

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 20 DECEMBER 2018 (HC 1849)**

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 The purpose of the changes is to implement the next phase of the roll-out of the EU Settlement Scheme, for resident EU citizens and their family members to obtain UK immigration status.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

- 3.2 Appendix EU to the Immigration Rules provides the basis for the EU Settlement Scheme for resident EU citizens and their family members, and the family members of certain British citizens, to apply for UK immigration status, which they will require in order 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 18 and 19 of the draft Withdrawal Agreement with the European Union published on 14 November 2018.¹
- 3.3 The EU Settlement Scheme, for which Appendix EU to the Immigration Rules provides, will also be the basis on which EU citizens resident in the UK by 29 March 2019 and their family members will be able to obtain UK immigration status in order to remain here in the event of the UK leaving the EU without a deal. This was set out in the policy paper on citizens' rights in a 'no deal' scenario, published by the Government on 6 December 2018.²
- 3.4 Appendix EU to the Immigration Rules came into force on 28 August 2018, for the purposes of an initial test (or 'private beta') phase of the EU Settlement Scheme. This involved the participation on a voluntary basis of persons on the payroll of 12 NHS Trusts and three universities, and enrolled students of those universities, in north-west England, as specified in the Statement of Changes in Immigration Rules presented to Parliament on 20 July 2018 (Cm 9675). This first private beta phase successfully

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756374/14_November_Draft_Agreement_on_the_Withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union.pdf

² <https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brex>

proved some of the functionality and processes of the EU Settlement Scheme in a live environment. The Government published a report on its findings on 31 October 2018.³

- 3.5 A second, expanded private beta phase began from 1 November 2018, as specified in the Statement of Changes in Immigration Rules presented to Parliament on 11 October 2018 (HC 1534). This second phase, which will end on 21 December 2018, has tested the online application process as an integrated, end-to-end process. It has been available, on a voluntary basis, to staff in the higher education, health and social care sectors across the UK, and to some vulnerable individuals, being supported by a small number of local authorities and community groups, in order to test the operation of the scheme for those with support needs. This second phase has also tested additional elements of the EU Settlement Scheme, including the Settlement Resolution Centre which provides support for applicants.
- 3.6 The Government intends to publish a report on the second private beta phase in January 2019. However, the initial findings from this phase have been positive. By 13 December 2018, more than 15,500 applications had been made and more than 12,400 of these had been concluded, enabling the new system and applicant interaction with it to be tested at scale. 71 per cent of the concluded applications were granted settled status, with the rest granted pre-settled status, and many received their decision within 24 hours. 77 per cent of applicants who provided feedback said that they found the online application process easy (39 per cent) or fairly easy (38 per cent) to complete. More than 90 per cent of applicants successfully used the identity verification app to prove their identity remotely, with the rest required to submit their identity document by post.
- 3.7 The Government has also learned lessons from this second private beta phase, enabling it to make further technical and other changes to improve the overall experience of applicants in applying under the scheme. These include improved functionality in respect of how an applicant verifies their email address; an increase in the size of files an applicant can upload, should they need to provide supporting evidence; and updates to the caseworking system. By 13 December 2018, the Settlement Resolution Centre (which is open from 8am to 8pm on weekdays and from 9-30am to 4-30pm at the weekend, to provide information and assistance in relation to the scheme) had received more than 5,020 telephone calls and more than 2,030 emails from those making an application or considering whether to do so, and feedback gathered from its work has been used widely to inform further improvements, including in the guidance available to applicants.
- 3.8 In light of the successful testing of the online application process for the EU Settlement Scheme during the first and second private beta phases, the Government has decided to proceed, as planned, with the start of the wider public implementation of the scheme from 21 January 2019. From that date, the scheme will be available, as specified in this Statement of Changes in Immigration Rules, to resident EU citizens (and their EU citizen family members) with a valid passport,⁴ and to their non-EU citizen family members holding a valid biometric residence card.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752872/18103_1_PB1_Report_Final.pdf

⁴ In this phase of the scheme's implementation, an EU citizen will not be able, for technical reasons, to use a biometric national identity card to prove their identity and nationality remotely by using that document with the identity verification app. They will be able to do so once the scheme is fully open by 30 March 2019.

- 3.9 This requirement for a particular identity document reflects the fact that, during this phase of the scheme's implementation, the applicant will be required to prove their identity and nationality remotely by using that document with the identity verification app, which is an integrated part of the online application process. The applicant will be able to submit this document by post to be checked by the Home Office and returned to them, if the digital app is unable to read the relevant information in its biometric chip because that is damaged or defective.
- 3.10 Currently, the Government anticipates that the further phased implementation of the EU Settlement Scheme will be secured through further Immigration Rules changes to be laid before Parliament in early March 2019, so that the scheme will be fully open by 30 March 2019. This will include scope for applicants to prove their identity and nationality by other means, including by submitting their identity document by post to be checked by the Home Office and returned to them.

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)

- 3.11 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 set out in this statement shall take effect on 21 January 2019. However, if an application has been made under Appendix EU to the Immigration Rules on or after 1 November 2018 and before 22 December 2018, during the second private beta phase of the EU Settlement Scheme, the application will be decided in accordance with the Immigration Rules in force on 21 December 2018.

7. Policy background

What is being done and why?

7.1 This Statement of Changes in Immigration Rules makes provision for the start of the wider public implementation of the EU Settlement Scheme. As well as new implementation provisions for the scheme to reflect the scope of that phase described in paragraph 3.8, above, the following changes are being made to the Immigration Rules for the scheme contained in Appendix EU:

- Changes to the suitability provisions of the EU Settlement Scheme, to provide scope for an applicant who is subject to a removal decision under the Immigration (European Economic Area) Regulations 2016, on the grounds of their non-exercise or misuse of rights under the Free Movement Directive (2004/38/EC), to be refused immigration status under the scheme where this is proportionate in the particular circumstances of the case.
- Changes to Annex 1 to Appendix EU, in particular to clarify the evidential requirements for family members, many more of whom will be able to apply for immigration status under this phase of the implementation of the EU Settlement Scheme, and to reflect the relevant statutory provisions in Northern Ireland and Scotland, as well as in England and Wales, for cases in which a child is in the care of a guardian.
- Changes to other parts of the Immigration Rules, to clarify that, for now, an application for administrative review of a decision under the EU Settlement Scheme has to be made in the UK, and to provide scope for the cancellation of leave granted under the scheme where the person is refused admission to the UK on EU law public policy grounds.

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 Government has not undertaken a public consultation on the EU Settlement Scheme, but the policy has 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, 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, 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 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.