

Evidence to the Secondary Legislation Scrutiny Committee for its consideration of the Statement of Changes to the Immigration Rules: HC 590, 14 March 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.
2. [Reunite Families UK](#) (RFUK) is a lived experience non-profit organisation, having been established in 2017 as a Facebook group by two mothers who were themselves affected by the spouse/partner migration rules. RFUK supports and advocates for couples and families affected by the UK's spouse visa rules. The organisation helps them navigate the process and improve their quality of life whilst they are on their settlement journey. We believe people have a right to be with their loved ones here in the UK and shouldn't have to overcome increasingly impossible hurdles to be able to do so.
3. We ask that the Secondary Legislation Scrutiny Committee draw the [Statement of Changes to the Immigration Rules: HC 590](#), published on 14 March 2024, to the special attention of the House. Our evidence focuses on the changes to the Minimum Income Requirement (MIR), i.e. changes to Appendices FM and FM-SE which contain the financial requirement for family visas. HC 590 increases the MIR to sponsor a partner from a gross annual income equivalent of £18,600 to £29,000 (the 25th percentile of earnings for jobs which are eligible for Skilled Worker visas), before increasing to the 40th percentile (currently £34,500) and the 50th percentile (£38,700) in early 2025. To rely on cash savings held for six months, under the new MIR they would total £88,500, rising to £112,750 next year.¹ There is to be no additional sum required to sponsor children.

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

4. This impact of the new MIR will be far-reaching. Due to the scope of families now sponsored under Appendix FM, the MIR will affect the ability of British citizens, settled persons, stateless persons, and persons with protection status, pre-settled status under the EU Settlement Scheme,² and limited leave as a worker or business person under Appendix ECAA Extension of Stay to sponsor their partners and children to come to or remain in the UK. It will now significantly impact UK- EU couples as well as those family members of EU citizens, who are ineligible for EUSS family permits under the Immigration Rules.

¹ This is calculated by taking the MIR (in this case, £29,000 rising to £38,700) multiplying it by 2.5 (i.e. the number of years of granted leave), and then adding the minimum of £16,000.

² In particular, 'an EEA national in the UK who holds valid limited leave to enter or remain granted under paragraph EU3 of Appendix EU to these Rules on the basis of meeting condition 1 in paragraph EU14 of that Appendix'.

5. Around 50% of UK employees earn less than the £29,000pa threshold.³ Individuals aged 21 and over, who work 35 hours per week, and are paid the National Living Wage (from 1 April 2024), will earn approximately £20,820pa. The December 2023 report of RFUK found that the effect of the MIR is discriminatory as it disproportionately affects protected groups, those living in the South East and working single parents (in particular, mothers).⁴ There is a £182 difference in the weekly median income between a full-time employee in London and one in North East England.⁵ There is also disparity on the basis of protected characteristics, for example:
- race**, with Pakistani, Bangladeshi, and Black/African/Caribbean British citizens disproportionately affected;⁶
 - sex and maternity**, as female part-time workers earned a gross median income of £12,876 and their male counterparts earned £12,262,⁷ and receipt of relevant public funds (i.e. Child Tax Credit and Child Benefit) does not exempt a lone-parent from meeting the financial requirement; and
 - age**, with individuals under 30 and over 50 disproportionately affected; for example, the gross median weekly pay for full-time employees in the UK, aged 18 to 21, is £441.⁸
6. The new threshold does not consider or account for the many people, often women, who work part-time and care for the child whilst trying to meet the threshold to sponsor their partner and in some cases step-children who currently live abroad. Members of the Reunite Families' community have in some cases been separated for over 4 years as a result of the current rules.

Raquel's Story

"The school told me he is grieving because he's lost his daddy. We've thought about bringing him to the UK for a visit but the cost of it would take away from the savings for the visa application process. Also, I'm worried what it would do to my boys if they were forced to say goodbye to their father again."

Raquel was living in Brazil when she met her husband, Manoel. They married, and had two sons together. A series of events led the family to decide to try and relocate to the UK. Raquel, who has worked teaching in universities and private colleges, is still trying to reach the current MIR threshold of £22,400 (£18,600, plus £3,800 for a dependent child) to bring over her husband and

³ Migration Observatory, 'Family fortunes: The UK's new income requirement for partner visas' (1 February 2024) <<https://migrationobservatory.ox.ac.uk/resources/commentaries/family-fortunes-the-uks-new-income-requirement-for-partner-visas/>> accessed 29 February 2024.

