

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 9 June 2008 under section 3(2) of
The Immigration Act 1971*

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STATEMENT OF CHANGES

IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the rules laid down by her as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395), as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cmnd 2663), 26 October 1995 (HC 797), 4 January 1996 (Cmnd 3073), 7 March 1996 (HC 274), 2 April 1996 (HC 329), 30 August 1996 (Cmnd 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cmnd 3669), 5 June 1997 (HC26), 30 July 1997 (HC 161), 11 May 1998 (Cmnd 3953), 8 October 1998 (Cmnd 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cmnd 4851), 27 August 2001 (Cmnd 5253), 16 April 2002 (HC 735), 27 August 2002 (Cmnd 5597), 7 November 2002 (HC 1301), 26 November 2002 (HC 104), 8 January 2003 (HC 180), 10 February 2003 (HC 389), 31 March 2003 (HC 538), 30 May 2003 (Cmnd 5829), 24 August 2003 (Cmnd 5949), 12 November 2003 (HC 1224), 17 December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC 523), 3 August 2004 (Cmnd 6297), 24 September 2004 (Cmnd 6339), 18 October 2004 (HC 1112), 20 December 2004 (HC 164), 11 January 2005 (HC 194), 7 February 2005 (HC 302), 22 February 2005 (HC 346), 24 March 2005 (HC 486), 15 June 2005 (HC 104), 12 July 2005 (HC 299), 24 October 2005 (HC 582), 9 November 2005 (HC 645), 21 November 2005 (HC 697), 19 December 2005 (HC 769), 23 January 2006 (HC 819), 1 March 2006 (HC 949), 30 March 2006 (HC 1016), 20 April 2006 (HC 1053), 19 July 2006 (HC 1337), 18 September 2006 (Cm 6918), 7 November 2006 (HC 1702), 11 December 2006 (HC 130), 19 March 2007 (HC 398), 3 April 2007 (Cm 7074), 4 April 2007 (Cm 7075), 7 November 2007 (HC 28), 13 November 2007 (HC 40), 19 November 2007 (HC 82), 6 February 2008 (HC 321) and 17 March 2008 (HC 420).

These changes will come into force on 30th June 2008. However, if an applicant has made an application for leave before 30th June 2008 under any of the paragraphs of the Rules deleted by paragraph 13 below, and the application has not been decided before that date, it will be decided in accordance with the Rules in force on 29th June 2008 as set out in Appendix F.

1. In paragraph 6:

in the definition of “Highly Skilled Migrant”, for “who is granted leave under paragraphs 135A to 135G of these Rules” substitute “granted leave under paragraphs 135A to 135G of the Rules in force before 30th June 2008”;

in the definition of “Innovator”, for “who is granted leave under paragraphs 210A to 210F of these Rules” substitute “granted leave under paragraphs 210A to 210F of the Rules in force before 30th June 2008”;

in the definition of “Participant in the Fresh Talent: Working in Scotland Scheme”, for “who is granted leave under paragraphs 143A to 143F of these Rules” substitute “granted leave under paragraphs 143A to 143F of the Rules in force before 30th June 2008”;

in the definition of “Participant in the International Graduates Scheme”, for “who is granted leave under paragraphs 135O to 135T of these Rules” substitute “granted leave under paragraphs 135O to 135T of the Rules in force before 30th June 2008”;

for the words “In paragraph 320(7B) of these Rules”, substitute “In paragraph 320(7B) and paragraph 320(11) of these Rules”.

2. In paragraph 6, after the definition of “Work Permit Holder” insert:

““Businessperson” means a migrant granted leave under paragraphs 200 to 208 of the Rules in force before 30th June 2008

“Investor” means a migrant granted leave under paragraphs 224 to 229 of the Rules in force before 30th June 2008.

“Self-employed Lawyer” means a migrant granted entry clearance, or leave to enter or remain, outside the Rules under the concession for Self-employed lawyers that formerly appeared in Chapter 6, Section 1 Annex D of the Immigration Directorate Instructions.

“Tier 1 (General) Migrant” means a migrant who is granted leave under paragraphs 245B to 245F of these Rules.

“Tier 1 (Entrepreneur) Migrant” means a migrant who is granted leave under paragraphs 245H to 245N of these Rules.

“Tier 1 (Investor) Migrant” means a migrant who is granted leave under paragraphs 245O to 245U of these Rules.

“Tier 1 (Post-Study Work) Migrant” means a migrant who is granted leave under paragraphs 245V to 245ZA of these Rules.

“Tier 1 Migrant” means a migrant who is granted leave as a Tier 1 (General) Migrant, a Tier 1 (Entrepreneur) Migrant, a Tier 1 (Investor) Migrant or a Tier 1 (Post-Study Work) Migrant.

“Writer, Composer or Artist” means a migrant granted leave under paragraphs 232 to 237 of the Rules in force before 30th June 2008.”

3. In paragraph 34B(i)(a), delete “business person,” and “investor, innovator”.
4. In paragraph 34B(i)(a), for “Tier 1 (General) Migrant” substitute “Tier 1 Migrant”.
5. In paragraph 34B(i)(c), delete “or”.
6. In paragraph 34B (i), after “(d) a Tier 2 sponsorship licence” add “ or (e) Indefinite leave to remain as a businessperson, investor or innovator.”
7. In paragraph 34B(ii)(a), delete “business person,” and “investor, innovator”.
8. In paragraph 34B(ii)(a), for “Tier 1 (General) Migrant” substitute “Tier 1 Migrant”.
9. In paragraph 34B(ii)(a), delete “or”.
10. In paragraph 34B(ii), after “training or work experience” in paragraph 34B(ii)(b) add “or (c) Indefinite leave to remain as a businessperson, investor or innovator.”
11. In paragraph 60(i)(c), for “and 143A to 143F” substitute “, 143A to 143F or 245V to 245ZA”.
12. For paragraph 70(vi)(c), substitute:
“(c) a Tier 1 (General) Migrant or Tier 1 (Entrepreneur) Migrant; and”.
13. Delete paragraph 70(vi)(d) and (e).
14. In paragraph 131I, for each occurrence of “Tier 1 (General) Migrant” substitute “Tier 1 Migrant”.
15. In paragraph 134(i), after “made up of” insert “any combination of”.
16. In paragraph 134(i), after “(under paragraphs 135A to 135F of these rules)” insert “or leave as a self-employed lawyer (under the concession that appeared in Chapter 6, Section 1 Annex D of the Immigration Directorate Instructions), or leave as a writer, composer or artist (under paragraphs 232 to 237 of these rules)”.
17. Delete paragraphs:
 - (i) 135A to 135C,
 - (ii) 135O to 135T,
 - (iii) 143A to 143F,
 - (iv) 200 to 208, save in so far as they are relevant to paragraph 209,
 - (v) 210A to 210F, save in so far as they are relevant to paragraph 210G,
 - (vi) 224 to 229, save in so far as they are relevant to paragraph 230,
 - (vii) 232 to 237, save in so far as they are relevant to paragraph 238.
18. Before paragraph 245A, insert:
“245AA. Documentary evidence
 - (a) Where Part 6A or Appendices A to C, or E of these Rules state that specified documents must be provided, that means documents specified by the Secretary of

State in the Tier 1 of the Points Based System Policy Guidance as being specified documents for the route under which the applicant is applying. If the specified documents are not provided, the applicant will not meet the requirement for which the specified documents are required as evidence.

- (b) If the Entry Clearance Officer or Secretary of State has reasonable cause to doubt the genuineness of any document submitted by an applicant which is, or which purports to be, a specified document under Part 6A or Appendices A to C, or E of these Rules and, having taken reasonable steps to verify the document, is unable to verify that it is genuine, the document will be discounted for the purposes of this application.”.
- 19. Delete paragraph 245C(a).
 - 20. In paragraph 245C(c), for “Appendix A”, substitute “paragraphs 1 to 31 of Appendix A”.
 - 21. At the end of paragraph 245C(f)(x), delete “or”.
 - 22. At the end of paragraph 245C(f)(xi), for “.” substitute “;”.
 - 23. After paragraph 245C(f)(xi), insert:
 - “(xii) as a Businessperson,
 - (xiii) as a Self-employed Lawyer,
 - (xiv) as a Tier 1 (Entrepreneur) Migrant,
 - (xv) as a Tier 1 (Investor) Migrant,
 - (xvi) as a Tier 1 (Post-Study Work) Migrant, or
 - (xvii) as a Writer, Composer or Artist.”.
 - 24. In para 245D(iii)(1), after “Highly Skilled Migrant”, insert “(provided that grant was not subject to a condition prohibiting Employment as a Doctor in Training), as an Innovator”.
 - 25. At the end of paragraph 245E(b)(iv), for “.” substitute “;”.
 - 26. After paragraph 245E(b)(iv) insert:
 - “(v) as a Self-Employed Lawyer,
 - (vi) as a Writer, Composer or Artist.”.
 - 27. After paragraph 245F(c) insert:
 - “(ca) If an applicant has made an application other than in India for entry clearance on or after 30 June 2008, and has submitted with that application a valid Highly Skilled Migrant Programme Approval Letter, the applicant will be automatically awarded 75 points under Appendix A and 10 points under Appendix B.”.
 - 28. Delete paragraph 245G.
 - 29. After paragraph 245G insert:

“TIER 1 (ENTREPRENEUR) MIGRANTS

245H. Purpose of this route and meaning of “business”

- (a) This route is for migrants who wish to establish, join or take over one or more businesses in the UK.
- (b) For the purpose of paragraphs 245G to 245N and paragraphs 32 to 41 of Appendix A “business” means an enterprise as:
 - (i) a sole trader,
 - (ii) a partnership, or
 - (iii) a company registered in the UK.

245I. Entry to the UK

All migrants arriving in the UK and wishing to enter as a Tier 1 (Entrepreneur) Migrant must have a valid entry clearance for entry under this route. If they do not have a valid entry clearance, entry will be refused.

245J. Requirements for entry clearance

To qualify for entry clearance as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, entry clearance will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal.
- (b) The applicant must have a minimum of 75 points under paragraphs 32 to 41 of Appendix A.
- (c) The applicant must have a minimum of 10 points under Appendix B.
- (d) The applicant must have a minimum of 10 points under Appendix C.

245K. Period and conditions of grant

(a) Entry clearance will be granted for a period of 3 years and will be subject to the following conditions:

- (i) no recourse to public funds,
- (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
- (iii) no employment other than working for the business(es) the applicant has established, joined or taken over.

245L. Requirements for leave to remain

To qualify for leave to remain as a Tier 1 (Entrepreneur) Migrant under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.
- (b) The applicant must have a minimum of 75 points under paragraphs 32 to 41 of Appendix A.
- (c) The applicant must have a minimum of 10 points under Appendix B.
- (d) The applicant must have a minimum of 10 points under Appendix C.
- (e) The applicant who is applying for leave to remain must have, or have last been granted, entry clearance, leave to enter or remain:
 - (i) as a Highly Skilled Migrant,
 - (ii) as a Tier 1 (General) Migrant,
 - (iii) as a Tier 1 (Entrepreneur) Migrant,
 - (iv) as a Tier 1 (Investor) Migrant,
 - (v) as a Tier 1 (Post-Study Work) Migrant,
 - (vi) as a Businessperson,
 - (vii) as an Innovator,
 - (viii) as an Investor,
 - (ix) as a Participant in the Fresh Talent: Working in Scotland Scheme,
 - (x) as a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme),

- (xi) as a Postgraduate Doctor or Dentist,
 - (xii) as a Self-employed Lawyer,
 - (xiii) as a Student,
 - (xiv) as a Student Nurse,
 - (xv) as a Student Re-Sitting an Examination,
 - (xvi) as a Student Writing Up a Thesis,
 - (xvii) as a Work Permit Holder, or
 - (xiii) as a Writer, Composer or Artist.
- (f) An applicant who has, or was last granted, leave as a Student or a Postgraduate Doctor or Dentist and:
- (i) is currently being sponsored by a government or international scholarship agency, or
 - (ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,
- must provide the written consent of the sponsoring Government or agency to the application.

