



STATEMENT OF CHANGES IN IMMIGRATION RULES

*Presented to Parliament by
the Secretary of State for the Home Department
by Command of Her Majesty
September 2009*

(This document is accompanied by an Explanatory Memorandum)

Cm 7701

£5.50

© Crown Copyright 2009

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.

For any other use of this material please write to Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU or e-mail: licensing@opsi.gov.uk

ISBN: 9780101770125

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

ID 6028213 01/09

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 (Cmnd 2663), 26 October 1995 (HC 797), 4 January 1996 (Cmnd 3073), 7 March 1996 (HC 274), 2 April 1996 (HC329), 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), 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 (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), 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) and 29 April 2009 (HC413).

The changes in this Statement shall take effect on 1 October 2009.

1. In paragraph 6,
 - (a) in the definition of “Certificate of Sponsorship”, insert “as a Tier 2 migrant or a Tier 5 migrant” after “leave to enter or remain”.
 - (b) after the definition of “Certificate of Sponsorship”, insert:
“Under Part 6A of these Rules, “Confirmation of Acceptance for Studies” means an authorisation issued by a Sponsor to an applicant for entry clearance, leave to enter or remain as a Tier 4 Migrant in accordance with these Rules.”
 - (c) in the definition of “Certificate of Sponsorship Checking Service”, delete “or course of study”.
 - (d) after the definition of “Certificate of Sponsorship Checking Service”, insert:
“Under Part 6A of these Rules, “Confirmation of Acceptance for Studies Checking Service” means a computerised interface with the Points Based System computer database which allows a United Kingdom Border Agency caseworker or entry clearance officer assessing a migrant’s application for entry clearance, leave to enter or leave to remain as a Tier 4 migrant under these Rules to access and review details of the migrant’s Confirmation of Acceptance for Studies, including details of the migrant’s Sponsor, together with details of the course of study and other details associated with the circumstances in which the Confirmation of Acceptance for Studies was issued.”
 - (e) in the definition of “Sponsor” insert “or Confirmation of Acceptance for Studies Checking Service” after “Certificate of Sponsorship Checking Service”.
2. In paragraph 135G(i), insert “(or four years where the applicant is applying under the terms of the HSMP ILR Judicial Review Policy Document)” after “5 years”.
3. In paragraph 135G(ii), insert “(or four years where the applicant is applying under the terms of the HSMP ILR Judicial Review Policy Document)” after “five years”.
4. In paragraph 135G(iv), insert “or the applicant is applying under the terms of the HSMP ILR Judicial Review Policy Document” after “application”.
5. Delete heading after paragraph 143 and paragraphs 144 to 151.
6. Insert after paragraph 143:
“Representatives of overseas businesses which have no branch, subsidiary or other representative in the United Kingdom
Requirements for leave to enter as a representative of an overseas business
144. The requirements to be met by a person seeking leave to enter the United Kingdom as a representative of an overseas business are that he:

- (i) has been recruited and taken on as an employee outside the United Kingdom of a business which has its headquarters and principal place of business outside the United Kingdom and which has no branch, subsidiary or other representative in the United Kingdom; and
- (ii) is seeking entry to the United Kingdom:
 - (a) as a senior employee with full authority to take operational decisions on behalf of the overseas business for the purpose of representing it in the United Kingdom by establishing and operating a registered branch or wholly owned subsidiary of that overseas business, the branch or subsidiary of which will be concerned with same type of business activity as the overseas business; or
 - (b) as an employee of an overseas newspaper, news agency or broadcasting organisation being posted on a long-term assignment as a representative of their overseas employer.
 - (iii) where entry is sought under (ii)(a), the person:
 - (a) will be the sole representative of the employer present in the United Kingdom under the terms of this paragraph;
 - (b) intends to be employed full time as a representative of that overseas business; and
 - (c) is not a majority shareholder in that overseas business.
 - (iv) where entry is sought under (ii)(b), the person intends to work full-time as a representative of their overseas employer.
 - (v) does not intend to take employment except within the terms of this paragraph; and
 - (vi) has competence in the English language to the required standard on the basis that
 - (a) paragraphs 2(b) or (c) of Appendix B of these Rules applies to the person, or
 - (b) the person is competent in the English language to a basic user standard, including the ability to understand and use familiar everyday expressions, to introduce himself and others and to ask and answer questions about basic personal details, and
- (1) provides an original English language test certificate from an English language test provider approved by the Secretary of State for these purposes, which clearly shows the applicant's name, the qualification obtained (which must meet or exceed the level that the Secretary of State specifies in the guidance as being required to meet the standard described above) and the date of the award, or
- (2) has obtained an academic qualification (not a professional or vocational qualification) which is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree in the UK, and provides the specified evidence to show he has the qualification and:
 - (i) UK NARIC has confirmed that the degree was taught or researched in English to level C1 of the Council of Europe's Common European Framework for Language Learning or above, or
 - (ii) the applicant provides the specified evidence to show that the qualification was taught or researched in English; and
 - (vii) can maintain and accommodate himself and any dependants adequately without recourse to public funds; and
 - (viii) holds a valid United Kingdom entry clearance for entry in this capacity.

