

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 16 MARCH 2017 (HC 1078)**

1. Introduction

1.1. 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:

- Implement the second of two phases of changes to Tier 2, announced by the Government on 24 March 2016 following a review by the independent Migration Advisory Committee.
- Extend the overseas criminal record certificate requirement to Tier 2 migrants coming to work in education, health and social care sectors and to their adult dependants.
- Clarify that applications for visit visas must be made to a post designated to accept such applications.
- Include the list of Permit Free Festivals for 2017/18.
- Update the codes of practice relating to skilled workers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

Other matters of interest to the House of Commons

3.2. As this Statement of Changes is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1. The Immigration Rules, as laid before Parliament by the Secretary of State, constitute a statement of practice to be followed in the administration of the Immigration Act 1971 for regulating the entry into and 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 visas and immigration pages of the GOV.UK website at www.gov.uk/government/collections/immigration-rules where there are also copies of all the Statements of Changes in Immigration Rules issued since May 1994.

4.3. The changes to Appendix FM set out in paragraphs FM1 to FM8, and to Appendix FM-SE set out in paragraphs FM-SE1 to FM-SE10 shall take effect from 6 April 2017 and apply to all decisions made on or after that date.

4.4. The changes to the Introduction set out in paragraphs Intro.1 to Intro.4, to Part 6A set out in paragraphs 6A.31 to 6A.45, 6A.47 to 6A.62, to Appendix A set out in paragraphs A40 to A48, A52 to A91, A99 to A106, to Appendix J set out in paragraph J1 and to Appendix K set out in paragraphs K1 to K7 of this statement shall take effect from 6 April 2017. However, if an applicant has made an application for entry clearance or leave to remain using a Certificate of Sponsorship that was assigned to the applicant by their Sponsor before 6 April 2017, the application will be decided in accordance with the rules in force on 5 April 2017.

4.5. The changes to Appendix A set out in paragraphs A.92 to A.98 shall take effect for applications for Certificates of Sponsorship under the Tier 2 (General) limit decided on or after 11 April 2017.

4.6. The other changes set out in this statement shall take effect from 6 April 2017. However, in relation to those changes, if an application has been made for entry clearance or leave to enter or remain or administrative review before 6 April 2017, the application will be decided in accordance with the Immigration Rules in force on 5 April 2017.

5. Extent and Territorial Application

5.1. The extent of this Statement of Changes is all of the United Kingdom.

Other matters of interest to the House of Commons

5.2. The territorial application of this Statement of Changes is all of the United Kingdom.

6. European Convention on Human Rights

6.1. As this Statement of Changes in Immigration Rules is not subject to the affirmative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

What is being done and why

Changes relating to applications and validity

7.1. Paragraph 34(9)(a)(ii) of Part 1 has been changed to clarify that an applicant must make an appointment as part of the application process within 45 business days, rather than 45 calendar days. This gives an applicant a longer period of time to make an appointment.

7.2. A new paragraph 34BB is being added to provide that an applicant can only have one outstanding application for leave to remain at a time, and that any subsequent application for leave, submitted when an applicant already has an outstanding previous application which has not yet been decided, will be treated as a variation of the previous application. If an applicant submits more than one application on the same date, all the applications will be invalid unless the Secretary of State writes to the applicant asking them to withdraw one or more of the applications and the applicant responds in the specified time confirming which application(s) they will withdraw.

Changes relating to overseas criminal record certificates

7.3. The requirement to provide an overseas criminal record certificate as part of an entry clearance application was introduced for Tier 1 (Entrepreneur) and Tier 1 (Investor) migrants on 1 September 2015. We are making changes to Part 6A and Part 8 of the Immigration Rules to insert this requirement into the relevant eligibility provisions, as well as to extend the requirement to provide a criminal record certificate to Tier 2 (General) migrants who are intending to work in education, health and social care sectors and to their adult dependants. The extension of this requirement will strengthen safeguards against those with a criminal history seeking to come to the UK. As the requirement will now be set out in Part 6A and Part 8, we are deleting paragraph 320(2A).

Changes relating to general grounds for refusal and suitability requirements

7.4. A minor change (and in Appendix Armed Forces and Appendix FM) to clarify changes introduced in November 2016 which meant applications for leave to remain made under the Rules by those subject to the restricted leave policy must be refused.

