

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (Arrangements for Certain Skilled Visa Applications) Instrument (LIN 20/162) 2020

(subregulation 2.07(5) and items 1136, 1137, 1138, 1228, 1229, 1230 and 1241 of Schedule 1)

1. The instrument, LIN 20/162, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations) and for items 1136, 1137, 1138, 1228, 1229, 1230 and 1241 of Schedule 1 to the Regulations.
2. The instrument repeals *Migration (LIN 19/209: Arrangements for Certain Skilled and Temporary Graduate Visa Applications) Instrument 2019* (F2020C00274), made under subregulation 2.07(5) of the Regulations in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. Subregulation 2.07(5) of the Regulations empowers the Minister, if an item of Schedule 1 prescribes criteria or requirements by reference to a legislative instrument, to specify in a legislative instrument the following criteria:
 - a. an approved form for making an application for a class of visa;
 - b. the way in which an application for a class of visa must be made;
 - c. the place at which an application for a class of visa must be made.
4. The instrument operates to specify the form, place and manner for making an application for the following visas:
 - a. Skilled (Provisional) (Class VF) visa;
 - b. Skilled (Provisional) (Class VC) visa;
 - c. Skilled (Residence) (Class VB) visa;
 - d. Skilled Independent (Permanent) (Class SI) visa;

- e. Skilled—Nominated (Permanent) (Class SN) visa;
 - f. Skilled—Regional Sponsored (Provisional) (Class SP) visa; and
 - g. Skilled Work Regional (Provisional) (Class PS) visa.
5. The purpose of the instrument is to update the arrangements for making an application for a Skilled (Provisional) (Class VF) visa or for a Skilled (Provisional) (Class VC) visa in sections 7 and 8 respectively. Specifically, the instrument requires that an application for either visa must be made using form 1276 (internet) as an internet application (internet application). If an applicant is unable to make an application as an internet application, the instrument provides an alternative manner of making an application. The alternative manner may only be used if an internet application cannot be made by the applicant and they have the approval of the Department to do so.
 6. Subsections 7(2) and 8(2) of the instrument provide that if an application for a Skilled (Provisional) (Class VF) visa or a Skilled (Provisional) (Class VC) visa cannot be made as an internet application an application may be made using paper form 1276 or paper form 1409 respectively, if the Department has provided approval by an authorising email. Subsections 7(3) and 8(3) specify how such an application should be made.
 7. Under the previous instrument, LIN 19/209, applicants for a Skilled (Provisional) (Class VF) visa or a Skilled (Provisional) (Class VC) visa were able to make an application using paper form 1276 or paper form 1409 respectively and post it or have it couriered to the Department. The instrument removes these arrangements for applications for both visas and replaces it with the arrangements in sections 7 and 8 of the instrument.
 8. The change to arrangements for the Skilled (Provisional) (Class VF) visa and for the Skilled (Provisional) (Class VC) visa reflect that the Department’s preferred lodgement method is internet application. This aligns with the Department’s expansion of online lodgement capability, allowing the Department to better manage visa applications and improve efficiency. The instrument provides alternative application methods for applicants for a Skilled (Provisional) (Class VF) visa or a Skilled (Provisional) (Class VC) visa who are unable to make an internet application.
 9. The instrument maintains the same arrangements from LIN 19/209, for making an application for all other visas included in the instrument.

10. In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003*, consultation was not necessary. The instrument is of a minor or machinery nature due to its administrative character and does not substantially alter existing arrangements.
11. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25105).
12. The maker of the instrument (Senior Executive Service Band One, Temporary Visa Program Branch) was appropriately delegated by the *Minister (Instrument-making Powers) Delegation 2020/252* (LIN 20/252).
13. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
14. The instrument applies to applications for a visa made on or after the instrument commences.
15. The instrument commences on 13 November 2020.