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Statement of changes in Immigration Rules

*Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty
September 2004*

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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 (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 (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), 17th December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC 523) and August 2004 (Cmnd 6297).

These changes take effect on 1st October 2004, except for the changes in paragraph 10 which shall take effect on 25th October 2004.

1. In paragraph 6 –

(a) after the definition of “adoption”, insert:

“degree level study” means a course which leads to a recognised United Kingdom degree at bachelor’s level or above, or an equivalent qualification at level 6 or above of the revised National Qualifications Framework, or levels 9 or above of the Scottish Credit and Qualifications Framework;” and

(b) for the definition of ‘sponsor’, substitute:

“‘sponsor’ means the person in relation to whom an applicant is seeking leave to enter or remain as their spouse, fiancé, unmarried partner or dependent relative, as the case may be, under paragraphs 277 to 295O or 317 to 319;”.

2. Paragraph 60 is amended as follows:

(a) For sub-paragraph (i) substitute:

“(i) either

(a) he is a person specified in Appendix 1 to these Rules and he was last admitted to the United Kingdom in possession of a valid student entry clearance, or valid prospective student entry clearance in accordance with paragraphs 82 to 87 of these Rules; or

(b) he is not a person specified in Appendix 1 to these Rules and he has been accepted for a course of study at degree level or above; or

(c) he is not a person specified in Appendix 1 to these Rules and he was last admitted to the United Kingdom in possession of a valid student entry clearance, or valid prospective student entry clearance in accordance with paragraphs 82 to 87 of these Rules, if he has been accepted for a course of study below degree level; and”.

(b) Sub-paragraph (vi) is amended as follows:

(i) for “4” substitute “2”;

(ii) after the words “short courses” insert “below degree level”; and

(iii) for “2” substitute “1”.

3. For paragraph 110(i) substitute:

“(i) is coming to an educational establishment in the United Kingdom under an exchange scheme approved by the Department for Education and Skills, the Scottish or Welsh Office of Education or the Department of Education, Northern Ireland, or administered by the British Council’s Education and Training Group or the League for the Exchange of Commonwealth Teachers; and “.

4. For paragraph 131C substitute:

“131C The requirements for an extension of stay to take employment for a Science and Engineering Graduate Scheme participant are that the applicant:

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

(ii) holds a valid Home Office immigration employment document for employment; and

(iii) meets each of the requirements of paragraph 128 (ii) to (vi).”.

5. After paragraph 131D insert “131E The requirements for an extension of stay to take employment 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) holds a valid work permit; and

(iii) meets each of the requirements of paragraph 128(ii) to (vi).

6. After paragraph 131E insert “131F The requirements for an extension of stay to take employment (unless the applicant is otherwise eligible for an extension of stay for employment under these Rules) 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 210E of these Rules; and

(ii) holds a valid Home Office immigration employment document for employment; and

(iii) meets each of the requirements of paragraph 128(ii) to (vi).

7. At paragraph 132, after “provided the Secretary of State is satisfied that each of the requirements of paragraph 131, 131A, 131B, 131C” replace “131C or 131D is met” with “131C, 131D or 131E is met”.

8. For paragraph 135D substitute:

“135D. The requirements for an extension of stay as a highly skilled migrant, in the case of a person who was granted leave to enter under paragraph 135A, are that the applicant:

(i) entered the United Kingdom with a valid United Kingdom entry clearance as a highly skilled migrant; and

(ii) has already taken during his period of leave all reasonable steps to become lawfully economically active in the United Kingdom in employment, self-employment or a combination of both; and

(iii) meets the requirements of paragraph 135A(i)-(iii).”.

9. After paragraph 135D insert:

“135DA The requirements for an extension of stay as a highly skilled migrant in the case of a person who has leave to 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 132 of these Rules; and

(ii) meets the requirements of paragraph 135A (i)-(iii).

135DB The requirements for an extension of stay as a highly skilled migrant in the case of a person who has leave to remain 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 as a highly skilled migrant 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 135A(i)-(iii).

135DC. The requirements for an extension of stay as a highly skilled migrant in the case of a person who has leave to remain as a postgraduate doctor or postgraduate dentist are that the applicant:

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

(ii) has the written consent of his official sponsor to such 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 the requirements of paragraph 135A(i)-(iii).

135DD The requirements for an extension of stay as a highly skilled migrant for 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 135A(i)-(iii).”.

