

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 22 February 2005 under section 3(2) of
the Immigration Act 1971*

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22 February 2005*

(This document is accompanied by an Explanatory Memorandum)

STATEMENT OF CHANGES IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the Rules laid down by him as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395), as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cmnd 2663), 26 October 1995 (HC 797), 4 January 1996 (Cmnd 3073), 7 March 1996 (HC 274), 2 April 1996 (HC 329), 30 August 1996 (Cmnd 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cmnd 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cmnd 3953), 8 October 1998 (Cmnd 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cmnd 4851), 27 August 2001 (Cmnd 5253), 16 April 2002 (HC 735), 27 August 2002 (Cmnd 5597), 7 November 2002 (HC 1301), 26 November 2002 (HC 104), 8 January 2003 (HC 180), 10 February 2003 (HC 389), 31 March 2003 (HC 538), 30 May 2003 (Cmnd 5829), 24 August 2003 (Cmnd 5949), 12 November 2003 (HC 1224), 17th December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC 523), 3 August 2004 (Cmnd 6297), 24 September 2004 (Cmnd 6339), 18 October 2004 (HC 1112), 20 December 2004 (HC 164), 11 January 2005 (HC 194) and 7 February 2005 (HC 302).

These changes take effect on 15 March 2005.

1. In paragraph 6(b), delete the words “invalid care allowance” and insert “carer’s allowance”; delete the words “working families’ tax credit” and “disabled person’s tax credit”; after “child benefit under Part IX of that Act;” delete “or;” after “income-based jobseeker’s allowance under the Jobseekers Act 1995” insert “; state pension credit under the State Pension Credit Act 2002; or child tax credit and working tax credit under Part 1 of the Tax Credits Act 2002.”
2. In paragraph 6(c), delete the words “invalid care allowance” and insert “carer’s allowance”; delete the words “working families’ tax credit” and “disabled person’s tax credit”.
3. Delete paragraph 6(d).
4. After paragraph 6A, insert:

“6B. A person shall not be regarded as having recourse to public funds if he is a person who is not excluded from specified benefits under section 115 of the Immigration and Asylum Act 1999 by virtue of regulations made under sub-sections (3) and (4) of that section or section 42 of the Tax Credits Act 2002.”
5. At the end of paragraph 40, insert : “A visitor seeking leave to enter for the purposes of marriage must meet the requirements of paragraph 56D.”
6. After paragraph 56C, insert:

“VISITORS SEEKING TO ENTER FOR THE PURPOSES OF MARRIAGE

Requirements for leave to enter as a visitor for marriage

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

 - (i) meets the requirements set out in paragraph 41 for entry as a visitor; and
 - (ii) can show that he intends to give notice of marriage, or marry, in the United Kingdom within the period for which entry is sought; and
 - (iii) can produce satisfactory evidence, if required to do so, of the arrangements for giving notice of marriage, or for his wedding ceremony to take place, in the United Kingdom during the period for which entry is sought; and
 - (iv) holds a valid United Kingdom entry clearance for entry in this capacity.

Leave to enter as a visitor for marriage

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

Refusal of leave to enter as a visitor for marriage

56F. Leave to enter as a visitor for marriage is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 56D is met.”
7. After paragraph 75, insert:

“Requirements for leave to enter the United Kingdom to take the PLAB Test

75A. The requirements to be met by a person seeking leave to enter in order to take the PLAB Test are that the applicant:

- (i) is a graduate from a medical school and intends to take the PLAB Test in the United Kingdom; and
- (ii) can provide documentary evidence of a confirmed test date or of his eligibility to take the PLAB Test; and
- (iii) meets the requirements of paragraph 41 (iii) – (vii) for entry as a visitor; and
- (iv) intends to leave the United Kingdom at the end of his leave granted under this paragraph unless he is successful in the PLAB Test and granted leave to remain:
 - (a) as a postgraduate doctor or trainee general practitioner in accordance with paragraphs 70 to 75; or
 - (b) to undertake a clinical attachment in accordance with paragraphs 75G to 75M of these Rules; or
 - (c) as a work permit holder for employment in the United Kingdom as a doctor in accordance with paragraphs 128 to 135; or
 - (d) as a doctor under the highly skilled migrant programme in accordance with paragraphs 135A to 135H.

