

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 13 November 2007 under section 3(2) of
The Immigration Act 1971*

*Ordered by The House of Commons to be printed
13 November 2007*

(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 her as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395), as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cmnd2663), 26 October 1995 (HC 797), 4 January 1996 (Cmnd 3073), 7 March 1996 (HC 274), 2 April 1996 (HC329), 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 (Cmnd4065), 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), 26November 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 (HC523), 3 August 2004 (Cmnd 6297), 24 September 2004 (Cmnd 6339), 18 October 2004 (HC 1112), 20 December2004 (HC 164), 11 January 2005 (HC 194), 7 February 2005 (HC 302), 22 February 2005 (HC 346), 24 March2005 (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 March2006 (HC 949), 30 March 2006 (HC 1016), 20 April 2006 (HC 1053), 19 July 2006 (HC 1337), 18 September2006 (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 (Cm7075) and 7 November 2007 (HC 28).

These changes shall take effect on 30 November 2007.

1. In the definition of “employment” in paragraph 6 after “includes paid and unpaid employment,” there is inserted –
“paid and unpaid work placements undertaken as part of a course or period of study,”
2. In paragraph 46A(i) “paragraph 41(i)-(vii);” is deleted and there is inserted – “paragraph 41(i)-(iv) and (vi)-(vii);”
3. In paragraph 46A(vi) “Department of Education and Skills” is deleted.
4. In paragraph 56A(ii) “paragraph 57(i) – (vii)” is deleted and there is inserted – “paragraph 57(i) – (ix)”.
5. In paragraph 56K(ii) “Department of Education and Skills” is deleted.
6. In paragraph 57 paragraph (i) is deleted and there is inserted –
“(i) has been accepted for a course of study, or a period of research, which is to be provided by or undertaken at an organisation which is included on the Register of Education and Training Providers, and is at either;
(a) a publicly funded institution of further or higher education which maintains satisfactory records of enrolment and attendance of students and supplies these to the Border and Immigration Agency when requested; or
(b) a *bona fide* private education institution; or
(c) an independent fee paying school outside the maintained sector which maintains satisfactory records of enrolment and attendance of students and supplies these to the Border and Immigration Agency when requested; and”
7. In paragraph 57 paragraph (ii) is deleted and there is inserted –
“(ii) is able and intends to follow either:
(a) a recognised full-time degree course or postgraduate studies at a publicly funded institution of further or higher education; or
(b) a period of study and/or research in excess of 6 months at a publicly funded institution of higher education where this forms part of an overseas degree course; or
(c) a weekday full-time course involving attendance at a single institution for a minimum of 15 hours organised daytime study per week of a single subject, or directly related subjects; or
(d) a full-time course of study at an independent fee paying school; and”

8. In paragraph 57 paragraphs (v) – (viii) are deleted and there is inserted –

“(v) he holds a valid Academic Technology Approval Scheme (ATAS) clearance certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office which relates to the course, or area of research, he intends to undertake and the institution at which he wishes to undertake it; if he intends to undertake either;

- (i) postgraduate studies leading to a Doctorate or Masters degree by research in one of the disciplines listed in paragraph 1 of Appendix 6 to these Rules; or
- (ii) postgraduate studies leading to a taught Masters degree in one of the disciplines listed in paragraph 2 of Appendix 6 to these Rules; or
- (iii) a period of study or research, as described in paragraph 57(ii)(b), in one of the disciplines listed in paragraph 1 or 2 of Appendix 6 to these Rules, that forms part of an overseas postgraduate qualification; and
- (vi) intends to leave the United Kingdom at the end of his studies; and
- (vii) does not intend to engage in business or to take employment, except part-time or vacation work undertaken with the consent of the Secretary of State; and
- (viii) is able to meet the costs of his course and accommodation and the maintenance of himself and any dependants without taking employment or engaging in business or having recourse to public funds; and
- (ix) holds a valid United Kingdom entry clearance for entry in this capacity.”