245M. Period and conditions of grant

- (a) Leave to remain will be granted:
 - (i) for a period of 2 years, to an applicant who has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant,
 - (ii) for a period of 3 years, to any other applicant.
- (b) Leave to remain under this route will be subject to the following conditions:
 - (i) no recourse to public funds,
 - (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
 - (iii) no employment, other than working for the business or businesses which he has established, joined or taken over.

245N. Requirements for indefinite leave to remain

To qualify for indefinite leave to remain as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, indefinite leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused, unless the applicant qualifies for leave to remain by virtue of paragraphs 33E-33F of these Rules.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.
- (b) The applicant must be engaged in business activity at the time of his application and the applicant must provide specified evidence to show this.
- (c) The applicant must have spent a continuous period of 5 years Lawfully in the UK, of which the most recent period must have been spent with leave as a Tier (1) (Entrepreneur) Migrant, and the rest may be made up of leave:
 - (i) as a Tier 1 (Entrepreneur) Migrant,
 - (ii) as a Businessperson,
 - (iii) as an Innovator.
- (d) The applicant must have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, with reference to paragraphs 33B to

33F of these Rules, unless the applicant is under the age of 18 or aged 65 or over at the time the application is made.

TIER 1 (INVESTOR) MIGRANTS

245O. Purpose

This route is for high net worth individuals making a substantial financial investment to the UK.

245P. Entry to the UK

All migrants arriving in the UK and wishing to enter as a Tier 1 (Investor) Migrant must have a valid entry clearance for entry under this route. If they do not have a valid entry clearance, entry will be refused.

245Q. Requirements for entry clearance

To qualify for entry clearance or leave to remain as a Tier 1 (Investor) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, entry clearance will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal.
- (b) The applicant must have a minimum of 75 points under paragraphs 42 to 50 of Appendix A.

245R. Period and conditions of grant

(a) Entry clearance will be granted for a period of 3 years and will be subject to the following conditions:

- (i) no recourse to public funds,
- (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
- (iii) no Employment as a Doctor in Training.

245S. Requirements for leave to remain

To qualify for leave to remain as a Tier 1 (Investor) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.
- (b) The applicant must have a minimum of 75 points under paragraphs 42 to 50 of Appendix A.
- (c) The applicant must have, or have last been granted, entry clearance, leave to enter or remain:
 - (i) as a Highly Skilled Migrant,
 - (ii) as a Tier 1 (General) Migrant,
 - (iii) as a Tier 1 (Entrepreneur) Migrant,
 - (iii) as a Tier 1 (Investor) Migrant,
 - (iv) as a Tier 1 (Post-Study Work) Migrant,
 - (v) as a Businessperson,
 - (vi) as an Innovator,
 - (vii) as an Investor,
 - (viii) as a Student,

- (ix) as a Student Nurse,
 - (x) as a Student Re-Sitting an Examination,
 - (xi) as a Student Writing Up a Thesis,
 - (xii) as a Work Permit Holder, or
 - (xiii) as a Writer, Composer or Artist.
- (d) An applicant who has, or was last granted, leave as a Student and:
- (i) is currently being sponsored by a government or international scholarship agency, or
 - (ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,
- must provide the written consent of the sponsoring Government or agency to the application.

245T. Period and conditions of grant

- (a) Leave to remain will be granted:
- (i) for a period of 2 years, to an applicant who has, or was last granted, leave as a Tier 1 (Investor) Migrant,
 - (ii) for a period of 3 years, to any other applicant.
- (b) Leave to remain under this route will be subject to the following conditions:
- (i) no recourse to public funds,
 - (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
 - (iii) no Employment as a Doctor in Training.

245U. Requirements for indefinite leave to remain

To qualify for indefinite leave to remain, a Tier 1 (Investor) Migrant must meet the requirements listed below. If the applicant meets these requirements, indefinite leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused, unless the applicant qualifies for leave to remain by virtue of paragraphs 33E to 33F of these Rules.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.
- (b) The applicant must have spent a continuous period of 5 years Lawfully in the UK, of which the most recent period must have been spent with leave as a Tier 1 (Investor) Migrant, and the rest may be made up of leave:
- (i) as a Tier 1 (Investor) Migrant,
 - (ii) as an Investor.
- (c) The applicant must have maintained the investment referred to in Table 8 of Appendix A throughout the period of 5 years referred to in subparagraph (b) above other than in the first 3 months of that period and, in relation to time spent with leave as a Tier 1 (Investor) Migrant, the applicant must provide specified documents to show that this requirement has been met.
- (d) The applicant must have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, with reference to paragraphs 33B to 33F of these Rules, unless the applicant is under the age of 18 or aged 65 or over at the time the application is made.

TIER 1 (POST-STUDY WORK) MIGRANTS

245V. Purpose

The purpose of this route is to encourage international graduates who have studied in the UK to stay on and do skilled or highly skilled work.

245W. Entry to the UK

All migrants arriving in the UK and wishing to enter as a Tier 1 (Post-Study Work) Migrant must have a valid entry clearance for entry under this route. If they do not have a valid entry clearance, entry will be refused.

245X. Requirements for entry clearance

To qualify for entry clearance as a Tier 1 (Post-Study Work) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, entry clearance will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal.
- (b) The applicant must not previously have been granted entry clearance or leave to remain as a Tier 1 (Post-Study Work) Migrant.
- (c) The applicant must have a minimum of 75 points under paragraphs 51 to 58 of Appendix A.
- (d) The applicant must have a minimum of 10 points under Appendix B.
- (e) The applicant must have a minimum of 10 points under Appendix C.

245Y. Period and conditions of grant

Entry clearance will be granted for a period of 2 years and will be subject to the following conditions:

- (a) no recourse to public funds,
- (b) registration with the police, if this is required by paragraph 326 of these Rules, and
- (c) no Employment as a Doctor in Training.

245Z. Requirements for leave to remain

To qualify for leave to remain as a Tier 1 (Post-Study Work) Migrant, an applicant must meet the requirements listed below. Subject to paragraph 245ZA(i), if the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.
- (b) The applicant must not previously have been granted entry clearance or leave to remain as a Tier 1 (Post-Study Work) migrant.
- (c) The applicant must have a minimum of 75 points under paragraphs 51 to 58 of Appendix A.
- (d) The applicant must have a minimum of 10 points under Appendix B.
- (e) The applicant must have a minimum of 10 points under Appendix C.
- (f) The applicant must have, or have last been granted, entry clearance, leave to enter or leave to remain:
 - (i) as a Participant in the Fresh Talent: Working in Scotland Scheme,
 - (ii) as a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme),
 - (iii) as a Student,

- (iv) as a Student Nurse,
 - (v) as a Student Re-Sitting an Examination, or
 - (vi) as a Student Writing Up a Thesis.
- (g) An applicant who has, or was last granted leave as a Participant in the Fresh Talent: Working in Scotland Scheme must be a British National (Overseas), British overseas territories citizen, British Overseas citizen, British protected person or a British subject as defined in the British Nationality Act 1981.
- (h) An applicant who has, or was last granted, leave as a Student and:
- (i) is currently being sponsored by a government or international scholarship agency, or
 - (ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,
- must provide the written consent of the sponsoring Government or agency to the application.

245ZA. Period and conditions of grant

- (a) Leave to remain will be granted:
- (i) for a period of the difference between 2 years and the period of the last grant of entry clearance, leave to enter or remain , to an applicant who has or was last granted leave as a Participant in the Fresh Talent: Working in Scotland Scheme, as a Participant in the International Graduates Scheme (or its predecessor the Science and Engineering Graduates Scheme). If this calculation results in no grant of leave then leave to remain is to be refused;
 - (ii) for a period of 2 years, to any other applicant.
- (b) Leave to remain under this route will be subject to the following conditions:
- (i) no access to public funds,
 - (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
 - (iii) no Employment as a Doctor in Training unless the applicant has, or has last been granted, entry clearance, leave to enter or remain as a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme) or as a Participant in the Fresh Talent: Working in Scotland Scheme.”.
30. In paragraph 266E, after each occurrence of “Tier 1 (General) Migrant” insert “, Tier 1 (Entrepreneur) Migrant or Tier 1 (Investor) Migrant”,
31. In paragraph 284(i), after “proposed civil partner”, insert:
 “or unless the leave in question was granted to the applicant as the spouse, civil partner, unmarried or same-sex partner of a Tier 1 Migrant and that spouse or partner is the same person in relation to whom the applicant is applying for an extension of stay under this rule”.
32. In paragraphs 287(a)(i)(d), 287(a)(i)(e) and 295G(i)(b), for “Tier 1 (General) Migrant” substitute “Tier 1 Migrant”.
33. After paragraph 319, in the headings “Family Members of Tier 1 (General) Migrants” and “Partners of Tier 1 (General) Migrants”, for “Tier 1 (General) Migrants” substitute “Tier 1 Migrants”.
34. In paragraphs 319A to 319K, for each occurrence of “Tier 1 (General) Migrant” substitute “Tier 1 Migrant”.
35. In paragraph 319C(g), for “There” substitute:
 “Unless the Tier 1 Migrant is a Tier 1 (Investor) Migrant, there”.
36. In paragraph 319H(g), for “There” substitute:
 “Unless the Tier 1 Migrant is a Tier 1 (Investor) Migrant, there”.

37. At the beginning of paragraph 320(7B), insert “subject to paragraph 320(7C),”.
38. After paragraph 320(7B), insert:
“320(7C) Paragraph 320(7B) shall not apply in the following circumstances:
- (a) where the applicant is applying as:
 - (i) a spouse, civil partner or unmarried or same-sex partner under paragraphs 281 or 295A,
 - (ii) a fiancé(e) or proposed civil partner under paragraph 290,
 - (iii) a parent, grandparent or other dependent relative under paragraph 317,
 - (iv) a person exercising rights of access to a child under paragraph 246, or
 - (v) a spouse, civil partner, unmarried or same-sex partner of a refugee or person with Humanitarian Protection under paragraphs 352A, 352AA, 352FA or 352FD; or
 - (b) where the individual was under the age of 18 at the time of his most recent breach of the UK’s immigration laws.”.
39. After paragraph 320(10) insert:
“320(11) where the applicant has previously contrived in a significant way to frustrate the intentions of these Rules. Guidance will be published giving examples of circumstances in which an applicant who has previously overstayed, breached a condition attached to his leave, been an Illegal Entrant or used Deception in an application for entry clearance, leave to enter or remain (whether successful or not) is likely to be considered as having contrived in a significant way to frustrate the intentions of these Rules.”.
40. In paragraph 391:
Delete “with a serious criminal record” and add “who has been deported following conviction for a criminal offence”

Delete “for a long term of years” and add:

“(i) in the case of a conviction which is capable of being spent under the Rehabilitation of Offenders Act 1974, unless the conviction is spent within the meaning of that Act or, if the conviction is spent in less than 10 years, 10 years have elapsed since the making of the deportation order; or

(ii) in the case of a conviction not capable of being spent under that Act, at any time, unless refusal to revoke the deportation order would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees.”

Delete “the court which made the recommendation”.

Delete “However, save in the most exceptional circumstances...” to end.
41. In Appendix A, immediately above paragraph 1 insert a heading “Attributes for Tier 1 (General) Migrants”.
42. In paragraph 5 of Appendix A, for “a qualification”, substitute “an academic qualification”.
43. In paragraph 6 of Appendix A, after “UK NARIC”, insert “, or the appropriate UK professional body”.
44. In paragraph 11(b) of Appendix A, for “not less than 12 months”, substitute “not more than 12 months”.
45. In paragraph 11(d) of Appendix A, for “or Tier 1 (General) Migrant”, substitute “, Tier 1 (General) Migrant, Writer, Composer or Artist, or Self-employed Lawyer”.
46. In paragraph 22 of Appendix A, for “or Tier 1 (General) Migrant”, substitute “, Tier 1 (General) Migrant, Writer, Composer or Artist, or Self-employed Lawyer”.

