



Statement of changes in Immigration Rules

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

April 2012

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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 Acts 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), 24 April 2009 (HC 413), 9 September 2009 (Cm 7701), 23 September 2009 (Cm 7711), 10 December 2009 (HC 120), 10 February 2010 (HC 367), 18 March 2010 (HC 439), 28 June 2010 (HC 59), 15 July 2010 (HC 96), 22 July 2010 (HC 382), 19 August 2010 (Cm 7929), 1 October 2010 (Cm 7944), 21 December 2010 (HC 698), 16 March 2011 (HC 863), 31 March 2011 (HC 908) , 13 June 2011 (HC 1148), 19 July 2011 (HC 1436), 10 October 2011 (HC 1511), 7 November 2011 (HC 1622), 8 December 2011 (HC 1693), 20 December 2011 (HC 1719), 19 January 2012 (HC 1733) and 15 March 2012 (HC 1888).

Implementation

The changes in paragraphs 5, 11 and 13 set out in this Statement shall take effect on 14 June 2012. However, if an applicant has made an application for entry clearance or leave before 14 June 2012 and the application has not been decided before that date, it will be decided in accordance with the rules in force on 13 June 2012.

The other changes set out in this Statement shall take effect on 6 April 2012. However, if an applicant has made an application for entry clearance or leave before 6 April 2012 and the application has not been decided before that date, it will be decided in accordance with the rules in force on 5 April 2012.

This Statement should be read as subsequent to HC1888, which also comes into force on 6 April 2012. Where there is a conflict between the provisions of this Statement and HC1888, the provisions of this Statement will prevail.

Review

Before the end of each review period, the Secretary of State undertakes to review all of the relevant Immigration Rules including any Relevant Rule amended or added by these changes. The Secretary of State will set out the conclusions of the review in a report and publish the report.

The report must in particular:

- (a) consider each of the Relevant Rules and whether or not each Relevant Rule achieves its objectives and is still appropriate; and
- (b) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

“Review period” means:

- (a) the period of five years beginning on 6 April 2012, and
- (b) subject to the paragraph below, each successive period of five years.

If a report under this provision is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

“Relevant Rule” means an immigration rule which imposes a net burden (or cost) on business or civil society organisations.

Changes

1. In paragraph 245ZV(ga)(i), after “Tier 4 (General) Migrant” insert “, or as a Student,”
2. In paragraph 245ZV(gb), after “Tier 4 (General) Migrant” insert “, or as a Student”
3. In paragraph 245ZX(ha)(i), after “Tier 4 (General) Migrant” insert “, or as a Student,”
4. In paragraph 245ZX(hb), after “Tier 4 (General) Migrant” insert “, or as a Student”
5. In Appendix A, delete paragraph 74B and substitute:

“74B. No points will be awarded for a Certificate of Sponsorship unless:

(a) the job that the Certificate of Sponsorship Checking Service entry records that the person is being sponsored to do appears on:

(i) the list of occupations skilled to National Qualifications Framework level 6 or above, as stated in the codes of practice for Tier 2 Sponsors published by the UK Border Agency, or

(ii) the list of creative sector occupations skilled to National Qualifications Framework level 4 or above, as stated in the Sponsor Guidance published by the UK Border Agency,

or

(b) (i) the applicant is applying for leave to remain,

(ii) the applicant previously had leave as a Tier 2 (Intra-Company Transfer) Migrant under the Rules in place between 6 April 2011 and 5 April 2012, and has not since been granted leave to remain in any other route, or entry clearance or leave to enter in any route, and

(iii) the job that the Certificate of Sponsorship Checking Service entry records that the person is being sponsored to do appears on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the codes of practice for Tier 2 Sponsors published by the UK Border Agency,

or

(c) (i) the applicant is applying for leave to remain as a Tier 2 (Intra-Company Transfer) Migrant in the Long Term Staff sub-category,

(ii) the applicant previously had leave as:

(1) a Tier 2 (Intra-Company Transfer) Migrant under the rules in place before 6 April 2011, or

(2) a Qualifying Work Permit Holder,

and has not since been granted leave to remain in any other route, or entry clearance or leave to enter in any route, and

(iii) the job that the Certificate of Sponsorship Checking Service entry records that the person is being sponsored to do appears on the list of occupations skilled to National Qualifications Framework level 3 or above, as stated in the codes of practice for Tier 2 Sponsors published by the UK Border Agency, or the applicant is a Senior Care Worker or an Established Entertainer as defined in paragraph 6 of these Rules.”

