

EXPLANATORY MEMORANDUM TO THE STATEMENT OF CHANGES IN IMMIGRATION RULES PRESENTED TO PARLIAMENT ON 24 JANUARY 2022 (HC 1019)

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, made under the provisions of Section 1(4) and Section 3(2) in the Immigration Act 1971, that are used to regulate people's entry to, and stay in, the United Kingdom.
- 2.2 The changes being made add care workers to the Shortage Occupation List, and make the role eligible for the Skilled Worker route, disapplying the usual requirement that a role must be skilled to at least Regulated Qualification Framework (RQF) level 3.¹

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.²

¹ The RQF applies in England and Northern Ireland. The equivalent levels are SCQF level 6 in Scotland and CQFW level 3 in Wales.

² Available at: <https://www.gov.uk/guidance/immigration-rules>

- 6.3 These changes will be implemented on 15 February 2022 as detailed in the implementation section of the accompanying Statement of Changes. However, if an application for entry clearance, permission to enter or permission to stay has been made before 15 February 2022, such applications will be decided in accordance with the Immigration Rules in force on 14 February 2022.

7. Policy background

What is being done and why?

- 7.1 The Skilled Worker route is for applicants with a specific job offer from an approved sponsoring employer. Lower salary requirements and application fees apply where a job is on the Shortage Occupation List. These changes make care workers eligible to be sponsored in the Skilled Worker route and add them to the Shortage Occupation List, following a recommendation by the independent Migration Advisory Committee (MAC).
- 7.2 A key existing requirement of the Skilled Worker route is the job offer must be one which involves duties and responsibilities involving skills equivalent to RQF level 3, broadly equivalent to a level of skills obtained through A-levels or Scottish Highers. Applicants do not need to hold a formal qualification; it is the skill level of the job they will be doing which determines whether the threshold is met. These changes disapply this skills threshold for care workers, thus allowing them to qualify for the route.
- 7.3 These changes are aimed at helping to alleviate current pressures on the health and social care system as a result of Covid-19.
- 7.4 Sponsors offering jobs in shortage occupations must offer applicants a salary at least equal to whichever is the highest of:
- £20,480 per year
 - £10.10 per hour
 - 80% of the going rate for the occupation code, as listed in Appendix Skilled Occupations

As the third requirement is lower than the other two requirements for care workers, only the first two requirements will apply to this occupation.

- 7.5 In line with other care-related occupations, care workers are being added to the list of occupations where applicants must provide criminal record certificates from countries they have been present in for 12 months or more in the previous 10 years, and while aged 18 or over.
- 7.6 While home carers are included in the same occupation code, these changes are not designed to enable home carers to be sponsored as Skilled Workers, unless they are working for an organisation which is able to meet the sponsorship requirements. Private households or individuals (other than sole traders sponsoring someone to work for their business) cannot sponsor Skilled Workers.

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. The Immigration Rules relating to Skilled Workers have previously been simplified and the changes in this Statement adhere to that approach.

10. Consultation outcome

10.1 The changes for care workers respond to a recommendation by the MAC, who carried out a public call for evidence between 4 August and 22 October 2021 on the impact of the ending of freedom of movement on the adult social care sector. The MAC's recommendations were published in their 2021 annual report.³

11. Guidance

11.1 Guidance relating to these Rules changes will be updated and placed on the GOV.UK website on 15 February 2022, when these changes take effect.

12. Impact

12.1 The impact on business, charities or voluntary bodies is positive, as these organisations will be able to sponsor care workers where they have previously been unable to.

12.2 The impact on the public sector is as above, for public sector employers of care workers.

12.3 A full Impact Assessment has not been prepared for this instrument because it responds to an interim recommendation by the MAC, which has identified a need to respond quickly to support the social care sector. The MAC is still considering its final recommendations and is expected to publish these at the end of April 2022.

13. Regulating small business

13.1 The changes apply to activities that are undertaken by small businesses. As above, the impact on small businesses is positive.

14. Monitoring & review

14.1 The approach to the monitoring of these changes is 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.

14.2 A review provision is included in the instrument.

³ Available at <https://www.gov.uk/government/publications/migration-advisory-committee-annual-report-2021>

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.⁴
- 15.3 A copy of this Statement of Changes can be found on the visa and immigration pages of the GOV.UK website.⁵
- 15.4 Della Mcvay, Head of Points-Based System and Economic Migration Policy 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.

⁴ Available at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>

⁵ Available at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>