

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 22 July 2010 under section 3(2) of
the Immigration Act 1971*

*Ordered by The House of Commons to be printed
22 July 2010*

(This document is accompanied by an Explanatory Memorandum)

© Crown Copyright 2010

The text in this document (excluding the Royal Arms and other departmental or agency logos) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

ISBN: 978 0 10 296864 4

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID P002380552 07/10 4663 19585

Printed on paper containing 75% recycled fibre content minimum.

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 (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), April 2009 (HC 413), 9 September 2009 (Cm 7701), 23 September 2009 (Cm 7711), 10 December 2009 (HC 120), 10 February 2010 (HC 367), 28 June 2010 (HC 59) and 15 July 2010 (HC 96).

The changes set out in paragraphs 1 to 4, paragraphs 10 to 16 and paragraphs 18 to 22 in this Statement shall take effect on 23 July 2010. The changes at paragraphs 5 to 9 and paragraph 17 shall take effect on 12 August 2010.

1. Delete paragraph 245ZW(c)(iv)(2) and insert:

“(2) until such time as a decision is received from the UK Border Agency on an application which is supported by a Confirmation of Acceptance for Studies assigned by a Highly Trusted Sponsor and which is made while the applicant has extant leave, and any appeal against that decision has been determined, study at the Highly Trusted Sponsor institution which the Confirmation of Acceptance for Studies Checking Service records as having assigned a Confirmation of Acceptance for Studies to the Tier 4 migrant; and

(3) supplementary study.”

2. Delete paragraph 245ZY(c)(iv)(2) and insert:

“(2) until such time as a decision is received from the UK Border Agency on an application which is supported by a Confirmation of Acceptance for Studies assigned by a Highly Trusted Sponsor and which is made while the applicant has extant leave, and any appeal against that decision has been determined, study at the Highly Trusted Sponsor institution which the Confirmation of Acceptance for Studies Checking Service records as having assigned a Confirmation of Acceptance for Studies to the Tier 4 migrant; and

(3) supplementary study.”

3. Delete paragraph 245ZZB(c)(v)(2) and insert:

“(2) until such time as a decision is received from the UK Border Agency on an application which is supported by a Confirmation of Acceptance for Studies assigned by a Highly Trusted Sponsor and which is made while the applicant has extant leave, and any appeal against that decision has been determined, study at the Highly Trusted Sponsor institution which the Confirmation of Acceptance for Studies Checking Service records as having assigned a Confirmation of Acceptance for Studies to the Tier 4 migrant; and

(3) supplementary study.”

4. Delete paragraph 245ZZD(c)(v)(2) and insert:

“(2) until such time as a decision is received from the UK Border Agency on an application which is supported by a Confirmation of Acceptance for Studies assigned by a Highly Trusted Sponsor and which is made while the applicant has extant leave, and any appeal against that decision has been determined, study at the Highly Trusted Sponsor institution which the Confirmation of Acceptance for Studies Checking Service records as having assigned a Confirmation of Acceptance for Studies to the Tier 4 migrant; and

(3) supplementary study.”

5. Delete the heading of Part 9 and substitute:

“Part 9 – General grounds for the refusal of entry clearance, leave to enter, leave to remain, variation of leave to enter or remain and curtailment of leave in the United Kingdom”.

6. Delete the heading before paragraph 322 and substitute:
“Refusal of leave to remain, variation of leave to enter or remain or curtailment of leave”.
7. In paragraph 322 insert after “, the following provisions apply in relation to the refusal of an application for”:
“leave to remain,”
8. Delete the heading after paragraph 322 and substitute:
“Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused”.
9. Delete the heading before paragraph 322(2) and substitute:
“Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom should normally be refused”.
10. In paragraph 323A(d)(ii) insert “the Sponsor is a Highly Trusted Sponsor or” after “unless”.
11. In paragraph 69(a) of Appendix A, delete “skilled occupations” and substitute “occupations skilled to National Qualifications Framework level 3”.
12. In paragraph 82(a)(i) of Appendix A, delete “skilled occupations” and substitute “occupations skilled to National Qualifications Framework level 3”.
13. Delete paragraph 82(b) and substitute:
“(b) (unless the applicant is an Established Entertainer) the salary (which for these purposes includes such allowances as are specified as acceptable for this purpose in guidance issued by the United Kingdom Border Agency) that the Certificate of Sponsorship Checking Service entry records that the migrant will be paid is at or above the appropriate rate for the job as stated in guidance published by the United Kingdom Border Agency, and”
14. In paragraph 116(e) of Appendix A, delete “ and”
15. In paragraph 116(f) of Appendix A, delete “.” and substitute “, and”
16. After paragraph 116(f) of Appendix A insert:
“(g) if it was not issued for a course of studies, it was issued for a full-time, salaried, elected executive position as a student union sabbatical officer to an applicant who is part-way through their studies or who is being sponsored to fill the position in the academic year immediately after their graduation.”
17. Delete paragraph 118 of Appendix A and substitute:
“118. No points will be awarded for a Confirmation of Acceptance for Studies unless:
 - (a) the applicant supplies, as evidence of previous qualifications, specified documents that the applicant used to obtain the offer of a place on a course from the Sponsor; and
 - (b) one of the requirements in (i) to (viii) below is met:
 - (i) the Confirmation of Acceptance for Studies was assigned before 3 March 2010, or
 - (ii) the course is degree level study; or
 - (iii) the course is a foundation degree course; or
 - (iv) the course is a pre-sessional course before a degree-level course; or
 - (v) the applicant is a Government Sponsored student and the course is an English language course; or
 - (vi) the applicant is a national of one of the following countries:
 - Antigua and Barbuda
 - Australia
 - The Bahamas
 - Barbados
 - Belize
 - Canada
 - Dominica
 - Grenada
 - Guyana
 - Jamaica
 - New Zealand

