

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 10 SEPTEMBER 2020 (HC 707)**

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 This instrument amends the Immigration Rules that are used to regulate people's entry to and stay in the United Kingdom. The detail of the changes being made is included in section 7 of this Explanatory Memorandum, but in summary, the changes will:

- Introduce the Student and Child Student rules for the Points Based Immigration System and make consequential amendments to other sections of the rules;
- Introduce sections of the rules for English Language provision, Maintenance and Academic Technology Approval Scheme (ATAS) and make consequential amendments to other sections of the rules;
- Remove or amend all references to Tier 4 as the route will close on 5 October 2020 at 0900 when the Student route is introduced. The definitions of 'Student' and 'Child Student' will include reference to 'Tier 4 (General)' and 'Tier 4 (Child)' students respectively, to ensure that current Tier 4 visa holders can continue to extend their visas and bring dependants under the new rules, if they meet the requirements of the route.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As this statement of changes in Immigration Rules is subject to the procedure set out under section 3(2) of the Immigration Act 1971, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this Statement of Changes in Immigration Rules is all of the United Kingdom.
- 4.2 The territorial application of this Statement of Changes in Immigration Rules is all of the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 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.
- 6.2 This Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules, which can be found on the GOV.UK website at www.gov.uk/government/collections/immigration-rules, where all the Statements of Changes in Immigration Rules issued since May 1994 are published.
- 6.3 These changes shall take effect on 5 October 2020 at 0900. In relation to those changes, if an application for entry clearance, leave to enter or leave to remain has been made before 5 October 2020 at 0900, such applications will be decided in accordance with the Immigration Rules in force on 5 October 2020 at 0859.
- 6.4 Where consequential changes relating to the need to obtain an ATAS certificate have been made to the conditions of leave for routes, these changes take effect for all applications made or granted on or after 5 October at 0900.

7. Policy background

What is being done and why?

Introduction of the Student and Child Student rules

- 7.1 The changes are being introduced to give effect to the Government's plan to create a global visa system which applies equally to all individuals coming to the UK to work or study, including EEA nationals. The Government set out its intent in a policy statement, 'The UK's points-based immigration system¹', on 19 February 2020 and provided further details in its policy statement, 'UK points-based immigration system: further details statement²', on 13 July 2020.
- 7.2 The Student and Child Student routes, collectively referred to as the Student routes, are for both European Economic Area (EEA) and non-EEA nationals

¹ <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement>

² <https://www.gov.uk/government/publications/uk-points-based-immigration-system-further-details-statement>

who wish to come to the UK for the purpose of study. The routes are the first to be simplified in line with the recommendations of the Law Commission in its report, ‘Simplifying the Immigration Rules³’, to which the Government responded on 25 March 2020. The Immigration Rules will eventually be consolidated in the new style.

7.3 The Student and Child Student routes will replace the Tier 4 (General) and Tier 4 (Child) routes in the Immigration Rules.

7.4 The main differences between the Tier 4 routes and the Student routes are outlined below:

- EEA nationals will be incorporated into a global application system. EEA nationals will be required to meet the same requirements to study within the UK as non-EEA nationals and will need to apply under the Student rules;
- There are increased switching permissions within the study route and increased switching between routes within the Points Based Immigration System. Students will be able to apply for further permission from within the UK, provided they meet the Academic Progression requirement and the new course of study commences within 28 days of the expiry of the current leave. Under the Tier 4 route, to be able to apply for further leave in country, a Tier 4 (General) student must have last been sponsored by a higher education provider with a track record of compliance, overseas higher education institution, embedded college offering pathway courses or an independent school. A Tier 4 (Child) student must have last held leave as a Tier 4 Migrant. Under the Student and Child Student routes, applicants will be able to apply for further permission to stay in the UK to study under Student Routes, unless they last held leave as a visitor; or a short-term student; or granted outside the immigration rules. Additionally, a migrant cannot apply if they last held leave as a Parent of a Child Student; a Seasonal Worker; or as a Domestic Worker in a Private Household. These applications will be rejected rather than refused if they do not meet this requirement;
- The eight-year time limit on studying courses at postgraduate level has been removed. There is no longer a limit on the time that an individual can spend studying postgraduate courses;
- Applicants who apply for permission to stay in the UK will not be required to provide evidence of maintenance funds when they have spent longer than one year in the UK on their current visa;
- Students at higher education providers with a track record of compliance will not routinely be required to provide evidence of academic qualifications used to obtain the offer of sponsorship;
- Students who will be applying for leave as a Student Union Sabbatical Officer or to study on a recognised Foundation Programme will not be required to prove evidence of maintenance funds, as it is accepted that these individuals will be earning an income during the validity of their visas.

