

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 15 June 2005 under section 3(2) of
the Immigration Act 1971*

*Ordered by The House of Commons to be printed
15 June 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), 7 February 2005 (HC 302), 22 February 2005 (HC 346) and 24 March 2005 (HC 486).

These changes take effect on 22 June 2005, except for the changes in paragraphs 1, 2 & 12 which shall take effect on 6 July 2005.

1. Substitute paragraph 95(x) with:
“95(x) holds a valid United Kingdom entry clearance, granted for a limited period not exceeding 2 years, for entry in this capacity.”.
2. Substitute paragraph 96 with:
“Leave to enter as a working holidaymaker
96. A person seeking to enter the United Kingdom as a working holidaymaker may be admitted provided he is able to produce on arrival a valid United Kingdom entry clearance granted for a period not exceeding 2 years for entry in this capacity.”.
3. After paragraph 143, insert:
“Requirements for leave to enter the United Kingdom as a Fresh Talent: Working in Scotland scheme participant
143A. The requirements to be met by a person seeking leave to enter as a Fresh Talent: Working in Scotland scheme participant are that the applicant:
 - (i) has been awarded an HND, or a UK recognised undergraduate degree, Master’s degree or PhD by either:
 - (a) a Scottish publicly funded institution of further or higher education; or
 - (b) a Scottish bona fide private education institution which maintains satisfactory records of enrolment and attendance; and
 - (ii) has lived in Scotland for an appropriate period of time whilst studying for the HND, undergraduate degree, Master’s degree or PhD referred to in (i) above; and
 - (iii) intends to seek and take employment in Scotland during the period of leave granted under this paragraph; and
 - (iv) is able to maintain and accommodate himself and any dependants adequately without recourse to public funds; and
 - (v) has completed the HND, undergraduate degree, Master’s degree or PhD referred to in (i) above in the last 12 months; and
 - (vi) intends to leave the United Kingdom if, on expiry of his leave under this paragraph, he has not been granted leave to remain in the United Kingdom as:
 - (a) a work permit holder in accordance with paragraphs 128 – 135 of these Rules; or
 - (b) under the highly skilled migrant programme in accordance with paragraphs 135A – 135H of these Rules; or
 - (c) a person intending to establish themselves in business in accordance with paragraphs 200 – 210 of these Rules; or
 - (d) an innovator in accordance with paragraphs 210A – 210H of these Rules; and

- (vii) has the written consent of his official sponsor to enter or remain in the United Kingdom as a Fresh Talent: Working in Scotland scheme participant, if the studies which led to his qualification under (i) above (or any studies he has subsequently undertaken) were sponsored by a government or international scholarship agency; and
- (viii) if he has previously been granted leave as either:
 - (a) a Fresh Talent: Working in Scotland scheme participant in accordance with this paragraph; and/or
 - (b) a participant in the Science and Engineering Graduates Scheme in accordance with paragraphs 135O – 135T of these Rules
 is not seeking leave to enter under this paragraph which, when amalgamated with any previous periods of leave granted in either of these two categories, would total more than 24 months; and
- (ix) holds a valid entry clearance for entry in this capacity except where he is a British National (Overseas), a British overseas territories citizen, a British Overseas citizen, a British protected person or a person who under the British Nationality Act 1981 is a British subject.

Leave to enter as a Fresh Talent: Working in Scotland scheme participant

143B. A person seeking leave to enter the United Kingdom as a Fresh Talent: Working in Scotland scheme participant may be admitted for a period not exceeding 24 months provided the Immigration Officer is satisfied that each of the requirements of paragraph 143A is met.

Refusal of leave to enter as a Fresh Talent: Working in Scotland scheme participant

143C. Leave to enter as a Fresh Talent: Working in Scotland scheme participant is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 143A is met.

Requirements for an extension of stay as a Fresh Talent: Working in Scotland scheme participant

143D. The requirements to be met by a person seeking an extension of stay as a Fresh Talent: Working in Scotland scheme participant are that the applicant:

- (i) meets the requirements of paragraph 143A (i) to (vii); and
- (ii) has leave to enter or remain in the United Kingdom as either:
 - (a) a student in accordance with paragraphs 57 – 69L of these Rules; or
 - (b) a participant in the Science and Engineering Graduates Scheme in accordance with paragraphs 135O – 135T of these Rules; or
 - (c) a Fresh Talent: Working in Scotland scheme participant in accordance with paragraphs 143A – 143F of these Rules; and
- (iii) if he has previously been granted leave as either:
 - (a) a Fresh Talent: Working in Scotland scheme participant in accordance with paragraphs 143A – 143F of these Rules; and/or
 - (b) a Science and Engineering Graduates Scheme participant in accordance with paragraphs 135O – 135T of these Rules

is not seeking leave to remain under this paragraph which, when amalgamated with any previous periods of leave granted in either of these two categories, would total more than 24 months.

