

Statement of changes in Immigration Rules

Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty April 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 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),18 September 2006 (Cm 6918), 7 November 2006 (HC1702), 11 December 2006 (HC130) and 19 March 2007 (HC398).

The changes in paragraphs 1, 5, 7–8, 12–15 and 19–20 shall take effect on 19 April 2007. The changes in paragraphs 2–4, 6, 9–11 and 16-18 shall take effect on 1st September 2007.

- 1. Paragraph 6 is amended as follows:
 - (a) After the definition of "Approved Destination Status Agreement with China" there is inserted "a *bona fide* private education institution" is a private education institution which:
 - maintains satisfactory records of enrolment and attendance of students, and supplies these to the Border and Immigration Agency when requested;
 - b) provides courses which involve a minimum of 15 hours organised daytime study per week;
 - ensures a suitably qualified tutor is present during the hours of study to offer teaching and instruction to the students;
 - d) offers courses leading to qualifications recognised by the appropriate accreditation bodies;
 - e) employs suitably qualified staff to provide teaching, guidance and support to the students;
 - f) provides adequate accommodation, facilities, staffing levels and equipment to support the numbers of students enrolled at the institution; and
 - g) if it offers tuition support to external students at degree level, ensures that such students are registered with the UK degree awarding body."
 - (b) After the definition of "EEA national" there is inserted -
 - "an external student" is a student studying for a degree from a UK degree awarding body without any requirement to attend the UK degree awarding body's premises or a UK Listed Body's premises for lectures and tutorials."
- 2. In paragraph 41(v) "study at a maintained school" is deleted and there is inserted "undertake a course of study".
- 3. In paragraph 44(ii) "Any period spent as a seasonal agricultural worker is" is deleted and there is inserted "Any periods spent as a seasonal agricultural worker and as a student visitor are".
- 4. In paragraph 46A, sub-paragraph (v)(b) the full stop after "visitor" is deleted and there is inserted ": and
 - (vi) if he has been accepted for a course of study, this is to be provided by an organisation which is included on the Department for Education and Skills' Register of Education and Training Providers, and which is outside the maintained sector."
- 5. In paragraph 56A(ii) "paragraph 57(i) (vi)" is deleted and there is inserted "paragraph 57(i) (vii)".
- 6. After paragraph 56J there is inserted -

"STUDENT VISITORS

Requirements for leave to enter as a student visitor

56K. The requirements to be met by a person seeking leave to enter the United Kingdom as a student visitor are that he:

- (i) is genuinely seeking entry as a student visitor for a limited period as stated by him, not exceeding six months; and
- (ii) has been accepted on a course of study which is to be provided by an organisation which is included on the Department for Education and Skills' Register of Education and Training Providers; and
- (iii) intends to leave the United Kingdom at the end of his visit as stated by him; and
- (iv) does not intend to take employment in the United Kingdom; and
- does not intend to engage in business, to produce goods or provide services within the United Kingdom, including the selling of goods or services direct to members of the public; and
- (vi) does not intend to study at a maintained school; and
- (vii) will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends; and
- (viii) can meet the cost of the return or onward journey; and
- (ix) is not a child under the age of 18.

Leave to enter as a student visitor

56L. A person seeking leave to enter to the United Kingdom as a student visitor may be admitted for a period not exceeding 6 months, subject to a condition prohibiting employment, provided the Immigration Officer is satisfied that each of the requirements of paragraph 56K is met.

Refusal of leave to enter as a student visitor

56M. Leave to enter as a student visitor is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 56K is met."

- 7. For paragraph 57(i), substitute
 - "(i) has been accepted for a course of study which is to be provided by an organisation which is included on the Department for Education and Skills' 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".
- 8. In paragraph 57 paragraphs (iv) (vi) are deleted and there is inserted –
- "(iv) if he has been accepted to study externally for a degree at a private education institution, he is also registered as an external student with the UK degree awarding body; and
- (v) intends to leave the United Kingdom at the end of his studies; and
- (vi) 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
- (vii) 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."
- 9. After paragraph 57(vii), delete the full stop and insert
 - "; and
 - (viii) holds a valid United Kingdom entry clearance for entry in this capacity."
- 10. For paragraph 58 there is substituted
 - "58. A person seeking leave to enter the United Kingdom as a student may be admitted for an appropriate period depending on the length of his course of study and his means, and with a condition restricting his freedom to take employment, provided he is able to produce to the Immigration Officer on arrival a valid United Kingdom entry clearance for entry in this capacity."
- 11. For paragraph 60(i) there is substituted –

