

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 17 JULY 2023 (HC 1496)**

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of His 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 primarily concern changes to the EU Settlement Scheme, extension of the Ukraine Extension Scheme, changes to the Student route, Asylum - pausing the differentiation policy to support SAP (streamlined asylum processing) for flow cases, improving clarity regarding withdrawing asylum claims, and changes to the Skilled Worker route. This instrument also makes a series of minor changes to other policy areas, detailed in paragraphs 7.32 to 7.42 of section 7 of this Explanatory Memorandum.
- 2.3 The changes also include updates to the Shortage Occupation List following an interim review by the independent Migration Advisory Committee (MAC). They also make additional provision for General Practitioner (GP) trainees, as set out in NHS England's Delivery plan for recovering access to primary care.

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 extent of this Statement of Changes in Immigration Rules (that is, the jurisdiction(s) which the statement forms part of the law of) is all of the United Kingdom.
- 4.2 The territorial application of this Statement of Changes in Immigration Rules (that is, where the statement produces a practical effect) 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

Asylum - pausing the differentiation policy

- 6.3 The changes to Asylum - pausing the differentiation policy to support SAP (streamlined asylum processing) for applications made on or after 28 June 2022 and until the introduction of the Illegal Migration Bill (7 March 2023), will come into effect at 1500 on 17 July 2023, and therefore depart from the usual convention that changes to the Immigration Rules come into force no earlier than 21 days after being laid in Parliament.
- 6.4 We will breach the usual 21-day convention and commence the Rules “pausing” differentiation on the day after they are laid. Taking urgent action is necessary in order to determine asylum applications more quickly and move asylum seekers out of asylum accommodation as soon as possible. This change does not disadvantage those affected and quicker decisions will help to give much-needed certainty to those in need of protection.

Student route changes (dependants and switching)

- 6.5 The changes relating to the Student route, and consequential changes to work routes in this statement, will come into effect at 1500 on 17 July 2023, and therefore depart from the usual convention that changes to the Immigration Rules come into force no earlier than 21 days after their being laid in Parliament.
- 6.6 The Government considers this departure from that convention to be necessary and proportionate. The changes were announced in Parliament and widely reported on 23 May 2023 and there has therefore already been sufficient notice that the changes are taking place. Furthermore, the Government wishes to reduce the possibility of a large number of applications for dependants and switching being made in the 21 days usually available between Immigration Rules changes being laid and coming into force. The changes in relation to dependants will only apply to those students starting courses from 1 January 2024, so there will be no effect on those students making applications relating to courses starting in autumn 2023.
- 6.7 The other changes will be implemented on various dates from 7 August 2023 as detailed in the implementation section of the accompanying Statement of Changes.

7. Policy background

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

What is being done and why?

Changes to the EU Settlement Scheme (EUSS) and EUSS family permit

- 7.1 The EUSS enables EU, other European Economic Area (EEA) and Swiss citizens living in the UK by the end of the transition period on 31 December 2020, and their family members and the family members of certain British citizens returning with them from the EEA or Switzerland, to obtain the UK immigration status they need to continue living in the UK. The EUSS family permit enables relevant family members to travel to the UK.
- 7.2 The changes in respect of the Immigration Rules for the EUSS in Appendix EU are as follows:
- Valid application – to make meeting the deadline for the application (or, in line with the Citizens’ Rights Agreements,² having reasonable grounds for the delay in making an application) a validity rather than an eligibility requirement. Consistent with the Agreements, this will enable the Secretary of State to consider whether there are reasonable grounds for a late application as a preliminary issue, before going on to consider whether a valid application meets the relevant eligibility and suitability requirements. We will not reassess the validity of an application which has already been confirmed as valid by the issuing of a Certificate of Application.
 - Valid application – to prevent a valid application to the EUSS as a joining family member being made by an illegal entrant to the UK, thereby reinforcing the Government’s approach to tackling illegal migration.
 - Extension of limited leave to enter or remain (pre-settled status) – to reflect that the Secretary of State may extend such leave under the EUSS (under sections 3(3)(a) and 4(1) of the Immigration Act 1971) without a valid application, so as to underpin the Government’s implementation of the judgment in the Independent Monitoring Authority for the Citizens’ Rights Agreements v the Secretary of State for the Home Department [2022] EWHC 3274 (Admin) (21 December 2022).³ The judgment found that the right to reside under the Agreements of a person granted pre-settled status does not expire by virtue of failing to make a second application to the EUSS; the Secretary of State will therefore make arrangements for pre-settled status to be extended automatically in relevant cases.
 - Route closures – to close the EUSS on 8 August 2023 to new applications under two routes not covered by the Agreements: family member of a qualifying British citizen (on their return to the UK having exercised free movement rights in the EEA or Switzerland, known as ‘Surinder Singh’ cases) and primary carer of a British citizen (known as ‘Zambrano’ cases). The UK made generous transitional provisions enabling such persons to access the EUSS for more than four years. It is now appropriate, as a matter of fairness to other British citizens wishing to sponsor foreign national family members to settle in the UK, that any new

² The Withdrawal Agreement with the EU, the Separation Agreement with the other EEA countries and the Citizens’ Rights Agreement with Switzerland (“the Agreements”).