47. In paragraph 27(a) of Appendix A delete “or a vocational or professional qualification”.
48. Renumber paragraph 27(a) of Appendix A as “(a)(i)”.
49. At the end of paragraph 27(a)(i) of Appendix A insert:
- “or
- (ii) the qualification is a vocational or professional qualification and is deemed by the appropriate UK professional body to meet or exceed the recognised standard of a Bachelor’s or Master’s degree or a PhD in the UK.”.
50. In the heading in Table 3 of Appendix A, for “or Tier 1 (General) Migrant”, substitute “, Tier 1 (General) Migrant, as a Writer, Composer or Artist, or Self-employed Lawyer”.
51. In paragraphs 24 and 25 of Appendix A, for “or Tier 1 (General) Migrant”, substitute “Tier 1 (General) Migrant, Writer, Composer or Artist, or Self-employed Lawyer”.
52. In Table 4 of Appendix A, for the heading “Applications for leave to remain where an applicant has, or has last had, leave to enter as a Tier 1 (General) Migrant”, substitute, “Applications for leave to remain where an applicant has, or has last had, leave to enter as a Tier 1 (General) Migrant, Writer, Composer or Artist, or Self-employed Lawyer”.
53. In Appendix A, after Table 4 insert:

“Attributes for Tier 1 (Entrepreneur) Migrants

32. An applicant applying for entry clearance or leave to remain as a Tier 1 (Entrepreneur) Migrant must score 75 points for attributes.
33. Subject to paragraph 34, available points for applications for entry clearance or leave to remain are shown in Table 5.
34. Available points for an applicant applying for leave to remain who has, or has last been granted, entry clearance, leave to enter or remain as:
- (i) a Tier 1 (Entrepreneur),
- (ii) a Businessperson, or
- (iii) an Innovator
- are shown in Table 6.
35. Notes to accompany the tables appear below the respective tables.

Table 5

Investment	Points
The applicant has access to not less than £200,000.	25
The money is held in one or more regulated financial institutions.	25
The money is disposable in the UK.	25

Investment: notes

36. Specified documents must be provided as evidence of any investment.
37. A regulated financial institution is one which is regulated by the appropriate regulatory body for the country in which the financial institution operates. For example, where a financial institution does business in the UK, the appropriate regulator is the Financial Services Authority.
38. Money is disposable in the UK if all of the money is held in a UK based financial institution or if the money is freely transferable to the UK and convertible to sterling. Funds in a foreign currency will be converted to pounds sterling (£) using the spot exchange rate which appeared on www.oanda.com¹ on the date on which the application was made.

¹ This is an external website, for which the Home Office is not responsible

Table 6

Investment and business activity	Points
The applicant has invested, or had invested on his behalf, not less than £200,000 in cash directly into one or more businesses in the UK.	20
The applicant has: (a) registered with HM Revenue and Customs as self-employed, or (b) registered a new business in which he is a director, or (c) registered as a director of an existing business. Where the applicant's last grant of entry clearance, leave to enter or leave to remain was as a Tier 1 (Entrepreneur) Migrant, the above condition must have been met within 3 months of the grant.	20
The applicant is engaged in business activity at the time of his application for leave to remain.	15
The applicant has: (a) established a new business or businesses that has or have created the equivalent of at least two new full time jobs for persons settled in the UK, or (b) taken over or joined an existing business or businesses and his services or investment have resulted in a net increase in the employment provided by the business or businesses for persons settled in the UK by creating the equivalent of at least two new full time jobs. Where the applicant's last grant of entry clearance or leave to enter or remain was as a Tier 1 (Entrepreneur) Migrant, the jobs must have existed for at least 12 months of the period for which the previous leave was granted.	20

Investment and business activity: notes

39. Documentary evidence must be provided in all cases. Specified documents must be provided as evidence of any investment and business activity that took place when the applicant had leave as a Tier 1 (Entrepreneur) Migrant.

40. The investment must not include the value of any residential accommodation, property development or property management. The investment must not be in the form of a director's loan, unless it is unsecured and in favour of the business.

41. A full time job is one involving at least 30 hours' work a week. Two or more part time jobs that add up to 30 hours a week will count as one full time job. Where the applicant's last grant of entry clearance or leave was as a Tier 1 (Entrepreneur) Migrant, the jobs must have existed for a total of at least 12 months during the period during which the migrant had leave in that category. This need not consist of 12 consecutive months and the jobs need not exist at the date of application, provided they existed for at least 12 months during the period of leave that the migrant is seeking to extend.

Attributes for Tier 1 (Investor) Migrants

42. An applicant applying for entry clearance or leave to remain as a Tier 1 (Investor) Migrant must score 75 points for attributes.

43. Subject to paragraph 44, available points for applications for entry clearance or leave to remain are shown in Table 7.

44. Available points for an applicant applying for leave to remain who has, or has last been granted, entry clearance, leave to enter or remain as:

- (i) a Tier 1 (Investor) Migrant, or
- (ii) an Investor

are shown in Table 8.

45. Notes to accompany both Table 7 and Table 8 appear below Table 8.

Table 7

Assets	Points
<p>The applicant:</p> <p>(a) has money of his own held in a regulated financial institution and disposable in the UK amounting to not less than £1 million; or</p> <p>(b) (i) owns personal assets which, taking into account any liabilities to which they are subject, have a value exceeding £2 million,</p> <p>and</p> <p>(ii) has money under his control held in a regulated financial institution and disposable in the UK amounting to not less than £1 million which has been loaned to him by a financial institution regulated by the Financial Services Authority.</p>	75

Table 8

Assets and investment	Points
<p>The applicant:</p> <p>(a) has money of his own under his control in the UK amounting to not less than £1 million, or</p> <p>(b) (i) owns personal assets which, taking into account any liabilities to which they are subject, have a value of not less than £2 million, and</p> <p>(ii) has money under his control held in a regulated financial institution and disposable in the UK amounting to not less than £1 million which has been loaned to him by a financial institution regulated by the Financial Services Authority.</p>	30
<p>The applicant has invested not less than £750,000 of his capital in the UK by way of UK Government bonds, share capital or loan capital in active and trading UK registered companies other than those principally engaged in property investment.</p>	30

<p>The investment referred to above was made within 3 months of obtaining entry clearance, leave to enter or leave to remain as a Tier 1 (Investor) Migrant and the investment has been maintained for the whole of the remaining period of that leave;</p> <p>or</p> <p>The migrant has, or was last granted, entry clearance, leave to enter or leave to remain as an Investor.</p>	15
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Assets and investment: notes

- 46. Specified documents must be provided as evidence of investment.
- 47. A regulated financial institution is one which is regulated by the appropriate regulatory body for the country in which the financial institution operates. For example, where a financial institution does business in the UK, the appropriate regulator is the Financial Services Authority.
- 48. Money is disposable in the UK if all of the money is held in a UK based financial institution or if the money is freely transferable to the UK and convertible to sterling. Funds in a foreign currency will be converted to pounds sterling (£) using the spot exchange rate which appeared on www.oanda.com² on the date on which the application was made.
- 49. “Money of his own”, “personal assets” and “his capital” include money or assets belonging to the applicant’s spouse, civil partner or unmarried or same-sex partner, provided that specified documents are provided to show that the money or assets are under the applicant’s control and that he is free to invest them.
- 50. Investment excludes investment by the applicant by way of deposits with a bank, building society or other enterprise whose normal course of business includes the acceptance of deposits.

Attributes for Tier 1 (Post-Study Work) Migrants

- 51. An applicant applying for entry clearance or leave to remain as a Tier 1 (Post-Study Work) Migrant must score 75 points for attributes.
- 52. Available points are shown in Table 9.
- 53. Notes to accompany the table appear below the table.

Table 9

Qualification	Points
<p>The applicant has been awarded:</p> <p>(a) a UK recognised bachelor or postgraduate degree, or</p> <p>(b) a UK postgraduate certificate or diploma, or</p> <p>(c) a Higher National Diploma (“HND”) from a Scottish institution.</p>	20

² This is an external website, for which the Home Office is not responsible

(a) The applicant studied for his award at a UK institution that is a UK recognised or listed body, or which holds a sponsor licence under Tier 4 of the Points Based System, or (b) If the applicant is claiming points for having been awarded a Higher National Diploma from a Scottish Institution, he studied for that diploma at a Scottish publicly funded institution of further or higher education, or a Scottish bona fide private education institution which maintains satisfactory records of enrolment and attendance.	20
The applicant's periods of UK study and/or research towards his eligible award were undertaken whilst he had entry clearance, leave to enter or leave to remain in the UK: (a) as a Student, or (b) as a dependant of someone with leave in any category permitting the admittance of dependants.	20
The applicant made the application for entry clearance or leave to remain as a Tier 1 (Post-Study Work) Migrant within 12 months of obtaining the relevant qualification.	15
The applicant is applying for leave to remain and has, or was last granted, leave as a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme) or as a Participant in the Fresh Talent: Working in Scotland Scheme.	75

Qualification: notes

54. Specified documents must be provided as evidence of the qualification.
55. A qualification will have been deemed to have been “obtained” on the date on which the applicant was first notified in writing, by the awarding institution, that the qualification had been awarded.
56. A “UK recognised body” is an institution that has been granted degree awarding powers by either a Royal Charter, an Act of Parliament or the Privy Council.
57. “UK listed body” is an institution that is not a UK recognised body but which provides full courses that lead to the award of a degree by a UK recognised body.
58. To qualify as an HND from a Scottish institution, a qualification must be at level 8 on the Scottish Credit and Qualifications Framework.”.
54. For Appendix B, substitute:

“Appendix B
English language

1. An applicant applying for entry clearance or leave to remain as a Tier 1 Migrant (other than as a Tier 1 (Investor) Migrant), must have 10 points for English language.
2. 10 points will only be awarded if the applicant:
 - (a) has the level of English language shown in the table below and:

- (i) provides an original English language test certificate from an English language test provider approved by the Secretary of State for these purposes, which clearly shows the applicant's name; the qualification obtained (which must meet or exceed the level shown in the table below); and the date of the award, or
- (ii) has obtained an academic qualification (not a professional or vocational qualification) which is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the UK, and which UK NARIC has confirmed was taught or researched in English to the level indicated in the table below, and provides the specified documents, or

Level of English language	Points
A knowledge of English equivalent to level C1 of the Council of Europe's Common European Framework for Language Learning or above	10

- (b) is a national of one of the following countries:

Antigua and Barbuda
 Australia
 The Bahamas
 Barbados
 Belize
 Canada
 Dominica
 Grenada
 Guyana
 Jamaica
 New Zealand
 St Kitts and Nevis
 St Lucia
 St Vincent and the Grenadines
 Trinidad and Tobago
 USA,

and provides the specified documents, or

- (c) has obtained an academic qualification (not a professional or vocational qualification), which is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the UK, from an educational establishment in one of the following countries:

Antigua and Barbuda
 Australia
 The Bahamas
 Barbados
 Belize
 Dominica
 Grenada
 Guyana
 Ireland
 Jamaica
 New Zealand
 St Kitts and Nevis
 St Lucia
 St Vincent and The Grenadines
 Trinidad and Tobago
 the UK
 the USA,

and provides the specified documents, or

- (d) has, or has last been granted, leave as a Tier 1 (General) Migrant or a Tier 1 (Entrepreneur) Migrant, or

- (e) has, or was last granted, leave as a Highly Skilled Migrant, if that leave was granted under these Rules at a time when they included the changes which came into force on 5 December 2006³, or
- (f) is applying as a Tier 1 (Post-Study Work) Migrant and achieved 75 points under Appendix A.

55. For Appendix C, substitute:

**“Appendix C
Maintenance (funds)**

- 1. An applicant applying for entry clearance or leave to remain as a Tier 1 Migrant (other than as a Tier 1 (Investor) Migrant) must score 10 points for funds.
- 2. 10 points will only be awarded if an applicant:
 - (a) applying for entry clearance, has the level of funds shown in the table below and provides the specified documents, or

Level of funds	Points
£2,800	10

- (b) applying for leave to remain, has the level of funds shown in the table below and provides the specified documents.