Leave to enter to take the PLAB Test

75B. A person seeking leave to enter the United Kingdom to take the PLAB Test may be admitted for a period not exceeding 6 months, provided the Immigration Officer is satisfied that each of the requirements of paragraph 75A is met.

Refusal of leave to enter to take the PLAB Test

75C. Leave to enter the United Kingdom to take the PLAB Test is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 75A is met.

Requirements for an extension of stay in order to take the PLAB Test

75D. The requirements for an extension of stay in the United Kingdom in order to take the PLAB Test are that the applicant:

- (i) was given leave to enter the United Kingdom for the purposes of taking the PLAB Test in accordance with paragraph 75B of these Rules; and
- (ii) intends to take the PLAB Test and can provide documentary evidence of a confirmed test date; and
- (iii) meets the requirements set out in paragraph 41 (iii)-(vii); and
- (iv) intends to leave the United Kingdom at the end of his leave granted under this paragraph unless he is successful in the PLAB Test and granted leave to remain:
 - (a) as a postgraduate doctor or trainee general practitioner in accordance with paragraphs 70 to 75; or
 - (b) to undertake a clinical attachment in accordance with paragraphs 75G to 75M of these Rules; or
 - (c) as a work permit holder for employment in the United Kingdom as a doctor in accordance with paragraphs 128 to 135; or
 - (d) as a doctor under the highly skilled migrant programme in accordance with paragraphs 135A to 135H; and
- (v) would not as a result of an extension of stay spend more than 18 months in the United Kingdom for the purpose of taking the PLAB Test.

Extension of stay to take the PLAB Test

75E. A person seeking leave to remain in the United Kingdom to take the PLAB Test may be granted an extension of stay for a period not exceeding 6 months, provided the Secretary of State is satisfied that each of the requirements of paragraph 75D is met.

Refusal of extension of stay to take the PLAB Test

75F. Leave to remain in the United Kingdom to take the PLAB Test is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 75D is met.

Requirements for leave to enter to undertake a clinical attachment or dental observer post

75G. The requirements to be met by a person seeking leave to enter to undertake a clinical attachment or dental observer post are that the applicant:

- (i) is a graduate from a medical or dental school and intends to undertake a clinical attachment or dental observer post in the United Kingdom; and
- (ii) can provide documentary evidence of the clinical attachment or dental observer post which will:
 - (a) be unpaid; and
 - (b) only involve observation, not treatment, of patients; and
- (iii) meets the requirements of paragraph 41 (iii) – (vii) of these Rules; and
- (iv) intends to leave the United Kingdom at the end of his leave granted under this paragraph unless he is granted leave to remain:
 - (a) as a postgraduate doctor, dentist or trainee general practitioner in accordance with paragraphs 70 to 75;
 - (b) as a work permit holder for employment in the United Kingdom as a doctor or dentist in accordance with paragraphs 128 to 135; or
 - (c) as a General Practitioner under the highly skilled migrant programme in accordance with paragraphs 135A to 135H.

Leave to enter to undertake a clinical attachment or dental observer post

75H. A person seeking leave to enter the United Kingdom to undertake a clinical attachment or dental observer post may be admitted for the period of the clinical attachment or dental observer post, up to a maximum of 12 months, provided the Immigration Officer is satisfied that each of the requirements of paragraph 75G is met.

Refusal of leave to enter to undertake a clinical attachment or dental observer post

75J. Leave to enter the United Kingdom to undertake a clinical attachment or dental observer post is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 75G is met.

