EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (LEAVE TO ENTER AND REMAIN) (AMENDMENT) ORDER 2016

2016 No. [XXXX]

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 amends the Immigration (Leave to Enter and Remain) Order 2000 ("The 2000 Order") to: provide for visas for private medical treatment and for entry as an academic visitor to have effect as leave to enter the United Kingdom for up to 11 and 12 months respectively on an unlimited number of occasions during their period of validity; enable leave to enter to be granted or refused orally to short-term students and parents of Tier 4 (child) students; ensure that the categories of visitors who may be granted leave to enter via an e-gate reflect the new categories of visitors; and prevent the leave of partners and children of certain Crown servants and British council employees from lapsing due to time spent outside the United Kingdom.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 The 2000 Order makes provision relating to the giving and refusing of leave to enter and remain in the United Kingdom, provides that a visa or other entry clearance may have effect as leave to enter the United Kingdom, and ensures that, in certain circumstances, leave to enter or remain does not lapse on travel outside the common travel area (Ireland, the Channel Islands and the Isle of Man).

4.2 On 24 April 2015, the visitor routes of entry to the UK, which are set out in the immigration rules, were simplified and their number reduced from 15 to four (see statement of changes HC 1025). The following categories of visitor now exist: standard visitor, marriage/civil partnership visitor, permitted paid engagements visitor and transit visitor. At the same time, the student visitor and Parent of a Child at School routes ceased to be classified as visit routes and were re-branded short-term student and Parent of a Tier 4 (child) student respectively in order to make their purposes clearer.

4.3 In light of the aforementioned amendments to the immigration rules, it has been necessary to update certain provisions within the 2000 Order. This Order also amends the 2000 Order to reflect various policy developments.

5. Extent and Territorial Application

5.1 The instrument extends to the United Kingdom.

5.2 The instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister for Immigration has made the following statement regarding Human Rights:

In my view the provisions of the Immigration (Leave to Enter and Remain) (Amendment) Order 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 This Order amends the 2000 Order to make provision with respect to visitors for private medical treatment and academic visitors. This Order amends the 2000 Order to extend the period for which the visa may take effect as leave to enter the United Kingdom to 11 months in the case of visitors for private medical treatment and 12 months in the case of academic visitors.

7.2 This Order further amends the categories of person to whom leave to enter the United Kingdom may be granted or refused orally to include reference to short-term students and parents of Tier 4 (child) students. This change is required in light of the fact that short-term students and Parents of Tier 4(child) students (previously student visitors and Parents of a Child at School, respectively) are no longer treated as visitors.

7.3 Following the simplification of the visitor routes and the reclassification of short-term student visas and Parents of Tier 4 (child) student visas as non-visit visas, the 2000 Order needs further amending to update the categories of person who, provided they are registered travellers[1] may be granted leave to enter automatically if they enter the United Kingdom via an e-gate. The scheme is currently available to nationals from Australia, Canada, Japan, New Zealand and the USA. The amendments will ensure that the 2000 Order accurately reflects the current immigration rules, while still granting leave automatically to the same cohorts previously covered. The categories granted leave automatically when they pass through an e-gate will be: standard visitor, transit visitor and Parent of a Tier 4 (child) student.

7.4 Additionally, the provisions regarding non-lapsing leave in the 2000 Order are being amended with respect to partners and children of certain British or settled Crown servants (those employed by the Home Office, Foreign and Commonwealth Office and Department for International Development) and British Council employees who accompany their partner or parent on a posting abroad. Ordinarily, leave that does not lapse upon an individual leaving the United Kingdom does lapse if that individual remains outside the United Kingdom for a continuous period of more than two years.

[1] Registered Traveller is a scheme for low risk, frequent travellers who, upon successful enrolment and payment of an annual fee, can benefit from quicker processing at the border by entering via the E-passport gates (or the EEA queue) at most UK major ports).

The 2000 Order is being amended so that, if a posting lasts more than two years and the partner or child does not return to the United Kingdom during that time, their leave will not lapse. In the case of those granted limited leave to enter or remain in the United Kingdom under the family provisions of the immigration rules, this will further ensure that such persons can complete their probationary period outside the United Kingdom before applying for indefinite leave. The amendment relies on the definition of 'parent' in the immigration rules, which applies irrespective of the child's age. In most cases, however, the amendment will capture children who are under the age of eighteen or were under the age of eighteen when granted the leave in question.

Consolidation

7.5 Not applicable.

8. Consultation outcome

8.1 Not applicable.

9. Guidance

9.1 Guidance has been/ will be updated and placed on the GOV.UK website.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Home Office continues to monitor and review the provisions of the Immigration Rules and their operation to ensure that customers are best served.

13. Contact

13.1 Mary Batchelor at the Visit Policy team Telephone 0207 035 4848 or email: mary.batchelor@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.