6. In Appendix A, in paragraph 74D(b), delete “beginning 6 April 2011 and ending 5 April 2012” and substitute “beginning 6 April and ending 5 April each year”
7. In Appendix A, in paragraph 77B, delete “6 April 2011 to 5 April 2012” and substitute “6 April 2012 to 5 April 2014”
8. In Appendix A, in paragraph 77B(a), delete “for entry clearance”
9. In Appendix A, in paragraph 77B(b), delete “applicants for leave to remain as a Tier 2 (General) Migrant” and substitute “specified applicants for leave to remain as a Tier 2 (General) Migrant, as set out in paragraph 77D of Appendix A,”
10. In Appendix A, delete paragraph 77D(b)(i) and substitute:

“(i) the applicant is applying for leave to remain unless the applicant has, or was last granted entry clearance, leave to enter or leave to remain as the partner of a Relevant Points Based System Migrant, or”
11. Delete paragraph 77E and substitute:

“77E. No points will be awarded for a Certificate of Sponsorship unless:

(a) the job that the Certificate of Sponsorship Checking Service entry records that the person is being sponsored to do appears on:

(i) the list of occupations skilled to National Qualifications Framework level 6 or above, as stated in the codes of practice for Tier 2 Sponsors published by the UK Border Agency, or

(ii) the list of creative sector occupations skilled to National Qualifications Framework level 4 or above, as stated in the Sponsor Guidance published by the UK Border Agency,

or

(b) the job that the Certificate of Sponsorship Checking Service entry records that the person is being sponsored to do is skilled to National Qualifications Framework level 4 or above, and appears on the list of shortage occupations published by the UK Border Agency,

or

(c) (i) the applicant is applying for leave to remain,

(ii) the applicant previously had leave as a Tier 2 (General) Migrant or a Qualifying Work Permit Holder, and has not since been granted leave to remain in any other route, or entry clearance or leave to enter in any route,

(iii) at the time a Certificate of Sponsorship or Work Permit which led to a grant of leave in (ii) was issued, the job referred to in that Certificate of Sponsorship or Work Permit appeared on the list of shortage occupations published by the UK Border Agency, and

(iv) the job that the Certificate of Sponsorship Checking service entry records that the person is being sponsored to do in his current application is the same as the job referred to in (iii), for either the same or a different employer,

or

(d) (i) the applicant is applying for leave to remain,

(ii) the applicant previously had leave as a Tier 2 (General) Migrant under the Rules in place between 6 April 2011 and 5 April 2012, and has not since been granted leave to remain in any other route, or entry clearance or leave to enter in any route, and

(iii) the job that the Certificate of Sponsorship Checking Service entry records that the person is being sponsored to do appears on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the codes of practice for Tier 2 Sponsors published by the UK Border Agency,

or

(e) (i) the applicant is applying for leave to remain,

(ii) the applicant previously had leave as:

(1) a Tier 2 (General) Migrant under the rules in place before 6 April 2011,

(2) a Qualifying Work Permit Holder,

(3) a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation,

(4) a Member of the Operational Ground Staff of an Overseas-owned Airline

(5) a Jewish Agency Employee,

and has not since been granted leave to remain in any other route, or entry clearance or leave to enter in any route, and

(iii) the job that the Certificate of Sponsorship Checking Service entry records that the person is being sponsored to do appears on the list of occupations skilled to National Qualifications Framework level 3 or above, as stated in the codes of practice for Tier 2 Sponsors published by the UK Border Agency, or the applicant is a Senior Care Worker or an Established Entertainer as defined in paragraph 6 of these Rules.”