Leave to enter as a representative of an overseas business

145. A person seeking leave to enter the United Kingdom as a representative of an overseas business may be admitted for a period not exceeding 3 years provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity, and his leave may be subject to the following conditions:

- (i) no recourse to public funds,
- (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
- (iii) no employment other than working for the business which the applicant has been admitted to represent.

Refusal of leave to enter as a representative of an overseas business

146. Leave to enter as a representative of an overseas business is to be refused if a valid United Kingdom entry clearance for entry in this capacity is not produced to the Immigration Officer on arrival.

Requirements for an extension of stay as a representative of an overseas business

147. The requirements for an extension of stay as a representative of an overseas business are that the applicant:

- (i) entered the United Kingdom with a valid United Kingdom entry clearance as:
 - (a) a sole representative of an overseas business, including entry under the rules providing for the admission of sole representatives in force prior to 1 October 2009; or

- (b) a representative of an overseas newspaper, news agency or broadcasting organisation;
 - (ii) the person was admitted in accordance with paragraph 144(ii)(a) and can show that:
- (a) the overseas business still has its headquarters and principal place of business outside the United Kingdom; and
- (b) he is employed full time as a representative of that overseas business and has established and is in charge of its registered branch or wholly owned subsidiary; and
- (c) he is still required for the employment in question, as certified by his employer;
 - (iii) the person was admitted in accordance with paragraph 144(ii)(b) and can show that:
- (a) he is still engaged in the employment for which the entry clearance was granted; and
- (b) he is still required for the employment in question, as certified by his employer.
 - (iv) does not intend to take employment except within the terms of this paragraph; and
 - (v) can maintain and accommodate himself and any dependants adequately without recourse to public funds.

Extension of stay as a representative of an overseas business

148. An extension of stay as a representative of an overseas business may be granted provided the Secretary of State is satisfied that each of the requirements of paragraph 147 is met. The extension of stay will be granted for:

- (i) a period not exceeding 2 years, unless paragraph (ii) applies.
- (ii) a period not exceeding 3 years, if the applicant was last granted leave prior to 1 October 2009, and will be subject to the following conditions:
 - (i) no recourse to public funds,
 - (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
 - (iii) no employment other than working for the business which the applicant has been admitted to represent.

Refusal of extension of stay as a representative of an overseas business

149. An extension of stay as a representative of an overseas business is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 147 is met.

Indefinite leave to remain for a representative of an overseas business

150. Indefinite leave to remain may be granted, on application, to a representative of an overseas business provided:

- (i) he has spent a continuous period of 5 years in the United Kingdom in this capacity; and
- (ii) he has met the requirements of paragraph 147 throughout the 5 year period; and
- (iii) he is still required for the employment in question, as certified by his employer; and
- (iv) he has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, unless he is under the age of 18 or aged 65 or over at the time he makes his application.

Refusal of indefinite leave to remain for a sole representative of an overseas business

151. Indefinite leave to remain in the United Kingdom for a representative of an overseas business is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 150 is met.”

7. In paragraph 245D(c), delete (iii) and substitute:
 “(iii) no Employment as a Doctor in Training, unless the applicant is applying for leave to remain and has, or has last been granted, entry clearance, leave to enter or leave to remain that was not subject to a condition restricting their employment, whether that is employment as a Doctor in Training or otherwise, and has been employed during that leave on an NHS Foundation Programme or as a Doctor in Training.”
8. In paragraph 245E(b), insert after “(vii) as a Tier 2 Migrant”:
 “; or

Where the application is being made under terms of the HSMP ILR Judicial review Policy Document, a continuous period of 4 years lawfully in the UK, of which the most recent must have been spent with leave as a Tier 1 (General) Migrant, in any combination of the following categories:

- (i) as a Tier 1 (General) Migrant;
- (ii) as a Highly Skilled Migrant;
- (iii) as a Work permit Holder; or
- (iv) as an Innovator.”

