

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 21 December 2010 under section 3(2) of
the Immigration Act 1971*

*Ordered by The House of Commons to be printed
21 December 2010*

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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 (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), 23 September 2009 (Cm 7711), 10 December 2009 (HC 120), 10 February 2010 (HC 367), 28 June 2010 (HC 59), 15 July 2010 (HC 96), 22 July 2010 (HC 382), 19 August 2010 (Cm 7929) and 1 October 2010 (Cm 7944).

The changes set out in paragraphs 2 to 15 of this Statement shall take effect on 23 December 2010. However, if an applicant has made an application for entry clearance before 23 December 2010 and the application has not been decided before that date, it will be decided in accordance with the Rules in force on 22 December 2010.

The changes set out in paragraphs 1, 16 and 17 of this Statement shall take effect on 21 December 2010.

1. In paragraph 6 insert:

“Tier 2 Interim Limit” means: the number of Certificates of Sponsorship available to be assigned by the Secretary of State to Sponsors under the Tier 2 (General) Migrant route between 21 December 2010 and 5 April 2011.

“Exceptional Consideration Process” means: the process for assigning additional Certificates of Sponsorship to Sponsors under the Tier 2 Interim Limit as set out in the Addendum to the “Policy Guidance for Tier 2 and Tier 5 Sponsors”.

2. Delete paragraph 245B and substitute:

“245B. Entry to the UK

DELETED”

3. In paragraph 245C delete:

“245C. Requirements for entry clearance or leave to remain

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

(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.

and substitute:

“245C. Requirements for leave to remain

To qualify for leave to remain as a Tier 1 (General) 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.”

4. In paragraph 245C(b) delete “if applying for leave to remain, ”.
5. In paragraph 245C(c)(i) delete “is applying for leave to remain and ”.
6. Delete paragraph 245D(a) and substitute:
“(a) DELETED”