Requirements for an extension of stay in order to undertake a clinical attachment or dental observer post

75K. The requirements to be met by a person seeking an extension of stay to undertake a clinical attachment or dental observer post are that the applicant:

- (i) was given leave to enter or remain in the United Kingdom to undertake a clinical attachment or dental observer post or:
 - (a) for the purposes of taking the PLAB Test in accordance with paragraphs 75A to 75F and has passed both parts of the PLAB Test;
 - (b) as a postgraduate doctor, dentist or trainee general practitioner in accordance with paragraphs 70 to 75; or
 - (c) as a work permit holder for employment in the UK as a doctor or dentist in accordance with paragraphs 128 to 135; and
- (ii) is a graduate from a medical or dental school and intends to undertake a clinical attachment or dental observer post in the United Kingdom; and
- (iii) can provide documentary evidence of the clinical attachment or dental observer post which will:
 - (a) be unpaid; and
 - (b) only involve observation, not treatment, of patients; and
- (iv) intends to leave the United Kingdom at the end of his period of leave granted under this paragraph unless he is granted leave to remain:
 - (a) as a postgraduate doctor, dentist or trainee general practitioner in accordance with paragraphs 70 to 75; or
 - (b) as a work permit holder for employment in the United Kingdom as a doctor or dentist in accordance with paragraphs 128 to 135; or
 - (c) as a General Practitioner under the highly skilled migrant programme in accordance with paragraphs 135A to 135H.; and
- (v) meets the requirements of paragraph 41 (iii) – (vii) of these Rules.

Extension of stay to undertake a clinical attachment or dental observer post

75L. A person seeking leave to remain in the United Kingdom to undertake a clinical attachment or dental observer post may be granted an extension of stay for the period of their clinical attachment or dental observer post, provided that the Secretary of State is satisfied that each of the requirements of paragraph 75K is met.

Refusal of extension of stay to undertake a clinical attachment or dental observer post

75M. Leave to remain in the United Kingdom to undertake a clinical attachment or dental observer post is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 75K is met.”.

8. After paragraph 131F, insert:

“131G. The requirements for an extension of stay to take employment (unless the applicant is otherwise eligible for an extension of stay for employment under these Rules) for an individual who has leave to enter or leave to remain in the United Kingdom to take the PLAB Test or to undertake a clinical attachment or dental observer post are that the applicant:

- (i) entered the United Kingdom or was given leave to remain for the purposes of taking the PLAB Test in accordance with paragraphs 75A to 75F of these Rules; or
- (ii) entered the United Kingdom or was given leave to remain to undertake a clinical attachment or dental observer post in accordance with paragraphs 75G to 75M of these Rules; and
- (iii) holds a valid Home Office immigration employment document for employment as a doctor or dentist; and
- (iv) meets each of the requirements of paragraph 128 (ii) to (vi).”.

9. For paragraphs 132 and 133, substitute:

“132. An extension of stay for work permit employment may be granted for a period not exceeding the period of approved employment recommended by the Home Office provided the Secretary of State is satisfied that each of the requirements of paragraphs 131, 131A, 131B, 131C, 131D, 131E, 131F, or 131G is met. An extension of stay is to be subject to a condition restricting the applicant to employment approved by the Home Office.

133. An extension of stay for employment is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraphs 131, 131A, 131B, 131C, 131D, 131E, 131F, or 131G is met (unless the applicant is otherwise eligible for an extension of stay for employment under these Rules).”.

10. After paragraph 135DF, insert:

“135DG. The requirements for an extension of stay as a highly skilled migrant in the case of a person who has leave to enter or leave to remain in the United Kingdom to take the PLAB Test or to undertake a clinical attachment are that the applicant:

- (i) entered the United Kingdom or was given leave to remain for the purposes of taking the PLAB Test in accordance with paragraphs 75A to 75F of these Rules; or
- (ii) entered the United Kingdom or was given leave to remain to undertake a clinical attachment in accordance with paragraphs 75G to 75M of these Rules; and
- (iii) holds a valid document issued by the Home Office confirming that he meets, at the time of the issue of that document, the criteria specified by the Secretary of State for entry to the United Kingdom under the Highly Skilled Migrant Programme under the priority application process for general practitioners; and
- (iv) meets the requirements of paragraph 135A(ii)-(iii).”.

11. For paragraphs 135E and 135F, substitute:

“135E. An extension of stay as a highly skilled migrant may be granted for a period not exceeding 3 years, provided that the Secretary of State is satisfied that each of the requirements of paragraph 135D, 135DA, 135DB, 135DC, 135DD, 135DE, 135DF or 135DG is met.

