

EXPLANATORY STATEMENT

Issued by the Assistant Minister for Immigration

Migration Act 1958

Migration Amendment (Status of Forces Agreement—United Kingdom of Great Britain and Northern Ireland) Regulations 2025

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with that Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to that Act.

Subsection 33(1) of the Migration Act provides that Special Purpose visas (SPVs) are a class of temporary visas to travel to, enter, and remain in Australia. Under subparagraph 33(2)(a)(ii) of the Act, a non-citizen is taken to have been granted an SPV if the non-citizen is a member of a class of persons that has a prescribed status.

Regulation 2.40 of the *Migration Regulations 1994* (the Migration Regulations) provides for a list of classes of persons who hold such prescribed status for the purposes of paragraph 33(2)(a) of the Migration Act.

The *Migration Amendment (Status of Forces Agreement—United Kingdom of Great Britain and Northern Ireland) Regulations 2025* (the Amending Regulations) is to amend the Migration Regulations to establish a visa application-free pathway for members and civilian component members of the United Kingdom of Great Britain and Northern Ireland (the United Kingdom) armed forces to enter into Australia. These Amending Regulations reflects the Government's commitment to implement the *Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation* (the Australian-UK SOFA), which was signed on 21 March 2024.

In accordance with Article 4 of Annex 1 of the Australia-UK SOFA on 'Conditions of Entry and Departure', the Receiving State (Australia) shall facilitate the entry and departure of the Visiting Force (the United Kingdom), its Civilian Component and Dependents into and their departure from the Receiving State for the purposes of cooperative activities and that such persons shall be exempt from any requirements to apply for a visa.

In its current form, the Migration Regulations provide that armed forces from the United Kingdom already hold the status of being a member of the Commonwealth forces members as prescribed under

paragraph 2.40(1)(g) of those Regulations. Generally, a spouse, a de facto partner or a dependent relative of a member of the armed forces holds the status of foreign armed forces dependant prescribed under paragraph 2.40(1)(h) of the Migration Regulations. However, there are currently no provisions under the Migration Regulations that provide a visa application-free pathway to a SPV for this civilian component for a spouse, a de facto partner, or a dependent relative of a member of the United Kingdom armed forces. This current visa application-free pathway is granted to non-citizens who hold prescribed status provided under regulation 2.40 of the Migration Regulations. The terms ‘Commonwealth forces members’ and ‘foreign armed forces dependant’ are defined in regulation 1.03 of those Regulations.

The Amending Regulations amend regulation 1.03 of the Migration Regulations by establishing the United Kingdom under the definitions of *SOFA forces member* and *SOFA forces civilian component member*. This will ensure that members and the civilian component of the United Kingdom armed forces (the cohort) are able to enter into Australia having prescribed status in accordance with paragraphs 2.40(d) and (e) of those Regulations (respectively), on the grounds that they present a national passport that is in force and a certificate that they are either a member or a member of the civilian component of the United Kingdom armed forces. Additionally, this will achieve the policy intent, which is for a non-citizen in that cohort to be taken to have been granted an SPV if that non-citizen has a prescribed status or is a member of a class of persons that has prescribed status in accordance with paragraph 33(2)(a) of the Migration Act, and to give effect to Australia’s commitment to the Australia-UK SOFA.

The preliminary provisions of the proposed Regulations would commence on the day after the instrument is registered, and the amendments would commence on the later of:

- the day after registration and
- the day the Agreement between Australia and the United Kingdom for Defence and Security Cooperation, done at Canberra on 21 March 2024, comes into force for Australia;

but the amendments would never commence if the Agreement does not come into force for Australia.

The Migration Act specifies no conditions that need to be satisfied before the power to make the Amending Regulations be exercised.

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Amending Regulations are compatible with human rights. A copy of this Statement is at [Attachment A](#).

The Office of Impact Analysis (OIA) was consulted in relation to the amendments. No Impact Analysis is required. The OIA consultation reference number is OIA24-08549

The Amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act). Section 17 of the Legislation Act provides that the rule-maker must be satisfied that any consultation that is appropriate and reasonable practicable has been undertaken before making a legislative instrument.

