

By email only:

The Rt Hon Priti Patel MP, Secretary of State for the Home Department

[public.enquiries@homeoffice.gov.uk](mailto:public.enquiries@homeoffice.gov.uk)

cc: Kevin Foster MP, Parliamentary Under-Secretary of State for Safe and Legal Migration

[MinisterforImmigration@homeoffice.gov.uk](mailto:MinisterforImmigration@homeoffice.gov.uk)

18 February 2022

Dear Home Secretary,

**Re: Tier 1 (Investor) Route Closure**

We urgently write in relation to your closure of the Tier 1 (Investor) route to all new applicants, from all nationalities, which took immediate effect from 4pm on 17 February 2022.

On 17 February 2022, without prior warning, you tweeted, 'I've closed the Tier 1 Investor visa with immediate effect following our review of all those granted'.<sup>1</sup> The Home Office confirmed this in a news story.<sup>2</sup> A Statement of Changes (CP 632) to the Immigration Rules was published online suddenly on 17 February 2022 at 4:04pm, and took effect four minutes earlier at 4:00pm on that same day.<sup>3</sup> Although we were given a draft copy of the Statement of Changes for the Spring changes on 11 February 2022, and were in the process of reviewing these as part of our engagement with the Simplification of the Immigration Rules, they did not contain a proposed closure of the Tier 1 (Investor) route.

We received no advanced notice of your intention to close the route, other than reports in the press citing Government officials,<sup>4</sup> and there was no formal public consultation regarding these changes. We understand the reason for this is that you did not wish to signal closure of the route.<sup>5</sup> The Statement of Changes also departs from the convention that changes to the Immigration Rules come into force no earlier than 21 days after being laid in Parliament. We understand that you have

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<sup>1</sup> <<https://twitter.com/pritipatel/status/1494330167413465091>> accessed 17 February 2022.

<sup>2</sup> Home Office, 'Tier 1 Investor Visa route closes over security concerns' (17 February 2022)

<<https://www.gov.uk/government/news/tier-1-investor-visa-route-closes-over-security-concerns>> accessed 17 February 2022.

<sup>3</sup> Home Office, Statement of changes to the Immigration Rules: CP 632, 17 February 2022

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1055714/E02722027\\_-\\_Immigration\\_Rules\\_changes\\_-\\_CP\\_632\\_PRINT\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1055714/E02722027_-_Immigration_Rules_changes_-_CP_632_PRINT_.pdf)> accessed 17 February 2022.

<sup>4</sup> BBC, 'UK to scrap visas for rich foreign investors scheme' (17 February 2022)

<<https://www.bbc.co.uk/news/uk-politics-60410844>> accessed 17 February 2022.

Laura Hughes and Robert Wright, 'UK to scrap 'golden visas' in crackdown on money laundering' *Financial Times* (London, 16 February 2022) <<https://www.ft.com/content/f990e61f-ece8-4bc9-91d9-58fee67e2ba3>> accessed 17 February 2022.

<sup>5</sup> Explanatory Memorandum to the Statement of Changes in Immigration Rules Presented to Parliament on 17 February 2022 (CP 632) [10.1] (hereinafter 'Explanatory Memorandum')

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1055715/E02722027\\_-\\_CP\\_632\\_-\\_EXPLANATORY\\_MEMORANDUM\\_PRINT\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1055715/E02722027_-_CP_632_-_EXPLANATORY_MEMORANDUM_PRINT_.pdf)> accessed 17 February 2022.

departed from proper legislative practice for an instrument subject to the negative procedure,<sup>6</sup> as it was ‘anticipated that closure of the route with 21-days’ notice, or less, would trigger a “closing down sale” effect, involving a very substantial upturn in application levels in advance of closure.’<sup>7</sup>

The “closing down sale” could happen with any route you wish to close, as there will inevitably be persons who had intended to apply on a route, and who are in the midst of preparing an application when a route is suddenly closed.

We are concerned that this action undermines democratic procedures of accountability and any sense of legal certainty, stability, and predictability.

As confirmed by the Supreme Court in the case of *Hesham Ali*, the point of the Immigration Rules ‘is to give Parliament a degree of control over the practice to be followed by the Secretary of State in the administration of the 1971 Act for regulating immigration control’.<sup>8</sup> They are ‘laid before Parliament, may be the subject of debate, and can be disapproved under the negative resolution procedure. They are therefore made in the exercise of powers which have been democratically conferred, and are subject, albeit to a limited extent, to democratic procedures of accountability.’<sup>9</sup>

With such a busy Parliamentary schedule, the laying of changes on the day they are to take effect leaves no or almost no time for debate or disapproval. In this case, Parliament was in recess, and was thus not even sitting on 17 February 2022.

This is also not the first time that such action has been taken, to which we have objected. In 2018, we corresponded with Richard Jackson in your Department regarding the legality of a decision taken to suspend the Tier 1 (Investor) visa on 7 December 2018, which was done with less than 24 hours notice, and without change to the Immigration Rules. That decision was subsequently reversed.

However, this is a sudden decision to close a long-established route which has existed since 1994, and was brought within the points-based system in 2008. It underwent an extensive review in 2014, and your Department was committed to its reform in 2015 and 2019. The documents and information upon which you have relied in the Explanatory Memorandum for reform, have long been available. The Migration Advisory Committee *Tier 1 (Investor) route: investment thresholds and economic benefits* report was published in February 2014.<sup>10</sup> The review you are due to publish is for visas granted from when the scheme launched in 2008 up to 5 April 2015, prior to the reform and thus has little import for current applicants under the reformed rules. Your analysis is of a ‘sample’ of extension applications granted in 2019.<sup>11</sup> The Intelligence and Security Committee’s Russia report was printed on 21 July 2020, and recommended an overhaul of the programme and more robust

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<sup>6</sup> National Archives, *Statutory Instrument Practice* (November 2017) <[https://www.legislation.gov.uk/pdfs/StatutoryInstrumentPractice\\_5th\\_Edition.pdf](https://www.legislation.gov.uk/pdfs/StatutoryInstrumentPractice_5th_Edition.pdf)> accessed 17 February 2022.