9. In paragraph 245E(d), insert “or the applicant is applying under the terms of the HSMP ILR Judicial Review Policy Document” after “application is made”.
10. In paragraph 245T(b), delete (iii) and substitute:
“(iii) no Employment as a Doctor in Training, unless the applicant has, or has last been granted, entry clearance, leave to enter or leave to remain that was not subject to a condition restricting their employment, whether that is employment as a Doctor in Training or otherwise, and has been employed during that leave on an NHS Foundation Programme or as a Doctor in Training.”
11. In paragraph 245ZA(b), delete (iii) and substitute:
“(iii) no Employment as a Doctor in Training, unless the applicant has, or has last been granted, entry clearance, leave to enter or leave to remain that was not subject to a condition restricting their employment, whether that is employment as a Doctor in Training or otherwise, and has been employed during that leave on an NHS Foundation Programme or as a Doctor in Training.”
12. In paragraph 245ZD(i), insert “unless applying as a Tier 2 (Intra-Company Transfer) Migrant” after “10% of its shares”.
13. In paragraph 245ZF(b)(i)(1), delete “or”
14. In paragraph 245ZF(b)(i)(2), delete “and” and substitute “or”
15. In paragraph 245ZF(b)(i), insert after (2):
“(3) as a Representative of an Overseas Business, and”
16. In paragraph 245ZF(c), insert “(xiv) as a Representative of an Overseas Business” after “(xiii) as a Qualifying Work Permit Holder”.
17. In paragraph 245ZF(c), delete “(xiv)” and substitute “(xv)”.
18. In paragraph 245ZF(c), delete “(xv)” and substitute “(xvi)”.
19. In paragraph 245ZF(c), delete “(xvi)” and substitute “(xvii)”.
20. In paragraph 245ZF(c), delete “(xvii)” and substitute “(xviii)”.
21. In paragraph 245ZF(c), delete “(xviii)” and substitute “(xix)”.
22. In paragraph 245ZF(c), delete “(xix)” and substitute “(xx)”.
23. In paragraph 245ZF(c), delete “(xx)” and substitute “(xxi)”
24. In paragraph 245ZF(k), insert “unless applying as a Tier 2 (Intra-Company Transfer) Migrant” after “10% of its shares”.
25. Paragraph 245ZG(b), delete “has not already spent a period greater than 5 years in the UK since the applicant”.
26. Paragraph 245ZG, insert new paragraph (e), “In addition to the periods in paragraphs (a) to (d), leave to remain will be granted for the period between the date that the application is decided and the date that the Certificate of Sponsorship Checking service records as the start date of employment in the UK, provided this is not a negative value.”
27. In paragraph 245ZG, delete “(e)” and substitute “(f)”.
28. In paragraph 245ZG, delete “(f)” and substitute “(g)”.
29. In paragraph 245ZH(b), insert “(iv) as a Representative of an Overseas Business” after “(iii) as a Qualifying Work Permit Holder”.
30. In paragraph 245ZH(b), delete “(iv)” and substitute “(v)”.
31. In paragraph 245ZH(b), delete “(v)” and substitute “(vi)”.
32. In paragraph 245ZH(b), delete “(vi)” and substitute “(vii)”.
33. In paragraph 245ZH(c), delete “Subject to paragraph (d), the” and substitute “The”.
34. In paragraph 245ZH, delete paragraph (d).
35. In paragraph 245ZV(b), delete “paragraphs 113 to 119” and substitute “paragraphs 113 to 120”.
36. In paragraph 245ZW(c)(iii)(3), insert “except where it is a United Kingdom statutory requirement that the placement should exceed half the total length of the course” after “undertaken in the UK”.
37. In paragraph 245ZW(c)(iii)(5), insert “; and” after “Foundation Programme”.
38. In paragraph 245ZW(c), final paragraph, insert “permanent” before “full time vacancy” and insert “or as a sabbatical officer” after second reference to Foundation Programme.
39. Paragraph 245ZW(c), insert at end:

- “(iv) no study except:
- (1) study at the institution that the Confirmation of Acceptance for Studies Checking Service records as the migrant’s Sponsor, or where the migrant was awarded points for a visa letter, study at the institution which issued that visa letter,
 - (2) supplementary study.”
40. In paragraph 245ZY(c)(iii)(3), insert “except where it is a United Kingdom statutory requirement that the placement should exceed half the total length of the course” after “undertaken in the UK”.
41. In paragraph 245ZY(c), final paragraph, insert “permanent” before “full time vacancy” and insert “or as a sabbatical officer” after second reference to Foundation Programme.
42. In paragraph 245ZY(c), insert at end:
- “(iv) no study except:
- (1) study at the institution that the Confirmation of Acceptance for Studies Checking Service records as the migrant’s Sponsor, or where the migrant was awarded points for a visa letter, study at the institution which issued that visa letter,
 - (2) supplementary study.”
43. In paragraph 245ZZA(b), delete “paragraphs 120 to 125” and substitute “paragraphs 121 to 126”.
44. In paragraph 245ZZA, insert at end:
- “(i) If the applicant is currently being sponsored by a Government or international scholarship agency, or within the last 12 months has come to the end of such a period of sponsorship, the applicant must provide the written consent of the sponsoring Government or agency to the application and must provide the specified documents to show that this requirement has been met.”
45. In paragraph 245ZZB(c)(iv)(3), insert “except where it is a United Kingdom statutory requirement that the placement should exceed half the total length of the course” after “undertaken in the UK”.
46. In paragraph 245ZZB(c), final paragraph, insert delete “full time vacancy” and substitute “permanent full time vacancy other than a vacancy as a sabbatical officer”.
47. In paragraph 245ZZB(c), insert at end:
- “(v) no study except:
- (1) study at the institution that the Confirmation of Acceptance for Studies Checking Service records as the migrant’s Sponsor, or where the migrant was awarded points for a visa letter, study at the institution which issued that visa letter,
 - (2) supplementary study.”
48. In paragraph 245ZZC, insert at end:
- “(k) If the applicant is currently being sponsored by a Government or international scholarship agency, or within the last 12 months has come to the end of such a period of sponsorship, the applicant must provide the written consent of the sponsoring Government or agency to the application and must provide the specified documents to show that this requirement has been met.”
49. In paragraph 245ZZD(c)(iv)(3), insert “except where it is a United Kingdom statutory requirement that the placement should exceed half the total length of the course” after “undertaken in the UK”.
50. In paragraph 245ZZD(c), final paragraph, delete “full time vacancy” and substitute “permanent full time vacancy other than a vacancy as a sabbatical officer”.
51. In paragraph 245ZZD(c), insert at end:
- “(v) no study except:
- (1) study at the institution that the Confirmation of Acceptance for Studies Checking Service records as the migrant’s Sponsor, or where the migrant was awarded points for a visa letter, study at the institution which issued that visa letter,
 - (2) supplementary study.”
52. In paragraph 319D, delete (iii) and substitute:
- “(iii) no Employment as a Doctor in Training, unless the applicant is applying for leave to remain and has, or has last been granted, entry clearance, leave to enter or leave to remain that was not subject to a condition restricting their employment, whether that is employment as a Doctor in Training or otherwise, and has been employed during that leave on an NHS Foundation Programme or as a Doctor in Training.”
53. In paragraph 323A, insert “, a Tier 4 Migrant” after “a Tier 2 Migrant”.
54. In Appendix A, delete paragraph 7A and substitute, “Applicants will only be awarded points for a Bachelor’s degree if:

- (a) they have, or have last been granted, leave to enter or remain as a Tier 1 (General) Migrant, Highly Skilled Migrant, Writer, Composer or Artist or a Self-Employed Lawyer Person;
 - (b) that leave was granted before 31 March 2009; and
 - (c) they are applying to extend that leave.”
55. In Appendix A, delete paragraph 8A and substitute, “Applicants will only be awarded points for previous earnings of less than £20,000 if:
- (a) they have, or have last been granted, leave to enter or remain as a Tier 1 (General) Migrant, Highly Skilled Migrant, Writer, Composer or Artist or a Self-Employed Lawyer Person;
 - (b) that leave was granted before 31 March 2009; and
 - (c) they are applying to extend that leave.”
56. In Appendix A, paragraph 10, delete “except those referenced to at paragraph 11 below)”.
57. In Appendix A, delete paragraph 11.
58. In Appendix A, paragraph 12, delete “paragraphs 10 or 11 above” and substitute “paragraph 10 above”.
59. In Appendix A, delete third row of Table 9 and substitute:

The applicant’s periods of UK study and/or research towards his eligible award were undertaken whilst he had entry clearance, leave to enter or leave to remain in the UK that was not subject to a restriction preventing him from undertaking a course of study and/or research.	20
--	----