St Kitts and Nevis
St Lucia
St Vincent and the Grenadines
Trinidad and Tobago
United States of America,
and provides the specified documents, or

(vii) the Confirmation of Acceptance for Studies Checking Service entry confirms that the applicant has a knowledge of English equivalent to level B1 of the Council of Europe's Common European Framework for Language Learning or above and:

(1) if the Confirmation of Acceptance for Studies was assigned before 12 August 2010, the applicant provides documents to support the Sponsor's assessment of his knowledge of English, or

(2) if the course of study stated on the Confirmation of Acceptance for Studies is an English language course, the applicant provides documents to support the Sponsor's assessment of his knowledge of English, or

(3) the applicant provides an original English language test certificate from an English language test provider approved by the Secretary of State for these purposes, which is within its validity date, and clearly shows:

- i. the applicant's name,
- ii. that the applicant has achieved or exceeded level B1 of the Council of Europe's Common European Framework for Language Learning in all four components (reading, writing, speaking and listening), unless exempted from sitting a component on the basis of the applicant's disability, and
- iii. the date of the award, or

(4) the applicant has successfully completed a course as a Tier 4 (Child) student (or under the student rules that were in force before 31 March 2009, where the student was granted permission stay whilst he was under 18 years old) which:

- i. was at least six months in length, and
- ii. ended within two years of the date the sponsor assigned the Confirmation of Acceptance for Studies.

18. Delete paragraph 120(a) of Appendix A and substitute:

“(a) The course must meet the following minimum academic requirements:

i. for applicants applying to study in England, Wales or Northern Ireland, the course must be at National Qualifications Framework (NQF) Level 3 or above if the Sponsor is:

- (aa) a Highly Trusted Sponsor; or
- (bb) an A rated Sponsor and the Confirmation of Acceptance for Studies was assigned on or before 30 April 2010; or
- (cc) an A rated Sponsor with an application for Highly Trusted Sponsor status pending determination by the UK Border Agency and the Confirmation of Acceptance for Studies was assigned between 1 May 2010 and 30 June 2010; or
- (dd) a B rated Sponsor and the Confirmation of Acceptance for Studies was assigned on or before 5 April 2010; or

ii. for applicants applying to study in England, Wales or Northern Ireland, the course must be at National Qualifications Framework (NQF) Level 4 or above if the requirements at 120(a)(i)(aa) to (dd) are not met; or

iii. for applicants applying to study in Scotland, the course must be accredited at Level 6 or above in the Scottish Credit and Qualifications Framework (SCQF) by the Scottish Qualifications Authority if the Sponsor is:

- (aa) a Highly Trusted Sponsor; or
- (bb) an A rated Sponsor and the Confirmation of Acceptance for Studies was assigned on or before 30 April 2010; or
- (cc) an A rated Sponsor with an application for Highly Trusted Sponsor status pending determination by the UK Border Agency and the Confirmation of Acceptance for Studies was assigned between 1 May 2010 and 30 June 2010; or
- (dd) a B rated Sponsor and the Confirmation of Acceptance for Studies was assigned on or before 5 April 2010; or

