

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION SKILLS CHARGE (AMENDMENT) REGULATIONS 2022

2022 No. 1391

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Immigration Skills Charge Regulations 2017, which provide that a sponsor, subject to certain exemptions, must pay a charge each time it assigns a certificate of sponsorship to a skilled worker.
- 2.2 The amendments give effect to an international obligation contained in the EU-UK Trade and Cooperation Agreement (TCA) to exempt certain intra-corporate transfers from the Immigration Skills Charge.
- 2.3 Finally, the amendments exempt sponsors of migrants applying under the Scale-up route from the Immigration Skills Charge.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is all of the United Kingdom
- 4.2 The territorial application of this instrument is all of the United Kingdom

5. European Convention on Human Rights

- 5.1 The Minister for Immigration, Tom Pursglove, has made the following statement regarding Human Rights:

“In my view the provisions of the Immigration Skills Charge (Amendment) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 These Regulations are made under section 70A of the Immigration Act 2014, which was inserted into that Act by section 85 of the Immigration Act 2016. They are subject to the affirmative resolution procedure. This is the second time that the Immigration Skills Charge Regulations 2017 have been amended since they were made.

7. Policy background

What is being done and why?

- 7.1 The Immigration Skills Charge (“the charge”) is intended to incentivise employers to invest in training and upskilling the resident workforce, and to reduce their reliance on

migrant workers. The income raised by the charge is put towards addressing skills gaps in the UK workforce.

- 7.2 The charge currently applies to sponsors of skilled workers as defined in the Immigration Skills Charge Regulations 2017, as amended by the Immigration Skills Charge (Amendment) Regulations 2020, which effectively means it applies to sponsors of skilled workers under the Skilled Worker route and some intra-company transferees under the Global Business Mobility routes.
- 7.3 Under the terms of the EU-UK Trade and Cooperation Agreement (TCA), from 1 January 2023, EU nationals must be exempt from the charge where they are undertaking intra-corporate transfers as defined in the TCA. In practice this means EU workers sent to the UK on intra-corporate transfers on the Global Business Mobility - Senior or Specialist Worker route for up to three years will be exempt from the charge, provided the worker is an EU national and the business sending them is based in the EU.
- 7.4 Amendments to the Immigration Skills Charge regulations are now needed to reflect these exemptions, because the trade commitment undertaken in the TCA was introduced after the last amendments to the regulations.
- 7.5 The Scale-up route was launched to support high-growth UK businesses to access the highly skilled workers needed to continue that growth. The charge was never part of the design of the route, so a temporary waiver was implemented when the route opened to ensure Scale-up workers were not charged. This amendment to the regulations will codify the exemption.
- 7.6 There are no other changes. The amount of the charge, processes and exemptions are all otherwise unchanged.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because one part of the new regulations concerns immigration charges that did not apply to EU workers when the UK was a member of the EU. This instrument implements a commitment taken under the UK-EU Trade and Cooperation Agreement. It does not otherwise involve the exercise of powers connected to the UK's withdrawal from the EU, or its future relationship with the EU.

9. Consolidation

- 9.1 The Government does not assess that there is any need for consolidation measures.

10. Consultation outcome

- 10.1 The changes relating to the Global Business Mobility route are an international obligation which is contained in the EU-UK Trade and Cooperation Agreement (TCA). As such, these were subject to considered discussions between the UK and EU and the agreement is published.
- 10.2 There was no consultation on the change relating to the Scale-up route since it codifies an existing waiver and therefore has no impacts beyond how the disapplication of the charge is given effect.

11. Guidance

- 11.1 Updated guidance for sponsors relating to the charge will be placed on the gov.uk website at <https://www.gov.uk/uk-visa-sponsorship-employers/immigration-skills-charge>.

12. Impact

- 12.1 These changes are designed to increase the number of migrants that will be exempt from the charge. This means that businesses sponsoring applicants, who meet the requirements of the exemption, on the relevant Global Business Mobility route, will benefit from not having to pay the charge.
- 12.2 People applying for the Scale-up route are currently having the charge waived and this change puts that disapplication of the charge onto a statutory footing. There will be no material impact on businesses, therefore.
- 12.3 An Impact Assessment has not been prepared for this instrument. The charge is classified as a tax and is therefore out of scope of the new Better Regulation Framework.

13. Regulating small business

- 13.1 The Immigration Skills Charge Regulations 2017 affects all employers who sponsor workers to whom the charge applies. Some of these employers are small businesses.
- 13.2 Small businesses that incur the charge already pay a reduced rate of £364 per worker per year, as opposed to £1,000 per worker per year for larger businesses. The changes being made by this instrument will only serve to reduce the burden on small businesses by exempting some EU workers from the charge.

14. Monitoring & review

- 14.1 Funds raised by the charge are allocated to the skills budgets of the Department for Education and the Devolved Administrations. The Home Office will keep the operation of the charge under review, with support from, amongst others, the Department for Education.

15. Contact

- 15.1 Queries regarding this instrument should be directed to Thomas Jackson, Senior Policy Advisor on Business Mobility Policy, Points Based System and Economic Migration Unit, Migration and Citizenship Directorate, Migration and Borders Group, Home Office, 3rd Floor, Vulcan House Steel, 6 Millsands, Sheffield, S3 8NU. Telephone: 07920 241 911.
- 15.2 The Deputy Director for the Points-Based System and Economic Migration Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Hon. Tom Pursglove at the Home Office can confirm that this Explanatory Memorandum meets the required standard.