

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 7 DECEMBER 2017 (HC 309)**

1. Introduction

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

2. Purpose of the Instrument

2.1. The purpose of the main changes is to:

- Take account of the future commencement of the immigration bail provisions in Schedule 10 to the Immigration Act 2016.
- Provide for entry clearance to be issued electronically.
- Allow standard and marriage/civil partnership visit visa holders to transit using the same visa.
- Clarify and remove inconsistencies from the rules relating to indefinite leave to remain for main applicants and their dependants in work categories.
- Double the number of available places in the Tier 1 (Exceptional Talent) category to 2,000, and allow accelerated settlement for certain applicants.
- Consolidate and clarify the rules for Tier 1 (Entrepreneur) applicants.
- Make new Tier 2 provisions for research positions and for students switching from Tier 4.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

Other matters of interest to the House of Commons

3.2. As this Statement of Changes is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1. The Immigration Rules, as laid before Parliament by the Secretary of State, constitute a statement of practice to be followed in the administration of the Immigration Act 1971 for regulating the entry into and stay of persons in the United Kingdom.

4.2. This Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules, which can be found under the visas and immigration pages of the GOV.UK website at www.gov.uk/government/collections/immigration-rules where there are also copies of all the Statements of Changes in Immigration Rules issued since May 1994.

4.3. The changes to Appendix M set out in paragraph M1., and to Appendix N set out in paragraph N2. of this statement shall take effect on 28 December 2017.

4.4. The changes to Appendix G set out in paragraph G1. of this statement shall take effect on 1 January 2018. However, in relation to those changes, if an application has been made for entry clearance or leave to enter or remain before 1 January 2018, the application will be decided in accordance with the Immigration Rules in force on 31 December 2017.

4.5. The changes to Part 6A set out in paragraphs 6A.22 and 6A.23, to Appendix A set out in paragraphs A16. to A19., and to Appendix J set out in paragraphs J1. to J11. of this statement shall take effect on 11 January 2018. However, if an applicant has made an application for entry clearance or leave to remain using a Certificate of Sponsorship that was assigned to him by his Sponsor before 11 January 2018, the application will be decided in accordance with the rules in force on 10 January 2018.

4.6. The changes to Part 5 set out in paragraphs 5.13 to 5.15 and 5.18 to 5.19, to Part 7 set out in paragraphs 7.3 to 7.5 and 7.7, to Part 8 set out in paragraphs 8.20 and 8.36, and to Appendix Armed Forces set out in paragraph AF2. of this statement shall take effect on the commencement of Schedule 10 to the Immigration Act 2016.

4.7. The other changes set out in this statement shall take effect on 11 January 2018. However, in relation to those changes, if an application has been made for entry clearance or leave to enter or remain before 11 January 2018, the application will be decided in accordance with the Immigration Rules in force on 10 January 2018.

5. Extent and Territorial Application

5.1. The extent of this Statement of Changes is all of the United Kingdom.

Other matters of interest to the House of Commons

5.2. None

6. European Convention on Human Rights

6.1. As this Statement of Changes in Immigration Rules is not subject to the affirmative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

What is being done and why

Changes relating to immigration bail

7.1. The Government proposes to commence Schedule 10 to the Immigration Act 2016 as soon as practicable. Schedule 10 introduces a new provision of immigration bail and repeals the existing powers of temporary admission and temporary release.

7.2. The changes in this Statement of Changes relate to the rules concerning applications for entry clearance, leave to enter or remain, further leave or indefinite leave in various scenarios. The common factor in each case is the relevance of the applicant having last been granted, or being currently on, temporary admission or temporary release.

7.3. Those who were granted and remain on temporary admission or temporary release on the date on which the provisions of Schedule 10 are commenced will automatically be treated as if they had been granted immigration bail. After that date, temporary admission and temporary release will no longer be granted, and immigration bail will be granted instead.

7.4. However, for some time after the commencement of the provisions in Schedule 10 there may be individuals whose earlier grant of temporary admission or temporary release is relevant to their application. Accordingly these references in the rules are preserved to ensure there is no prejudice caused by the changes.

Changes relating to general grounds for refusal

7.5. The last part of paragraph 320(2) in Part 9 was introduced on 22 November 2012 (HC 760). The policy intention was to emphasise the public interest in refusing to permit a person convicted of a criminal offence to enter the UK. That remains an important policy aim, but it was not the intention to create a separate public interest test to the now well established public interest test that must be taken into account in the assessment of human rights claims. This section of paragraph 320(2) is therefore being deleted, together with the other instances of this paragraph in Appendix Armed Forces (paragraph 8(d)), Appendix FM (in paragraph S-EC.1.4) and Appendix V (in paragraph V3.4).