³ <https://ima-citizensrights.org.uk/app/uploads/2022/12/IMA-FINAL-judgment.pdf>

applications should have to meet the family Immigration Rules applicable to others. The routes will remain open to those who are already on them (or with a pending application, administrative review or appeal) or who have pending access to them via a relevant EUSS family permit.

- Dependent relatives – to include within the EUSS the child of a durable partner where the child has turned 18 since they were granted pre-settled status under the scheme.

7.3 The changes in respect of the Immigration Rules for the EUSS family permit in Appendix EU (Family Permit) close the EUSS family permit on 8 August 2023 to new applications by a family member of a qualifying British citizen, in line with the closure of the EUSS to such applications from that date. Those granted an EUSS family permit as such a family member (including on appeal), following an application made by 8 August 2023, will still be able to come to the UK. They will be able to apply here to the EUSS where they do so before the expiry of the leave to enter granted by virtue of having arrived in the UK with that entry clearance (or later where they have reasonable grounds for their delay in making their application).

Extension of the Ukraine Extension Scheme

7.4 The Ukraine Extension Scheme enables Ukrainian nationals who held permission to enter or stay in the UK on 18 March 2022 (or who held permission which expired on or after 1 January 2022) to continue their stay in the UK.

Extension of the eligibility period

7.5 This change extends the scheme to allow Ukrainian nationals who obtain permission to enter or stay in the UK for any period between 18 March 2022 and 16 November 2023 to apply to the Ukraine Extension Scheme and obtain 36 months' permission to stay in the UK.

7.6 Ukrainian nationals who travel to the UK without making an application to one of the Ukraine Schemes can be considered for six months' Leave Outside the Rules at the border. If those granted wish to stay in the UK, they need to make an application for further permission to stay. Extending the eligibility period of the Ukraine Extension Scheme will provide a route for these individuals, as well as other Ukrainian nationals who arrived with permission to enter or stay on another route after 18 March 2022, to obtain a longer period of permission to stay and therefore greater certainty in respect of their immigration status.

Extension of the application deadline

7.7 We are extending the application deadline for the Ukraine Extension Scheme to 16 May 2024.

7.8 The application deadline is intended to encourage people to apply for leave under the Ukraine Extension Scheme to ensure they maintain a lawful immigration status. This will provide greater certainty and clarity for the individual, the Home Office and other

Government Departments and organisations who require evidence of immigration status to confirm entitlement to services.

- 7.9 The last date that a Ukrainian national granted six months' Leave Outside the Rules at the border would have valid leave is 16 May 2024. As a result, this was chosen as the appropriate deadline for applications to the Ukraine Extension Scheme. In line with our broader approach to immigration, it is right that those who have permission to enter or stay in the UK seek to regularise their stay before their permission expires.

Changes to the Student route and consequential changes to work routes

- 7.10 The following changes are being made to the student route in response to the Government's commitment to reduce net migration:
- Removing the right for international students to bring dependants unless they are on postgraduate courses currently designated as research programmes; and
 - Removing the ability for international students to switch out of the student route into work routes before their studies have been completed.
- 7.11 These changes preserve the ability for dependants already in the UK to extend their stay, and for international students on taught postgraduate courses beginning before 1 January 2024 to bring dependants. They also preserve existing exemptions for dependants of government-sponsored students and for dependent children who are born in the UK.
- 7.12 The switching restrictions will ensure that students are generally not switching in-country to another route until they have completed their courses. Students on courses at degree level or above will be able to apply before course completion to switch to sponsored work routes, as long as their employment start date is not before their course completion. Those studying towards PhDs will be able to switch after 24 months' study.

Asylum - pausing the differentiation policy

- 7.13 Provisions within the Nationality and Borders Act (NABA) which came into force on 28 June 2022 set out the framework to differentiate between two groups of refugees; "Group 1" and "Group 2". Group 1 are refugees who meet three conditions set out in Section 12 of the NABA, namely that they "come directly" from a country or territory where their life or freedom was threatened; claim asylum "without delay"; and, where applicable, show "good cause" for their illegal entry or presence. Those who do not meet these criteria are Group 2 refugees.
- 7.14 The primary way in which the Groups are differentiated is the grant of permission to stay; Group 1 refugees are normally granted refugee permission to stay for five years after which they can apply for settlement, whereas Group 2 refugees are normally granted temporary refugee permission to stay for 30 months on a 10-year route to settlement.

