

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION AND ASYLUM ACT 1999 (PART 5 EXEMPTION: LICENSED SPONSORS) ORDER 2022

2022 No. 235

1. Introduction

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

2. Purpose of the instrument

2.1 This Order replaces the Immigration and Asylum Act 1999 (Part V Exemption: Licensed Sponsors Tiers 2 and 4) Order 2009 (“the 2009 Order”).¹ The Order exempts employers and educational establishments who hold licences to sponsor workers and students under the UK Immigration Rules from the general prohibition in the Immigration and Asylum Act 1999 (“the 1999 Act”) on providing immigration advice and immigration services.

2.2 The exemption is restricted to immigration advice and services provided free of charge by licensed sponsors to people applying for, or who have been granted, entry clearance or leave to enter or remain in the UK on a sponsored work or study route, and to the worker’s or student’s eligible family members seeking to accompany or join them. The Order maintains the exemption for Worker (formerly ‘Tier 2’) and Student (formerly ‘Tier 4’) sponsors contained in the 2009 Order. It also covers licensed sponsors on the Temporary Worker routes under the Immigration Rules and new routes being launched from Spring 2022 onwards, including the Global Business Mobility routes.

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 territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is the same as the territorial extent.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 It is prohibited under section 84(1) of the 1999 Act, and a criminal offence under section 91(1) of that Act, for a person to provide immigration advice or immigration

¹ SI 2009/506: <https://www.legislation.gov.uk/uksi/2009/506/contents/made>.

services unless they are a ‘qualified person’, as defined in section 84(2) of the Act, or exempt under section 84(4) or section 84(6) of the Act. Qualified persons include those who are registered with the Office of the Immigration Services Commissioner (OISC), authorised by a designated professional body (such as the Law Society of Scotland or General Council of the Bar of Northern Ireland) or authorised by a designated regulator (such as the Law Society or the General Council of the Bar) to provide immigration advice or services.

- 6.2 Section 84(4)(d) of the 1999 Act enables categories of person to be specified by order so that they are exempt from this general prohibition. This Order is being made under that section, and applies to employers and educational establishments who hold licences, issued by the Home Office, to sponsor overseas nationals to work or study in the UK. It allows sponsor licence holders to provide immigration advice and services, free of charge, to their sponsored workers or students, and to the worker or student’s eligible family members, in connection with an application for entry clearance, leave to enter or leave to remain in the UK for the purpose of work or study (where the Immigration Rules require that person to have a sponsor), or for the variation of such clearance or leave.
- 6.3 The exemption recognises that sponsors are likely to be providing immigration advice and immigration services (as defined in section 82(1) of the 1999 Act) while carrying out their sponsor duties. For example, when a sponsor assigns a Certificate of Sponsorship to a worker, or a Confirmation of Acceptance of Studies to a student, they are likely, in practice, to be advising that individual in connection with an application for entry clearance or leave to enter or remain, which is a ‘relevant matter’ under section 82(1) of the 1999 Act for the purposes of the definition of “immigration advice” in that section.
- 6.4 Other activities which the Home Office considers to be covered by the definitions of “immigration advice” and “immigration services” include corresponding on behalf of the individual with the Home Office about their status when they are making or have made an application for entry clearance or leave to enter or remain, advising the individual on the length of clearance or leave they have been granted and the conditions attached to it, and reminding them to seek an extension of stay where necessary. The exemption ensures licensed sponsors can carry out these activities without risking criminal liability.
- 6.5 This Order is subject to the negative resolution procedure and will come into effect on 11 April 2022. The 2009 Order is revoked on the same date.

7. Policy background

What is being done and why?

- 7.1 This Order replaces the 2009 Order, which it revokes. As well as maintaining the exemption contained in the 2009 Order, this Order will also extend that exemption to licensed sponsors on the existing Temporary Worker routes, the new Global Business Mobility routes, and future sponsored work or study routes under the Immigration Rules.
- 7.2 The 2009 Order has become unduly complex, having been substantially amended three times during 2020/21 to reflect changes to the immigration system.² This risks

² The relevant amending instruments are: SI 2020/966, SI 2020/1147, and SI 2021/1035.

the legislation being misunderstood or misapplied. With the launch of the Global Business Mobility routes in Spring 2022, and further changes planned beyond that, legislation is needed to ensure sponsors on new routes do not risk criminal liability while assisting their sponsored workers or students and carrying out their sponsor duties. Rather than make yet further amendments to the 2009 Order, we have taken the opportunity to make a new Order which not only maintains the substance of the exemption in the 2009 Order, but also updates it and ensures it is more flexible in accommodating future changes to the Immigration Rules.

