

# STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 7 November 2006 under section 3(2) of  
the Immigration Act 1971*

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*(This document is accompanied by an Explanatory Memorandum)*

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## STATEMENT OF CHANGES IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the Rules laid down by him as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395), as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (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), 17 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), 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) and 18 September 2006 (Cm 6918).

The change in paragraph 1 shall take effect on 8 November 2006. The changes in paragraphs 2-8 shall take effect on 5 December 2006.

1. Delete paragraphs 135D-135F.

2. In paragraph 6, after the definition of 'United Kingdom passport', insert:

“ ‘a UK Bachelors degree’ means –

- (a) A programme of study or research which leads to the award, by or on behalf of a university, college or other body which is authorised by Royal Charter or by or under an Act of Parliament to grant degrees, of a qualification designated by the awarding institution to be of Bachelors degree level; or
- (b) A programme of study or research, which leads to a recognised award for the purposes of section 214(2)(c) of the Education Reform Act 1988, of a qualification designated by the awarding institution to be of Bachelors degree level.”

3. In paragraph 135B, after “is met”, insert:

“and that the application does not fall for refusal under paragraph 135HA”.

4. In paragraph 135C, after “is met”, insert:

“or if the application falls for refusal under paragraph 135HA”.

5. After paragraph 135C, insert:

### **“Requirements for an extension of stay as a highly skilled migrant**

135D. The requirements for an extension of stay as a highly skilled migrant for a person who has previously been granted entry clearance or leave in this capacity, are that the applicant:

- (i) entered the United Kingdom with a valid United Kingdom entry clearance as a highly skilled migrant, or has previously been granted leave in accordance with paragraphs 135DA-135DH of these Rules; and
- (ii) has achieved at least 75 points in accordance with the criteria specified in Appendix 4 of these Rules, having provided all the documents which are set out in Appendix 5 (Part I) of these Rules which correspond to the points which he is claiming; and
- (iii) (a) has produced an International English Language Testing System certificate issued to him to certify that he has achieved at least band 6 competence in English; or  
(b) has demonstrated that he holds a qualification which was taught in English and which is of an equivalent level to a UK Bachelors degree by providing both documents which are set out in Appendix 5 (Part II) of these Rules; and
- (iv) meets the requirements of paragraph 135A(ii)-(iii).

135DA The requirements for an extension of stay as a highly skilled migrant for a work permit holder are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a work permit holder in accordance with paragraphs 128 to 132 of these Rules; and
- (ii) meets the requirements of paragraph 135A (i)-(iii).

135DB The requirements for an extension of stay as a highly skilled migrant for a student are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a student in accordance with paragraphs 57 to 62 of these Rules; and
- (ii) has obtained a degree qualification on a recognised degree course at either a United Kingdom publicly funded further or higher education institution or a bona fide United Kingdom private education institution which maintains satisfactory records of enrolment and attendance; and
- (iii) has the written consent of his official sponsor to remain as a highly skilled migrant if he is a member of a government or international scholarship agency sponsorship and that sponsorship is either ongoing or has recently come to an end at the time of the requested extension; and
- (iv) meets the requirements of paragraph 135A(i)-(iii).

135DC. The requirements for an extension of stay as a highly skilled migrant for a postgraduate doctor or postgraduate dentist are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a postgraduate doctor or a postgraduate dentist in accordance with paragraphs 70 to 75 of these Rules; and
- (ii) has the written consent of his official sponsor to such employment if he is a member of a government or international scholarship agency sponsorship and that sponsorship is either ongoing or has recently come to an end at the time of the requested extension; and
- (iii) meets the requirements of paragraph 135A(i)-(iii).

135DD The requirements for an extension of stay as a highly skilled migrant for a working holidaymaker are that the applicant:

- (i) entered the United Kingdom as a working holidaymaker in accordance with paragraphs 95 to 96 of these Rules; and
- (ii) meets the requirements of paragraph 135A(i)-(iii).

