

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Presented to Parliament pursuant to section 3(2) of
the Immigration Act 1971*

*Ordered by The House of Commons to be printed
9 July 2012*

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STATEMENT OF CHANGES IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the rules laid down by her as to the practice to be followed in the administration of the Immigration Acts for regulating entry into and the stay of persons in the United Kingdom and contained in the statement laid before Parliament on 23 May 1994 (HC 395) as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cm 2663), 26 October 1995 (HC 797), 4 January 1996 (Cm 3073), 7 March 1996 (HC 274), 2 April 1996 (HC329), 30 August 1996 (Cm 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cm 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cm 3953), 8 October 1998 (Cm 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cm 4851), 27 August 2001 (Cm 5253), 16 April 2002 (HC 735), 27 August 2002 (Cm 5597), 7 November 2002 (HC 1301), 26 November 2002 (HC 104), 8 January 2003 (HC 180), 10 February 2003 (HC 389), 31 March 2003 (HC 538), 30 May 2003 (Cm 5829), 24 August 2003 (Cm 5949), 12 November 2003 (HC 1224), 17 December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC523), 3 August 2004 (Cm 6297), 24 September 2004 (Cm 6339), 18 October 2004 (HC 1112), 20 December 2004 (HC 164), 11 January 2005 (HC 194), 7 February 2005 (HC 302), 22 February 2005 (HC 346), 24 March 2005 (HC 486), 15 June 2005 (HC 104), 12 July 2005 (HC 299), 24 October 2005 (HC 582), 9 November 2005 (HC 645), 21 November 2005 (HC 697), 19 December 2005 (HC 769), 23 January 2006 (HC 819), 1 March 2006 (HC 949), 30 March 2006 (HC 1016), 20 April 2006 (HC 1053), 19 July 2006 (HC 1337), 18 September 2006 (Cm 6918), 7 November 2006 (HC 1702), 11 December 2006 (HC 130), 19 March 2007 (HC 398), 3 April 2007 (Cm 7074), 4 April 2007 (Cm 7075), 7 November 2007 (HC 28), 13 November 2007 (HC 40), 19 November 2007 (HC 82), 6 February 2008 (HC 321), 17 March 2008 (HC 420), 9 June 2008 (HC 607), 10 July 2008 (HC 951), 15 July 2008 (HC 971), 4 November 2008 (HC 1113), 9 February 2009 (HC 227), 9 March 2009 (HC 314), April 2009 (HC 413), 9 September 2009 (Cm 7701), 23 September 2009 (Cm 7711), 10 December 2009 (HC 120), 10 February 2010 (HC 367), 18 March 2010 (HC 439), 28 June 2010 (HC 59), 15 July 2010 (HC 96), 22 July 2010 (HC 382), 19 August 2010 (Cm 7929), 1 October 2010 (Cm 7944), 21 December 2010 (HC 698), 16 March 2011 (HC 863), 31 March 2011 (HC 908), 13 June 2011 (HC 1148), 19 July 2011 (HC 1436), 10 October 2011 (HC 1511), 7 November 2011 (HC 1622), 8 December 2011 (HC 1693), 20 December 2011 (HC 1719), 19 January 2012 (HC 1733), 15 March 2012 (HC 1888), 4 April 2012 (Cm 8337) and 13 June 2012 (HC 194).

Implementation

The changes set out in this Statement shall take effect from 30 July 2012. However, if an applicant has made an application for leave before 30 July 2012 and the application has not been decided before that date, it will be decided in accordance with the Rules in force on 29 July 2012.

Changes

1. After paragraph 245ZV(j), insert:

“(k) The Entry Clearance Officer must be satisfied that the applicant is a genuine student.

245ZV(k) will not be applied to a national or the rightful holder of a qualifying passport issued by one of the relevant competent authorities listed in Appendix H.”

2. After paragraph 320(7C)(b), insert:

“(7D) failure, without providing a reasonable explanation, to comply with a request made on behalf of the Entry Clearance Officer to attend for interview.”