60. In Appendix A, table 9, in the first row insert “or Professional Graduate Diploma of Education” after “in education”.
61. In Appendix A, paragraph 72, delete “The applicant must also...any combination of (a) and (b) above”, and substitute:
- “(a) The applicant must also have been working for the Sponsor for the specified period and must provide the specified documents to prove this. During that period the applicant must have been working for the sponsor:
- (i) outside the UK,
 - (ii) in the UK, provided he had leave to work for the Sponsor as a Tier 2 (Intra-Company Transfer) Migrant, as a Qualifying Work permit Holder (provided that the work permit was granted because the holder was the subject of an intra-company transfer), and/or as a Representative of an Overseas Business, or
 - (iii) any combination of (i) and (ii) above.
- (b) The specified period is:
- (i) a continuous period of 6 months immediately prior to the date of application, or
 - (ii) if the applicant has been on maternity, paternity or adoption leave at some point within the 6 months preceding the date of application, an aggregated period of at least 6 months within the 18 month period immediately prior to the date of application.”
62. In Appendix A, paragraph 73(b), delete “, or have last been granted,”.
63. In Appendix A, paragraph 73(c), delete “he must have...to prove this.”, and substitute:
- “he must have been working for the Sponsor for the specified period, and must provide the specified documents to prove this. The specified period must be:
- (i) a continuous period of 6 months immediately prior to the date of application, or
 - (ii) if the applicant has been on maternity, paternity or adoption leave at some point within the 6 months preceding the date of application, an aggregated period of at least 6 months within the 18 month period immediately prior to the date of application,”.
64. In Appendix A, paragraph 109A(a), insert “unless the migrant is applying for leave to enter and has previously been granted leave to enter using the same Certificate of Sponsorship reference number,” after “is made,”.
65. In Appendix A, paragraph 110, delete “, leave to enter”.
66. In Appendix A, delete paragraphs 123 to 135 and insert after paragraph 112:
- “Attributes for Tier 4 (General) Students**
113. An applicant applying for entry clearance or leave to remain as a Tier 4 (General) Student must score 30 points for attributes.
114. Available points are show in Table 16 below.

115. Notes to accompany Table 16 appear below that table.

Table 16

Criterion	Points awarded
For entry clearance applications: visa letter	30
For leave to remain applications: visa letter or Confirmation of Acceptance for Studies	30

Notes

116. A visa letter or Confirmation of Acceptance for Studies will only be considered to be valid if:

- (a) it was issued no more than 6 months before the application is made,
- (b) the application for entry clearance or leave to remain is made no more than 3 months before the start date of the course of study as stated on the visa letter or Confirmation of Acceptance for Studies,
- (c) the Sponsor has not withdrawn the offer since the visa letter or Confirmation of Acceptance for Studies was issued,
- (d) it was issued by an institution with a Tier 4 (General) Student Sponsor Licence,
- (e) the institution must still hold such a licence at the time the application for entry clearance or leave to remain is determined, and
- (f) it contains such information as is specified as mandatory in guidance published by the United Kingdom Border Agency.

117. A Confirmation of Acceptance for Studies reference number will only be considered to be valid if:

- (a) the number supplied links to a Confirmation of Acceptance for Studies Checking Service entry that names the applicant as the migrant and confirms that the Sponsor is sponsoring him in the Tier 4 category indicated by the migrant in his application for leave to remain (that is, as a Tier 4 (General) Student or a Tier 4 (Child) Student), and
- (b) that reference number must not have been cancelled by the Sponsor or by the United Kingdom Border Agency since it was assigned.

118. In order to be awarded points for a visa letter or Confirmation of Acceptance for Studies, the applicant must supply, as evidence of previous qualifications, specified documents that the applicant used to obtain the offer of a place on a course from the Sponsor.

119. If the applicant is re-sitting examinations or repeating a module of a course, the applicant must not previously have re-sat the same examination or repeated the same module more than once. If this requirement is not met then no points will be awarded for the visa letter or Confirmation of Acceptance for Studies.

120. Points will only be awarded for a visa letter or Confirmation of Acceptance for Studies (even if all the above requirements are met) if the course in respect of which it is issued meets each of the following requirements:

- (a) The course must meet the United Kingdom Border Agency's minimum academic requirements, as set out in sponsor guidance published by the United Kingdom Border Agency.
- (b) The course must, except in the case of a pre-session course, lead to an approved qualification as defined in sponsor guidance published by the United Kingdom Border Agency.
- (c) Other than when the applicant is actually on a work placement, all study that forms part of the course must take place on the premises of the sponsoring educational institution.
- (d) The course must meet one of the following requirements:
 - i. be a full time course of study that leads to a UK recognised bachelor degree, postgraduate degree, postgraduate diploma or postgraduate certificate,
 - ii. be an overseas course of degree level study that is recognised as being equivalent to a UK Higher Education course and is being provided by an overseas Higher Education Institution,
 - iii. be a full time course of study involving a minimum of 15 hours per week organised daytime study and, except in the case of a pre-session course, lead to a qualification below bachelor degree level.
- (e) If the course contains a course-related work placement, any period that the applicant will be spending on that placement must not exceed half of the total length of the course spent in the United Kingdom except where it is a United Kingdom statutory requirement that the placement should exceed half the total length of the course.

Attributes for Tier 4 (Child) Students

121. An applicant applying for entry clearance or leave to remain as a Tier 4 (Child) Student must score 30 points for attributes.