- iv. for applicants applying to study in Scotland, the course must be accredited at Level 7 or above in the Scottish Credit and Qualifications Framework (SCQF) by the Scottish Qualifications Authority if the requirements at 120(a)(iii)(aa) to (dd) are not met; or
 - v. the course must be a short-term Study Abroad Programme in the United Kingdom as part of the applicant's qualification at an overseas higher education institution, and that qualification must be confirmed as the same as a United Kingdom degree level by the National Recognition Information Centre for the United Kingdom (UK NARIC); or
 - vi. the course must be an English language course at level B2 or above of the Common European Framework of Reference for Languages; or
 - vii. the course may be an English language course at any level, where the applicant is a Government Sponsored student or the course is a pre-sessional course before a degree course; or
 - viii. the course may be an English language course at level A2 or above on the Common European Framework of Reference for Languages where the Confirmation of Acceptance for Studies was assigned before 23 July 2010; or
 - ix. the course must be a recognised Foundation Programme for postgraduate doctors or dentists.”
19. In paragraph 120 (d) iii, delete “as defined in guidance published by the United Kingdom Border Agency, below bachelor degree level.” and substitute “below bachelor degree level as defined in paragraph 120(a)”.
20. In paragraph 120(e) of Appendix A, delete “by a Highly Trusted Sponsor.” and substitute “if the Sponsor is:
- (aa) a Highly Trusted Sponsor; or
 - (bb) an A rated Sponsor and the Confirmation of Acceptance for Studies was assigned on or before 30 April 2010; or
 - (cc) an A rated Sponsor with an application for Highly Trusted Sponsor status pending determination by the UK Border Agency and the Confirmation of Acceptance for Studies was assigned between 1 May 2010 and 30 June 2010; or
 - (dd) a B rated Sponsor and the Confirmation of Acceptance for Studies was assigned on or before 5 April 2010.”
21. Delete paragraph 1A of Appendix C and substitute:
- “1A. In all cases where an applicant is required to obtain points under Appendix C, the applicant must meet the requirements listed below:
- (a) The applicant must have the funds specified in the relevant part of Appendix C at the date of the application;
 - (b) If the applicant is applying for entry clearance, leave to enter or leave to remain as a Tier 1 Migrant (other than a Tier 1 (Investor) Migrant), a Tier 2 Migrant or a Tier 5 (Temporary Worker) Migrant, the applicant must have had the funds referred to in (a) above for a consecutive 90-day period of time, ending no earlier than one calendar month before the date of application;
 - (c) If the applicant is applying for entry clearance or leave to remain as a Tier 4 Migrant, the applicant must have had the funds referred to in (a) above for a consecutive 28-day period of time, ending no earlier than one calendar month before the date of application;
 - (d) If the funds were obtained when the applicant was in the UK, the funds must have been obtained while the applicant had valid leave and was not acting in breach of any conditions attached to that leave; and
 - (e) The applicant must provide the specified documents.”
22. Delete paragraphs (ea), (eb) and (f) of Appendix E and substitute:
- “(f) In all cases, the funds in question must be available to:
- (i) the applicant, or
 - (ii) where he is applying as the partner of a Relevant Points Based System Migrant, either to him or to that Relevant Points Based System Migrant, or
 - (iii) where he is applying as the child of a Relevant Points Based System Migrant, either to him, to the Relevant Points Based System Migrant or to the child's other parent who is lawfully present in the UK or being granted entry clearance, or leave to enter or remain, at the same time;
- (g) The funds in question must have been available to the person referred to in (a) above for:
- (i) a consecutive 90-day period of time, ending no earlier than one calendar month before the date of application, if the applicant is applying as the Partner or Child of a Tier 1 Migrant (other than a Tier 1 (Investor) Migrant), a Tier 2 Migrant or a Tier 5 (Temporary Worker) Migrant;
 - (ii) a consecutive 28-day period of time, ending no earlier than one calendar month before the date

of application, if the applicant is applying as the Partner or Child of a Tier 4 Migrant;

(h) If the funds in question were obtained when the person referred to in (a) above was in the UK, the funds must have been obtained while that person had valid leave and was not acting in breach of any conditions attached to that leave; and

(i) In the following cases, sufficient funds will be deemed to be available where all of the following conditions are met:

(1) the Relevant Points Based System Migrant to whom the application is connected has, or is being granted, leave as a Tier 2 Migrant,

(2) the Sponsor of that Relevant Points Based System Migrant is A-rated, and

(3) that Sponsor provides a written undertaking that, should it become necessary, it will maintain and accommodate the dependants of the Relevant Points Based System Migrant up to the end of the first month of the Relevant Points Based System Migrant's employment. The undertaking may be limited provided the limit is at least £533 per dependant.

