Submissions on the Statement of changes in Immigration Rules (HC 590) and government response

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Considerations and recommendations for the Family route

March 2024

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Introduction

On 4 December 2023, the Government announced a five-point plan to reduce legal migration, including an increase in the Minimum Income Requirement (MIR) for partners of British citizens and settled persons, from £18,600 to £38,700. Following public concern, the introduction of the increased MIR has been amended to a phased increase, initially rising to £29,000 on 11 April 2024, then to £34,500 (no specified date) and finally to £38,700 in 'early 2025'.

Notably, in contrast to the original introduction of the MIR in 2012, no assessment has been carried out by the Migration Advisory Committee (MAC) to determine the appropriate level of the MIR increase, nor has the Government published an equality impact assessment.

Statistical context

The policy has been announced in the context of increases in family-related immigration, with the Home Office noting in the immigration statistics for the year ending September 2023 that *'there were 82,395 family-related visas granted in the year ending September 2023, more than double (117% more) the previous year.'*

However, such a comparison is arguably a misleading one given, in particular, the ongoing COVID-19 impacts of the previous years. When comparing family-related grants of leave in the year ending September 2023 with the pre-pandemic period of the year ending September 2019, a more modest increase of 56% emerges (from 52,802 to 82,395). Further, in the intervening years the numbers of grants were significantly *lower* (32,133 in 2020; 36,353 in 2021) – the apparent significant rise between 2022-2023 may be largely a 'correction' of the reduced levels of applications during the COVID-19 period (with families experiencing travel restrictions and/or income disruption due to COVID-19 causing them to have delayed relocation plans/submission of applications).

Moreover, following Brexit, partners of EU nationals (holding pre-settled or settled status), whose marriage/durable relationship was established after 31 December 2020, now form an additional cohort of family member applicants required to apply Appendix FM (where they would previously have entered under the EEA Regulations) – representing route displacement rather than a true increase in family migration.

Given the low-level of family-related grants of leave as a proportion of UK immigration as a whole (approximately 5% of all entry clearance grants), the new policy is unlikely to have a significant impact on net migration in the UK.[1] The Government has acknowledged that the impact of the MIR increase on the number of grants under Appendix FM is uncertain (as we examine below, many applicants who cannot meet the new MIR are likely to succeed in applications based on exceptional circumstances/human rights claims). Conversely, the proposed more than doubling of the MIR can be expected to cause significant hardship for British families and indeed additional cost to the Home Office (as set out further below). These life-altering individual impacts appear difficult to justify in comparison to the modest reduction in net migration resulting from this change.

[1] The Migration Observatory at the University of Oxford, 'Family fortunes: The UK's new income requirement for partner visas' (1 February 2024).

We are therefore taking the opportunity to raise key considerations regarding the forthcoming increases to the MIR and highlight potential mitigations which may alleviate some of the more pronounced impacts on families and on Home Office operations.

Considerations against the proposed MIR increase

1. Policy rationale of ensuring the couple has sufficient funds to finically support the applicant does not warrant the level of the MIR increase

'Burden on the State'/self-sufficiency rationale for the MIR

When introducing the MIR in 2012, the Government set the threshold at £18,600 – the lowest level of gross annual pay at which a family consisting of two adults would not require assistance from the benefits system, as recommended by the Migration Advisory Committee (MAC). The policy aimed to ensure that migrants and their sponsors possessed adequate financial means to support themselves without becoming a burden on the State.

This remains the stated policy aim for the increased MIR threshold: the Government's factsheet of 1 February 2024 states that this change is *'to ensure people only bring dependants to the UK they can support financially',* and the Government has further indicated that the increase *'will ensure people only bring dependants to the UK they can support financially.'*[2] [3]

The proposed level of increase to the MIR does not accord with this policy objective. Even the initial threshold of £29,000 exceeds the amount required for a couple to support themselves without becoming a burden on the State, and the final threshold of £38,700 substantially exceeds this amount.

If ensuring that migrants are not reliant on the State is the primary rationale for the increase, consideration should be given to aligning the level of MIR accordingly – i.e., an updated calculation of the original £18,600 threshold, taking into account inflation and wage growth. As we note below, we consider that the MAC should again be commissioned to assess and advise on the appropriate level of the MIR.

It must also be noted that migrants granted permission under Appendix FM are subject to a condition prohibiting 'recourse to public funds' and are required to pay the Immigration Health Surcharge (IHS). We are not aware of any evidence that the present level of the MIR has failed to deliver (or that an increase in line with inflation would fail to deliver) the policy objective of preventing dependence on public funds and ensuring that sponsors/their partners have sufficient funds to support themselves in the UK.

Paradoxically, the proposed increase to the MIR may actually result in a greater burden upon the State and communities, given the significant risk that the policy may result in more divided families with the attendant impacts (including increasing the likelihood of British/settled persons becoming reliant of public funds in the absence of a partner/co-parent to contribute to family income and

[2] Government factsheet: Reducing Net Migration Factsheet – 1 February 2024.

[3] See Government's response to petition, 'Don't increase the income requirement for family visas to £38,700'.

childcare, and the well documented societal impacts on children and communities as a result of family separation – see our examination of these issues in the section on 'indirect costs').[4]

Inappropriate alignment of MIR increase with Skilled Worker threshold

The Government has stated that it is '*raising the minimum income for family visas to £38,700 in line with the minimum salary threshold for the Skilled Worker route.'*[5]

The initial incremental increase to £29,000 was selected on the basis of being *'the 25th percentile of earnings for jobs which are eligible for Skilled Worker visas.'*, with the further increases to £34,500 and £38,700 representing the 40th and 50th percentiles respectively.*'*[6]

Accordingly, the level of the increase to the MIR appears to have been selected in order to mirror the forthcoming Skilled Worker threshold of £38,700, rather than any calculation of the level at which an individual would not be reliant on public funds. This appears both inconsistent with the stated rationale of the MIR and the fundamental purpose of the two different routes.

It must be noted that the purposes of the Skilled Worker route and the family route are distinctly different. The purpose of the Skilled Worker route is '*for employers to recruit people to work in the UK, in a specific job […] in an eligible skilled occupation*' (Appendix Skilled Worker). The proposed increase in the general salary threshold, to £38,700 (from £26,200), is stated to be aimed at:

> *'encouraging businesses to look to British talent first and invest in their workforce, helping us to deter employers from over-relying on migration, while bringing salaries in line with the average full-time salary for these types of jobs.'*[7]

The Skilled Worker route, and the minimum general and occupational salary thresholds that the route entails, is intended to enable employers to fill genuine vacancies (in eligible skilled roles) whilst seeking to protect resident labour, both in terms of encouraging employers to fill vacancies from the resident workforce before turning to migrant labour and in terms of preventing undercutting of resident workers' wages with lower-cost foreign labour, thereby displacing resident workers.

In contrast, the Family route serves an entirely different purpose – enabling British/settled persons and their overseas national partners (and British/settled children and their overseas national parent) to live together in the UK (including to enjoy their rights to family life under Article 8 of the European Convention on Human Rights (ECHR), without recourse to public funds.

If the purpose of the MIR in the Family route is to ensure that a couple has sufficient funds to support themselves financially, setting the required income at the same level as that in the Skilled Worker route, which has been set to deter employers from recruiting overseas national workers to fill vacancies for skilled roles, would appear entirely incongruous.

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[4] Rita Griffiths, 'No Love on the Dole: The Influence of the UK Means-tested Welfare System on Partnering and Family Structure', Journal of Social Policy 46(3), 543-561 (July 2017) https://doi.org/10.1017/S0047279417000046.

[5] Government factsheet: Reducing Net Migration Factsheet – 1 February 2024.

[6] ibid.

[7] ibid.

Further, applying the same income threshold level for the Skilled Worker route and family members places partners of British/settled persons in a *less* advantageous position than foreign workers in seeking to meet the threshold level. In particular:

- the Skilled Worker route recognises that there are circumstances where a lower salary level is appropriate, providing numerous avenues for lower thresholds to be met, including reductions for 'new entrants' (younger applicants), certain PhD level roles, shortage occupations, and occupations on national pay scales – no such reductions are available to partners of British/settled persons regardless of age or occupation; and
- Skilled Workers' salaries are assessed by reference to their intended *future* salary only – FM applicants must show they/their partner have been in receipt of income at the threshold level for *the last 6 months.*

We submit that, given the very contrasting purposes and policy rationales of these two routes, parity of salary/MIR thresholds appears misplaced. Correlation between the Skilled Worker salary threshold and the MIR for the Family route is not congruous or purpose appropriate. The thresholds in each of these categories should be set at a level appropriate to the very different purposes of each route.

Disproportionality of MIR increase to average earnings

Whilst a three-stage phased increased in now proposed, all three stages are set to be implemented within less than a year (early 2025) – therefore, the ultimate MIR threshold of £38,700 is of greatest relevance in considering the long-term impacts on families. Nevertheless, in this paper we consider the impact of all three thresholds throughout our assessment.