- "(i)(a) was last admitted to the United Kingdom in possession of a valid student entry clearance in accordance with paragraphs 57–62 or valid prospective student entry clearance in accordance with paragraphs 82–87 of these Rules; or
- (b) has previously been granted leave to enter or remain in the United Kingdom to re-sit an examination in accordance with paragraphs 69A-69F of these Rules; or
- (c) if he has been accepted on a course of study at degree level or above, has previously been granted leave to enter or remain in the United Kingdom in accordance with paragraphs 87A-87F, 128-135, 135O-135T and 143A-143F of these Rules; or
- (d) has valid leave as a student in accordance with paragraphs 57-62 of these Rules; and".
- 12. In paragraph 69A(i)(a) "paragraph 57(i) (vi)" is deleted and there is inserted "paragraph 57(i) (vii)".
- 13. In paragraph 69(i)(b) "paragraph 57(iv) (vi)" is deleted and there is inserted "paragraph 57(iv) (vii)".
- 14. In paragraph 69G(i)(a) "paragraph 57(i) (vi)" is deleted and there is inserted "paragraph 57(i) (vii)".
- 15. In paragraph 69G(i)(b) "paragraph 57(iv) (vi)" is deleted and there is inserted "paragraph 57(iv) (vii)".
- 16. In paragraph 82(iii) the full stop after "studies" is deleted and there is inserted "; and
 - (iv) holds a valid United Kingdom entry clearance for entry in this capacity."
- 17. For paragraph 83 there is substituted
 - "83. A person seeking leave to enter the United Kingdom as a prospective student may be admitted for a period not exceeding 6 months with a condition prohibiting employment, provided he is able to produce to the Immigration Officer on arrival a valid United Kingdom entry clearance for entry in this capacity."
- 18. In paragraph 85, sub-paragraph (i) "if he is a person specified in Appendix 1 to these Rules" is deleted.
- 19. For paragraph 170(iva), substitute:
 - "(iva) if seeking leave as a Minister of Religion can produce an International English Language Testing System certificate issued to him to certify that he has achieved level 6 competence in spoken and written English and that it is dated not more than two years prior to the date on which the application is made."
- 20. For paragraph 173(iv), substitute:
 - "(iv)(a) if he entered the United Kingdom as a minister of religion, missionary or member of a religious order in accordance with sub paragraph (i) prior to 23 August 2004 meets the requirements of paragraph 170 (ii)—(iv); or
 - (b) if he entered the United Kingdom as a minister of religion, missionary or member of a religious order in accordance with sub paragraph (i), on or after 23 August 2004 but prior to 19 April 2007, or was granted leave to remain in accordance with paragraph 174B between those dates, meets the requirements of paragraph 170 (ii)—(iv), and if a minister of religion met the requirement to produce an International English Language Testing System certificate certifying that he achieved level 4 competence in spoken English at the time he was first granted leave in this capacity; or
 - (c) if he entered the United Kingdom as a minister of religion, missionary or member of a religious order in accordance with sub paragraph (i) on or after 19 April 2007, or was granted leave to remain in accordance with paragraph 174B on or after that date, meets the requirements of paragraph 170 (ii)-(iv), and if a minister of religion met the requirement to produce an International English Language Testing System certificate certifying that he achieved level 6 competence in spoken and written English at the time he was first granted leave in this capacity."



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EXPLANATORY MEMORANDUM TO THE STATEMENT OF CHANGES IN IMMIGRATION RULES LAID ON 3 APRIL 2007 (CM 7074)