135F. An extension of stay as a highly skilled migrant is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 135D, 135DA, 135DB, 135DC, 135DD, 135DE, 135DF or 135DG is met.”.

12. After paragraph 206, insert:

“206A. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a person who has leave to enter or remain for work permit employment are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a work permit holder in accordance with paragraphs 128 to 133 of these Rules; and
- (ii) meets each of the requirements of paragraph 201 (i) – (x).

206B. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a highly skilled migrant are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a highly skilled migrant in accordance with paragraphs 135A to 135F of these Rules; and
- (ii) meets each of the requirements of paragraph 201 (i) – (x).

206C. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a participant in the Science and Engineering Graduates Scheme are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a participant in the Science and Engineering Graduates Scheme in accordance with paragraphs 135O to 135T of these Rules; and
- (ii) meets each of the requirements of paragraph 201 (i) – (x).

206D. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for an innovator are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as an innovator in accordance with paragraphs 210A to 210F of these Rules; and
- (ii) meets each of the requirements of paragraph 201 (i) – (x).

206E. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a student are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a student in accordance with paragraphs 57 to 62 of these Rules; and
- (ii) has obtained a degree qualification on a recognised degree course at either a United Kingdom publicly funded further or higher education institution or a bona fide United Kingdom private education institution which maintains satisfactory records of enrolment and attendance; and
- (iii) has the written consent of his official sponsor to such self employment if he is a member of a government or international scholarship agency sponsorship and that sponsorship is either ongoing or has recently come to an end at the time of the requested extension; and
- (iv) meets each of the requirements of paragraph 201 (i) – (x).

206F. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a working holidaymaker are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a working holidaymaker in accordance with paragraphs 95 to 100 of these Rules; and
- (ii) has spent more than 12 months in total in the UK in this capacity; and
- (iii) meets each of the requirements of paragraph 201 (i) – (x).”.

13. For paragraphs 207 and 208, substitute:

“207. An extension of stay in order to remain in business with a condition restricting his freedom to take employment may be granted for a period not exceeding 3 years provided the Secretary of State is satisfied that each of the requirements of paragraph 206, 206A, 206B, 206C, 206D, 206E or 206F is met.

208. An extension of stay in order to remain in business is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 206, 206A, 206B, 206C, 206D, 206E or 206F is met.”.

14. After paragraph 210DF, insert:

“210DG. The requirements to be met for an extension of stay as an innovator, for a person in the United Kingdom to establish themselves or remain in business are that the applicant:

- (i) entered the United Kingdom or was granted leave to remain as a person intending to establish themselves or remain in business in accordance with paragraphs 201 – 208 of these Rules; and
- (ii) meets the requirements of paragraph 210 (i) – (iv).”.

15. For paragraphs 210E and 210F, substitute:

“210E. An extension of stay as an innovator may be granted for a period not exceeding 30 months provided the Secretary of State is satisfied that each of the requirements of paragraph 210D, 210DA, 210DB, 210DC, 210DD, 210DE, 210DF or 210DG is met.

210F. An extension of stay as an innovator is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 210D, 210DA, 210DB, 210DC, 210DD, 210DE, 210DF or 210DG is met.”.

