

Statement of changes in Immigration Rules [HC 908]

Presented to Parliament on 31 March 2011 (Session 2010-2012)

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CORRECTION

On page 7

Under paragraph 48, where it inserts paragraph 115H(i)(c) into the Immigration Rules, sub-paragraph (c) erroneously reads "... during the period 1 March 2010 to 28 February 2010" and should read "... during the period 1 March 2010 to 28 February 2011".

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 31 March 2011 under section 3(2) of
the Immigration Act 1971*

*Ordered by The House of Commons to be printed
31 March 2011*

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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), 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).

The changes set out in this Statement in paragraphs 1 to 3, 6 to 17 and 29 to 63 shall take effect on 21 April 2011. However, if an applicant has made an application for leave before 21 April 2011 and the application has not been decided before that date, it will be decided in accordance with the Rules in force on 20 April 2011. The changes at paragraphs 4 to 5 and 18 to 28 shall take effect on 6 April 2011. However, if an applicant has made an application for leave before 6 April 2011 and the application has not been decided before that date, it will be decided in accordance with the rules in force on 5 April 2011.

Review

Before the end of each review period, the Secretary of State must:

- (a) carry out a review of the changes made by HC 908 to the extent that they are still in force,
- (b) set out the conclusions of the review in a report, and
- (c) lay the report before Parliament.

The report must in particular:

- (a) set out the objectives intended to be achieved by any regulatory system established by HC 908
- (b) assess the extent to which those objectives are achieved, and
- (c) 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 the date these provisions come into force, being 6 April 2011 or 21 April 2011, and
- (b) subject to the paragraph below, each successive period of five years.

If a report under this provision is laid before Parliament 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 laid.

Changes

1. In paragraph 6, after the definition of “A-Rated Sponsor” insert:
“Under Part 6A and Appendix A of these Rules, a “**B-Rated Sponsor**” is a Sponsor which is recorded as being “B-Rated” on the register of licensed Sponsors maintained by the United Kingdom Border Agency.”.
2. In paragraph 6, delete the definition of “Confirmation of Acceptance for Studies” and substitute:
“Under Part 6A and Appendix A of these Rules, “**Confirmation of Acceptance for Studies**” means a unique reference number electronically issued by a Sponsor via the Sponsor Management System to an applicant for entry clearance, leave to enter or remain as a Tier 4 Migrant in accordance with these Rules.”.

3. In paragraph 56O(b)(iv), delete “to provide a minimum of £50k funding” and substitute “to make a decision whether to provide a minimum of £50,000 funding”.
4. In paragraph 245CD(a), after “Rehabilitation of Offenders Act 1974” insert “unless the applicant is applying under the terms of the HSMP ILR Judicial Review Policy Document”.
5. In paragraph 245CD(e) after “4 years lawful leave in the UK;” insert “or 5 years lawful leave in the UK if the applicant applied to the HSMP between 3 April 2006 and 7 November 2006, received an approval letter and came to or stayed in the United Kingdom on the basis of that letter;”.
6. In paragraph 245GE(g), delete “paragraphs (c) to (d)” and substitute “paragraphs (c) to (f)”.
7. In paragraph 245GE(h), delete “paragraphs (a) to (e)” and substitute “paragraphs (a) to (g)”.
8. In paragraph 245ZV(c), delete “13” and substitute “14”.
9. After paragraph 245ZV(c), insert:
“(ca) Where an applicant has been issued with a Confirmation of Acceptance for Studies on or after 21 April 2011, the applicant must, if required to do so on examination or interview, be able to demonstrate without the assistance of an interpreter English language proficiency of a standard to be expected from an individual who has reached the standard specified in a Confirmation of Acceptance for Studies assigned in accordance with Appendix A paragraph 118(c) (for the avoidance of doubt, the applicant will not be subject to a test at the standard set out in Appendix A, paragraph 118(c)).”
10. In paragraph 245ZW(c)(iv)(1), after “visa letter” insert:
“unless the migrant is studying at an institution which is a partner institution of the migrant’s Sponsor”.
11. In paragraph 245ZX(d), delete “13” and substitute “14”.
12. In paragraph 245ZX(l), after “current entry clearance or leave to remain”, insert “granted under these Rules”.
13. In paragraph 245ZY(c)(iv)(1), after “visa letter” insert:
“unless the migrant is studying at an institution which is a partner institution of the migrant’s Sponsor”.
14. In paragraph 245ZZA(c), delete “14 to 18” and substitute “15 to 22”.
15. In paragraph 245ZZC(b)(i), delete “(Child) Student” and substitute “Migrant”.
16. In paragraph 245ZZC(d), delete “14 to 18” and substitute “15 to 22”.
17. In paragraph 245ZZC(j), after “current entry clearance or leave to remain”, insert “granted under these Rules”.
18. After paragraph 281(i)(b)(ii), insert:
“(b)(iii) the applicant does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974; and”.
19. After paragraph 281(vi) delete ‘; and’.
20. Delete paragraph 281(vii).
21. At paragraph 282(b), replace the word “both” with the word “all”.
22. After paragraph 287(a)(vi), insert “; and
(vii) the applicant does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974.”.
23. After paragraph 287(b)(iv), insert “; and
(v) the applicant does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974.”.
24. After paragraph 289A(iv), insert “; and
(v) the applicant does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974.”.
25. After paragraph 295A(i)(b)(ii), insert:
“(b)(iii) the applicant does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974; and”.
26. After paragraph 295A(viii), delete ‘; and’.
27. Delete paragraph 295A(ix).
28. At paragraph 295B(b), replace the word “both” with the word “all”.
29. In paragraph 319AA, delete “Tier 4 Migrant” and substitute “Tier 4 (General) Student”.