Level of funds	Points
£800	10

3. The applicant must have the funds specified in paragraph 2 above at the date of the application and must also have had those funds for a period of time set out in the guidance specifying the specified documents for the purposes of paragraph 2 above.”.

56. In Appendix E, for each occurrence of the words “Tier 1 (General) Migrant” or “Tier 1 (General) Migrants” substitute “Tier 1 Migrant” or, as the case may be, “Tier 1 Migrants”.

57. In Appendix E, after “(e)” insert:

“(ea) In all cases, the funds in question must be available to:

- (i) the applicant, or
- (ii) where he is applying as the partner of a Tier 1 Migrant, either to him or to that Tier 1 Migrant, or
- (iii) where he is applying as the child of a Tier 1 Migrant, either to him, to the Tier 1 Migrant or to the child’s other parent who is Lawfully present in the UK or being granted entry clearance, or leave to enter or remain, at the same time

at the date of the application and must have been available to that person for a period of time set out in the guidance specifying the specified documents for the purposes of Appendix E.”.

58. After Appendix E insert:

**“Appendix F
Immigration rules relating to Highly Skilled Migrants, the International
Graduates Scheme, the Fresh Talent: Working in Scotland Scheme,
Businesspersons, Innovators, Investors and Writers, Composers and Artists as
at 29 June 2008**

³ HC 1702.

Highly skilled migrants

Requirements for leave to enter the United Kingdom as a highly skilled migrant

135A. The requirements to be met by a person seeking leave to enter as a highly skilled migrant are that the applicant:

- (i) must produce a valid document issued by the Home Office confirming that he meets, at the time of the issue of that document, the criteria specified by the Secretary of State for entry to the United Kingdom under the Highly Skilled Migrant Programme; and
- (ii) intends to make the United Kingdom his main home; and
- (iii) is able to maintain and accommodate himself and any dependants adequately without recourse to public funds; and
- (iv) holds a valid United Kingdom entry clearance for entry in this capacity; and
- (v) if he makes an application for leave to enter on or after 29 February 2008, is not applying in India.

Immigration Officers at port should not refuse entry to passengers on the basis that they applied in India, if those passengers have a valid entry clearance for entry in this capacity

Leave to enter as a highly skilled migrant

135B. A person seeking leave to enter the United Kingdom as a highly skilled migrant may be admitted for a period not exceeding 2 years, subject to a condition prohibiting Employment as a Doctor in Training (unless the applicant has submitted with this application a valid Highly Skilled Migrant Programme Approval Letter, where the application for that approval letter was made on or before 6 February 2008), provided the Immigration Officer is satisfied that each of the requirements of paragraph 135A is met and that the application does not fall for refusal under paragraph 135HA.

Refusal of leave to enter as a highly skilled migrant

135C. Leave to enter as a highly skilled migrant is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 135A is met or if the application falls for refusal under paragraph 135HA.

International Graduates Scheme

Requirements for leave to enter as a participant in the International Graduates Scheme

135O. The requirements to be met by a person seeking leave to enter as a participant in the International Graduates Scheme are that he:

- (i) has successfully completed and obtained either:
 - (a) a recognised UK degree (with second class honours or above) in a subject approved by the Department for Education and Skills for the purposes of the Science and Engineering Graduates scheme, completed before 1 May 2007; or
 - (b) a recognised UK degree, Master's degree, or PhD in any subject completed on or after 1 May 2007; or
 - (c) a postgraduate certificate or postgraduate diploma in any subject completed on or after 1 May 2007;at a UK education institution which is a recognised or listed body.
- (ii) intends to seek and take work during the period for which leave is granted in this capacity;
- (iii) can maintain and accommodate himself and any dependants without recourse to public funds;
- (iv) completed his degree, Master's degree, PhD or postgraduate certificate or diploma, in the last 12 months;
- (v) if he has previously spent time in the UK as a participant in the Science and Engineering Graduates Scheme or International Graduates Scheme, is not seeking leave to enter to a date beyond 12 months from the date he was first given leave to enter or remain under the Science and Engineering Graduates Scheme or the International Graduates Scheme;

(vi) intends to leave the United Kingdom if, on expiry of his leave under this scheme, he has not been granted leave to remain in the United Kingdom in accordance with paragraphs 128-135, 200-210H or 245A-245G of these Rules;

(vii) has the written consent of his official sponsor to enter or remain in the United Kingdom under the Science and Engineering Graduates Scheme or International Graduates Scheme if his approved studies, or any studies he has subsequently undertaken, were sponsored by a government or international scholarship agency; and

(viii) holds a valid entry clearance for entry in this capacity except where he is a British National (Overseas), a British overseas territories citizen, a British Overseas citizen, a British protected person or a person who under the British Nationality Act 1981 is a British subject.

Leave to enter as a participant in the International Graduates Scheme

135P. A person seeking leave to enter the United Kingdom as a participant in the International Graduates Scheme may be admitted for a period not exceeding 12 months provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity.

Refusal of leave to enter as a participant in the International Graduates Scheme

135Q. Leave to enter as a participant in the International Graduates Scheme is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 135O is met.

Requirements for leave to remain as a participant in the International Graduates Scheme

135R. The requirements to be met by a person seeking leave to remain as a participant in the International Graduates Scheme are that he:

(i) meets the requirements of paragraph 135O(i) to (vii); and

(ii) has leave to enter or remain as a student or as a participant in the Science and Engineering Graduates Scheme or International Graduates Scheme in accordance with paragraphs 57–69L or 135O–135T of these Rules;

(iii) would not, as a result of an extension of stay, remain in the United Kingdom as a participant in the International Graduates Scheme to a date beyond 12 months from the date on which he was first given leave to enter or remain in this capacity or under the Science and Engineering Graduates Scheme.

Leave to remain as a participant in the International Graduates Scheme

135S. Leave to remain as a participant in the International Graduates Scheme may be granted if the Secretary of State is satisfied that the applicant meets each of the requirements of paragraph 135R.

Refusal of leave to remain as a participant in the International Graduates Scheme

135T. Leave to remain as a participant in the International Graduates Scheme is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 135R is met.

Requirements for leave to enter the United Kingdom as a Fresh Talent: Working in Scotland scheme participant

143A. The requirements to be met by a person seeking leave to enter as a Fresh Talent: Working in Scotland scheme participant are that the applicant:

(i) has been awarded:

(a) a HND, by a Scottish publicly funded institution of further or higher education, or a Scottish bona fide private education institution; or

(b) a recognised UK undergraduate degree, Master's degree or PhD or postgraduate certificate or diploma, by a Scottish education institution which is a recognised or listed body; and

(ii) has lived in Scotland for an appropriate period of time whilst studying for the HND, undergraduate degree, Master's degree PhD or postgraduate certificate or diploma referred to in (i) above; and

(iii) intends to seek and take employment in Scotland during the period of leave granted under this paragraph; and

(iv) is able to maintain and accommodate himself and any dependants adequately without recourse to public funds; and

(v) has completed the HND, undergraduate degree, Master's degree PhD or postgraduate certificate or diploma referred to in (i) above in the last 12 months; and

(vi) intends to leave the United Kingdom if, on expiry of his leave under this paragraph, he has not been granted leave to remain in the United Kingdom as:

(a) a work permit holder in accordance with paragraphs 128–135 of these Rules; or

(b) a Tier 1 (General) Migrant; or

(c) a person intending to establish themselves in business in accordance with paragraphs 200–210 of these Rules; or

(d) an innovator in accordance with paragraphs 210A–210H of these Rules; and

(vii) has the written consent of his official sponsor to enter or remain in the United Kingdom as a Fresh Talent: Working in Scotland scheme participant, if the studies which led to his qualification under (i) above (or any studies he has subsequently undertaken) were sponsored by a government or international scholarship agency; and

(viii) if he has previously been granted leave as either:

(a) a Fresh Talent: Working in Scotland scheme participant in accordance with this paragraph; and/or

(b) a participant in the Science and Engineering Graduates Scheme or International Graduates Scheme in accordance with paragraphs 135O–135T of these Rules is not seeking leave to enter under this paragraph which, when amalgamated with any previous periods of leave granted in either of these two categories, would total more than 24 months; and

(ix) holds a valid entry clearance for entry in this capacity except where he is a British National (Overseas), a British overseas territories citizen, a British Overseas citizen, a British protected person or a person who under the British Nationality Act 1981 is a British subject.

Leave to enter as a Fresh Talent: Working in Scotland scheme participant

143B. A person seeking leave to enter the United Kingdom as a Fresh Talent: Working in Scotland scheme participant may be admitted for a period not exceeding 24 months provided the Immigration Officer is satisfied that each of the requirements of paragraph 143A is met.

Refusal of leave to enter as a Fresh Talent: Working in Scotland scheme participant

143C. Leave to enter as a Fresh Talent: Working in Scotland scheme participant is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 143A is met.

Requirements for an extension of stay as a Fresh Talent: Working in Scotland scheme participant

143D. The requirements to be met by a person seeking an extension of stay as a Fresh Talent: Working in Scotland scheme participant are that the applicant:

(i) meets the requirements of paragraph 143A (i) to (vii); and

(ii) has leave to enter or remain in the United Kingdom as either:

(a) a student in accordance with paragraphs 57–69L of these Rules; or

(b) a participant in the Science and Engineering Graduates Scheme or International Graduates Scheme in accordance with paragraphs 135O–135T of these Rules; or

(c) a Fresh Talent: Working in Scotland scheme participant in accordance with paragraphs 143A–143F of these Rules; and

(iii) if he has previously been granted leave as either:

(a) a Fresh Talent: Working in Scotland scheme participant in accordance with paragraphs 143A–143F of these Rules; and/or

(b) a Science and Engineering Graduates Scheme or International Graduates Scheme participant in accordance with paragraphs 135O–135T of these Rules is not seeking leave to remain under this paragraph which, when amalgamated with any previous periods of leave granted in either of these two categories, would total more than 24 months.

Extension of stay as a Fresh Talent: Working in Scotland scheme participant

143E. An extension of stay as a Fresh Talent: Working in Scotland scheme participant may be granted for a period not exceeding 24 months if the Secretary of State is satisfied that each of the requirements of paragraph 143D is met.

Refusal of an extension of stay as a Fresh Talent: Working in Scotland scheme participant

143F. An extension of stay as a Fresh Talent: Working in Scotland scheme participant is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 143D is met.

Persons intending to establish themselves in business

Requirements for leave to enter the United Kingdom as a person intending to establish himself in business

200. For the purpose of paragraphs 201-210 a business means an enterprise as:

- a sole trader; or
- a partnership; or
- a company registered in the United Kingdom.

201. The requirements to be met by a person seeking leave to enter the United Kingdom to establish himself in business are:

- (i) that he satisfies the requirements of either paragraph 202 or paragraph 203; and
- (ii) that he has not less than £200,000 of his own money under his control and disposable in the United Kingdom which is held in his own name and not by a trust or other investment vehicle and which he will be investing in the business in the United Kingdom; and
- (iii) that until his business provides him with an income he will have sufficient additional funds to maintain and accommodate himself and any dependants without recourse to employment (other than his work for the business) or to public funds; and
- (iv) that he will be actively involved full time in trading or providing services on his own account or in partnership, or in the promotion and management of the company as a director; and
- (v) that his level of financial investment will be proportional to his interest in the business; and
- (vi) that he will have either a controlling or equal interest in the business and that any partnership or directorship does not amount to disguised employment; and
- (vii) that he will be able to bear his share of liabilities; and
- (viii) that there is a genuine need for his investment and services in the United Kingdom; and
- (ix) that his share of the profits of the business will be sufficient to maintain and accommodate himself and any dependants without recourse to employment (other than his work for the business) or to public funds; and
- (x) that he does not intend to supplement his business activities by taking or seeking employment in the United Kingdom other than his work for the business; and
- (xi) that he holds a valid United Kingdom entry clearance for entry in this capacity.

