



# Joint Evidence to the Secondary Legislation Scrutiny Committee for its consideration of the Statement of Changes to the Immigration Rules: HC 556, 19 February 2024

## Introduction

1. The Immigration Law Practitioners' Association (ILPA) is a professional association and registered charity, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession, and to help ensure a fair and human rights-based immigration and asylum system. ILPA is represented on numerous government, official, and non-governmental advisory groups and regularly provides evidence to parliamentary and official inquiries.
2. Work Rights Centre is a registered charity dedicated to supporting migrants to access employment justice and improve their social mobility. We do this by providing free and confidential advice in the areas of employment, immigration, and social security, and by mobilising frontline intelligence to address the systemic causes of migrants' inequality. The charity was founded in 2016. Ever since, we have advised over 5,000 people, helped recover over £200,000 in unpaid wages and fees, and supported hundreds more to make job applications and secure their immigration status. Our frontline service consists of two multilingual teams of advisers who operate in London (5 days a week) and Manchester (on Saturdays). Together, the advice team assist an average of 20 beneficiaries a week, with issues which range from nonpayment, insecure immigration status, and career advice.
3. We ask that the Secondary Legislation Scrutiny Committee draw the Statement of Changes to the Immigration Rules: HC 556, published on 19 February 2024, to the special attention of the House, on the following bases:
  - I. that the statutory instrument is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
  - II. that it may imperfectly achieve its policy objectives;
  - III. that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation; and
  - IV. that there appear to be inadequacies in the consultation process.



## Background

4. The Statement of Changes HC 556 contains two significant changes to the Immigration Rules:
  - a. Changing the Ukraine Schemes, including by closing the Ukraine Family Scheme (UFS) to new applications with immediate effect; closing the Ukraine Extension Scheme (UES) to new applications, other than from UK-born children, from 16 May 2024; and reducing grants of leave from 36 to 18 months;
  - b. Removing the ability of Health and Care Workers to have joining or accompanying dependants, with transitional arrangements for Health and Care Workers who have applied on the route and are sponsored before the provisions come into force.
5. There have been three Ukraine Schemes:
  - a. The UFS permitted people in the UK who were British, Irish, settled, held refugee status or humanitarian protection, or limited leave under the EU Settlement Scheme (with a few exceptions) to sponsor a wide-range of relatives from Ukraine, including their immediate family, extended family, and the immediate family members of their extended family (e.g. a person could sponsor their cousin and their cousin's wife and children);
  - b. The Homes for Ukraine Sponsorship Scheme (HFUS Scheme) permitted a Ukrainian and their close family to apply to stay with an individual host who is checked by the council to ensure they are suitable to provide six months' accommodation; and
  - c. The UES permitted Ukrainians already in the UK on time-limited visas to switch into this route, recognising they cannot be expected to return to Ukraine.

### **I. The Statement of Changes is politically and legally important, and raises public policy issues**

#### Ukraine Schemes

6. The Ukraine Schemes were initially created as a result of significant public pressure at the time of the Russian invasion of Ukraine, for the UK to align with our European partners and offer a safe haven for individuals impacted by the invasion.
7. The Government frequently states that it stands shoulder to shoulder with Ukraine. The Government cites its generosity to Ukrainians and their family members during their time of need, to demonstrate its commitment to offering safe and legal routes for those whose lives are endangered. During his speech to the House of Commons on 13 December 2022, the Prime

Minister, Rishi Sunak, boasted that ‘[w]e have a proud history of providing sanctuary to those most in need....In the last year, we have opened our hearts and our homes to people from Hong Kong, Afghanistan and Ukraine. Thousands of families will be setting extra places around the Christmas table this year. No one—no one—can doubt our generosity of spirit.’<sup>1</sup> The Home Secretary stated in his speech on 5 December 2023 that ‘[t]he whole country can be proud that in the past decade we have also welcomed more than half a million people through humanitarian routes—people from Ukraine, Hong Kong and Afghanistan, including 85,000 from Ukraine and Hong Kong in the past year alone’.<sup>2</sup>

8. The 12 January 2024 [Report on safe and legal routes](#), presented to Parliament pursuant to section 61 of the Illegal Migration Act 2023, states:

*‘In response to Russia’s illegal full-scale invasion of Ukraine on 24 February 2022, the UK has strengthened its partnership with Ukraine immeasurably. The UK, together with our partners and allies, stands in solidarity with Ukraine and condemns the Russian government’s unprovoked and premeditated war against Ukraine.*

*The UK Government put in place three schemes to provide sanctuary to Ukrainians fleeing the war: the Ukraine Family Scheme (UFS), the Ukraine Sponsorship Scheme (also known as Homes for Ukraine – HFU) and the Ukraine Extension Scheme (UES).*

*[...]*

*All of the schemes are free to apply for, provide permission to come to the UK safely and legally, with 36 months permission to stay in the UK and no restrictions to the right to work or access to benefits and services.’*

9. In the [King’s Speech](#), on 7 November 2023, His Majesty stated, ‘My Ministers will work closely with international partners to support Ukraine’. With all due respect, these proposed changes to the Appendix Ukraine Scheme, and *de facto* changes to the HFUS Scheme through guidance, do not support the people of Ukraine.
10. The abrupt closure of the UFS means that Ukrainian relatives of people in the UK will no longer be able to travel to safety here, unless they can fit the tighter rules of the HFUS Scheme.
11. Since the inception of the HFUS Scheme, local authorities have been required to check that a sponsor’s proposed accommodation offers sufficient space to accommodate the visa applicants.

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<sup>1</sup> [HC Deb 13 December 2022, vol 724, col 885.](#)

<sup>2</sup> [HC Deb 5 December 2023, vol 834, col 1454.](#)

Individuals who would have been able to sponsor their family members under UFS, might not be able to pass such a check. Their family members may thus be left in situations of persecution and danger, as they will have no safe route to the United Kingdom.