The Government's legal migration statement on estimated immigration impacts states that between 50% to 60% of the UK working population would be able to meet the MIR of £29,000 (i.e., 40-50% would *not* be able to meet the requirement) – suggesting that many financially autonomous families would be ineligible under Appendix FM, even at the first level of increase.[8]

The Migration Observatory at the University of Oxford notes that approximately 60% of the UK working population would be **unable** to meet the MIR at £34,500 and an alarming **70% would be unable to meet the income threshold of £38,700** (meaning that only approximately 30% of UK workers are likely to be able to afford to sponsor family members under Appendix FM from 2025).[9]

These estimates do not include *non-working* British/settled persons, such as those who are the primary caregivers of children, making the total proportion of all British citizens unable to meet the new MIR even higher (we examine further below the disproportionate impacts of the MIR and use of the national median income, in respect of sex, age, ethnicity and region).

The threshold of £38,700 is also higher than the UK's median salary for full-time employees (£35,000), indicating that even if the average salary of UK workers were considered the relevant benchmark for the MIR, the threshold of £38,700 is disproportionately high.[10]

Given that such a substantial proportion of UK workers do not earn sufficient income to meet the proposed MIR to sponsor overseas family members, it is to be expected that the proposed

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[8] Home Office, 'Legal migration statement: estimated immigration impacts' (21 December 2023).
[9] ibid.
[10] Migration Observatory, 'How will new salary thresholds affect UK migration?' (6 December 2023).

threshold will inevitably cause hardship for many British citizens (and their children) who will be unable to bring partners to the UK, resulting in divided families and creating more single-parent households (the consequences of which we address further later).

As noted, by raising the MIR to £29,000, £34,500 and finally £38,700 in line with the Skilled Worker route, the Government appears to have deviated from its stated policy ambition of avoiding reliance on public funds and ensuring that families granted leave under Appendix FM are financially independent. If this is the Government's objective, then a more modest MIR increase, either in line with inflation and real wages or National Minimum Wage, (which is due to increase from £10.42 per hour to £11.44 per hour on 1 April 2024 for workers aged 21 and over) could be a more proportionate approach.[11] [12]

2. Discriminatory/disproportionate demographic outcomes

We highlight below a number of the potential disproportionate demographic outcomes for certain groups, arising from the proposed level of increase to the MIR threshold. Whilst many of these issues are present to an extent under the current MIR, they will become vastly more pronounced with the substantial increase to the MIR.

Region

The planned increase to the MIR will disproportionately affect those living outside London and the Southeast. At £38,700, **the only region with a median income that would meet the MIR is London**.[13]

None of the devolved nations (Scotland, Wales and Northern Ireland) have median income meeting the proposed MIR increase to £38,700.[14]

- Scotland – £35,518
- Wales – £32,371
- Northern Ireland – £32,893

The significant pay disparities between London and the Southeast and the rest of the UK means that the elevated MIR would result in barring a significant proportion of British citizens living outside the capital from being joined by their non-British partners in the UK, *despite their ability to support those family members without recourse to public funds* (noting also that the cost of living, similarly to wages, is lower outside London and the Southeast). In the North-East, for example, only 25% of workers would have sufficient income to sponsor their families to live in the UK with them.[15]

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[11] Low Pay Commission, 'Minimum wage rates for 2024' (21 November 2023).

[12] For example, an annual salary on the updated National Minimum Wage of £11.44 per hour for a worker aged 21 and over employed full-time for 37.5 hours per week would be £22,308. This figure does not include calculations for inflation.

[13] Office of National Statistics, 'Annual Survey of Hours and Earnings (ASHE)' (last updated 12 April 2023).

[14] Office for National Statistics, 'Earnings and hours worked, place of residence by local authority: ASHE Table 8 – 2023 provisional edition of this dataset' (1 November 2023). Note: this data is based on median gross annual earnings for full-time working adults.

[15] Migration Observatory, 'Family fortunes: The UK's new income requirement for partner visas' (1 February 2024).

These stark regional differences would result in wholly disproportionate impacts on families outside of London and the Southeast, including in the devolved nations, regardless of their ability to finically support their overseas national family members, and would not be commensurate with the aim of ensuring that migrants do not rely on public funds/can finically support themselves.

Sex

The Migration Observatory notes that *'whereas around 60% of men earn less than the new income requirement, this rises to more than 75% for women.'*[16]

Breaking this down, when assessing the percentage of UK employees who meet the new income threshold, only 21% of female workers could be eligible to sponsor a family member with an MIR of £38,700 (26% at £34,500 and 36% at £29,000). Conversely, 39% of male workers could be eligible to sponsor a family member with an MIR of £38,700 (47% at £34,500 and 58% at £29,000).[17]

It should be noted that these figures only account for *working* women – as women are more likely to be full-time caregivers for children, the true proportion of women able to satisfy the new MIR threshold is likely to be far lower.

With the ONS estimating the average age for women in the UK to have their first child as 30.9 years old, many women will also experience the double impacts on their ability to meet the MIR of age (see below) and part-time working or career breaks for child care preventing them from sponsoring their partner to join the family unit in the UK – at precisely the time that the support of a partner's presence is most needed, in raising a young family and contributing to family income. (See also our observations on the impact of British women with childcare responsibilities due to the current rules for entry clearance applications preventing consideration of the partners income).

These discrepancies between men and women's ability to sponsor foreign national family members are significant. Accordingly, such impactful increases to the MIR threshold will result in discrimination against (or disproportionate impacts for) British citizens/settled persons based on gender.

Age

The proposed income thresholds for the Family route disproportionately impact young families: at £38,700, **only 22% of employees aged 25 to 29 would meet the MIR** (30% at £34,500 and 46% at £29,000) and **34% for employees ages 30 to 34** (42% at £34,500 and 55% at £29,000).[18]

In December 2023, the House of Commons Library calculated that median pay in the UK for 18- to 21-year-olds is £22,932; for 22- to 29-year-olds is £30,316; and for 30- to 39-year-olds is £37,544.[19] **If the MIR threshold were to be ultimately increased to £38,700, only those over the age of 40 would have a median salary high enough to satisfy the MIR.**

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[16] ibid.

[17] The Guardian, 'Home Office accused of 'chaos' after U-turn on salary threshold for family visa' (21 December 2023).

[18] Migration Observatory, 'Family fortunes'.

[19] House of Commons Library, 'Average earnings by age and region' (18 December 2023).

The MIR will therefore adversely impact younger couples to a greater extent. This appears to contrast starkly with government policy in other areas of immigration, seeking to attract/accommodate younger applicants, such as the reduced salary requirements for 'new entrants' in the Skilled Worker route (recognising the lower pay levels of recent graduates/ workers at an early stage in their careers) and widening of Youth Mobility schemes. One of the perceived benefits of younger workers is the longevity of their potential contribution to the UK workforce and tax system (particularly given the challenges the UK, in common most developed countries, now face of an aging population).[20] The reality of the proposed measures suggest that it would prove easier, faster and less expensive for young couples to unite in the UK through use of other routes such as the new entrant provisions of the Skilled Worker route than to do so under the more appropriate (in terms of intended purpose) Family route.

Younger applicants are also more likely to have pre-school-age children (as noted above, in respect of women), making the presence of both parents all the more important to enable families to juggle substantial childcare with working to provide family income – divided families are more like to become reliant on the state than united families (see further below).

Ethnicity

The impact of an increased MIR is stark for certain ethnicities, with the following percentage of employees meeting the proposed income threshold at £38,700:[21]

- White – 29%
- Pakistani – 23%
- Black/African/Caribbean – 22%
- Bangladeshi – 21%

No single ethnicity surveyed would have a majority of individuals capable of meeting proposed increases to the MIR. With Pakistani and Indian nationals accounting for 25% of the total family-related grants of leave issued in YE September 2023, the Government ought to consider disproportionate impacts on certain ethnic groups in line with the importance of family stability and unity.[22]

Given the concerns highlighted above, we consider that publication of an equality impact assessment is urgently required, prior to the Government finalising the proposed increases to the MIR in order to properly inform policy considerations.

Impacts on British families and children

The negative effects of familial separation caused by the existing income requirements have been well documented, including the developmental and emotional issues caused in children of separated families.

Section 55 of the Borders, Citizenship and Immigration Act 2009, of course, requires the Home Office to carry out its existing functions in a way that considers the need to safeguard and promote

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[20] International Monetary Fund, 'Aging is the real population bomb' (June 2023) – *'the most formidable demographic challenge facing the world is no longer rapid population growth but population aging.'*
[21] Migration Observatory, 'Family fortunes'.
[22] Home Office, 'Immigration system statistics, year ending September 2023: Why do people come to the UK? For family reasons' (7 December 2023).

the welfare of children in the UK.[23] Such significant changes to the MIR will cause many more children (including many British children) to be separated from one of their parents, not only risking breaches of the Government's Section 55 duty but also risking less positive outcomes for those children and attendant impacts for communities (see below).[24]

In addition to changes to the MIR, recent increases in application fees and the IHS entail that financial strain and expectations on families are higher than ever. Family route applications are currently charged at £1,846 **– over 500% of the estimated unit cost of processing** such applications (£366).[25] Indeed, the House of Commons Library notes that UK immigration costs are significantly higher than those in other Western countries such as Canada, Germany, France and the USA.[26]

Given the importance of the Family route to maintain cohesion of British families, acknowledgement of the negative impacts of the MIR increase in conjunction with high application fees is even more pressing.