30. In paragraph 319C(i), delete both instances of “Tier 4 Migrant” and substitute in both instances “Tier 4 (General) Student”.
31. In paragraph 319D(b)(iv), delete “Tier 4 Migrant” and substitute “Tier 4 (General) Student”.
32. In paragraph 319D(b)(v), delete “Tier 4 Migrant” and substitute “Tier 4 (General) Student”.
33. In paragraph 319H(i), delete both instances of “Tier 4 Migrant” and substitute in both instances “Tier 4 (General) Student”.
34. In paragraph 319I(b)(iii), delete “Tier 4 Migrant” and substitute “Tier 4 (General) Student”.
35. In paragraph 319I(b)(iv), delete “Tier 4 Migrant” and substitute “Tier 4 (General) Student”.
36. In paragraph 323A(d)(ii), delete “or the United Kingdom Border Agency has given its written consent for the migrant to transfer to another Sponsor” and insert:
“; the UK Border Agency has granted written permission for the migrant to change to another Sponsor, or the migrant is studying at an institution which is a partner institution of the migrant’s Sponsor.”.
37. In Appendix A, at the end of paragraph 74A(d), delete “and”.
38. In Appendix A, at the end of paragraph 74A(e), delete “.” and substitute “, and”.
39. In Appendix A, after paragraph 74A(e) insert:
“(f) the Sponsor is an A-rated Sponsor, unless the application is for leave to remain and the applicant has, or was last granted, leave as a Tier 2 (Intra-Company) Migrant or a Qualifying Work Permit Holder.”.
40. In Appendix A, at the end of paragraph 77C(e), delete “and”.
41. In Appendix A, at the end of paragraph 77C(f), delete “.” and substitute “, and”.
42. In Appendix A, after paragraph 77C(f) insert:
“(g) the Sponsor is an A-rated Sponsor, unless:
(1) the application is for leave to remain, and
(2) the applicant has, or was last granted, leave as a Tier 2 (General) Migrant, a Jewish Agency Employee, a Member of the Operational Ground Staff of an Overseas-owned Airline, a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation, or a Qualifying Work Permit Holder, and
(3) the applicant is applying to work for the same employer named on the Certificate of Sponsorship or Work Permit document which led to his last grant of leave or, in the case of an applicant whose last grant of leave was as a Jewish Agency Employee, a Member of the Operational Ground Staff of an Overseas-owned Airline, a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation, the same employer for whom the applicant was working or stated he was intending to work when last granted leave.”.
43. In Appendix A, delete paragraph 89 and substitute:
“89. A Certificate of Sponsorship reference number will only be considered to be valid for the purposes of this sub-category if:
(a) the number supplied links to a Certificate of Sponsorship Checking Service entry that names the applicant as the Migrant and confirms that the Sponsor is sponsoring him as a Tier 2 (Minister of Religion) Migrant, and
(b) the Sponsor is an A-rated Sponsor, unless:
(1) the application is for leave to remain, and
(2) the applicant has, or was last granted, leave as a Tier 2 (Minister of Religion) Migrant, a Minister of Religion, Missionary or Member of a Religious Order, and
(3) the applicant is applying to work for the same employer named on the Certificate of Sponsorship which led to his last grant of leave or, in the case of an applicant whose last grant of leave was as a Minister of Religion, Missionary or Member of a Religious Order, the same employer for whom the applicant was working or stated he was intending to work when last granted leave.”
44. In Appendix A, delete paragraph 97 and substitute:
“97. A Certificate of Sponsorship reference number will only be considered to be valid for the purposes of this sub-category if:
(a) the number supplied links to a Certificate of Sponsorship Checking Service entry that names the applicant as the Migrant and confirms that the Sponsor is sponsoring him as a Tier 2 (Sportsperson) Migrant, and
(b) the Sponsor is an A-rated Sponsor, unless:
(1) the application is for leave to remain, and

- (2) the applicant has, or was last granted, leave as a Tier 2 (Sportsperson) Migrant or a Qualifying Work Permit Holder, and
 - (3) the applicant is applying to work for the same employer named on the Certificate of Sponsorship or Work Permit document which led to his last grant of leave.”.
45. In Appendix A, at the end of paragraph 109A(b), delete “and”.
46. In Appendix A, at the end of paragraph 109A(c), delete “.” and substitute “, and”.
47. In Appendix A, after paragraph 109A(c) insert:
“(d) the Sponsor is an A-rated Sponsor, unless the application is for leave to remain and the applicant has, or was last granted, leave as a Tier 5 Migrant, an Overseas Government Employee or a Qualifying Work Permit Holder.”
48. In Appendix A, after the heading “Notes” which follows Table 16, insert:
“115A. In order to obtain points for a Confirmation of Acceptance for Studies, the applicant must provide a valid Confirmation of Acceptance for Studies reference number.