⁴ Reunite Families UK, 'Family Migration Rules: Spouse / Partner Migration Rules: An initial findings report examining the mental health impact of the rules on children and families' (December 2023) <<https://www.reunitefamiliesuk.co.uk/wp-content/uploads/2023/12/RFUK-Year-1-Initial-Findings-Mental-Health-Impact-of-the-Spouse-Migration-Rules-FINAL.pdf>> accessed 19 March 2024 ('RFUK Report').

⁵ *ibid.*

⁶ *ibid.*

⁷ Office for National Statistics, 'Earnings and hours worked, all employees: ASHE Table 1' (1 November 2023) <<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/allemployeesasheatab1e1>> accessed 29 February 2024, Table 1.7a 'Annual Pay - Gross 2023'.

⁸ House of Commons Library, 'Average earnings by age and region' (18 December 2023) <<https://commonslibrary.parliament.uk/research-briefings/cbp-8456/>> accessed 29 February 2024.

her stepdaughter, having been made redundant during the pandemic, while saving for the onerous recently increased visa application and Immigration Health Charge fees totalling near £10,000 for the first set of applications. As an enforced single mother of two boys, now aged 5 and 6, much of her income goes to childcare and basic living costs. She is unlikely to find work that will meet the new MIR.

The oldest son has been “deeply affected” by being separated from Daddy. He suffers from “separation anxiety and mental trauma”. The youngest son remembers less of daddy, but Raquel says it’s a “ticking time bomb” having discovered from grandma that he holds back feelings to not upset mummy.

7. The Home Office partially recognises that different individuals in different situations are still deserving of sponsoring their family members. The MIR in Appendix Armed Forces is increased ‘to £23,496, which is the 2023/4 salary threshold for an Army (including the Brigade of Gurkhas) Private and their Royal Navy, Royal Marines and Royal Air Force equivalents on completion of training’.⁹ The Home Office refuses to accept this justification may also apply to other professions earning less than £29,000pa, absent exceptional circumstances, such as an NHS employee working below Band 5, or in Band 5 with less than two years’ tenure,¹⁰ junior Home Office staff,¹¹ some legal aid solicitors,¹² trainees in the legal field who the Law Society recommends are paid £26,068 in London, and £23,122 outside of London,¹³ and teachers like Raquel.
8. These changes are legally important and engage the public sector equality duty, the prohibition of discrimination in Article 14 of the European Convention on Human Rights (ECHR) as the right to respect for private and family life (Article 8 ECHR) is engaged in cases of family separation, and the Home Secretary’s statutory duty to safeguard and promote the welfare of children.¹⁴

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

9. The [Explanatory Memorandum](#) (EM) states that the MIR ‘is being amended as it has not been increased for over a decade and no longer reflects the level of income required by a family to ensure they are self-sufficient and do not need to rely on public funds.’¹⁵

⁹ Explanatory Memorandum to the Statement of Changes in Immigration Rules Presented to Parliament on 14 March 2024 (HC 590) (‘EM’)

<[https://assets.publishing.service.gov.uk/media/65f18e90133c22b8eecd3893/E03091226 - HC 590 - EXPLANATORY MEMORANDUM_Web_Accessible_.pdf](https://assets.publishing.service.gov.uk/media/65f18e90133c22b8eecd3893/E03091226_-_HC_590_-_EXPLANATORY_MEMORANDUM_Web_Accessible_.pdf)> accessed 18 March 2024, §5.38-5.40.

¹⁰ ‘Find NHS Pay Bands 2023/24’ <<https://www.nhsbands.co.uk/>> accessed 29 February 2024.

¹¹ Home Office, ‘Home Office: structure and salaries, 2023’ (last updated 7 November 2023)

<<https://www.gov.uk/government/publications/home-office-structure-and-salaries-2023>> accessed 29 February 2024.

¹² Legal Aid Practitioners Group, ‘We are Legal Aid - Findings from the 2021 Legal Aid Census’ (March 2022)

<https://lapg.co.uk/wp-content/uploads/We-Are-Legal-Aid_Findings-from-the-2021-Legal-Aid-Census_Final.pdf> accessed 29 February 2024.

¹³ The Law Society, ‘Recommended minimum salary for trainee solicitors and SQE candidates’ (31 July 2023)

<<https://www.lawsociety.org.uk/topics/hr-and-people-management/recommended-minimum-salary-for-trainee-solicitors-and-sqe-candidates>> accessed 29 February 2024.

¹⁴ Borders, Citizenship and Immigration Act 2009, section 55.

¹⁵ EM, §4.1 and §5.14.

