

Statement of Changes in Immigration Rules - HC299

July 2005

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), 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) and 15 June 2005 (HC 104).

These changes take effect on 2 August 2005, except for the changes in paragraph 1 which shall take effect on 19 July 2005.

1. For paragraphs 70 to 75, substitute:

"Requirements for leave to enter the United Kingdom as a postgraduate doctor or dentist

70. The requirements for leave to enter the United Kingdom for the purpose of training as a doctor or dentist are that the applicant:

(i) (a) is a graduate from a medical school or dental school who has a confirmed place on a recognised Foundation Programme to continue their training as a doctor or dentist in the UK; or

(b) is a doctor or dentist who has full, limited or temporary registration with the General Medical Council or General Dental Council or who is eligible for the same and who intends to undertake basic or higher specialist training in the United Kingdom in a hospital or the Community Health services or in General Practice, or in a combination of these; and

(ii) holds a letter from the Postgraduate Dean responsible for their training in the UK approving the applicant's training plan and recommending the duration of leave that should be granted; and

(iii) is able to maintain and accommodate himself and any dependants without recourse to public funds; and

(iv) intends to leave the United Kingdom if, on expiry of his leave under this paragraph, he has not been granted leave to remain in the United Kingdom as:

(a) a doctor or dentist undertaking a period of clinical attachment or a dental observer post in accordance with paragraphs 75G to 75M of these Rules; or

(b) a work permit holder in accordance with paragraphs 128 to 135 of these Rules; or

(c) a highly skilled migrant in accordance with paragraphs 135A to 135H of these Rules; or

(d) a person intending to establish themselves in business in accordance with paragraphs 200 to 210 of these Rules; or

(e) an innovator in accordance with paragraphs 210A to 210H of these Rules; and

(v) if his study at medical school or dental school, or any subsequent studies he has undertaken, were sponsored by a government or international scholarship agency, he has the written consent of his sponsor to enter or remain in the United Kingdom as a postgraduate doctor or dentist; and

(vi) if he has previously been granted leave as a postgraduate doctor or dentist, is not seeking leave to enter or remain which, when amalgamated with any previous periods of leave in this category, would total more than:

(a) 26 months to complete a Foundation Programme; or

(b) 3 years to complete basic specialist training, if the applicant has already completed a Foundation Programme; or

(c) 4 years to complete basic specialist training, if the applicant has not already completed a Foundation Programme; and

(vii) 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 postgraduate doctor or dentist

71. Leave to enter the United Kingdom as a postgraduate doctor or dentist may be granted:

(i) to undertake a Foundation Programme, for a period not exceeding 26 months; or

(ii) to undertake postgraduate training as a doctor or dentist in a hospital or the Community Health services or in General Practice, or in a combination of these, for a period not exceeding 3 years at a time;

provided the Immigration Officer is satisfied that each of the requirements of paragraph 70 is met.

Refusal of leave to enter as a postgraduate doctor or dentist

72. Leave to enter as a postgraduate doctor or dentist is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 70 is met.

Requirements for an extension of stay as a postgraduate doctor or dentist

73. The requirements to be met by a person seeking an extension of stay as a postgraduate doctor or dentist are that the applicant:

(i) meets the requirements of paragraph 70 (i) to (vi); and

(ii) has leave to enter or remain in the United Kingdom as either:

- (a) a student in accordance with paragraphs 57 to 69L of these Rules; or
- (b) as a postgraduate doctor or dentist in accordance with paragraphs 70 to 75 of these Rules; or
- (c) as a doctor taking the PLAB Test in accordance with paragraphs 75A to 75F of these Rules; or
- (d) as a doctor or dentist undertaking a period of clinical attachment or a dental observer post in accordance with paragraphs 75G to 75M of these Rules; or
- (e) as a work permit holder in accordance with paragraphs 128 to 135 of these Rules.

