

# New Immigration Rules Autumn 2021

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# How to read a Statement of Changes (SoChs)

- ▶ Very heavy going ! Rule changes bear references as per route in question but via their own numbering which is related to the SoChs rather than to the altered rules
- ▶ Before changes are actually implemented you need to compare the SoChs with the present rules
- ▶ After changes are made you will only be able to find the previous wording of the Rule in the archived rules

# Implementation and Transition

- ▶ Transitional protection for extant applications typical
- ▶ Implementation dates:
  - rule changes are divided up into batches with particular dates of entering force
  - with all other rules not named in a batch given a catch-all date

# Ongoing issues

- ▶ There is a general strategy to define terms used in the modern routes as also including their predecessors, eg Skilled Worker also includes T2 General (r6)
- ▶ Thus we see the old T5 routes now renamed Temporary Worker but defined such as to capture current and past iterations of the sub-routes eg Charity Worker and Creative Worker (r6) and all the other temporary workers routes too
- ▶ Funds for a dependant child may now come from a lawfully present parent as well as the principal migrant

# Generic points

- ▶ Ecctis replaces UK NARIC
- ▶ National ID cards only valid (r11A-11B) if EEA national has EUSS/EUPSS or pending application or Frontier Worker or Healthcare visitor, or EEA national's family member with EUSSch family permit, Swiss Service Provider, British citizen of Gibraltar
- ▶ r34GB gives a clarification: *“the date the variation application (the new application) is made is deemed to be the date the application was made prior to it being varied (the old application)”*
- ▶ cf r34GC: if a new dependant is added on the variation of prior application then their application date is the new application's date

# Withdrawing applications

- ▶ More elaborate withdrawal provisions
- ▶ Withdraw by written notice or via [www.gov.uk/cancel-visa](http://www.gov.uk/cancel-visa) r34H - deemed date is request receipt by UKVI
- ▶ UKVI decision makers entitled to determine applications notwithstanding withdrawal applications r34I
- ▶ Proof of identity to be returned unless SSHD “*thinks it necessary to retain it*” r34J
- ▶ In-country applications: travel outside CTA deems application withdrawn r34K (previously rules said a request for travel purposes would deem a matter withdrawn from date of travel)

# Overstaying protection

- ▶ Beyond the protections introduced by r39E from November 2016 condoning 14 days overstaying from a refusal automatically and, otherwise, 14 days overstaying with “*good reason*”
- ▶ Now we have protection for overstaying between 24 January and 31 August 2020
- ▶ And for Hong Kong BNOs outside the Rules, protection for overstaying between 1 July 2020 and 31 January 2021

# Youth Mobility

- ▶ Rebranded - “T5” abandoned From 1 January 2022
- ▶ Continues to be route for BOCs, BOT citizens, BN(O)s, and those listed in Appendix YMS Eligible Nationals, aged <30, no previous time spent in route in UK, hold £2,530 for 28 days, 2 year max + no self-employment unless working from home with £5k of equipment & no employees
- ▶ Deemed Sponsorship Status - no need for country of origin to issue CoS, lighter documentary requirements for applications, passport suffices to prove sponsorship: Australia, New Zealand, Canada, Japan, Monaco, Hong Kong, Taiwan and Korea
- ▶ Invitation to apply arrangements (ie applicant expresses interest, if randomly selected then receives invitation and makes application) - India and Iceland added to San Marino, Japan, Hong Kong, Taiwan and Korea

# Youth Mobility - Indian nationals

- ▶ Two extra criteria
  - YMS4.5B: RQF level 6 qualification (BA degree level) via written confirmation from issuing institution
  - YMS4.5C: 3 years' work experience in “*a professional role equivalent to an eligible occupation listed in Appendix Skilled Occupations*” evidenced by payslips bearing job title and employer's name *or* payslips whose employer confirms authentic

# Temporary workers

- ▶ A revamp of the Tier 5 routes which have lived a brief life as T5 - now simply temporary workers from 6 October 2021
- ▶ Temporary Work - Creative Worker route
- ▶ Minimum age requirement of 18 on the Temporary Work - Charity Worker, Religious Worker and International Agreement routes
- ▶ Clarification of relevant International Agreement participants: European Union Trade and Cooperation Agreement (TCA) and the “*provisionally applied*” CARIFORUM-UK Economic Partnership Agreement (ie African, Caribbean and Pacific States eg Belize, Guyana, Barbados, Bahamas)