202. Where a person intends to take over or join as a partner or director an existing business in the United Kingdom he will need, in addition to meeting the requirements at paragraph 201, to produce:

- (i) a written statement of the terms on which he is to take over or join the business; and
- (ii) audited accounts for the business for previous years; and
- (iii) evidence that his services and investment will result in a net increase in the employment provided by the business to persons settled here to the extent of creating at least 2 new full time jobs.

203. Where a person intends to establish a new business in the United Kingdom he will need, in addition to meeting the requirements at paragraph 201 above, to produce evidence:

- (i) that he will be bringing into the country sufficient funds of his own to establish a business; and

(ii) that the business will create full time paid employment for at least 2 persons already settled in the United Kingdom.

Leave to enter the United Kingdom as a person seeking to establish himself in business

204. A person seeking leave to enter the United Kingdom to establish himself in business may be admitted for a period not exceeding 2 years with a condition restricting his freedom to take employment provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity.

Refusal of leave to enter the United Kingdom as a person seeking to establish himself in business

205. Leave to enter the United Kingdom as a person seeking to establish himself in business is to be refused if a valid United Kingdom entry clearance for entry in this capacity is not produced to the Immigration Officer on arrival.

Requirements for an extension of stay in order to remain in business

206. The requirements for an extension of stay in order to remain in business in the United Kingdom are that the applicant can show:

(i) that he entered the United Kingdom with a valid United Kingdom entry clearance as a businessman; and

(ii) audited accounts which show the precise financial position of the business and which confirm that he has invested not less than £200,000 of his own money directly into the business in the United Kingdom; and

(iii) that he is actively involved on a full time basis in trading or providing services on his own account or in partnership or in the promotion and management of the company as a director; and
(iv) that his level of financial investment is proportional to his interest in the business; and

(v) that he has either a controlling or equal interest in the business and that any partnership or directorship does not amount to disguised employment; and

(vi) that he is able to bear his share of any liability the business may incur; and

(vii) that there is a genuine need for his investment and services in the United Kingdom; and

(viii) (a) that where he has established a new business, new full time paid employment has been created in the business for at least 2 persons settled in the United Kingdom; or

(b) that where he has taken over or joined an existing business, his services and investment have resulted in a net increase in the employment provided by the business to persons settled here to the extent of creating at least 2 new full time jobs; and

(ix) that his share of the profits of the business is sufficient to maintain and accommodate him and any dependants without recourse to employment (other than his work for the business) or to public funds; and

(x) that he does not and will not have to supplement his business activities by taking or seeking employment in the United Kingdom other than his work for the business.

206A. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a person who has leave to enter or remain for work permit employment are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a work permit holder in accordance with paragraphs 128 to 133 of these Rules; and

(ii) meets each of the requirements of paragraph 201 (i)–(x).

206B. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a highly skilled migrant are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a highly skilled migrant in accordance with paragraphs 135A to 135F of these Rules; and

(ii) meets each of the requirements of paragraph 201 (i)–(x).

206C. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a participant in the Science and Engineering Graduates Scheme or International Graduates Scheme are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a participant in the Science and Engineering Graduates Scheme or International Graduates Scheme in accordance with paragraphs 135O to 135T of these Rules; and

(ii) meets each of the requirements of paragraph 201 (i)–(x).

206D. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for an innovator are that the applicant:

(i) entered the United Kingdom or was given leave to remain as an innovator in accordance with paragraphs 210A to 210F of these Rules; and

(ii) meets each of the requirements of paragraph 201 (i)–(x).

206E. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a student are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a student in accordance with paragraphs 57 to 62 of these Rules; and

(ii) has obtained a degree qualification on a recognised degree course at either a United Kingdom publicly funded further or higher education institution or a bona fide United Kingdom private education institution which maintains satisfactory records of enrolment and attendance; and

(iii) has the written consent of his official sponsor to such self employment if he is a member of a government or international scholarship agency sponsorship and that sponsorship is either ongoing or has recently come to an end at the time of the requested extension; and

(iv) meets each of the requirements of paragraph 201 (i)–(x).

206F. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a working holidaymaker are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a working holidaymaker in accordance with paragraphs 95 to 100 of these Rules; and

(ii) has spent more than 12 months in total in the UK in this capacity; and

(iii) meets each of the requirements of paragraph 201 (i)–(x).

206G. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom in the case of a person who has leave to enter or remain as a Fresh Talent: Working in Scotland scheme participant are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a Fresh Talent: Working in Scotland scheme participant in accordance with paragraphs 143A to 143F of these Rules; and

(ii) has the written consent of his official sponsor to such employment if the studies which led to him being granted leave under the Fresh Talent: Working in Scotland scheme in accordance with paragraphs 143A to 143F of these Rules, or any studies he has subsequently undertaken, were sponsored by a government or international scholarship agency; and

(iii) meets each of the requirements of paragraph 201 (i)–(x).

206H. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a Postgraduate Doctor or Dentist are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a Postgraduate Doctor or Dentist in accordance with paragraphs 70 to 75 of these Rules; and

(ii) has the written consent of his official sponsor to such self employment if he is a member of a government or international scholarship agency sponsorship and that sponsorship is either ongoing or has recently come to an end at the time of the requested extension; and

(iii) meets each of the requirements of paragraph 201 (i)–(x).

206I. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a Tier 1 (General) Migrant are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a Tier 1 (General) Migrant; and

(ii) meets each of the requirements of paragraph 201(i)-(x).

Extension of stay in order to remain in business

207. An extension of stay in order to remain in business with a condition restricting his freedom to take employment may be granted for a period not exceeding 3 years at a time provided the Secretary of State is satisfied that each of the requirements of paragraph 206, 206A, 206B, 206C, 206D, 206E, 206F, 206G, 206H or 206I is met.

Refusal of extension of stay in order to remain in business

208. An extension of stay in order to remain in business is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 206, 206A, 206B, 206C, 206D, 206E, 206F, 206G, 206H or 206I is met.

Innovators

Requirements for leave to enter the United Kingdom as an innovator

210A. The requirements to be met by a person seeking leave to enter as an innovator are that the applicant:

- (i) is approved by the Home Office as a person who meets the criteria specified by the Secretary of State for entry under the innovator scheme at the time that approval is sought under that scheme;
- (ii) intends to set up a business that will create full-time paid employment for at least 2 persons already settled in the UK; and
- (iii) intends to maintain a minimum five per cent shareholding of the equity capital in that business, once it has been set up, throughout the period of his stay as an innovator; and
- (iv) will be able to maintain and accommodate himself and any dependants adequately without recourse to public funds or to other employment; and
- (v) holds a valid United Kingdom entry clearance for entry in this capacity.

Leave to enter as an innovator

210B. A person seeking leave to enter the United Kingdom as an innovator may be admitted for a period not exceeding 2 years, provided the Immigration Officer is satisfied that each of the requirements of paragraph 210A is met.

Refusal of leave to enter as an innovator

210C. Leave to enter as an innovator is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 210A are met.

Requirements for an extension of stay as an innovator

210D. The requirements for an extension of stay in the United Kingdom as an innovator, in the case of a person who was granted leave to enter under paragraph 210A, are that the applicant:

- (i) has established a viable trading business, by reference to the audited accounts and trading records of that business; and
- (ii) continues to meet the requirements of paragraph 210A (i) and (iv); and has set up a business that will create full-time paid employment for at least 2 persons already settled in the UK; and
- (iii) has maintained a minimum five per cent shareholding of the equity capital in that business, once it has been set up, throughout the period of his stay.

210DA. The requirements for an extension of stay in the United Kingdom as an innovator, in the case of a person who has leave for the purpose of work permit employment are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a work permit holder in accordance with paragraphs 128 to 132 of these Rules; and
- (ii) meets the requirements of paragraph 210A (i)-(iv).

210DB. The requirements for an extension of stay in the United Kingdom as an innovator in the case of a person who has leave as a student are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a student in accordance with paragraphs 57 to 62 of these Rules; and

(ii) has obtained a degree qualification on a recognised degree course at either a United Kingdom publicly funded further or higher education institution or a bona fide United Kingdom private education institution which maintains satisfactory records of enrolment and attendance; and

(iii) has the written consent of his official sponsor to remain under the Innovator category if he is a member of a government or international scholarship agency sponsorship and that sponsorship is either ongoing or has recently come to an end at the time of the requested extension; and

(iv) meets the requirements of paragraph 210(i)-(iv).

210DC. The requirements to be met for an extension of stay as an innovator, for a person who has leave as a working holidaymaker are that the applicant:

(i) entered the United Kingdom as a working holidaymaker in accordance with paragraphs 95 to 96 of these Rules; and

(ii) meets the requirements of paragraph 210A(i)-(iv).

210DD. The requirements to be met for an extension of stay as an innovator, for a postgraduate doctor, postgraduate dentist or trainee general practitioner are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a postgraduate doctor, postgraduate dentist or trainee general practitioner in accordance with paragraphs 70 to 75 of these Rules; and

(ii) has the written consent of his official sponsor to remain under the innovator category if he is a member of a government or international scholarship agency sponsorship and that sponsorship is either ongoing or has recently come to an end at the time of the requested extension; and

(iii) meets the requirements of paragraph 210(i)-(iv).

210DE. The requirements to be met for an extension of stay as an innovator, for a participant in the Science and Engineering Graduate Scheme or International Graduates Scheme are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a participant in the Science and Engineering Graduate Scheme or International Graduates Scheme in accordance with paragraphs 135O to 135T of these Rules; and

(ii) meets the requirements of paragraph 210A(i)-(iv).

210DF. The requirements to be met for an extension of stay as an innovator, for a highly skilled migrant are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a highly skilled migrant in accordance with paragraphs 135A to 135E of these Rules; and

(ii) meets the requirements of paragraph 210A(i)-(iv)

Requirements for leave to enter the United Kingdom as an investor

224. The requirements to be met by a person seeking leave to enter the United Kingdom as an investor are that he:

(i) (a) has money of his own under his control in the United Kingdom amounting to no less than £1 million; or

(b) (i) owns personal assets which, taking into account any liabilities to which he is subject, have a value exceeding £2 million; and

(ii) has money under his control in the United Kingdom amounting to no less than £1 million, which may include money loaned to him provided that it was loaned by a financial institution regulated by the Financial Services Authority; and

(ii) intends to invest not less than £750,000 of his capital in the United Kingdom by way of United Kingdom Government bonds, share capital or loan capital in active and trading United Kingdom registered companies (other than those principally engaged in property investment and excluding investment by the applicant by way of deposits with a bank, building society or other enterprise whose normal course of business includes the acceptance of deposits); and

(iii) intends to make the United Kingdom his main home; and

(iv) is able to maintain and accommodate himself and any dependants without taking employment (other than self employment or business) or recourse to public funds; and

(v) holds a valid United Kingdom entry clearance for entry in this capacity.

Leave to enter as an investor

225. A person seeking leave to enter the United Kingdom as an investor may be admitted for a period not exceeding 2 years with a restriction on his right to take employment, provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity.

Refusal of leave to enter as an investor

226. Leave to enter as an investor is to be refused if a valid United Kingdom entry clearance for entry in this capacity is not produced to the Immigration Officer on arrival.

Requirements for an extension of stay as an investor

Extension of stay as an investor

227. The requirements for an extension of stay as an investor are that the applicant:

- (i) entered the United Kingdom with a valid United Kingdom entry clearance as an investor; and
- (ii) (a) has money of his own under his control in the United Kingdom amounting to no less than £1 million; or
- (b) (i) owns personal assets which, taking into account any liabilities to which he is subject, have a value exceeding £2 million; and
- (ii) has money under his control in the United Kingdom amounting to no less than £1 million, which may include money loaned to him provided that it was loaned by a financial institution regulated by the Financial Services Authority; and
- (iii) has invested not less than £750,000 of his capital in the United Kingdom on the terms set out in paragraph 224 (ii) above and intends to maintain that investment on the terms set out in paragraph 224 (ii); and
- (iv) has made the United Kingdom his main home; and
- (v) is able to maintain and accommodate himself and any dependants without taking employment (other than his self employment or business) or recourse to public funds.