Tier 4 Interim Limit

115B. The Secretary of State shall be entitled to limit the number of Confirmations of Acceptance for Studies allocated to any specific Sponsor in any one period.

115C. The limit on the number of Confirmations of Acceptance for Studies allocated to specific Sponsors shall be known as the Tier 4 Interim Limit.

115D. The Tier 4 Interim Limit will apply from 21 April 2011 to 5 April 2012 (inclusive) (the “Tier 4 Interim Limit Period”).

115E. The Tier 4 Interim Limit will be applied to any Tier 4 Sponsor that does not satisfy both of the following criteria throughout the Tier 4 Interim Limit Period:

- (i) has Highly Trusted Sponsor status; and
- (ii) is subject to and holds a valid and satisfactory full institutional inspection, review or audit by one of the following bodies:
 - (a) the Bridge Schools Inspectorate; or
 - (b) the Education and Training Inspectorate; or
 - (c) Estyn; or
 - (d) Her Majesty’s Inspectorate of Education; or
 - (e) the Independent Schools Inspectorate; or
 - (f) Ofsted; or
 - (g) the Quality Assurance Agency for Higher Education; or
 - (h) The Schools Inspection Service;

or is not:

- (iii) an independent school;
- (iv) the Foundation Programme Office;
- (v) the Yorkshire and Humber Strategic Health Authority; or
- (vi) a Tier 4 Sponsor that applied for a Tier 4 Sponsor licence on or after 21 April 2011 and meets the requirements of (ii) (but not (i)) above.

115F. A Tier 4 Sponsor who does not satisfy the requirements of paragraph 115E and is therefore subject to the Tier 4 Interim Limit is known as a Limited Sponsor.

115G. All Confirmations of Acceptance for Studies allocated by the Secretary of State to Limited Sponsors prior to 21 April 2011 and which have not been assigned to an applicant for entry clearance, leave to enter or leave to remain under Tier 4 prior to 21 April 2011 are withdrawn and the only Confirmations of Acceptance for Studies allocated to a Limited Sponsor are the Confirmations of Acceptance for Studies allocated in accordance with paragraph 115H below.

115H. The Tier 4 Interim Limit will be calculated as follows:

- (i) A Limited Sponsor who has that status as at 21 April 2011 will be allocated:
 - (a) where the Limited Sponsor had a Tier 4 Sponsor Licence for the entirety of the period 1 March 2010 to 28 February 2011, a number of Confirmations of Acceptance for Studies equal to the number assigned by that Limited Sponsor to Tier 4 Migrants which were used for an application which resulted in a grant of entry clearance, leave to enter or leave to remain,

where both the assignment and grant of leave were between 1 March 2010 and 28 February 2011;

(b) where the Limited Sponsor had a Tier 4 Sponsor Licence for only part of the period 1 March 2010 to 28 February 2011, a number of Confirmations of Acceptance for Studies equal to:

(i) the number of Confirmations of Acceptance for Studies assigned by the Limited Sponsor to Tier 4 Migrants which were used for an application which resulted in a grant of entry clearance, leave to enter or leave to remain, where both the assignment and grant of leave were between 1 March 2010 and 28 February 2011;

(ii) multiplied by the appropriate factor to increase the figure in (i) until it is equal to the number of Confirmations of Acceptance for Studies that would have been assigned and granted in a period of 12 months;

(c) where the Limited Sponsor did not have a Tier 4 Sponsor licence during the period 1 March 2010 to 28 February 2010, a number of Confirmations of Acceptance for Studies equal to:

(i) the annual allocation the Limited Sponsor received when it was granted its Tier 4 Sponsor licence;

(ii) less 26% which is the average percentage of Confirmations of Acceptance for Studies assigned by Limited Sponsors which did not result in a grant of entry clearance, leave to enter or leave to remain, where both the assignment and refusal of leave were between 1 March 2010 and 28 February 2011;

(d) where the calculation in paragraphs (a) to (c) above results in 0 or a negative number, the Limited Sponsor will be allocated 0 Confirmations of Acceptance for Studies under the Tier 4 Interim Limit.

(ii) A Limited Sponsor who acquires that status after 21 April 2011 will be allocated a number of Confirmations of Acceptance for Studies:

(a) equal to the result of the calculation appropriate for the Limited Sponsor's circumstances as set out in 115H(i) above; and

(b) subject to a reduction equal to the number of Confirmations of Acceptance for Studies assigned by the Limited Sponsor to Tier 4 Migrants since 21 April 2011 which were used for an application which resulted in a grant of entry clearance, leave to enter or leave to remain since 21 April 2011.

