

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Presented to Parliament pursuant to section 3(2) of
the Immigration Act 1971*

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¹STATEMENT OF CHANGES IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the rules laid down by her as to the practice to be followed in the administration of the Immigration Acts for regulating entry into and the stay of persons in the United Kingdom and contained in the statement laid before Parliament on 23 May 1994 (HC 395) as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cm 2663), 26 October 1995 (HC 797), 4 January 1996 (Cm 3073), 7 March 1996 (HC 274), 2 April 1996 (HC329), 30 August 1996 (Cm 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cm 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cm 3953), 8 October 1998 (Cm 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cm 4851), 27 August 2001 (Cm 5253), 16 April 2002 (HC 735), 27 August 2002 (Cm 5597), 7 November 2002 (HC 1301), 26 November 2002 (HC 104), 8 January 2003 (HC 180), 10 February 2003 (HC 389), 31 March 2003 (HC 538), 30 May 2003 (Cm 5829), 24 August 2003 (Cm 5949), 12 November 2003 (HC 1224), 17 December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC523), 3 August 2004 (Cm 6297), 24 September 2004 (Cm 6339), 18 October 2004 (HC 1112), 20 December 2004 (HC 164), 11 January 2005 (HC 194), 7 February 2005 (HC 302), 22 February 2005 (HC 346), 24 March 2005 (HC 486), 15 June 2005 (HC 104), 12 July 2005 (HC 299), 24 October 2005 (HC 582), 9 November 2005 (HC 645), 21 November 2005 (HC 697), 19 December 2005 (HC 769), 23 January 2006 (HC 819), 1 March 2006 (HC 949), 30 March 2006 (HC 1016), 20 April 2006 (HC 1053), 19 July 2006 (HC 1337), 18 September 2006 (Cm 6918), 7 November 2006 (HC 1702), 11 December 2006 (HC 130), 19 March 2007 (HC 398), 3 April 2007 (Cm 7074), 4 April 2007 (Cm 7075), 7 November 2007 (HC 28), 13 November 2007 (HC 40), 19 November 2007 (HC 82), 6 February 2008 (HC 321), 17 March 2008 (HC 420), 9 June 2008 (HC 607), 10 July 2008 (HC 951), 15 July 2008 (HC 971), 4 November 2008 (HC 1113), 9 February 2009 (HC 227), 9 March 2009 (HC 314), 24 April 2009 (HC 413), 9 September 2009 (Cm 7701), 23 September 2009 (Cm 7711), 10 December 2009 (HC 120), 10 February 2010 (HC 367), 18 March 2010 (HC 439), 28 June 2010 (HC 59), 15 July 2010 (HC 96), 22 July 2010 (HC 382), 19 August 2010 (Cm 7929), 1 October 2010 (Cm 7944), 21 December 2010 (HC 698), 16 March 2011 (HC 863), 31 March 2011 (HC 908), 13 June 2011 (HC 1148), 19 July 2011 (HC 1436), 10 October 2011 (HC 1511), 7 November 2011 (HC 1622), 8 December 2011 (HC 1693), 20 December 2011 (HC 1719), 19 January 2012 (HC 1733), 15 March 2012 (HC 1888), 4 April 2012 (Cm 8337), 13 June 2012 (HC 194), 9 July 2012 (HC 514), 19 July 2012 (Cm 8423), 5 September 2012 (HC 565), 22 November 2012 (HC 760), 12 December 2012 (HC 820) and 20 December 2012 (HC 847).

Implementation

The changes set out in this Statement shall take effect on 31 January 2013. With regard to the change set out in paragraph 9 of this Statement only, if an applicant has made an application for entry clearance or leave to remain before 31 January 2013 and the application

¹ This Statement of Changes can be viewed at <http://www.ind.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

has not been decided before that date, it will be decided in accordance with the rules in force on 30 January 2013.

Review

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

The report must in particular:

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

“Review period” means:

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

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

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

Changes

1. After paragraph 245DB(e), insert:

- “(f) Except where the applicant has had entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator in the 12 months immediately before the date of application and is being assessed under Table 5 of Appendix A, the Entry Clearance Officer must be satisfied that:
 - (i) the applicant genuinely intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months;
 - (ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);
 - (iii) that the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such

time as it is spent by his business or businesses. ‘Available to him’ means that the funds are:

- (1) in his own possession,
 - (2) in the financial accounts of a UK incorporated business of which he is the director, or
 - (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A;
- (iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DC;
- (g) In making the assessment in (f), the Entry Clearance Officer will assess the balance of probabilities. The Entry Clearance Officer may take into account the following factors:
- (i) the evidence the applicant has submitted;
 - (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
 - (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;
 - (iv) the applicant's previous educational and business experience (or lack thereof);
 - (v) the applicant's immigration history and previous activity in the UK; and
 - (vi) any other relevant information.
- (h) The Entry Clearance Officer reserves the right to request additional information and evidence to support the assessment in (f), and to refuse the application if the information or evidence is not provided. Any requested documents must be received by the UK Border Agency at the address specified in the request within 28 working days of the date of the request.
- (i) If the Entry Clearance Officer is not satisfied with the genuineness of the application in relation to a points-scoring requirement in Appendix A, those points will not be awarded.
- (j) The Entry Clearance Officer will not carry out the assessment in (f) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.”