(j) In all cases the applicant must provide the specified documents.”



information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone Fax & E-Mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Parliamentary Bookshop

12 Bridge Street, Parliament Square,

London SW1A 2JX

Telephone orders/ General enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: bookshop@parliament.uk

Internet: <http://www.bookshop.parliament.uk>

TSO@Blackwell and other Accredited Agents

Customers can also order publications from

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

ISBN 978-0-10-296864-4



9 780102 968644

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 22 JULY 2010 (HC 382)**

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 changes to Tier 4, the student tier of the Points-Based System and to clarify that applicants who have overstayed their previous leave are subject to the same General Grounds for Refusal as applicants who still have extant leave. These changes also bring the requirements for maintenance (funds available to the applicant across the Points-Based System) under Tiers 1, 2, 4 and 5 and the minimum academic requirements for courses under Tier 4, which were previously contained in guidance, into the Rules.

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

3.1 This Statement of Changes contains some changes to the Immigration Rules which are being made in response to some successful legal challenges. A further change to Tier 4 will be beneficial to students applying for extensions of leave for a new course of study with a new sponsor during the peak summer period. In order to minimise the risk of further legal challenge and strengthen the Points-Based System against potential abuse, as well as to cater for the summer peak in student applications, these particular changes are being brought into force the day after they are laid. 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.

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 stay of persons in, the United Kingdom.

4.3 This Statement of Changes in Immigration Rules has been 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.

4.2 The changes to the Immigration Rules at paragraphs 1 to 4, 10 to 16 and 18 to 22 will come into force on 23 July 2010. The changes to the Immigration Rules at paragraphs 5 to 9 and 17 will come into force on 12 August 2010.

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

7. Policy Background

What is being done and why

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

Amendments to Tier 4

- 7.2 Tier 4 of the Points-Based System caters for international students who wish to study in the United Kingdom. Tier 4 has been implemented in phases, with the introduction of the main policy changes on 31 March 2009. Tier 4 comprises two categories: Tier 4 (General) Student and Tier 4 (Child) Student.
- 7.3 At present, all migrants who are granted entry clearance or leave to remain under Tier 4, the student tier of the Points Based System, are tied to the specific education provider that is recorded as their Tier 4 sponsor. The condition tying a student to their sponsoring education provider has been added to all Tier 4 migrants who have applied to the UK Border Agency (UKBA) for entry clearance or leave to remain since 5 October 2009. All students who are subject to this condition need to apply to the UKBA to vary their leave, and cannot commence study at a new sponsoring institution until receipt of the decision approving the application. Failure to comply with this condition can lead to criminal prosecution and / or curtailment of leave.
- 7.4 The principle of sponsorship – whereby those who benefit most directly from the contributions migrants make to the United Kingdom (employers and education institutions) are expected to play their part in ensuring the UK’s migration system is not abused – is an integral part of the Points Based System. The new Highly Trusted sponsor licence introduced for Tier 4 sponsors on 6 April 2010 is a further segmentation of the existing sponsor rating system designed to identify those sponsors who are achieving the highest levels of compliance with their sponsor obligations and whose students are showing the greatest compliance with the terms of their visa or leave. Those holding a “Highly Trusted sponsor” licence are granted additional freedoms and offered new services to recognise their previous track record of good compliance.
- 7.5 Under Tier 4, a student’s leave is based on the sponsorship of their Tier 4 licensed sponsor. Section 50 of the Borders, Citizenship and Immigration Act 2009 allowed a condition to be added to a person’s leave to enter or remain in the UK restricting his or her studies in the UK. This is to ensure each Tier 4 student is linked to an individual educational institution. The condition tying a student to their sponsoring education provider was added into the Immigration Rules in Statement of Changes in Immigration Rules (Cm 7701), and has been added to all Tier 4 migrants who have applied to the UK Border Agency for entry clearance or leave to remain since 5 October 2009.
- 7.6 All students subject to this condition now need to apply to the UK Border Agency to vary their leave before being able to change institutions. This allows the UK Border Agency to maintain accurate records of where migrants are studying and check that the institutions to which they wish to move are bona fide and are willing to take on the sponsorship of the students under Tier 4. Tier 4 students cannot currently start studying at their new sponsor institution until they receive a positive decision on their application. This restriction applies to students who are changing institutions for any reason, including those who are progressing from study at one institution to higher level study at another.
- 7.7 Since the introduction of this new condition, the education sector has reported that except for those students who have been able to secure premium appointments at Public Enquiry Offices (PEOs) where decisions are typically taken that day, postal applications have not in many cases been processed in sufficient time to enable students to start new courses in line with course start dates. There is a growing concern that in the peak student surge period over the summer, UKBA’s operational capacity to deal with these applications will be under significant pressure.
- 7.8 The following changes to the Immigration Rules are therefore being made to the Tier 4 (General) and Tier 4 (Child) categories:
- Students who are applying to the UK Border Agency under Tier 4 for permission to study at a different sponsor will be permitted to commence study at that sponsor before receipt

of UKBA's decision on the application where that education provider is a "Highly Trusted Sponsor".