115I. A Limited Sponsor will, on provision to the UK Border Agency of evidence that it meets the criteria set out in paragraph 115E above, be exempt from the Tier 4 Interim Limit from the date the UK Border Agency provides written confirmation that it is so exempt."

49. In Appendix A, after paragraph 116(d) insert:

"(da) where the application for entry clearance or leave to remain is for the applicant to commence a new course of study, not for completion of a course already commenced by way of re-sitting examinations or repeating a module of a course, the Sponsor must hold an A-rated or Highly Trusted Sponsor Licence."

50. In Appendix A, after paragraph 116(e) insert:

“

(ea) the migrant must not previously have applied for entry clearance, leave to enter or leave to remain using the same Confirmation of Acceptance for Studies reference number where that application was either approved or refused (not rejected as an invalid application or withdrawn);”

51. In Appendix A, delete paragraph 117(b) and substitute:

“(b) that reference number must not have been withdrawn or cancelled by the Sponsor or the UK Border Agency since it was assigned.”

52. In Appendix A, paragraph 118(b), delete “one of the requirements in (i) to (viii) below is met:” and substitute:

“for Confirmation of Acceptance for Studies assigned on or before 20 April 2011, one of the requirements in (i) to (vii) below is met:”

53. In Appendix A, at the end of paragraph 118(b)(vii)(4)(ii), insert:

“(c) For Confirmation of Acceptance for Studies assigned on or after 21 April 2011, one of the requirements in (i) to (iii) below is met:

(i) the course is degree level study and the Confirmation of Acceptance for Studies has been assigned by a Sponsor which is a Recognised Body or a body in receipt of funding as a higher education institution from the Department for Employment and Learning in Northern Ireland, the Higher

Education Funding Council for England, the Higher Education Funding Council for Wales, or the Scottish Funding Council, and:

- (1) the applicant is a national of one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; United States of America, and provides the specified documents; or
- (2) has obtained an academic qualification (not a professional or vocational qualification), which is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the UK, from an educational establishment in one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Ireland; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and The Grenadines; Trinidad and Tobago; the UK; the USA, and provides the specified documents; or
- (3) the applicant has successfully completed a course as a Tier 4 (Child) Student (or under the student rules that were in force before 31 March 2009, where the student was granted permission stay whilst he was under 18 years old) which:
 - i. was at least six months in length, and
 - ii. ended within two years of the date the sponsor assigned the Confirmation of Acceptance for Studies; or
- (4) the Confirmation of Acceptance for Studies Checking Service entry confirms that the applicant has a knowledge of English equivalent to level B2 of the Council of Europe's Common European Framework for Language Learning in all four components (reading, writing, speaking and listening), or above.

Or

(ii) the course is degree level study and the Confirmation of Acceptance for Studies has been assigned by a Sponsor which is not a Recognised Body or is not a body in receipt of funding as a higher education institution from the Department for Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales, or the Scottish Funding Council, and:

- (1) the applicant is a national of one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; United States of America, and provides the specified documents; or
- (2) has obtained an academic qualification (not a professional or vocational qualification), which is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the UK, from an educational establishment in one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Ireland; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and The Grenadines; Trinidad and Tobago; the UK; the USA, and provides the specified documents; or
- (3) the applicant has successfully completed a course as a Tier 4 (Child) Student (or under the student rules that were in force before 31 March 2009, where the student was granted permission stay whilst he was under 18 years old) which:
 - i. was at least six months in length, and
 - ii. ended within two years of the date the sponsor assigned the Confirmation of Acceptance for Studies; or
- (4) the applicant provides an original English language test certificate from an English language test provider approved by the Secretary of State for these purposes, which is within its validity date, and clearly shows:
 - i. the applicant's name,
 - ii. that the applicant has achieved or exceeded level B2 of the Council of Europe's Common European Framework for Language Learning in all four components (reading, writing, speaking and listening), unless exempted from sitting a component on the basis of the applicant's disability, and
 - iii. the date of the award.

Or

(iii) the course is for below degree level study and:

- (1) the applicant is a national of one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; United States of America, and provides the specified documents; or
- (2) has obtained an academic qualification (not a professional or vocational qualification), which is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the UK, from an educational establishment in one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Ireland; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and The Grenadines; Trinidad and Tobago; the UK; the USA, and provides the specified documents; or
- (3) the applicant has successfully completed a course as a Tier 4 (Child) student (or under the student rules that were in force before 31 March 2009, where the student was granted permission stay whilst he was under 18 years old) which:
 - i. was at least six months in length, and
 - ii. ended within two years of the date the sponsor assigned the Confirmation of Acceptance for Studies; or
- (4) the applicant provides an original English language test certificate from an English language test provider approved by the Secretary of State for these purposes, which is within its validity date, and clearly shows:
 - i. the applicant's name,
 - ii. that the applicant has achieved or exceeded level B1 of the Council of Europe's Common European Framework for Language Learning in all four components (reading, writing, speaking and listening), unless exempted from sitting a component on the basis of the applicant's disability, and
 - iii. the date of the award."