9. In paragraph 60(ii) “paragraph 57(i) – (vii)” is deleted and there is inserted –
“paragraph 57(i) – (viii)”.

10. After “Appendix 5” there is inserted –

“Appendix 6

Disciplines for which an Academic Technology Approval Scheme certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office is required for the purposes of paragraph 57(v) of these Rules

1. Doctorate or Masters by research:

Subjects allied to Medicine:

JACs codes beginning B1 – Anatomy, Physiology and Pathology
 B2 – Pharmacology, Toxicology and Pharmacy
 B9 – Others in subjects allied to Medicine

Biological Sciences

JACs codes beginning C1 – Biology
 C2 – Botany
 C4 – Genetics
 C5 – Microbiology
 C7 – Molecular Biology, Biophysics and Biochemistry
 C9 – Others in Biological Sciences

Veterinary Sciences, Agriculture and related subjects:

JACs codes beginning D3 – Animal Science
 D9 – Others in Veterinary Sciences, Agriculture and related subjects

Physical Sciences:

JACs codes beginning F1 – Chemistry
 F2 – Materials Science
 F3 – Physics
 F5 – Astronomy
 F8 – Physical and Terrestrial Geographical and Environmental
 Sciences
 F9 – Others in Physical Sciences

Mathematical and Computer Sciences:

JACs codes beginning G1 – Mathematics
 G2 – Operational Research
 G4 – Computer Science
 G7 – Artificial Intelligence
 G9 – Others in Mathematical and Computing Sciences

Engineering:

JACs codes beginning

- H1 – General Engineering
- H2 – Civil Engineering
- H3 – Mechanical Engineering
- H4 – Aerospace Engineering
- H5 – Naval Architecture
- H6 – Electronic and Electrical Engineering
- H7 – Production and Manufacturing Engineering
- H8 – Chemical, Process and Energy Engineering
- H9 – Others in Engineering

Technologies:

JACs codes beginning

- J2 – Metallurgy
- J4 – Polymers and Textiles
- J5 – Materials Technology not otherwise specified
- J7 – Industrial Biotechnology
- J9 – Others in Technology

2. Taught Masters:

- F2 – Materials Science
- F3 – Physics (including Nuclear Physics)
- H3 – Mechanical Engineering
- H4 – Aerospace Engineering
- J5 – Materials Technology/Materials Science not otherwise specified

11. In paragraph 69A paragraph (i) is deleted and there is inserted –

“(i) (a) meets the requirements for admission as a student set out in paragraph 57(i)-(viii); or
(b) met the requirements for admission as a student set out in paragraph 57 (i)-(iii) in the previous academic year and continues to meet the requirements of paragraph 57 (iv)-(viii)

save, for the purpose of paragraphs (i) (a) or (b) above, where leave was last granted in accordance with paragraphs 57 – 62 of these Rules before 30 November 2007, the requirements of paragraph 57(v) do not apply; and”

12. In paragraph 69G paragraph (i) is deleted and there is inserted –

“(i) (a) meets the requirements for admission as a student set out in paragraph 57(i)-(viii); or
(b) met the requirements for admission as a student set out in paragraph 57 (i)-(iii) in the previous academic year and continues to meet the requirements of paragraph 57 (iv)-(viii)

save, for the purpose of paragraphs (i) (a) or (b) above, where leave was last granted in accordance with paragraphs 57 – 62 of these Rules before 30 November 2007, the requirements of paragraph 57(v) do not apply; and”

13. In paragraph 76(i) “or 82-87;” is deleted and there is inserted – “or 82 -87F;”

14. In paragraph 79(i) “or 82-87;” is deleted and there is inserted – “or 82-87F;”.

15. In paragraph 326(2) paragraph (iv) is deleted and there is inserted –

“(iv) On the basis of marriage to or civil partnership with a person settled in the UK or as the unmarried or same-sex partner of a person settled in the UK”.



