

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 28 June 2010 under section 3(2) of
the Immigration Act 1971*

*Ordered by The House of Commons to be printed
28 June 2010*

(This document is accompanied by an Explanatory Memorandum)

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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 him 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 (HC329), 30 August 1996 (Cmnd 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cmnd 3669), 5 June 1997 (HC 26), 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 (HC523), 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), 17 March 2008 (HC 420), 9 June 2008 (HC 607), 10 July 2008 (HC 951), 15 July 2008 (HC 971), 4 November 2008 (HC 1113), 9 February 2009 (HC 227), 9 March 2009 (HC 314), April 2009 (HC413), 9 September 2009 (Cm 7701), 23 September 2009 (Cm 7711), 10 December 2009 (HC 120), 10 February 2010 (HC 367) and 18 March 2010 (HC 439).

The changes in this Statement shall take effect on 19 July 2010. However, if an applicant has made an application as a Tier 1 (General) migrant before 19 July 2010 and the application has not been decided before that date, it will be decided in accordance with the Rules in force on 18 July 2010.

1. In paragraph 6, insert after the definition of a Tier 1(General) Migrant:

“In part 6A of these Rules, “relevant grant allocation period” means a specified period of time, which will be published by the Secretary of State on the UK Border Agency website, during which applications for entry clearance or leave to enter in respect of a particular route may be granted subject to the grant allocation for that period;

In part 6A of these Rules, “grant allocation” means a limit, details of which will be published by the Secretary of State on the UK Border Agency website, on the number of grants of entry clearance or leave to enter which may be granted in respect of a particular route during the relevant grant allocation period;”
2. In paragraph 245C, insert after “, the application will be refused”:

“If the application would be refused only by reason of failing to meet the requirement in paragraph (aa) below, it will be reallocated to the next relevant grant allocation period for consideration.”
3. In paragraph 245C insert:

“(aa) The grant allocation relating to the Tier 1 (General) Migrant route would not be exceeded by granting the application for entry clearance or leave to enter in the relevant grant allocation period.”
4. Delete paragraph 245C(c) and substitute:

“(c) The applicant must have the specified minimum number of points under paragraphs 1 to 31 of Appendix A as set out below:

 - (i) if the applicant is applying for leave to remain and has, or last had, leave as a Tier 1 (General) migrant, as a Highly Skilled Migrant, as a Writer, Composer or Artist or as a Self-employed Lawyer, the specified minimum number of points is 75 points.
 - (ii) if the applicant does not fall within the scope of 245C(c)(i), the specified minimum number of points is 80 points.”
5. Delete paragraph 1 of Appendix A and substitute:

“1. An applicant applying for entry clearance or leave to remain as a Tier 1 (General) Migrant must score the specified minimum number of points for attributes as set out below:

 - (i) if the applicant is applying for leave to remain and has, or last had, leave as a Tier 1 (General) Migrant, as a Highly Skilled Migrant, as a Writer, Composer or Artist, or as a Self-employed Lawyer, the specified minimum number of points is 75 points.
 - (ii) if the applicant does not fall within the scope of Appendix A, 1(i), the specified minimum number of points is 80 points.”

6. In paragraph 1A of Appendix A, delete “75 points” and substitute “80 points”

7. In Appendix A, delete the third table at Table 2 and substitute:

Applications for entry clearance and all other applications for leave to remain

| <i>Previous earnings</i> | <i>Points</i> |
|---------------------------------|----------------------|
| <i>£25,000-£29,999</i> | <i>5</i> |
| <i>£30,000-£34,999</i> | <i>15</i> |
| <i>£35,000-£39,999</i> | <i>20</i> |
| <i>£40,000-£49,999</i> | <i>25</i> |
| <i>£50,000-£54,999</i> | <i>30</i> |
| <i>£55,000-£64,999</i> | <i>35</i> |
| <i>£65,000-£74,999</i> | <i>40</i> |
| <i>£75,000-£149,999</i> | <i>45</i> |
| <i>£150,000 or more</i> | <i>80</i> |



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 28 JUNE 2010 (HC 59)**

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 these changes is to make changes to the Points-Based System (PBS) applied to non-EEA economic migrants. These changes provide for the application of a limit on applications approved under Tier 1 (General) of the PBS and to increase the number of points required to qualify under Tier 1 (General).

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

3.1 None.

4. Legislative Context

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

4.2 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: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/>, where there are also copies of all the Statements of Changes in Immigration Rules issued since May 2003.

4.3 These changes to the Immigration Rules will come into force on 19 July 2010. However, if an application under Tier 1 (General) is made before 19 July, it will be decided in accordance with the Rules in force on 18 July 2010, regardless of the date a decision is made.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy Background

What is being done and why

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

Limits on the number of applications approved under Tier 1 of the Points Based System

7.2 Tier 1 of the Points-Based System caters for highly skilled workers, and was launched on 29 February 2008. Tier 1 consists of four categories: Tier 1 (General), Tier 1 (Entrepreneur), Tier 1 (Investor) and Tier 1 (Post-Study Work).