3. Indirect costs

Increase in complex applications

The increase of the MIR to £38,700 is likely to result in a significant increase in the number of complex applications on the basis of exceptional circumstances and claims under Article 8 of the ECHR. Such applications are far more complex, requiring additional caseworker time to consider them and are likely to give rise to additional appeals and litigation.

Further, an increase in the number of applicants applying under the Appendix FM ten-year route (rather than the five-year route) will increase the overall number of applications (requiring at least five applications per applicant, from initial leave to enter/remain to ultimately reach the indefinite leave to remain stage) to be considered by the Home Office.

The UKVI Family and Human Rights Unit, responsible for processing in-country applications for leave to remain on the ten-year partner, parent and private life routes, is already under significant operational pressure with substantial delays and a current service standard of twelve months for decisions.

These factors suggest that the proposed substantial increase to the MIR is likely to result in a significant increase in downstream operating pressures/costs for the Home Office.

Financial and societal costs of family separation

Within a wider policy perspective, policies such as the MIR increase to £38,700, which result in British children being separated from one of their parents are additionally likely to result in wider costs/impacts to the State and society more generally.

Statistically, children from single-parent households are far more likely to interact with the criminal justice system, leading to significant downstream costs for the Government incurred by the police,

[23] House of Lords Justice and Home Affairs Committee, '1st Report of Session 2022-2023 – All families matter: An inquiry into family migration' (28 February 2023) .
[24] ibid.
[25] UK Visas and Immigration, 'Visa fees transparency data' (31 January 2024).
[26] House of Commons Library, 'Immigration fees' (24 October 2023).

courts and prison system.[27] Single parents are far more likely to require recourse to public funds and therefore be a greater burden on the State.[28]

Increasing the MIR to £38,700 (a level that, as noted above, approximately 70% of workers in the UK would not meet) will increase the number of families in the UK with children separated from a parent and unable to live together as a family unit in the UK, and result in additional costs to in the long term.

We would be keen to understand to what extent the Government has undertaken an assessment of the additional that may result and to what extent the Home Office has consulted with other relevant departments, including the Ministry of Justice and Department for Work and Pensions on the impact of the MIR policy in other areas of government policy and operations.

4. Limited effect on net migration figures and cost-benefit analysis

Whilst an increase to the MIR would cause significant hardship to British families and children, the Government has indicated that it is unsure of the estimated volume impacts on net migration statistics. In its Estimated Immigration Impacts assessment, the Home Office calculates that the impact of an increase of the MIR to £29,000 on inflows is '*uncertain – possibly low tens of thousands'*.

Increase in Article 8 claims

Some applicants may still be granted permission under the Family route if refusal of their application meets the exceptional circumstances test and would result in a breach of Article 8 of the European Convention of Human Rights. It is projected that, *excluding* Article 8 claims and additional income considerations, a range of 10,000 to 30,000 individuals who might have otherwise been eligible through the Family route would be disqualified based solely on their earnings - calculations based on this approach do not accurately reflect likely application volumes. The Government's legal migration statement on estimated immigration impacts concedes that Article 8 applications could increase *significantly* as families who would have previously met the MIR threshold would no longer be able to do so, which would likely offset a large proportion of the decrease in Appendix FM applications.

Displacement to alternative immigration categories

Furthermore, prospective Appendix FM applicants seeking to join/accompany their partners/children in the UK may instead choose to apply under different immigration categories to do so. This displacement of applicants into other routes, such as sponsored work, study and youth mobility routes, would additionally offset the projected decrease in Appendix FM applicants, which does not appear to have been taken into account in the Government's estimates.

The lack of impact on net migration figures is all the more stark when coupled with the significant costs this change would have on families, communities and the Home Office itself, such as applications occupying more caseworker time, more complex applications and the prospect of prolonged legal challenges, as detailed above.

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[27] Centre for Social Justice, 'Being tough on the causes of crime: Tackling family breakdown to prevent youth crime' (February 2007).

[28] Griffiths, 'No Love on the Dole'.

Potential future litigation and MM Lebanon

In the case of *R (on the application of MM (Lebanon)) (Appellant) v Secretary of State for the Home Department (Respondent)*, the Supreme Court ruled that the £18,600 MIR threshold was not itself lawful and did not breach the Home Office's duty to safeguard the interests of children (under Section 55 of the Borders, Citizenship and Immigration Act 2009). However, the Court observed that the MIR was legal **insofar as the rate set was at a '*rational level*' connected to the aim of ensuring avoidance of burden on the State**. The Court also ruled that Home Office *would* be in breach of its section 55 duty if it did not permit families to rely on alternative sources of income (such as support from third parties) in order to satisfy this threshold.[29] Not to do so in could result in breach of the ECHR and/or the Human Rights Act 1998 (HRA).[30]

With the doubling of the MIR to £38,700, well beyond the level at which an overseas national partner can be financially supported without recourse to public funds, and the likely adverse impacts (on children in particular), there would appear to be a significant risk of further legal challenges as to lawfulness.

As noted above, we anticipate a substantial increase in applications granted on the basis of exceptional circumstances/Article 8 grounds if the Home Office is to comply with its obligations under Section 55 of the Borders, Citizenship and Immigration Act 2009 and the ECHR.

The cost-benefit analysis suggests nominal gains in terms of reducing net migration, whilst simultaneously resulting in significant adverse impacts and disproportionate financial and social pressures for British families and communities, as well as operational and costs impact for the Home Office and the state.

Recommendations for negative impact mitigation

We set out below three key recommendations: first, the urgent need for an independent MAC consultation to determine the appropriate MIR threshold; second, broadening the accepted sources of income/funds for families to meet the MIR, with suggestions for potential mechanisms; third, reconsideration of the ten-year route to settlement for families that cannot meet the MIR.

1. Urgent need for an independent MAC consultation

Prior to introducing the £18,600 MIR threshold in 2012, the Government commissioned the MAC to advise on the introduction of the financial requirement and conducted a public consultation with stakeholders. An extensive process was followed to identify the threshold of £18,600 and the economic and social impact of introducing the threshold was considered in detail. No such consultation has taken place for the proposed MIR increase.

For the current proposed increase in April 2024, it appears – as highlighted above – that the main consideration was the correlation to the median salary for roles eligible for sponsorship under the Skilled Worker category. As noted, correlation of financial thresholds for the Family route and

[29] *R (on the application of MM (Lebanon)) (Appellant) v Secretary of State for the Home Department (Respondent)* [2017] UKSC 10 – judgment available here.
[30] ibid.

Skilled Worker route should not be the basis for substantive policy formulation, given the vastly different purposes of these immigration categories, as well as human rights considerations applicable to the former.

As set out above, the increase of the MIR threshold to £38,700 does not align with the Government's stated policy objective of avoiding reliance on public funds and ensuring that families, including individuals granted leave under Appendix FM, are not a burden on the State. The minimal decrease in net migration that may result from such policies proves difficult to balance against such life-altering ramifications for families, and other cost impacts to public finances and society, without independent review and consultation of the Government's current plans.

Given this analysis, before introducing a policy change with such far-reaching effects, we would urge that the MAC is instructed as a priority to undertake a thorough consultation and analysis to identify an appropriate and fully considered revised MIR threshold per the Government's stated policy rationale of promoting self-reliance, and that will not have the same disproportionate and potentially discriminatory impact on British families as the current proposal. As an indication of a salary threshold which would reflect the aim of preventing migrants being a burden on the state - the initial £18,600 threshold (which was initially calculated to ensure self-reliance of migrants) would now be approximately £25,500, taking inflation into account.[31]

2. Broadening available methods to satisfy the MIR

There are several steps that could be taken to mitigate the impact of any increase to the MIR threshold on British families. Such changes would require only minor amendments to the Immigration Rules/policy guidance, whilst still maintaining the integrity of the system and continuing to ensure that family members coming to the UK under Appendix FM will be able to support themselves financially without requiring access to public funds.

Allowing reliance on either partner's income for entry clearance applications

Under the current Immigration Rules, when applying for entry clearance, employment or self-employment income of the applicant themselves cannot be considered when assessing whether the financial requirement is satisfied (in contrast to leave to remain applications), even if that income is substantially in excess of the MIR threshold.