7. In paragraph 245D(d), delete “Entry clearance and leave to remain” and substitute “Leave to remain”.
8. In Appendix A, paragraph 1, delete “entry clearance or”.
9. In Appendix A, paragraph 1(i), delete “is applying for leave to remain and ”.
10. In Appendix A, paragraph 1A(b), delete “entry clearance or”.
11. In Appendix A, Table 1, delete “Applications for entry clearance and all other applications for leave to remain” and substitute “All other applications for leave to remain”.
12. In Appendix A, Table 2, delete “Applications for entry clearance and all other applications for leave to remain” and substitute “All other applications for leave to remain”.
13. In Appendix A, Table 3, delete “Applications for entry clearance and all other applications for leave to remain” and substitute “All other applications for leave to remain”.
14. In Appendix A, paragraph 25, delete “If the applicant is applying for entry clearance or leave to remain (except where the applicant has, or was last granted, leave as a Highly Skilled Migrant Tier 1 (General) Migrant, as a Writer, Composer or Artist, or Self-employed Lawyer,” and substitute, “In all cases other than those in paragraph 24 above,”.
15. In Appendix A, Table 4, delete “Applications for entry clearance and all other applications for leave to remain (unless the applicant falls into the boxes below)” and substitute “Applications for leave to remain (unless the applicant falls into the boxes below)”.
16. In Appendix A, paragraph 63A delete “These limits will be specified in the Points Based System guidance”.
17. In Appendix A, insert:
 - 63B. The Tier 2 Interim Limit is 10,832.
 - 63C. The Tier 2 Interim Limit applies in the period from 21 December 2010 until 5 April 2011 (inclusive).
 - 63D. The Tier 2 Interim Limit consists of:
 - (i) The number of Certificates of Sponsorship to be assigned by the Secretary of State to a Sponsor in accordance with paragraph 63F below; and
 - (ii) The number of Certificates of Sponsorship not assigned to Sponsors pursuant to paragraphs 63D(i) and 63F, but available to be assigned under the Exceptional Consideration Process.
 - 63E. All Certificates of Sponsorship that have been assigned by the Secretary of State to a Sponsor prior to 21 December 2010 and which have not been assigned by the Sponsor to a Tier 2 (General) Migrant prior to 21 December 2010 are withdrawn and the only Certificates of Sponsorship assigned to any Sponsor under the Tier 2 Interim Limit are the Certificates of Sponsorship assigned in accordance with the calculation in paragraph 63F.
 - 63F. The number in paragraph 63D(i) is calculated as follows:
 - (i) The number of Certificates of Sponsorship assigned by the Sponsor to a Tier 2 (General) Migrant between 19 July 2009 and 31 March 2010 is identified by the Secretary of State;
 - (ii) Where the number in 63F(i) is 0, the Secretary of State shall assign 0 Certificates of Sponsorship to the Sponsor under the Tier 2 Interim Limit;
 - (iii) Where the number in 63F(i) is 1, the Secretary of State shall assign to the Sponsor a number of Certificates of Sponsorship that is equal to 1 minus the number of Certificates of Sponsorship assigned by that Sponsor to Tier 2 General Migrants during the period 19 July 2010 to 20 December 2010;
 - (iv) Where the number in 63F(i) is between 2 and 5 (inclusive), the Secretary of State shall assign to the Sponsor a number of Certificates of Sponsorship that is the number in 63F(i) minus (a) 1; and (b) the number of Certificates of Sponsorship assigned by that Sponsor to Tier 2 General Migrants during the period 19 July 2010 to 20 December 2010;
 - (v) Where the number in 63F(i) is 6 or more, the Secretary of State shall assign to the Sponsor a number of Certificates of Sponsorship that is the number in 63F(i) reduced by 15% and rounded down to the nearest whole number, minus the number of Certificates of Sponsorship assigned by that Sponsor to Tier 2 General Migrants during the period 19 July 2010 to 20 December 2010;
 - (vi) Where a Sponsor was (a) assigned Certificates of Sponsorship before 19 July 2010, (b) the period for which those were assigned expires on or after 31 March 2011, and (c) the number in 63F(i) is greater than the number of Certificates of Sponsorship assigned to the Sponsor for the period concluding on or after 31 March 2011, the Secretary of State shall assign to the Sponsor the same number of Certificates of Sponsorship as were assigned to the Sponsor prior to 19 July 2010 minus any Certificates of Sponsorship assigned by that Sponsor to Tier 2 General Migrants during the period 19 July 2010 to 20 December 2010.

(vii) Where the Sponsor joined the Sponsor Register on or after 1 April 2010, the number in paragraph 63D(i) is 0.

(viii) Where the calculation in paragraphs 63F(iii) to (vi) results in a negative number, the Secretary of State shall assign 0 Certificates of Sponsorship to the Sponsor under the Tier 2 Interim Limit.

63G. The total number of Certificates of Sponsorship available to be assigned to Sponsors further to paragraph 63D(i) is 9,803 as of 20 December 2010.

63H. The number in paragraph 63D(ii) is the result of subtracting from the Tier 2 Interim Limit the total number of Certificates of Sponsorship assigned to specific Sponsors by the process set out in paragraph 63F.

63I. The imposition of a limit as referred to in paragraph 63D(i) and in accordance with paragraph 63F, does not prevent the SSHD from assigning additional Certificates of Sponsorship to a specific Sponsor further to a successful application under the Exceptional Consideration Process.

63J. If a Sponsor returns to the Secretary of State Certificates of Sponsorship which have been assigned to it in accordance with paragraph 63F or 63D(ii), the Secretary of State is entitled (but not required) to add such Certificates of Sponsorship to the number of Certificates of Sponsorship available for allocation under paragraph 63D(ii).

63K. The total number of Certificates of Sponsorship available to be assigned under the Exceptional Consideration Process is 1,029 as of 20 December 2010 to which will be added from time to time as may be appropriate the number of Certificates of Sponsorship returned to the Secretary of State in accordance with paragraph 63J.