135DE The requirements for an extension of stay as a highly skilled migrant for a participant in the Science and Engineering Graduates Scheme are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a participant in the Science and Engineering Graduates Scheme in accordance with paragraphs 135O to 135T of these Rules; and
- (ii) meets the requirements of paragraph 135A(i)-(iii).

135DF. The requirements for an extension of stay as a highly skilled migrant for an innovator are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as an innovator in accordance with paragraphs 210A to 210E of these Rules; and
- (ii) meets the requirements of paragraph 135A(i)-(iii).

135DG. Deleted.

135DH. The requirements for an extension of stay as a highly skilled migrant for a participant in the Fresh Talent: Working in Scotland scheme are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a Fresh Talent: Working in Scotland scheme participant in accordance with paragraphs 143A to 143F of these Rules; and
- (ii) has the written consent of his official sponsor to such employment if the studies which led to him being granted leave under the Fresh Talent: Working in Scotland scheme in accordance with paragraphs 143A to 143F of these Rules, or any studies he has subsequently undertaken, were sponsored by a government or international scholarship agency; and
- (iii) meets the requirements of paragraph 135A(i)-(iii).

#### **Extension of stay as a highly skilled migrant**

135E. An extension of stay as a highly skilled migrant may be granted for a period not exceeding 3 years, provided that the Secretary of State is satisfied that each of the requirements of paragraph 135D, 135DA, 135DB, 135DC, 135DD, 135DE, 135DF or 135DH is met and that the application does not fall for refusal under paragraph 135HA.

#### **Refusal of extension of stay as a highly skilled migrant**

135F. An extension of stay as a highly skilled migrant is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 135D, 135DA, 135DB, 135DC, 135DD, 135DE, 135DF or 135DH is met or if the application falls for refusal under paragraph 135HA.”

6. For paragraphs 135G and 135H, substitute:

**“Requirements for indefinite leave to remain as a highly skilled migrant**

135G. The requirements for indefinite leave to remain for a person who has been granted leave as a highly skilled migrant are that the applicant:

- (i) has spent a continuous period of 5 years lawfully in the United Kingdom, of which the most recent period must have been spent with leave as a highly skilled migrant (in accordance with paragraphs 135A to 135F of these Rules), and the remainder must be made up of leave as a highly skilled migrant, leave as a work permit holder (under paragraphs 128 to 133 of these Rules), or leave as an Innovator (under paragraphs 210A to 210F of these Rules); and
- (ii) throughout the five years spent in the United Kingdom has been able to maintain and accommodate himself and any dependants adequately without recourse to public funds; and
- (iii) is lawfully economically active in the United Kingdom in employment, self-employment or a combination of both.

**Indefinite leave to remain as a highly skilled migrant**

135GA. Indefinite leave to remain may be granted provided that the Secretary of State is satisfied that each of the requirements of paragraph 135G is met and that the application does not fall for refusal under paragraph 135HA.

**Refusal of indefinite leave to remain as a highly skilled migrant**

135H. Indefinite leave to remain in the United Kingdom is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 135G is met or if the application falls for refusal under paragraph 135HA.”

7. After paragraph 135H, add:

**“Additional grounds for refusal for highly skilled migrants**

135HA. An application under paragraphs 135A-135H of these Rules is to be refused, even if the applicant meets all the requirements of those paragraphs, if:

- (i) the applicant submits any document which, whether or not it is material to his application, is forged or not genuine, unless the Immigration Officer or Secretary of State is satisfied that the applicant is unaware that the document is forged or not genuine; or
- (ii) the Immigration Officer or Secretary of State has cause to doubt the genuineness of any document submitted by the applicant and, having taken reasonable steps to verify the document, has been unable to verify that it is genuine.”