12. Crucially, Ukrainians who do not have indefinite leave to remain in the UK (which a large proportion of those who have arrived since Russia's invasion are unlikely to have, as the Ukraine Schemes do not offer routes to settlement, while alternative immigration routes typically offer a five-year route to settlement), are ineligible to become a sponsor for the HFUS Scheme. The eligibility requirements for sponsors under the HFUS Scheme are not contained within the Immigration Rules, but are published by the Department for Levelling Up, Housing and Communities.<sup>3</sup>
13. Although not made clear on the face of the Statement of Changes, on 19 February 2024, the Government also abruptly restricted who can sponsor individuals under the HFUS Scheme. Previously hosts could have any immigration status, so long as they could offer six months suitable accommodation and had leave to remain for at least six months. On 19 February 2024, [guidance](#) was updated to limit sponsorship to individuals who can be 'British or Irish Citizens or be 'settled in the UK' (which means having the right to live in the UK permanently)' for applications submitted after 3pm on 19 February 2024. This change is concerning for several reasons.
14. First, there is a very concerning slippage between guidance and the Immigration Rules. In *R (on the application of Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, Lord Dyson held at §94 that 'a rule is any requirement which a migrant must satisfy as a condition of being given leave to enter or leave to remain', and must be contained within the Immigration Rules. Arguably, the requirements a sponsor must meet, to be an 'approved sponsor' constitutes such a rule. If the HFUS Scheme sponsor does not meet the new immigration status requirement, the applications for leave under the HFUS Scheme would be refused.
15. While there is a line of case law that relates to points-based system sponsors,<sup>4</sup> it can be distinguished: the position of sponsors under the HFUS is far more akin to sponsors under family routes. In fact, it is clear from the Economic Note at §15, that the intention of altering the HFUS was to bring 'sponsor eligibility requirements closer to Appendix FM'. Under Appendix FM, the immigration status of the sponsoring partner is a rule:

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<sup>3</sup> Department for Levelling Up, Housing and Communities, 'Eligibility, safeguarding, DBS and accommodation checks: Homes for Ukraine' (last updated 19 February 2024) <<https://www.gov.uk/guidance/eligibility-safeguarding-dbs-and-accommodation-checks-homes-for-ukraine#eligibility-and-checks>> accessed 21 February 2024.

<sup>4</sup> *R (New London College Ltd) v Secretary of State for the Home Department* [2013] UKSC 51; *R (on the application of St Mary Magdalene Academy) v The Secretary of State for the Home Department* [2015] EWHC 725.

*E-ECP.2.1. The applicant's partner must be-*

- (a) a British Citizen in the UK, subject to paragraph GEN.1.3.(c); or*
- (b) present and settled in the UK, subject to paragraph GEN.1.3.(b); or*
- (c) in the UK with protection status; or*
- (d) in the UK with limited leave under Appendix EU, in accordance with paragraph GEN 1.3.(d); or*
- (e) in the UK with limited leave as a worker or business person under Appendix ECAA Extension of Stay, in accordance with paragraph GEN.1.3.(e); or*
- (f) in the UK with permission as a Stateless person.*

16. Prior to the change, there was no immigration status requirement for Approved Sponsors. Therefore, that absence has been filled with a rule, which ought to be contained within the Immigration Rules governing the requirement for grants under the HFUS Scheme. It is inappropriate to unilaterally make amendments to guidance and thus avoid Parliamentary procedure under section 3(2) of the Immigration Act 1971 and Parliamentary approval of what is arguably, in substance, a rule.
17. Second, the change to sponsorship under the HFUS Scheme is likely to increase homelessness. Many of the people coming forward to volunteer with local councils as hosts are Ukrainian nationals, who arrived under Appendix Ukraine Scheme, and have rented or bought a home to offer a spare room to someone else. It is unclear if the recent change prevents local council's 're-matching' homeless Ukrainians with hosts who have limited leave to remain. However, making all those hosts ineligible to sponsor will leave fewer places for Ukrainians to live before they have found a home of their own. Ukrainians are ideal as hosts, as they can speak to a new arrival in their own language and may have lived experience to help guide the new arrival through the transition.
18. Third, it will cause family separation. Given moving to the UK is such a major change, it is common for Ukrainian families to have one member of the family arrive first to find work and housing and then the rest of the family join them. It will now be much more difficult for individuals who are in the UK with permission under Appendix Ukraine Scheme to bring any family members they may have left behind. There are countless reasons why a family member may not have moved to the UK with their relative(s). Individual and family circumstances can change in ordinary times, but in times of war it is even more likely that unexpected changes may happen. For example, individuals may be called to fight, or there could be a bereavement, which leaves a child needing to join other family members in the UK. Men who are demobilised, sometimes due to injury, will need to join their families in the UK.

19. Furthermore, the extent of the applicant’s family members that could apply to join an applicant to the UK under the UFS is not replicated in the HFUS Scheme. The definition of ‘family member’ for the purpose of the UFS included an immediate family member of the UK-based sponsor (such as a partner or child under 18), an extended family member (such as a niece) and an immediate family member of an extended family member (such as a partner of a niece). The HFUS Scheme has a stricter requirement. If an applicant is not a Ukrainian national, they must be an immediate family member of a Ukrainian applicant, which is defined as meaning a partner of the Ukrainian national, child aged under 18 on the date of application of the Ukrainian national or their partner, parent of a Ukrainian national child aged under 18 on the date of application, or fiancé(e) or proposed civil partner of the Ukrainian national. Non-Ukrainian extended family members, which includes parents, grandparents, grandchildren, adult children, siblings, cousins, aunts, uncles, nieces, and nephews, are excluded.

**To demonstrate the effect, consider the following hypothetical case study:**

Anastasia is a Ukrainian national, who came to the UK on the Homes for Ukraine Scheme, leaving her Ukrainian one-year old son, Borys, with his Ukrainian grandmother in Ukraine. Anastasia was sponsored by someone who is no longer a Homes for Ukraine sponsor. Anastasia has since moved out and she has taken a 2-year tenancy on a flat large enough for her family.

