

Research Briefing

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The immigration rules

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Summary

Most of the practical details about who can come to visit or live in the UK, and the conditions attached to that immigration permission, are specified in the UK's immigration rules rather than primary or secondary legislation.

The rules are subject to a similar process to the negative procedure for statutory instruments. This gives Parliament a limited role in overseeing changes to the rules.

Changes to the rules automatically take effect on the date appointed by the Home Secretary. To reject the changes, Parliament must approve a motion to disapprove the rules within 40 days of the statement of changes being laid. Critics say there should be more rigorous scrutiny and approval processes. They point to the significance of the rules to migrants' experiences in the UK, and the extent of policy changes that can be implemented through the rules.

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What are the immigration rules?

The UK immigration system is based on an enormous volume of primary and secondary legislation, caselaw and related rules and policy guidance.

Most of the practical details about who is allowed to come to the UK, and the eligibility criteria and conditions attached to their immigration permission, can be found in the [UK's immigration rules](#).¹ The immigration rules are statements of policy rather than secondary legislation.² They can be changed at any time by the Home Secretary publishing a statement of changes to the immigration rules. The Home Office plans to schedule major changes to the rules twice a year (in April and October) but in practice the rules change more frequently.³

The Immigration Act 1971 sets some broad parameters for what the rules must cover, including specifying they must include provision for workers, students, visitors and dependants (with the possibility of restrictions and conditions).⁴ The courts have also established that any requirement which, if not satisfied, would lead to a refusal decision must be specified in the immigration rules.⁵

Significant policy changes can be implemented through the immigration rules. Examples since 2010 include the introduction of an annual limit on the number of work visas available; changing salary and skill thresholds for work visas; introducing (and raising) minimum salary thresholds for spouse/partner visas; curtailing some migrants' eligibility to bring family members to the UK; and establishing nationality-specific immigration routes for people from Hong Kong, Afghanistan and Ukraine.

Although most people are granted immigration permission under provisions in the immigration rules, the Home Secretary (in practice, officials) retains a residual discretion to grant permission 'outside the immigration rules'. This discretion is exercised sparingly, for example, in exceptional cases which don't satisfy the rules but have compelling factors which justify granting immigration permission.

¹ HC 395 of 1993-4 (as amended)

² [\[2016\] UKSC 60](#), para 17. For an overview of previous debate over their legal status, see Law Commission, [Simplification of the Immigration Rules Consultation paper 242 \(PDF\)](#), 21 January 2019, paras 3.1-3.21

³ Home Office, [Simplifying the Immigration Rules: a response \(PDF\)](#), March 2020, p.9; gov.uk, Collection, [Immigration rules: statement of changes 1994 to 2024](#)

⁴ [Immigration Act 1971, ss 1\(4\), 3\(2\)](#)

⁵ [\[2012\] UKSC 33](#), para 57

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Procedure for changing the rules

Government ministers and officials have considerable autonomy over the process of making and implementing new immigration rules.

The Home Secretary has a duty to lay statements of the rules (and changes to the rules) before Parliament.⁶ [Statements of the immigration rules](#) and [statements of changes to the rules](#) are published as parliamentary or command papers with an accompanying explanatory memorandum.

[Section 3\(2\) of the Immigration Act 1971](#) outlines an approval process which is similar to the [negative procedure for statutory instruments](#).⁷ Statements of changes to the rules are laid before Parliament and automatically come into effect on the date(s) appointed by the Home Secretary. They remain in force unless either House agrees a motion to disapprove them within 40 sitting days. In practice, it is extremely rare for Parliament to pass a motion to disapprove immigration rules changes.⁸

If either House passes a resolution signalling disapproval of the changes during that period, a fresh set of changes must be made within 40 days of the resolution. The disapproved set of rules changes take effect in the meantime. Ministers have said it would be impractical for a motion to disapprove to have the effect of invalidating the rules because this would lead to a temporary absence of rules which would undermine the operation of the immigration system.⁹

The 40-day period for Parliament to express its disapproval starts from the date the statement is laid. It excludes any periods of dissolution or prorogation or during which both Houses are adjourned for more than four days.