16. After paragraph 227, insert:
- “227A. The requirements to be met for an extension of stay as an investor, for a person who has leave to enter or remain in the United Kingdom as a work permit holder are that the applicant:
- (i) entered the United Kingdom or was granted leave to remain as a work permit holder in accordance with paragraphs 128 to 133 of these Rules; and
 - (ii) meets the requirements of paragraph 224 (i) – (iv).
- 227B. The requirements to be met for an extension of stay as an investor, for a person in the United Kingdom as a highly skilled migrant are that the applicant:
- (i) entered the United Kingdom or was granted leave to remain as a highly skilled migrant in accordance with paragraphs 135A to 135F of these Rules; and
 - (ii) meets the requirements of paragraph 224 (i) – (iv).
- 227C. The requirements to be met for an extension of stay as an investor, for a person in the United Kingdom to establish themselves or remain in business are that the applicant:
- (i) entered the United Kingdom or was granted leave to remain as a person intending to establish themselves or remain in business in accordance with paragraphs 201 to 208 of these Rules; and
 - (ii) meets the requirements of paragraph 224 (i) – (iv).
- 227D. The requirements to be met for an extension of stay as an investor, for a person in the United Kingdom as an innovator are that the applicant:
- (i) entered the United Kingdom or was granted leave to remain as an innovator in accordance with paragraphs 210A to 210F of these Rules; and
 - (ii) meets the requirements of paragraph 224 (i) – (iv).”.
17. For paragraphs 228 and 229, substitute:
- “228. An extension of stay as an investor, with a restriction on the taking of employment, may be granted for a maximum period of 3 years, provided the Secretary of State is satisfied that each of the requirements of paragraph 227, 227A, 227B, 227C or 227D is met.
229. An extension of stay as an investor is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 227, 227A, 227B, 227C or 227D is met.”.
18. After paragraph 266, insert:
- “266A. The requirements for an extension of stay as a retired person of independent means for a person in the United Kingdom as a work permit holder are that the applicant:
- (i) entered the United Kingdom or was granted leave to remain as a work permit holder in accordance with paragraphs 128 to 133 of these Rules; and
 - (ii) meets the requirements of paragraph 263 (i) – (v).
- 266B. The requirements for an extension of stay as a retired person of independent means for a person in the United Kingdom as a highly skilled migrant are that the applicant:
- (i) entered the United Kingdom or was granted leave to remain as a highly skilled migrant in accordance with paragraphs 135A to 135F of these Rules; and
 - (ii) meets the requirements of paragraph 263 (i) – (v).
- 266C. The requirements for an extension of stay as a retired person of independent means for a person in the United Kingdom to establish themselves or remain in business are that the applicant:
- (i) entered the United Kingdom or was granted leave to remain as a person intending to establish themselves or remain in business in accordance with paragraphs 201 to 208 of these Rules; and
 - (ii) meets the requirements of paragraph 263 (i) – (v).
- 266D. The requirements for an extension of stay as a retired person of independent means for a person in the United Kingdom as an innovator are that the applicant:
- (i) entered the United Kingdom or was granted leave to remain as an innovator in accordance with paragraphs 210A to 210F of these Rules; and
 - (ii) meets the requirements of paragraph 263 (i) – (v).”.
19. For paragraphs 267 and 268, substitute:
- “267. An extension of stay as a retired person of independent means, with a prohibition on the taking of employment, may be granted so as to bring the person’s stay in this category up to a maximum of 4 years in aggregate, provided the Secretary of State is satisfied that each of the requirements of paragraph 266

is met. An extension of stay as a retired person of independent means, with a prohibition on the taking of employment, may be granted for a maximum period of 4 years, provided the Secretary of State is satisfied that each of the requirements of paragraph 266A, 266B, 266C or 266D is met.

268. An extension of stay as a retired person of independent means is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 266, 266A, 266B, 266C or 266D is met.”.

20. After paragraph 276AC, insert:

“SPOUSES OF ARMED FORCES MEMBERS WHO ARE EXEMPT FROM IMMIGRATION CONTROL UNDER SECTION 8(4) OF THE IMMIGRATION ACT 1971

Requirements for leave to enter or remain as the spouse of an armed forces member who is exempt from immigration control under section 8(4) of the Immigration Act 1971

276AD. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the spouse of an armed forces member who is exempt from immigration control under section 8(4) of the Immigration Act 1971 are that:

- (i) the applicant is married to an armed forces member who is exempt from immigration control under section 8(4) of the Immigration Act 1971; and
- (ii) each of the parties intends to live with the other as his or her spouse during the applicant's stay and the marriage is subsisting; and
- (iii) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and
- (iv) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds; and
- (v) the applicant does not intend to stay in the United Kingdom beyond his or her spouse's enlistment in the home forces, or period of posting or training in the United Kingdom.