Anastasia was waiting for Borys to be granted his first passport, to sponsor Borys and his grandmother to come to the UK, under the Homes for Ukraine Scheme.

Until 19 February 2024, Anastasia could sponsor Borys and his grandmother to join her once she found a place with appropriate space for them to live together in the UK.

Following the change to sponsor eligibility criteria on 19 February 2024, this will no longer be possible.

Anastasia has no way to sponsor her son and his grandmother to come to the UK.

Due to the legal aid crisis, she will find it difficult to obtain free legal assistance to make a complex application on the basis of Article 8 of the European Convention on Human Rights.

Her only three choices are to (1) make a protection claim, and wait for her claim to be decided, which could take years, before she has family reunion rights; (2) return to Ukraine to be reunited with her son and his grandmother; (3) search for someone willing to sponsor and house her family.

20. The creation of stress and harm by the separation of families, particularly where one or more family members are left behind in an unsafe country, is far from standing ‘shoulder to shoulder’ with Ukraine.
21. The halving of the grant period under the HFUS Scheme, from 36 months to 18 months, could also have ramifications that are important for public policy. A shorter period of leave reduces a migrant’s perception of stability, not just internally, but externally, which could impact employment opportunities and the ability to find stable and long-term accommodation. This could have knock-on effects on local authorities, who will be required to step in and assist individuals who cannot support themselves.
22. As for the UES, given the Russian invasion is still underway and the situation remains very volatile, closing the UES to new applicants from 16 May 2024 will create a cohort of individuals on other immigration routes (as partners, seasonal workers, skilled workers, students, visitors etc.) who cannot safely return to Ukraine, but may have no way to extend their leave to remain in the UK. They may overstay their leave and become subject to hostile environment measures, or claim protection in the UK and enter the UK’s asylum and humanitarian protection backlog. This policy is shortsighted and will place additional strain on an already overstretched legal aid sector and Home Office asylum operations.
23. Additionally, the amendments to the UES fail to include children of individuals on the UES born overseas. They only include children born in the UK. One of ILPA’s members worked with an individual who went to Canada on a visit visa for a wedding, and unexpectedly gave birth early, and could not find a way to bring her child back to the UK. Now the situation would be worsened as the mother could not sponsor her child under the HFUS Scheme.
24. In a June 2023 poll, most people thought that we should either increase (24%) or maintain (45%) our support levels for Ukraine. Only 12% of those polled thought we should reduce support.<sup>5</sup> In light of public opinion, to row back on the generosity of the Ukraine schemes is of huge political importance.

#### Health and Care Workers

25. Once in force, these changes will have a drastic impact on the lives of those applying to enter the UK to work as a care worker or senior care worker, and on those who are already in the UK as the holder of any other visa (even if that visa allows them to bring dependants to the UK) and wish

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<sup>5</sup> YouGov, ‘Ukraine War tracker June 2023’

<<https://d3nk13psvxxpe9.cloudfront.net/documents/YouGov - Ukraine War tracker June 2023.pdf>> accessed 21 February 2024.

to switch into the Health and Care Worker visa. These individuals will no longer be permitted to stay with, or bring over, their immediate family members.

26. This measure will also result in family separation, including separation of parent from child, contrary to the best interests of the child. The House of Lords Justice and Home Affairs Committee reported in 2023 that a period of just six to nine months of separation from a parent can be detrimental to a child, harming their long and short term educational attainment but also harnessing ‘profound feelings of anxiety and circular worries about their family members as well as feelings of loneliness, displacement, guilty and self-doubt’.<sup>6</sup> Technological means of communication can worsen the harm. The Committee received evidence that, ‘many children become overwhelmed by the conflicting emotions of wanting to be with their loved one, even if it is through a computer or mobile phone screen, and the devastation of knowing they are so far away while doing so’.<sup>7</sup>
27. In these circumstances, it is imperative that the House pay special attention to these policy changes in the Statement of Changes. As is explained in the course of these submissions, they are politically and legally important and give rise to issues of public policy likely to be of interest to the House.

## II. The Statement of Changes will imperfectly achieve its policy objectives

### Ukraine Schemes

28. The [Economic Note](#) on ‘Ukraine Family Scheme closure and changes to the Home for Ukraine Scheme’ states at §3 that the ‘UK Government remains committed to its foreign policy objective of providing sanctuary and support to Ukrainians who have been displaced as a result of the ongoing Russia-Ukraine conflict. The full-scale continuation of hostilities in the region demonstrates the pertinence and sustained need for the UK’s humanitarian protection schemes to support those fleeing Ukraine’.
29. However, this Statement of Changes restricts rather than sustains the UK’s humanitarian protection schemes to support those fleeing Ukraine. It demonstrates that the UK Government is not committed to this policy objective of providing sanctuary and support to Ukrainians who have been displaced as a result of the ongoing Russia-Ukraine conflict.
30. The changes to the UFS would now exclude any individual whose:
  - a. UK-based relative cannot personally provide housing, for example:

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<sup>6</sup> Justice and Home Affairs Committee, [All families matter: An inquiry into family migration](#) (HL 2022-23 144) §15.

<sup>7</sup> *ibid* §18.



