

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 10 December 2009 under section 3(2) of
the Immigration Act 1971*

*Ordered by The House of Commons to be printed
10 December 2009*

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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 (Cm 2663), 26 October 1995 (HC 797), 4 January 1996 (Cm 3073), 7 March 1996 (HC 274), 2 April 1996 (HC329), 30 August 1996 (Cm 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cm 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cm 3953), 8 October 1998 (Cm 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cm 4851), 27 August 2001 (Cm 5253), 16 April 2002 (HC 735), 27 August 2002 (Cm 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 (Cm 5829), 24 August 2003 (Cm 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 (Cm 6297), 24 September 2004 (Cm 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 (HC 413), 9 September 2009 (Cm 7701) and 23 September 2009 (Cm 7711)

The changes in this Statement shall take effect on 1 January 2010, except for the changes set out in paragraphs 7 to 13 and 15 to 19 which shall take effect on 22 February 2010. However, if an applicant has made an application for entry clearance or leave to enter or remain as Tier 4 (General) Student or Tier 4 (Child) Student migrant before 22 February and the application has not been decided before that date, it will be decided in accordance with the Rules in force on 21 February 2010.

1. In paragraph 34B, insert after (e):

“(f) an extension of stay or indefinite leave to remain on the basis of long residence in the United Kingdom.”.
2. Delete paragraph 46A and substitute:

“46A The requirements to be met by a person seeking leave to enter the United Kingdom as a child visitor are that the applicant:

 - (i) is genuinely seeking entry as a child visitor for a limited period as stated, not exceeding 6 months or not exceeding 12 months to accompany an academic visitor, provided in the latter case the applicant has entry clearance;
and
 - (ii) meets the requirements of paragraph 41 (ii)-(iv), (vi)-(vii) and (x)-(xii);
and
 - (iii) is under the age of 18; and
 - (iv) can demonstrate that suitable arrangements have been made for their travel to, and reception and care in the United Kingdom. If a foster carer or relative (not a parent or guardian) will be responsible for the care of the applicant, the arrangements must meet the requirements laid down in guidance published by the UK Border Agency ; and
 - (v) has a parent or guardian in their home country or country of habitual residence who is responsible for their care and who confirms that they consent to the arrangements for the applicant’s travel, reception and care in the United Kingdom; and
 - (vi) if a visa national:
 - (a) the applicant holds a valid United Kingdom entry clearance for entry as an accompanied child visitor and is travelling in the company of the adult identified on the entry clearance, who is on the same occasion being admitted to the United Kingdom; or
 - (b) the applicant holds a valid United Kingdom entry clearance for entry as an unaccompanied child visitor; and

(vii) if the applicant has been accepted for a course of study, this is to be provided by an institution which is outside the maintained sector and is:

- (a) the holder of a Sponsor Licence for Tier 4 of the Points Based System, or
- (b) the holder of valid accreditation from a UK Border Agency approved accreditation body, or
- (c) inspected by one of the bodies set out in guidance published by the UK Border Agency, and

(viii) if the applicant is undertaking an exchange or educational visit only, this is to be provided by a school in the maintained sector, a non-maintained special school, an independent non fee-paying or an independent fee-paying school, as described in guidance published by the UK Border Agency.”

3. In paragraph 46B, delete “A person” and substitute “An applicant”.
4. In paragraph 46D(i), insert after “(xii)” “; and”.
5. In paragraph 46D(iii), insert after “in the United Kingdom.”, “If a foster carer or relative (not a parent or guardian) will be responsible for the care of the applicant, the arrangements must meet the requirements laid down in guidance published by the UK Border Agency”.
6. In paragraph 46D(iv), insert after “his care”, “and who confirms that they consent to the arrangements for the applicant’s travel, reception and care in the United Kingdom”.
7. In paragraph 56K, delete (ii) and substitute:
“(ii) has been accepted on a course of study which is to be provided by an institution which is:
 - (a) the holder of a Sponsor licence for Tier 4 of the Points Based System, or
 - (b) the holder of valid accreditation from a UK Border Agency approved accreditation body, or
 - (c) inspected or audited by one of the bodies set out in guidance published by the UK Border Agency, or
 - (d) an overseas Higher Education Institution offering only part of their programmes in the United Kingdom, holding its own national accreditation and offering programmes that are an equivalent level to a United Kingdom degree, and.”
8. In paragraph 245ZQ(b), after “Entertainer Visitor” in sub-paragraph (b)(ii)(2) delete “.” and insert:
“, or
(iii) as an Overseas Government Employee, provided
 - (a) the Certificate of Sponsorship Checking Service reference for which he is being awarded points in this application shows he is being sponsored in the international agreement sub-category, and
 - (b) the applicant is continuing employment with the same overseas government or international organisation for which earlier leave was granted, or(iv) as a Qualifying Work Permit Holder, provided
 - (a) the applicant was previously issued with a work permit for the purpose of employment by an overseas government, and
 - (b) the Certificate of Sponsorship Checking Service reference for which he is being awarded points in this application shows he is being sponsored in the international agreement sub-category, and
 - (c) the applicant is continuing employment with the same overseas government or international organisation for which earlier leave was granted”.
9. In Appendix A, delete table under heading “Table 16” and substitute:

Criterion	Points awarded
Confirmation of Acceptance for Studies	30

10. In paragraph 116 of Appendix A, delete “visa letter or”.
11. In paragraph 116(b) of Appendix A, delete “visa letter or”.
12. In paragraph 116(c) of Appendix A, delete “visa letter or”
13. In paragraph 118 of Appendix A, delete “visa letter or”.
14. In paragraph 119 of Appendix A, delete “visa letter or”.
15. In paragraph 120 of Appendix A, delete “visa letter or”.
16. In paragraph 120(d), delete (i) of Appendix A and substitute;
“(i) be a full time course of degree level study that leads to an approved qualification as defined in UKBA guidance;”.

