EXPLANATORY MEMORANDUM TO

THE IMMIGRATION SKILLS CHARGE (AMENDMENT) REGULATIONS 2020

2020 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 instrument amends the Immigration Skills Charge Regulations 2017, which provide that a sponsor, subject to certain exemptions, must pay a charge each time it assigns a certificate of sponsorship to a skilled worker.

2.2 The amendments are being made to accommodate changes to the Immigration Rules for Skilled Workers, as set out in the Policy Statement on the UK's Points-Based Immigration System (CP 220).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The extent of this instrument is all of the United Kingdom.

4.2 The territorial application of this instrument is all of the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for Future Borders and Immigration, Kevin Foster, has made the following statement regarding Human Rights:

"In my view the provisions of the Immigration Skills Charge (Amendment) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations are made under section 70A of the Immigration Act 2014, which was inserted into that Act by section 85 of the Immigration Act 2016. They are subject to the affirmative resolution procedure. This is the first time that the Immigration Skills Charge Regulations 2017 have been amended since they were made.

7. Policy background

What is being done and why

7.1 The Immigration Skills Charge ("the charge") is intended to incentivise employers to invest in training and upskilling the resident workforce, and to reduce their reliance on migrant workers. The income raised by the charge is put towards addressing skills gaps in the UK workforce.

7.2 The charge currently applies to sponsors of skilled workers as defined in the Immigration Skills Charge Regulations 2017, which effectively means it applies to sponsors of skilled workers under the Tier 2 (General) and Tier 2 (Intra-Company Transfer) immigration routes. These routes will be amended and renamed under the UK's new Points-Based Immigration System. Consistent with the policy objective, the skills charge should continue to apply in relation to skilled workers coming under the new Points-Based Immigration System. Of the changes to be introduced in the new system, the most relevant to these Regulations are:

- The skills threshold in the new Skilled Worker route (formerly the Tier 2 (General) route) will be lowered from jobs skilled to level 6 and above (or level 4 and above in some cases) of the Regulated Qualifications Framework (RQF), to jobs skilled to level 3 and above of that framework.
- The requirement for sponsors to carry out a resident labour market test before sponsoring a skilled worker is being removed.

7.3 As these factors are used to define skilled workers in the Immigration Skills Charge Regulations 2017, amendments to those Regulations are needed so that the definition captures the right cohort of "skilled workers" when the Rules are amended, including those coming to do a role skilled at RQF3 and above. The new definition defines skilled workers as those who:

- are subject to a skills threshold in relation to their job offer; and
- are subject to a minimum salary threshold; and
- must be sponsored; and
- are applying in a route which permits stay of more than 2 years (regardless of the length of stay of the particular individual)

7.4 This new definition encompasses the bespoke routes for sportspeople and ministers of religion, which are currently exempt from the charge. These exemptions are being maintained. Further changes are therefore being made to the list of exempt occupations to ensure sponsors of sportspeople (including coaches, instructors and officials) and ministers of religion continue to be exempt from the charge.

7.5 There are no other changes. The amount of the charge, processes and exemptions are all otherwise unchanged.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union/ trigger the statement requirements under the European Union (Withdrawal) Act. However, this SI is related to the decision to implement a single global immigration system as a result of the UK leaving the European Union. These changes will be implemented through changes to the Immigration Rules.

9. Consolidation

9.1 The Government does not assess that there is any need for consolidation measures.

10. Consultation outcome

10.1 The Government and the independent Migration Advisory Committee (MAC) have carried out extensive engagement since 2017 on the development of the UK's new Points-Based Immigration System, including two public consultations by the MAC to inform its 2018 and 2020 reports. A public consultation has not taken place regarding the changes to these Regulations, owing to the consequential nature of the changes.

11. Guidance

11.1 Updated guidance for sponsors relating to the charge will be placed on the gov.uk website at https://www.gov.uk/uk-visa-sponsorship-employers/immigration-skills-charge.

12. Impact

12.1 The impact on business, charities or voluntary bodies is, as now, an additional cost for recruiting migrant workers. The Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2020 will bring EEA nationals within the scope of the Immigration Rules. Forthcoming changes to the Immigration Rules will allow business, charities or voluntary bodies to sponsor skilled workers in a broader range of occupations than they may do under the current Tier 2 route. Employers will be required to pay the Immigration Skills Charge for all of these workers meaning that the charge is payable with regard to a wider range of skilled worker recruitment than at present.

12.2 The impact on the public sector is, as now, that those public sector employers that sponsor skilled workers will be required to pay the charge.

12.3 An Impact Assessment has not been prepared for this instrument. The charge is classified as a tax and is therefore out of scope of the new Better Regulation Framework.

13. Regulating small business

13.1 The legislation applies to all employers that are sponsors under the Skilled Worker and Intra-Company Transfer immigration routes, which includes small businesses.

13.2 To minimise the impact of the requirements on small businesses, small businesses that sponsor Skilled Workers pay a reduced rate of £364 per worker per year, as opposed to £1,000 per worker per year for larger businesses. These amounts, and the definitions identifying small businesses, are not being changed by this instrument.

14. Monitoring & review

14.1 Funds raised by the charge are allocated to the skills budgets of the Department for Education and the Devolved Administrations. The Home Office will keep the operation of the charge under review, with support from, amongst others, the Department for Education.

15. Contact

15.1 Queries regarding this instrument should be directed to the Migration Policy Unit, Borders Immigration and Citizenship System, Policy and International Group, Home Office, 2nd Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF, Telephone: 020 7035 4848.

15.2 The Deputy Director for Migration Policy Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Hon. Kevin Foster MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.