12. In Appendix A, delete paragraph 80A and substitute:

“80A. The Tier 2 (General) limit for the specific periods 6 April 2012 to 5 April 2013 and 6 April 2013 to 5 April 2014 is 20,700 Certificates of Sponsorship in each year.”

13. Delete paragraph 81A and substitute:

“81A. No points will be awarded under the heading "Type of Job" unless the job described in the Sponsor's application for a Certificate of Sponsorship:

(a) appears on:

(i) the list of occupations skilled to National Qualifications Framework level 6 or above, as stated in the codes of practice for Tier 2 Sponsors published by the UK Border Agency, or

(ii) the list of creative sector occupations skilled to National Qualifications Framework level 4 or above, as stated in the Sponsor Guidance published by the UK Border Agency,

or

(b) is skilled to National Qualifications Framework level 4 or above, and appears on the list of shortage occupations published by the UK Border Agency”

14. In Appendix A, delete Table 11C and substitute:

“Table 11C

Certificates of Sponsorship under the Tier 2 (General) limit available to be allocated each month (subject to the processes set out at paragraphs 83 to 84A)

Tier 2 (General) limit for the year 6 April 2012 to 5 April 2013

Application Period	Provisional monthly allocation
6 March 2012 - 5 April 2012	1,725
6 April 2012 - 5 May 2012	1,725
6 May 2012 - 5 June 2012	1,725
6 June 2012 - 5 July 2012	1,725
6 July 2012 - 5 August 2012	1,725
6 August 2012 - 5 September 2012	1,725
6 September 2012 - 5 October 2012	1,725
6 October 2012 - 5 November 2012	1,725
6 November 2012 - 5 December 2012	1,725
6 December 2012 - 5 January 2013	1,725
6 January 2013 - 5 February 2013	1,725
6 February 2013 - 5 March 2013	1,725

Tier 2 (General) limit for the year 6 April 2013 to 5 April 2014

Application Period	Provisional monthly allocation
6 March 2013 - 5 April 2013	1,725
6 April 2013 - 5 May 2013	1,725
6 May 2013 - 5 June 2013	1,725
6 June 2013 - 5 July 2013	1,725
6 July 2013 - 5 August 2013	1,725
6 August 2013 - 5 September 2013	1,725
6 September 2013 - 5 October 2013	1,725
6 October 2013 - 5 November 2013	1,725
6 November 2013 - 5 December 2013	1,725
6 December 2013 - 5 January 2014	1,725
6 January 2014 - 5 February 2014	1,725
6 February 2014 - 5 March 2014	1,725

15. In Appendix A, paragraph 83E, delete “for 6 April 2011 to 5 April 2012 to which the application period of 6 February 2012 to 5 March 2012 relates:” and substitute “for 6 April to 5 April each year, to which the application period of 6 February to 5 March relates:”
16. In Appendix A, paragraph 83E(ii), delete “the total Tier 2 (General) limit of 20,700 Certificates of Sponsorship in the period 6 April 2011 to 5 April 2012” and substitute “the total Tier 2 (General) limit in the period 6 April to 5 April each year”



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 4 APRIL 2012 (CM 8337)**

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 purposes of these changes are:

- To implement annual limits for 2012/13 and 2013/14 for Tier 2 of the Points-Based System;
- To raise the skills threshold for the Tier 2 (General) and Tier 2 (Intra-Company Transfer) categories from occupations at National Qualifications Framework (NQF) level 4 to level 6, except where the applicant is sponsored in a shortage occupation or specified creative sector occupation;
- To make a minor change regarding Tier 4 of the Points Based System.

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

3.1 The Committee is invited to note that this Statement of Changes implements the Government's principal policies relating to Tier 2 of the Points-Based System in 2012/13, to implement the Government's strategy for reducing non-EEA economic net migration.