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 13 NOVEMBER 2007 (HC 40)**

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 the following ten changes:-

- An amendment to the definition of “Employment” in the Interpretation Section of the rules to prevent student visitors from undertaking a paid or unpaid work placement as part of a course of study in the United Kingdom.
- An amendment to the child visitor rules which removes the link to the requirement in the visitor rules that prevents a visitor undertaking a course of study, a requirement which was introduced in the Statement of Changes in Immigration Rules laid on 3 April 2007 (Cm 7074).
- Amendments to the rules relating to Students, Child Visitors and Student Visitors to rename the DfES’ Register of Education and Training Providers as the Register of Education and Training Providers.
- A change to the student rules which introduces a mandatory requirement for those intending to undertake postgraduate studies leading to a Doctorate or Masters degree by research, or a Taught Masters degree, in designated subjects, to obtain an Academic Technology Approval Scheme (ATAS) certificate from the Foreign and Commonwealth Office before applying for leave to enter or remain in the United Kingdom in order to pursue those studies. The relevant list of subjects is provided in Appendix 6 to the Rules.
- A change to the student rules to allow students who are enrolled on degree courses overseas to attend a publicly funded institution of higher education for a period of study and/or research.
- A change to the student rules to require those who intend to undertake a period of study and/or research in the UK for more than 6 months, as a part of their postgraduate overseas degree course, to obtain an ATAS certificate if the subject matter is akin to those covered by the ATAS.
- Amendments to the rules relating to the categories of “Re-sits of examinations” and “Writing up a thesis” as a result of the introduction of the ATAS.
- A consequential amendment to the rules relating to “Parent of a child at school”, necessitated by the changes to the student requirements.
- An amendment to the rules relating to the Spouses and Children of Students to allow these dependants of Students’ Unions Sabbatical Officers to seek entry to and remain in the United Kingdom in accordance with the rules.
- Correction of an omission in paragraph 326(2)(iv) of the Immigration Rules, relating to Registration with the Police.

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

3.1 We wish these changes to the Immigration Rules to come into force on the 30 November in order to give proper effect to the Foreign and Commonwealth Office’s Academic Technology Approval Scheme which commenced on 1 November. We regret that this Rule change was not laid before the House the customary 21 days prior to coming into effect.

4. Legislative Background

- 4.1 The Immigration Rules are made under section 3(2) of the Immigration Act 1971. These Rules constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating the rights of persons to enter and to remain in the United Kingdom. Under section 3(2) the Secretary of State is obliged to lay before Parliament statements of the Rules, or any changes in the Rules, as soon as possible.
- 4.2 This Statement of Changes in Immigration Rules will be laid on 13th November 2007. The changes will take effect on 30 November 2007.

- 4.3 This Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules, which can be found under the 'Law & Policy' page at: 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 Not applicable.

7. Policy background

- 7.1 A summary of each of the policy changes contained in this Statement of Changes in Immigration Rules follows:

The definition of Employment

The new category of Student Visitors which was introduced in the Statement of Changes in Immigration Rules laid on 3 April 2007 (Cm 7074) allows for the admission of short term students who wish to study in the UK for six months or less but who do not wish to take part-time employment or seek an extension to their visitor leave. As part of some educational and vocational courses students are required to undertake a work placement for which they can receive payment; in other instances no payment is received. The new category was not intended to allow student visitors to undertake such work placements and the amendment to the definition of "Employment" seeks to clarify the position that student visitors are not permitted to undertake a work placement (paid or unpaid) as part of their course. Such students will require prior entry clearance as a student.

Change to the Child Visitor Rules

In the Statement of Changes in Immigration Rules laid on 3 April 2007 (Cm 7074) an amendment was made to the Child Visitor rules to allow children under the age of 18 to undertake a course of study of six months duration or less at a private education institution if the provider of the course of study was included on the DfES Register of Education and Training Providers. In the same statement the rules relating to visitors were also amended to prevent visitors from undertaking a course of study in the UK. As this particular requirement forms part of the Child Visitor rules, this amendment seeks to remove that link so that child visitors can undertake a course of study in the UK if so required.

Removal of references to DfES in the rules

Following changes to the machinery of government in June 2007 the responsibilities of the former Department for Education and Skills have been re-allocated. The DfES Register of Education and Training Providers, for which this former department had responsibility, has been renamed as the Register of Education and Training Providers. The amendments to the rules relating to Students, Child Visitors and Student Visitors reflect this change of name for the Register.

Students enrolled overseas studying or undertaking research in the UK

The current student rules do not provide for the admission of students to the UK to undertake study and/or research at a publicly funded institution of higher education where the students are enrolled on degree courses at overseas institutions. Changing the student rules to allow the admission of such students will help to promote the international exchange of knowledge and expertise, and will seek to improve the UK's competitive position in the global education market.