8. After Appendix 3, insert:

**“Appendix 4**

**Points criteria needed to succeed under paragraph 135D(ii) of these Rules**

<b>QUALIFICATIONS</b>	
Points	Qualifications (can include equivalent level professional qualifications) Applicants may claim points for only one qualification.
50	PhD
35	Masters degree
30	Bachelors degree
<b>PREVIOUS EARNINGS</b>	
Points	Applicants whose previous grant of leave to enter/remain under HSMP was for a period of more than 12 months: Previous Earnings from 12 out of the 15 months preceding the application.
5	16 – 17,999 Pounds Sterling (£)
10	18 – 19,999
15	20 – 22,999
20	23 – 25,999
25	26 – 28,999
30	29 – 31,999
35	32 – 34,999
40	35 – 39,999
45	40 +

Points	Applicants whose previous grant of leave to enter/remain under HSMP was for a period of 12 months or less: Previous Earnings from 8 out of the 12 months preceding the application.
5	10,650 – 11,999 Pounds Sterling (£)
10	12,000 – 13,299
15	13,300 – 15,299
20	15,300 – 17,299
25	17,300 – 19,299
30	19,300 – 21,299
35	21,300 – 23,299
40	23,300 – 26,499
45	26,500+
<b>UK EXPERIENCE</b>	
Points 5	Applicants whose previous grant of leave to enter/remain under HSMP was for a period of more than 12 months: At least £16,000 of the past earnings for which points have been claimed under the previous points scoring section, have been earned in the United Kingdom.
Points 5	Applicants whose previous grant of leave to enter/remain under HSMP was for a period of 12 months or less: At least £10,650 of the past earnings for which points have been claimed under the previous points scoring section, have been earned in the United Kingdom.
<b>AGE</b>	
Points	Age (as at date of posting of application)
20	29 or under
10	30 or 31
5	32 or 33

## Appendix 5

### Documents referred to in paragraphs 135D(ii) and 135D(iii)b:

#### Part I

#### Qualifications – if achieved after initial HSMP grant

<b>Required evidence for those with an academic qualification</b>
Original academic certificate showing: <ul style="list-style-type: none"> <li>● Title of the award;</li> <li>● Date of award;</li> <li>● Institution;</li> <li>● Name of applicant.</li> </ul>
<b>Required evidence for those with a professional/vocational qualification</b>
Original award certificate showing: <ul style="list-style-type: none"> <li>● Title of award;</li> <li>● Date of award;</li> <li>● Institution;</li> <li>● Name of applicant; and</li> </ul> Letter from UK professional body confirming qualification's equivalence to UK academic level showing: <ul style="list-style-type: none"> <li>● Name of award including country and awarding body;</li> <li>● Equivalence of award to UK academic levels.</li> </ul>

**Required evidence for those who have just graduated**

Letter from institution on headed paper showing:

- Name of applicant;
- Qualification awarded;
- Date of award;
- Date certificate will be issued; and

Academic transcript showing:

- Name of applicant;
- Institution;
- Course details;
- Confirmation of award.

**Previous Earnings****Required evidence for those who have been in salaried employment**

Both the following covering the full period claimed for:

- Income tax returns;
- Wage slips.

**Required evidence for those who worked in a country with no tax system**

Any two of the following three to cover the full period claimed for:

- Bank statements;
- Wage slips;
- Letter from employer stating salary.

**Required evidence for independent contractors**

All of the following to cover the full period claimed for:

- Income tax return;
- Copies of contracts from employers covering the total amount of earnings claimed;
- Invoices covering the full amount claimed; and
- Bank statements showing incoming payments covering the full amount claimed.

**Required evidence for those who have been self employed**

Both the following to cover the full period claimed for:

- Applicant's individual personal income tax return; and
- Applicant's personal bank statements;

Plus one of the following combinations of documents covering the full period claimed for:

- Company audited accounts PLUS Company Tax return (one of these documents must confirm the total payment claimed by the applicant); OR
- Unaudited business/management accounts confirming the total payment claimed by the applicant PLUS either
- Business bank statements AND a business tax return; OR
- Copies of contracts totalling the full amount payable to the individual AND corroborating invoices.