Where the couple is returning/relocating to the UK from overseas, the British or settled partner's *overseas* income is counted towards satisfying the MIR (based on the last 6 months of their employment overseas and a job offer in the UK to start within 3 months, at the requisite income level). The policy rationale to exclude the applicant partner's income from being accepted on the same basis as the returning British/settled partner's income is unclear.

As previously highlighted, the Government has been clear that a key policy justification for increasing the MIR is to ensure that partners coming to the UK are able to financially support themselves. Allowing applicants to rely on their own income (on the same basis as the returning British/settled partner's income in accepted) would not have any adverse impact on the possibility of a couple being unable to support themselves in the UK – whether the couple rely on income

[31] Bank of England, Inflation calculator (based on comparisons of 2012 to January 2024).

from one or both partners to support themselves and any dependants should not be material to any assessment if the requisite MIR threshold can be satisfied. Accordingly, the policy rationale for this rule is unclear given the Government's aims to ensure avoidance of burden on the State.

Notably, extension of this provision to both partners' incomes would benefit British/settled women who are primary child carers (particularly those with young children not yet of school age) but whose foreign national partners are in well-remunerated roles. In our experience, these families often have no choice but to rely entirely on cash savings, requiring at least £62,500 held for 6 months, to meet the financial requirement – given that the savings option to meet the MIR is also expected to rise in line with the doubling of the MIR, this is likely to prove untenable even for highly affluent families. When considered in combination with the statistics on disproportionate demographic outcomes and gender, this change is all the more pressing.

Allowing an applicant to rely on their overseas income (and a UK job offer) in the same way as the returning British/settled partner) would be a constructive and proportionate change to the allowable methods to meet the MIR, in response to the substantial increase of the MIR level. It would not have a material bearing on the need for the couple to support themselves financially but would alleviate certain adverse impacts the increased MIR will cause. Provided that the same evidential requirements are in place for foreign nationals applying for entry clearance using their own income as is currently required for returning British citizens/settled persons, reliability factors remain the same. This policy architecture is already in place for permission to stay applications and could therefore be extended for entry clearance applications with minimal additional drafting.

Permitting additional combinations of income types

The Rules do not currently permit applicants to combine certain different types of income to satisfy the MIR. We recommend that applicants be permitted to combine a wider range of lawfully earned, taxed and liquefiable income and savings.

For example, income from self-employment cannot currently be combined with savings to satisfy the MIR, whereas income from employed earnings can be combined with savings. Simplification of these provisions, as well as making the income requirements under Appendix FM more flexible and streamlined, would provide a straightforward way to mitigate impacts of the MIR increase for families who otherwise would not constitute a burden on the State but struggle to meet current evidential requirements.

Expansion of third-party support mechanisms

At present, the financial requirement cannot be met in whole or in part by promises of financial support from third parties unless the applicant can show that there are exceptional circumstances which would render a refusal of their application a breach of their Article 8 rights because such refusal could result in unjustifiably harsh consequences for them, their partner or a relevant child.

We would suggest that it would be proportionate to enable applicants to satisfy the financial requirement based on credible guarantees of support from third parties without the need for it to be accepted that there are exceptional circumstances in place.

Any increase to the MIR will mean that many individuals will no longer have sufficient salaries to satisfy the requirement. However, these same people may well have family members who are happy to provide guarantees of financial support to them whilst they set up their lives in the UK.

3. Reconsideration of the ten-year route to settlement for families

We contend that the ten-year route to settlement be used as a last resource to keep families together and alleviate financial pressures that families will be placed under because of the proposed increase to the MIR threshold and recent fee increases for immigration applications. Accordingly, the Government ought to reconsider the current use of the ten-year route to settlement for Family route migrants and rethink the policy benefit of this pathway to settlement, given its implications for family units.

Applicants that struggle to satisfy the financial requirement and are ultimately granted permission based on exceptional circumstances, are granted permission with the caveat that they will need to wait ten years (rather than the standard five) before becoming eligible for indefinite leave to remain in the UK (ILR). This means that where the Home Office has assessed that there are exceptional circumstances in a family's situation which would mean it would be unjustifiably harsh to refuse their application, the same family are subsequently placed on a longer (and accordingly far more expensive) route to ILR.

Reunite Families UK has compiled data in their recently published report on the mental health impact of the minimum income requirement which shows how much a family with one non-British/settled partner and child on the ten-year route to ILR would spend over that ten-year period on IHS costs, application fees and biometrics appointment fees. The data shows that the total costs will be approximately £34,152. Conversely, the same family would only be required to pay costs of approximately £20,828 if they were on the five-year route to ILR.[32] This means that families with lower incomes who cannot satisfy the financial requirement by 'standard' means are required to incur additional costs an additional £13,243. Additionally, individuals on the ten-year route face compounding challenges, such as employment difficulties and physical and mental health problems, thus further impacting financial stability.[33] The financial viability of this route for applicants who have had the exceptionality of their circumstances accepted by the Home Office will increasingly prove untenable and the Government could expect substantial increases in fee waiver applications, accordingly. These overarching financial pressures caused by the ten-year route and high application fees make families' financial situations even more precarious – this could prove contrary to the Home Office's Section 55 duties to safeguard and promote the welfare of children in the UK and result in serious familial consequences.

We recognise the Government's overarching policy objective of avoiding reliance on public funds and ensuring that families including individuals granted leave under Appendix FM are self-reliant rather than State-reliant. However, the ten-year route to ILR does not decrease a family's likelihood of being required to rely on the State for financial support, but rather increases it due to the mounting costs which families are required to cover for each application that must be made and compounding financial struggles they experience because of their immigration status.

[32] Reunite Families UK, 'Family Migration Rules: Spouse/Partner Migration Rules: An initial findings report examining the mental health impact of the rules on children and families' (December 2023).
[33] Lucy Mort et al, 'A Punishing Process: Experiences of People on the 10-Year Route to Settlement' (March 2023).

Conclusion

By way of summary, we would request that the proposed forthcoming increase to the MIR be paused considering the disproportionate and potentially litigatory impact of this change.

The MAC should then be instructed as a priority to undertake a thorough consultation to identify an appropriate and fully considered revised MIR threshold.

The Home Office ought equally to consider the impact of any prospective MIR threshold increase on British families and how such effects can be mitigated. We would accordingly submit the following:

- that applicants be allowed to rely on their own income to satisfy the financial requirement;
- that applicants be permitted to rely on reliable promises of third-party support without needing to evidence exceptional circumstances;
- that applicants be permitted to combine all various sources of legally earned income to meet the MIR; and
- reconsideration of deployment of the ten-year route to settlement for the Family route.

Implementing these straightforward recommendations would allow the Home Office to continue to be sure that all those coming to the UK are able to support themselves financially, whilst also easing the financial pressure and anxiety on British families. They would also prepare the Government Legal Department against future legal arguments.

In the interim, Laura Devine Immigration is prepared and eager to engage in further discussions with the Government to best serve clients and families during this pivotal time for migration policy.

Evidence to the Secondary Legislation Scrutiny Committee for its consideration of the Statement of Changes to the Immigration Rules: HC 590, 14 March 2024

Introduction

1. The Immigration Law Practitioners' Association (ILPA) is a professional association and registered charity, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession, and to help ensure a fair and human rights-based immigration and asylum system.

2. Reunite Families UK (RFUK) is a lived experience non-profit organisation, having been established in 2017 as a Facebook group by two mothers who were themselves affected by the spouse/partner migration rules. RFUK supports and advocates for couples and families affected by the UK's spouse visa rules. The organisation helps them navigate the process and improve their quality of life whilst they are on their settlement journey. We believe people have a right to be with their loved ones here in the UK and shouldn't have to overcome increasingly impossible hurdles to be able to do so.

3. We ask that the Secondary Legislation Scrutiny Committee draw the Statement of Changes to the Immigration Rules: HC 590, published on 14 March 2024, to the special attention of the House. Our evidence focuses on the changes to the Minimum Income Requirement (MIR), i.e. changes to Appendices FM and FM-SE which contain the financial requirement for family visas. HC 590 increases the MIR to sponsor a partner from a gross annual income equivalent of £18,600 to £29,000 (the 25th percentile of earnings for jobs which are eligible for Skilled Worker visas), before increasing to the 40th percentile (currently £34,500) and the 50th percentile (£38,700) in early 2025. To rely on cash savings held for six months, under the new MIR they would total £88,500, rising to £112,750 next year.[1] There is to be no additional sum required to sponsor children.

I. The Statement of Changes is politically and legally important, and raises public policy issues

4. This impact of the new MIR will be far-reaching. Due to the scope of families now sponsored under Appendix FM, the MIR will affect the ability of British citizens, settled persons, stateless persons, and persons with protection status, pre-settled status under the EU Settlement Scheme,[2] and limited leave as a worker or business person under Appendix ECAA Extension of Stay to sponsor their partners and children to come to or remain in the UK. It will now significantly impact UK- EU couples as well as those family members of EU citizens, who are ineligible for EUSS family permits under the Immigration Rules.