- i. if the sponsor in the UK does not have a large enough home, but their relatives were intending to rent or buy their own accommodation after they arrived;
    - ii. a parent who would relocate from a care home in Ukraine to a care home in the UK;
    - iii. a family member whose accessibility or disability-related needs could not be met in the sponsor's own home (such as not being able to offer stair-free access).
  - b. UK-based relative is a refugee, holds humanitarian protection, or has limited leave under the EU Settlement Scheme, because they cannot act as a sponsor under the HFUS Scheme.
  - c. extended family holds mixed nationalities, because only Ukrainians and their immediate family can apply under the HFUS Scheme, even if the non-Ukrainian extended family member is a dependent child.
31. The Economic Note details at §§10-13 that the closure of the UFS is to address the following weak policy objectives:
  - a. **accommodation suitability** 'to mitigate the risk of homelessness resulting from accommodation being unsuitable or unavailable'; however, nothing prevents an individual on the HFUS Scheme being rendered homeless after the first six months of accommodation.
  - b. **safeguarding** 'to ensure that Ukrainian arrivals are protected from harm'; however, the UFS is fundamentally different from the HFUS Scheme insofar as sponsorship did not extend beyond the family.
  - c. **financial considerations** to address 'criticism of the fact that the UFS does not attract the same financial incentives as HFU, such as 'thank you' payments made to sponsors', when these measures will attract far greater criticism for closing the UFS altogether.
  - d. **declining application volumes** but as the Economic Note states there were still approximately 1,000 applications in September 2023. Therefore, while the UFS may be 'costly to run in time and money', the extensive and generous family definition was clearly considered worthwhile for those that benefited while fleeing war. The government is unable to say what has changed to make that policy objective no longer one worth pursuing.
  - e. **legal challenge** as the Home Office is seeing increased litigation linked to third country nationals who were resident in Ukraine at the time of the invasion, but with no Ukrainian family members. These changes may close that particular litigation, while opening the new changes to further litigation. In any case, the intention of the Home Office should be to create a scheme that is lawful and make the appropriate improvements to ensure it is, not close a scheme to avoid litigation regarding and findings of its unlawfulness.

32. As above, the [Economic Note](#), at §15, states that the policy change to HFUS Scheme will bring ‘sponsor eligibility requirements closer to Appendix FM’, by requiring sponsors for new HFUS Scheme visas to be British, Irish or ‘settled’. It goes on to state at §16 that:

*‘Those here on Ukraine schemes, who were never intended to be allowed to function as sponsors themselves, will also be excluded from acting as a sponsor under HFU. In addition, individuals holding EUSS presettled status, as well as those with Humanitarian Protection or Refugee Leave, will no longer be eligible to act as sponsors for new applications. This is because these groups have limited permission to stay in the UK. While they can still sponsor under broader family routes, it is important to note that HFU is not intended for family reunification purposes. Individuals with an Article 8 right (family life), as per the Human Rights Act 1998, can still utilise the existing family routes outlined in the Rules.’*

33. It is clear the true reason behind this policy change is to protect the Home Office from ‘additional risk of legal challenge’ ([Economic Note](#) §17). Therefore, the Home Office wishes to level down rather than level up, close rather than keep open, safe routes for individuals to be reunited with their Ukrainian family members who are in the UK with leave under Appendix Ukraine Scheme. The clear impact of this will be that Ukrainian individuals here with limited leave to remain on a Ukraine Scheme route will have no choice but to make an asylum or humanitarian protection claim, thus adding to the Home Office’s significant and looming backlog, which stood at almost 100,000 cases,<sup>8</sup> on 28 December 2023, in order to access full family reunion rights. Failing that, they will add to the Home Office’s backlog of complex family and human rights claims, which currently stand at [24 weeks](#). By contrast, a Homes for Ukraine application currently takes 3 weeks. That constitutes a vastly different period of time for an individual in a situation of unsafety in Ukraine, or in a neighbouring country, seeking reunification with their UK-based family member.

34. The changes to the Homes for Ukraine Scheme do not further the UK’s foreign policy objective.

35. The [Economic Note](#) states at §46 that:

*‘Following consultation with DLUHC, there is little evidential basis to suggest that changes to HFU sponsor eligibility criteria would restrict sponsor availability to the point where it could constrain new arrivals.’*

36. However, the new HFUS Scheme sponsor eligibility criteria would clearly constrain new arrivals:

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<sup>8</sup> Full Fact, ‘Has the asylum backlog been cleared?’ (3 January 2024)  
<<https://fullfact.org/immigration/asylum-backlog-cleared/>> accessed 15 February 2024.

**Example 1:**

Matt Dathan, Home Affairs Editor for The Times, on 21 February 2024, [reported](#):

‘Olga Brandes-Shytikova, 42, had been planning to apply to bring her son Mykyta, who is living with his 69-year-old grandmother in Chernivtsi, western Ukraine, to the UK.

Mykyta was previously living with his father until he was called up to the Ukrainian army this year after a period of time out of action.

Brandes-Shytikova had waited until this week to submit the application for a visa for Mykyta under the Ukraine Family Scheme because she first wanted to secure a job and her own home so she could look after him in the UK.

After coming to the UK under the Homes for Ukraine scheme with her 17-year-old daughter Yevheniia last May, Brandes-Shytikova got a full-time job at Lidl in Croydon. However, the Home Office suddenly closed the Ukraine Family Scheme without notice on Monday afternoon.

The Home Office insisted that the closure would not affect Ukrainian refugees wanting to come to the UK because they could instead apply for a visa under the Homes for Ukraine scheme (HfU), which requires someone in the UK to sponsor them.

However, it later emerged that the Home Office had changed the eligibility criteria for being a sponsor. Only British and Irish citizens or foreign nationals with settled status in the UK could act as a sponsor for a Ukrainian refugee under the scheme.

Previously, a sponsor only needed to hold at least six months’ permission to stay in the UK, meaning all Ukrainian refugees already in the UK would qualify. [...]

However, the sudden changes meant that effective immediately from 3pm on Monday, Brandes-Shytikova was suddenly ineligible to act as the sponsor for Mykyta and has left her desperately searching for someone to act as a sponsor to be reunited with him.

Brandes-Shytikova told The Times that her son “thinks we betrayed him”.

Speaking from her temporary home in Croydon, she said: “Talking about it makes me cry. There were requirements — I needed to earn more money and I needed a bigger home for my son to live with us. I did all these things.

“I feel that I did everything the government wanted me to do. I found a job and I found a new place to live so that my son would have his own room. And now they have changed the rules, we did not expect this.”

She added: “He is only 11, he will be 12 in August. He says he will come to the border anyway, even though he hasn’t got any documents, and he will wait as long as it takes. I told him that he needs to get documents and we will get them for him. He is getting sick and we think it’s because he is very unhappy.”