³ <https://www.lawcom.gov.uk/project/simplifying-the-immigration-rules/>

7.5 As part of the new simplified style, we are introducing new Rules on English Language and Finance (which will only apply to the new Student and Child Student routes at this stage) with the intention of creating Rules on themes that apply across several routes. These thematic Rules include changes to:

- ensure applicants only need to prove the required level of English language to the Home Office once;
- update the majority speaking English language country list to include Malta and Ireland (where, for example a non-Irish national has a degree from an Irish university they can rely on this to show their English language ability);
- allow applicants who have gained GCSE/A'Level or Scottish Highers in English while at school in the UK to rely on this to prove their English language ability, replacing the ability of Child Students to rely on 6 months in the UK to prove English;
- no longer require applicants who have met the maintenance requirement on their current route to meet it again if they have been supporting themselves in the UK for more than a year;
- allow applicants to rely on electronic bank statements;
- allow applicants to show they meet maintenance requirements by relying on a wider range of accounts.

There are also some minor and technical changes to the way time periods are calculated and our approach to accounts with financial institutions where the Home Office cannot verify financial evidence.

7.6 The changes made to the Immigration Rules to replace the Tier 4 routes with the Student routes are outlined below:

- Introduction – Transitional arrangements for EU nationals have been added. Definitions which are no longer needed have been deleted and others have been updated to refer to the new Student routes;
- Part 1 – The validation rules at paragraph 34 have been amended to reflect the new route-specific validation rules for Students in Appendix ST and Child Students in Appendix CS. Paragraph 39A has been deleted as the requirement has been moved into Appendix ST: Student and Appendix CS: Child Student;
- Part 3 - Paragraph A57B has been amended to refer to the new Student routes;
- Part 5 - Paragraphs 187 to 196B have been amended to refer to the new Student routes and conditions of leave have been amended to refer to the new Appendix ATAS;
- Part 6A - Paragraphs 245EB to 245ZZE has been deleted or amended to refer to the new Student routes. All Tier 4 rules have been deleted. Conditions of leave for other routes have been amended to refer to the new Appendix ATAS;
- Part 7 has been amended to refer to the new Student routes. Conditions of leave have been amended to refer to the new Appendix ATAS;

- Part 8 - Paragraphs have been deleted or amended to refer to the new Student routes. The Student Dependent rules are now contained in Appendix ST: Student;
- Part 9 - Paragraphs have been amended to refer to the new Student routes;
- Part 10 – Paragraph 326(2) has been amended to change a reference to the Parent of a Tier 4 Child route to the Parent of a Child Student route;
- Part 11 – Paragraph 352H has been amended to refer to the new Appendix ATAS;
- Part 15 has been deleted and the requirements moved into Appendix ATAS;
- Appendix English Language - has been inserted and sets out the ways in which English Language requirements may be met;
- Appendix Finance - has been inserted and sets out the ways in which financial requirements may be met;
- Appendix 6 - has been deleted and the requirements moved into Appendix ATAS;
- Appendix A - Paragraphs 113 to 125-SD have been deleted and the requirements moved into Appendix ST: Student or Appendix CS: Child Student as appropriate;
- Appendix AR - Paragraph 3.2 has been amended to refer to the new Student routes, so that they are eligible decisions for the purpose of administrative review;
- Appendix ATAS has been inserted and sets out the current Academic Technology Approval Scheme requirements and condition of leave in a new format, as well as a list of relevant academic subjects and exempt nationals, replacing Part 15 and Appendix 6. A list of countries whose nationals are exempt from the ATAS requirements and condition has been added to this appendix;
- Appendix Armed Forces – Paragraph 5A has been amended to refer to the new Appendix ATAS;
- Appendix B – Paragraphs 12 and 13 have been updated to refer to the new Student routes;
- Appendix C - Paragraphs 1A to 21C have been deleted and the requirements moved into Appendix ST: Student or Appendix CS: Child Student as appropriate. The maintenance requirements have been moved to Appendix Finance;
- Appendix E - Paragraphs (b) to (n) have been deleted or amended to refer to the new Student routes. The maintenance requirements have been moved to Appendix Finance;
- Appendix FM – Paragraph GEN1.14 has been amended to refer to the new Appendix ATAS;
- Appendix H - has been deleted and the rules have been moved to Appendix ST: Student and Appendix CS: Child Student;
- Appendix ST: Student - has been inserted and contains the new Student and Dependents of a Student rules;
- Appendix CS: Child Student - has been inserted and contains the new Child Student rules;
- Appendix V –the definition of an accredited institution in Appendix 1 has been updated to refer to Student sponsors rather than Tier 4 sponsors;