[1] This is calculated by taking the MIR (in this case, £29,000 rising to £38,700) multiplying it by 2.5 (i.e. the number of years of granted leave), and then adding the minimum of £16,000.

[2] In particular, 'an EEA national in the UK who holds valid limited leave to enter or remain granted under paragraph EU3 of Appendix EU to these Rules on the basis of meeting condition 1 in paragraph EU14 of that Appendix'.

5. Around 50% of UK employees earn less than the £29,000pa threshold.[3] Individuals aged 21 and over, who work 35 hours per week, and are paid the National Living Wage (from 1 April 2024), will earn approximately £20,820pa. The December 2023 report of RFUK found that the effect of the MIR is discriminatory as it disproportionately affects protected groups, those living in the South East and working single parents (in particular, mothers).[4] There is a £182 difference in the weekly median income between a full-time employee in London and one in North East England.[5] There is also disparity on the basis of protected characteristics, for example:
   a. **race**, with Pakistani, Bangladeshi, and Black/African/Caribbean British citizens disproportionately affected;[6]
   b. **sex and maternity**, as female part-time workers earned a gross median income of £12,876 and their male counterparts earned £12,262,[7] and receipt of relevant public funds (i.e. Child Tax Credit and Child Benefit) does not exempt a lone-parent from meeting the financial requirement; and
   c. **age**, with individuals under 30 and over 50 disproportionately affected; for example, the gross median weekly pay for full-time employees in the UK, aged 18 to 21, is £441.[8]

6. The new threshold does not consider or account for the many people, often women, who work part-time and care for the child whilst trying to meet the threshold to sponsor their partner and in some cases step-children who currently live abroad. Members of the Reunite Families' community have in some cases been separated for over 4 years as a result of the current rules.

Raquel's Story

"The school told me he is grieving because he's lost his daddy. We've thought about bringing him to the UK for a visit but the cost of it would take away from the savings for the visa application process. Also, I'm worried what it would do to my boys if they were forced to say goodbye to their father again."

Raquel was living in Brazil when she met her husband, Manoel. They married, and had two sons together. A series of events led the family to decide to try and relocate to the UK. Raquel, who has worked teaching in universities and private colleges, is still trying to reach the current MIR threshold of £22,400 (£18,600, plus £3,800 for a dependent child) to bring over her husband and

[3] Migration Observatory, 'Family fortunes: The UK's new income requirement for partner visas' (1 February 2024) <https://migrationobservatory.ox.ac.uk/resources/commentaries/family-fortunes-the-uks-new-income-requirement-for-partner-visas/> accessed 29 February 2024.
[4] Reunite Families UK, 'Family Migration Rules: Spouse / Partner Migration Rules: An initial findings report examining the mental health impact of the rules on children and families' (December 2023) <https://www.reunitefamiliesuk.co.uk/wp-content/uploads/2023/12/RFUK-Year-1-Initial-Findings-Mental-Health-Impact-of-the-Spouse-Migration-Rules-FINAL.pdf> accessed 19 March 2024 ('RFUK Report').
[5] ibid.
[6] ibid.
[7] Office for National Statistics, 'Earnings and hours worked, all employees: ASHE Table 1' (1 November 2023) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/allemployeesashetable1> accessed 29 February 2024, Table 1.7a 'Annual Pay - Gross 2023'.
[8] House of Commons Library, 'Average earnings by age and region' (18 December 2023) <https://commonslibrary.parliament.uk/research-briefings/cbp-8456/> accessed 29 February 2024.

her stepdaughter, having been made redundant during the pandemic, while saving for the onerous recently increased visa application and Immigration Health Charge fees totalling near £10,000 for the first set of applications. As an enforced single mother of two boys, now aged 5 and 6, much of her income goes to childcare and basic living costs. She is unlikely to find work that will meet the new MIR.

The oldest son has been "deeply affected" by being separated from Daddy. He suffers from "separation anxiety and mental trauma". The youngest son remembers less of daddy, but Raquel says it's a "ticking time bomb" having discovered from grandma that he holds back feelings to not upset mummy.

7. The Home Office partially recognises that different individuals in different situations are still deserving of sponsoring their family members. The MIR in Appendix Armed Forces is increased *'to £23,496, which is the 2023/4 salary threshold for an Army (including the Brigade of Gurkhas) Private and their Royal Navy, Royal Marines and Royal Air Force equivalents on completion of training'.*[9] The Home Office refuses to accept this justification may also apply to other professions earning less than £29,000pa, absent exceptional circumstances, such as an NHS employee working below Band 5, or in Band 5 with less than two years' tenure,[10] junior Home Office staff,[11] some legal aid solicitors,[12] trainees in the legal field who the Law Society recommends are paid £26,068 in London, and £23,122 outside of London,[13] and teachers like Raquel.

8. These changes are legally important and engage the public sector equality duty, the prohibition of discrimination in Article 14 of the European Convention on Human Rights (ECHR) as the right to respect for private and family life (Article 8 ECHR) is engaged in cases of family separation, and the Home Secretary's statutory duty to safeguard and promote the welfare of children.[14]

II. The Statement of Changes will imperfectly achieve its policy objectives

9. The Explanatory Memorandum (EM) states that the MIR *'is being amended as it has not been increased for over a decade and no longer reflects the level of income required by a family to ensure they are self-sufficient and do not need to rely on public funds.'*[15]

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[9] Explanatory Memorandum to the Statement of Changes in Immigration Rules Presented to Parliament on 14 March 2024 (HC 590) ('EM') <https://assets.publishing.service.gov.uk/media/65f18e90133c22b8eecd3893/E03091226_-__HC_590__-_EXPLANATORY_MEMORANDUM__Web_Accessible_.pdf> accessed 18 March 2024, §5.38-5.40.
[10] 'Find NHS Pay Bands 2023/24' <https://www.nhsbands.co.uk/> accessed 29 February 2024.
[11] Home Office, 'Home Office: structure and salaries, 2023' (last updated 7 November 2023) <https://www.gov.uk/government/publications/home-office-structure-and-salaries-2023> accessed 29 February 2024.
[12] Legal Aid Practitioners Group, 'We are Legal Aid - Findings from the 2021 Legal Aid Census' (March 2022) <https://lapg.co.uk/wp-content/uploads/We-Are-Legal-Aid_Findings-from-the-2021-Legal-Aid-Census_Final.pdf> accessed 29 February 2024.
[13] The Law Society, 'Recommended minimum salary for trainee solicitors and SQE candidates' (31 July 2023) <https://www.lawsociety.org.uk/topics/hr-and-people-management/recommended-minimum-salary-for-trainee-solicitors-and-sqe-candidates> accessed 29 February 2024.
[14] Borders, Citizenship and Immigration Act 2009, section 55.
[15] EM, §4.1 and §5.14.

No Rational Connection

10. There is no rational connection between the 25th percentile of earnings for jobs which are eligible for Skilled Worker visas and the amount necessary for British and settled people to sponsor their family members to come to or remain in the UK without reliance on public funds. The seemingly arbitrary new MIR is illogical for the following reasons:

   a. **There is no basis for asserting that requiring the sponsor (e.g. a non-migrant British citizen) to have an income of £29,000pa to bring their partner to the UK will '*help ensure that migrants are more likely to make a net positive contribution to the public finances*'.[16]** Instead, highly skilled and productive members of the settled population may leave the UK to live with their family members overseas, resulting in a loss to the British economy.[17] The Government should not seek to motivate British citizens to take high-wage, high-productivity, high-skill roles by holding over their heads the threat of family separation.

   b. **It is perverse for the Government to argue that family members need not rely on public funds, when this is already a condition of their leave,**[18] only lifted by the Home Office following a very small minority of migrants making a 'change of conditions' application[19] on narrow grounds (destitution, risk of imminent destitution, welfare of a relevant child, or exceptional circumstances affecting the family's income or expenditure).

   c. **It will be easier for sponsored individuals to bring their dependants to the UK, than it will be for British citizens to sponsor their partners**. For example, a commonwealth citizen with a grandparent born in the UK, applying on the basis of UK ancestry, would only need to show 'that there will be adequate maintenance and accommodation' for them and their family without recourse to public funds.[20] A High Potential Individual (i.e. a migrant who has been awarded a qualification by an eligible foreign university) only has a maintenance requirement if they have been living in the UK for less than 12 months, and all they must show is savings of £285 for a partner, £315 for a child, and £200 for each additional child available for 28 consecutive days.[21] A British citizen would need to show £88,500 in savings for 6 months.

   d. **There is no evidence that the MIR gives due weight to the benefits which joining families bring to families and society.** This is significant, as the MAC highlighted in its 2020 annual