2. After paragraph 245DD(g), insert:

- “(h) Except where the applicant has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator and is being assessed under Table 5 of Appendix A, the UK Border Agency must be satisfied that:
- (i) the applicant genuinely:
 - (1) intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months, or
 - (2) has established, taken over or become a director of one or more businesses in the UK and continues to operate that business or businesses; and
 - (ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);
 - (iii) that the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent by his business or businesses. ‘Available to him’ means that the funds are:
 - (1) in his own possession,
 - (2) in the financial accounts of a UK incorporated business of which he is the director, or
 - (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A;
 - (iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DE.
- (i) In making the assessment in (h), the UK Border Agency will assess the balance of probabilities. The UK Border Agency may take into account the following factors:
- (i) the evidence the applicant has submitted;
 - (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
 - (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;
 - (iv) the applicant's previous educational and business experience (or lack thereof);
 - (v) the applicant's immigration history and previous activity in the UK;

- (vi) where the applicant has already registered in the UK as self-employed or as the director of a business, and the nature of the business requires mandatory accreditation, registration and/or insurance, whether that accreditation, registration and/or insurance has been obtained; and
 - (vii) any other relevant information.
- (j) The UK Border Agency reserves the right to request additional information and evidence to support the assessment in (h), and to refuse the application if the information or evidence is not provided. Any requested documents must be received by the UK Border Agency at the address specified in the request within 28 working days of the date of the request.
 - (k) If the UK Border Agency is not satisfied with the genuineness of the application in relation to a points-scoring requirement in Appendix A, those points will not be awarded.
 - (l) The UK Border Agency will not carry out the assessment in (h) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.”

3. Delete paragraph 245DE(c) and substitute:

- “(c) Without prejudice to the grounds for curtailment in paragraph 323 of these Rules, leave to enter or remain granted to a Tier 1 (Entrepreneur) Migrant may be curtailed if:
- (i) within 6 months of the date specified in paragraph (d), the applicant has not done one or more of the following things:
 - (1) registered with HM Revenue and Customs as self-employed,
 - (2) registered a new business in which he is a director, or
 - (3) registered as a director of an existing business, or
 - (ii) the funds referred to in the relevant sections of Appendix A cease to be available to him, except where they have been spent in the establishment or running of his business or businesses. ‘Spent’ excludes spending on the applicant’s own remuneration. ‘Available to him’ means that the funds are:
 - (1) in his own possession,
 - (2) in the financial accounts of a UK incorporated business of which he is the director, or
 - (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A.”

4. In paragraph 322, after sub-paragraph (1C), insert:

“(1D) failure, without providing a reasonable explanation, to comply with a request made by the UK Border Agency to attend for interview.”
5. In Appendix A, at the end of paragraph 41(b), delete “and”
6. In Appendix A, at the end of paragraph 41(c), delete “.” and substitute “; and”
7. In Appendix A, after paragraph 41(c), insert:

“(d) The money will remain available to the applicant until such time as it is spent in the establishment or running of the applicant’s business or businesses. ‘Spent’ excludes spending on the applicant’s own remuneration. The UK Border Agency reserves the right to request further evidence or otherwise verify that the money will remain available, and to refuse the application if this evidence is not provided or it is unable to satisfactorily verify. ‘Available to him’ means that the funds are:

 - (1) in his own possession,
 - (2) in the financial accounts of a UK incorporated business of which he is the director, or
 - (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A.”
8. In Appendix A, at the end of paragraph 41-SD(b)(i)(8), delete “.” and substitute “, and”
9. In Appendix A, after paragraph 41-SD(b)(i)(8), insert:

“(9) confirmation that the money will remain available to the applicant until such time as it is transferred to the applicant or the applicant’s business.”



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 30 JANUARY 2013 (HC 943)**

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 purpose of these changes is to make changes to the Tier 1 (Entrepreneur) category of the Points-Based System to better protect it against abuse, while not disadvantaging genuine applicants.