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

2. Description

- 2.1 This Statement of Changes in Immigration Rules replaces the Statement of Changes in Immigration Rules laid on 28 March (HC418) in relation to students and ministers of religion but is to take effect on the same date as the instrument it replaces.
- 2.2 This Statement of Changes (like the Statement of Changes laid on 28 March) contains the following eleven policy changes:
 - A new provision to allow short term students to enter the UK for a period of six months or less as student visitors.
 - An amendment to the visitor rules to prevent visitors from undertaking a course of study in the UK.
 - An amendment to the child visitor rules to enable children under the age of 18 to undertake, if required, a short course of study of six months duration or less at a private education institution which is included on the DfES Register of Education and Training Providers.
 - A change to the prospective student rules to introduce a mandatory entry clearance requirement for those seeking entry to the UK to finalise their study arrangements.
 - A change to the student rules to introduce a mandatory entry clearance requirement for those seeking entry to the UK for the purpose of study.
 - A change to the in-country student switching provisions to only allow switching into the student category by work permit holders; those here to re-sit an examination; sabbatical officers; Fresh Talent: Working in Scotland scheme participants and those in the UK on the Science & Engineering Graduates Scheme or its successor, the International Graduate Scheme.
 - An amendment to the student rules so that external students who have been accepted on a
 course at degree level or above at a private education institution must also be registered with
 the UK degree awarding body.
 - A change to introduce a definition of an external student. "External students" are those students studying for a degree with a UK degree awarding body without any requirement to attend the UK degree awarding body's premises or a UK Listed Body's premises for lectures, tutorials etc. The majority of such students study independently, via correspondence, but some may also choose to attend a private education institution offering tutorial support for their particular degree course.
 - An amendment to require all institutions to maintain satisfactory records of enrolment and attendance of their students and supply these to the Border and Immigration Agency when requested to do so.
 - A change to introduce a revised definition of a *bona fide* private education institution into the Rules. Previously this was published as a set of criteria in guidance notes.

- A change relating to the rules for Ministers of Religion from overseas. This involves
 increasing the standard of English language required for entry to the United Kingdom or
 seeking to switch into this category.
- 2.3 There is one key difference between the previous Statement of Changes laid on 28 March and this Statement of Changes. That is as follows: applicants who are already in the United Kingdom with leave as a Minister of Religion at the date of the rules change will not be required to produce an International English Language Testing System certificate at level 6 competence in order to obtain further leave in this category.

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

3.1 None.

4. Legislative Background

- 4.1 The Immigration Rules are the rules made under section 3(2) of the Immigration Act 1971. These constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom. Under section 3(2) the Secretary of State is obliged "... from time to time (and as soon as may be) lay before Parliament statements of the rules, or any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act."
- 4.2 This Statement of Changes in Immigration Rules replaces those laid on the 28 March and will be laid on 3 April 2007. The following changes will continue to take effect from 19 April 2007:
 - Requiring external students to be registered with the UK degree awarding body;
 - Requiring all institutions to maintain satisfactory records of enrolment and attendance of their students and supply these to the Border and Immigration Agency when requested to do so;
 - Making the bona fide criteria part of the rules;
 - Increasing the standard of English required for entry to the UK as a Minister of Religion.

The remaining changes will take effect on 1 September 2007:

- The new student visitor category;
- The consequential changes to the visitor and child visitor provisions;
- The new mandatory entry clearance requirements for the student and prospective student provisions; and
- The consequential changes to the in-country switching provisions for students and prospective students.
- 4.3 These changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules which can be found under the 'Laws & Policy' page at: www.ind.homeoffice.gov.uk, where there are also copies of all the Statement of Changes in Immigration Rules issued since May 2003.

5. Extent

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

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

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

Student visitors

• Under the current Rules, non-visa national short term students enter the UK as visitors or students largely on the basis of what intention they declare to an Immigration Officer on arrival (short term students are those who have been accepted on a course of study of six months duration or less). This change will introduce a new category of student visitor within the visitor rules to provide for short term students who wish to study in the UK but who do not wish to take part-time employment or seek an extension to their student visitor leave. In addition to meeting all the requirements of paragraph 41 of the visitor rules, a student visitor must provide evidence that the course of study is provided by an education institution which is included on the Department for Education and Skills' Register of Education and Training Providers. A short term student wishing to take part-time employment or extend their stay in the UK will require prior entry clearance as a student.

Visitors

• The new student visitor category necessitates some small consequential amendments to the provisions for visitors. The requirement preventing a visitor studying at a maintained school has been expanded to prevent study at any institution so that all potential short term students are required to seek entry either in the new student visitor category or under the student route. In addition, for the purposes of considering an in-country application for visitor leave, the visitor rules have been amended so that any period as a student visitor will be counted as a period spent as a visitor.