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[16] EM, §5.18 (emphasis added).
[17] See for instance the impact on the NHS workforce in House of Lords Justice and Home Affairs Committee, 'All families matter: An inquiry into family migration' (28 February 2023) <https://committees.parliament.uk/publications/34107/documents/188323/default/> accessed 19 March 2024, ('Justice and Home Affairs Committee 'All families matter' Report') §184.
[18] Home Office, 'Public Funds' (v 19.0, 5 October 2023) <https://assets.publishing.service.gov.uk/media/651eb1b279fc58000d639649/Public+funds__1_.pdf> accessed 19 March 2024.
[19] Migration Observatory, 'Deprivation and the no recourse to public funds (NRPF) condition' (15 November 2023) <https://migrationobservatory.ox.ac.uk/resources/briefings/deprivation-and-the-no-recourse-to-public-funds-nrpf-condition/> accessed 19 March 2024. At the end of 2022, about 2.6 million people had visas with the NRPF condition, and there were only 2,500 successful applications to lift the NRPF condition in 2022.
[20] Immigration Rules, Appendix UK Ancestry, UKA 33.1.
[21] Immigration Rules, Appendix High Potential Individual, HPI 17.3 and 17.5.

report that previous analysis of the MIR gave 'insufficient attention to the benefits that accrue, to both the family and society' from family migration and it 'regrets that the 2012 reform placed too great an emphasis on economic and fiscal considerations'.[22]

e. **The MIR makes it harder rather than easier for mixed nationality families to participate fully in society.** The families make sacrifices on food, accommodation, education, employment, healthcare and socialisation. Marginalising these families fosters societal division and tension, which is the opposite effect to that intended by the Rules.[23]

11. The Justice and Home Affairs Committee stated only last year: *'We did not receive any evidence suggesting that the financial requirement is achieving its aims. It does not promote social cohesion, nor does it protect public finances. It achieves the opposite. We recognise that, to foster social cohesion, families need sufficient resources, set at around benefits level… The financial requirement should be revisited to be more flexible and to focus on the likelihood of future income of the family unit rather than on the sponsor's past income. The threshold should not increase'.*[24]

<u>More Complex Human Rights Grants</u>

12. The EM states that increasing the MIR will support *'the aim to reduce the overall level of net migration'*.[25] Yet, the Home Office states that *'before accounting for Article 8 claims and other income, an estimated range of between 10,000 to 30,000 people who may otherwise have qualified via the family route would be unable to do so, on the basis of earnings alone.'*[26] Compared to the net migration figure of 672,000, this is a minute reduction. Furthermore, the Home Office's estimate of 10,000 to 30,000 fails to account for Article 8 claims. The Home Office further states that *'reflecting obligations under Article 8, even where the MIR is not met, it is assumed that some applicants may still be granted permission under the family route. As no exact estimate of eligibility through this route is possible, the overall impact of the change is uncertain.'*[27]

13. The Home Office ought to instead consider the resulting operational impact of a greater proportion of people relying on their Article 8 ECHR rights to apply for a family visa. It is not clear what, if any, measures the Home Office has taken to manage this extra burden. The Family and Human Rights Unit, which is responsible for processing in-country applications for leave to remain in the UK on the parent, partner (ten-year), and private life routes, fee waivers, and in-country asylum intake is likely to face a significant increase in applications. The Unit is already facing severe

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[22] MAC, 'Annual Report' (December 2020) <https://assets.publishing.service.gov.uk/media/5fd88ff1e90e076631fb2285/Annual_Report_2020_BB.pdf> accessed 19 March 2024, page 23; Justice and Home Affairs Committee 'All families matter' Report, §84.

[23] RFUK Report, pages 23-27; Justice and Home Affairs Committee 'All families matter' Report §§153 and 159.

[24] Justice and Home Affairs Committee 'All families matter' Report §83-85.

[25] EM, §5.18.

[26] Home Office, Legal Migration Statement 4th December 2023 - Estimated Immigration Impacts (December 2023) <https://assets.publishing.service.gov.uk/media/6581835023b70a0013234bcd/Legal+Migration+Statement+4th+December+2023+-+Estimated+Volume+Impacts.pdf> accessed 18 March 2024 ('Home Office Estimated Impacts') §55.

[27] ibid §54, The Home Office accepts that it is 'likely a greater proportion of people will no longer meet the threshold based on earnings alone and rely on their Article 8 rights'.

pressure and delays. Its service standard to process an application is currently 12 months,[28] and it had 21,578 fee waiver applications outstanding at the end of Q4 2023, which compares to 5,460 at the end of Q4 2022.[29] The service standard for processing overseas applications for entry clearance on a family route is 24 weeks.[30] The likely increase in the complexity of applications will impact the speed at which decisions can be made, resulting in lengthier separation of families seeking to be reunited with loved ones in the UK. Those applications that are refused by the Home Office in the first instance, will ordinarily be appealable, placing a greater burden on the Immigration and Asylum Chamber of the First-tier Tribunal and Upper Tribunal.

14. Individuals who are successful in applying on the basis of exceptional circumstances will be placed on a ten-year (rather than five-year) route to settlement, resulting in further applications per applicant and compounding the issue of Home Office decision-making capacity.[31] The ten-year precarity in immigration status will also cause individuals financial, employment, and health difficulties, particularly affecting children's life and education prospects, mental health and well-being.[32] This will not safeguard and promote the welfare of children in the UK in accordance with the Home Secretary's statutory obligation to do so.

15. The increased MIR will not prevent migrants from entering or staying in the UK. Rather, it will increase the number of migrants granted permission to enter or stay on complex human rights grounds or following appeals which will increase Home Office and Tribunal workload, worsen delay and backlogs, and impact the lives of migrants. For these reasons, the changes will not achieve their policy objectives, imperfectly or otherwise.

III. Explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation

16. The Home Office has repeatedly claimed that a full impact assessment regarding the package of immigration changes announced to tackle net migration in December 2023 exists.[33] It has said it will publish an 'Equality Impact Assessment on this change in due course'.[34] However, no full

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[28] UK Visas and Immigration 'Visa processing times: applications inside the UK' (updated 19 February 2024) <https://www.gov.uk/guidance/visa-processing-times-applications-inside-the-uk#family-visas> accessed 4 March 2024.

[29] UK Visas and Immigration 'FW_01: Fee Waiver Applications' (Immigration and Protection Data: Q4 2023, updated 7 March 2024) <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fmedia%2F65f0270e9812270011f6129e%2FUKVI_IP_Q4_2023%2B_3_.xlsx&wdOrigin=BROWSELINK> accessed 18 March 2024.

[30] UK Visas and Immigration, 'Visa processing times: applications outside the UK' (updated 19 February 2024) <https://www.gov.uk/guidance/visa-processing-times-applications-outside-the-uk> accessed 4 March 2024.

[31] Immigration Rules, Appendix FM, GEN 3.2.(3).

[32] RFUK Report; Lucy Mort, Josephine Whitaker-Yilmaz, Marley Morris and Amanda Shah, '"A Punishing Process": Experiences of People on the 10-year Route to Settlement' (2 March 2023) page 35 <https://www.ippr.org/articles/a-punishing-process> accessed 1 March 2024.

[33] EM, §9.2; Explanatory Memorandum to Statement of Changes in Immigration Rules presented to Parliament on 19 February 2024 (HC 556) <https://assets.publishing.service.gov.uk/media/65cf88d00f4eb10011a981a2/E03074471_-_HC_556_-_EXPLANATORY_MEMORANDUM__Web_Accessible_.pdf> accessed 18 March 2024; Home Office Estimated Impacts §3; UK Parliament,

[34] Question for Home Office (UIN 14147, tabled on 16 February 2024) <https://questions-statements.parliament.uk/written-questions/detail/2024-02-16/14147> accessed 19 March 2024.

Impact Assessment (IA) or Equality Impact Assessment (EIA) has been published in relation to the MIR changes at the time these Rules were laid before Parliament. The EM contains no analysis of the impact of these changes. It is not possible for Parliament to scrutinise the impact of these changes, the policy objective, or their intended implementation, including the Home Office's compliance with the public sector equality duty under s 149 of the Equality Act 2010.

IV. Inadequacies in the consultation process

17. On 4 December 2023, the Home Secretary stated the MIR would be increased from £18,600 to £38,700.[35] On 21 December 2023, in response to a written question Lord Sharpe of Epsom stated it would incrementally increase *'to £29,000, that is the 25th percentile of earnings for jobs which are eligible for Skilled Worker visas, moving to the 40th percentile (currently £34,500) and finally the 50th percentile (currently £38,700 and the level at which the general skilled worker threshold is set) in the final stage of implementation.'*[36]

18. There was no formal public consultation prior or subsequent to either announcement regarding the MIR policy changes.[37] There has also been no consultation with civil society organisations such as ours, which have specialist knowledge of these Rules and/or first-hand knowledge of the impact of the Rules on families and children. MAC was not commissioned to conduct a review of the MIR. It appears the Home Secretary has undertaken insufficient inquiry prior to making his decision in setting the MIR. By contrast, for the changes to Appendix Armed Forces, which include a lower MIR, the Home Office consulted with and worked collaboratively with the Ministry of Defence.[38]

19. Accordingly, the House should intensely scrutinise the Home Secretary's Statement of Changes to the Rules, and the Home Office should keep these changes under close and continuous review. A review for a report on 6 April 2027 is insufficient given the scale and impact of these changes.[39]

Conclusion

20. We recommend that the Secondary Legislation Scrutiny Committee ask the following questions of the Home Office:
    a. Why does the Home Office accept that members of the Armed Forces earn less than the MIR yet remain deserving of family unification, but not recognise the same for other groups, such as women, ethnic minorities, those aged under 30 and over 50, those living outside the South East, and those working for the NHS or in the civil service?