## UK Experience

<b>Required evidence for those claiming points for previous earnings</b>
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Evidence will be assessed for that sent in to qualify for Previous Earnings criteria. No additional documents required.
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## Age assessment

<b>Required evidence for those claiming points under the age assessment</b>
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The original passport or travel document.
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## Part II

### English Language

<b>Required evidence for those claiming a degree taught in English to fulfil criteria</b>
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Both of the following:
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Original degree certificate; and
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Original letter on headed paper from the institution confirming the degree was taught in English showing:
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- |  |
|--|
| <ul style="list-style-type: none"><li>● Name;</li><li>● Qualification awarded;</li><li>● Date awarded.</li></ul> |
|--|

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**EXPLANATORY MEMORANDUM TO  
THE STATEMENT OF CHANGES IN IMMIGRATION RULES  
LAID ON 7 NOVEMBER 2006 (HC 1702)**

**1. Introduction**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Description**

- 2.1 This Statement of Changes in Immigration Rules contains one policy change. It makes a number of changes to the rules relating to the Highly Skilled Migrant Programme (HSMP), as part of wider changes which the Home Office is making to this immigration category. This involves changes to the rules for further leave to remain applications, new rules relating to verification of documents and some technical amendments.

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

- 3.1 Parts of this Statement of Changes are being brought into effect one day after the Statement is laid, rather than after the normal twenty-one day period. This concerns the deletion of the existing leave to remain rules; the introduction of all the new rules will be after a longer than normal period of twenty-eight days. We are taking this step to avoid a rush of speculative applications within the twenty-one day period by people who would wish their applications to be considered under the old rules. There was a marked rise in applications under the HSMP following the publication of the Command Paper on the Points Based System in March this year, which did not announce imminent changes to the scheme. It is therefore likely that an announcement of a significant change to the scheme itself within three weeks would lead to a very large rise in the number of these speculative applications. This would create significant pressures on the Immigration and Nationality Directorate (IND) even in a normal period, but, at a time of transition to the new rules, it would make it very difficult for IND to manage that transition, as new applications received within that period would need to be considered under the old rules; this would not be good customer service for applicants. In addition, it is important that the new rules on the verification of documents are applied as soon as possible, so that they should have the greatest impact.

**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 7 November 2006. One of the changes will take effect on 8 November 2006 and the others on 5 December 2006 (as detailed in the Statement of Changes).
- 4.3 This Statement of Changes in Immigration Rules was incorporated into a consolidated version of the Immigration Rules, which can be found under the 'Laws & Policy' page at: [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk), where there are also copies of all the Statements 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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 A summary of the policy change contained in this Statement of Changes in Immigration Rules follows.

7.2 The HSMP is designed to allow highly skilled individuals with exceptional skills to come to the United Kingdom to seek work or opportunities for self-employment. Those applying for the first time to the programme, whether from outside the UK or to switch within the UK from another immigration category, must go through a two-stage application process. Firstly, they must apply for a HSMP approval letter for entry to the programme. Secondly, they must meet all the parts of the relevant immigration rule in order to obtain leave as a highly skilled migrant. Applicants who are seeking to extend existing leave as a highly skilled migrant need to make only one application – to vary their leave. Successful applicants are allowed free access to the labour market, and the scheme is a route to settlement.

7.3 The Home Office is making a number of changes to the HSMP, which reflect our determination to ensure greater transparency and objectivity in decision making. These changes will help to ensure that the scheme selects the people who will be the most successful in the labour market and who will thus make a strong economic contribution to the UK.

7.4 We are making changes to the criteria which lead to the grant of approval letters (to replace some of the more subjective criteria with more objective attributes) and introducing a mandatory English language requirement. However, most of these changes will be effected in policy documents and do not require amendment to the Immigration Rules.