Leave to enter or remain as the spouse of an armed forces member who is exempt from immigration control under section 8(4) of the Immigration Act 1971

276AE. A person seeking leave to enter or remain in the United Kingdom as the spouse of an armed forces member who is exempt from immigration control under section 8(4) of the Immigration Act 1971 may be given leave to enter or remain in the United Kingdom for a period not exceeding 4 years or the duration of the enlistment, posting or training of his or her spouse, whichever is shorter, provided that the Immigration Officer, or in the case of an application for leave to remain, the Secretary of State, is satisfied that each of the requirements of paragraph 276AD (i)-(v) is met.

Refusal of leave to enter or remain as the spouse of an armed forces member who is exempt from immigration control under section 8(4) of the Immigration Act 1971

276AF. Leave to enter or remain in the United Kingdom as the spouse an armed forces member who is exempt from immigration control under section 8(4) of the Immigration Act 1971 is to be refused if the Immigration Officer, or in the case of an application for leave to remain, the Secretary of State, is not satisfied that each of the requirements of paragraph 276AD (i)-(v) is met.

CHILDREN OF ARMED FORCES MEMBERS WHO ARE EXEMPT FROM IMMIGRATION CONTROL UNDER SECTION 8(4) OF THE IMMIGRATION ACT 1971

Requirements for leave to enter or remain as the child of an armed forces member exempt from immigration control under section 8(4) of the Immigration Act 1971

276AG. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the child of an armed forces member exempt from immigration control under section 8(4) of the Immigration Act 1971 are that:

- (i) he is the child of a parent who is an armed forces member exempt from immigration control under section 8(4) of the Immigration Act 1971; and
- (ii) he is under the age of 18 or has current leave to enter or remain in this capacity; and
- (iii) he is unmarried, has not formed an independent family unit and is not leading an independent life; and
- (iv) he can and will be maintained and accommodated adequately without recourse to public funds in accommodation which his parent(s) own or occupy exclusively; and
- (v) he will not stay in the United Kingdom beyond the period of his parent's enlistment in the home forces, or posting or training in the United Kingdom; and
- (vi) his other parent is being or has been admitted to or allowed to remain in the United Kingdom save where:
 - (a) the parent he is accompanying or joining is his sole surviving parent; or

- (b) the parent he is accompanying or joining has had sole responsibility for his upbringing;
or
- (c) there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care.

Leave to enter or remain as the child of an armed forces member exempt from immigration control under section 8(4) of the Immigration Act 1971

276AH. A person seeking leave to enter or remain in the United Kingdom as the child of an armed forces member exempt from immigration control under section 8(4) of the Immigration Act 1971 may be given leave to enter or remain in the United Kingdom for a period not exceeding 4 years or the duration of the enlistment, posting or training of his parent, whichever is the shorter, provided that the Immigration Officer, or in the case of an application for leave to remain, the Secretary of State, is satisfied that each of the requirements of 276AG (i)-(vi) is met.

Refusal of leave to enter or remain as the child of an armed forces member exempt from immigration control under section 8(4) of the Immigration Act 1971

276AI. Leave to enter or remain in the United Kingdom as the child of an armed forces member exempt from immigration control under section 8(4) of the Immigration Act 1971 is to be refused if the Immigration Officer, or in the case of an application for leave to remain, the Secretary of State, is not satisfied that each of the requirements of paragraph 276AG (i)-(vi) is met.”.

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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 22 FEBRUARY 2005 (HC 346)**

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

2. Description

2.1 This Statement of Changes in Immigration Rules contains the following five policy changes:

- A new provision for visitors to enter the UK for marriage where there is no intention to settle here afterwards (“marriage tourists”).
- A new provision to enable the dependants of foreign and Commonwealth nationals serving in HM Forces to apply for leave to accompany them in the UK.
- Amendment to the definition of “Public funds”.
- Incorporation of a concession outside the Immigration Rules about doctors taking the Professional and Linguistic Assessment Board Test (‘PLAB Test’), and doctors and dentists undertaking clinical attachments.
- Provisions about who will be able to switch into leave as a “Person Intending to Establish Themselves in Business”; “Investor”; or “Retired Person of Independent Means”.

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

3.1 None.

4. Legislative Background

4.1 The Immigration Rules are the rules made under section 3(2) of the Immigration Act 1971. These constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom. Under section 3(2) the Secretary of State is obliged “.. from time to time (and as soon as may be) lay before Parliament statements of the rules, or any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act ..”.