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[35] HC Deb 4 December 2023, Vol 742, Col 42.
[36] Question for Home Office (UIN HL987, tabled on 7 December 2023) <https://hansard.parliament.uk/commons/2023-12-04/debates/921A08A2-F615-48F2-8C56-423A29556F9F/LegalMigration> accessed 19 March 2024.
[37] EM, §7.
[38] EM, §7.1.
[39] EM, §10.1.

b. What evidence is there of a rational connection between the new MIR and the stated purpose of ensuring migrants do not require public funds?
c. How does this change comply with the Home Secretary's statutory duty to safeguard and promote the welfare of children?
d. What, if any, operational measures have been taken to prepare for an increase in family applications and appeals on the basis of exceptional circumstances and human rights grounds?
e. Why has the single impact assessment for this package of immigration measures still not been published?
f. Has an EIA been conducted in relation to the increased MIR? If so, why has it not been published? If not, why not, and how has the Home Office complied with the public sector equality duty under s 149 of the Equality Act 2010? For example, has the potential impact of the increased MIR on (a) women and (b) people belonging to specific ethnicities been considered prior to the increase?
g. Why was there no consultation prior to the change to the MIR? How has the Home Secretary ensured he has all relevant information to set the MIR, without consultation?
h. Why were the recommendations of the House of Lords Justice and Home Affairs Committee's inquiry into family migration not followed when formulating the new policy?
i. How will the new MIR further social cohesion?
j. Has the effect of the new MIR on social care been considered e.g. where UK citizens wish to return with non-UK family to care for elderly UK resident relatives?

21. For the above reasons, we ask for careful scrutiny and recommend that each House annuls the Statement of Changes and provides the Home Secretary the opportunity to reconsider the policies underlying these changes.

This evidence is endorsed by the following organisations:

1. Praxis;
2. The Joint Council for the Welfare of Immigrants;
3. Migrant Voice; and
4. British in Europe.

19 March 2024

Q&A with the Home Office

Q1: The EM states that the replacement of the Shortage Occupation List with the new Immigration Salary List is to "make clearer that the entries on the list are those where the Government considers it sensible to offer a discounted salary threshold, rather than being a list of all occupations experiencing labour shortages". What criteria are used to decide where it is sensible to offer such a discount, and how do these differ from the criteria for an occupation being put on the labour shortage list?

A1: The criteria for the ISL are broadly the same as for the SOL, but the change in name reflects a previous MAC recommendation from its October 2023 report (https://www.gov.uk/government/publications/review-of-the-shortage-occupation-list-2023):

> "Finally, the SOL – despite its name – is not a list of all occupations currently in shortage in the UK. To be included on the SOL, an occupation must be in shortage, but immigration must also be a sensible way of addressing that shortage, and occupations should only be added to the SOL if it allows employers easier access to the immigration system. Placing some occupations on the SOL would make little difference to an employer's ability to use the immigration system to recruit overseas labour, while adding other occupations may increase the risk of labour market exploitation in sectors which are already deemed to have a higher-than-average risk. Given that the only substantive benefit from being on the SOL, if the Government accepts the recommendations in this report, is a salary threshold reduction for eligible occupations, we suggest that the Government changes the name of the SOL to the Immigration Salary Discount List (ISDL) to correctly reflect its function in the immigration system."

Q2: I gather that the MAC's advice on the ISL resulted from a "rapid review". Have the results of that been published?

A2: Yes – https://www.gov.uk/government/publications/rapid-review-of-the-immigration-salary-list

Q3: Para 5.16 of the EM discusses how Article 8 of the ECHR is a "qualified right" and can be outweighed by considerations of immigration control. Has this been tested in the courts?

A3: Under Article 8 of the ECHR, the rights of the individual to respect for their private and family life can be lawfully outweighed by measures which are necessary in the interests the economic well-being of the country. Maintaining immigration control constitutes such an interest. The Supreme Court in MM (Lebanon) v SSHD found that the minimum income requirement (MIR) as an immigration control measure was lawful.

Q4: Article 8 is cited as a fallback provision in relation to many areas of change in the immigration rules (most recently, for example, on the tightening of the sponsor eligibility criteria under the Homes for Ukraine scheme). If the right can be outweighed in the way stated, does it follow that the Committee can take less comfort from this safety net?

I do not understand the rationale for abolishing the child element of the minimum income requirement, which is stated as "to ensure that British nationals are not treated less favourably than migrants who are required to meet the General Skilled Worker threshold as a flat rate, regardless of any children being sponsored". Could you expand, please?

The overall intention of the changes to the MIR is to reduce immigration, but the abolition of the child element will have the reverse effect. The child element is also intended to reflect the additional costs to the UK of hosting a child. How is the abolition consistent with these aims?

A4: The new level of the MIR has been set at a level which is based on earnings as well as benefit levels to help to ensure that migrants make a net positive contribution to the public finances. This is to ensure that the MIR level supports the wider ambition for the UK to be a high-wage, high-productivity, high-skill economy. Therefore, the MIR is necessary to protect the economic wellbeing of the country and any interference with a person's rights to respect for their private and family life arising from the MIR does not breach Article 8.

Additionally, the family Immigration Rules contain provisions allow for a person to be granted a family visa ("family leave") even where they do not meet the MIR where they show that their case raises exceptional circumstances and a refusal of family leave would lead to unjustifiably harsh consequences for them or their family. This ensures that Article 8 is not breached.

Whilst any potential interference in Article 8 is broadly similar for British Citizens and non-British Citizens who are settled in the UK, a person's (and their family's) individual circumstances will be considered as part of the exceptional circumstances assessment".

Q5: The MIR for the Armed Forces is increasing to £23,496, but from what figure?

From £18,600 for a partner, and £22,400 with a child included in the application, plus an additional £2,400 for every further such child.

Q6: You say that an Impact Assessment has been prepared covering the changes to the Skilled Worker route, the increase in the MIR and the February rules changes. I cannot find the IA – has it been published, and if so where? If not, why not and when will it be available please?

There has been no consultation on the skilled worker route changes, for the reasons given in the EM. Has the IA benefited from input from businesses, to improve the analysis of how they are likely to be affected?

The impact assessment on the net migration package is currently going through formal clearance processes. While this was planned for publication alongside the laying of the Immigration Rules, the complexity of analysis has meant we were not able to do so and are working at pace to ensure this is published promptly so the impact of changes can be assessed.

Q7: Is the increase in the MIR discriminatory; for example, because it disproportionately affects certain parts of the country, certain family types (eg working single mothers) and those with certain protected characteristics eg race, sex, maternity, and age?

A7: The increase to the MIR will maintain the elements of direct discrimination on the basis of age currently within the Immigration Rules. Part 4 of Schedule 3 Equality Act 2010 permits discrimination in relation to age if it is authorised in legislation, including the Immigration Rules. Further, in accordance with section 13(2) of the Equality Act 2010, it is not unlawful to discriminate on the basis of age if it is a proportionate means of achieving a legitimate aim. Those under the age of 18 will not be required to meet the MIR as they are not able to apply under the partner route or act as a sponsor. This is in-line with UK law which requires both parties to be over the age of 18 for them to be able to marry and so protects vulnerable children from the damaging impact of forced marriage.

The increase to the MIR may result in indirect discrimination on the basis of: age; disability; race; religion; and sex. This is because of pay gaps between particular groups so, for example, more men than women are likely to be able to meet the increased threshold.

The potential impacts are mitigated as far as possible as those unable to meet the increased MIR will still be granted leave where to deny entry, or permission for further stay, would breach their and/or their family's Article 8, ECHR rights.

The increase to the MIR is considered a proportionate means of achieving the legitimate aim of ensuring that those who seek to establish their family life in the UK provide a net positive contribution to the UK and are not a burden on the taxpayer.

Q8: Why is it appropriate to have a lower salary requirement for the armed forces than it is for, for example, some NHS employees, lawyers and teachers?

A8: The minimum income requirement (MIR) to be met for HM Armed Forces personnel to sponsor a partner or dependent child(ren) under Appendix HM Armed Forces, is being increased to £23,496. There will be no separate child element to the MIR.