No Rational Connection

10. There is no rational connection between the 25th percentile of earnings for jobs which are eligible for Skilled Worker visas and the amount necessary for British and settled people to sponsor their family members to come to or remain in the UK without reliance on public funds. The seemingly arbitrary new MIR is illogical for the following reasons:
- a. **There is no basis for asserting that requiring the sponsor (e.g. a non-migrant British citizen) to have an income of £29,000pa to bring their partner to the UK will ‘help ensure that migrants are more likely to make a net positive contribution to the public finances’.**¹⁶ Instead, highly skilled and productive members of the settled population may leave the UK to live with their family members overseas, resulting in a loss to the British economy.¹⁷ The Government should not seek to motivate British citizens to take high-wage, high-productivity, high-skill roles by holding over their heads the threat of family separation.
 - b. **It is perverse for the Government to argue that family members need not rely on public funds, when this is already a condition of their leave,**¹⁸ only lifted by the Home Office following a very small minority of migrants making a ‘change of conditions’ application¹⁹ on narrow grounds (destitution, risk of imminent destitution, welfare of a relevant child, or exceptional circumstances affecting the family’s income or expenditure).
 - c. **It will be easier for sponsored individuals to bring their dependants to the UK, than it will be for British citizens to sponsor their partners.** For example, a commonwealth citizen with a grandparent born in the UK, applying on the basis of UK ancestry, would only need to show ‘that there will be adequate maintenance and accommodation’ for them and their family without recourse to public funds.²⁰ A High Potential Individual (i.e. a migrant who has been awarded a qualification by an eligible foreign university) only has a maintenance requirement if they have been living in the UK for less than 12 months, and all they must show is savings of £285 for a partner, £315 for a child, and £200 for each additional child available for 28 consecutive days.²¹ A British citizen would need to show £88,500 in savings for 6 months.
 - d. **There is no evidence that the MIR gives due weight to the benefits which joining families bring to families and society.** This is significant, as the MAC highlighted in its 2020 annual

¹⁶ EM, §5.18 (emphasis added).

¹⁷ See for instance the impact on the NHS workforce in House of Lords Justice and Home Affairs Committee, ‘All families matter: An inquiry into family migration’ (28 February 2023)

<<https://committees.parliament.uk/publications/34107/documents/188323/default/>> accessed 19 March 2024, (‘Justice and Home Affairs Committee ‘All families matter’ Report’) §184.

¹⁸ Home Office, ‘Public Funds’ (v 19.0, 5 October 2023)

<https://assets.publishing.service.gov.uk/media/651eb1b279fc58000d639649/Public+funds_1_.pdf> accessed 19 March 2024.

¹⁹ Migration Observatory, ‘Deprivation and the no recourse to public funds (NRPf) condition’ (15 November 2023)

<<https://migrationobservatory.ox.ac.uk/resources/briefings/deprivation-and-the-no-recourse-to-public-funds-nrpf-condition/>> accessed 19 March 2024. At the end of 2022, about 2.6 million people had visas with the NRPf condition, and there were only 2,500 successful applications to lift the NRPf condition in 2022.

²⁰ Immigration Rules, Appendix UK Ancestry, UKA 33.1.

²¹ Immigration Rules, Appendix High Potential Individual, HPI 17.3 and 17.5.

report that previous analysis of the MIR gave ‘insufficient attention to the benefits that accrue, to both the family and society’ from family migration and it ‘regrets that the 2012 reform placed too great an emphasis on economic and fiscal considerations’.²²

e. **The MIR makes it harder rather than easier for mixed nationality families to participate fully in society.** The families make sacrifices on food, accommodation, education, employment, healthcare and socialisation. Marginalising these families fosters societal division and tension, which is the opposite effect to that intended by the Rules.²³

11. The Justice and Home Affairs Committee stated only last year: *‘We did not receive any evidence suggesting that the financial requirement is achieving its aims. It does not promote social cohesion, nor does it protect public finances. It achieves the opposite. We recognise that, to foster social cohesion, families need sufficient resources, set at around benefits level... The financial requirement should be revisited to be more flexible and to focus on the likelihood of future income of the family unit rather than on the sponsor’s past income. The threshold should not increase’.*²⁴

More Complex Human Rights Grants

12. The EM states that increasing the MIR will support *‘the aim to reduce the overall level of net migration’.*²⁵ Yet, the Home Office states that *‘before accounting for Article 8 claims and other income, an estimated range of between 10,000 to 30,000 people who may otherwise have qualified via the family route would be unable to do so, on the basis of earnings alone.’*²⁶ Compared to the net migration figure of 672,000, this is a minute reduction. Furthermore, the Home Office’s estimate of 10,000 to 30,000 fails to account for Article 8 claims. The Home Office further states that *‘reflecting obligations under Article 8, even where the MIR is not met, it is assumed that some applicants may still be granted permission under the family route. As no exact estimate of eligibility through this route is possible, the overall impact of the change is uncertain.’*²⁷