7.6. The amendment to paragraph 320(7B) brings the treatment of applicants for leave to enter or remain into line with the treatment of entry clearance applicants.

Changes relating to electronic entry clearance

7.7. The Government proposes to commence issuing entry clearance in electronic form. This will initially be trialled with specified groups with a view to general introduction of entry clearance in electronic form at a subsequent date.

7.8. These changes relate to the rules concerning the format in which an entry clearance is to be issued; and also the documents that need to be presented to an immigration officer. Currently the Immigration Rules require an entry clearance to be endorsed in a valid passport or other identity document. The amendment to the rules will allow entry clearance to be issued both in an electronic form and by endorsement in a valid passport or identity document.

7.9. Applicants who hold an entry clearance issued in electronic form will not be required to present such an entry clearance to an Immigration Officer on arrival in the UK. The issue of such an entry clearance will be checked electronically.

Changes relating to visitors

7.10. Appendix 3 to Appendix V sets out the permitted activities for all visitors except transit visitors. The permitted activities do not allow visitors other than transit visitors to transit the UK, which means that, for example a person who requires a visa to visit the UK for business, tourism, to get married or for other visit purposes, must obtain a separate visa in order to transit the UK. The change introduced by these rules will enable visitors who hold a standard or marriage/civil partnership visit visa to transit the UK without the need to obtain a separate visa. Transit visas will still be available for transit only visits.

7.11. Appendix 3 to Appendix V also sets out the study that visitors are permitted to undertake in the UK. Appendix 3 is being changed to clarify that visitors are not permitted to study at an academy or a school maintained by a local authority.

7.12. Appendix 5 to Appendix V comprises a list of events that are Permit Free Festivals. Permit Free Festivals are events that are assessed as contributing to the cultural heritage of the UK and at which performers can, exceptionally, be paid for their participation as visitors. Visitors cannot normally receive payment from a UK source for any permitted activities they undertake here. The list for 2017/18 has been updated to include the Africa Utopia festival.

Changes relating to Tier 1 of the Points-Based System

7.13. Tier 1 of the Points-Based System caters for high value migrants, and currently consists of four active categories: Tier 1 (Exceptional Talent), Tier 1 (Entrepreneur), Tier 1 (Investor) and Tier 1 (Graduate Entrepreneur). It also includes the Tier 1 (General) category, which was closed to new applicants in April 2011 but remains open for settlement applications until April 2018.

7.14. The Tier 1 (Post-Study Work) category was closed in April 2012. Provisions relevant to switching from this category to Tier 1 (Entrepreneur) or Tier 1 (Investor) categories are being removed as they are no longer required.

Tier 1 (Exceptional Talent)

7.15. The Tier 1 (Exceptional Talent) category is for talented individuals in the fields of science, humanities, engineering, the arts and digital technology to work in the UK without the need to be sponsored for employment in a specific post. Applicants must be endorsed by a Designated Competent Body (DCB). The following changes are being made to this category:

- There are currently 1,000 places available per year in this category, allocated between five DCBs. The number of places is being doubled to 2,000. To ensure the places are allocated according to need, the additional 1,000 places will not be allocated between the DCBs at the start of each year. Instead they will form a pool of unallocated places which can be drawn on according to need on a first-come first-served basis by any DCBs which have used up their allocation.

- Enabling current world leaders in their fields (those endorsed under a DCB’s “exceptional talent” criteria) to qualify for indefinite leave to remain in the UK after 3 years of continuous residence. This brings Tier 1 (Exceptional Talent) category into line with Tier 1 (Entrepreneur) and Tier 1 (Investor) categories, both of which currently offer similar accelerated settlement. Potential future leaders in their fields (those endorsed under a DCB’s “exceptional promise” criteria) will continue to qualify for settlement after 5 years of continuous residence.
- Updates to the endorsement criteria used by the Royal Society, the British Academy and the Royal Academy of Engineering, at those DCBs’ request. These provide a simpler application process for applicants who hold specific peer-reviewed fellowships or who have been appointed to senior academic or research positions.
- Minor changes to the criteria for endorsement by Arts Council England, at Arts Council England’s request.

