

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 14 DECEMBER 2021 (HC 913)**

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.

2.2 These changes to the Immigration Rules are being made (i) to clarify the eligibility criteria for the Afghan Relocations and Assistance Policy (ARAP); (ii) to clarify that ARAP dependants can be refused where the main applicant is to be refused; and (iii) remove the requirement for dependants to be Afghan nationals.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments OR the Select Committee on Statutory Instruments OR the Sifting Committees]

3.1 None.

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, where all the Statements of Changes in Immigration Rules issued since May 1994 are published.¹

- 6.3 These changes will be implemented at 1600hrs on 14 December 2021 as detailed in the implementation section of the accompanying Statement of Changes.

7. Policy background

What is being done and why?

- 7.1 The Afghan Relocations and Assistance Policy (ARAP) replaced the former Intimidation Policy, with associated guidance published on Gov.UK, on 1 April 2021. Under the ARAP scheme, any current or former Locally Employed Staff (LES) directly employed by HMG in Afghanistan assessed to be at serious risk of threat to life are eligible to apply for relocation to the UK regardless of their employment status, rank or role, or length of time served. There are four categories of relocation within the ARAP, currently set out in guidance only:
- Category 1: High risk/imminent threat – urgent relocation
 - Category 2: Eligible for relocation by default – routine relocation
 - Category 3: Not eligible for relocation – other support offered
 - Category 4: Special cases: case by case basis.
- 7.2 The policy was expanded by way of published content on Gov.UK (not in the Immigration Rules) on 4 June 2021 to allow for those who were contracted to provide linguistic services in support of the UK Armed Forces to fall under Category 2. The policy was further expanded in late July to allow case-by-case consideration of individuals who had worked in a role that made a material contribution to HMG's mission in Afghanistan, and without whose work the UK's operations would have been adversely affected, and who were now at risk because of their work given the changing situation in Afghanistan.
- 7.3 We are taking this opportunity to update the Immigration Rules to clarify the eligibility criteria to remove the uncertainty that emerged during and after Operation Pitting (the evacuation of Afghanistan in August 2021) around who would qualify. This will provide a greater degree of clarity both to those who think they might be eligible and to decision makers and will bring the criteria for qualifying within the Immigration Rules. It will also ensure consistency amongst Government departments who are responsible for taking initial eligibility decisions on ARAP applications (Ministry of Defence and Foreign, Commonwealth and Development Office).
- 7.4 The updated ARAP policy will be narrower than that applied previously including during Operation Pitting in August 2021, insofar as the Rules will limit eligibility to those who furthered the UK's military and national security objectives.
- 7.5 Changes are also being made to permit dependants to be refused in line with the main applicant, as there is currently no clear basis for this to happen in the Immigration Rules. This will bring the Rules in line with the policy intent and the ARAP in line

¹ <https://www.gov.uk/guidance/immigration-rules>

with other immigration routes. Spouses and partners along with children under the age of 18 qualify as ARAP dependants under the Immigration Rules.

- 7.6 It has always been the policy intention that dependants would only qualify under the ARAP if the main applicant did, and these changes will make this explicit in the Immigration Rules. The change will clarify this position for those applying as well as for decision makers.
- 7.7 Finally, the requirement for dependants to be Afghan nationals is also being removed. This will make it possible for families to relocate together when the spouse, partner or children are a different nationality to the lead ARAP applicant: at the moment it is not possible for families that include any non-Afghan nationals to relocate to the UK as a unit under the ARAP. This change will therefore enable more families to remain together and avoid any indirect discrimination.
- 7.8 These changes will apply to all applications decided on or after 16:00hrs on 14 December 2021.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 The Government has committed to the consolidation of the Rules as part of its response to the Law Commission recommendations on simplifying the Immigration Rules.

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 the 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 on ARAP was published on 1 April 2021.

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 on page 4 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 to 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 unchanged, be revoked or 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 Robert Hayes-Walters at StateofChanges@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 Ollie Carlisle at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 Kevin Foster MP, Parliamentary Under Secretary of State (Minister for Safe and Legal Migration) at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.