- Appendix W - Paragraphs 2.3 to 5.1 have been amended to refer to the new Student routes. Conditions of leave have been amended to refer to the new Appendix ATAS.

7.7 EEA nationals are subject to transitional arrangements until the transition period ends on 31 December. An EEA or Swiss national who makes an application in the UK under the new Student or Child Student rules before 1 January 2021 will have their application rejected since they continue to have Freedom of Movement under EU law and are entitled to apply to the EU Settlement Scheme. EEA nationals who apply under the Student or Child Student rules from outside the UK will only be granted leave that commences on or after 1 January 2021, provided they meet the requirements of the route.

Refresh of the reduced documentary evidence list

7.8 The list of countries whose nationals may submit reduced documentary evidence (formerly Appendix H) has been updated to add all the countries which form part of the EEA and Switzerland. The following countries have been added to the list: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden and Switzerland.

Closure of the Tier 4 (General) and Tier 4 (Child) Routes

7.9 The Tier 4 (General) and Tier 4 (Child) routes will be closed to new applications after 5 October 2020 at 0859. References to Tier 4 have either been deleted from the Immigration Rules or amended where appropriate to reflect the new Student and Child Student rules. All references to Students or Child Students in the new rules must be read as including references to people who currently hold leave as Tier 4 Migrants, including in Part 9, Appendix AR and Appendix W. All Student and Child Student applications, including Student Dependent applications, which are made on or after 5 October 2020 at 0900 will be decided in accordance with the new Student rules, even where they are accompanied by a Certificate of Acceptance for Studies which was issued under the Tier 4 rules and policy in place before 5 October at 0900.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This Statement of Changes in Immigration Rules is not being made under the European Union (Withdrawal) Act, but it relates to the withdrawal of the United Kingdom from the European Union because it supports implementation of the Student and Child Student routes to permit EEA nationals to apply to enter the UK as students.

9. Consolidation

- 9.1 The Immigration Rules were last consolidated in 1994. Consideration will be given in due course to the nature and timing of any further consolidation.

10. Consultation Outcome

- 10.1 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.
- 10.2 When drafting these Immigration Rules in the simplified style we have consulted the Simplification of the Rules Review Committee, established in response to Law Commission's recommendations, as set out in the Home Office's Response to the Law Commission Report on Simplifying the Immigration Rules on 25 March 2020.

11. Guidance

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

12. Impact

- 12.1 Closing the Tier 4 (General) and Tier 4 (Child) routes will have little or no effect on students currently in the UK or who were planning to apply under the routes as the Student and Child Student rules will replace the existing routes and will provide a simplified pathway through the UK's education system. The changes will have a higher impact on students of EEA nationalities, as they will no longer be able to enter the UK on the basis of Free Movement and will have to apply for a visa prior to entering the UK.
- 12.2 The introduction of the Student and Child Student routes will impact on sponsoring institutions as recruitment practices will need to be amended to incorporate EEA students into their processes. The impacts are considered to be justified as they form part of the Government's commitment to end Freedom of Movement following the UK's withdrawal from the European Union.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 There is no, or no significant, impact on activities that are undertaken by small businesses.

14. Monitoring and Review

- 14.1 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.

15. Contact

- 15.1 Specific written queries relating to this Statement of Changes should be directed to Richard Short at StatementofChanges@homeoffice.gov.uk. Please note that this mailbox is only for Parliamentary use in relation to 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.
- 15.2 More general 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>.
- 15.3 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>.
- 15.4 Tim Rymer at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 Kevin Foster MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.