122. Available points are show in Table 17 below.

123. Notes to accompany Table 17 appear below that table.

Table 17

Criterion	Points awarded
For entry clearance applications: visa letter	30
For leave to remain applications: visa letter or Confirmation of Acceptance for Studies	30

Notes

124. A visa letter or Confirmation of Acceptance for Studies will be considered to be valid only if:

- (a) where the applicant is under 16, it was issued by an independent, fee paying school,
- (b) it was issued no more than 6 months before the application is made,
- (c) the application for entry clearance or leave to remain is made no more than 3 months before the start date of the course of study as stated on the visa letter or Confirmation of Acceptance for Studies,
- (d) the Sponsor has not withdrawn the offer since the visa letter or Confirmation of Acceptance for Studies was issued,
- (e) it was issued by an institution with a Tier 4 (Child) Student Sponsor Licence,
- (f) the institution must still hold such a licence at the time the application for entry clearance or leave to remain is determined, and
- (g) it contains such information as is specified as mandatory in guidance published by the United Kingdom Border Agency.

125. A Confirmation of Acceptance for Studies reference number will only be considered to be valid if:

- (a) the number supplied links to a Confirmation of Acceptance for Studies Checking Service entry that names the applicant as the migrant and confirms that the Sponsor is sponsoring him in the Tier 4 category indicated by the migrant in his application for leave to remain (that is, as a Tier 4 (General) Student or a Tier 4 (Child) Student), and
- (b) that reference number must not have been cancelled by the Sponsor or by the United Kingdom Border Agency since it was assigned.

126. Points will not be awarded under Table 17 unless the course that the student will be pursuing meets one of the following requirements:

- (a) be taught in accordance with the National Curriculum,
- (b) be taught in accordance with the National Qualification Framework (NQF),
- (c) be accepted as being of equivalent academic status to (a) or (b) above by Ofsted (England), the Education and Training Inspectorate (Northern Ireland), Her Majesty's Inspectorate of Education (Scotland) or Estyn (Wales),
- (d) be provided as required by prevailing independent school education inspection standards."

67. In Appendix B, paragraph 2(d), after "or a Tier 1 (Entrepreneur) Migrant" insert "or Business person,".

68. In Appendix B, paragraph 5(c)(ii), delete ", Missionary or Member of a Religious Order".

69. In Appendix B, paragraph 6(c)(i), delete ", Missionary or Member of a Religious Order".

70. In Appendix C, paragraph 12, insert "or Confirmation of Acceptance for Studies" after "visa letter".



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

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

Tel 028 9023 8451 Fax 028 9023 5401

ISBN 978-0-10-177012-5



9 780101 770125

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 9 SEPTEMBER 2009 (HC 7701)**

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 make provision for the issuance of a Confirmation of Acceptance for Studies by the sponsor of a Tier 4 migrant; implement the ruling of the High Court on the challenge brought by way of judicial review to granting of indefinite leave to remain to individual who entered the UK under the Highly Skilled Migrant Programme; to amend the existing Sole Representatives of Overseas Businesses category; and to make minor amendments and corrections to the Points Based System.

3. Matters of Special interested 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. The Home Secretary makes this Statement of Changes under Section 3(2) of the Immigration Act 1971.

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 These changes to the Immigration Rules will come into force on 1 October 2009.

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:

Highly Skilled Migrant Programme (HSMP)

7.2 The HSMP was the principal predecessor of Tier 1 of the Points-Based System. It was closed to new applicants when Tier 1 was introduced but remains open to the extent that existing participants may apply for extensions.

7.3 Prior to 3 April 2006 the qualifying requirement for indefinite leave to remain ("ILR") under the HSMP was that migrants must show that they had spent four years' continuous residence in the UK. The four-year qualifying period was increased to five years on 3 April 2006.

- 7.4 The HSMP Forum Ltd brought judicial review proceedings on the grounds that those who entered onto the HSMP before the qualifying period for ILR was increased from four to five years, should be eligible for ILR after four years on the scheme and that those who had entered onto the HSMP before the requirement to demonstrate a knowledge of the English language and life in the UK was imposed should not be required to meet those criteria when applying for ILR. This legal challenge was successful and an amended policy was implemented on 20 April 2009. This Statement of Changes incorporates the terms of that amended policy into the Immigration Rules. Those applicants for ILR further whose circumstances are affected by the judgment in *R (on the application of the HSMP Forum (UK) Limited) v Secretary of State for the Home Department* [2009] EWHC 711 (Admin) will qualify for ILR after a continuous period of four years (as opposed to five years) lawfully in the UK, and without demonstrating knowledge of the English language and life in the UK.