- 7.15 The differentiation policy was intended to disincentivise migrants from using criminal smugglers to facilitate illegal journeys to the UK. Since then, the scale of the challenge facing the UK, like other countries, has grown – and the Government introduced the Illegal Migration Bill. The new Bill goes further in seeking to deter illegal entry to the UK, so that the only humanitarian route into the UK is through a safe and legal one. The Bill will radically overhaul how we deal with people who arrive in the UK illegally via safe countries, rendering their asylum and human rights claims (in respect of their home country) inadmissible and imposing a duty on the Home Secretary to remove them. This approach represents a considerably stronger means of tackling the same issue that the differentiation policy sought to address: people making dangerous and unnecessary journeys through safe countries to claim asylum in the UK.
- 7.16 We are therefore pausing the differentiation policy through these Rules changes. This means we will stop taking grouping decisions under the differentiated asylum system after these Rules changes and those individuals who are successful in their asylum application, including those who are granted humanitarian protection, will receive the same conditions. Our ability to remove failed asylum applicants remains unchanged.
- 7.17 Individuals who have already received a “Group 2” or humanitarian protection decision under post-28 June 2022 policies will be contacted and will have their conditions aligned to those afforded to “Group 1” refugees. This includes length of permission to stay, route to settlement, and eligibility for Family Reunion.

Improving clarity regarding withdrawing asylum claims

- 7.18 Changes are being made to Part 11 of the Immigration Rules to improve clarity regarding the withdrawal of asylum applications whilst strengthening our ability to promptly treat as withdrawn asylum applications from individuals who do not comply with processes.
- 7.19 The amendments to paragraph 333C clarify that consideration of all withdrawn asylum claims will be discontinued.
- 7.20 Paragraph 333C(a) provides greater flexibility to accept explicit withdrawals where a claimant requests a withdrawal of their claim in writing but fails to do so on a specified form, preventing duplicative correspondence with the claimant.
- 7.21 The inclusion of 333C(b)(i) will ensure the progression of applications more efficiently by helping to prevent absconder scenarios. This makes absolutely clear that the burden is on the claimant to keep the Home Office up to date with their contact details, and failure to do so may result in a withdrawal of the asylum claim.
- 7.22 The inclusion of 333C(b)(iv) details the requirement to attend any reporting events and where there is a failure to do so, the result may be the application being treated as implicitly withdrawn. This will also ensure efficiency with application progression through preventing potential absconder scenarios.
- 7.23 These changes will extend the circumstances in which an asylum claim may be withdrawn. By providing more clarity, it will enable decision-making resources to be

concentrated on those who genuinely wish to continue with their asylum claims in the United Kingdom.

Changes to the Skilled Worker route

- 7.24 The Shortage Occupation List offers lower salary requirements and lower visa application fees for jobs identified as being in shortage and where immigration is a sensible part of addressing that shortage. Following recommendations by the Migration Advisory Committee (MAC), all jobs in the following occupations in construction are being added to the list:
- 5312 Bricklayers and masons
 - 5313 Roofers, roof tilers and slaters
 - 5315 Carpenters and joiners
 - 5319 Construction and building trades not elsewhere classified
 - 5321 Plasterers
- 7.25 Following a further recommendation by the MAC, dryliners are being reclassified to the same occupation code as plasterers, making the job eligible to be sponsored for the Skilled Worker route and included on the Shortage Occupation List.
- 7.26 To support the fishing industry in becoming fully compliant with the immigration system following the implementation of Section 43 of the Nationality and Borders Act 2022⁴, jobs in the fishing industry in the following occupations are also being added to the Shortage Occupation List:
- 5119 Agriculture and fishing trades not elsewhere classified
 - 9119 Fishing and other elementary agriculture occupations not elsewhere classified
- 7.27 A change is being made for applicants who are sponsored for General Practitioner (GP) specialty training. The change means they will be granted permission until 4 months after the end date of their certificate of sponsorship, instead of the usual 14 days. This is because, unlike other applicants who have qualified in the UK, they cannot benefit from the Graduate route and may need additional time to find employment with a GP practice that is a licensed sponsor. A further change is being made to allow them to undertake supplementary employment during this period.
- 7.28 For consistency with Temporary Work routes, a specific requirement is being added that applicants must genuinely intend to undertake their sponsored job, and not intend to work in breach of their conditions. This builds on requirements already in the Rules.
- 7.29 A minor change to Appendix Skilled Occupations is being made to correct an error in the salary scales for specialty registrars in Scotland.

Changes to the Service Providers from Switzerland route

⁴ [Nationality and Borders Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

- 7.30 A change in HC 1160⁵ relating to employment regulations was erroneously applied to this route and is being removed.