227A. The requirements to be met for an extension of stay as an investor, for a person who has leave to enter or remain in the United Kingdom as a work permit holder are that the applicant:

- (i) entered the United Kingdom or was granted leave to remain as a work permit holder in accordance with paragraphs 128 to 133 of these Rules; and
- (ii) meets the requirements of paragraph 224 (i)–(iv).

227B. The requirements to be met for an extension of stay as an investor, for a person in the United Kingdom as a highly skilled migrant are that the applicant:

- (i) entered the United Kingdom or was granted leave to remain as a highly skilled migrant in accordance with paragraphs 135A to 135F of these Rules; and
- (ii) meets the requirements of paragraph 224 (i)–(iv).

227C. The requirements to be met for an extension of stay as an investor, for a person in the United Kingdom to establish themselves or remain in business are that the applicant:

- (i) entered the United Kingdom or was granted leave to remain as a person intending to establish themselves or remain in business in accordance with paragraphs 201 to 208 of these Rules; and
- (ii) meets the requirements of paragraph 224 (i)–(iv).

227D. The requirements to be met for an extension of stay as an investor, for a person in the United Kingdom as an innovator are that the applicant:

- (i) entered the United Kingdom or was granted leave to remain as an innovator in accordance with paragraphs 210A to 210F of these Rules; and
- (ii) meets the requirements of paragraph 224 (i)–(iv).

227E. The requirements to be met for an extension of stay as an investor, for a person in the United Kingdom as a Tier 1 (General) Migrant are that the applicant:

(i) entered the United Kingdom or was granted leave to remain as a Tier 1 (General) Migrant; and

(ii) meets the requirements of paragraph 224(i)-(iv).

228. An extension of stay as an investor, with a restriction on the taking of employment, may be granted for a period not exceeding 3 years at a time of 3 years, provided the Secretary of State is satisfied that each of the requirements of paragraph 227, 227A, 227B, 227C, 227D or 227E is met.

Refusal of extension of stay as an investor

229. An extension of stay as an investor is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 227, 227A, 227B, 227C, 227D or 227E is met.

Writers, composers and artists

Requirements for leave to enter the United Kingdom as a writer, composer or artist

232. The requirements to be met by a person seeking leave to enter the United Kingdom as a writer, composer or artist are that he:

(i) has established himself outside the United Kingdom as a writer, composer or artist primarily engaged in producing original work which has been published (other than exclusively in newspapers or magazines), performed or exhibited for its literary, musical or artistic merit; and

(ii) does not intend to work except as related to his self employment as a writer, composer or artist; and

(iii) has for the preceding year been able to maintain and accommodate himself and any dependants from his own resources without working except as a writer, composer or artist; and

(iv) will be able to maintain and accommodate himself and any dependants from his own resources without working except as a writer, composer or artist and without recourse to public funds; and

(v) holds a valid United Kingdom entry clearance for entry in this capacity.

Leave to enter as a writer, composer or artist

233. A person seeking leave to enter the United Kingdom as a writer, composer or artist may be admitted for a period not exceeding 2 years, subject to a condition restricting his freedom to take employment, provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity.

Refusal of leave to enter as a writer, composer or artist

234. Leave to enter as a writer, composer or artist is to be refused if a valid United Kingdom entry clearance for entry in this capacity is not produced to the Immigration Officer on arrival.

Requirements for an extension of stay as a writer, composer or artist

235. The requirements for an extension of stay as a writer, composer or artist are that the applicant:

(i) entered the United Kingdom with a valid United Kingdom entry clearance as a writer, composer or artist; and

(ii) meets the requirements of paragraph 232 (ii)-(iv).

Extension of stay as a writer, composer or artist

236. An extension of stay as a writer, composer or artist may be granted for a period not exceeding 3 years with a restriction on his freedom to take employment, provided the Secretary of State is satisfied that each of the requirements of paragraph 235 is met.

Refusal of extension of stay as a writer, composer or artist

237. An extension of stay as a writer, composer or artist is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 235 is met.”.

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 9 JUNE 2008 (HC 607)**

1. Introduction

This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Statement of Changes in Immigration Rules contains the following changes:

- It fully implements Tier 1 of the Points Based System, introducing new provisions for highly skilled migrants, entrepreneurs, investors and recent graduates from UK universities.

Tier 1 was partly implemented by Statement of Changes HC321, which was laid before Parliament on 6 February. That Statement of Changes can be found at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/>

Statement of Changes HC321 implemented the Tier 1 (General) route for highly skilled migrants applying in-country (from 29 February 2008) and in India (from 1 April 2008). It also made provision for their dependants.

This Statement of Changes extends Tier 1 (General) to applicants throughout the world, and introduces the three other subcategories of Tier 1: Tier 1 (Entrepreneur), Tier 1 (Investor) and Tier 1 (Post-Study Work), each in relation to applicants in the UK and globally.

- The Statement amends the General Grounds for Refusal (previously amended by Statement of Changes HC321) that provide for people who have previously used deception in Entry Clearance applications, or previously breached UK immigration law, to have future applications to come to the UK refused for between 1-10 years. These Rules are being amended so that people who breached UK immigration law while they were under 18, or are applying to come to the UK in certain family settlement categories, will not automatically be refused, although there will continue to be a discretion to refuse such persons (discussed further below).
- The Statement amends the period of time that a person should normally be absent from the UK before revocation of a deportation order is considered, to align exclusion periods with those in the general grounds for refusal.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Immigration Rules are the Rules made under section 3(2) of the Immigration Act 1971. These constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom. Under section 3(2) the Secretary of State is obliged "... from time to time (and as soon as may be) lay before Parliament statements of the Rules, or any changes in the Rules, laid down by him as to the practice to be followed in the administration of this Act ..".

4.2 The changes set out in this Statement will come into effect on 30 June 2008.

4.3 This Statement of Changes in Immigration Rules has been incorporated into a consolidated version of the Immigration Rules, which can be found under the 'Policy and Law' page at: www.ukba.homeoffice.gov.uk, where there are also copies of all the Statements of Changes in Immigration Rules issued since May 2003.

5. Extent

5.1 This Statement of Changes in Immigration Rules applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- 7.1 A summary of the policy changes contained in this Statement of Changes in Immigration Rules follows.

The Points-Based System

- 7.2 In March 2006, following an extensive public consultation, a command paper entitled *A Points-Based System: Making Migration Work for Britain (CM 6741)* was published. This set out proposals to modernise and strengthen the UK's immigration system by bringing in an Australian-style points system comprising five tiers:

- Tier 1: Highly Skilled individuals to contribute to growth and productivity;
- Tier 2: Skilled workers with a job offer to fill gaps in the UK labour force;
- Tier 3: Low skilled workers to fill specific temporary labour shortages;
- Tier 4: Students;
- Tier 5: Youth mobility and temporary workers: people coming to the UK to fulfil primarily non-economic objectives.

- 7.3 More detailed plans for Tier 1 were set out in a Statement of Intent published on 5 December 2007. The aim of this Tier is to boost the UK's economy by attracting and retaining the "brightest and best" as workers or businesspeople. The requirements for both entry to and staying on in the UK are set at levels commensurate with that objective. The requirements will be kept under review, with the help of the Migration Advisory Committee and the Migration Impacts Forum, to ensure that the points system is controlling migration effectively in the national interest.

- 7.4 Tier 1 covers four routes of entry and stay in the UK:

- Tier 1 (General): for migrants who wish to find highly skilled employment or self-employment in the UK;
- Tier 1 (Entrepreneur): for those investing in the UK by setting up or taking over, or being actively involved in the running of, a business;
- Tier 1 (Investor): for high net worth individuals making a substantial financial investment in the UK;
- Tier 1 (Post-Study Work): to retain the most able international graduates who have studied in the UK.

Tier 1 (General)

- 7.5 Tier 1 (General) is already in operation for applications for leave to remain made in the United Kingdom and for Entry Clearance applications made in India. This Statement of Changes will open it to Entry Clearance applications in the rest of the world.

- 7.6 A full description of Tier 1 (General) can be found in the Explanatory Memorandum to Statement of Changes HC321, laid before Parliament on 6 February 2008. This can be found at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges> and is also annexed to this Memorandum.

Tier 1 (Entrepreneur)

- 7.7 Tier 1 (Entrepreneur) is intended for migrants who are investing in the UK by setting up or taking over, and being actively involved in the running of, a business.

- 7.8 In order to enter and stay in this route, migrants will need to obtain 75 points against criteria similar to those that appeared in the old Businessperson route, which is being deleted by this Statement.

- 7.9 Among other requirements, they will need to invest at least £200,000 in a new or existing UK business and, in order to gain an extension of stay in this category after their initial leave expires, they will need to show that their activities have created at least two new full time jobs for persons settled in the UK. Full details of the points that will be awarded for their investment and business activity, and the circumstances in which they will be awarded, are set out in paragraphs 36-41 of Appendix A of the immigration rules.

- 7.10 Migrants under Tier 1 (Entrepreneur) will need a knowledge of English equivalent to level C1 of the Council of Europe's Common European Framework for Language Learning. This is approximately equivalent to a GCSE pass at grades A-C. Nationals of majority-English-speaking countries, as defined in the immigration rules, will be deemed automatically to meet the language requirement. Full details appear in Appendix B of the immigration rules.
- 7.11 We consider it important that migrants in Tier 1 (Entrepreneur) have a reserve of funds to support themselves if, for example, their business does not provide them with an income for a period. The amounts they will be required to have are specified in Appendix C of the immigration rules. In our view, this is more objective than a requirement that migrants be able to "maintain and accommodate" themselves.
- 7.12 Migrants in Tier 1 (Entrepreneur) will not be able to take employment outside the business(es) they have established, joined or taken over, and will not be able to claim public funds.
- 7.13 This Statement of Changes reflects the current intention that Tier 1 (Entrepreneur) Migrants will be able to apply for settlement after five years in the UK, subject to meeting the requirements set out in the immigration rules.

Tier 1 (Investor)

- 7.14 This sub-category is for high net worth individuals making a substantial financial investment in the UK.
- 7.15 In order to enter and stay in this route, migrants will need to obtain 75 points against criteria similar to those that appeared in the old Investor route, which is being deleted by this Statement.
- 7.16 Among other requirements, they will need to have net assets of at least £1m, and will need to invest at least £750,000 in this country by way of UK Government bonds, share capital or loan capital in active and trading UK registered companies (other than those principally engaged in property investment). Full details of the points that will be awarded for their investment, and the circumstances in which they will be awarded, are set out in paragraphs 42-50 of Appendix A of the immigration rules.
- 7.17 Tier 1 (Investor) Migrants will not need a specific knowledge of English unless they are applying for settlement. They will not be required to show that they have a specific reserve of funds available to support themselves. That would be unnecessary, as these people are by definition extremely wealthy.
- 7.18 Tier 1 (Investor) Migrants will be able to work if they wish to, except that they will not be able to take employment as a Doctor in Training. They will have no access to public funds.
- 7.19 This Statement of Changes reflects the current intention that Tier 1 (Investor) Migrants will be able to apply for settlement after five years in the UK, subject to meeting the requirements set out in the immigration rules.