This is different to the MIR to be met under Appendix FM as it aligns the MIR to the salary threshold for a Regular Army (including the Brigade of Gurkhas) Private and their Royal Navy, Royal Marines and Royal Air Force equivalents (in 2023/24), rather than to that of a skilled worker. This difference takes into account the unique role played by members of HM Armed Forces, the nature of their service, the sacrifices, dangers and risk of injury or death they face, and recognises the UK Government's moral obligations to service personnel and their families under the Armed Forces Covenant. Aligning the MIR to the HM Armed Forces salary threshold will help ensure the Ministry of Defence are able to recruit and retain personnel, in order to maintain national security.

The Covenant sets out a political commitment between the Government and those who serve or have served in HM Armed Forces and their families that they are not disadvantaged because of that service. It recognises that families play a vital role in supporting the operational effectiveness of the Armed Forces and the lack of choice that service personnel and their families have over deployment.

The MIR under Appendix HM Armed Forces means families can support themselves without reliance on public funds. While the ability to support themselves and any family members is one reason for the salary requirements in the Skilled Worker route, it is not the main reason. The requirements exist primarily to ensure migrant workers receive fair pay for their occupation, are not seen as a source of cheap labour, and are not used to undercut or avoid investing in the resident workforce. They are a requirement directed at sponsoring employers, rather than at the workers themselves.

Skilled Workers must be paid the higher of a general salary threshold or the going rate for their particular occupation. Most NHS employees and teachers sponsored under the route will be subject to a reduced general threshold of £23,200 (which is lower than the £23,496 Minimum Income Requirement (MIR) under Appendix HM Armed Forces) and going rates determined by national pay scales for those occupations. Where the salary requirements are higher, this is simply a consequence of going salary rates in those occupations. Similarly, we will require lawyers sponsored in the route to be paid the going rate of £52,300 for their occupation, subject to any salary discounts an individual application may qualify for.

Q9: The EM states that the MIR is being increased because it does not reflect the "level of income required by a family to ensure they are self-sufficient and do not need to rely on public funds". However, the level of the increase is set with reference to percentiles of Skilled Worker earnings (initially the 25th percentile, rising to the 50th). Why is it appropriate to link these factors? What work has been done to examine the level of income required to be self-sufficient? What evidence is there to show that a particular percentile of Skilled Worker earnings corresponds to that level?

A9: The new minimum income requirement level of £38,700 is based on the median income for people in high skilled jobs and is a long-overdue move to bring the previous level (which had not been updated in more than a decade). By tethering the MIR to the general salary threshold for skilled workers, it ensures that migration policy is supportive of the wider ambition for the UK to be a high-wage, high-productivity, high-skill economy. The increase to the MIR will ensure that families will make a net positive impact on the economy, as well as contributing to the government target to lower net migration.

Q10: Is it correct that a 'High Potential' migrant would only need to show savings of £285 for 28 days to bring a partner to the UK, whereas a British citizen would need to show savings of £88,500 for 6 months? If so, how is this comparison justified?

A10: Applicants in most routes must meet a financial requirement. However, how they do this differs from route to route. Applicants must generally show that they either:

- have sufficient funds for their activity or role (for example, study, work)
- can maintain and accommodate themselves and any dependants without accessing public funds.

An applicant in the High Potential Individual (HPI) route needs to show funds of £1,270 to support themselves, plus additional funds of £285 for a dependent partner, £315 for the first dependent child and £200 for each additional dependent child.

The nature of the HPI route means lead applicants are expected to be able to secure well-paid work in the UK relatively quickly. The financial requirement is therefore based on the funds applicants are estimated to need to support themselves and any dependants for their first month in the UK.

More importantly, HPI is a temporary route with a maximum grant period of 2 years (3 years for PhD graduates). It does not allow applicants to claim public funds and does not lead to settlement in the UK. It is therefore not necessary to consider the impact applicants may have on the public finances in the same way as it is for those on the family route.

Q11: Is the Home Office expecting a significant increase in Article 8 claims following the changes, and if so, what are the expected impacts of this?

There remains considerable uncertainty as to the impact of an increase in the MIR on the proportion of applicants granted under the 10 year route to settlement and would require in-depth analysis into individual applications to assess whether a refusal would result in unjustifiably harsh consequences.

Q12: How is it justified to hold no consultation on these changes when they will have significant effects on a large number of people and businesses?

A12: Previous advice and evidence provided by the Migration Advisory Committee regarding net-fiscal contributions and access to benefits was considered when making this decision. We did not seek further advice from the Migration Advisory Committee (MAC) before making the decision to increase the Minimum Income Requirement (MIR) element of the family immigration rules.

The decision to raise the MIR was taken to ensure that migration policy is supportive of the wider ambition for the UK to be a high-wage, high-productivity, high-skill economy, and help to ensure that migrants make a net positive contribution to the public finances in addition to ensuring that families would not need to have recourse to welfare and had sufficient resources to participate in British life.

In February 2017, the Supreme Court upheld the lawfulness of the minimum income requirement under the family Immigration Rules. The Court found the minimum income requirement is not a breach of the right to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR) and is not discriminatory. The Supreme Court endorsed our approach in setting an income requirement for family migration which prevents burdens on the taxpayer and ensures migrant families can integrate into our communities. The Supreme Court agreed this strikes a fair balance between the interests of those wishing to sponsor a partner to settle in the UK and of the community in general.

Q13: In relation to the Shortage Occupation / Immigration Salary List comparison, could you please provide a summary list of those occupations (if any) that (i) were on the SOL and are not on the ISL; (ii) were not on the SOL but are on the ISL? I could not immediately see this in the conclusions of the MAC review.

A13: The occupations being removed are all listed on pages 14-20 of the MAC's report: Rapid review of the Immigration Salary List (publishing.service.gov.uk). The two fishing occupations on page 14 remain on the ISL, as the Government did not accept the MAC's recommendation to remove those two. The occupations listed on pages 15-20 are all being removed.

The only new additions are:

- 1212 Managers and proprietors in forestry, fishing and related services – only "fishing boat masters" (Scotland only)
- 3212 Pharmaceutical technicians – all jobs
- 5235 Boat and shop builders and repairers – all jobs (Scotland only)
- 6129 Animal care services occupations not elsewhere classified – only racing grooms, stallion handlers, stud grooms, stud hands, stud handlers and work riders

Q14: In making the changes to the minimum income requirement, did the Home Office consider any mitigating actions, such as that applicants be permitted to:

- *rely on the income of the partner currently overseas (for example, their overseas income combined with a UK job offer) to satisfy the financial requirement;*
- *rely on credible promises of third-party support without needing to evidence "exceptional circumstances";*
- *combine all various sources of financial resources (eg savings and income, including from self-employment) to meet the MIR; and*

And if these were rejected, for what reasons?

A14: There is no flexibility with regard to the level of the minimum income requirement which must be met in all cases subject to the requirement; it is right and fair it should be consistently applied in all cases. Expecting family migrants and their sponsors to be financially independent is reasonable, both to them and the taxpayer.

Whilst the level of the Minimum Income Requirement (MIR) is increasing, other aspects of the rules in relation to meeting the financial requirement remain unchanged.

Overseas income and UK job offers

The minimum income requirement has to be met according to the financial resources available to the couple. This is why we are not generally able to accept evidence of overseas employment or prospective job offers. These requirements give us some assurances the person is properly qualified for, and can hold down employment at, the level of income relied upon. We otherwise risk being presented with applications based on earnings which do not accurately reflect the employment capacity of the person concerned. To maintain the integrity of the system for all applicants and sponsors, we need rules in place which prevent this.

Third party support

Where the MIR cannot be met, paragraph Gen 3.1 of Appendix FM to the Immigration Rules provides for other sources on income, financial support or funds available to be considered in circumstances where there are exceptional circumstances and a refusal could otherwise breach Article 8. Furthermore, any application that is made under the Family Rules but which does not otherwise meet the requirements of the Rules, will have consideration of any exceptional circumstances which would render refusal of entry clearance or leave to remain a breach of Article 8 of the European Convention on Human Rights, because such refusal could result in unjustifiably harsh consequences for the applicant, their partner or a relevant child.

Full details of how the MIR can be met are published on Gov.UK at:
https://www.gov.uk/government/publications/chapter-8-appendix-fm-family-members

Combining income sources

The minimum income requirement can be met in a number of ways in addition to or instead of income from employment or self-employment. For example, income from a couple's investments, property rental or pension may also be taken into account, together with their cash savings.

There are some limitations to what income sources can be combined. For example, it would not be appropriate to combine the past income from self-employment with current cash savings held at the date of application. To do so would not be an accurate indicator of the real level of financial resources available to the couple. It could also lead to the same money being counted twice, once as earnings and later as savings.

A self-employed person, or a director of a specified limited company in the UK who has the necessary level of current cash savings, can use these savings as their sole means of meeting the minimum income requirement.

There is currently no intention to amend the ways in which the MIR can be met, such as allowing the overseas income of the applicant or a combination of savings and income from self-employment.

However, we continue to keep the family Immigration Rules under review, and make adjustments should these prove necessary.