- This arrangement is restricted to students applying to study at a Highly Trusted Sponsor institution because such institutions will have already demonstrated that they have a high proportion of compliant students with low drop-out rates in order to qualify for a Highly Trusted Sponsor licence.
- To ensure consistency of approach, an amendment is also being made to paragraph 323A(d) (ii) removing the power for UKBA to curtail a student's leave where that student studies at a Highly Trusted Sponsor institution other than the institution named on the student's visa letter.

7.9 A further change to the Tier 4 (General) category is also being made to make it a requirement that students must provide evidence of having passed a UK Border Agency-approved secure English language test at a minimum of B1 level on the Common European Framework of Reference for languages where they meet the following criteria:

- The student is from a non-majority English speaking country;
- The student is applying to study in the UK on a course below degree level (excluding those on foundation degrees, Scottish HNDs or English language courses);
- The student holds a Confirmation of Acceptance for Studies issued to them on or after 12 August.

7.10 This change builds on the previous position where the sponsors of such students were required to make their own assessment of the English language level of the student. The use of an independent test is seen as an advance on this as it should help ensure that sponsors are not duped by students offering false or fake documents to prove their English language ability.

Changes following legal challenges

7.11 Legal challenges have been brought against the Government regarding the extent to which the following Points-Based System criteria are specified in UK Border Agency guidance rather than in the Immigration Rules:

- Minimum academic levels of courses that can be studied under Tier 4 (General); and
- The periods of time that Points-Based System Migrants and their Dependents are required to have held funds for before submitting their applications

7.12 These changes bring the details of these requirements, as currently set out in UK Border Agency guidance, within the Immigration Rules.

7.13 The requirements themselves remain unchanged or, as in the case of the judgment on the minimum level of English language course under Tier 4, restores the position taken before that judgment was handed down.

Tier 2

7.14 For the avoidance of doubt, these changes also bring details of the minimum skill level at which an occupation is deemed to be skilled under Tier 2 into the Rules.

Overstayers

7.15 These changes also amend paragraph 322 of the Immigration Rules so as to make clear that the general grounds for refusal of an application for leave to remain set out in that paragraph

apply where the applicant has no extant leave to extend or vary. This change clarifies that these provisions are applicable to an applicant who had overstayed their previous leave.

8. Consultation

- 8.1 No formal consultation on the change to increase flexibility in Tier 4 has taken place, however informal discussions have been held with representatives of the education sector and these have informed the UK Border Agency's chosen course of action in relation to Tier 4 Migrants studying with Highly Trusted Sponsors. The education sector is concerned that the current Rules would lead to large numbers of students missing their course start dates at the beginning of the Autumn term and this amendment to the Rules allows a student to commence a new course of study before he or she has received a decision from the UK Border Agency. This approach therefore addresses the sector's concerns.
- 8.2 No formal consultation has taken place on the other changes, as these are provisions which have been in existence for some time in guidance. Bringing them into the Immigration Rules is therefore a technical amendment only.

9. Guidance

- 9.1 Information on these changes will be made available to migrants, sponsors and UK Border Agency staff, through updates to websites and guidance.

10. Impact

- 10.1 A previous impact assessment which covered changes to the level of course which can be studied under Tier 4 and the introduction of secure English language testing was published on 6 April 2010 and remains current. No impact assessment has been prepared for the other changes as these are technical changes to address legal challenges, to clarify the position for over-stayers, and to address the operational challenge posed by the large number of students applying to change institution during the traditional summer surge, ahead of the start of the new academic year in September/October. That particular change does not alter the application process for Tier 4 students, their sponsors, or any applicants in other categories. It will apply equally to all migrants, regardless of race, religion, disability, gender or gender identity, sexual orientation and age.

11. Regulating small business

- 11.1 The legislation applies to small businesses, however the increased flexibility will allow small businesses which are licensed as Highly Trusted Sponsors under Tier 4 of the Points Based System to allow their students to commence study without delay. The other technical amendments will have no new impact.

12. Monitoring and review

- 12.1 All the changes introduced by this Statement will be monitored on an on-going basis as part of the review of progress towards meeting Public Service Agreement 3: 'ensure fair, controlled migration that protects the public and contributes to economic growth.'

13. Contact

- 13.1 Queries should be addressed to Jo Laker at the UK Border Agency on 0208 760 2944 or by email to: joanne.laker2@homeoffice.gsi.gov.uk