**Example 2:**

Maria and her sister acquired status in the UK via the Ukraine Extension Scheme. They were both studying in the UK when Russia’s invasion of Ukraine escalated. Their mother is still in Ukraine and they were making plans for her to join them both in the UK. They needed to find accommodation that was suitable for all of them to live together in. However, because of the changes to the Home Office’s policy, they can no longer be reunited with their mother.

37. Therefore, it is wholly unclear what, if any, policy objective is served by these changes to the Ukraine Schemes.

Health and Care Workers

38. Ministers believe that immigration is ‘far too high’.<sup>9</sup> Since social care workers and their dependants were considered to be one of the main contributors to the recent increase in net migration,<sup>10</sup> this measure is a poor attempt to curb legal migration. It is difficult to safely and efficiently cut back on migration when the Government has yet to confirm what specific net migration figure would be satisfactory and why. It is also unclear why this has become an active issue since data from the Office of National Statistics (ONS) shows that net migration for the year ending in June 2023 (672,000) is lower than what the ONS estimated it would be in the year ending December 2022 (745,000).<sup>11</sup>
39. The measure banning health and care workers from sponsoring their family members to join them in the UK will come at the cost of social care in the UK suffering from further shortages and capacity issues. Professor Brian Bell, chair of the Migration Advisory Committee, commented

<sup>9</sup> [HC Deb 4 December 2023, Vol 742, Col 41.](#)

<sup>10</sup> Migration Observatory, ‘The same but different... ONS finds net migration has “levelled off” after two years of strong growth, reaching 606,000 in 2022’ (25 May 2023) <<https://migrationobservatory.ox.ac.uk/press/the-same-but-different-ons-finds-net-migration-has-levelled-off-after-two-years-of-strong-growth-reaching-606000-in-2022/>> accessed 22 February 2024.

<sup>11</sup> ONS, ‘Long-term international migration, provisional: year ending June 2023’ (23 November 2023) <<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/longterminternationalmigrationprovisional/yearendingjune2023>> accessed 22 February 2024.

that: “You can’t encourage enough British people to do the work in social care because it’s so badly paid. If you make it harder for migrants to come in on the route ... that might begin to reduce the number who are coming in... But I think you have to ask the question, if you do it from the migration perspective, and you achieve that policy objective, aren’t you massively harming the social care sector?”<sup>12</sup> Those who choose to apply to work in the UK, on the other hand, will be at greater risk of exploitation. The same was flagged by the MAC in their 2022 report on adult social care and immigration.<sup>13</sup>

40. The Home Office’s ‘Reducing Net Migration Factsheet’<sup>14</sup> notes that these measures will reform and end the exploitation and abuse identified by the MAC and National Care Association and will further ensure that those who enter the UK on this route, genuinely provide care for those who need it. However, there is no evidence that this would be the case. If care workers and senior care workers cannot rely on the financial, emotional and practical support of their immediate family members in the UK, they will be at increased risk of exploitative work conditions, or be pushed to destitution. The Gangmasters and Labour Abuse Authority’s recent quarterly report<sup>15</sup> suggests that care workers are often at risk of exploitation and the most common vulnerability is the potential victim being tied to a certificate of sponsorship or visa, resulting in workers often being forced to work in poor conditions and their sponsors using the threat of withdrawal of their sponsorship as a scare tactic to prevent them from defending themselves.<sup>16</sup> In these situations, workers would need to have the financial support of their dependant to avoid destitution. There is also doubt as to whether the Care Quality Commission (CQC) has the expertise and capacity to deal with increased registrations from sponsors. The Chief Inspector of Adult Social Care and Integrated Care at the CQC told the Health and Social Care Committee on 19 December 2023,<sup>17</sup> that should the proposed measure lead to an increase in the numbers of

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<sup>12</sup> Shanti Das and Toby Helm, ‘Curbs on migrant workers would be ‘dangerous’ for social care, warns government adviser’ *The Guardian* (25 November 2023) <<https://www.theguardian.com/society/2023/nov/25/curbs-on-migrant-workers-would-be-dangerous-for-social-care-warns-government-adviser>> accessed 22 February 2024.

[Curbs on migrant workers would be ‘dangerous’ for social care, warns government adviser | Social care | The Guardian](https://www.theguardian.com/society/2023/nov/25/curbs-on-migrant-workers-would-be-dangerous-for-social-care-warns-government-adviser)

<sup>13</sup> MAC, ‘Adult Social Care and Immigration: A Report from the Migration Advisory Committee’ (April 2022) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1071678/E02726219\\_CP\\_665\\_Adult\\_Social\\_Care\\_Report\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1071678/E02726219_CP_665_Adult_Social_Care_Report_Web_Accessible.pdf)> accessed 22 February 2024.

<sup>14</sup> Home Office, ‘Reducing Net Migration Factsheet – February 2024’ (1 February 2024) <<https://homeofficemedia.blog.gov.uk/2024/02/01/reducing-net-migration-factsheet-december-2023/>> accessed 22 February 2024.

<sup>15</sup> GLAA, ‘GLAA Intelligence Picture Q4’ (October - December 2023) <<https://www.gla.gov.uk/our-impact/intelligence-picture/glaa-intelligence-picture-q4-october-december-2023/>> accessed 22 February 2024.

<sup>16</sup> *ibid.*

<sup>17</sup> Health and Social Care Committee, ‘Oral evidence: Social care: changes to legal migration measures, HC 411’ (19 December 2023) Q6 <<https://committees.parliament.uk/oralevidence/14040/html/>> accessed 22 February 2024.

providers registering with the CQC, this would raise some concerns about the availability of resources.