Child visitors

• There are no specific provisions for children under 18 years of age to seek entry to the UK as a new student visitor. In order to enable such students to obtain leave to enter the UK for a short course of study and ensure that existing child protection measures continue to apply (as provided for under the child visitor category), an additional requirement has been introduced into the child visitor provisions to enable a child to undertake a course of study at a private institution which is included on the DfES Register of Education and Training Providers.

Students

- The introduction of a mandatory entry clearance requirement for students and prospective students seeks to increase the rigour of our decision making and is consistent with the general aim of exporting our borders. This change also ensures that those seeking entry to the UK for the purpose of study or to make final study arrangements do so in the correct category.
- Whilst the 2006 Rules change (HC 1016) removed the ability of non-visa national visitors who have been accepted on a course of degree level or above to switch into the student category, other non-visa nationals with prior leave to enter or remain (except for those in some temporary work-related categories) retained their ability to switch into the student category if they had been accepted on a course of degree level or above. In making the further changes to the in-country switching provisions we have sought to ensure that we only allow

those people who can be said to have a legitimate expectation to progress into the student route to do so. This will now include those who have leave to re-sit an examination, as a work permit holder, as a sabbatical officer, those here under the Fresh Talent: Working in Scotland scheme and those here under the Science and Engineering Graduates Scheme or its successor, the International Graduate Scheme.

- One area where further strengthening of the Rules is required concerns external students studying for a degree at a private education institution. Studying this type of course has been identified as an area of abuse by those seeking to prolong their stay in the UK in order to work rather than to study. External students who have been accepted to study externally on a degree course at a private education institution will now need to be registered with the UK degree awarding body.
- At present the Home Office encourages education institutions to report voluntarily in respect of those students who do not enrol on or fail to attend for their chosen course of study. Under the points based system for managed migration this reporting will become mandatory as part of a sponsor's responsibilities. There is a need to familiarise education institutions with this process and begin to include those institutions who have not previously volunteered this information. The change to the Rules will introduce a limited form of mandatory reporting whereby all education institutions will be required to maintain satisfactory records of enrolment and attendance of students and supply these to the Home Office when requested.
- The Immigration Rules provide for students to attend a *bona fide* private education institution which maintains satisfactory records of enrolment and attendance. Previously the term *bona fide* has been explained by a set of criteria which has been made available by means of guidance notes. In order to make these more robust and to emphasise the importance to the private education sector of complying with these criteria, for the purposes of applying for and remaining on the Department for Education and Skills' Register of Education and Training Providers, we have moved the *bona fide* criteria from guidance notes into the Interpretation Section of the rules.
- Two additions have also been made to the previously published set of criteria:-
 - in addition to maintaining satisfactory records of enrolment and attendance of students a private education institution is now required to supply these records to the Home Office when requested to do so; and
 - a new requirement so that if a private education institution is offering tuition support to
 external degree level students it must ensure that such students are also registered with
 the UK degree awarding body.

Ministers of Religion

- The White Paper "Secure borders, Safe Haven", published in February 2002 explained a
 ministerial concern that those who come to the UK in order to take up a position as a minister
 of religion should be able to relate to the community in which they teach and work. The
 White Paper set out an intention to:
- allow appropriately qualified overseas persons already in the UK in another capacity to switch their status, in-country; and
- ensure those seeking entry as ministers of religion are able to demonstrate an appropriate command of English.

- From 23 August 2004 applicants wishing to come to the UK as ministers of religion have been required to provide an International English Language Testing System (IELTS) certificate at level 4 or above. On announcing the introduction of the language requirement on 22 July 2004 the then Home Secretary David Blunkett also said "Following consultation with faith communities, ministers of religion will need to demonstrate that they have a basic grasp of English (level four standard) before they are allowed to work in the UK. After two years, the pre-entry requirement will be raised to level six a competent writer and speaker of English".
- Those entering the UK on or after 23 August 2004, but prior to 19 April 2007 will not be required to meet the raised English language standard International English Language Testing System (IELTS) at level 6 or above when seeking an extension of leave.

8. Impact

- 8.1 A 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.

9. Contact

9.1 Queries should be addressed to the Home Office's Immigration and Nationality Enquiry Bureau on telephone 0870-606-7766 or by e-mail: indpublicenquiries@ind.homeoffice.gsi.gov.uk.