The Department of Home Affairs consulted with the Department of Defence, which provided advice on the amendments to the Migration Regulations in order to achieve the Australia-UK SOFA objectives of providing a visa application-free pathway for the members or the civilian component of the United Kingdom armed forces.

The Migration Regulations are exempt from sunsetting pursuant to item 38A of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

The Migration Regulations are exempt from sunsetting on the basis that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and
- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

The Amendment Regulations will be repealed by operation of Division 1 of Part 3 of Chapter 3 of the Legislation Act. Specifically, that Division (under section 48A) operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. As the Amendment Regulations will automatically repeal, they do not engage the sunsetting framework under Part 4 of the Legislation Act.

Further details of the Amending Regulations are set out in Attachment B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Migration Amendment (Status of Forces Agreement—United Kingdom of Great Britain and Northern Ireland) Regulations 2025

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The purpose of the *Migration Amendment (Status of Forces Agreement—United Kingdom of Great Britain and Northern Ireland) Regulations 2025* (the Amendment Regulations) is to give effect to the Agreement for Defence and Security Cooperation between Australia and the United Kingdom of Great Britain and Northern Ireland (Australia-UK SOFA) which was signed on 21 March 2024. This agreement will come into force once final implementation steps are taken by the UK and Australia. This type of agreement is commonly known as a Status of Forces Agreement (SOFA).

In accordance with Article 4 of Annex 1 of the Australia-UK SOFA on ‘Conditions of Entry and Departure’, the Receiving State (Australia) shall facilitate the entry and departure of the Visiting Force (the United Kingdom), its Civilian Component and Dependents into and their departure from the Receiving State for the purposes of cooperative activities and that such persons shall be exempt from any requirements to apply for a visa.

The Amendment Regulations amend the *Migration Regulations 1994* (Migration Regulations) to allow members of the UK armed forces and civilian component, and their dependants, to be taken to have been granted a Special Purpose visa (SPV) to travel to, enter and remain in Australia to carry out official duties in accordance with the terms of the Australia-UK SOFA, without needing to make a visa application.

The Amendment Regulations achieve this by including the United Kingdom of Great Britain and Northern Ireland (the UK) in the definition of *SOFA forces civilian component member* and *SOFA forces member* in the Migration Regulations. The effect of this is that members of the UK armed forces, civilian component and dependants who come under the Australia-UK SOFA and who hold the relevant documents, are classes of persons having a prescribed status for the purpose of being taken be granted a SPV under section 33 of the *Migration Act 1958*.

The 2024 Defence Security Cooperation Treaty which includes the Australia-UK SOFA will come into force once letters between Australia and the UK are exchanged in line with Article 14(1) of the Treaty. The Amendment Regulations are required to be made and in force to ensure domestic procedures are in place under Article 14(1), but will not come into effect until such time as the Treaty comes into force.

Human rights implications

This Disallowable Legislative Instrument engages the following right:

- the right to work in Article 6(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Right to work

This Disallowable Legislative Instrument engages Article 6(1) of the ICESCR. Article 6(1) states:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

This Disallowable Legislative Instrument may positively engage the right to work of UK armed forces personnel and civilian component deployed to Australia under the Australia-UK SOFA by allowing them to work as visa holders in line with their official duties under the Australia-UK SOFA.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights.

**The Hon Matt Thistlethwaite MP
Assistant Minister for Immigration**

Details of the Migration Amendment (Status of Forces Agreement – United Kingdom of Great Britain and Northern Ireland) Regulations 2025

Section 1 – Name

This section provides that the title of the Regulations is the *Migration Amendment (Status of Forces Agreement—United Kingdom of Great Britain and Northern Ireland) Regulations 2025* (the Amending Regulations).

Section 2 – Commencement

This section provides for the instrument to commence on the day after registration on the Federal Register of Legislation.

Subsection 2(1) provides that each provision of the Amending Regulations specified in column 1 of the table will commence, or will be taken to commence, in accordance with column 2 of the table. Any other statement in column 2 has the effect according to its terms.

Table item 1 would provide that the preliminary sections of the instrument would commence on the day after the instrument is registered on the Federal Register of Legislation (see column 2 of that table).