3.2 The Committee is further invited to note that this Statement of Changes is accompanied by amended guidance which is being published on the UK Border Agency website at www.ukba.homeoffice.gov.uk/ and www.ukba.homeoffice.gov.uk/sitecontent/documents/ on the same date as these rules are laid before Parliament, namely 4 April 2012.

3.3 The Government regrets that, for the changes to the annual limits, it has not been possible in this instance to comply with the convention that changes should be laid before Parliament no less than 21 days before they will come into force. These changes must come into force on 6 April 2012 as the existing Tier 2 (General) limit expires on 5 April 2012. The report from the Migration Advisory Committee report, referred to in paragraph 8.2 below, was published on 28 February 2012. The matters covered in the report were complex and the Government wished to give full and detailed consideration to these matters before deciding its final policies and laying changes to the Rules to implement them.

3.4 The Government also regrets that it has not been possible to comply with the 21 day convention in relation to the Tier 4 change. This is a minor correction to an oversight in HC1888, which comes into force on 6 April 2012 and was laid in accordance with the 21 day convention.

3.5 The changes to the skills threshold will come into force on 14 June 2012, which is the same date as the changes to maintenance funds set out in HC1888. This complies with the 21 day convention while minimising the number of different dates, making it easier for Sponsors and applicants to prepare for the changes.

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 changes in paragraphs 5, 11 and 13 set out in this Statement shall take effect on 14 June 2012. However, if an applicant has made an application for entry clearance or leave before 14 June 2012 and the application has not been decided before that date, it will be decided in accordance with the rules in force on 13 June 2012.

4.4 The other changes in this Statement, relating to annual limits, shall take effect on 6 April 2012. However, if an applicant has made an application for entry clearance or leave before 6 April 2012 and the application has not been decided before that date, it will be decided in accordance with the rules in force on 5 April 2012.

4.5 This Statement should be read as subsequent to HC1888, which also comes into force on 6 April 2012. Where there is a conflict between the provisions of this Statement and HC1888, the provisions of this Statement will prevail.

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 a 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 2 of the Points-Based System

7.2 Tier 2 of the Points-Based System caters for skilled workers with a job offer, and was launched on 27 November 2008. Tier 2 consists of four categories: Tier 2 (Intra-Company Transfer), Tier 2 (General), Tier 2 (Minister of Religion) and Tier 2 (Sportsperson). The Intra-Company Transfer category consists of four sub-categories: Short Term Staff, Skills Transfer, Graduate Trainee, and Long Term Staff.

7.3 The Tier 2 (General) category was subject to an annual limit of 20,700 entry clearance applications in 2011/12, achieved through limiting the number of Certificates of Sponsorship allocated by the Secretary of State to sponsoring employers. These changes apply new annual limits of 20,700, divided into monthly allocations, for 2012/13 and 2013/14.

7.4 The scope of the Tier 2 (General) limit is being widened to include migrants who are in the UK as dependants of Tier 4 migrants and apply to switch in-country to become Tier 2 migrants in their own right, as these are effectively the same as new applicants.

7.5 The graduate trainee sub-category of Tier 2 (Intra-Company Transfer) contains an existing limit of five trainees per Sponsor per year. A change is being made so that this limit automatically renews each year in perpetuity, without needing a further Rules change each year. A further Rules change would be needed to revoke or amend this limit.

7.6 The minimum skills threshold of jobs which may be sponsored under Tier 2 (General) and Tier 2 (Intra-Company Transfer) is being raised from jobs at NQF level 4 to NQF level 6. This change is being made following advice from the Migration Advisory Committee. The change will not apply to Tier 2 (General) applicants with an offer of a job on the Shortage Occupation List. The change will also not apply to migrants who have leave under one of these categories under the previous Rules and who apply in-country to extend their stay or change employment.