Representatives of Overseas Businesses Category

- 7.5 The Sole Representatives of Overseas Businesses category encourages inward investment to the UK by providing a means for overseas companies to transfer an employee to the UK in order to establish a UK branch or wholly-owned subsidiary. This Statement of Changes makes three amendments to the category:

- It introduces a requirement for English language skills at a basic user standard, in line with the language requirement for working in the UK under Tier 2 of the Points Based System. The ability to speak English is essential for a sole representative to make an effective economic contribution and will help to protect this category from abuse;
- It introduces a requirement that the branch of the overseas business which is to be established in the United Kingdom must be concerned with the same type of business activity as the overseas business;
- It brings provisions for representatives of overseas media organisations back inside the Immigration Rules. Provision for these representatives was deleted from the Rules in November 2008 as the expectation was that they would apply under the Tier 2 (Intra-Company Transfer) category. However, this is not possible for those media organisations with no established presence in the UK as they have no one to act as a Tier 2 Sponsor. A concession was introduced earlier this year for these organisations following representations received from Embassies and High Commissions. Because these representatives need not be the sole representative of the media organisation in the UK, the title of the category is being amended to remove the word “sole”. A representative of an organisation that is not a media organisation is still required to be the sole representative of that organisation.

Amendments to Tier 1 of the Points Based System

- 7.6 Tier 1 of the Points Based System caters for highly skilled migrants and was launched in full on 30 June 2008. This Statement of Changes makes the following minor amendments:
- It permits Tier 1 Migrants to work as a doctor on the Foundation Programme or as a doctor in speciality training where their previous leave was not subject to a condition restricting their employment. This consolidates and broadens the previous list of circumstances in which Tier 1 Migrants are permitted to undertake such work. As such it brings an operational instruction agreed with the Department of Health within the Immigration Rules.
 - It corrects a drafting error to clarify that only those migrants who were already in Tier 1 (General) or its predecessor categories before 31 March 2009 will be awarded points under the criteria in place before that date. On 31 March 2009 the bar was raised for Tier 1 (General) so that no points would be awarded for a Bachelors degree or for previous earnings under £20,000.

- It deletes the provision for periods of study leave to be taken into account when calculating the points awarded for previous earnings under the Tier 1 (General) category. The change ensures that decisions will be based on an applicant's recent work experience and earning capability, better demonstrating their ability to make a significant contribution to the UK labour market.
- It broadens the eligibility of the Tier 1 (Post-Study Work) category to include migrants who have studied for an eligible qualification whilst in the UK in any leave category that did not prohibit study. Previously eligibility only extended to those migrants who studied whilst in the UK as a Student, Tier 4 migrant or family member. This change increases the attractiveness of UK higher education to migrants and removes an inconsistency in that it allows free access to the UK labour market to be granted to any migrant who has studied lawfully for an eligible qualification in the UK.
- It corrects an omission by adding a Professional Graduate Diploma in Education to the list of eligible qualifications that may be awarded points under the Tier 1 (Post-Study Work) category, alongside the existing provision for a Postgraduate Certificate in Education.
- It provides for 10 points to be awarded automatically for English language to a Tier 1 (Entrepreneur) Migrant who has, or has last been granted, leave as a Business person. The Business person category was replaced by the Tier 1 (Entrepreneur) category on 30 June 2008. This provision is a transitional arrangement to allow Business persons to extend their stay without needing to demonstrate their English language ability.

Amendments to Tier 2 of the Points Based System

7.7 Tier 2 of the Points Based System caters for skilled migrants with a job offer and was launched on 27 November 2008. This Statement of Changes makes the following minor amendments:

- It removes the restriction against a Tier 2 (Intra-Company Transfer) Migrant owning more than 10% of his/her sponsor's shares. Under the Tier 2 (General) category the restriction ensures that a genuine attempt has been made to test the resident labour market. However, it serves no useful purpose under the Tier 2 (Intra-Company Transfer) category and is a barrier to board members of multinational companies applying to work in the UK.
- It provides for migrants in the new Representatives of Overseas Businesses category to switch into Tier 2, and for time spent in the UK in this category to count towards the qualifying period of six months previous company experience for Tier 2 (intra-company transfer).
- It amends existing provisions for granting leave to remain under which have the effect of treating applicants in Tier 2 predecessor categories more favourably than applicants who entered the UK under Tier 2. The amendment means that both types of applicant may be granted a further two years leave to remain on completing five years in the UK (if they do not apply for indefinite leave to remain).
- It corrects an unintended consequence of the Immigration Rules in which, where an application is decided early, the grant of leave to remain will finish correspondingly early. The correction means that leave to remain may be granted in line with the dates requested by the applicant's sponsor. Additional leave (of up to three months) may be granted to cover the period between the date of decision and the start date requested by the sponsor.
- It removes the option for a Tier 2 Migrant applying for indefinite leave to remain to provide a further certificate of sponsorship to show that he/she is still required by his/her employer. The remaining option for the employer to certify in writing that the applicant is still required by his / her employer is cheaper and more convenient administratively for employers and for the UK Border Agency.