Table item 2 would provide that the amendments in Schedule 1 to the instrument would commence on the later of:

- the day after the instrument is registered on the Federal Register of Legislation (see paragraph (a) of that item); and
- the day the Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation, done at Canberra on 21 March 2024, comes into force for Australia (see paragraph (b) of that item);

but the amendments would never commence if the Agreement does not come into force for Australia. The Minister must also announce, by notifiable instrument, the day the Agreement would come into force for Australia.

A note at the foot of the table under subsection 2(1) explains that the table relates only to the provisions of the Amending Regulations as originally made. The table will not be amended to deal with any later amendments to the proposed Regulations.

Subsection 2(2) provides that any information in column 3 of, the table is not be part of the Regulations. Information may be inserted in column 3, or information in it may be edited, in any published version of the Regulations.

Section 3 – Authority

This section provides that the instrument is made under the *Migration Act 1958* (the Migration Act).

Section 4 – Schedules

This section provides for how the amendments in the Amending Regulations operate.

Schedule 1 – Amendments

Migration Regulations 1994

Item [1] – Regulation 1.03 (paragraph (a) of the definition of *SOFA forces civilian component member*)

Item [2] – Regulation 1.03 (paragraph (a) of the definition of *SOFA forces member*)

Item 1 of Schedule 1 inserts the United Kingdom of Great Britain and Northern Ireland (the United Kingdom) into the relevant position in paragraph (a) of the definition of *SOFA forces civilian component member* in regulation 1.03 of the Migration Regulations.

That definition previously meant a person who:

- is, for the purposes of a Status of Forces Agreement between Australia and France, Japan, Malaysia, New Zealand, Papua New Guinea, the Republic of the Philippines, Singapore, Turkey or the United States of America, a member of the civilian component of the armed forces of one of those countries (paragraph (a) of the definition); and
- holds a national passport that is in force and a certificate that he or she is a member of the civilian component of the armed forces of the relevant country (paragraph (b) of the definition).

The amended paragraph (a) of the definition of *SOFA forces civilian component member* in regulation 1.03 of the Migration Regulations includes a person who is, for the purposes of a Status of Forces Agreement between Australia and the countries listed in that paragraph of that definition of that regulation, a member of the civilian component of the United Kingdom armed forces.

Item 2 of Schedule 1 inserts the United Kingdom of Great Britain and Northern Ireland (the United Kingdom) into the relevant position in paragraph (a) of the definition of *SOFA forces member* in regulation 1.03 of the Migration Regulations.

That definition previously meant a person who:

- is, for the purposes of a Status of Forces Agreement between Australia and France, Japan, Malaysia, New Zealand, Papua New Guinea, the Republic of the Philippines, Singapore, Turkey or the United States of America, a member of the armed forces of one of those countries; and
- holds military identity documents and movement orders issued from an official source of the relevant country.

The amended paragraph (a) of the definition of *SOFA forces member* in regulation 1.03 of the Migration Regulations includes a person who is, for the purposes of a Status of Forces Agreement

between Australia and the countries listed in that paragraph of that definition of that regulation, a member of the United Kingdom armed forces.

The amendments in items 1 and 2 of Schedule 1 to the Amending Regulations ensures that members and the civilian component of the United Kingdom armed forces (the cohort) are able to enter into Australia having prescribed status in accordance with paragraphs 2.40(d) and (e) of the Migration Regulations (respectively), on the grounds that members of the cohort present a national passport that is in force and a certificate that they are either a member or a member of the civilian component of the United Kingdom armed forces.

Additionally, the effect of the amendments achieves the policy intent, which is for that a non-citizen in that cohort to be taken to have been granted a special purpose visa if that non-citizen has a prescribed status or is a member of a class of persons that has prescribed status in accordance with paragraph 33(2)(a) of the *Migration Act 1958*, and to give effect to Australia's commitment to the Australia-UK SOFA.

Unless otherwise indicated in this document, it is Copyright of the Commonwealth of Australia and the following applies:

Copyright Commonwealth of Australia.

This material does not purport to be the official or authorised version. Reproduction and use of this material is subject to a [Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Australia License](#).

You should make independent inquiries and obtain appropriate advice before relying on the information in any important matter.

This document has been distributed by LexisNexis Australia. All queries regarding the content should be directed to the author of this document.