7.5 We are also amending the requirements in the Immigration Rules for applicants who have previously had a grant of leave in this category and are applying for an extension. Instead of having to show that they have taken all reasonable steps to become lawfully economically active in the UK (as they do under current rules), applicants will now have to show that they can meet a points test similar to that required of applicants who are applying for a HSMP approval letter. The points criteria for extension applications, and the evidence which will be required to gain those points, will be set out in appendices to the Immigration Rules, and we will refuse the application if the evidence submitted is not what we require. A mandatory English language requirement has also been imposed for applicants seeking an extension of their leave under HSMP. This approach will be more effective in ensuring that the HSMP helps us to select those migrants who will make the greatest economic contribution to the UK.

7.6 We are also introducing a new rule to deal with forged documents and a new rule for the verification of documents submitted with HSMP applications. To tackle evidence of general abuse under the scheme, verification procedures will be made more robust, with a greater onus placed on the applicant to demonstrate that he meets the criteria set and that his application is genuine.

- We will now be able to refuse applications outright when documents which are not genuine, whether or not they are material to the application, have been submitted. Although entry clearance officers and caseworkers are currently able to refuse most applications when documents which are not genuine but which are material to the application are submitted, there has been no equivalent power in the case of documents which are not material to an application. Such applicants have made an application in bad faith and should not be able to qualify under the scheme.

- We will also be able to refuse cases where standard verification checks on documents which we have reasonable cause to suspect are not genuine have not been able to demonstrate that they are genuine. Cases sometimes arise where we have reasonable cause to doubt that a document is genuine, for example, where we have evidence that there are a high number of forged documents issued by a particular institution or evidence that documents are easily available from a particular source. Verification might not always be possible if the author or issuer of the document is not willing to co-operate. This new rule allows us to refuse the application on the basis of the reasonable doubt we have about the document as long as reasonable steps have been taken to verify the document and verification has not been possible.

7.7 Previously, those with existing leave to do the Professional and Linguistic Assessment Board (PLAB) test (which allows overseas doctors to practise in the UK) or a clinical attachment have been able to switch into HSMP provided that they have received a HSMP approval letter using the Priority Application Process for General Practitioners. As we are removing the GP Priority provision as part of our changes to the points criteria, people who have leave in these categories will not now be able to switch into HSMP. There will be published concessionary arrangements for those who have been granted a HSMP approval letter under the Priority Application Process before the publication of this Statement of Changes.

7.8 We are also making some minor, technical amendments to the rules relating to applications for further leave to remain and indefinite leave to remain to make it clear exactly which requirements need to be satisfied at which stage of the process.

7.9 These changes involve a twenty-seven day deletion of the HSMP rules for leave to remain applications. We are taking this step so that caseworkers can clear existing HSMP cases and make the necessary changes to operational procedures necessitated by the new rules. Suspending the HSMP for twenty-seven days will enable us to manage the transition most effectively within the available resources and ensure that current levels of customer service are maintained when the new arrangements are introduced. This will not, however, substantively disadvantage applicants. Applications made for leave to remain under HSMP during the suspension period will not be returned; they will be accepted as valid and will be considered against the new rules after the suspension period. This means that people whose leave to enter or remain is due to expire during the suspension period will not have to leave the UK as a result of suspension; their leave will be extended under section 3C of the Immigration Act 1971 as long as they submit their application before their existing leave expires. In addition, people in this situation will be given the chance to submit additional evidence to show that they meet the new rules. Our published guidance expands on the arrangements for those who submit applications during the suspension period. Applications for entry clearance and for indefinite leave to remain under the scheme will continue to be dealt with as normal.

## **8. Impact**

8.1 A partial or final Regulatory Impact Assessment has not been prepared for this instrument as it has minimal impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is not expected to be significant. Applications will continue to be decided by entry clearance officers and by caseworkers in the Immigration and Nationality Directorate and, although some of the procedures will change, this will not represent a significant problem for those deciding applications.

## **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](mailto:indpublicenquiries@ind.homeoffice.gsi.gov.uk)

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