41. Regulation from the CQC is not sufficient to prevent exploitation. This requirement would not remarkably alter the current rules on regulation. The Health and Social Care Act 2008 makes it an offence for persons who carry out a 'regulated activity' in England to do so without being registered with the CQC.<sup>18</sup> Moreover, the sponsor licence application process entails a check that organisations are registered with a regulatory body if they are so required, and a review of the organisation's previous inspection report.<sup>19</sup> Regulated activities are contained in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, and include an extensive list of activities including personal care, accommodation for persons who require care and nursing care.<sup>20</sup> It is difficult to conceive that a care home would be carrying out exclusively non-regulated activities since its purpose is to provide personal and nursing care to those who require it, which are clearly regulated activities. Despite this, the Home Office has found that 22% of main applicants in England between January and June 2023 were for sponsors unable to be matched to the CQC register of regulated businesses. However, by the Home Office's own admission, 'data imperfections and potential differences in the organisational level data captured by each dataset could bias this match rate downwards', '[t]he six-month period used may also not reflect the non-match rate over a longer time-period' and, importantly, the data analysis included both in and out of country applicants.<sup>21</sup> Therefore, it is unclear if the policy impact of this will indeed be 'a 22% reduction in care and senior care worker main applicant inflows to sponsors in England'.<sup>22</sup>
42. Furthermore, there are no minimum standards of inspection accompanying these regulatory requirements, for example, and there is no further obligation to regularly or routinely inspect sponsors to ensure that best practice is encouraged and maintained.
43. In his statement on 4 December 2023, the Home Secretary said that the first point of his five-point plan will be to '*end the abuse of the health and care visa*'.<sup>23</sup> He went on to assert that '*[a]pproximately 120,000 dependants accompanied 100,000 care workers and senior care*

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<sup>18</sup> Health and Social Care Act 2008, s 10(1).

<sup>19</sup> Home Office, 'Workers, Temporary Workers and Students: guidance for sponsors. Appendix A: supporting documents for sponsor licence applications (Version 10/23)

<[https://assets.publishing.service.gov.uk/media/651e859f5f7e680014fabd78/Sponsor-guidance\\_Appendix-A\\_10-2\\_3.pdf](https://assets.publishing.service.gov.uk/media/651e859f5f7e680014fabd78/Sponsor-guidance_Appendix-A_10-2_3.pdf)> accessed 10 January 2024.

<sup>20</sup> The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, Sch 1.

<sup>21</sup> Home Office, 'Legal migration statement: estimated immigration impacts' (21 December 2023) §34

<<https://www.gov.uk/government/publications/legal-migration-statement-estimated-immigration-impacts/legal-migration-statement-estimated-immigration-impacts-accessible>> accessed 22 February 2024.

<sup>22</sup> *ibid* §35.

<sup>23</sup> [HC Deb 4 December 2023, Vol 742, Col 42.](#)

*workers in the year ending September 2023*.<sup>24</sup> However, it is unclear what ‘abuse’ the Home Secretary is referring to. On average, this is less than two dependants per main applicant working in the UK, which is reasonable for someone who is moving to a new country for work purposes. The number of dependants for health and care workers, therefore, aligns with the number of main applicants on this route, and it does not make sense to suggest that bringing dependent family members to join the Health and Care Worker who is moving to work in the UK, in accordance with the Immigration Rules, constitutes ‘abuse’.

44. The Home Secretary also said that *‘[o]nly 25% of dependants are estimated to be in work, which means that a significant number are drawing on public services rather than helping to grow the economy.’*<sup>25</sup> However, he failed to clarify how many of the dependants he referred to are children. The Home Office data does not distinguish between partners and children when counting dependants so it is difficult to reconcile the accuracy of these statistics with the use of the term ‘abuse’. It is further dishonest to suggest that dependants of health and care workers are ‘drawing on’ public services when a condition of No Recourse to Public Funds (NRPF) is attached to any grant of leave to enter or remain as a partner or child on this route. This condition can only be lifted under exceptional circumstances (for example, in cases of present or imminent destitution), following a Home Office caseworker’s independent assessment of a submitted change of conditions application. It is senseless to suggest that migrants do not contribute to the growth of our economy. Migrants pay taxes, rent property, and support UK businesses. The Government has provided no assessment of the economic impact of a non-working dependant in the UK.
45. For these reasons, the Health and Care Worker changes will imperfectly achieve their policy objectives.

### **III. Explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation**

46. As above, it remains unclear what policy objectives are served by the regressive changes to restrict the Ukraine Schemes and dependants of Health and Care Workers.
47. There is no published Equality Impact Assessment in relation to these policy changes. Therefore, it is impossible to understand how the Home Secretary has complied with his public sector equality duty under section 149 of the Equality Act 2010 or assessed the impact of these policy proposals on individuals with protected characteristics.

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<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

48. If there is an Equalities Statement, it should be published and be subject to public and parliamentary scrutiny. Lady Rose in *R (on the application of Marouf) v Secretary of State for the Home Department* [2023] UKSC 23 was clear in §55:

*‘The Policy Equalities Statement is, and should be, a public document. The Court of Appeal in [R (Bridges) v Chief Constable of South Wales [2020] EWCA Civ 1058, [2020] 1 WLR 5037] said that the purpose of the duty is not only to aid decision making. It “helps to reassure members of the public, whatever their race or sex, that their interests have been properly taken into account before policies are formulated or brought into effect.”: para 176. It is part of the body’s accountability to the public.’*

### Ukraine Schemes

49. The Explanatory Memorandum states:

*‘9.5 There is no significant impact on business. However, for the public sector impact, the balanced package of measures over a three-year appraisal period, from February 2024 to February 2027, is estimated to have a Net Present Social Value (NPSV) range of - £36m to £70m, with a central estimate of £3m.*

*9.6 Within the central scenario, the main quantified cost is a potential £8m loss in fiscal revenue. The most substantial monetised benefit is the potential relief of fiscal pressure, such as the reduction in benefit payments to Ukrainian refugees, estimated at £16m over the 3-year appraisal period.’*

50. It is clear that the changes to the Ukraine Schemes are not by any means assured to be a fiscal gain for the United Kingdom, and even the central gain is minimal at £3 million. The [Economic Note](#) states:

- a. the ‘Net Present Social Value of [Policy 1] UFS closure has been estimated to be between £4 million and -£25 million’ (at §45);
  - b. the estimated Net Present Social Value for Policy 2 [Changes to HFU Sponsor Eligibility Criteria] is between £44 million and -£5 million over the appraisal period’ (at §50); and
  - c. ‘the combined impact of policies 1 and 2 is estimated to range between a Net Present Social Value of £70 million and -£36 million over the three-year appraisal period, with a central estimate of £3 million’ (at §53).
51. Therefore, it is unclear from the explanatory material what objective is served by these policies and their intended implementation (including the change to the HFUS Scheme sponsor eligibility



criteria), which would also come at the cost of removing vital safe routes for Ukrainians and their family members.