Tier 1 (Post-Study Work)

- 7.20 This sub-category is for international graduates who have studied in the UK. It replaces the categories that previously catered for these people- the International Graduates Scheme and Fresh Talent: Working in Scotland.
- 7.21 In order to enter this route, migrants will need to obtain 75 points against criteria relating to the qualification they took and the institution they took it at. The scheme is only open to people who have obtained a degree or postgraduate diploma or certificate from a UK institution, or a Higher National Diploma from a Scottish institution.
- 7.22 Full details of the points that will be awarded, and the circumstances in which they will be awarded, are set out in paragraphs 51-58 of Appendix A of the immigration rules.
- 7.23 Migrants under Tier 1 (Post-Study Work) will need a knowledge of English at the same level as we are requiring from those in Tier 1 (Entrepreneur). However, they will automatically meet this requirement by virtue of having obtained their qualification in the UK. Full details appear in Appendix B of the immigration rules.
- 7.24 We consider it important that migrants in Tier 1 (Post-Study Work) have a reserve of funds to support themselves if, for example, they experience periods of unemployment.

The amounts they will be required to have are specified in Appendix C of the immigration rules.

- 7.25 Tier 1 (Post-Study Work) Migrants will have free access to the labour market, except that they will not generally be able to work as a Doctor in Training. They will have no access to public funds.
- 7.26 Leave in this route will be granted for a maximum of two years, and no extensions will be allowed. Leave will not count towards settlement, but these Rules permit Tier 1 (Post-Study Work) Migrants to switch into any other Tier 1 subcategory, or into the Work Permit route, subject to meeting the qualifying conditions.

Family members of Tier 1 Migrants

- 7.27 Migrants under any subcategory of Tier 1 will be able to be joined by their spouse, civil partner, unmarried or same sex partner and their children. Children will need to be under 18 when they first apply for leave under this route. Family members will need to meet the same requirements as currently apply to Tier 1 (General) Migrants (explained in paragraphs 7.19-7.20 of the Explanatory Memorandum to Statement of Changes HC321). In most sub categories of Tier 1, a certain sum of money will need to be available to support the family members before they will be allowed in. However, this requirement does not apply to the family members Tier 1 (Investor) Migrants as it is not necessary for them.

Immigration routes being deleted by this Statement

- 7.28 This Statement of Changes deletes the following routes from the Immigration Rules:
- 7.28.1 The Highly Skilled Migrant Programme (which has already been deleted in-country and for applications made in India);
 - 7.28.2 Investors (the old route that appeared in paragraphs 224-229 of the Immigration Rules);
 - 7.28.3 Businesspersons;
 - 7.28.4 Writers, Composers and Artists;
 - 7.28.5 International Graduates Scheme;
 - 7.28.6 Innovators;
 - 7.28.7 Fresh Talent: Working in Scotland.
- 7.29 Separately, the provision for Self Employed Lawyers, which existed as a concession outside the Immigration Rules, is also being deleted.

Transitional arrangements

- 7.30 We have announced transitional arrangements to minimise the degree to which these changes disadvantage people with leave in a category that is being deleted. Full details can be found at <http://www.bia.homeoffice.gov.uk/workingintheuk/temporaryarrangements>
- 7.31 These Rules provide that any application made in the categories referred to at paragraphs 7.28 and 7.29 before this Statement comes into operation on 30 June will be considered under the Rules in force on 29 June.
- 7.32 Migrants with leave in any of the categories listed in paragraphs 7.28 or 7.29 will be able to stay in the UK until their leave expires, provided they continue to meet the conditions under which it was granted. After that, unless they qualify for settlement, they will need to apply for further leave either under the Points Based System or in another category.
- 7.33 The specific transitional arrangements for people with leave in the Highly Skilled Migrant Programme were set out in the Explanatory Memorandum to the Statement of Changes HC321.
- 7.34 In the transitional arrangements we have announced, we stated that we would allow people with leave as a Self Employed Lawyer, Writer, Composer or Artist, or an Innovator to apply for further leave in that category at any time before this Statement of Changes comes into effect. If they are successful, they will be granted enough extra leave to take them up to the threshold for being eligible to apply for settlement.
- 7.35 These Rules provide that people with leave in the International Graduates Scheme (IGS), or its predecessor the Science and Engineering Graduates Scheme (SEGS), will be able to apply for a one-off extension in Post-Study Work to take them up to a total of two years of IGS/SEGS and Post-Study Work leave combined. This Statement of Changes

also makes arrangements for the small number of people granted six months' leave to enter under the Fresh Talent: Working in Scotland (FT:WiS) Scheme to be granted an additional period of leave so they can spend a total of two years in the UK under FT:WiS and Post-Study Work combined.

- 7.36 No transitional arrangements are being introduced for people with leave in the existing Investor and Businessperson routes, as the extension tests for Tier 1 (Investor) and Tier 1 (Entrepreneur) respectively are broadly the same as those that existed in the categories that we are deleting.

General Grounds for Refusal

- 7.37 In the Statement of Changes HC321, we announced a number of amendments to the General Grounds for Refusal. These included provision for applicants who use deception in their entry clearance applications to have future applications to come here refused for ten years, and for other people who have previously breached UK immigration law to have any applications to return they may make refused for either one, five or ten years, depending on how they left the UK following their breach. These provisions appear in paragraph 320(7B) of the Immigration Rules and are mandatory grounds for refusal.

- 7.38 This Statement of Changes makes two amendments to the effect of paragraph 320(7B) as promised by the Immigration Minister, Liam Byrne MP, in the House of Commons on 13 May 2008. Mr Byrne's speech can be found in Hansard for that date at columns 1350-1354, and is also available at <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080513/debtext/80513-0028.htm#0805147000250>. The concessions he announced took effect immediately, but he undertook to put them on the face of the Immigration Rules at the earliest available opportunity.

- 7.39 This Statement of Changes therefore makes two amendments to the General Grounds for Refusal. Firstly, it provides that paragraph 320(7B) will not apply where the applicant was under the age of 18 at the time of his or her last breach of immigration law.

- 7.40 Secondly, it provides that paragraph 320(7B) will not apply to applications made in the following categories of the immigration rules:

- A spouse, civil partner or unmarried/same sex partner (paragraphs 281 or 295A of the Immigration Rules);
- A fiancé(e) or proposed civil partner (paragraph 290 of the Immigration Rules);
- A parent, grandparent or other dependant relative (paragraph 317 of the Immigration rules);
- A person exercising rights of access to a child (paragraph 246 of the Immigration Rules); and
- A spouse, civil partner, unmarried or same sex partner of a refugee or person with Humanitarian Protection (paragraphs 352A, 352AA, 352FA and 352FD of the Immigration Rules).

- 7.41 The concessions are subject to an exception, as announced by the Minister in the debate in the House of Commons on 13 May. We are accordingly introducing a new paragraph 320(11) into the Rules, to allow us a discretion to refuse applicants who are exempt from automatic refusal under paragraph 320(7B) as a result of the above provisions, but who have contrived in significant way to frustrate the intentions of the Immigration Rules. Guidance will be issued to explain the circumstances in which a person is likely to be considered to have contrived in a significant way to frustrate the intentions of the immigration rules. An example could be a person who has entered into a bogus marriage.

- 7.42 In addition, Ministers have announced two other concessions to paragraph 320(7B)- one covering people who were in the UK on 17 March 2008 who go home voluntarily by 1 October 2008 and the other covering people whom the UKBA has accepted were trafficked to the UK. The precise details of the first concession can be found in the Lord Bassam of Brighton's speech in the House of Lords on 17 March 2008. That speech appears in columns 96-100 of Hansard for that date, and can also be found at <http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80317-0014.htm> The second concession was announced in a letter dated 14 May 2008 from Liam Byrne MP to Chris Huhne MP.

- 7.43 These two concessions will also not apply to a person who has contrived in a significant way to frustrate the intentions of the immigration rules. They are not being incorporated into the Immigration Rules in this Statement of Changes as they are both temporary- the

first because it is time-limited and the second because it is an interim measure pending the UK's ratification of the Council of Europe Convention on Action against Trafficking in Human Beings.

- 7.44 As indicated in the Explanatory Memorandum to Statement of Changes HC321, we will require migrants who have left the UK at public expense to repay the costs of their departure, once we have introduced primary legislation that allows us to do so.

Revocation of deportation order

- 7.45 As described in paragraphs 7.37-7.41, paragraph 320(7B) of the Immigration Rules provides, subject to the exceptions referred to above, that any immigration offender who has been removed or deported from the UK will be banned from returning for ten years.
- 7.46 Paragraph 391 of the Immigration Rules relating to the revocation of a deportation order currently provides that save in the most exceptional circumstances, the Secretary of State will not revoke the order unless the person has been absent from the United Kingdom for a period of at least 3 years since it was made.
- 7.47 This Statement of Changes will align the time periods of exclusion in criminal deportation cases with those in paragraph 320(7B), ensuring that those deported on criminality grounds do not face exclusion for a shorter period than immigration offenders such as overstayers and illegal workers. In the case of an applicant with a criminal conviction, continued exclusion will normally be the proper course until the sentence has become spent under the terms of the Rehabilitation of Offenders Act 1974 or for ten years, whichever is the longer period. In the case of a sentence which can never become spent, exclusion will normally be permanent unless this would be contrary to the Human Rights Convention or the Convention and Protocol relating to the Status of Refugees.
- 7.48 Where an individual receives a custodial sentence of over 30 months, their conviction will never become spent under the terms of the Rehabilitation of Offenders Act 1974. Due to the seriousness of these offences, the Immigration Rules will now provide that in these circumstances, a deportation order is normally never revoked unless not to revoke it would breach our international obligations.

8. Impact

- 8.1 An impact assessment on Tier 1 of the Points Based System has been published and can be found at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsddocs/>
- 8.2 An impact assessment has not been prepared for the other changes as they have no significant impact on business, charities or voluntary bodies.

9. Contact

- 9.1 All queries should be addressed to the Home Office's Immigration Enquiry Bureau on telephone 0870 606 7766 or by email to biapublicenquiries@bia.homeoffice.gsi.gov.uk

EXPLANATORY MEMORANDUM TO THE STATEMENT OF CHANGES IN IMMIGRATION RULES LAID ON 6 FEBRUARY 2008 (HC 321)

1. Introduction

This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Statement of Changes in Immigration Rules contains the following changes:

- The first part of the Points Based System is being implemented, which is the Tier 1 (General) route for highly skilled migrants, together with provision for their dependants. The route will be open to migrants applying in-country from 29 February 2008; and open to migrants applying overseas in India from 1 April 2008. The route will later be opened to all migrants applying overseas.
- Highly Skilled Migrants, Tier 1 (General) Migrants and their dependants will, in certain circumstances, have a condition imposed on their leave to enter or remain in the UK prohibiting them from taking employment as a doctor in training.
- The rules for indefinite leave to remain as a work permit holder are being amended to allow time spent in the UK as a Highly Skilled Migrant to count towards the 5 year qualifying period for settlement.
- The General Grounds for Refusal are being amended to provide for the mandatory refusal of applications in which deception is used. They are also being amended so that previous breaches of the UK's immigration laws will be taken into account in a consistent manner.
- Rules are being inserted to simplify the process for introducing specified application forms and procedures for applications or claims in connection with immigration.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

- 4.1 The Immigration Rules are the Rules made under section 3(2) of the Immigration Act 1971. These constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom. Under section 3(2) the Secretary of State is obliged “.. from time to time (and as soon as may be) lay before Parliament statements of the Rules, or any changes in the Rules, laid down by him as to the practice to be followed in the administration of this Act ..”.
- 4.2 Paragraphs 2-3 of the Statement of Changes implement powers conferred by Section 50(1) of the Immigration, Asylum and Nationality Act 2006 (the 2006 Act), which confers powers to make rules under section 3 of the Immigration Act 1971 requiring a specified procedure to be followed when making an application or claim in connection with immigration. The rules may, in particular, require a specified form to be used, specified information and documents to be provided, direct the manner in which a fee is to be paid and provide for the consequences of not complying with a specified requirement.
- 4.3 Section 50(3)(a) of the 2006 Act, which will be commenced on 29 February 2008, repeals section 31A of the Immigration Act 1971, which confers powers to make Regulations prescribing application forms and procedures for applications made under that Act. The Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2007 which are made under section 31A of the Immigration Act 1971 will cease to have effect when section 31A is repealed.
- 4.4 Paragraphs 1-41 of this Statement of Changes will come into force on 29 February 2008. The rest of the statement will come into effect on 1 April 2008.