- 7.3 The Government's 'Programme for Government', announced on 20 May 2010, states:
- “We will introduce an annual limit on the number of non-EU economic migrants admitted into the UK to live and work. We will consider jointly the mechanism for implementing the limit.”
- 7.4 The Government has commenced a consultation on how, in the longer term, those limits should be determined and implemented. It is, in the meantime, applying limits on Tier 1 and Tier 2 migrants as an interim while the outcome of that consultation is considered. This approach is consistent with the Government view that while the United Kingdom can benefit from migration, uncontrolled and unlimited migration places unacceptable pressure on public services, school places, and the provision of housing, all of which causes problems for certain local communities. The Government is not only concerned to act to limit migration at an early opportunity but is also concerned that the expectation that full limits on migration will be introduced in due course could prompt a surge in applications. The consequences of such a surge would be an immediate increase in net migration. That would be contrary to the Government's policy of reducing net migration and may lead to a more severe correction being required in terms of a future limit than would otherwise be the case. Furthermore, it is in accordance with Government policy and in the interests of the economic well-being of the UK to act to prevent a spike in the number of foreign nationals entering the labour market (Tier 1 migrants are not required to have a job offer in order to qualify) having regard to the current financial situation and just as the Government introduces a policy aimed at reducing dependence on overseas labour.
- 7.5 These changes place an interim limit on the number of applications for the Tier 1 (General) category which may be granted during a specified period of time. The limit will apply only to applications for entry clearance submitted outside the United Kingdom. The limit will not apply to applications for leave to remain under Tier 1 (General) or any application under the Tier 1 (Entrepreneur), Tier 1 (Investor) and Tier 1 (Post Study Work) sub-categories. The limit to be applied to the Tier 1 (General) category will be published separately by the UK Border Agency at <http://www.ukba.homeoffice.gov.uk/workingintheuk/tier1/>.
- 7.6 These changes result from consideration of various options for implementing an interim limit on economic migration. In order to ensure that the process treats applicants fairly and that all applications are, in time and as the limits allow, considered, these changes structure the limit as follows:
- 7.7 These changes ensure that no application made to the United Kingdom Border Agency under these rules is discarded without having been considered substantively.
- 7.8 When an application is considered substantively, it will be considered with reference to the established and objective points based system requirements. In addition to those requirements, a limit on the number of applications that may be granted will be applied by these changes. These changes refer to that limit as the “grant allocation” and to the relevant period to which the grant allocation applies as the “relevant grant allocation period”. The level at which the grant allocation will be set and the relevant grant allocation period will be published by the United Kingdom Border Agency on its website. Publishing the limit on the United Kingdom Border Agency website provides flexibility to ensure that the grant allocation remains at the right level. It is envisaged that the limit will operate on a monthly basis.
- 7.9 These changes add to the current requirements in the Immigration Rules that must be met by a successful application for entry clearance or leave to enter as a Tier 1 (General) Migrant a requirement that the grant allocation in the relevant grant allocation period would not be exceeded by the granting of the application.
- 7.10 Where an application meets all the requirements of the Immigration Rules, the application will be granted.

- 7.11 Where an application fails to meet the substantive points based requirements of the Immigration Rules, the application will be refused.
- 7.12 Where an application meets all the requirements of the Immigration Rules but granting leave would exceed the grant allocation for the relevant grant allocation period, the application will not be refused but no grant of leave will be made. Instead the application will be re-allocated to the next period for consideration.
- 7.13 These changes do not make equivalent provision for Tier 2 migrants. The interim limits applied in respect of Tier 2 applications will be met by separately limiting the number of Certificates of Sponsorship that licensed Tier 2 sponsors are authorised to issue. A limit on the number of applications by individual Tier 2 migrants is not therefore required. This change can be made without amendment to the Immigration Rules.

Points requirements for Tier 1 (General) of the Points Based System

- 7.14 The United Kingdom Border Agency has considered the need to raise the level of points required to meet the requirements under the Tier 1 (General) category in order to pursue its legitimate aim of maintaining immigration control. It concluded that there should be an increase in the level of points required which, combined with an overall limit on the number of applications to be granted, will ensure that only the brightest and most able migrants are granted entry to the United Kingdom. Tier 1 (General) applicants are currently required to score 95 points for attributes, 75 of which must be for qualifications, previous earnings, UK experience and age. These changes increase the threshold for qualifications, previous earnings, experience and age to 80 points, thereby ensuring that the application process leads to the most meritorious applications being granted. This change will not apply to those who already have leave as a Tier 1 (General) migrant and are applying to extend that leave or are seeking to switch into Tier 1 (General) from one of the predecessor routes for highly skilled migrants.
- 7.15 The points awarded to those with previous earnings of £150,000, “or with a qualifying MBA qualification” are increased from 75 to 80 in order to maintain the position that meeting this requirement alone is sufficient to meet the overall points threshold.

8. Consultation

- 8.1 There has been no formal consultation with corporate partners outside government on the introduction of interim limits. The Government is consulting formally on its longer term plans to implement limits on economic migration. The Government’s concern, in the interests of effective immigration control, to ensure that early limits are in place while that consultation exercise is undertaken has precluded any earlier consultation on the operation of these interim limits.

9. Guidance

- 9.1 Information on these changes will be made available to migrants, sponsors and UK Border Agency staff, through updates to websites and guidance.

10. Impact

- 10.1 An Impact Assessment in respect of these changes is being published on the UK Border Agency website on 28 June 2010 and can be found at www.ukba.homeoffice.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to small businesses. The impact on small businesses has been considered in the impact assessment published on 28 June 2010.

12. Monitoring and review

- 12.1 All the changes introduced by this Statement will be monitored on an on-going basis as part of the review of progress towards meeting Public Service Agreement 3: 'ensure fair, controlled migration that protects the public and contributes to economic growth.'

13. Contact

- 13.1 Queries should be addressed to Ragnar Clifford, UK Border Agency. Tel: 0114 207 2444 or e-mail: Ragnar.Clifford6@homeoffice.gsi.gov.uk.