Extension of stay as a Fresh Talent: Working in Scotland scheme participant

143E. An extension of stay as a Fresh Talent: Working in Scotland scheme participant may be granted for a period not exceeding 24 months if the Secretary of State is satisfied that each of the requirements of paragraph 143D is met.

Refusal of an extension of stay as a Fresh Talent: Working in Scotland scheme participant

143F. An extension of stay as a Fresh Talent: Working in Scotland scheme participant is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 143D is met.”.

4. After paragraph 131G, insert:

“131H. 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) in the case of a person who has leave to enter or remain as a Fresh Talent: Working in Scotland scheme participant are that the applicant:

- (i) entered the United Kingdom or was given leave to remain as a Fresh Talent: Working in Scotland scheme participant in accordance with paragraphs 143A to 143F of these Rules; and
 - (ii) holds a valid Home Office immigration employment document for employment in Scotland; and
 - (iii) has the written consent of his official sponsor to such employment if the studies which led to him being granted leave under the Fresh Talent: Working in Scotland scheme in accordance with paragraphs 143A to 143F of these Rules, or any studies he has subsequently undertaken, were sponsored by a government or international scholarship agency; and
 - (iv) meets each of the requirements of paragraph 128 (ii) to (vi).”
5. For paragraph 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, 131G or 131H 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, 131G or 131H is met (unless the applicant is otherwise eligible for an extension of stay for employment under these Rules).”.
6. After paragraph 135DG, insert:
- “135DH. The requirements for an extension of stay as a highly skilled migrant in the case of a person who has leave to enter or remain as a Fresh Talent: Working in Scotland scheme participant are that the applicant:
- (i) entered the United Kingdom or was given leave to remain as a Fresh Talent: Working in Scotland scheme participant in accordance with paragraphs 143A to 143F of these Rules; and
 - (ii) has the written consent of his official sponsor to such employment if the studies which led to him being granted leave under the Fresh Talent: Working in Scotland scheme in accordance with paragraphs 143A to 143F of these Rules, or any studies he has subsequently undertaken, were sponsored by a government or international scholarship agency; and
 - (iii) meets the requirements of paragraph 135A(i)-(iii).”.
7. For paragraph 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, 135DG or 135DH 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, 135DG or 135DH is met.”.
8. After paragraph 206F, insert:
- “206G. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom in the case of a person who has leave to enter or remain as a Fresh Talent: Working in Scotland scheme participant are that the applicant:
- (i) entered the United Kingdom or was given leave to remain as a Fresh Talent: Working in Scotland scheme participant in accordance with paragraphs 143A to 143F of these Rules; and
 - (ii) has the written consent of his official sponsor to such employment if the studies which led to him being granted leave under the Fresh Talent: Working in Scotland scheme in accordance with paragraphs 143A to 143F of these Rules, or any studies he has subsequently undertaken, were sponsored by a government or international scholarship agency; and
 - (iii) meets each of the requirements of paragraph 201 (i) - (x).”.
9. For paragraph 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, 206F or 206G 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, 206F or 206G is met.”
10. After paragraph 210DG, insert:
- “210DH. The requirements to be met for an extension of stay as an innovator, in the case of a person who has leave to enter or remain as a Fresh Talent: Working in Scotland scheme participant are that the applicant:
- (i) entered the United Kingdom or was given leave to remain as a Fresh Talent: Working in Scotland scheme participant in accordance with paragraphs 143A to 143F of these Rules; and
- (ii) has the written consent of his official sponsor to such employment if the studies which led to him being granted leave under the Fresh Talent: Working in Scotland scheme in accordance with paragraphs 143A to 143F of these Rules, or any studies he has subsequently undertaken, were sponsored by a government or international scholarship agency; and
- (iii) meets each of the requirements of paragraph 210 (i) - (iv).”
11. For paragraph 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, 210DG or 210DH 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, 210DG or 210DH is met.”
12. For paragraph 322(9), substitute:
- “322(9) failure by an applicant to produce within a reasonable time information, documents or other evidence required by the Secretary of State to establish his claim to remain under these Rules;”

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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 15 JUNE 2005 (HC 104)**

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 three changes:

- A new provision for a ‘Fresh Talent: Working in Scotland’ scheme. This is a scheme to enable non-EEA nationals who have been awarded an HND, an undergraduate, or Master’s degree, or a PhD, by a relevant Scottish institution, to apply to stay in Scotland for up to two years after completing their studies to seek and take work.
- A minor change to reinstate a reference to the Working Holidaymaker Rules about the maximum period of leave which can be granted to working holidaymakers in their entry clearances.
- A small amendment to the Rules to clarify that an application for variation of leave to enter or remain in the UK can be refused if the applicant fails to produce information required by the Secretary of State.