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

3.1. The Government regrets that for these changes it has not been possible to comply with the convention that changes should be laid before Parliament no less than 21 days before they will come into force, and recognises that it has given a commitment to make changes in a more orderly manner wherever possible. However, the Government considers that there are good reasons why these changes should come into force with immediate effect, namely:

- The changes are being made in response to evidence of organised criminality and abuse by individual applicants in the Tier 1 (Entrepreneur) category. It is clear that, following reforms to other immigration routes, loopholes in the Tier 1 (Entrepreneur) rules are being exploited. Funds are being re-cycled and artificial businesses are being created. The current rules must be strengthened quickly to allow for a meaningful assessment of an applicant's claimed credentials and to prevent abusive applications being granted.
- The changes are designed to improve the effectiveness of the current Rules and better tackle abuse rather than make strategic policy changes. The Government is not seeking to introduce new requirements or stricter Rules for genuine entrepreneurs to come to, or stay in, the UK.
- The UK Border Agency is experiencing an unprecedented surge in Tier 1 (Entrepreneur) applications. The evidence suggests that many of these applications are not genuine, and the UK Border Agency's experience is that the surge would likely be made worse by giving potential applicants advance notice of the changes. The number of in-country applications has risen from 739 in 2011 to 6,878 in 2012, accelerating in the second half of the year and culminating in a spike of nearly 3,000 applications in December alone. The Government believes the spike in December was largely related to the advance notice of the changes to the Tier 1 (Entrepreneur) category that were announced when HC 760 was laid on 22 November 2012, and which came into force on 13 December 2012 (These changes prevented students from switching into the route unless they have £50,000 funding from a specified source, such as a registered venture capitalist firm or UK Government department). Although the volume of applications has since fallen from that spike, it continues to be high and, combined with the evidence of abuse, gives rise to the need to act quickly.

Announcing these latest changes with 21 days notice would be likely to generate a similar spike in abusive applications to that seen in December, from those seeking to avoid the new tests of genuineness.

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 the stay of persons in the United Kingdom.

4.2. This Statement of Changes in Immigration Rules will be 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 will take effect on 31 January 2013. With regard to the change set out in paragraph 9 of this Statement, this is a minor change and the only change which alters the evidence which must be initially submitted by applicants. This change will not apply to applications which have been made before 31 January 2013.

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 Immigration Rules is subject to a negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1. The policy changes contained in this Statement of Changes in Immigration Rules all relate to the Tier 1 (Entrepreneur) category, which caters for those with financial backing (of either £50,000 or £200,000, depending on the circumstances) who are coming to the UK to set up, take over, or otherwise be actively involved in the running of a business in the UK.

7.2. The changes being made to this category are designed to improve the effectiveness of the current Rules and better tackle abuse rather than make strategic policy changes.

7.3. A "genuine entrepreneur" test is being introduced to give the UK Border Agency the ability to test the credibility of suspicious applicants and to use their discretion, while leaving the basic requirements unchanged. The genuineness approach has worked well on Tier 4 (the student route) since its introduction on 30 July 2012 as a result of HC 514. The test avoids having to keep tightening the rules on specified documents and evidence in ways which are burdensome for genuine applicants but not effective against bogus ones.

7.4. Further changes are being made to require the necessary minimum funds to be held, or invested in the business, on an ongoing basis rather than solely on the date the application was made, and for leave to be curtailed if the funds cease to be available. These changes will better ensure the required funds are genuinely available to applicants to be invested in their businesses. There are no changes to the level or accepted sources of the funds themselves.

8. Consultation

8.1. As these changes are required urgently to counter abuse, they have not been the subject of a formal public consultation.

9. Guidance

9.1. Guidance will be updated and placed on the UK Border Agency website.

10. Impact

10.1. The changes covered in this statement are concerned with countering abuse and are not expected to have a significant impact on genuine applicants, such that an impact assessment is unnecessary.

11. Regulating small business

11.1. The Tier 1 (Entrepreneur) category is used by migrants establishing or taking over small businesses. This Statement of Changes is concerned with countering abuse and is not expected to have a significant impact on genuine small businesses.

12. Monitoring and review

12.1. The review clauses at the beginning of this Statement of Changes require the Secretary of State to review the operation and effect of all of the relevant Immigration Rules, including any Rules amended or added by the changes in this Statement and lay a report before Parliament within five years of 6 April 2012 and within every five years after that. Following each review the Secretary of State will decide whether the relevant Immigration Rules should remain as they are, be revoked or be amended. A further Statement of Changes would be needed to revoke or amend the relevant Rules.

12.2. The Government intends to review the effectiveness of these changes as they are implemented and over the next six months.

13. Contact

13.1. Queries should be directed to the UK Border Agency's immigration enquiry bureau on 0870 606 7766, or as per the Contact page on the UK Border Agency website at www.ukba.homeoffice.gov.uk/contact/.

13.2. Specific written queries relating to this Statement of Changes should be directed to StatementofChanges@homeoffice.gsi.gov.uk. Please note that this mailbox is only for Parliamentary use and specific technical queries regarding the drafting of this Statement of Changes. It is not a contact point for general enquiries. Queries to this e-mail address from outside Parliament about other immigration issues, including how these changes affect applications, will not receive a response.

13.3. A copy of this Statement of Changes can be found on the UK Border Agency website at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/.