# Skilled Workers

- ▶ Tradeable points option E (scientists etc, higher education teaching professionals): have to be in a UK regulated profession previously defined via EU Directives but now listed by Ecctis
- ▶ The minimum hourly rate of £10.10 (at the application date) was introduced on 6 April 2021 - now SW24.3 applies this to ILR too
- ▶ Only A-rated Sponsors may certify the availability of funds for those seeking entry clearance or in UK <1 year
- ▶ Funds for a dependant child may come from a lawfully present parent as well as the Skilled Worker themselves SW33.2(a)

# Sole representatives

- ▶ More elaborate requirements for ILR though apparently reverting to the status quo from some months ago
- ▶ Applicant must have worked full-time for an active trading UK operation headquartered overseas and not have done any other work/business ROB 16.1 and supervised the operation (employer's letter) ROB 16A.2
- ▶ ROB 16.2: *evidence* from employer of salary
- ▶ ROB 16A.3 evidence of business generated, share register overseas/accountant's letter re overseas ownership

# Domestic workers in private households

- ▶ Domestic Worker in a Private Household route deleted in Part 5 of Rules
- ▶ Now found fully in **Appendix Domestic Worker in a Private Household** - note this is a legacy route for those granted leave before 6 April 2012 and is to be contrasted with modern route **Appendix Overseas Domestic Worker**
- ▶ It is one of the sextet of routes from which switching into new immigration routes is barred under the generic repeated Validity criteria
- ▶ Clarification that child born in UK can be dependant as well as child previously granted leave DW25.1, 251A

# Overseas domestic workers

- ▶ Core criteria is aged 19+, 1 years' past work under same roof as employer evidenced by payslips (as cleaner, gardener, chauffeur, cook, nanny, security), ongoing role here, travelling with employer or their partner/child, 6 month maximum stay and no intention to make UK primary home via successive visits - may change employer within notifying UKVI during stay
- ▶ Written agreement confirming NMW paid - slight sharpening of test away from just looking at employment terms - does *“the employer genuinely intend[...] to pay the applicant at least the National Minimum Wage throughout their employment in the UK”*

# Appendix Domestic Worker who is a Victim of Slavery

- ▶ Clarifies this route is for those who entered the UK as an Overseas Domestic Worker, a Domestic Worker in a Private Household, or as a private servant in a diplomatic household, having held entry clearance in the Temporary Work - International Agreement category
- ▶ Must now provide “*a valid passport or other document which satisfactorily establishes their identity and nationality*” - previously said “*travel document*”  
DWMS1.2

# Appendix Hong Kong BN(O)

- ▶ Until 20 July 2021 there was express discretion to accept applications outside Rules where no prior entry clearance held
- ▶ Partner may join BN(O) Status Holder HK13.3
- ▶ No longer any requirement for partner to form part of same household at application date (just to intend to live together subsequently) HK13.7
- ▶ Children/grandchildren of BN(O) Status Holders are eligible - only grandchildren need to have formerly been part of the same household HK15.2
- ▶ Clarification where both of a child's parents are not on route: beyond sole responsibility/sole surviving parent etc, now also non BN(O)SH may be parent with British citizenship or right of abode

# Appendix Hong Kong BN(O)

- ▶ Criteria for children where both parents are not on BN(O)SH route: beyond sole responsibility/sole surviving parent etc, now also non BN(O)SH may be ordinarily resident parent with British citizenship or right of abode HK15.4(c)
- ▶ UK born children of BN(O)SH and of BN(O) Household Members may be added to family as dependants HK15.5
- ▶ For children where both parents are not on BN(O) Household Members route, now now also non BN(O)SH may be ordinarily resident parent with British citizenship or right of abode HK37.2(c)

# Start ups & Global Talent: Prestigious Prizes

- ▶ GCSE or A Level English suffices EL 2.4 read with EL 7.1-7.2
- ▶ Continuous residence for GTPPs: get the same saving grace for excess absence > 180 days as to humanitarian aid providers, disaster victims, Skilled Worker researchers, where abroad due to research activities