4.2 The introduction of additional requirements for those subject to immigration control who wish to give notice of marriage in the UK, supplements the provisions of sections 19 to 25 of the Immigration & Asylum (Treatment of Claimants etc) Act 2004, which came into force on 1 February 2005. These provisions introduced additional requirements for those subject to immigration control who wish to give notice of marriage in the UK. Under these provisions, before a person subject to immigration control can give notice of a marriage they will need to:

- hold entry clearance enabling them to marry in the UK; or
- hold the written permission of the Secretary of State; or
- have settled status in the UK.

In addition, they must give notice of marriage at one of a limited number of designated offices.

4.3 This Statement of Changes in Immigration Rules will be laid on 22 February. All the changes will take effect on 15 March.

4.4 This Statement of Changes in Immigration Rules was incorporated into a consolidated version of the Immigration Rules, which can be found under the ‘Laws & Policy’ page at: www.ind.homeoffice.gov.uk, where there are also copies of all the Statement of Changes in Immigration Rules issued since May 2003.

5. Extent

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

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

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

‘Marriage tourists’ visa

- Both visa and non-visa nationals will need to obtain entry clearance as a marriage visitor if they wish to come to the UK in a temporary capacity to marry. If they do not do so, a registrar will no longer accept notice of their marriage. Where a person intends to settle in the UK after their marriage they should apply for a fiancé entry clearance in the normal manner.

- This new provision in the Immigration Rules creates a legislative basis for marriage tourists. It allows entry clearance officers to refuse an entry clearance if they are not satisfied that arrangements have been made to give notice of marriage or to marry during the period of leave. It also provides for immigration officers to refuse leave to enter in such circumstances.

Dependants of serving members of the armed forces

- Section 8(4) of the Immigration Act 1971 gives exemption from immigration control (though not from deportation provisions) to various categories of foreign and Commonwealth military personnel:
 - members of the home forces subject to service law;
 - members of a Commonwealth force training in the United Kingdom with the home forces;
 - those serving or posted for service in the United Kingdom as a member of a visiting force including NATO forces; and
 - those serving or posted for service as a member of an international headquarters or defence organisation.
- Dependants of military personnel are not exempt from immigration control. They are currently granted leave to remain under the terms of a concession outside the Immigration Rules. However, they must first seek entry as a visitor before applying for further leave to remain under the concession. This is inconvenient and incurs additional expense because as visitors they can only be granted a maximum period of leave of six months before having to apply, and pay the appropriate fee, for an extension of stay under the concession. Visitor conditions also prohibit employment whereas dependants granted leave under the concession are permitted to work.
- To enable dependants of armed forces members to obtain leave to enter prior to their arrival in the United Kingdom, two new rules have been drafted:
 - Spouses of armed forces members who are exempt from immigration control under section 8(4) of the Immigration Act 1971; and
 - Children of armed forces members who are exempt from immigration control under section 8(4) of the Immigration Act 1971.
- The new Rules require that dependants can be maintained and accommodated without recourse to public funds. Marriages must be subsisting. Children must be under the age of 18, unmarried and not leading an independent life. Under the terms of the concession, leave for dependants of exempt military personnel was granted for periods up to three years, or for the duration of the military posting, whichever was the shorter. The new Rules allow for leave to enter or remain to be granted for up to four years, or for the duration of the posting, whichever is shorter. This is consistent with the minimum period of enlistment in the armed forces. It also provides sufficient leave to cover dependants until their serving spouse, or parent, may qualify for settlement in the United Kingdom under the HM Forces rule after discharge and on completion of 4 years service. The longer period will also reduce the overall cost to dependants as less frequent extensions of stay will be required. Leave is granted on conditions permitting employment.