Amendments to Tier 4 of the Points-Based System

7.7 Tier 4 of the Points-Based System caters for international students who wish to study in the United Kingdom. As with other parts of the Points-Based System, Tier 4 was implemented in phases, with the introduction of the main policy changes on 31 March 2009. Tier 4 consists of two categories: Tier 4 (General) Student and Tier 4 (Child) Student.

7.8 A minor change is being made to give effect to the intended policy on time limits, as set out in HC1888.

8. Consultation

8.1 On 26 October 2011, the Secretary of State commissioned the Migration Advisory Committee (MAC) to report on the following questions:

“The Government will deliver an improved migration system that commands public confidence and serves our economic interests. It will be more efficient and less open to abuse and will reduce the number of non-EU migrants. The Government is developing policies to meet this objective. As a result of these policies the Government anticipates that net migration will be in the tens of thousands in future. In this context, at what level should the limit on Tier 2 (General) be set for 2012, taking account of the economic, labour market, social and public service impacts of the limit; and of the uptake of Tier 2 (General) and intra-company transferee visas in 2011/12?”

“Is the £40,000 minimum salary threshold for intra-company transfers seeking to stay for 12 months or longer an appropriate proxy test to ensure that migrants meet the General Agreement on Trade in Services (GATS) definition of senior Managers and Specialists? The MAC is asked to provide economic rather than legal advice when considering the compatibility of the definition. Should the £40,000 be a national rate or allow for regional variations in pay? Current policy allows the £40,000 threshold to be met through a combination of salary and

allowances. Does the inclusion of non-salary remuneration undermine the use of the £40,000 threshold as a proxy test of skill level?

“In order to allow the Government to identify an appropriate skill level for Tier 2 can the MAC confirm the list of occupations in Table B1 of its February 2011 report on the list of skilled occupations in Tier 2, i.e. those occupations skilled to National Qualification Framework level 4 and above (NQF4+) but not to National Qualification Framework level 6 and above (NQF6+), undertake a review of the non-NQF6+ job titles currently on the shortage list and estimate the impact on numbers of migrants in Tier 2 if the skills bar were raised to NQF6+?”

“Currently jobs paid more than £150,000 are exempt from the Resident Labour Market Test (RLMT) requirement in recognition of the fact that, at that level, there will be little threat of disturbance to the resident labour market and such jobs are likely to be more global in character. If that threshold were lowered to a range of £70,000-£100,000, what would be the impact on demand for Tier 2 visas, the resident labour force and employers?”

8.2 The MAC issued a public call for evidence regarding these questions, which ran from 26 October to 21 December 2011. The MAC published its report to the Government on 28 February 2012. The report is available on the UK Border Agency website at www.ukba.homeoffice.gov.uk/MAC

9. Guidance

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

10. Impact

10.1 An Impact Assessment on these changes is being published on the Home Office website at www.homeoffice.gov.uk/publications/immigration/.

11. Regulating small business

11.1 The changes to Tier 2 of the Points-Based System will apply to small businesses that are licensed as Tier 2 Sponsors.

12. Monitoring and review

12.1 The review clauses at the beginning of this Statement of Changes require the Secretary of State to review the operation and effect of the changes in this Statement and lay a report before Parliament within five years after these changes come into force and within every five years after that, to the extent that the rules contained in this Statement of Changes remain in force at the review date. Following each review the Secretary of State will decide whether the changes should remain as they are, or be revoked or be amended. A further Statement of Changes would be needed to revoke the changes or to amend them.

12.2 All the changes made by this Statement will be monitored on an on-going basis as part of the review of progress towards meeting the Government’s commitment to reduce annual net migration.

12.3 The annual limits for Tier 2 (General) introduced by this Statement apply only to the period 6 April 2012 to 5 April 2014. These limits will be reviewed before 6 April 2014 and a further Statement of Changes will be laid before Parliament to set out the limits for the following year.

13. Contact

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

13.2 Other queries not related to this Statement of Changes, such as queries relating to individual cases, should be addressed as per the Contact page on the UK Border Agency website at www.ukba.homeoffice.gov.uk/contact/.