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 visitor1. The immigration rules set out the permitted activities for visitors2, which include tourism, visiting friends and family and carrying out business activities such as attending meetings and conferences. Standard visitors (other than

[1] Paragraph V 1.5 of Appendix V to the Immigration Rules Rules - https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-v-visitor-rules.
[2] Appendix 3 to Appendix V to the Immigration

Approved Destination Status visitors, who may only come to the UK for up to 30 days as part of a Chinese tour group), marriage/civil partnership visitors and permitted paid engagement visitors can all carry out any permitted visitor activity. Under the immigration rules that were in place immediately before 24 April 2015, the separate visit routes only permitted a visitor to undertake activities specific to that route as well as tourism and visiting friends/family. For example a private medical treatment visitor could come here for private medical treatment and visit family but not to undertake sports visitor activities.

4.3 Also on 24 April 2015, the student visitor and Parent of a Child at School visitor 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. In practice, the requirements and conditions of these routes have not changed due to their re-classification.

4.4 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) 2016 Order are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 As set out in Appendix V to the Immigration Rules, a visitor is a person who is coming to the UK for a temporary purpose, to carry out a permitted visitor activity (see paragraph 4.2. above). The usual maximum period for which a visitor is allowed to stay in the UK is six months. There are two exceptions to this. Firstly, a maximum period of 11 months' stay initially is permitted for private medical treatment visitors, to provide flexibility where a consultant has assessed that the treatment will take longer than six months. The leave can be extended beyond 11 months if the treatment is still continuing. Secondly, a maximum period of 12 months' stay is permitted for visiting academics (i.e. persons coming to the UK on an academic exchange, to undertake their own research or take part in teaching or clinical practice where they are not being paid), again to provide flexibility as more than six months is often required to complete research.

7.2 This Order amends the 2000 Order to make provision with respect to private medical treatment and academic visitors, so that the period for which the visa may take effect as leave to enter the United Kingdom is up to 11 months in the case of visitors for private medical treatment and up to 12 months in the case of academic visitors. At

present, under the 2000 Order, visas granted for these purposes take effect as leave to enter the United Kingdom for a period of up to 6 months only.

7.3 Section 8(3) of the 2000 Order allows a notice giving or refusing leave to enter to be given orally to persons seeking entry as a visitor. This enables immigration officers' powers to be applied flexibly and remotely (e.g. in a location where there is not a border force presence). For instance where a private plane or ship is arriving at a remote location, passenger information received in advance on passengers who require leave to enter the UK can be used by the immigration officer, who can grant leave to enter and advise the passenger of the conditions of their stay by phone. Where leave to enter is to be refused, this can also be done by phone. In that case, the passenger must remain on board the plane or ship until it leaves the UK. Following the simplification of the visitor routes and the reclassification of the short-term student visas and Parents of Tier 4 (child) student visas as non-visit visas, the 2000 Order needs amendment to include reference to short-term students and parents of Tier 4 (child) students in the categories of person to whom leave to enter the United Kingdom may be granted or refused orally.

7.4 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 travellers3 may be granted leave to enter automatically if they enter the United Kingdom via an e-gate. The scheme is currently available to passport holders of Australia, Canada, Hong Kong (SAR), Japan, New Zealand, Republic of Korea, Singapore, Taiwan 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.

7.5 Additionally, the provisions regarding non-lapsing leave4 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. 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.

Consolidation

7.6 Not applicable.

[3] 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).

[4] Leave to enter or remain in the UK that remains in force when the holder leaves the Common Travel Area.

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 Queries regarding this instrument should be directed to visitpolicy@homeoffice.gsi.gov.uk.