

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Presented to Parliament on 7 November 2011 pursuant to section 3(2) of
the Immigration Act 1971*

*Ordered by The House of Commons to be printed
7 November 2011*

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STATEMENT OF CHANGES IN IMMIGRATION RULES

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

The changes set out in this Statement shall take effect on 28 November 2011.

Review

Before the end of each review period, the Secretary of State must:

- (a) carry out a review of the changes made by HC 1622 to the extent that they are still in force,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

The report must in particular:

- (a) set out the objectives intended to be achieved by any regulatory system established by HC 1622,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

“Review period” means:

- (a) the period of five years beginning on 28 November 2011, and
- (b) subject to the paragraph below, each successive period of five years.

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

Changes

Marriage

1. In paragraph 277, delete “21” and substitute “18”.
2. In paragraph 277, delete “(or aged under 18 if either party is a serving member of HM Forces)”.
3. In paragraph 289AA, delete “21” and substitute “18”.
4. In paragraph 289AA, delete “(or aged under 18 if either party is a serving member of HM Forces)”.
5. In paragraph 295AA, delete “21” and substitute “18”.
6. In paragraph 295AA, delete “(or aged under 18 if either party is a serving member of HM Forces)”.



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 7 NOVEMBER 2011 (HC 1622)**

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 reduce the minimum age at which a person may be granted entry clearance or leave as the spouse, civil partner, fiancé(e), proposed civil partner, unmarried or same-sex partner of a sponsor, and the minimum age at which a person may sponsor such an application, from 21 to 18 years. It will also delete references to a minimum age of 18 for entry clearance or leave as the spouse, civil partner, fiancé(e), proposed civil partner, unmarried or same-sex partner of a HM Forces sponsor, and the minimum age at which a member of HM Forces may sponsor such an application.

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

3.1 None.

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.

4.2 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.

4.3 The changes in this statement shall take effect on 28 November 2011.

4.4 These changes are being made to give effect to the Supreme Court judgment in R (on the application of Quila and another) (FC) v Secretary of State for the Home Department and R (on the application of Bibi and another) (FC) v Secretary of State for the Home Department [2011] UKSC 45 given on 12 October 2011.

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

Marriage

7.1 Following public consultation (*Marriage to Partners from Overseas: A Consultation Paper* – December 2007), the minimum age at which someone may sponsor, or be sponsored for, an application for entry clearance, leave to enter, leave to remain or variation of leave as a spouse, fiancé(e), civil partner, proposed civil partner, unmarried or same-sex partner was raised from 18 to 21 on 27 November 2008. The policy objective was to tackle the problem of forced marriage in particular in the light of evidence from the joint Foreign Office and Home Office Forced Marriage Unit that the highest number of forced marriage cases dealt with by that Unit involved those in the age group 17 to 20.

7.2 The policy attracted public and media interest, including concerns that it might impact disproportionately on genuine marriages (i.e. those where there is no suggestion of coercion).

7.3 A judicial review led to a hearing before the Supreme Court in *R (on the application of Quila and another) (FC) v Secretary of State for the Home Department* and *R (on the application of Bibi and another) (FC) v Secretary of State for the Home Department*. On 12 October 2011, the Court found that whilst they recognised that the Secretary of State was pursuing a legitimate and rational aim, the rule (increasing the minimum marriage visa age to 21) disproportionately interfered with the Article 8 rights of those who were in genuine marriages. Accordingly, the Secretary of State has decided to revert to a minimum age of 18.

7.4 In order to ensure consistency in the way that spouses, fiancé(e)s, civil partners, proposed civil partners, unmarried and same-sex partners are treated under the Immigration Rules, the age change from 21 to 18 has been applied to all those groups.

7.5 In April 2010, the Immigration Rules were amended to introduce a change to the marriage visa age policy for British and foreign national serving members of HM forces and their spouses, civil partners, unmarried or same sex partners, fiancé(e)s or proposed civil partners so that a minimum age requirement of 18 would apply to both parties. This change allowed a British or foreign national serving member of HM forces to sponsor a visa for their foreign national partner, at a lower age than civilian British citizens and permanent UK residents. This reflected the unique circumstances in which the armed forces operate.

7.6 This specific reference to a minimum age of 18 for HM forces and their spouses and partners is being deleted from the immigration rules. It is no longer required as a minimum age of 18 will apply to all civil partners, proposed civil partners, unmarried and same-sex partners as well as to spouses and fiancé(e)s whether the sponsor or person being sponsored is a civilian or members of HM forces.

8. Consultation

8.1 As the change to the Rules relating to marriage follows a Supreme Court judgment and is necessary to ensure compatibility of the Immigration Rules with the European Convention on Human Rights, no formal consultation has been carried out.

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 An impact assessment for the increase in the marriage visa age from 18 to 21, was published in November 2008 and is available on the National Archives website at <http://webarchive.nationalarchives.gov.uk/20100303154234/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/marriagetopartnersfromoverseas/www.ukba.homeoffice.gov.uk>. The impact of retaining a marriage visa age of 18 was considered at that time. A further impact assessment has not been carried out for reverting to a minimum age of 18 because the rules are being amended to ensure compatibility with the European Convention on Human Rights. There is no impact on the armed forces as a minimum age of 18 will continue to apply to them and their spouses and partners.

11. Regulating small business

11. These changes have no impact on small business.

12. Monitoring and review

12.1 The review clauses at the beginning of this Statement require the Secretary of State to review the operation and effect of the changes in this Statement and publish a report within five years after these changes come into force and within every five years after that. Following each review the Secretary of State will decide whether the changes should remain as they are, or be revoked or be amended. A further Statement of Changes would be needed to revoke the changes or to amend them.

13. Contact

13.1 Queries specifically regarding this Statement of Changes only should be addressed to Helen Sayeed at the Home Office on 0208 760 2533 or e-mail: Helen.Sayeed4@homeoffice.gsi.gov.uk

13.2 Other queries not directly related to this Statement of Changes, such as queries relating to individual cases, should be addressed as per the Contact page on the UK Border Agency website at: www.ukba.homeoffice.gov.uk/contact/.