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 21 DECEMBER 2010 (HC 698)**

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 are:
 - to close the Tier 1 (General) category of the Points-Based System to overseas applicants so that only applications which have a reasonable prospect of being granted under the interim limit on this route are accepted for consideration; and
 - to specify in the Immigration Rules the level of the Government's interim limit for Tier 2 (General) of the Points Based System between 21 December 2010 and 5 April 2011.
3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**
 - 3.1 The Government regrets that for both of these changes it has not been possible to comply with the convention that changes should be laid before Parliament no less than 21 days before they will come into force.
 - 3.2 On 23 November 2010 the Home Secretary announced her intention to alter the scope of Tier 1 under the full limits on migration to be introduced in April 2011. This was in response to the consultation on the form full limits should take where businesses confirmed that they placed greater importance on the Tier 2 route than the Tier 1 (General) route. A decision was taken to close Tier 1 (General) to out of country applications following this announcement.
 - 3.3 At the time of that announcement and until 17 December 2010, UKBA operated Tier 1 (General) on the basis that an interim limit was in force further to previous rules changes.
 - 3.4 The interim limit imposed on Tier 1 (General) by HC 59 was ruled unlawful on 17 December by the judgment of the Divisional Court in the judicial review challenges brought by the Joint Council for the Welfare of Immigrants and the English Community Care Association.
 - 3.5 However, the Home Secretary has been granted a certificate for this appeal to proceed directly to Supreme Court if permission is granted by that court and permission to appeal to Court of Appeal if permission is not granted. Therefore the prospect of a successful appeal remains open. Therefore this document proceeds on two bases; (i) an explanation of the closure of Tier 1 (General) in the context of interim limits and (ii) an explanation of the closure of Tier 1 irrespective of interim limits.
 - 3.6 In the context of the interim limit on Tier 1, the closure of Tier 1 General for out of country applications is being made to effectively manage closing down the Tier 1 (General) category for overseas applicants without a surge in applications which may result in the number of applications accepted for consideration exceeding the number which UKBA calculates can be accepted with a reasonable prospect of being granted. UKBA calculates the number of applications that can be accepted with a reasonable prospect of being granted as the remaining capacity under the interim limit plus 20% which represents the average refusal rate. In order to take all possible measures to minimise the risk of accepting an application which would exceed the interim limit if granted, UKBA is laying these rules as close as is operationally possible to when the number of applications received represents the remaining capacity under the interim limit plus 20%.

- 3.7 Such surges in applications are not uncommon. When the changes were laid to introduce the Tier 1 (General) interim limit (HC 59), 1,695 applicants were granted Tier 1 (General) entry clearance in July 2010, compared to an average of 948 grants per month over the preceding 3 months. Announcing the intention to close the route to overseas applicants would likely generate a similar or even greater surge.
- 3.8 When the interim limits were designed, the intention was to roll-over applications which could not be granted under the interim limit for consideration under the full limit.
- 3.9 The intention to alter the scope of Tier 1 under the full limits means that applications rolled-over are highly unlikely to be successful. It is therefore considered that in order to ensure that only applications which have a fair chance of success under the interim limit are accepted by UK Border Agency for consideration, Tier 1 (General) needs to be closed to overseas applicants before the number of applications received exceeds the number of grants of leave remaining under the interim limit.
- 3.10 On 28 June 2010 the Home Secretary announced to the House of Commons that Tier 1 (General) visa applications would be held flat from the equivalent period in 2009-10. The UK Border Agency subsequently informed the Merits of Statutory Instruments Committee that this would mean the interim limit would be set at 5,400 Tier 1 (General) visa approvals. The figure of 5,400 was based on the interim limit beginning on 1 July 2010, whereas in fact it began on 19 July 2010. A more accurate figure based on the equivalent period in 2009-10 is 5,100 Tier 1 (General) visa applications. The 5,100 figure has been used when determining the date on which Tier 1 (General) will be closed to overseas applicants.
- 3.11 Further, the Tier 1 (General) interim limit represented the number of migrants that the Home Secretary wished to allow to enter the UK in advance of the full limit being implemented, mindful of the Coalition commitment to reduce migration to the UK. The interim limit was intended to prevent a surge of applications exceeding that number prior to the introduction of the full limit. It is acknowledged that the Divisional Court ruled that the interim limit was not lawfully imposed however the concern regarding a surge in applications remains, for the reasons set out above, and the Home Secretary is concerned to ensure that further to her announcement of 23 November, such a surge does not materialise. The Home Secretary is empowered by s.3(2) Immigration Act 1971 to lay statements of changes in the rules as to the practice to be followed in regulating the entry into the UK of individuals requiring leave to enter the UK and is therefore lawfully entitled to close Tier 1 (General), which she does for the reasons outlined above.
- 3.12 This Statement of Changes closes Tier 1 (General) in respect of applications for entry clearance only. It makes no changes affecting applications for leave to remain.
- 3.13 On 28 June 2010 the Home Secretary also announced the imposition of an interim limit on Tier 2 General of the Points Based System. The second of these changes, specifying the level of the Tier 2 General interim limit in the Immigration Rules, is being made to take account of the Divisional Court judgement of 17 December 2010 in the cases brought by the Joint Council for the Welfare of Immigrants and the English Community Care Association. The Divisional Court determined that in order for the Government's interim limit policy to have legal effect the level of the limit should be specified in the Immigration Rules, as opposed to UK Border Agency guidance.
- 3.14 The Statement of Changes remedies the matter. They will take effect immediately to ensure that employers and other users of the UK's immigration system have certainty about its operation.