54. In Appendix A, paragraph 120, after "Confirmation of Acceptance for Studies" insert: "assigned on or before 20 April 2011".

55. In Appendix A, following paragraph 120(e)(dd), insert new paragraph:

"120A. Points will only be awarded for a Confirmation of Acceptance for Studies assigned on or after 21 April 2011 (even if all the requirements in paragraphs 116 to 119 above are met) if the course in respect of which it is issued meets each of the following requirements:

(a) The course must meet the following minimum academic requirements:

- i. for applicants applying to study in England, Wales or Northern Ireland, the course must be at National Qualifications Framework (NQF) / Qualifications and Credit Framework (QCF) Level 3 or above if the Sponsor is a Highly Trusted Sponsor; or
- ii. for applicants applying to study in England, Wales or Northern Ireland, the course must be at National Qualifications Framework (NQF) / Qualifications and Credit Framework (QCF) Level 4 or above if the Sponsor is an A-Rated Sponsor or a B-Rated Sponsor; or
- iii. for applicants applying to study in Scotland, the course must be accredited at Level 6 or above in the Scottish Credit and Qualifications Framework (SCQF) by the Scottish Qualifications Authority and the Sponsor must be a Highly Trusted Sponsor; or
- iv. for applicants applying to study in Scotland, the course must be accredited at Level 7 or above in the Scottish Credit and Qualifications Framework (SCQF) by the Scottish Qualifications Authority if the Sponsor is an A-Rated Sponsor or B-Rated Sponsor; or
- v. the course must be a short-term Study Abroad Programme in the United Kingdom as part of the applicant's qualification at an overseas higher education institution, and that qualification must be confirmed as the same as a United Kingdom degree level by the National Recognition Information Centre for the United Kingdom (UK NARIC); or
- vi. the course must be an English language course at level B2 or above of the Common European Framework of Reference for Languages; or
- vii. the course must be a recognised Foundation Programme for postgraduate doctors or dentists;

(b) The Confirmation of Acceptance for Studies must be for a single course of study except where the Confirmation of Acceptance for Studies is:

- (i) issued by a Sponsor which is a Recognised Body or a body in receipt of funding as a higher education institution from the Department for Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales,

- or the Scottish Funding Council to cover both a pre-sessional course of no longer than three months' duration and a course of degree level study at that Sponsor; and
- (ii) the applicant has an unconditional offer of a place on a course of degree level study at that Sponsor; and
- (iii) the course of degree level study commences no later than one month after the end date of the pre-sessional course.
- (c) The course must, except in the case of a pre-sessional course, lead to an approved qualification as defined in the Tier 4 (Sponsor) guidance published by the UK Border Agency on the UK Border Agency website.
- (d) Other than when the applicant is on a course-related work placement or a pre-sessional course, all study that forms part of the course must take place on the premises of the sponsoring educational institution or an institution which is a partner institution of the migrant's Sponsor.
- (e) The course must meet one of the following requirements:
- i. be a full time course of degree level study that leads to an approved qualification as defined in UKBA guidance;
 - ii. be an overseas course of degree level study that is recognised as being equivalent to a UK Higher Education course and is being provided by an overseas Higher Education Institution; or
 - iii. be a full time course of study involving a minimum of 15 hours per week organised daytime study and, except in the case of a pre-sessional course, lead to an approved qualification, below bachelor degree level as defined in the Tier 4 (Sponsor) guidance published by the UK Border Agency on the UK Border Agency website.
- (f) If the course contains a course-related work placement, any period that the applicant will be spending on that placement must not exceed half of the total length of the course spent in the United Kingdom except where it is a United Kingdom statutory requirement that the placement should exceed half the total length of the course. Where the student is following a course of study below degree level study including a course-related work placement, the course can only be offered if the Sponsor is a Highly Trusted Sponsor."
56. In Appendix A, after paragraph 124(f) insert:
- “,
- (fa) the migrant must not previously have applied for entry clearance, leave to enter or leave to remain using the same Confirmation of Acceptance for Studies reference number, if that application was either approved or refused (not rejected as an invalid application or withdrawn), and”.
57. In Appendix A, delete paragraph 125(b) and substitute:
- “(b) that reference number must not have been withdrawn or cancelled by the Sponsor or the UK Border Agency since it was assigned.”.
58. In Appendix A, after paragraph 126(d) insert:
- “(e) is a single course of study, except where the Confirmation of Acceptance for Studies is:
- (i) issued by an independent school to cover both a pre-sessional course and a course at an independent school; and
 - (ii) the applicant has an unconditional offer of a place at the independent school; and
 - (iii) the duration of the pre-sessional course and period of study at the independent school does not exceed the maximum period of entry clearance or leave to remain that can be granted under paragraphs 245ZZB and 245ZZD of the Immigration Rules.”
59. In Appendix C, in paragraph 12, delete each instance of “London” and substitute “inner London”.
60. In Appendix C, after paragraph 12 insert:
- “12A. If the length of the applicant’s course includes a part of a month, the time will be rounded up to the next full month.”
61. In Appendix C, delete paragraph 13 and substitute:
- “13. Funds will be available to the applicant only where the specified documents show the funds are held or provided by:
- (i) the applicant (whether as a sole or joint account holder); and/or
 - (ii) the applicant’s parent(s) or legal guardian(s), and the parent(s) or legal guardian(s) have provided written consent that their funds may be used by the applicant in order to study in the UK; and/or
 - (iii) an official financial sponsor which must be Her Majesty’s Government, the applicant’s home government, the British Council or any international organisation, international company, University or Independent school.”.