Tier 1 (Entrepreneur)

7.16. The Tier 1 (Entrepreneur) category caters for applicants coming to the UK to set up, take over, or be involved in the running of a UK business. In response to feedback, the “Attributes” requirements for this category in Appendix A are being re-written to make them clearer and easier to follow. There are also consequential minor changes to Part 6A. The requirements themselves are unchanged, other than the following:

- The job creation rules currently require jobs to have existed for at least 12 months during the applicant’s most recent period of leave. A change is being made to enable applicants to apply even if their current leave was granted less than 12 months ago; in such cases the jobs must have existed for at least 12 months before the date of the current application.
- A transitional arrangement relating to the job creation requirement for applicants who entered the category before 6 April 2014, currently set out in published guidance, is being incorporated into the Immigration Rules. This transitional arrangement will only apply to extension and settlement applications made before 6 April 2019.
- Applicants will be asked to confirm the paid hours of the employees in jobs they created as well as the hourly rate, to reduce the possibility of calculation errors.
- An amendment is being made to the requirement relating to Real Time Full Payment Submissions, to reflect the fact that these documents do not state the employment start date.
- An amendment is being made to the requirements relating to job creation, so that the required evidence relates to the period before the applicant joined the

business, rather than the period before jobs were created. This provides a clearer demonstration of the applicant's impact on the business.

- Clarifications are being made to make clear that, where funds are currently held by another business, which is not the business the applicant is using to score points, that business is considered to be a third party providing funding.
- Applicants relying on investment from a venture capital firm will now be required to also provide a letter from the firm confirming the date(s) the funds were transferred to the applicant or invested in their business and that the firm was registered with the Financial Conduct Authority at the time. This requirement is added to counter ongoing abuse relating to venture capital funding.
- To prevent recycling of funds between applicants, a change is being made so that applicants cannot rely on funds or investment that have been provided by another Tier 1 (Entrepreneur) Migrant, or that migrant's business or close family member. Who is considered to be a close family member will depend on the facts in an individual application.
- On 19 November 2015, Statement of Changes HC 535 introduced a requirement that investments made in the form of directors' loans must be evidenced through readily identifiable transactions in applicants' business bank statements. A change is being made so that this requirement only applies to investments made after 19 November 2015.
- A provision is being removed because it contradicts the rule requiring applicants to be registered with Companies House within 6 months of the date the applicant entered the category. The removed provision requires that such registration has to be effected within 8 months of the same date.
- Redundant transitional arrangements relating to applicants switching from Tier 1 (Post-Study Work) are being removed. This is because leave as a Tier 1 (Post-Study Work) Migrant was granted for two years and the category was closed on 6 April 2012.
- A clarification is being made to the rule which excludes buying the business from its previous owner from being considered as a qualifying investment, to clarify that this means buying any business from its previous owner.
- Minor amendments are being made to the requirements concerning format and contents of letters (used as evidence) for consistency.
- Clarifications are being made to the evidential requirements for Tier 1 (General) migrants switching into the Tier 1 (Entrepreneur) category to make clear the relevant dates for evidence.

Tier 1 (Investor)

7.17. The Tier 1 (Investor) category is for high net worth individuals making an investment of at least £2 million in the UK. The following changes are being made to this category:

- Minor technical changes are being made in relation to evidence of investments with National Savings and Investment (NS&I).
- Investors who entered the category before 6 November 2014 may rely on the un-mortgaged portion of their main home. Changes are being made to this provision to clarify that the property must be the applicant's main home, and also to provide, where the property is co-owned in a tenancy in common, that the investor's share, and only the investor's share, may count.

Changes relating to Tier 2 of the Points-Based System

7.18. Tier 2 of the Points-Based System caters for migrant workers with an offer of a skilled job from a licensed employer. There are four categories: General, Intra-Company Transfer (ICT), Minister of Religion and Sports person.

Tier 2 (General)

7.19. The Tier 2 (General) category is for migrant workers with an offer of a skilled job from a licensed employer which cannot be filled by a resident worker. The following changes are being made to this category:

- Flexibility is being introduced to enable students to apply to switch to Tier 2 after their studies as soon as they have completed their courses. Currently non-PhD students cannot apply to switch within the UK until they have received their final results.
- Exemptions from the Resident Labour Market Test are being added for posts to be held by researcher applicants who are recipients of supernumerary research Awards and Fellowships, and for established research team members sponsored by either a Higher Education Institution or a Research Council.
- Pay rates for health sector workers are being brought into line with pay scales in England and each of the devolved administrations, and consolidated in a new table.
- Provision is being made to allow nurses to be sponsored under Tier 2 if they are undertaking an approved programme with a view to returning to practice.
- A provision that is currently set out in the Sponsor Guidance is being incorporated, which restricts how far a migrant's start date may be put back before it becomes a prohibited change. The restriction now applies only to Tier 2 (General) Migrants, and only to any changes to start date which occur after leave has been granted.