- 7.3 The 2009 Order exempts organisations who hold licences to sponsor overseas nationals on the Worker routes (Skilled Worker, Intra-Company Transfer, Intra-Company Graduate Trainee, T2 Minister of Religion, International Sportsperson, and their predecessor ‘Tier 2’ routes); and the Student and Child Student routes (and their predecessor ‘Tier 4’ routes). The 2009 Order does not, however, apply to Temporary Worker³ (formerly ‘Tier 5’) sponsors, even though they are required to comply with the same sponsor duties as other licensed sponsors. This Order covers such sponsors, and treats them in the same way as other licensed sponsors. In this context, it is to be noted that four of the new Global Business Mobility routes are classified as Temporary Worker routes for sponsor licensing purposes.⁴ This Order ensures that all Global Business Mobility sponsors benefit from the exemption.
- 7.4 The Order has been drafted so as to apply, by default, to any sponsored work or study route that may be launched or rebranded in the future. Whereas the 2009 Order listed each relevant route separately (and therefore required amendment each time a new route was launched, or an existing one renamed), this Order defines ‘licensed sponsor’ with reference to the public registers of sponsors maintained by the Home Office and available on the GOV.UK website,⁵ and refers in general terms to applications for entry clearance or leave to enter or remain under the Immigration Rules for the purposes of work or study (rather than to applications under named Appendices to the Rules). This means that the Order will not require amendment merely because a new sponsored work or study route is launched or an existing one rebranded.

What does the Order allow licensed sponsors to do?

- 7.5 As is the case with the 2009 Order, the exemption conferred by this Order comes with important caveats. The sponsor is restricted to providing immigration advice or services in relation to the person they are directly sponsoring in connection with their application for entry clearance or leave for the purposes of work or study in the UK (and, where relevant, their eligible family members – see paragraphs 7.7 to 7.10 below). It is not an unrestricted authorisation to advise any migrant, or advise on wider immigration issues. Furthermore, the sponsor must provide these services free of charge. If they wish to provide such services as part of a business, or advise on wider immigration matters, they must register with OISC (unless otherwise qualified or exempt under the 1999 Act). Finally, although not specified in the Order itself, all

³ The current Temporary Worker routes are: Charity Worker, Creative Worker, Government Authorised Exchange, International Agreement, Religious Worker and Seasonal Worker.

⁴ Those routes are: Graduate Trainee, Secondment Worker, Service Supplier, and UK Expansion Worker. The remaining route, Senior or Specialist Worker, which replaces the existing Intra-Company Transfer route, will fall under the ‘Worker’ banner.

⁵ The registers are available at: <https://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators#lists-of-licensed-sponsors>.

sponsors exempt under the Order must comply with the OISC Code of Standards,⁶ as required by paragraph 3(4) of Schedule 5 to the 1999 Act.

- 7.6 The substantive provisions are contained in article 2 of the Order. Paragraph (2) enables a licensed sponsor to provide immigration advice and immigration services, free of charge, to an individual they are sponsoring in connection with an application by that individual for entry clearance or leave (including the variation of such clearance or leave) for the purpose of work or study in the UK. This includes an application the individual is proposing to make or has made, or where the individual has been granted such clearance or leave.
- 7.7 Paragraph (3) enables the licensed sponsor to provide immigration advice and immigration services, free of charge, to an individual other than the person they are directly sponsoring, but only in connection with an application by that individual for entry clearance or leave or for a variation of entry clearance or leave (whether a prospective application or one which is in progress or has been determined). For this to apply, the sponsor must reasonably believe that the individual is applying, or has applied, for entry clearance or leave as an “eligible family member” (see paragraphs 7.9 to 7.10 below) of the sponsored individual (“the main applicant”) and that the individual’s application is, or was, dependent under the Immigration Rules on the outcome of an application by the main applicant. The licensed sponsor providing the advice or services must be sponsoring the main applicant.
- 7.8 Paragraphs (3)(d)(ii) and (4) cater for the situation where the individual has previously made an application as the eligible family member of the main applicant, that application has been determined, and the main applicant subsequently applies to vary their entry clearance or leave to undertake different employment or study, or to work for, or study with, a different sponsor. In such cases, the family member may not necessarily need to apply “in line” with the main applicant (for example, if they already have sufficient extant leave as the main applicant’s eligible family member) but this provision of the Order ensures the main applicant’s licensed sponsor (or sponsors, as the case may be) can provide immigration advice and services to the individual, regardless of whether that individual has applied to vary their own leave.