62. In Appendix C, delete paragraph 14 and substitute:

“14. An applicant will have an established presence studying in the UK if the applicant has current entry clearance, leave to enter or leave to remain as a Tier 4 migrant, Student or as a Postgraduate Doctor or Dentist and at the date of application:

- (i) has finished a single course that was at least six months long within the applicant’s last period of entry clearance, leave to enter or leave to remain, or
- (ii) is applying for continued study on a single course where the applicant has completed at least six months of that course.”.

63. In Appendix C, delete paragraph 20 and substitute:

“20. If the length of the applicant’s course includes a part of a month, the time will be rounded up to the next full month.

21. Funds will be available to the applicant only where the specified documents show the funds are held or provided by:

- (i) the applicant (whether as a sole or joint account holder); and/or
- (ii) the applicant’s parent(s) or legal guardian(s), and the parent(s) or legal guardian(s) have provided written consent that their funds may be used by the applicant in order to study in the UK; and/or
- (iii) an official financial sponsor which must be Her Majesty’s Government, the applicant’s home government, the British Council or any international organisation, international company, University or Independent school.

22. An applicant will have an established presence studying in the UK if the applicant has current entry clearance, leave to enter or leave to remain as a Tier 4 migrant or Student and at the date of application:

- (i) has finished a single course that was at least six months long within the applicant’s last period of entry clearance, leave to enter or leave to remain, or
- (ii) is applying for continued study on a single course where the applicant has completed at least six months of that course.”.



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 31 MARCH 2011 (HC 908)**

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 bring into effect changes to Tier 4 of the Points Based System following a recent public consultation on reform of the student immigration system; and
 - To make a small number of minor corrections and technical changes to the Rules.
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 makes a number of significant changes to Tier 4 of the Points-Based System to implement the Government's strategy for reducing abuse of the student immigration system, whilst ensuring that the brightest and best international students remain able to come to the UK and supporting the Government's strategy for reducing non-EEA migration.
 - 3.2 Changes which correct minor drafting errors in HC 863 in relation to the Rules requiring individuals to be free of unspent convictions and to clarify the application of HC 863 to migrants applying for indefinite leave to remain under the terms of the HSMP ILR Judicial Review Policy Document will come into effect on 6 April 2011. These were inadvertently missing from HC 863.
 - 3.3 The Government regrets that it is not possible to comply with the convention that changes should be laid before Parliament for no less than 21 days before they come into force. The Statement of Changes which contains the errors being corrected comes into force on 6 April 2011. Therefore the corrections referred to in paragraph 3.2 need to come into force on the same day as the provisions they are correcting.
 - 3.4 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/studyingintheuk/ and www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/ on the same date as these rules are laid before Parliament, namely 31 March 2011.
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 this Statement at paragraphs paragraphs 1 to 3, 6 to 17 and 29 to 63 shall take effect on 21 April 2011. However, if an applicant has made an application for leave before 21 April 2011 and the application has not been decided before that date, it will be decided in

accordance with the Rules in force on 20 April 2011. The changes at paragraphs 4 and 5 and 18 to 28 shall take effect on 6 April 2011.

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 4 of the Points Based System

7.2 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.

7.3 The Government ran a public consultation on reform of the Tier 4 student immigration system from 7 December 2010 to 31 January 2011. This Statement sets out the first set of changes being made to the Rules governing Tier 4 following consideration of the responses received to the consultation. As this is the first set of changes the Government is making following this consultation, a Statement of Intent is being published alongside these Rules setting out the other changes the Government plans to make. This will enable education providers and users of the UK's student immigration system to understand the plans for reform and take such steps to prepare themselves as are appropriate.

