

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 15 July 2010 under section 3(2) of
the Immigration Act 1971*

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

(This document is accompanied by an Explanatory Memorandum)

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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 him as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395) as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cm 2663), 26 October 1995 (HC 797), 4 January 1996 (Cm 3073), 7 March 1996 (HC 274), 2 April 1996 (HC329), 30 August 1996 (Cm 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cm 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cm 3953), 8 October 1998 (Cm 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cm 4851), 27 August 2001 (Cm 5253), 16 April 2002 (HC 735), 27 August 2002 (Cm 5597), 7 November 2002 (HC 1301), 26 November 2002 (HC 104), 8 January 2003 (HC 180), 10 February 2003 (HC 389), 31 March 2003 (HC 538), 30 May 2003 (Cm 5829), 24 August 2003 (Cm 5949), 12 November 2003 (HC 1224), 17 December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC523), 3 August 2004 (Cm 6297), 24 September 2004 (Cm 6339), 18 October 2004 (HC 1112), 20 December 2004 (HC 164), 11 January 2005 (HC 194), 7 February 2005 (HC 302), 22 February 2005 (HC 346), 24 March 2005 (HC 486), 15 June 2005 (HC 104), 12 July 2005 (HC 299), 24 October 2005 (HC 582), 9 November 2005 (HC 645), 21 November 2005 (HC 697), 19 December 2005 (HC 769), 23 January 2006 (HC 819), 1 March 2006 (HC 949), 30 March 2006 (HC 1016), 20 April 2006 (HC 1053), 19 July 2006 (HC 1337), 18 September 2006 (Cm 6918), 7 November 2006 (HC 1702), 11 December 2006 (HC 130), 19 March 2007 (HC 398), 3 April 2007 (Cm 7074), 4 April 2007 (Cm 7075), 7 November 2007 (HC 28), 13 November 2007 (HC 40), 19 November 2007 (HC 82), 6 February 2008 (HC 321), 17 March 2008 (HC 420), 9 June 2008 (HC 607), 10 July 2008 (HC 951), 15 July 2008 (HC 971), 4 November 2008 (HC 1113), 9 February 2009 (HC 227), 9 March 2009 (HC 314), April 2009 (HC 413), 9 September 2009 (Cm 7701), 23 September 2009 (Cm 7711), 10 December 2009 (HC 120), 10 February 2010 (HC 367) and 28 June 2010 (HC 59).

The changes in this Statement shall take effect on 19 July 2010.

1. In Appendix A, after the heading “Sponsorship” and before paragraph 63, insert:

“63A. The Secretary of State shall be entitled to limit the number of Certificates of Sponsorship available to be assigned to Sponsors in any one period, and to limit the number of Certificates of Sponsorship assigned to any specific Sponsor in any one period. These limits will be specified in the Points Based System guidance.”



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 15 JULY 2010 (HC 96)**

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 set out provision in the Immigration Rules for the Secretary of State to limit the number of migrants who may be sponsored under Tier 2.

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

3.1 This Statement of Changes makes an urgent change to the Immigration Rules following two court judgments¹ concerning the extent to which requirements under the Points Based System regulating the entry into or stay in the UK of non-nationals must be set out in the Immigration Rules rather than in UK Border Agency guidance. For the avoidance of doubt and to ensure the integrity of the Points-Based System and the implementation of interim limits on Tier 2 on 19 July 2010 as announced by the Secretary of State on 28 June 2010, it is necessary to bring these changes into force immediately. The Government regrets that it has not been possible to comply with the convention that changes should be laid before Parliament no less than 21 days before they will come into force.

4. Legislative Context

4.1 The Immigration Rules, as laid before Parliament by the Home Secretary, constitute a statement of practice to be followed in the administration of the Immigration Act 1971 for regulating entry into, and stay of persons in, the United Kingdom.

4.2 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 19 July 2010.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As this Statement of Changes in the Immigration Rules is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

What is being done and why

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

¹*Secretary of State for the Home Department v Anastasia Pankina & others* [2010] EWCA Civ 719 and *R (on the application of English UK Ltd) v Secretary of State for the Home Department* [2010] EWHC 1726 (Admin).

Limits on the number of Tier 2 Migrants who may be sponsored under the Points Based System

- 7.2 Tier 2 of the Points-Based System caters for skilled workers with a job offer, and was launched on 28 November 2008. Tier 2 consists of four categories: Tier 2 (General), Tier 2 (Intra-Company Transfer), Tier 2 (Ministers of Religion) and Tier 2 (Sportsperson).
- 7.3 The Government's 'Programme for Government', announced on 20 May 2010, states:
- “We will introduce an annual limit on the number of non-EU economic migrants admitted into the UK to live and work. We will consider jointly the mechanism for implementing the limit.”
- 7.4 The Government has commenced a consultation on how, in the longer term, those limits should be determined and implemented. It is, in the meantime, applying limits on Tier 1 and Tier 2 migrants as an interim measure while the outcome of that consultation is considered. This approach is consistent with the Government view that while the United Kingdom can benefit from migration, uncontrolled and unlimited migration places unacceptable pressure on public services, school places, and the provision of housing, all of which causes problems for certain local communities. The Government is not only concerned to act to limit migration at an early opportunity but is also concerned that the expectation that full limits on migration will be introduced in due course could prompt a surge in applications. The consequences of such a surge would be an immediate increase in net migration. That would be contrary to the Government's policy of reducing net migration and may lead to a more severe correction being required in terms of a future limit than would otherwise be the case. Furthermore, it is in accordance with Government policy and in the interests of the economic well-being of the UK to act to prevent a spike in the number of foreign nationals entering the labour market having regard to the current financial situation and just as the Government introduces a policy aimed at reducing dependence on overseas labour.
- 7.5 These changes place an interim limit on the number of Certificates of Sponsorship that licensed sponsors may assign under Tier 2. For the period of the interim limit announced by the Secretary of State on 28 June the limit will only be applied to the Tier 2 (General) category. The size of the limit will be published separately by the UK Border Agency at <http://www.ukba.homeoffice.gov.uk/workingintheuk/tier2/>.
- 7.6 The limit affects only the number of Certificates of Sponsorship that may be assigned to sponsors. An applicant must have a Certificate of Sponsorship before a valid application for entry clearance or leave to remain as a Tier 2 Migrant can be made. The application process for Tier 2 Migrants is therefore not directly affected by this change, nor will any valid application be refused as a consequence of the interim limit.

8. Consultation

- 8.1 There has been no formal consultation with corporate partners outside government on the introduction of interim limits in general or on this change in particular. The Government is consulting formally on its longer term plans to implement limits on economic migration. The Government's concern, in the interests of effective immigration control, to ensure that early limits are in place while that consultation exercise is undertaken has precluded any earlier consultation on the operation of these interim limits. This change consolidates the Government's position in respect of the interim limits under Tier 2.

9. Guidance

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

10. Impact

- 10.1 An Impact Assessment in respect of these changes was published on the UK Border Agency website on 28 June 2010 and can be found at www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/limits-on-non-eu-migration/.

11. Regulating small business

- 11.1 The legislation applies to small businesses. The impact on small businesses has been considered in the impact assessment published on 28 June 2010.

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 UK Border Agency on 0114 207 8373 or by email to: Richard.Jackson@homeoffice.gsi.gov.uk.