13. The Home Office ought to instead consider the resulting operational impact of a greater proportion of people relying on their Article 8 ECHR rights to apply for a family visa. It is not clear what, if any, measures the Home Office has taken to manage this extra burden. The Family and Human Rights Unit, which is responsible for processing in-country applications for leave to remain in the UK on the parent, partner (ten-year), and private life routes, fee waivers, and in-country asylum intake is likely to face a significant increase in applications. The Unit is already facing severe

²² MAC, ‘Annual Report’ (December 2020)

https://assets.publishing.service.gov.uk/media/5fd88ff1e90e076631fb2285/Annual_Report_2020_BB.pdf accessed 19 March 2024, page 23; Justice and Home Affairs Committee ‘All families matter’ Report, §84.

²³ RFUK Report, pages 23-27; Justice and Home Affairs Committee ‘All families matter’ Report §§153 and 159.

²⁴ Justice and Home Affairs Committee ‘All families matter’ Report §83-85.

²⁵ EM, §5.18.

²⁶ Home Office, Legal Migration Statement 4th December 2023 - Estimated Immigration Impacts (December 2023)

<https://assets.publishing.service.gov.uk/media/6581835023b70a0013234bcd/Legal+Migration+Statement+4th+December+2023+-+Estimated+Volume+Impacts.pdf> accessed 18 March 2024 (‘Home Office Estimated Impacts’) §55.

²⁷ *ibid* §54, The Home Office accepts that it is ‘likely a greater proportion of people will no longer meet the threshold based on earnings alone and rely on their Article 8 rights’.

pressure and delays. Its service standard to process an application is currently 12 months,²⁸ and it had 21,578 fee waiver applications outstanding at the end of Q4 2023, which compares to 5,460 at the end of Q4 2022.²⁹ The service standard for processing overseas applications for entry clearance on a family route is 24 weeks.³⁰ The likely increase in the complexity of applications will impact the speed at which decisions can be made, resulting in lengthier separation of families seeking to be reunited with loved ones in the UK. Those applications that are refused by the Home Office in the first instance, will ordinarily be appealable, placing a greater burden on the Immigration and Asylum Chamber of the First-tier Tribunal and Upper Tribunal.

14. Individuals who are successful in applying on the basis of exceptional circumstances will be placed on a ten-year (rather than five-year) route to settlement, resulting in further applications per applicant and compounding the issue of Home Office decision-making capacity.³¹ The ten-year precarity in immigration status will also cause individuals financial, employment, and health difficulties, particularly affecting children's life and education prospects, mental health and well-being.³² This will not safeguard and promote the welfare of children in the UK in accordance with the Home Secretary's statutory obligation to do so.
15. The increased MIR will not prevent migrants from entering or staying in the UK. Rather, it will increase the number of migrants granted permission to enter or stay on complex human rights grounds or following appeals which will increase Home Office and Tribunal workload, worsen delay and backlogs, and impact the lives of migrants. For these reasons, the changes will not achieve their policy objectives, imperfectly or otherwise.

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

16. The Home Office has repeatedly claimed that a full impact assessment regarding the package of immigration changes announced to tackle net migration in December 2023 exists.³³ It has said it will publish an 'Equality Impact Assessment on this change in due course'.³⁴ However, no full

²⁸ UK Visas and Immigration 'Visa processing times: applications inside the UK' (updated 19 February 2024) <<https://www.gov.uk/guidance/visa-processing-times-applications-inside-the-uk#family-visas>> accessed 4 March 2024.

²⁹ UK Visas and Immigration 'FW_01: Fee Waiver Applications' (Immigration and Protection Data: Q4 2023, updated 7 March 2024)

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fmedia%2F65f0270e9812270011f6129e%2FUKVI_IP_Q4_2023%2B_3.xlsx&wdOrigin=BROWSELINK> accessed 18 March 2024.

³⁰ UK Visas and Immigration, 'Visa processing times: applications outside the UK' (updated 19 February 2024)

<<https://www.gov.uk/guidance/visa-processing-times-applications-outside-the-uk>> accessed 4 March 2024.

³¹ Immigration Rules, Appendix FM, GEN 3.2.(3).

³² RFUK Report; Lucy Mort, Josephine Whitaker-Yilmaz, Marley Morris and Amanda Shah, "A Punishing Process": Experiences of People on the 10-year Route to Settlement' (2 March 2023) page 35 <<https://www.ippr.org/articles/a-punishing-process>> accessed 1 March 2024.