4.5 This Statement of Changes in Immigration Rules has been incorporated into a consolidated version of the Immigration Rules, which can be found under the 'Laws & Policy' page at: www.bia.homeoffice.gov.uk, where there are also copies of all the Statements of Changes in Immigration Rules issued since May 2003.

5. Extent

5.1 This Statement of Changes in Immigration Rules applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 A summary of the policy changes contained in this Statement of Changes in Immigration Rules follows.

The Points-Based System

7.2 In March 2006, following an extensive public consultation, a command paper entitled *A Points-Based System: Making Migration Work for Britain (CM 6741)* was published. This set out proposals to modernise and strengthen the UK's immigration system by bringing in an Australian-style points system comprising five tiers:

- Tier 1: Highly Skilled individuals to contribute to growth and productivity;
- Tier 2: Skilled workers with a job offer to fill gaps in the UK labour force;
- Tier 3: Low skilled workers to fill specific temporary labour shortages;
- Tier 4: Students;
- Tier 5: Youth mobility and temporary workers: people coming to the UK to fulfil primarily non-economic objectives.

7.3 More detailed plans for Tier 1 were set out in a Statement of Intent published on 5 December 2007. When it is fully launched, Tier 1 will cover four routes of entry and stay in the UK:

- Tier 1 (General): for migrants who wish to find highly skilled employment or self-employment in the UK;
- Entrepreneurs: for those investing in the UK by setting up or taking over, or being actively involved in the running of, a business;
- Investors: for high net worth individuals making a substantial financial investment in the UK;
- Post-Study Work: to retain the most able international graduates who have studied in the UK.

7.4 This Statement of Changes in Immigration Rules implements Tier 1 (General) only, and initially only for applications for leave to remain made in the UK. From 1 April 2008 the route will open to applications for entry clearance made in India. A further change to the immigration rules will be made in the summer, extending this route to the rest of the world.

7.5 A fundamental difference between Tier 1 (General) and the immigration rules for highly skilled migrants will be the concept of the single decision. Under the immigration rules for highly skilled migrants, applicants applying for entry clearance, or to switch from another immigration category, are required to obtain an approval letter from the Border and Immigration Agency. Once they obtain that letter, they need to make a separate application under the immigration rules for entry clearance or leave to remain. Under Tier 1 (General), they will make one application in which all the requirements will be considered. This will provide a more efficient and transparent service to migrants, while strengthening the Border and Immigration Agency's control of the system

The Tier 1 (General) route

- 7.6 This route is for highly skilled migrants. Migrants seeking to enter the UK in Tier 1 (General) will need entry clearance.
- 7.7 Applicants will need to obtain 75 points for a combination of attributes such as qualifications, age and previous earnings. Both the points awarded and the pass mark are similar to those that existed under the immigration rules for highly skilled migrants. Full details of the points that will be awarded for the various attributes, and the circumstances in which they will be awarded, are set out in Appendix A of the immigration rules.
- 7.8 Migrants under Tier 1 (General) will need a knowledge of English equivalent to level C1 of the Council of Europe's Common European Framework for Language Learning. This is approximately equivalent to a GCSE pass at grades A-C. Migrants will be able to supply a wider range of evidence than they could under the immigration rules for Highly Skilled Migrants to prove that they meet that requirement. Nationals of majority-English-speaking countries, as defined in the immigration rules, will be deemed automatically to meet the language requirement. Full details appear in Appendix B of the immigration rules.
- 7.9 We consider it important that migrants in Tier 1 (General) have a reserve of funds to support themselves if, for example, they experience periods of unemployment. The amounts they will be required to have are specified in Appendix C of the immigration rules. In our view, this is more objective than a requirement that migrants be able to "maintain and accommodate" themselves.
- 7.10 Subject to the exception described in paragraphs 7.11-7.13, successful applicants under Tier 1 (General) will be given free access to the labour market, and will be able to work for an employer, or be self-employed.

Employment as a doctor in training

- 7.11 With certain exceptions, Tier 1 (General) Migrants will not be able to take a post as a doctor in training. There are exceptions for those who currently have leave as a Highly Skilled Migrant, or a Postgraduate Doctor or Dentist, who are seeking leave to remain as a Tier 1 (General) Migrant.
- 7.12 The same restriction will apply to new applicants to the Highly Skilled Migrant Programme. It will also apply to dependants of Highly Skilled Migrants and Tier 1 (General) Migrants, subject to some exceptions.
- 7.13 This provision is being introduced at the request of the Department of Health in order to support doctors who received their medical training in the UK to access taxpayer-funded NHS training posts. It is the Department of Health's view that this provision will help to maximise the return on the significant investment in postgraduate medical training and to secure the future supply of trained specialists.

Settlement

- 7.14 Tier 1 (General) Migrants will be able to apply for settlement after five years in the UK, subject to meeting the requirements set out in the immigration rules.

Transitional arrangements

- 7.15 This Statement of Changes deletes the existing immigration rules for leave to remain as a Highly Skilled Migrant (on 29 February 2008), and excludes applicants applying in India from the immigration rules for leave to enter as a Highly Skilled Migrant (on 1 April 2008). There are transitional arrangements for migrants who are already in the process of applying to become a Highly Skilled Migrant at the date of these rules changes. The transitional provisions cater for migrants who have already applied for entry clearance or leave to remain as a Highly Skilled Migrant before the date of the rules change, as well as migrants who have obtained a Highly Skilled Migrant Programme Approval letter from the Home Office, but have not yet applied for entry clearance or leave to remain.
- 7.16 On 7 November 2006, we made significant amendments to the immigration rules on Highly Skilled Migrants (see the Statement of Changes HC 1702)- in particular requiring those who sought to extend their stay in the UK under those immigration rules to obtain a certain number of points and meet an English language requirement. At the same time, we introduced transitional arrangements that allowed those migrants who were already

in the UK as Highly Skilled Migrants but who did not meet the new requirements to remain if they met certain other conditions.

7.17 Where those migrants were working for an employer, we allowed the employer to apply for a permit on their behalf. In order that migrants who obtain work permits under these arrangements do not have to wait longer in order to qualify for settlement, we are amending the immigration rules for indefinite leave to remain as a work permit holder (paragraph 134 of the immigration rules) to provide that time previously spent here as a Highly Skilled Migrant will count towards settlement in the work permit category.

7.18 We are also adding the transitional provisions for self employed Highly Skilled Migrants, who do not meet the requirements for Tier 1 (General), to the immigration rules (these previously existed as a concession outside the immigration rules) . This makes the requirements more transparent and ensures that leave is granted under the immigration rules, rather than as the result of a concession.

Family members of Tier 1 (General) Migrants

7.19 Migrants under Tier 1 (General) will be able to be joined by their spouse, civil partner, unmarried or same sex partner and their children (though the latter will need to be under 18 when they first apply for leave under this route).

7.20 The requirements that the family members will have to meet appear in the immigration rules. They are broadly similar to those that family members of Highly Skilled Migrants or Work Permit Holders have to meet. However, the provisions governing the grant of indefinite leave to remain to spouses, civil partners and unmarried/same sex partners will differ slightly. Such persons will only be eligible to be granted settlement at the same time as the Tier 1 (General) migrant if they have lived with that migrant in the UK for at least two years. If they do not meet this requirement, they will be able to apply for further limited leave as the spouse, civil partner or unmarried/same sex partner of a person present and settled in the UK, and will be able to count the earlier time they spent living here with the Tier 1 (General) migrant towards the two year "probationary" period they need to serve in that category before being eligible for settlement in their own right. This is intended to ensure that we treat the partners of Tier 1 (General) Migrants in the same way as we treat those of people present and settled in the UK.

General Grounds for Refusal

7.21 Along with these changes, we are amending the general grounds for refusal in two ways.

7.22 The first amendment, which will come into force on 29 February 2008, provides that any application in which deception is used should automatically be refused. The immigration rules for Highly Skilled Migrants already stated that any application in which forged documents were submitted should automatically be refused (unless the applicant could prove that he or she did not know that they were forged). Because of the importance of ensuring that immigration applicants tell the truth, we are extending this to all applications, and to all forms of deception (not just the submission of forged documents).

7.23 From 1 April 2008, we will be amending the immigration rules that govern the way in which an entry clearance application should be treated where the applicant has previously breached the UK's immigration laws by:

- Overstaying while in the UK;
- Entering the UK illegally;
- Using deception (e.g. submitting false documents) in an immigration application; or
- Breaching his or her conditions of stay while in the UK (e.g. working illegally).

7.24 The previous immigration rules on this subject did not cover all the above breaches. They also gave a great deal of discretion to caseworkers, with the potential for inconsistent decision-making. The new immigration rules replace this by setting out a clear period during which a previous immigration offender will have any future applications to come here refused.

7.25 Applicants who have been refused entry clearance after having used deception in their applications will have any future applications they make refused for ten years. Other

immigration offenders (other than those who overstayed for 28 or fewer days and left at their own expense) will be refused for the following periods:

- One year if, following their breach, they left the UK voluntarily at their own expense;
- Five years if, following their breach, they left the UK voluntarily at public expense; and
- Ten years if they were removed or deported from the UK following their breach.

7.26 Where migrants have left the UK at public expense, we will also require them to repay the cost of their departure, once we have introduced primary legislation that allows us to do so.

Specification of application forms and procedures

7.27 Compulsory application forms for immigration applications made in the United Kingdom were first introduced in 1996 in order to make the relevant requirements clearer to applicants and to make the process more efficient. They were prescribed under the Immigration Rules – paragraph 32 of HC 395 as amended by paragraph 2 of HC 329.

7.28 Since August 2003, application forms and procedures have been prescribed by Regulations made under section 31A of the Immigration Act 1971 (currently the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2007). The introduction of any new prescribed form or any change of substance to an existing prescribed form has required Regulations amending the existing ones to be laid.

7.29 Setting out the procedures in Immigration Rules introduced by this Statement of Changes is designed to make the requirements for determining the validity of an application simpler and more transparent than the existing Regulations, with the resulting benefits of easier administration and improved consistency.

7.30 In addition, section 50(2) of the 2006 Act allows new or revised application forms to be specified administratively. It is intended that forms will be specified by announcement on the website of the Border and Immigration Agency of the Home Office, and the forms will be clearly marked as specified from the relevant date.

7.31 The changes will have a wider application than the existing Regulations which only apply to applications for leave to remain in the United Kingdom, whereas the Immigration Rules will apply to any application or claim in connection with immigration for which a form is specified in accordance with the Immigration Rules. In the future it is intended that forms will be specified for immigration applications made overseas. This will ensure a more uniform procedural basis for immigration applications generally

7.32 The changes also include particular provision for procedural requirements resulting from the introduction of the points-based system and the need to provide biographical or biometric information.

Transitional arrangements

7.33 There are transitional provisions for applications for leave to remain made before 29 February 2008 but considered after that date. There are also transitional provisions for applications made within 21 days of the date on which a new form is specified in accordance with the Immigration Rules, which permit the use of the form that was permitted immediately prior to the date of such specification.

7.34 In conjunction with these changes, paragraphs 32 and 33 of the Immigration Rules are being deleted, as the provisions therein are now redundant. A consequential change has also been made to the existing paragraph 34.

8. Impact

8.1 An impact assessment on this changes will be published on the website of the Border and Immigration Agency at <http://www.bia.homeoffice.gov.uk/aboutus/consultations/>, and on the Home Office website at <http://www.homeoffice.gov.uk/about-us/haveyoursay/>. Copies will also be placed in the House libraries.

8.2 The Department of Health will publish a separate impact assessment on the condition preventing work as a doctor in training.

9. Contact

- 9.1. All queries should be addressed to the Home Office's Immigration Enquiry Bureau on telephone 0870 606 7766 or by email to www.indpublicenquiries@homeoffice.gsi.gov.uk