

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Presented to Parliament on 19 July 2011 pursuant to section 3(2) of
the Immigration Act 1971*

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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 (HC 329), 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) and 13 June 2011 (HC 1148).

The changes in this statement shall take effect on 9 August 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 1436 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 1436,
- (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 9 August 2011, and
- (b) subject to paragraph 4, 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

1. In paragraph 6, after the definition of “Designated Competent Body”, insert:

“Under Part 6A and Appendix A of these Rules, “**Tier 1 (Exceptional Talent) Unique Reference Number**” means a unique reference number issued for the purposes of managing the Tier 1 (Exceptional Talent) Limit and provided by the UK Border Agency to an applicant prior to making his application as a Tier 1 (Exceptional Talent) Migrant.”

2. Delete paragraph 245B and substitute:

“245B. Purpose

This route is for exceptionally talented individuals in the fields of science, humanities, engineering and the arts, who wish to work in the UK. These individuals are those who are already internationally recognised at the highest level as world leaders in their particular field, or who have already demonstrated exceptional promise and are likely to become world leaders in their particular area.”

3. After paragraph 245BB(a), insert:

“(b) The applicant must have a Tier 1 (Exceptional Talent) Unique Reference Number, which:

(i) was assigned by the UK Border Agency to the applicant no more than 10 working days before the date of application;

(ii) relates to the Designated Competent Body the applicant states he is seeking endorsement from in his application; and

(iii) has not been used in support of a previous application.”

4. Renumber subsequent paragraphs 245BB(b) and (c) as (c) and (d).

5. Delete paragraph 245BD(c) and substitute:

“(c) The applicant must have a minimum of 10 points under paragraphs 1 to 9 of Appendix B.”

6. After paragraph 323A, insert:

“Curtailment of leave in relation to a Tier 1 (Exceptional Talent) Migrant

323B. In addition to the grounds specified in paragraph 323, the leave to enter or remain of a Tier 1 (Exceptional Talent) Migrant may be curtailed if the Designated Competent Body that endorsed the application which led to the migrant’s current grant of leave withdraws its endorsement of the migrant.

7. In paragraph 395C, after “Section 10” insert “ of the Immigration and Asylum Act 1999 or section 47 of the Immigration, Asylum and Nationality Act 2006”

8. In Appendix A, in Table 1, after “Endorsed by Designated Competent Body” insert “ according to that Body’s criteria as published on the UK Border Agency website”

9. In Appendix A, after the heading “Notes” under Table 1, delete paragraphs 4 to 6 and substitute:

“Tier 1 (Exceptional Talent) Limit

4. (a) The Secretary of State shall be entitled to limit the total number of Tier 1 (Exceptional Talent) endorsements Designated Competent Bodies may make in support of successful applications in a particular period, to be referred to as the Tier 1 (Exceptional Talent) Limit.

(b) The Tier 1 (Exceptional Talent) Limit for the period 9 August 2011 to 5 April 2012 is 1,000 endorsements in total, which will be allocated to the Designated Competent Bodies as follows:

(i) 300 endorsements to The Arts Council for the purpose of endorsing applicants with exceptional talent in the fields of arts and culture;

(ii) 300 endorsements to The Royal Society for the purpose of endorsing applicants with exceptional talent in the fields of natural sciences and medical science research;

(iii) 200 endorsements to The Royal Academy of Engineering for the purpose of endorsing applicants with exceptional talent in the field of engineering; and

(iv) 200 endorsements to The British Academy for the purpose of endorsing applicants with exceptional talent in the fields of humanities and social sciences.

(c) The Tier 1 (Exceptional Talent) Limit will be operated by assigning Tier 1 (Exceptional Talent) Unique Reference Numbers to prospective applicants according to the practice set out in paragraph 5 below.

(d) If a Designated Competent Body chooses to transfer part of its unused allocation of endorsements to another Designated Competent Body by mutual agreement of both bodies and the Secretary of State, the allocations of both bodies will be adjusted accordingly and the adjusted allocations will be published on the UK Border Agency website.

Tier 1 (Exceptional Talent) Unique Reference Numbers

5. (a) Before making his application, the prospective applicant must request a Tier 1 (Exceptional Talent) Unique Reference Number from the UK Border Agency, stating which Designated Competent Body he wishes to endorse his application.

(b) A number of places will be made available for each Designated Competent Body, under which Tier 1 (Exceptional Talent) Unique Reference Numbers can be assigned, as follows:

(i) From 9 August 2011 to 30 November 2011, a number of places equal to half that body's allocated endorsements under paragraph 4 above.

(ii) From 1 December 2011 to 5 April 2012, a number of places equal to that body's remaining unused allocated endorsements under paragraph 4 above.

(c) If:

(i) An applicant does not make a valid application within 10 working days of being assigned a Tier 1 (Exceptional Talent) Unique Reference Number, or

(ii) An application is refused, and that refusal is not subsequently overturned,

the Tier 1 (Exceptional Talent) Unique Reference Number assigned to that applicant will be cancelled and the used place will be returned to the number of places available for the relevant Designated Competent Body.

(d) A request to be assigned a Tier 1 (Exceptional Talent) Unique Reference Number will be granted if:

(i) The applicant has not previously been granted three Tier 1 (Exceptional Talent) Unique Reference Numbers during the period 9 August 2011 to 5 April 2012, and

(ii) Places are available for the relevant Designated Competent Body on the date the applicant makes his request.

(e) A request to be assigned a Tier 1 (Exceptional Talent) Unique Reference Number will be refused if:

(i) The applicant has previously been granted three Tier 1 (Exceptional Talent) Unique Reference Numbers during the period 9 August 2011 to 5 April 2012, or

(ii) (1) No places are available for the relevant Designated Competent Body on the date the applicant makes his request, and

(2) No places have been used which could potentially be returned to the number of places available under paragraph (c) above.