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 This Statement of Changes in Immigration Rules will be laid on 15 June. The changes to the Fresh Talent: Working in Scotland scheme will take effect on 22 June, as this is the date planned to launch the scheme. The other two changes will take effect on 6 July.

4.3 This Statement of Changes in Immigration Rules will be 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 three changes contained in this Statement of Changes in Immigration Rules follows:

Fresh Talent: Working in Scotland scheme

- The Fresh Talent: Working in Scotland scheme is a new immigration category which supports the Scottish Executive’s Fresh Talent Initiative. The Fresh Talent Initiative aims to counter Scotland’s falling population by encouraging people to consider living and working in Scotland.

- The Fresh Talent: Working in Scotland scheme will make it easier for non-EEA nationals who have studied in Scotland to stay on after their studies and to switch into a relevant immigration category to start working or continue working in Scotland. Those who have been awarded an HND, or a UK recognised undergraduate degree, Master's degree, or PhD, by a relevant Scottish institution, will be eligible to apply for leave under the scheme up to 12 months after they complete their qualification. They will have to have shown a commitment to Scotland both by choosing to study there and by living in Scotland for an appropriate period of time during their studies.
- Participants of the Fresh Talent: Working in Scotland scheme will be given up to two years of leave during which they can take any type of employment (paid or unpaid), self employment or business without having to separately apply for and obtain a work permit or other permission from the Home Office. We are also amending the Immigration Rules to enable them to apply to switch into leave as a work permit holder, highly skilled migrant, person intending to establish themselves in business, or innovator. This will enable participants to seek to continue to work beyond their leave under the Fresh Talent: Working in Scotland scheme.
- We have been working closely with the Scottish Executive in developing the Fresh Talent: Working in Scotland scheme. The Scottish Executive will be monitoring the scheme, and will be contacting participants at regular intervals to assess whether the scheme is helping them to pursue their careers in Scotland. The Scottish Executive will also be publishing reports on the monitoring of the scheme on their website.

Reinstating reference to the Working Holidaymaker (WHM) Rules about the maximum period of leave which can be granted to working holidaymakers in their entry clearances

- Prior to an earlier amendment this year, the WHM Rules referred to two years' leave being granted on arrival in the UK, whereas the expiry date of leave was two years from the date the entry clearance became valid for use, not from the date of arrival in the UK. There was also provision for the grant of leave to remain, even though the maximum two year period of leave in the category was already covered by the validity of the entry clearance. The terms of the provisions were therefore outdated and misleading.
- In making these amendments, however, this left the Rules without any reference to the maximum two-year leave period permitted in the category. Furthermore, following the publication of the amended Rules, queries arose about the basis for limiting the validity of the entry clearance to two years, in light of the absence from the Rules of any reference to a two-year maximum stay in the category. Legal advice was therefore obtained, which recommended that the Rules should be amended to include a specific reference to the maximum period of leave permitted under the WHM Rules. The change being laid in this 'Statement of Changes in Immigration Rules' simply restores the necessary reference.

Clarifying the Rules to ensure that an application for variation of leave to enter or remain in the UK can be refused if the applicant fails to produce information required by the Secretary of State

- Paragraph 322(9) of the Rules states that an application to vary leave to enter or remain in the United Kingdom should normally be refused if an applicant fails to produce, within a reasonable time, documents or other evidence required by the Secretary of State to establish their claim to remain under the Rules.
- Doubt has been raised about the scope of this Rule and whether or not "documents or other evidence" includes "information" requested by the Secretary of State in order to establish an applicant's claim to remain in the UK. We wish to clarify, and put beyond doubt, that an application should normally be refused under paragraph 322(9) where information, that the Secretary of States requires in order to make a decision on an application under the Rules, is not produced by the applicant as requested. This could arise where the applicant has failed to provide information requested on the application form, or where the applicant has failed to provide information requested in addition to that already provided in the application form.

- To achieve this clarity the word “information” needs to be inserted into paragraph 322(9) so that it states:

*“failure by an applicant to produce within a reasonable time **information**, documents or other evidence required by the Secretary of State to establish his claim to remain under these Rules”;*

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 Queries should be addressed to the Home Office’s Immigration and Nationality Enquiry Bureau on telephone: 0870-6067766 or by e-mail: indpublicenquiries@ind.homeoffice.gsi.gov.uk