17. In Appendix A, delete table under heading “Table 17” and substitute:

Criterion	Points awarded
Confirmation of Acceptance for Studies	30

18. In paragraph 124 of Appendix A, delete “visa letter or”.
19. In paragraph 124(c) of Appendix A, delete “visa letter or”.
20. In paragraph 124(d) of Appendix A, delete “visa letter or”.
21. In paragraph 12 of Appendix C, delete “visa letter or”.



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 10 DECEMBER 2009 (HC 120)**

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 provision in the child visitor rules to permit exchange visits by overseas students to state maintained and other schools; to require the issuance of a Confirmation of Acceptance for Studies by the sponsor of a Tier 4 migrant; to provide that applications for leave to remain or settlement on the basis of long residence will no longer be considered at a United Kingdom Border Agency Public Enquiry Office; and to provide for workers admitted under the previous rules for overseas government employees to switch in-country into the Tier 5 category for temporary workers.

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 The changes to the Immigration Rules in respect of child visitors, the place at which long residence applications can be made, switching into Tier 5 and the amendment to the requirements which must be met by any course to be studied under Tier 4 will come into force on 1 January 2010. The other provisions relating to Tier 4 will come into force on 22 February 2010.

4.3 These changes are needed to effect required changes to the child visitor provisions and to effect changes consequent upon implementation of Tier 4 of the Points Based System.

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:

Public Enquiry Office Applications

7.2 The Public Enquiry Office (PEO) provides a same day premium service for straightforward immigration applications. This service attracts a higher fee than an application that is submitted by post. Every effort is made to complete a case on the same day, but it has become increasingly difficult to provide a premium service for applications made on the basis of length of residence. The fact that there have been significant changes to Immigration Rules over recent years, and that applications made on the basis of residence can cover a wide variety of immigration categories over the period in question, means that cases often take longer than a day to complete. The PEO have given a commitment to the Home Affairs Committee to review and monitor case types in the PEO and to ensure unsuitable cases are removed from the list of services provided. In view of the fact that these cases are no longer straightforward, and acceptance of such cases in the PEO results in applicants having to pay a premium charge, it is not considered appropriate or reasonable to accept premium applications in this category where a premium service may not be delivered.

Child Visitors

7.3 The amendments to the child visitor rules introduce a provision for persons under the age of 18 to come to the UK for up to six months on an exchange or educational visit to a state maintained school, a non-maintained school or an independent fee-paying or non fee-paying school. Exchange visits provide a valuable opportunity for UK children to improve their language skills and promote better understanding between different cultures. This provision does not permit entry for the purposes of attending a course of study in the UK. Persons under the age of 18 who want to come to the UK to study for six months or less to attend a course must continue to qualify under the relevant provision of the Immigration Rules.

7.4 The amendments also clarify and reflect:

- the requirements in respect of the UK Border Agency's new duty with regard to the welfare of children; and
- the accreditation requirements for institutions that wish to provide short courses of study to overseas students under the age of 18.

The amendments to the student visitor rules clarify the accreditation requirements for institutions that wish to provide short courses of study to overseas students aged 18 and over.

Amendments to Tier 4 of the Points Based System

7.5 Tier 4 of the Points Based System caters for students and was launched on 31 March 2009. A previous Statement of Changes (Cm 7701, which came into force on 1 October 2009) provided for the next phase of the roll-out of Tier 4 sponsorship arrangements to allow Tier 4 applicants to earn points for leave to remain applications by using an electronic Confirmation of Acceptance for Studies. Initially, provision for migrants to be granted leave to remain using a visa letter issued by their sponsor was retained as a transitional arrangement, as well as for all entry clearance applications. This Statement of Changes removes those transitional provisions, with the effect that, from 22 February 2010, it will be compulsory for a Tier 4 application to be supported by a Confirmation of Acceptance for Studies.

7.6 This Statement also amends paragraph 120(d)(i) of Appendix A of the Immigration Rules. The effect of the current wording of this rule is to exclude certain qualifications (such as graduate certificates and diplomas) which are at degree level. This is not the policy intention and the amended wording remedies the position.

Amendment to Tier 5 of the Points Based System

7.7 Tier 5 of the Points Based System caters for youth mobility and temporary workers and was launched on 27 November 2008. There is currently no provision for those admitted in another category of the Immigration Rules to switch into Tier 5. This Statement of Changes amends the Tier 5 rules to enable those who were admitted under the previous rules for overseas government employees to switch into the Tier 5 (International Agreement) category.

Consolidation

7.8 This Statement of Changes in Immigration Rules will be 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.

8. Consultation

8.1 The UK Border Agency has consulted, and continues to consult, key stakeholders including educational institutions and employers in the ongoing development of the Points Based System and related immigration categories. Details of consultation undertaken in connection with development of the Points Based System have been set out in the explanatory notes to previous Statements of Changes in the Immigration Rules. The changes effected by this Statement are minor technical changes or clarifications of current Rules, no further formal public consultation has been undertaken in respect of them.

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 These changes are minor and the impacts on business, education providers, and the public sector are expected to be minimal. An impact assessment has therefore not been prepared. Impact assessments for each Tier of the Points Based System were carried out prior to their launch and can be found at: www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdocs

11. Regulating small business

11.1 The legislation applies to small businesses. The changes are minor and are not expected to have an adverse impact on small businesses.

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 at the Home Office. Tel: 0114 207 2444 or e-mail: Ragnar.Clifford6@homeoffice.gsi.gov.uk.