Extension of stay as a postgraduate doctor or dentist

74. An extension of stay as a postgraduate doctor or dentist may be granted:

- (i) to undertake a Foundation Programme, for a period not exceeding 26 months; or
- (ii) to undertake postgraduate training as a doctor or dentist in a hospital or the Community Health services or in General Practice, or in a combination of these, for a period not exceeding 3 years at a time;

provided the Secretary of State is satisfied that each of the requirements of paragraph 73 is met.

Refusal of an extension of stay as a postgraduate doctor or dentist

75. An extension of stay as a postgraduate doctor or dentist is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 73 is met."

2. For the heading above paragraph 340 substitute the heading "Consideration of asylum applications and human rights claims".

3. In paragraph 340 –

(a) at the end of the first sentence, after the words "asylum application" add the words "or a human rights claim";

(b) in the second sentence after the words -

(i) "requiring the applicant" add the words "or claimant"; and

(ii) "concerning the application" add the words "or claim".

4. In paragraph 342, after the words "asylum applicant" add the words "or human rights claimant".

Explanatory Memorandum to the Statement of Changes in Immigration Rules laid on 12 July 2005 (HC 299)

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

2. Description

2.1 This Statement of Changes in Immigration Rules contains the following two changes:

An amendment to the postgraduate doctors and dentists training structure.

An amendment to extend the non-compliance provisions beyond asylum applications to cover human rights claims.

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

3.1 None.

4. Legislative Background

4.1 The Immigration Rules are the rules made under section 3(2) of the Immigration Act 1971. These constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom. Under section 3(2) the Secretary of State is obliged "... from time to time (and as soon as may be) lay before Parliament statements of the rules, or any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act ..".

4.2 This Statement of Changes in Immigration Rules will be laid on 12 July. The changes to the postgraduate doctors and dentists training structure will take effect on 19 July, so to give applicants time to apply for the new scheme which starts on 2 August. The other change will take effect on 2 August.

4.3 This Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules which can be found under the 'Laws & Policy' page at: www.ind.homeoffice.gov.uk, where there are also copies of all the Statement of Changes in Immigration Rules issued since May 2003.

5. Extent

5.1 This Statement of Changes in Immigration Rules applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 A summary of each change contained in this Statement of Changes in Immigration Rules follows:

Amendment to the postgraduate doctors and dentists training scheme

There has been a longstanding provision which has enabled overseas doctors and dentists to come to the UK to pursue their training. We are updating the Immigration Rules relating to this category to reflect the changes to the training structure for doctors which come into effect this summer. These changes to the Immigration Rules ensure that overseas doctors coming to

the UK to undertake one of the new Foundation Programmes can be granted leave for the duration of this programme, rather than having to apply for an extension of stay partway through the programme.

We have also used this opportunity to clarify the provisions for overseas doctors and dentists and to formalise the role of the Postgraduate Deans, who supervise the training of doctors and dentists. This is to address the previous confusion as to which posts are recognised training posts, as these change over time. Postgraduate Deans will be aware of which posts will enable a doctor or dentist to pursue their training in the UK. Each migrant applying for leave in this category must submit a letter from the Postgraduate Dean with their application.

These changes have been prompted by changes made by the Department of Health. We have circulated our new provisions to the Department of Health, General Medical Council, General Dental Council, British Medical Association and representatives of the Postgraduate Deans. They have supported the added clarity of these provisions and we have incorporated as many of their comments as possible.

Extending the non-compliance provisions beyond asylum applications to cover human rights claims

Paragraph 340 of the Immigration Rules allows for a decision to be made on an asylum application where the applicant has failed to co-operate promptly and fully or otherwise assist with the Secretary of State's efforts to establish the facts of their asylum application. The provision allows an application to be decided on the basis of the evidence available to the Secretary of State.

A need has been identified to extend the scope of this provision to also cover claims for protection on human rights grounds. In practice the provision has been applied to such claims in accordance with IND's published policy. This change is therefore a formality which will add certainty and clarity to the process of assessing human rights claims.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this Statement of Changes in Immigration Rules as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Queries should be addressed to the Home Office's Immigration and Nationality Enquiry Bureau on telephone: 0870-6067766 or by e-mail: indpublicenquiries@ind.homeoffice.gsi.gov.uk