Changes relating to Tier 1 of the Points-Based System

7.5. Tier 1 of the Points-Based System caters for high value migrants, and currently consists of four active categories: Tier 1 (Exceptional Talent), Tier 1 (Entrepreneur), Tier 1 (Investor) and Tier 1 (Graduate Entrepreneur). It also includes the Tier 1 (General) category, which was closed to new applicants in April 2011 but remains open for settlement applications.

Tier 1 (Entrepreneur)

7.6. The Tier 1 (Entrepreneur) category caters for applicants coming to the UK to set up, take over, or be involved in the running of a business in the UK. The following technical changes are being made to this category to clarify various evidential requirements and to correct minor drafting errors:

- An amendment to provide a clearer definition of “invested” funds;
- Removing references to HM Revenue & Customs documentation which has been discontinued in light of self-assessment of self-employed earnings;
- Clarifying the evidential requirements for applicants who have invested in a Limited Liability Partnership;

- Revising the specified evidence required to demonstrate that an entrepreneur's employee has settled status in the UK (to satisfy the requirement for the applicant to create jobs for settled workers);
- Clarifying the specified evidence on job creation, so that an applicant can provide confirmation from an accountant that their business did not employ any workers prior to their involvement.

Tier 1 (Graduate Entrepreneur)

7.7. The Tier 1 (Graduate Entrepreneur) category caters for applicants identified by a Higher Education Institutions or the Department for International Trade as having as having developed genuine and credible business ideas and entrepreneurial skills to establish one or more businesses in the UK.

7.8. The Immigration Rules are being amended, so in the event of there being remaining places in the Tier 1 (Graduate Entrepreneur) limit after the initial round of allocations, the Secretary of State may allocate additional places to endorsing bodies by ad hoc request throughout the remainder of the year, rather than at a fixed point in the autumn (30 September).

Tier 1 (Exceptional Talent)

7.9. The Tier 1 (Exceptional Talent) category is for talented individuals in the fields of science, humanities, engineering, the arts and digital technology to work in the UK without the need to be sponsored for employment in a specific post. Applicants must be endorsed by a Designated Competent Body (DCB).

7.10. Minor changes relating to endorsements by two DCBs, Arts Council England and Tech City UK, are being made at those bodies' requests.

Tier 1 (General)

7.11. The Tier 1 (General) category was closed to new applicants in April 2011 and for extension applications in April 2015, but remains open for indefinite leave to remain applications. A minor change is being made to the time allowed for applicants to respond to requests for further information (from 28 working days to 28 calendar days), to correct a drafting error and for consistency with other categories.

Changes relating to Tier 2 of the Points-Based System

7.12. Tier 2 of the Points-Based System caters for migrant workers with an offer of a skilled job from a licensed employer. There are four overall categories: General, Intra-Company Transfer (ICT), Minister of Religion, and Sports person.

7.13. The Government announced changes to Tier 2 (General) and Tier 2 (ICT) on 24 March 2016 following a review published by the independent Migration Advisory Committee (MAC) on 19 January 2016. The Government announced that the changes would be introduced in two stages, in autumn 2016 and April 2017. This Statement includes the changes announced for April 2017, and additional minor changes.

Tier 2 (General)

7.14. The Tier 2 (General) category is for migrant workers with an offer of a skilled job from a licensed employer which cannot be filled by a resident worker.

7.15. The following changes are being made following the review of Tier 2 by the MAC:

The following changes are being made following the review of Tier 2 by the MAC:

- The salary threshold for experienced workers is being increased to £30,000 for the majority of new applicants. The salary threshold for new entrants remains at £20,800.
- The changes laid in November 2016 (HC 667) exempted nurses, medical radiographers, paramedics and secondary school teachers in mathematics, physics, chemistry, computer science, and Mandarin from the new salary threshold until July 2019. This exemption continues, and a further change is being made to award these occupations extra points when allocating places in the Tier 2 (General) limit, to bring them into parity with occupations paying higher salaries. The additional points only apply where such jobs are not already prioritised due to being included on the Shortage Occupation List.
- Changes are being made to support posts associated with the relocation of a high value business to the UK or a significant new inward investment project, where the sponsor is a newly-registered (within the last 3 years) branch or subsidiary of an overseas business and the investment involves new capital expenditure of £27 million or the creation of at least 21 new UK jobs. Sponsors in such cases will be exempt from carrying out a Resident Labour Market Test and from the requirement to assign a restricted Certificate of Sponsorship under the Tier 2 (General) limit.