There isn't a minimum length of time that immigration rule changes must be laid before Parliament before they can take effect. There is a convention that changes shouldn't come into force earlier than 21 days after being laid in Parliament, but this isn't always followed and there aren't any specific consequences of not doing so. The Home Office typically justifies departures from the convention by referring to a need to maintain the orderly operation of the immigration system – for example, to avoid a surge in applications before stricter rules come into force, or to respond to a court judgment.¹⁰

⁶ [Immigration Act 1971, s 3\(2\)](#)

⁷ For a detailed comparison with the negative procedure and overview of the history of the special procedure, see Law Commission, [Simplification of the Immigration Rules Consultation paper 242 \(PDF\)](#), 21 January 2019, paras 12.3-12.8

⁸ The most recent examples the Library is aware of are [HC Deb 22 November 1972 c1458](#) and [HC Deb 15 December 1982 c435](#)

⁹ [HL Deb 19 July 1971, vol 322 c704](#)

¹⁰ For example, [explanatory memorandum to HC 556](#), 19 February 2024

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Parliamentary scrutiny of the rules

Statements of changes to the immigration rules are scrutinised during the 40-day period by the House of Lords Secondary Legislation Scrutiny Committee.¹¹

The committee's role is advisory. It can refer statements it considers [important or flawed](#) to the attention of the House of Lords through its weekly report. When it does this a member of the Lords might lay a motion seeking a debate. This is typically done as a '[motion to regret](#)', which, if approved, doesn't amount to a formal disapproval.¹²

Opportunities for debate in the Commons

A [prayer motion](#) can be used to reject a statement of changes to the rules. In the Commons, [Early Day Motions](#) (EDMs) are the usual vehicle for tabling prayer motions.¹³

The government isn't obliged to make time for a debate in the Commons. The extent of parliamentary interest and volume of signatures an EDM attracts might have some influence on decisions about whether to provide time for a debate. If time for a debate is granted, it can't be used to amend the new rules – they must either be accepted or voted down in their entirety.

Time allocated for a debate on a prayer motion could be in a delegated legislation committee rather than in the main chamber. The committee's composition would reflect the balance of power in the House.

There are ways MPs can engineer debate on an immigration rule which fall short of providing an opportunity to vote on a prayer motion. For example, they might seek a Westminster Hall debate, or table an amendment to related primary legislation.

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Adequacy of the scrutiny arrangements

Since the inception of the 1971 Act, there have been criticisms that the parliamentary approval process for statements of immigration rules (and changes to the rules) is inadequate and sidelines Parliament.¹⁴

¹¹ They aren't within the remit of the Joint Committee on Statutory Instruments because the only non-statutory instruments that committee considers are ones subject to the affirmative procedure.

¹² For example, [HL Deb 14 May 2024 cc553-570](#)

¹³ For example, [EDM 574 of 2023-4](#); [EDM 2448 of 2007-08](#)

¹⁴ [HL Deb 12 October 1971, vol 324, c322-328: Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#) [PBC Deb 16 June 2020, c218: Liberal Democrats, For a Fair Deal Manifesto 2024 \(PDE\)](#), June 2024, p.88

The breadth of policy changes that can be implemented through the immigration rules, and the significance of the rules to the operation of the immigration system and migrants' rights, have been cited as reasons why they should be subject to more rigorous scrutiny and approval processes.¹⁵

Concerns have also been raised about the quality of supporting evidence for rules changes. The Home Office isn't obliged to consult on proposed changes (although changes sometimes follow consultation or engagement with selected stakeholders). It provides explanatory memoranda to accompany statements of changes to the rules but doesn't consistently prepare or publish impact assessments.

The Secondary Legislation Scrutiny Committee has observed Parliament's ability to scrutinise rules changes is compromised if the government doesn't provide adequate explanatory information.¹⁶ In the 2019-2024 Parliament the committee repeatedly raised concerns about the quality of supporting explanatory material provided by the Home Office, including its failure to respond to the committee's requests for further information.

Proposals have been made to enhance scrutiny of the immigration rules by:

- Establishing an advisory committee to scrutinise draft rules changes, how they will be implemented and their likely consequences (similar to the role of the [Social Security Advisory Committee](#)).
- Changing the approval procedure for changes to the rules or providing a regular opportunity for Parliament to scrutinise them.
- Giving a select committee a role in sifting proposed changes and recommending an appropriate approval procedure.
- Restricting the type of changes which can be implemented through immigration rule changes.¹⁷

Successive governments haven't shown an interest in making changes. They have defended the existing arrangements on the grounds that they are well-established, provide flexibility and support the smooth functioning of the immigration system.¹⁸ Ministers have argued that subjecting rules changes to a super-affirmative procedure would be disproportionate, hamper the government's ability to make timely changes, and be an ineffective use of parliamentary time.

¹⁵ [HC Deb 28 January 2019 c525](#)

¹⁶ Secondary Legislation Scrutiny Committee, [20th report of session 2023-24, HL Paper 94 \(PDF\)](#), 27 March 2024, para 17-18; 28

¹⁷ Institute for Government, [Managing migration after Brexit \(PDF\)](#), March 2019, p.46-7; British Future, [Getting it right from the start: Securing the future for EU citizens in the UK \(PDF\)](#), January 2019, p.9

¹⁸ [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill PBC Deb 16 June 2020, cc220-3](#); [Immigration and Social Security Co-ordination\(EU Withdrawal\) Bill PBC Deb 5 March 2019 cc326-7](#)

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