

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (EXEMPTION FROM CONTROL) (AMENDMENT) ORDER
2024

2024 No. 723

1. Introduction

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

2. Declaration

- 2.1 Tom Pursglove MP, Minister of State for Legal Migration and the Border at the Home Office, confirms that this Explanatory Memorandum meets the required standard.
- 2.2 John Brocklehurst, Deputy Director for Visa Policy at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Maria Rizou at the Home Office, email: maria.rizou1@homeoffice.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 The instrument will exempt three senior European Union (EU) officials from immigration control. These officials are the President of the European Commission, President of the European Council, and High Representative for Foreign Affairs. This will make the UK's treatment of these officials consistent with its treatment of senior officials from certain international organisations based in the UK and arrangements for comparable representatives from national governments visiting the UK on the business of that government.

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

- 5.1 From 1st January 2024, senior EU officials (the President of the European Commission, President of the European Council, and High Representative for Foreign Affairs) are no longer exempt from immigration control as previously under the Treaty on the Functioning of the European Union Protocol (No. 7) on the privileges and immunities of the European Union ("Protocol 7"). This means that when attending an official event or meeting in the UK, they are now subject to passport

checks and baggage spot checks. The difference will become more notable when the requirement for Electronic Travel Authorisation (ETA) is introduced for European nationals, projected to be Autumn 2024. At that point these officials will need to pay and pre-register to enter the UK, whilst comparable world leaders, including those from the United Nations, the Council of Europe and national governments, will be exempt from such requirements.

- 5.2 This instrument reflects the UK's commitment to ongoing, constructive diplomatic and official exchanges with the EU at senior levels. It makes the treatment of the three high-ranking EU officials consistent with treatment of comparable officials from international organisations and national governments.

What was the previous policy, how is this different?

- 5.3 The officials in scope were exempt from immigration control under Protocol 7 until 31st December 2023. The Immigration (Exemption from Control) (Amendment) Order 2024 ensures that the three most senior officials can travel to the UK without being subject to immigration control, in line with comparable officials from international organisations and national governments.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Section 8 of the Immigration Act 1971 allows the Secretary of State, by order, to exempt any person or class of persons, either unconditionally or subject to such conditions as may be imposed by or under the order, from all or any of the provisions of the Act relating to those who are not British citizens (i.e., to exempt them from immigration control). The Immigration (Exemption from Control) Order 1972 ("the 1972 Order") is made under this section and is being amended in order to exempt three senior EU officials from immigration control. These officials are the President of the European Commission, President of the European Council, and High Representative for Foreign Affairs. Provisions of the Immigration Act 1971 relating to deportation will still apply.

Why was this approach taken to change the law?

- 6.2 This is the only possible approach to make the necessary changes without changing primary legislation.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 No external consultation was undertaken for this Order. The amendments are necessary to maintain existing immigration exemption policy in respect of these three senior EU officials and to support the diplomatic relationship between the UK and EU bodies.

8. Applicable Guidance

- 8.1 The exempt guidance, <https://www.gov.uk/government/publications/exempt-exm/exempt-exm>, will be updated once the change takes effect on 15 July 2024.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument as it has no, or no significant impact on business, charity or voluntary bodies or the public sector, because the SI relates to the maintenance of existing immigration exemption policy.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this relates to restoration of previously held rights for a group of individuals with no direct impact on businesses, charities or voluntary bodies.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector because this relates to the restoration of previously held rights for a cohort of high-ranking individuals within the EU.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 Monitoring will be conducted internally by the Home Office.
- 10.2 The Order does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None.

12. European Convention on Human Rights

- 12.1 The Minister for Legal Migration and the Border has made the following statement regarding Human Rights:

“In my view the provisions of the Immigration (Exemption from Control) (Amendment) Order 2024 are compatible with the Convention rights.”

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).
- 13.2 This instrument does, however, relate to the withdrawal of the United Kingdom from the European Union because the sunset of Protocol 7 ended the exempt rights for these three roles, and we are now amending the 1972 Order for these senior officials to continue benefitting from immigration control.