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: www.ukba.homeoffice.gov.uk, where there are also copies of all the Statements of Changes in Immigration Rules issued since May 2003.
- 4.3 The closure of Tier 1 General to out of country applications will come into force on 23 December 2010. However, if an applicant has made an application for entry clearance before 23 December and the application has not been decided before that date, it will be decided in accordance with the Rules in force on 22 December 2010.
- 4.4 The specified interim limit on Tier 2 will take effect from 21 December 2010, the day that it is laid.

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:

Amendments to 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 These changes close the Tier 1 (General) category to all applicants for entry clearance. The Tier 1 (General) category will remain open to applicants who are already in the UK and are applying for leave to remain.
- 7.4 The reasons for making these changes are set out in paragraphs 3.2 to 3.12 above.

Amendments to Tier 2 of the Points Based System

- 7.5 Tier 2 of the Points Based System caters for skilled workers and was launched on 27 November 2008. Tier 2 consists of Tier 2 (General), Tier 2 (Intra-Company Transfers), Tier 2 (Elite Sportspeople) and Tier 2 (Ministers of Religion).
- 7.6 These changes will specify the level of the interim limit on Tier 2 General between 21 December 2010 and 5 April 2011.
- 7.7 The reasons for making this change are set out in paragraphs 3.13 and 3.14 above.

8. Consultation

8.1 The closure of Tier 1 General to out of country applications was informed by the Government's consultation, "Limits on Non-EU Economic Migration", which ran from 28 June 2010 to 17 September 2010. The UK Border Agency published a summary of questionnaire responses to that consultation on 29 November 2010. Moreover, as the Home Secretary stated in her announcement to the House on 23 November 2010, feedback from business groups has been that skilled migrants with job offers – Tier 2 – should have priority over those admitted without a job offer – Tier 1.

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 on the introduction of an interim limit was published on the UK Border Agency website on 28 June 2010. An impact assessment will be published on the changes to the scope of Tier 1 that will be introduced from April 2011 prior to their implementation.

11. Regulating small business

11.1 The Tier 1 (General) category does not involve a sponsoring employer. These changes therefore affect potential migrants only and do not apply regulations to small businesses.

11.2 The Tier 2 (General) category is used by some small and medium sized enterprises. The Government does not expect that specifying the level of the interim limit for Tier 2 General will, in itself, have adverse consequences for these sponsors.

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 specifically regarding this Statement of Changes only should be addressed to Richard Jackson at the UK Border Agency on 0114 207 8373 or email to: Richard.Jackson@homeoffice.gsi.gov.uk.

Other queries should be addressed as per the Contact page on the UK Border Agency website at www.ukba.homeoffice.gov.uk/contact/.