Student leave and the ATAS

The ATAS, which replaces the Voluntary Vetting Scheme (VVS), is designed to help prevent individuals from acquiring or developing knowledge and skills that could be used in the proliferation of weapons of mass destruction (WMD).

The ATAS makes it a mandatory requirement for those intending to undertake postgraduate studies in the UK which fall within the designated list to obtain an ATAS clearance certificate. This requirement also applies to those who are enrolled at an overseas institution but intend to come to the UK for more than 6 months to undertake a period of study/research which forms a part of their overseas degree course. The ATAS certificate must be obtained before an application for student entry clearance is made. The VVS was neither mandatory nor incorporated within the Rules. It also relied largely on the higher education institutions (HEI) to help identify applicants of proliferation concern. Under the ATAS, that responsibility has been predominantly transferred to government. With its mandatory status, the ATAS will substantially increase the number of individuals who are subject to clearance procedures and aims to identify a higher number who are of proliferation concern.

Students wishing to extend their stay in the United Kingdom to undertake or continue with the designated postgraduate studies will be required to hold a valid ATAS certificate when applying for further student leave.

The possession of an ATAS certificate does not in itself guarantee that a person's application for leave to enter or an extension of stay in the UK will be successful. The person must also meet the other requirements of the Immigration Rules for student leave.

Parents of a child at school

A requirement for leave to enter or remain as the parent of a child at school is that the child is attending an independent fee paying school and meets the requirements of the student rules as set out in paragraph 57. Due to the additional requirements within the student rules, paragraph 56A(ii) is amended accordingly to ensure that, where relevant, the new requirements are met.

Re-sits of examinations and Writing up a thesis

The requirements for leave to enter to re-sit an examination or, to write up a thesis, directly link to the requirements for admission as a student and therefore need to reflect the changes to paragraph 57, necessitated by the ATAS, as explained above. As the new requirement in paragraph 57(v) to obtain an ATAS clearance certificate has been introduced with effect from 30 November 2007, those who last obtained their student leave before this date would not have required such a certificate. Where this is the case there will not be a need to obtain an ATAS clearance certificate solely for the purpose of applying for leave to re-sit an examination or write up a thesis. The expectation is that at either of these stages a person would already have acquired the relevant level of knowledge and skills in his field of study or research.

Where a person was granted student leave on or after 30 November 2007 and obtained an ATAS certificate at that time, provided it remains valid, the certificate will satisfy the requirement of paragraph 57(v) contained in paragraphs 69A and 69G. An ATAS certificate will remain valid as long as the holder continues with the same course or area of research and at the same institution as it was originally issued for.

The changes to paragraphs 69A(i) and 69G(i) automatically apply to the requirements for an extension of stay to re-sit an examination or to write a thesis as contained in paragraphs 69D and 69J respectively.

Dependants of Students' Unions Sabbatical Officers.

When the former concession relating to Students' Unions Sabbatical Officers was incorporated into the rules in the Statement of Changes in Immigration Rules of September 2000 (Cm 4851), the technical amendments to the rules relating to the spouses and children of students to allow sabbatical officers to be accompanied by their spouses (and now civil partners) and children was not made. This amendment seeks to regularise the position for such dependants who have previously been treated exceptionally outside the rules.

Registration with the police

An amendment is made to Part 10 (Registration with the Police) paragraph 326(2)(iv) of the Rules. This corrects an omission which occurred when previous changes were made to paragraph 326(2)(iv) to incorporate provisions for civil partners. The effect of this may have been to suggest that the normal exemption from police registration did not apply to a person given leave as the unmarried heterosexual partner of a person settled in the UK. The amendment clarifies that a requirement to register with the police should not normally be imposed as a condition of the leave for this category of person.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this Statement as it has minimal impact on business, charities or voluntary bodies.
- 8.2 An initial impact assessment of the ATAS requirement within the student Rules has estimated that the annual cost to the publicly funded academic sector will be less than £5,000,000. A full impact assessment has therefore not been carried out.

9. Contact

- 9.1 Queries should be addressed to the Border & Immigration Agency Enquiry Bureau on telephone: 0870-606-7766 or by e-mail: indpublicenquiries@ind.homeoffice.gsi.gov.uk