- It adds a provision for periods of maternity, paternity or adoption leave to be taken into account when considering a migrant's past employment with his/her sponsor for Tier 2 (Intra-Company Transfer) and those migrants switching into Tier 2 (General) from a post-study category. This change, which is similar to a provision in Tier 1 (General) ensures that there is no discrimination against migrants who have been on maternity, paternity or adoption leave.
- It amends the existing Rules to removing the provision for awarding automatically 10 points for English language to a Tier 2 Migrant who has, or has last been granted, leave as a Missionary or as a Member of a Religious Order. These migrants, unlike those previously granted leave as a Minister of Religion, will not have previously demonstrated their level of English language and therefore it is considered necessary that they demonstrate their proficiency in English as part of their application under Tier 2.

Amendments to Tier 4 of the Points Based System

7.8 Tier 4 of the Points Based System caters for students and was launched on 31 March 2009. This Statement of Changes makes the following minor amendments:

- It provides for the next phase of the roll-out of Tier 4 sponsorship arrangements by allowing Tier 4 applicants to be granted leave to remain applicants only, using an electronic Confirmation of Acceptance for Studies to earn points. The existing provision (for migrants to be granted leave using a visa letter issued by their sponsor) remains as a transitional arrangement and for all entry clearance applications, and will be removed in a future Statement of Changes.
- It removes the requirement that course-related work placements do not exceed half the total length of a course of study in the UK for cases where a longer work placement is required by UK statute.
- It amends the restriction preventing a Tier 4 Migrant from filling a full-time vacancy (other than a vacancy as a Doctor in Training on a recognised Foundation Programme). The amendment allows a Tier 4 Migrant to fill a full-time vacancy during vacations, provided this is not a permanent full-time vacancy (other than a permanent full-time vacancy as a Doctor in Training on a recognised Foundation Programme). It also allows a Tier 4 Migrant to fill a permanent full-time vacancy as a sabbatical officer.
- It links a Tier 4 Migrant more closely to his/her sponsor by preventing study (other than supplementary study) at any institution that is not the migrant's Sponsor.
- It corrects an omission by requiring Tier 4 (Child) Migrants who have been sponsored by a Government or international scholarship agency within the last 12 months to provide evidence of consent to the application from their sponsor. This replicates the existing requirement for Tier 1 Migrants, Tier 2 Migrants and Tier 4 (General) Migrants.
- It amends the existing Rules to make clear that provisions for curtailing a migrant's leave extend to Tier 4 Migrants.
- It clarifies that the required evidence of previous qualifications, used to obtain the offer of a place on a course, are specified documents in UK Border Agency guidance.
- It clarifies that study for a postgraduate diploma or postgraduate certificate must be full-time, and that while study on a pre-sessional course does not need to lead to a recognised qualification, it must be full-time.
- It amends the paragraph numbering in Appendix A.

Amendments to Tier 5 of the Points Based System

7.9 Tier 5 of the Points Based System caters for youth mobility and temporary workers and was launched on 27 November 2008. This Statement of Changes makes the following minor amendment:

- It allows a Certificate of Sponsorship to be used for multiple entries to the UK within a three month period. Non-visa nationals sponsored as Tier 5 (Temporary Worker) migrants in the creative and sporting sub-category for periods of three months or less do not require entry clearance. Their leave lapses on leaving the United Kingdom. This amendment allows them to re-enter within the three month period without requiring a new Certificate of Sponsorship.

8. Consultation

8.1 The UK Border Agency has consulted, and continues to consult, key stakeholders including educational institutions and employers in the ongoing development of the Points Based System and related immigration categories. Details of consultation undertaken in connection with development of the Points Based System have been set out in the explanatory notes to previous Statements of Changes in the Immigration Rules. The changes effected by this Statement are minor technical changes or clarifications of current Rules, no further formal public consultation has been undertaken in respect of them.

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 These changes are minor and the impacts on business, education providers, and the public sector are expected to be minimal. An impact assessment has therefore not been prepared. Impact assessments for each Tier of the Points Based System were carried out prior to their launch and can be found at: www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdocs

11. Regulating small business

11.1 The legislation applies to small businesses. The changes are minor and are not expected to have an adverse impact on small businesses.

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 Richard Jackson at the Home Office. Tel: 0114 207 8373 or e-mail: Richard.Jackson@homeoffice.gsi.gov.uk.