7.16. The following additional changes to Tier 2 (General) are being made:

- Changes are being made to the Shortage Occupation List following a separate review by the MAC on teaching shortages, published on 26 January 2017. Secondary school teachers in mathematics and physics are being retained on the list. Secondary school teachers in chemistry are being removed from the list. Secondary school teachers in combined science (where there is an element of physics teaching), computer science and Mandarin are being added to the list.
- Annual updates are being made to the salary thresholds for high earners (whose sponsors are exempt from carrying out a Resident Labour Market Test and from the requirement to assign a restricted Certificate of Sponsorship under the Tier 2 (General) limit) and for indefinite leave to remain applications, based on the latest available Average Weekly Earnings data.
- Minor technical changes are being made to the Resident Labour Market Test, including widening the websites which may be used for graduate recruitment from a specified list of four to any freely-available, prominent, graduate recruitment website.

- Tier 4 Students must have satisfied certain study requirements during their continuous stay in the UK to switch into Tier 2 (General) in the UK. A change is being made to also allow Tier 4 Students who have spent time in the Isle of Man, the Bailiwick of Guernsey or the Bailiwick of Jersey in an eligible category since meeting those study requirements to switch into Tier 2 (General) in the UK.

Tier 2 (Intra-Company Transfer (ICT))

7.17. The Tier 2 (ICT) category supports inward investment and trade by allowing multinational employers to transfer key company personnel from overseas to their UK branch.

7.18. As with Tier 2 (General), a number of changes are being made in response to the review of Tier 2 by the MAC, and have been previously announced. The changes include:

- The Short Term Staff sub-category is being closed;
- The salary threshold for senior transferees who are able to extend their total stay in the category to up to nine years is being reduced, from £155,300 to £120,000;
- The requirement for transferees to have at least one year's experience working for the sponsor's linked entity overseas is being removed for applicants paid £73,900 or above.

Tier 2 (General) and Tier 2 (ICT)

7.19. The following changes are being made to both the Tier 2 (General) and the Tier 2 (ICT) categories in response to the review by the MAC:

- Changes are being made relating to the introduction of the Immigration Skills Charge, to enable a Certificate of Sponsorship to be considered invalid (and therefore for an application to be refused) if any charge which applies is not paid in full.
- Changes are being made following the MAC's recommendation that the use of allowances in Tier 2 be reviewed. Changes are being made to provide greater clarity and consistency as to which types of allowance will be considered against the salary requirements. In addition, the closure of the ICT Short Term Staff sub-category means that accommodation allowances can form a maximum of 30% (rather than 40%) of the total salary package for all ICT workers (except Graduate Trainees).

7.20. Annual updates are being made to the appropriate salary rates in the codes of practice in Appendix J, using the latest available salary data for each occupation. Additional job information from the SOC 2010 system is being incorporated to remove the need for sponsors and applicants to refer to further guidance outside the Immigration Rules, along with other minor and technical changes.

7.21. From 6 April 2011, the skills threshold for jobs sponsored under Tier 2 (General) and Tier 2 (ICT) increased from National Qualifications Framework (NQF) level 3 to NQF level 4. The transitional arrangements for those previously in these routes to extend their stay are no longer needed and are being closed. Provisions for these migrants to apply for indefinite leave to remain are being retained. The Government signalled this closure in March 2016, as well as the upcoming closure of the similar transitional arrangements for those sponsored in jobs at NQF level 4 in July 2018 (the skills threshold increased to NQF level 6 from 14 June 2012).

Changes relating to Tier 4 of the Points-Based System

7.22. Tier 4 of the Points Based System is the route used by non-EEA nationals wishing to study in the UK. Tier 4 is comprised of two categories: Tier 4 (General) and Tier 4 (Child). The following changes are being made in Tier 4:

- Tier 4 students who have work rights are limited in the number of hours they may work per week. An amendment is being made to set out a definition of a week, in order to ensure clarity for students, employers and sponsors.
- An amendment is being made to clarify that only where an applicant is being sponsored wholly by a Government or international scholarship agency by means of an award which covers both fees and maintenance must they provide the unconditional written consent of the sponsoring Government or agency to the application, and the specified documents set out in paragraph 245A.
- Under Tier 4 (General), if the course is below degree level, the grant of entry clearance or leave must not lead to the applicant having been granted more than 2 years in the UK as a Tier 4 migrant since the age of 18 to study courses that did not consist of degree level study. An amendment is being made to extend the time limit to 3 years for courses which are below degree level, but which are subject to a regulatory requirement by the Maritime and Coastguard agency that the applicant must spend at least 12 months at sea.
- Tier 4 (Child) applicants and Tier 4 (General) applicants who are under the age of 18 must provide confirmation from a parent or guardian that they consent to the arrangements for the child's travel to, and reception and care in the UK. An amendment is being made to require evidence of the relationship between the applicant and the person providing consent.
- An amendment is being made to correct a typographical error in paragraph 245ZX(c), making clear that the applicant must have a minimum of 30 points under paragraphs 113 to 120 and 120A of Appendix A.
- An amendment is being made to clarify the rules in relation to how soon an applicant seeking to study in the UK after a period of overstaying must commence their new course, to ensure consistency with wider rule changes that came into effect in November 2016.
- Under Tier 4 (General), all applicants aged 16 and over are required to satisfy the Secretary of State that they are a genuine student. To ensure consistency between the routes, an amendment is being made to Tier 4 (Child) to apply the Genuine Student Rule to those applicants who are aged 16 and over.
- Amendments are being made to clarify the circumstances in which an original document from UK NARIC must be provided.
- Under the Tier 4 (General) route, sponsors may only sponsor migrants to undertake courses that meet certain academic standards. An amendment is

being made to allow sponsors who have Probationary Sponsor status to sponsor applicants to undertake courses at a lower level where the applicants are under the age of 18. This equates to courses at Level 3 on the Regulated Qualifications Framework (RQF) in England, Wales or Northern Ireland and Level 6 in the Scottish Credit and Qualifications Framework (SCQF) by the Scottish Qualifications Authority (SQA).

- An amendment is being made to simplify the language when referring to an applicant's valid passport.
- An amendment is being made to clarify that where an applicant is applying for leave to undertake an intercalated bachelor's or master's degree course or PhD where they are studying medicine, veterinary medicine and science, or dentistry as their principal course of study, or to complete their principal course, having completed a period of intercalation, they are exempt from the requirement to show academic progression.
- Under Tier 4 (General), loan funds for maintenance purposes must be made available to the applicant before they travel to the UK. An amendment is being made to allow loan funds to be paid directly to the educational institution in the UK with the living costs portion of the loan released to the applicant before or on arrival in the UK. This change is being made because loans paid directly to educational institutions are deemed to provide sufficient security and evidence that the student has the requisite means to support themselves while studying in the UK.
- Where an applicant within the Tier 4 (Child) route has a younger sibling who is being accompanied by their parent(s) on the Parent of a Tier 4 (Child) route, an amendment is being made to provide for the applicant to show maintenance on the basis that they will reside with their parent(s).

Changes relating to Tier 5 of the Points-Based System

7.23. Sponsors of creative workers in the Creative and Sporting sub-category must comply with a recruitment code of practice or otherwise take into account the needs of the resident labour market. A change is being made to waive this requirement for creative sector jobs which appear on the Shortage Occupation List.

7.24. A further change is being made to the codes of practice for creative workers so that sponsors do not need to carry out a recruitment search where a performer is required for continuity or is engaged by a unit company in relation to productions outside the UK, rather than outside the EEA, as at present. This ensures that non-EEA nationals who have performed in productions elsewhere in the EEA are not disadvantaged.

7.25. Amendments are being made to clarify the maximum grant periods for Tier 5 (Temporary Workers).

7.26. The Rules are amended to provide for the operation of arrangements to manage the allocation of places under the Tier 5 (Youth Mobility Scheme) allocation for Taiwan, where demand is expected to significantly exceed supply.

Changes relating to family members of relevant Points-Based System migrants

7.27. The Rules are amended to delete the definition of ‘continuous’ inserted by HC667 of 3 November 2016, for the purposes of the residence requirements applied to family members of relevant Points-Based System migrants applying for settlement.

Changes relating to all Points-Based System routes

7.28. When the Points-Based System was introduced in 2008-2009, it replaced several previous immigration categories which were then closed. Changes are being made to remove the transitional arrangements for applicants who were previously granted leave in these closed categories to switch into the Points-Based System, where these arrangements are no longer needed. References to closed categories are being retained where required, such as for applicants who may still be relying on a period of leave as a highly skilled migrant or as a work permit holder to contribute towards their qualifying period to support an application for indefinite leave to remain.

7.29. Changes are being made to update references to the National Qualifications Framework (NQF) to refer to the new Regulated Qualifications Framework (RQF).

7.30. Changes are being made to reflect advice from UK NARIC that it is now able to assess qualifications as having been taught in English to levels below C1, and to bring evidential requirements in Appendix B in line with previous changes.