(f) In all other cases, no decision will be made regarding the request until the conditions of either (d) or (e) are met.

Endorsement by the relevant Designated Competent Body

6. Points will only be awarded for an endorsement from the relevant Designated Competent Body if the endorsement has not been withdrawn by the relevant Designated Competent Body at the time the application for Entry Clearance is considered by the UK Border Agency.”

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 19 JULY 2011 (HC 1436)**

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 implement the Tier 1 (Exceptional Talent) category and to implement a technical change to the Rules for administrative removal.

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

3.1 The Tier 1 (Exceptional Talent) route was originally introduced by HC 863, which was laid before Parliament on 16 March 2011 and came into force on 6 April 2011. It requires that Applicants are endorsed by a Designated Competent Body. However, no endorsements have yet been issued as further work in conjunction with the four Designated Competent Bodies was necessary to finalise the manner in which the route would operate. These changes therefore implement rules that enable the operation of this route, in the manner agreed with the Designated Competent Bodies, to commence.

3.2 These changes relate principally to the manner in which this route will operate and do not alter the substantive elements of this route which were established by HC 863. Tier 1 (Exceptional Talent) is an entirely new and free-standing route. These changes do not result in potential applicants suffering any detriment. The route is not yet operational and no applications have yet been made. Therefore no transitional provision is considered necessary.

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 9 August 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 a 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:

Amendments to the Tier 1 (Exceptional Talent) category of the Points Based System

7.2 This category caters for those who have achieved international recognition, or who have demonstrated exceptional promise to do so, in the fields of science, humanities, engineering and the arts. A limit of 1,000 places applies until 5 April 2012. The category and this limit were introduced by HC 863, laid on 16 March 2011, but the route is not yet operational.

7.3 Applicants do not require a sponsoring employer, but they must be endorsed by a Designated Competent Body. These changes confirm the four Designated Competent Bodies and their allocated places within the 1,000 limit as:

- The Arts Council (for arts and culture) – 300 places
- The Royal Society (for natural sciences and medical science research) – 300 places
- The Royal Academy of Engineering (for engineering) – 200 places
- The British Academy (for humanities and social sciences) – 200 places

7.4 These changes also amend the definition of the category and the practice for endorsing applications, following discussions with the Designated Competent Bodies. The changes in practice necessitate applicants requesting a reference number from the UK Border Agency before making an application, in order to manage the limit effectively. In order to prevent repeat speculative applications, applicants will only be able to request a maximum of three reference numbers each year (April to April).

7.5 A separate correction is being made to the changes set out in HC 863 which erroneously stated Tier 1 (Exceptional Talent) applicants extending their stay must score points for maintenance funds and do not need to score points for English language skills. The policy, as correctly set out in the Explanatory Memorandum to HC 863, is the reverse: Applicants are not subject to a maintenance requirement and must provide evidence of their English language skills when they apply to extend their stay.

7.6 An amendment to the Rules on curtailment of leave is being made so that the leave of a Tier 1 (Exceptional Talent) Migrant can be curtailed if the relevant Designated Competent Body withdraws its endorsement.

Amendments to the Rules for administrative removal

7.7 Paragraph 395C requires the Secretary of State to have regard to certain compassionate factors before making a decision to administratively remove under section 10 of the Immigration and Asylum Act 1999. The Secretary of State also has a power to administratively remove under section 47 of the Immigration, Asylum and Nationality Act 2006. As a matter of policy the Secretary of State has always considered the compassionate factors in paragraph 395C irrespective of whether the removal decision was made under section 10 or section 47.

7.8 The fact that paragraph 395C only refers to section 10 has had the unintended consequence of preventing a recipient of a section 47 decision from arguing, at appeal, that the person taking the decision should have exercised differently a discretion conferred by the immigration rules. This amendment allows those in receipt of a section 47 decision to raise the same grounds on appeal as those recipients of a section 10 decision. The compassionate factors in paragraph 395C significantly overlap with the factors considered when considering whether removal is proportionate under Article 8 of the European Convention on Human Rights. The Government is currently consulting on how we should approach the balance to be struck between the individual's rights to respect for private and family life and the wider public interest in protecting the public and controlling immigration.

8. Consultation

8.1 The Tier 1 (Exceptional Talent) category was developed following a full public consultation, "Limits on non-EU economic migration", which ran from 28 June 2010 to 17 September 2010. A summary of the findings of this consultation is published on the UK Border Agency website at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/limits-on-non-eu-migration/.

8.2 The changes to process introduced by this Statement of Changes have been developed in consultation with the Designated Competent Bodies for the category.

9. Guidance

9.1 Information on these changes, as well as a list of the Designated Competent Bodies and their endorsement criteria, will be made available to migrants and UK Border Agency staff, through updates to websites and guidance.

10. Impact

10.1 An Impact Assessment of the changes to Tier 1 and Tier 2 was published alongside HC 863, and included an assessment of the Tier 1 (Exceptional Talent) category.

11. Regulating small business

11.1 Tier 1 (Exceptional Talent) applicants do not require a sponsoring employer and therefore 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.

12.2 All the changes made by this Statement will be monitored on an on-going basis as part of the review of progress towards meeting the Government's commitment to reduce annual net migration from the level of hundreds of thousands to the level of tens of thousands.

12.3 The Tier 1 (Exceptional Talent) Limit introduced by this Statement applies only from 9 August 2011 until 5 April 2012. This limit will be reviewed before 6 April 2012 and a further Statement of Changes will be laid before Parliament.

13. Contact

13.1 Queries specifically regarding this Statement of Changes only should be addressed to Richard Jackson at the UK Border Agency on 0114 207 8373 or email to: Richard.Jackson@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/.