Public funds

- In deciding whether to grant leave to enter or remain, the Secretary of State will decide whether persons can maintain and accommodate themselves without recourse to public funds. Where leave is granted, it may also be subject to conditions, one of which may be that the person does not have recourse to public funds. The definition of public funds in the Immigration Rules informs these decisions. Where a person breaches a condition of their leave they may be prosecuted or removed.
- The definition of public funds has been amended to delete references to those which no longer exist – invalid care allowance, working families' tax credit and disabled person's tax credit. The amendment also deletes a reference to income-based Jobseeker's allowance which appeared twice. Carer's allowance, state pension credit, working tax credit and child tax credit have now been included in the definition.
- A change has also been made to make clear that a person shall not be regarded as having recourse to public funds if they are not excluded from such funds under specified legislative provisions.

Doctors and dentists taking the PLAB Test and clinical attachments

- There has been a long-standing concession outside the Immigration Rules to enable overseas doctors to come to the UK to take the PLAB (Professional and Linguistic Assessment Board) Test which most overseas doctors take to be granted limited registration with the General Medical Council. Overseas doctors are also granted leave to undertake periods of clinical attachment which are unpaid and involve observation only and not treatment of patients. Doctors and dentists with leave under these concessions can also switch into certain employment categories, providing they will be working as a doctor or dentist.
- The changes bring these concessions into the Immigration Rules in order to make them clear and transparent to doctors, dentists and their employers.
- They specify that dentists can also benefit from the arrangements by undertaking dental observation posts, which are the equivalent of clinical attachments. Dental observation posts have not previously been specifically mentioned.

- We have consulted the Department of Health and key medical and dental organisations about these changes. They supported the added clarity of having these categories in the Immigration Rules.

Switching (business and related categories)

- The current Immigration Rules require that anyone applying for leave to remain as a “Person Intending to Establish Themselves in Business”, an “Investor” or a “Retired Person of Independent Means” has to come to the UK in that category. However, casework guidance allows discretion for this to be waived in certain cases. We have therefore made changes to the Rules to specify who will be able to switch into leave under one of these categories, so that the provisions are clear and transparent. They also restrict switching to those in certain specified categories to re-enforce the separation between temporary and permanent migration categories.
- The changes to those who can switch into leave as a “Person Intending to Establish Themselves in Business” in the UK resemble the provisions for those who are able to switch into work permit employment. If they meet the requirements of the Rules, the following will be able to switch:
 - Work permit holders;
 - Highly Skilled Migrant Programme participants;
 - Science and Engineering Graduates Scheme participants;
 - Innovators;
 - Students who have successfully graduated in the UK; and
 - Working Holidaymakers who have spent more than 12 months in the UK.
- The categories of “Investors” and “Retired Persons of Independent Means” are not primarily employment categories. The changes enable those who are currently in the UK in an employment or business category that directly benefits the UK to switch if they meet the relevant requirements. This applies to those in the UK as work permit holders, Highly Skilled Migrant Programme participants, “Persons Intending to Establish Themselves in Business” and “Innovators”.
- We have also enabled “Persons Intending to Establish Themselves in Business” to switch into leave as an “Innovator” for consistency as both categories allow overseas nationals to set up a business in the UK.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this Statement of Changes in Immigration Rules as it has no impact on business, charities or voluntary bodies.

9. Contact

- 9.1 The following leads can answer queries regarding this Statement of Changes in Immigration Rules:
- ‘Marriage tourists’ visa policy : Brenda Hawkyard, Home Office, tel: 020-8760 8368 or e-mail: brenda.hawkyard@homeoffice.gsi.gov.uk
 - Dependants of serving members of the armed forces policy : Lynn Wallis, Home Office, tel: 020-8603 5465 or e-mail: lynn.wallis@homeoffice.gsi.gov.uk
 - Public funds policy : Mark Voce, Home Office, tel: 020-8760 8062 or e-mail: mark.voce3@homeoffice.gsi.gov.uk
 - Doctors and dentists taking the PLAB Test and clinical attachments policy : Graeme Hopkins, Home Office tel: 020-8760 8783 or e-mail: graeme.hopkins@homeoffice.gsi.gov.uk
 - Switching (business and related categories) policy : Graeme Hopkins, Home Office tel: 020-8760 8783 or e-mail: graeme.hopkins@homeoffice.gsi.gov.uk
 - Immigration Rules general : David Agnew, Home Office, tel: 020-8760 8572 or e-mail: david.agnew@homeoffice.gsi.gov.uk