7.31. IDFC Bank Ltd is being added to the list of financial institutions in India whose financial statements are accepted. Further changes to this list are being made to reflect the change of name of The Dhanalakshmi Bank Limited to Dhanlaxmi Bank.

Changes relating to Representatives of Overseas Businesses

7.32. Changes are being made to specify that, where there is a requirement for the overseas business to have no branch, subsidiary or other representative in the UK, this means no *active* branch, subsidiary or other representative.

7.33. The above change to Points-Based System routes in relation to UK NARIC is also being applied to this category.

Changes relating to overstayers

7.34. Paragraphs 320(7B)(i) and Appendix V paragraph 3.9(a) are being amended to reduce the period of overstaying which is permitted before a re-entry ban is imposed on individuals who have remained in the UK after their leave to enter or remain has expired. Unless specific exceptions apply, anyone who has overstayed for more than 90 days is subject to a 12 month re-entry ban. This is being reduced to 30 days. Consequential changes are also being made to Appendix V, paragraph 3.8.

7.35. The ban was introduced in 2012 to encourage those who had only recently overstayed and who could no longer apply for further leave in-country to depart and

re-apply from overseas. The period of 90 days was originally intended to reduce any incentive to remain in the UK without leave. The reduction in the 90-day period to 30 days is being brought in to increase compliance with the Immigration Rules and reduce overstaying, while still enabling those who have overstayed for short periods and who are essentially compliant to return to the UK relatively quickly.

Changes relating to Family and Private Life

7.36. The following changes and clarifications are being made to the Immigration Rules relating to family and private life:

- To clarify that a person who wishes to enter the UK as a fiancé(e) or proposed civil partner to enable them to marry or form a civil partnership here must be free to marry or form a civil partnership at the date of application.
- To add Police Injury Pension, alongside the Armed Forces equivalents, to the list of specified benefits received by the sponsor which mean that an applicant is exempt from the requirement to meet the minimum income threshold.
- To ensure that limited leave to remain granted to a child in line with the leave granted to their parent is subject to the same condition as to recourse to public funds.
- To clarify that a person who is not a director, but is an employee, of a specified limited company must meet the specified evidential requirements in respect of income from such a company.
- To clarify that payment for travel time (e.g. for a care worker travelling between appointments) can be accepted as employment income.
- To confirm that, for the purposes of the family Immigration Rules, a marriage in the UK must be recognised under marriage law in the relevant part of the UK.
- To make other minor changes and clarifications.

Changes relating to the visitor rules

7.37. The visitor rules are being amended to make clear that applications for visit visas can be made at any post in the world which is designated by the Home Secretary to accept such applications.

7.38. Appendix 5 to Appendix V of the Immigration Rules comprises a list of events that are Permit Free Festivals. Permit Free Festivals are events that are assessed as contributing to the cultural heritage of the UK and at which performers can, exceptionally, be paid for their participation as visitors. Visitors cannot normally receive payment from a UK source for any permitted activities they undertake here. The list has been updated for 2017/18.

8. Consultation

8.1. The changes to Tier 2 are being made in response to recommendations by the independent Migration Advisory Committee (MAC). The MAC consulted extensively before arriving at its recommendations. Its report is available on the GOV.UK website at <https://www.gov.uk/government/publications/migration-advisory-committee-macreview-tier-2-migration>.

8.2. Otherwise the changes in this Statement have not been the subject of a formal public consultation, as this would be disproportionate given the nature of the changes.

9. Guidance

9.1. Guidance relating to these rules changes will be updated and placed on the GOV.UK website.

10. Impact

10.1. The changes to Tier 2 will have an impact on businesses which are Tier 2 sponsors. The most significant changes are based on the MAC's advice (see above). An impact assessment of these changes is being published on the GOV.UK website. The changes are, in part, designed to influence employer behaviour by incentivising businesses to reduce their reliance on migrant workers.

10.2. Other changes will have limited or no impact on business, charities, the public sector or voluntary bodies, such that an impact assessment is unnecessary.

11. Regulating small business

11.1. As above, the changes to Tier 2 will have an impact on small businesses which are Tier 2 sponsors.

11.2. Other changes will have limited or no impact on 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 2017 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.

13. Contact

13.1. Queries should be directed to the Home Office as per the 'Contact UKVI' section on the visas and immigration pages of GOV.UK website at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>.

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 visa and immigration pages of the GOV.UK website at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>.