### Health and Care Workers

52. It is not possible to fully assess the Home Office's projected impact of these changes. The Explanatory Memorandum states:

*'9.3 Further detail on the impact on business, charities, voluntary bodies, as well as the public sector are being prepared in a full Impact Assessment. Given the short timeframe between these Rules changes and the subsequent wider package of Rules changes being laid in March (which also affect the same group), a single impact assessment is being prepared to illustrate the individual and combined impact of the package of changes. This IA will show the separate impact of each change but given resource constraints it would not have proved feasible to deliver two Impact Assessments in such close proximity.'*

53. It is disappointing to see, once more, that the Home Office has failed to ensure that key elements of the supporting material are available at the time these Rules were laid before Parliament. If the material was not available due to resource constraints, these Rules should have been laid with the subsequent wider package of Rules changes being laid in March, at the time when the single impact assessment was ready. No reason has been provided as to why these Rules could not have been introduced in that package.

54. The Explanatory Memorandum further states at §9.1:

*'The changes to the Skilled Worker routes are likely to have a limited direct impact on businesses, charities and voluntary organisations who use these routes to sponsor workers. Any significant impacts on business are likely to be indirect as a result of business decisions in how to respond to these changes.'* It notes at §9.2 that *'The changes to work routes are likely to have a significant impact on the public sector through changes to Home Office fee and Immigration Health Surcharge revenue.'*

55. The consequences this is likely to have on prospective applicants is that they will now need to choose between being separated from their family members or not applying to work in the UK as a senior care worker or care worker. This will have a detrimental impact on both migrants and their family members, and on the UK's social care sector which is already suffering from a

shortage of workers. For example, in 2022-23, 9.9% of social care jobs were vacant.<sup>26</sup> Since there is a predicted increase in the demand for social care,<sup>27</sup> staff shortages are of grave concern.

56. There is no guarantee that the current number of people employed in the care sector can be maintained if care workers cannot sponsor their dependants to join them in the UK. As the UK's ageing population is on the rise,<sup>28</sup> the demand for adult social care is expected to rise with it. Skills for Care noted that 82% of adult social care staff were women and almost half of employees under the age of 25 left their job within the first year of employment.<sup>29</sup> Therefore, a majority of those working in the adult care sector are likely to be women. If women cannot sponsor their dependent children to join them in the UK, this is likely to deter them from applying to work in the UK, as it would only separate and isolate families. Skills for Care also noted that in 2022 to 2023, there were on average, 152,000 vacancies in the adult care sector on any given day, with a turnover rate of 30%.<sup>30</sup> We appreciate that the Government has announced<sup>31</sup> that there will be new qualifications and investment in apprenticeships to help encourage domestic employment in the health and care sector. However, nothing has been announced to improve attraction to this sector, as it continues to operate on minimum wage with poor work conditions<sup>32</sup> and this continues to impact the long-standing, domestic skill-gap in this sector.<sup>33</sup> In the absence of a readily available, domestic workforce, the UK needs to focus on

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<sup>26</sup> Simon Bottery, 'Vacancies are falling but social care still needs a long-term workforce plan' (*TheKingsFund*, 24 July 2023) <

<https://www.kingsfund.org.uk/blog/2023/07/vacancies-falling-but-social-care-still-needs-long-term-workforce-plan> > accessed 21 February 2024.

<sup>27</sup> MAC, 'Adult social care and immigration' (27 April 2022)

<<https://www.gov.uk/government/publications/review-of-adult-social-care-2022/adult-social-care-and-immigration-accessible>> accessed 22 February 2024.

<sup>28</sup> Centre for Ageing Better, 'Our Ageing Population | The State of Ageing 2023-24'

<<https://ageing-better.org.uk/our-ageing-population-state-ageing-2023-4#:~:text=A%20growing%20older%20population%201%20The%20older%20population,making%20up%2018%25%20of%20the%20population.%20More%20itms>> accessed 22 February 2024.

<sup>29</sup> Skills for Care, 'Our position on workforce capacity'

<<https://www.skillsforcare.org.uk/About-us/Our-policy-positions/Capacity/Our-position-on-workforce-capacity.aspx>> accessed 22 February 2024.

<sup>30</sup> *ibid.*

<sup>31</sup> Department of Health and Social Care and Helen Whately MP 'Government sets out plans to develop the domestic care workforce' (10 January 2024)

<<https://www.gov.uk/government/news/government-sets-out-plans-to-develop-the-domestic-care-workforce>> accessed 22 February 2024.

<sup>32</sup> Community Care, 'Adult social care vacancy numbers fall slightly from all-time high but still top 150,000' (12 July 2023)

<<https://www.communitycare.co.uk/2023/07/12/adult-social-care-vacancy-numbers-fall-slightly-from-all-time-high-but-still-top-150000/>> accessed 22 February 2024.

<sup>33</sup> UNISON, 'Government must ditch 'catastrophic' plans for migrant care workers, say UNISON and the National Care Forum' (22 December 2023)

<<https://southwest.unison.org.uk/news/2023/12/government-must-ditch-plans/>> accessed 22 February 2024.

retaining the current number of workers, instead of making drastic changes which are likely to further deter people from pursuing employment in this sector, or further isolate the few who do.

57. It is also likely that this measure will result in worsening resource pressures in a sector which is already struggling to maintain a sufficient standard of care.<sup>34</sup> Therefore, deterring overseas workers from applying to work in the UK could result in the quality of adult social care further decreasing as staff shortages will inevitably impact care.

