefore no reference in E-DVILR.1.2.(a) to a subsequent grant of leave being made under this section.

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

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

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 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 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.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, 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 Emily Weighill at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 Rt Hon Caroline Nokes MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.