- A minor correction is being made to the Shortage Occupation List.

Tier 2 (Intra-Company Transfer (ICT))

7.20. The Tier 2 (ICT) category supports inward investment and trade by allowing multinational employers to transfer key company personnel from overseas to their UK branch. The following changes are being made to this category:

- A transitional arrangement which is no longer required is being removed. The arrangement ensured that migrants granted leave for 12 months or less under the rules in place before the Short Term Staff sub-category was introduced on 6 April 2011, were treated no less favourably than those granted in that sub-category in the context of the 12 month cooling-off period requirement.
- The definition of the Long Term Staff sub-category is being amended, to reflect the closure of the Short Term Staff sub-category on 6 April 2017.

Changes to indefinite leave to remain in work categories

7.21. The requirement to have had absences from the UK of no more than 180 days per year in order to qualify for settlement, which currently applies to main applicants, is being extended to partners of Points-Based System Migrants. To ensure that this requirement does not have retrospective effect, only absences from the UK during periods of leave granted under the rules in place from 11 January 2018 will count towards the 180 days.

7.22. The maximum 180 days absences requirement is waived for absences when applicants have assisted with the Ebola crisis in West Africa. This provision is being widened to include assisting with any national or international humanitarian or environmental crisis.

7.23. An amendment is being made so that Tier 2 Migrants are no longer required to have been continuously employed throughout the qualifying period to be eligible for settlement. The provision is unnecessary as a Tier 2 migrant who is no longer working for their Sponsor is subject to curtailment.

7.24. Minor changes are being made to provide clarification, to remove duplication and inconsistencies relating to:

- How the end date of the qualifying period for settlement is ascertained.
- How the maximum 180 days of absence from the UK per year are counted for the purpose of a settlement application.
- How time lawfully spent in the Isle of Man or Channel Islands in equivalent immigration routes can be counted towards time spent in the UK for the purpose of a settlement application.

Changes relating to Short-Term Study

7.25. Short term study (STS) is the route used to study in the UK for up to 6 months (or up to 11 months when studying an English language course). The following changes are being made:

- The definition of a “state-maintained school” is being removed to avoid duplication, as this is already defined in paragraph 6 of the Immigration Rules.
- A definition of “a course” within STS is being provided to give clarity that more than one programme of study can be undertaken on the STS route as long as they are completed within the validity of the visa period.
- To allow students studying under the STS route to remain in the UK for up to 30 days at the end of their study to provide greater clarity and bring the route in line with other short-term visas.
- The minimum age requirement within STS is being reduced from 18 to 16, to allow those aged 16 and over to apply for the longer English courses and to ensure the genuine student rule is applied consistently across the student visa categories.
- The Higher Education Funding Council for England (HEFCE) is being added to the list of bodies that can provide institutional inspections.
- STS students are not entitled to take part in any type of work, whether paid or unpaid. An amendment is being made to allow students to complete electives when they are studying towards a medical, dentistry or veterinary degree at an overseas HEI through the STS route. Those studying electives will continue to be unable to undertake any other type of work.
- Amendments are being made to make the STS Rules gender neutral.
- Sections relating to dependants within the STS rules are being deleted as they are now obsolete.

Changes relating to Tier 4 of the Points-Based System

7.26. Tier 4 of the Points-Based System is the route used by non-EEA nationals wishing to study in the UK. Tier 4 is comprised of two categories: Tier 4 (General) and Tier 4 (Child). The following changes are being made to Tier 4:

- References to Department for Employment and Learning in Northern Ireland are being updated as this has been renamed Department for the Economy.
- The definition of a “Student Union Sabbatical Officer” is being updated as the current definition refers to rules which are no longer in effect.