³³ EM, §9.2; Explanatory Memorandum to Statement of Immigration Rules presented to Parliament on 19 February 2024 (HC 556)

<<https://assets.publishing.service.gov.uk/media/65cf88d00f4eb10011a981a2/E03074471 - HC 556 - EXPLANATORY MEMORANDUM Web Accessible .pdf>> accessed 18 March 2024; Home Office Estimated Impacts §3; UK Parliament,

³⁴ Question for Home Office (UIN 14147, tabled on 16 February 2024)

<<https://questions-statements.parliament.uk/written-questions/detail/2024-02-16/14147>> accessed 19 March 2024.

Impact Assessment (IA) or Equality Impact Assessment (EIA) has been published in relation to the MIR changes at the time these Rules were laid before Parliament. The EM contains no analysis of the impact of these changes. It is not possible for Parliament to scrutinise the impact of these changes, the policy objective, or their intended implementation, including the Home Office's compliance with the public sector equality duty under s 149 of the Equality Act 2010.

IV. Inadequacies in the consultation process

17. On [4 December 2023](#), the Home Secretary stated the MIR would be increased from £18,600 to £38,700.³⁵ On 21 December 2023, in response to a written question Lord Sharpe of Epsom [stated](#) it would incrementally increase *'to £29,000, that is the 25th percentile of earnings for jobs which are eligible for Skilled Worker visas, moving to the 40th percentile (currently £34,500) and finally the 50th percentile (currently £38,700 and the level at which the general skilled worker threshold is set) in the final stage of implementation.'*³⁶
18. There was no formal public consultation prior or subsequent to either announcement regarding the MIR policy changes.³⁷ There has also been no consultation with civil society organisations such as ours, which have specialist knowledge of these Rules and/or first-hand knowledge of the impact of the Rules on families and children. MAC was not commissioned to conduct a review of the MIR. It appears the Home Secretary has undertaken insufficient inquiry prior to making his decision in setting the MIR. By contrast, for the changes to Appendix Armed Forces, which include a lower MIR, the Home Office consulted with and worked collaboratively with the Ministry of Defence.³⁸
19. Accordingly, the House should intensely scrutinise the Home Secretary's Statement of Changes to the Rules, and the Home Office should keep these changes under close and continuous review. A review for a report on 6 April 2027 is insufficient given the scale and impact of these changes.³⁹

Conclusion

20. We recommend that the Secondary Legislation Scrutiny Committee ask the following questions of the Home Office:
 - a. Why does the Home Office accept that members of the Armed Forces earn less than the MIR yet remain deserving of family unification, but not recognise the same for other groups, such as women, ethnic minorities, those aged under 30 and over 50, those living outside the South East, and those working for the NHS or in the civil service?

³⁵ HC Deb 4 December 2023, Vol 742, Col 42.

³⁶ Question for Home Office (UIN HL987, tabled on 7 December 2023)

<https://hansard.parliament.uk/commons/2023-12-04/debates/921A08A2-F615-48F2-8C56-423A29556F9F/LegalMigration>> accessed 19 March 2024.

³⁷ EM, §7.

³⁸ EM, §7.1.

³⁹ EM, §10.1.

- b. What evidence is there of a rational connection between the new MIR and the stated purpose of ensuring migrants do not require public funds?
 - c. How does this change comply with the Home Secretary's statutory duty to safeguard and promote the welfare of children?
 - d. What, if any, operational measures have been taken to prepare for an increase in family applications and appeals on the basis of exceptional circumstances and human rights grounds?
 - e. Why has the single impact assessment for this package of immigration measures still not been published?
 - f. Has an EIA been conducted in relation to the increased MIR? If so, why has it not been published? If not, why not, and how has the Home Office complied with the public sector equality duty under s 149 of the Equality Act 2010? For example, has the potential impact of the increased MIR on (a) women and (b) people belonging to specific ethnicities been considered prior to the increase?
 - g. Why was there no consultation prior to the change to the MIR? How has the Home Secretary ensured he has all relevant information to set the MIR, without consultation?
 - h. Why were the recommendations of the House of Lords Justice and Home Affairs Committee's inquiry into family migration not followed when formulating the new policy?
 - i. How will the new MIR further social cohesion?
 - j. Has the effect of the new MIR on social care been considered e.g. where UK citizens wish to return with non-UK family to care for elderly UK resident relatives?
21. 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.

19 March 2024

This evidence is endorsed by the following organisations:

1. Praxis;
2. The Joint Council for the Welfare of Immigrants;
3. Migrant Voice; and
4. British in Europe.