#### IV. Inadequacies in the consultation process

58. There has been no consultation on these policy changes. Accordingly, the House should intensely scrutinise the Home Secretary's Statement of Changes to the Rules.

#### Ukraine Schemes

59. As the Explanatory Memorandum concedes at §7.1, *'the changes in this Statement have not been the subject of a formal public consultation'*. However, the reason for the lack of consultation is administratively poor and its impact is cruel: *'to protect the integrity of the schemes and prevent a rush of applications to preempt the changes to the rules which have, in part, been made to mitigate risks of misuse of the generosity of the schemes'*.
60. The Home Office only had 'discussions' with:
- a. 'the Ukrainian Embassy in London, to ensure we are responding appropriately to their views on retaining the temporary nature of the permission granted to Ukrainians as it remains their view, and ours, that the return of their citizens to Ukraine when it is safe to do so, is a key objective to support reconstruction and redevelopment' (Explanatory Memorandum, §7.2);
  - b. 'the Scotland Devolved Administration, the Wales Devolved Administration and the Northern Ireland Devolved Administration so that they can identify and take into account any consequential impacts arising from the rules changes' and 'Crown Dependencies (Jersey/Guernsey/Isle of Man) have also been engaged to ensure they are fully aware of the UK's plans and able to respond accordingly in their position as a Crown Dependency', but the Explanatory Memorandum does not state they consulted with on whether or not to make these changes, rather these discussions appear to be after the decision was taken (Explanatory Memorandum, §7.3); and

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<sup>34</sup> House of Commons Library, 'Adult social care workforce in England' (22 January 2024) <<https://researchbriefings.files.parliament.uk/documents/CBP-9615/CBP-9615.pdf>> accessed 22 February 2024.

- c. 'in order to ensure the involvement of groups working with and on behalf of Ukrainians, discussions have been held with the International Organisation for Migration (IOM), the British Red Cross, and the Sanctuary Foundation' (Explanatory Memorandum, §7.4).
61. ILPA and Work Rights Centre received no advanced notice of the intention to close the Ukraine Family Scheme and drastically alter the Homes for Ukraine Scheme. We understand other key service provision organisations were also not consulted.

#### Health and Care Workers

62. As for Health and Care Workers, the Explanatory Memorandum states at §7.5: *'The other 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.'*
63. We disagree. The change to the ability of Health and Care Workers to be joined or accompanied by their dependants is of fundamental importance and public interest.

#### Parliamentary Scrutiny

64. The Statement of Changes was published at 10:44 GMT on 19 February 2024, and parts of it in relation to the Ukraine Scheme changes took effect at 15:00 GMT on that same day.
65. In the Statement of Changes, the Home Secretary has once more failed to comply with the convention that Rules come into force no earlier than 21 days after being laid in Parliament. This is a departure from proper legislative practice for an instrument subject to the negative procedure. This is not the first time that a Home Secretary has breached convention for expedient purposes, to avoid a "misplaced surge in applications". Every deadline has a similar effect: individuals will rush to meet it. This is the case with every route closed, as there will inevitably be persons who had intended to apply on a route and who were in the midst of preparing an application when the route was suddenly closed.
66. We understand the Home Secretary did not wish to signal closure of the route. The Explanatory Memorandum states:

*'11.1 The changes to the Ukraine Family Scheme (the closure of the UFS scheme to new applications) and to the Homes for Ukraine Sponsorship Scheme (changes to the sponsor eligibility through HMG guidance and period of permission granted to HFU applicants) will come into effect at 1500GMT on 19 February 2024, 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.'*

*11.2 The Government considers this departure from the convention to be justified and proportionate in order to maintain the orderly operation of the immigration system.’*

67. We are concerned that this action undermines democratic procedures of accountability and any sense of legal certainty, stability, and predictability. We disagree with the Home Office’s assessment: it is neither justified nor proportionate.
68. 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>35</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>36</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.
69. The Explanatory Memorandum further states:

*‘11.3 It is anticipated that closure of the UFS route to new applicants and changes to the HFU scheme with 21-days’ notice, or less, could trigger a misplaced surge in applications, involving a substantial increase in application levels in advance of the deadline in order to benefit from the current provisions, which is arguably unnecessary because the Homes for Ukraine Sponsorship Scheme remains open for applications from most of the Ukrainian applicants and sponsors of the Ukraine Family Scheme.’*

70. This is manifestly untrue; it is not ‘arguably unnecessary’. The Explanatory Memorandum fails to explain that the Home Secretary has drastically altered the HFUS Scheme through guidance, rendering the impact of the closure of the UFS all the more severe. Specifically, for the detailed reasons given above, demonstrated through case studies, it is not the case that individuals, who could only be sponsored by their Ukrainian family members in the UK under the HFUS, will ‘continue to be able to seek sanctuary in the UK through the Homes for Ukraine Sponsorship Scheme or apply under other immigration routes for which they are eligible’. It is also not the case as is stated in §11.4 that ‘most Ukrainians will continue to be able to seek sanctuary in the UK through the Homes for Ukraine Sponsorship Scheme or apply under other immigration routes for which they are eligible’ or as is purported in §11.5 that the ‘closure of the UFS affects only a small proportion of potentially eligible individuals, such as those third country nationals who are not immediate family members or who are not accompanying or joining a Ukrainian national in the UK.’

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<sup>35</sup> *Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] UKSC 60 §16.

<sup>36</sup> *ibid* §17.



71. In light of these concerns, and the misleading statements contained in the Explanatory Memorandum, we are of the view the consultation process was wholly inadequate.

### **Conclusion**

72. For the above reasons, we ask for careful scrutiny and recommend that each House annuls the Statement of Changes and provides the Home Secretary the opportunity to reconsider the policies underlying these changes.
73. The minor changes to the Youth Mobility Scheme and the correction of the minor drafting error can be contained in the Spring Statement of Changes to the Rules to be laid on 14 March 2024.

22 February 2024