7.4 The following changes are being made to the Tier 4 (General) category, which caters for migrants aged 16 years and over who wish to come to the UK for the purpose of study:

- The Government is introducing an Interim Limit on the number of Confirmations of Acceptance for Studies that can be issued by Tier 4 Sponsors that are not both subject to the public system of inspection, audit or review (sponsors that operate within the private further and higher education sectors and the English language sector) and have Highly Trusted Sponsor status. The limit will apply from 21 April 2011 until 5 April 2012 (inclusive). For the majority of Sponsors subject to the Tier 4 Interim Limit, the limit will equal the number of Confirmations of Acceptance for Studies that the Sponsor assigned and which were subsequently used in a Tier 4 application that resulted in a grant of entry clearance, leave to enter or leave to remain during the period 1 March 2010 and 28 February 2011. The Statement sets out how the limit will be calculated for Sponsors who were not licensed throughout the period 1 March 2010 and 28 February 2011, and those who are not subject to the Interim Limit from 21 April 2011, but who become subject to it at some point thereafter. The Tier 4 Interim Limit will not apply to independent schools, the Foundation Programme Office or the Yorkshire and Humber Strategic Health Authority or to Tier 4 Sponsors who apply for a Sponsor Licence on or after 21 April 2011 and who are subject to the public system of inspection, audit or review.
- All Tier 4 Sponsors offering courses at UK Bachelor's degree level and above will need to ensure that their prospective students are proficient in English language at level B2, an upper intermediate level, on the Common European Framework of Reference (CEFR) for languages. Sponsors which are Recognised Bodies or bodies in receipt of funding as higher education

institutions from the Department for Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales, or the Scottish Funding Council will be able to decide how they wish to undertake this assessment of their prospective students. Students intending to study at all other types of Sponsor will need to provide a Secure English Language Test certificate from an approved test provider to demonstrate their language competence. Exemptions will apply to those who are from a majority English-speaking country, have an academic qualification confirmed by UK NARIC as being equivalent to a UK degree level course from an establishment in a majority English speaking country, and those who have recently studied as a child under the Tier 4 (Child) category and its predecessor route.

- All Tier 4 Sponsors offering courses below UK Bachelor's degree level (including Sponsors which are Recognised Bodies or are in receipt of funding as higher education institutions from the Department for Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales, or the Scottish Funding Council) will need to ensure that their prospective students are proficient in English language at level B1, an intermediate level, on the CEFR for languages. All students will need to provide a Secure English Language Test certificate from an approved test provider to demonstrate their language competence unless one of the exemptions outlined above applies.
- All applicants will be required to demonstrate their ability to understand and speak English.
- Confirmations of Acceptance for Studies for applicants commencing a new course of study will only be valid if they have been issued by A-Rated and Highly Trusted Sponsors.

7.5 Some further changes, which clarify measures already contained within the Immigration Rules, but which do not originate from the review of the student route are being made as follows:

- Clarification of the definition of a Confirmation of Acceptance for Studies and definition of a B-Rated Sponsor.
- Greater clarity is being given to the minimum level of course a student may study depending on the rating of their sponsoring education provider.
- These changes make clear that a Confirmation of Acceptance for Studies will only be valid if it has been assigned to cover a single course of study. The only exception to this is where a Recognised Body or a Sponsor in receipt of funding as a higher education institution from the Department for Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales, or the Scottish Funding Council may assign a Confirmation of Acceptance for Studies to cover a pre-sessional course of no longer than three months' duration, where the applicant has an unconditional offer of a place on a degree level course of study at that Sponsor. The gap between the end of the pre-sessional course and the start date of the degree level course of study may not be longer than one month.
- Similarly, the changes clarify that Confirmations of Acceptance for Studies assigned by independent schools under the Tier 4 (Child) category will only be valid if assigned to cover a single course of study, except where the Confirmation of Acceptance for Studies also covers a pre-sessional course ahead of the main course of study at the independent school.
- Clarification of the definition of "established presence" which enables certain applicants, who have previously been studying in the UK, to present lower levels of maintenance funds in order to claim 10 points in Appendix C.

Amendments to Tier 2 and Tier 5 of the Points Based System

7.6 A change is being made to the Sponsorship arrangements for Tier 2 and Tier 5, such that Certificates of Sponsorship assigned under these tiers to new migrant employees (both those

who are applying for entry clearance or leave to remain in the UK under Tier 2 or 5 for the first time, and those who have existing leave to be in the UK under Tier 2, 5 or a predecessor category, but who are commencing employment with the Sponsor for the first time) will only be valid if they have been assigned by A-rated Sponsors.

Amendments to the General Grounds for Refusal

- 7.7 Tier 4 Migrants who applied for leave on or after 5 October 2009 are subject to a condition on their entry clearance or leave to remain which requires them to study with the same Tier 4 Sponsor throughout the term of the leave. Those who applied for leave under Tier 4 before this date are not subject to this condition, but instead are required to apply to the UK Border Agency before moving to a different Tier 4 Sponsor, to obtain written permission to do so. Tier 4 Migrants who do not obtain permission before starting a course of study at a new sponsor which is not Highly Trusted may have their leave curtailed.
- 7.8 A new fee is being introduced to cover the costs connected with the United Kingdom Border Agency's granting of permission to change sponsor and the relevant paragraph has been amended to reflect the process that takes place and the wording of the relevant provision in the Immigration and Nationality Fees Order 2011.
- 7.9 A further amendment is being made to make clear that Tier 4 Migrants who study at institutions other than the institution recorded as their Sponsor will not face curtailment of their leave if they are studying at a partner institution of the Tier 4 Sponsor.