- The description of law conversion courses in England and Wales is being updated to reflect that these are now validated by the Solicitors Regulation Authority and Bar Standards Board instead of the Joint Academic Stage Board.
- Part-time study at certain levels is being included within Tier 4. Tier 4 students studying part-time courses will not have work rights, will not be able to bring dependants and will not be able to extend in-country.
- The rules on academic progression are being updated to allow students to apply for leave to remain from within the UK to complete a work placement or a study abroad programme, or to complete their course, after having completed a work placement or study abroad programme.
- A clarification is being made within the table specifying maintenance requirements for Tier 4 (General) students to make clear which requirements are relevant to students who study in London and which to students who study outside London. Numbering is being added to all paragraphs in the table specifying maintenance requirements for Tier 4 (Child) students. Additionally, the language used in both tables is being altered so that it is consistent throughout.
- The maintenance requirements for Tier 4 (General) and Tier 4 (Child) students are being aligned where applicants are applying to study at a residential Independent School. Additional funds for living costs will not need to be evidenced, as these will already have been accounted for in the boarding fees, which include course fees and lodging fees.
- Minor grammatical errors, including duplication of words and repetition of same numbering, are being corrected.

Changes relating to family members of Tier 4 migrants

7.27. Work rights for dependants of Tier 4 students are being updated to ensure these remain if the relevant main Tier 4 applicant is applying, or been granted leave, to study the same course for which they have previously been granted leave of 12 months or more, as a Tier 4 (General) Student.

7.28. Amendments are being made so that Tier 4 students studying part-time courses will not be able to bring dependants to the UK.

Other changes relating to family members of Points-Based System migrants

7.29. The wording in relation to genuine and subsisting relationships is being brought into line with that for family members applying under Appendix FM. This change is also being made in relation to dependants of migrants in other work categories set out in Part 5 of the Immigration Rules.

7.30. Minor technical changes are being made to the rules on maintenance funds, to remove an unintended consequence that a child applicant of a Points-Based System

Migrant cannot rely on funds held in a parent's bank account unless that parent is either the main applicant or currently in the UK.

Changes to Tier 5 of the Points-Based System

7.31. At paragraph 1, the annual quota of places available under the Tier 5 (Youth Mobility Scheme) has been updated.

7.32. In Appendix N, the 'BOND business internships' is renamed as the 'British Council Tech Trainees' on the list of approved Government Authorised exchange schemes.

7.33. In Appendix N, the Khebrat Leadership for Change Programme has been added to the list of approved Government Authorised exchange schemes. This scheme will enable Saudi Arabian education professionals to undertake professional learning experience in the UK, through the Saudi national Khebrat programme.

Changes relating to sportspeople

7.34. The definition of professional sportsperson has been clarified.

7.35. In Appendix M, British Aikido has been added to the list of approved sports governing bodies.

Changes relating to domestic workers

7.36. At paragraph 159A(i), the minimum age limit for Overseas Domestic Workers has been increased to ensure that the worker has consented to their employment terms and conditions, and worked under those terms and conditions for a minimum of 12 months, as an adult.

7.37. At paragraph 245ZO(f), measures have been introduced to prevent overseas diplomats bringing extended family members to the UK in the guise of domestic workers, in order to circumvent the rules governing individuals permitted to accompany diplomats as dependants.

Minor corrections and clarifications

7.38. The definitions of "relevant NHS regulations" have been updated.

7.39. Minor amendments are also being made to overseas criminal record certificate requirements and family reunion rules.

8. Consultation

8.1. The changes in this Statement have not been the subject of a formal public consultation.

9. Guidance

9.1. Guidance relating to these rules changes will be updated and placed on the GOV.UK website.

10. Impact

10.1. These changes will have limited or no impact on business, charities, the public sector or voluntary bodies, such that an impact assessment is unnecessary.

11. Regulating small business

11.1. Changes will have limited or no impact on small businesses.

12. Monitoring and review

12.1. The review clauses at the beginning of this Statement of Changes require the Secretary of State to review the operation and effect of all of the relevant Immigration Rules, including any rules amended or added by the changes in this Statement, and lay a report before Parliament within five years of 6 April 2017 and within every five years after that. Following each review the Secretary of State will decide whether the relevant Immigration Rules should remain as they are, be revoked or be amended. A further Statement of Changes would be needed to revoke or amend the relevant rules.

13. Contact

13.1. Queries should be directed to the Home Office as per the ‘Contact UKVI’ section on the visas and immigration pages of GOV.UK website at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>.

13.2. Specific written queries relating to this Statement of Changes should be directed to StatementofChanges@homeoffice.gsi.gov.uk. Please note that this mailbox is only for Parliamentary use and specific technical queries regarding the drafting of this Statement of Changes. It is not a contact point for general enquiries. Queries to this e-mail address from outside Parliament about other immigration issues, including how these changes affect applications, will not receive a response.

13.3. A copy of this Statement of Changes can be found on the visa and immigration pages of the GOV.UK website at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>.