10. After paragraph 135N insert:

“Science and Engineering Graduates Scheme

Requirements for leave to enter as a participant in the Science and Engineering Graduates Scheme

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

(i) has successfully completed and obtained a degree (with second class honours or above), masters degree or Ph.D in a subject approved by the Department for Education and Skills at either:

(a) a publicly funded institution of further or higher education; or

(b) a bona fide private education institution which maintains satisfactory records of enrolment and attendance

(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, masters or PhD in the approved subject 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, is not seeking leave to enter to a date beyond 12 months from the date he was first given leave to enter or remain in this capacity;

(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 128-135H or 200-210H 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 Graduate 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 Science and Engineering Graduates Scheme

135P. A person seeking leave to enter the United Kingdom as a participant in the Science and Engineering 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 Science and Engineering Graduates Scheme

135Q. Leave to enter as a participant in the Science and Engineering 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 Science and Engineering Graduates Scheme

135R. The requirements to be met by a person seeking leave to remain as a participant in the Science and Engineering 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 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 Science and Engineering 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.

Leave to remain as a participant in the Science and Engineering Graduates Scheme

135S. Leave to remain as a participant in the Science and Engineering 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 Science and Engineering Graduates Scheme

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

11. For paragraph 210D substitute:

“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).".

12. In paragraph 276B, for sub-paragraph (i)(b), substitute:

"(b) he has had at least 14 years continuous residence in the United Kingdom, excluding any period spent in the United Kingdom following service of notice of liability to removal or notice of a decision to remove by way of directions under paragraphs 8 to 10A, or 12 to 14, of Schedule 2 to the Immigration Act 1971 or section 10 of the Immigration and Asylum Act 1999 Act, or of a notice of intention to deport him from the United Kingdom; and".

13. In paragraph 284(i), after "the applicant has limited leave to enter or remain in the United Kingdom" insert "which was given in accordance with any of the provisions of these Rules".

14. In paragraph 287(a), for paragraph (i) substitute:

"(i)(a) the applicant was admitted to the United Kingdom or given an extension of stay for a period of 2 years in accordance with paragraphs 281 to 286 of these Rules and has completed a period of 2 years as the spouse of a person present and settled in the United Kingdom; or

(b) the applicant was admitted to the United Kingdom or given an extension of stay for a period of 2 years in accordance with paragraphs 295AA to 295F of these Rules and during that 2 year period married the person whom he or she was admitted or granted an extension of stay to join and has completed a period of 2 years as the unmarried partner and then the spouse of a person present and settled in the United Kingdom; and".

15. In paragraph 287(b), for paragraph (i) substitute:

"(i)(a) the applicant was admitted to the United Kingdom or given an extension of stay for a period of 2 years as the spouse of a person present and settled in the United Kingdom in accordance with paragraphs 281 to 286 of these Rules; or

(b) the applicant was admitted to the United Kingdom or given an extension of stay for a period of 2 years as the unmarried partner of a person present and settled in the United Kingdom in accordance with paragraphs 295AA to 295F of these Rules and during that 2 year period married the person whom he or she was admitted or granted an extension of stay to join; and".

16. In paragraph 295D(i), after "United Kingdom" insert "which was given in accordance with any of the provisions of these Rules".

17. In paragraph 295G(i), after "or given an extension of stay for a period of 2 years" insert "in accordance with paragraphs 295AA to 295F of these Rules".

18. In paragraph 295M(i), after "or given an extension of stay for a period of 2 years" insert "in accordance with paragraphs 295AA to 295F of these Rules".

19. In paragraph 320(15), for " a work permit" substitute "an immigration employment document".

20. Paragraph 325 is amended as follows:

(a) in sub-paragraph (1)(i)(a), after the word "seasonal", insert "agricultural", and delete the words "at an agricultural camp"; and

(b) in sub-paragraph (1)(ii), delete the word "or" after "creative artists", and insert "(f) the Science and Engineering Graduates Scheme; or".

21. For paragraph 395C substitute:

“395C. Before a decision to remove under section 10 is given, regard will be had to all the relevant factors known to the Secretary of State, as listed in paragraph 364. In the case of family members, the factors listed in paragraphs 365-368 must also be taken into account.”.

22. For paragraph 395E substitute:

“395E. When a decision that a person is to be removed under section 10 has been given, a notice will be given to the person concerned informing him of the decision and of any right of appeal.”.

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