Amendments to bring existing requirements into the Immigration Rules

- 7.10 Legal challenges have been brought against the Government regarding the extent to and manner in which various Points-Based System requirements are specified in UK Border Agency guidance rather than in the Immigration Rules.
- 7.11 The requirements of the Points Based System that featured in those challenges which the Government was unsuccessful in defending have since been brought within the Immigration Rules.
- 7.12 The Secretary of State considers that the rules and guidance as currently structured are lawful. However, for the avoidance of any doubt and without prejudice to any future position the Secretary of State may take in litigation, these changes bring the following existing minor details and clarifications, which have previously been specified in UK Border Agency guidance, within the Immigration Rules:
- Under the Tier 4 (General) and Tier 4 (Child) categories:
 - That only leave granted under the Immigration Rules is considered in cases where the rules require that the new course of an applicant for leave to remain must start within one month of the expiry date of their current entry clearance or leave to remain;
 - That a Confirmation of Acceptance for Studies which has been used to support an application cannot be re-used to support another application, regardless of whether or not the first application was successful.
 - Under Tier 4 (Child):
 - That a Tier 4 (Migrant) is able to apply for leave to remain under the Tier 4 (Child) category.
 - Under the maintenance requirement for Tier 4 Migrants:

- That funds will only be considered to be available to an applicant in the circumstances set out in the amended Rules.
- Where the funds required for maintenance depend on the length of the course, the length of the course will be rounded up to the next full month.
- Where the funds required for maintenance depend on where the applicant is studying, references to specified London boroughs are being amended to specified inner London boroughs.
- Under the requirements for dependants:
 - That only Tier 4 (General) Students are eligible to bring their spouses or partners and dependant children with them to the UK.

Amendments to correct drafting errors in HC863

- 7.13 To apply a requirement to be free of unspent convictions to applicants for settlement under paragraphs 287 (spouses or civil partners) and 289A (victims of domestic violence) and a correction to the placement of the same requirement within paragraphs 281 and 295A, which relate to spouses and civil partners and unmarried and same-sex partners respectively to ensure that the criminality requirement applies only to those expressly seeking indefinite leave to enter on arrival rather than those seeking leave for a limited period of up to 27 months.
- 7.14 To amend the requirements for Indefinite Leave to Remain as a Tier 1 Migrant to make it clear that where a person is applying for Indefinite Leave to Remain under the terms of the HSMP ILR Judicial Review Policy Document they are required to have spent 4 years of lawful leave in the United Kingdom, unless they entered between 3 April 2006 and 7 November 2006, in which case they need to have spent 5 years of lawful leave in the United Kingdom.
- 7.15 A further addition affecting the above group of HSMP migrants will also see them exempt from the requirement to be free of unspent convictions
- 7.16 Two further changes correct minor drafting errors in relation to the Rules for Prospective Entrepreneurs and Tier 2 (Intra-Company Transfer) Migrants.

8. Consultation

- 8.1 The substantive changes to Tier 4 have been developed following a public consultation, “The Student Immigration System – a consultation”, which ran from 7 December 2010 to 31 January 2011. A summary of the findings of this consultation is published today on the UK Border Agency website at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/students/>. This report gives a detailed statistical breakdown of approximately 31,000 responses the UK Border Agency received via the online consultation questionnaire.
- 8.2 A Statement of Intent, which outlines the Government’s plans for implementation of changes to reform Tier 4 over the coming year is also published today on the UK Border Agency website at: <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/march/65-student-visas>

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 A draft Impact Assessment of the changes to Tier 4 has been prepared, however it is awaiting final clearance by the Regulatory Policy Committee. The Impact Assessment will be published in due course, once it has been finalised.

11. Regulating small business

- 11.1 The changes to Tier 4 of the Points-Based System will apply to small businesses that are licensed as Tier 4 Sponsors.

12. Monitoring and review

- 12.1 The review clauses at the beginning of this Statement 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. 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 from the level of hundreds of thousands to the level of tens of thousands.
- 12.3 The Interim Limit introduced by this Statement applies only from 21 April 2011 until 5 April 2012. These limits will be reviewed before 6 April 2012 and a further Statement of Changes will be laid before Parliament.

13. Contact

- 13.1 Queries specifically regarding this Statement of Changes only should be addressed as follows:
- Points Based System: to Amanda Willits at the UK Border Agency on 020 8760 2961 or email to: Amanda.Willits2@homeoffice.gsi.gov.uk.
 - Criminality requirement for settlement: to Martin Stares at the UK Border Agency on 0208 760 2699 or e-mail to: Martin.Stares2@homeoffice.gsi.gov.uk
- 13.2 Other queries should be addressed as per the Contact page on the UK Border Agency website at www.ukba.homeoffice.gov.uk/contact/.