Meaning of “eligible family member”

- 7.9 Article 2(6) of the Order provides that an application is made as an “eligible family member” where the individual’s entitlement under the Immigration Rules to make the application depends on the existence of a particular relationship or connection with the main applicant. Under the current Immigration Rules, for routes other than Child Student and Seasonal Worker, this means the main applicant’s spouse, civil partner, unmarried partner, and dependent children. A Child Student aged between 4 and 11, and attending an independent fee-paying school, can be joined or accompanied by one of their parents on the Parent of a Child Student route. The Seasonal Worker route does not make any provision for family members.
- 7.10 This approach differs from that in the 2009 Order, which enables advice and services to be provided to the main applicant’s “immediate family” and specifies the relationships which constitute “immediate family”. However, the effect is essentially the same, except that the 2009 Order does not cover advice or services in connection with applications by children aged 18 or over. All sponsored routes (other than Child

⁶ See: <https://www.gov.uk/government/publications/oisc-code-of-standards-commissioners-rules-2012>.

Student and Seasonal Worker) allow a dependent child aged 18 or over to apply if they have previously been granted entry clearance or leave as a dependent child of their parent or parents. This Order covers immigration advice and services provided by a licensed sponsor in relation to any child who is eligible to apply to accompany or join the main applicant, including those who have turned 18.

Previous Orders made under section 84(4)(d) of the 1999 Act

- 7.11 While the 2009 Order is being revoked, two further orders made under section 84(4)(d) of the 1999 Act will remain in force:
- The Immigration and Asylum Act 1999 (Part V Exemption: Relevant Employers) Order 2003 (SI 2003/3214): this exempts employers of overseas nationals who hold work permits issued under the immigration arrangements in place before the launch of Tier 2 in November 2008, and their immediate family members. Since there are still a small number of people with extant leave under those provisions, the Order is not being revoked at this time. We will keep this under review and consider revoking the Order when the leave of all such work permit holders and their immediate family members has expired. The provisions relating to EEA and Swiss nationals in that Order have already been repealed.⁷
 - The Immigration and Asylum Act 1999 (Part V Exemption: Educational Institutions and Health Sector Bodies) Order 2001(SI 2001/1403): this applies to organisations of the type specified in the Schedules to that Order. Since the exemptions contained in the Order do not depend on the organisation’s status as a licensed sponsor, and are not concerned specifically with visa applications made on sponsored work or study routes, it would not be appropriate to revoke the Order at the present time.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 This Order replaces the 2009 Order, which will be revoked on the date this Order comes into force.
- 9.2 The Order has been drafted in more general terms than the 2009 Order so as to apply to both existing and previous sponsored work and study routes, and any sponsored work or study route that may be launched or rebranded in the future. It is expected this will minimise the need to make regular updates to the Order, as has been the case with the 2009 Order.

10. Consultation outcome

- 10.1 Since this Order does not impose any additional costs or burdens on licensed sponsors, and the 1999 Act does not impose a statutory duty to consult, no formal consultation has taken place. OISC have been notified of the proposed changes and have confirmed they are content.

⁷ See regulation 30 of SI 2020/1309.

11. Guidance

- 11.1 The relevant sections of ‘Workers and Temporary Workers: guidance for sponsors’ and the ‘Student sponsor guidance’,⁸ as well as any relevant operational Home Office guidance, will be updated to reflect the changes set out in this Order. Guidance on the OISC website will also be updated.⁹

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen. The Order continues an exemption that was already in place for Worker and Student sponsors under the 2009 Order, and ensures Temporary Worker sponsors can carry out their sponsor duties without risking criminal liability. There are no additional obligations on, or costs to, business as a result of this Order. As is the case now, sponsors and migrants can choose to engage the services of a qualified immigration adviser if they wish.

13. Regulating small business

- 13.1 A number of small businesses are licensed sponsors and the legislation therefore may apply to activities undertaken by such businesses. As noted above, the Order does not impose any additional obligations, costs or burdens on businesses covered by the Order.

14. Monitoring & review

- 14.1 This Order does not include a statutory review clause. The Home Office will monitor the operation and effectiveness of the Order in light of changes to the immigration system or any issues identified, and liaise with OISC as appropriate should the need to amend the Order arise.

15. Contact

- 15.1 Peter Grant at the Home Office (telephone: 07341 804806 or email: peter.grant@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Della McVay, Deputy Director for the Points-Based System and Economic Migration, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kevin Foster MP, Parliamentary Under Secretary of State (Minister for Safe and Legal Migration) at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

⁸ The sponsor guidance is available at: <https://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators>.

⁹ See <https://www.gov.uk/government/publications/how-to-become-a-regulated-immigration-adviser>.