<sup>7</sup> *ibid* [3.2].

<sup>8</sup> *Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] UKSC 60 [16].

<sup>9</sup> *ibid* [17].

<sup>10</sup> Migration Advisory Committee, *Tier 1 (Investor) route: investment thresholds and economic benefits* (February 2014)

<<https://www.gov.uk/government/publications/the-investment-limits-and-economic-benefits-of-the-tier-1-investor-route-feb-2014>> accessed 17 February 2022.

<sup>11</sup> Explanatory Memorandum [7.3].

approach to the approval process, but it did not recommend the route's closure.<sup>12</sup> Thus, we cannot understand why this change to the Tier 1 (Investor) route is being made without any prior notice in February 2022, many years subsequent to the information upon which you rely.

We understand from the Explanatory Memorandum that you have concerns regarding the movement of illicitly obtained wealth, and there is media scrutiny and Parliamentary scrutiny.<sup>13</sup> However, reactionary rule-making, undertaken without consultation and in contravention of convention, undermines the possibility for adequate Parliamentary scrutiny.

As we are sure that you will appreciate, it takes time to plan a relocation to the UK and entirely credible clients of our members, who are unconnected to any security concerns or abuse, were already in the midst of preparing their applications at the time the closure of the route was announced and took effect. Applicants cannot plan their lives according to the law,<sup>14</sup> if the law can change at a moment's notice. There is no current alternative category for applicants to commence on a route for investment-related migration to the UK, following the closure of the Tier 1 (Entrepreneur) route in 2019. The proposed Innovator route amendments detailed in the Explanatory Memorandum will only be delivered through changes in Autumn 2022,<sup>15</sup> and we know nothing of the shape or form these will take or whether would-be Tier 1 (Investor) applicants will be eligible.

Those who had instructed representatives to prepare their applications or made other arrangements with a view to moving to the UK may be left out of pocket, with no way to enter or remain in the UK. There is a real human impact in the closure of any route, particularly when there is no alternative.

We note in the amendment of Lord Wallace of Saltaire tabled for Report stage of the Nationality and Borders Bill,<sup>16</sup> that it was suggested that a timeframe of two months following passage of the Bill be provided prior to the temporary closure of the route. This would have ensured an appropriate opportunity for the submission of any applications in the midst of being prepared prior to the closure of the Tier 1 (Investor) route, and it would have permitted respect for and adherence to the 21-day convention in negative procedure.

In accordance with the Immigration Rules as they stood at the date of application, it would have been open to your Department to use your considerable powers to scrutinise and refuse applications based on the source of funds under paragraphs 245EB(e), 245ED(g), 245EF(f) of the Immigration Rules (which include refusal where the specified money has been acquired by means which are unlawful or would be unlawful in the UK, or where funds have been made available by a third party and the character, conduct or associations of that party are such that approval of the application would not be conducive to the public good). It would also have been open to your Department to scrutinise the character of applicants under the general grounds for refusal which include refusal on the basis of an applicant's character, conduct, or associations under paragraph 9.3.1 of the Rules.

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<sup>12</sup> Intelligence and Security Committee of Parliament, *Russia* (HC 632) page 17, [56] <[https://isc.independent.gov.uk/wp-content/uploads/2021/03/CCS207\\_CCS0221966010-001\\_Russia-Report-v02-Web\\_Accessible.pdf](https://isc.independent.gov.uk/wp-content/uploads/2021/03/CCS207_CCS0221966010-001_Russia-Report-v02-Web_Accessible.pdf)> accessed 17 February 2022.

<sup>13</sup> Explanatory Memorandum [7.4].

<sup>14</sup> In *Secretary of State for the Home Department v Pankina* [2010] EWCA Civ 719 [17] the Court stated that Immigration Rules have 'acquired a status akin to law'.

<sup>15</sup> [7.6].

<sup>16</sup> Nationality and Borders Bill, Amendments to be moved on Report HL Bill 82-R(a) (11 February 2022) <<https://bills.parliament.uk/publications/45246/documents/1414>> accessed 17 February 2022.

Accordingly, we have three requests.

First, for a time-limited period of 21 days, will your Department accept discretionary initial Tier 1 (Investor) applications to be judged against the Rules in place on 16 February 2022? This would assist to undo the adverse impact of the failure to respect the 21-day rule, and avoid any unfairness to applicants who were close to submission at the time of the route's closure.

Second, we seek assurance that cases currently under consideration will be assessed in line with the Rules on the date of application.<sup>17</sup>

Third, in the future we must respectfully request that there is sufficient notice to representatives and potential applicants prior to such substantive changes in the Rules, and we must stress the constitutional importance that we see in laying changes to the Immigration Rules at least 21 days before they take effect.

Yours sincerely,

Nicole Francis

**Chief Executive**  
**Immigration Law Practitioners' Association**

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<sup>17</sup> For leave to remain, the date of application is defined in paragraph 34G of the Immigration Rules. For entry clearance we refer to the date any fee required to be paid under the regulations made under sections 68 and 69 of the Immigration Act 2014 is paid, per paragraph 30 of the Immigration Rules.