Appendix GAE Schemes

- 7.31 There are updates to Appendix Government Authorised Exchange schemes to allow the Diplomatic Missions Interns Scheme to accommodate the EU Delegation to the UK due to its treatment with diplomatic courtesies akin to a diplomatic mission.

Minor policy or technical changes to the Rules

Updates to the Seasonal worker route

- 7.32 The hourly rate for occupation codes 5431 and 5433 are being increased to align to the hourly rate for the Skilled Worker route, as workers in those occupation codes are also eligible to be sponsored on that route.
- 7.33 A minor drafting correction is being made to remove a duplicate requirement.

Global business mobility and Scale-up routes – Genuineness requirement

- 7.34 For consistency with Temporary Work routes, a specific requirement is being added that applicants must genuinely intend to undertake their sponsored job, and not intend to work in breach of their conditions. This builds on requirements already in the Rules.

HK BNO and App Private Life - minor changes regarding clarifications

- 7.35 The changes being made to Appendix Hong Kong British National (Overseas) (BN(O)) will bring the route into line with the equivalent provisions in the public funds conditions in Appendix FM and Appendix Private Life.

Clarification of private life rules relating to access to public funds

- 7.36 The changes to Appendix Private Life clarify the circumstances in which consideration should be given to removing the condition which prohibits access to public funds to better reflect exceptional circumstances, bringing the wording into line with that contained at GEN 1.11A of Appendix FM.

Appendix Adult Dependent Relative

- 7.37 Amendment to the Adult Dependent Relative Immigration Rules to correct an error in the March 2023 Statement of Changes. This amendment reverts to the previous policy position and allows certain partners of Adult Dependent Relatives to be able to come to the UK as an Adult Dependent Relative, where only one of them needs care. In these circumstances, the applicant and their partner must both either be the parents or grandparents of the sponsor.

⁵ Statement of changes to the immigration rules: HC 1160, 9 March 2023 - GOV.UK (www.gov.uk)

- 7.38 Minor changes are also being made to Appendix FM to remove references to Adult Dependent Relatives.

Changes to the Youth Mobility Scheme

- 7.39 The Youth Mobility Scheme route implements the international commitments we make to provide cultural exchange programmes for young people.
- 7.40 The rules are being amended to clarify that New Zealand nationals currently in the UK with a valid YMS visa who are applying for the 1 year extension can receive a total of 3 continuous years of leave (including the original grant of permission to enter).

Innovator founder

- 7.41 The provisions of Appendix Innovator Founder are being amended to clarify that letters on endorsement in support of applications under the “same business” criteria will be considered where the applicant previously had permission under the Start-up route.

Minor drafting changes

- 7.42 The Statement of Changes also introduces minor drafting changes to improve clarity and ensure consistency of wording within the various routes and to correct incorrect paragraph references and correct minor drafting errors, including those made in the Statement of Changes in Immigration Rules (HC 1160) laid on 9 March 2023.⁶

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because it supports further implementation of the EUSS.
- 8.2 For all other changes, this instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

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.

⁶ Statement of changes to the immigration rules: HC 1160, 9 March 2023 - GOV.UK (www.gov.uk)

- 10.2 The changes to update the Shortage Occupation List following an interim review by the independent Migration Advisory Committee (MAC) were informed by consultation with relevant stakeholders.

11. Guidance

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

12. Impact

- 12.1 There is likely to be no, or no significant, direct impact on business, charities, or voluntary bodies as a result of the changes to the Student route; however, any impacts, including significant indirect impacts on universities and impacts on the public sector, are set out in the Impact Assessment which has been prepared for these Rules changes.
- 12.2 The changes to the Skilled Worker route are estimated to have a limited impact on business, charities or voluntary bodies as well as a limited impact on the public sector such that an Impact Assessment has not been produced. The primary business impact is expected to result from the indirect impact on business from the additional potential labour supply available to employers and the public sector impact of additional fee, IHS and ISC revenue.
- 12.3 The changes to the EU Settlement Scheme (EUSS) and EUSS family permit are estimated to have no significant direct or indirect impacts on business, charities or voluntary bodies. Impacts on the public sector are uncertain.
- 12.4 The remainder of the changes are estimated to have no, or no significant, impact on business, charities or voluntary bodies.
- 12.5 The remainder of the changes are estimated to have 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 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 or 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.

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.⁷
- 15.3 A copy of this Statement of Changes can be found on the visa and immigration pages of the GOV.UK website.⁸
- 15.4 Sally Weston, Head of Simplification and Systems Unit at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 Rt Hon Robert Jenrick MP, Minister of State (Minister for Immigration) at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

⁷ Available at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>

⁸ Available at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>