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 9 JULY 2012 (HC 514)**

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 purposes of these changes are:

- To make provision for an Entry Clearance Officer to be satisfied that an applicant is a genuine student before granting entry clearance under Tier 4 of the Points Based System;
- To make provision for an Entry Clearance Officer to refuse to issue entry clearance where the applicant fails to attend an interview without providing a reasonable explanation.

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

The Committee is invited to note that this Statement of Changes is accompanied by amended guidance which is being published on the UK Border Agency website at www.ukba.homeoffice.gov.uk/visas-immigration/studying/adult-students/applying-inside-uk/ and www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/sty/ on the same date as these rules are laid before Parliament, namely 9 July 2012.

4. Legislative Context

4.1 The Home Secretary is making the stated changes to paragraphs 245ZV (Points Based System; Tier 4 (General) Student) and 320 (General grounds for the refusal of entry clearance) to the Immigration Rules laid down by her 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. The Home Secretary lays this Statement of Changes before Parliament under section 3(2) of the Immigration Act 1971.

4.2 This Statement of Changes in Immigration Rules will be 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.

5. Territorial Extent and Application

5.1 This instrument applies to 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 Tier 4 of the Points Based System provides for international students who wish to study in the United Kingdom. As with other parts of the Points Based System, Tier 4 was implemented in phases, with the introduction of the main policy changes on 31 March 2009.
- 7.2 Substantive changes to Tier 4 were made following a public consultation, “The Student Immigration System – a consultation”, which ran from 7 December 2010 to 31 January 2011. A summary of the findings of this consultation was published on the UK Border Agency website at: www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/students.
- A Statement of Intent, outlining the Government’s plans for implementation of changes to Tier 4 was also published on 31 March 2011 on the UK Border Agency website at: www.ukba.homeoffice.gov.uk/sitecontent/documents/news/sop4.pdf.
- A further Statement of Intent, which provided more detail of the Government’s plans for implementation of changes to Tier 4 from April 2012 was published on 13 February 2012 on the Home Office website at: <http://www.homeoffice.gov.uk/publications/immigration/changes-study-visa-soi>.
- 7.3 Since the Points Based System for Tier 4 was implemented in 2009 applicants have not generally been interviewed as part of the decision making process and an Entry Clearance Officer (ECO) has not as part of that process considered whether the applicant is a genuine student. From December 2011 to the end of February 2012 a pilot was run to assess the potential impact of interviewing more Tier 4 applicants, and of a new power to refuse entry clearance where ECOs doubted the applicant was a genuine student. Over 2300 visa applicants from 47 countries were interviewed. The full evaluation report of the pilot is being published alongside this Statement of Changes on 9 July 2012 and is available on the Home Office website at www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ104.
- 7.4 The pilot study shows that whilst reforms to Tier 4 since 2011 have had a significant impact on the level of abuse within the student route, there is evidence of some residual abuse in the system, and furthermore that interviews and additional powers would be useful in tackling it.
- 7.5 The Home Office is therefore making two changes to the Immigration Rules to support the introduction of a targeted programme of student interviews by the UK Border Agency. These will ensure that applicants seeking to abuse the immigration system are identified and refused a visa for the UK. The first change, to the Points Based System Rules, makes provision for an ECO to be satisfied that an applicant is a genuine student before granting entry clearance under Tier 4. The second change, to the general grounds for refusal of entry clearance, makes provision for an ECO to refuse to issue entry clearance where the applicant fails to attend an interview without providing a reasonable explanation.

7.6 Tier 4 is a sponsorship based system, and these changes to the Immigration Rules will not alter the obligations and responsibilities that are placed on sponsors of international students to be satisfied that applicants are able and intend to undertake their course of study before assigning a Confirmation of Acceptance for Studies (CAS).

7.7 In recognition of the fact that the Home Office has significantly strengthened the sponsorship obligations on colleges, refusals will, except in certain limited circumstances, only be made using paragraph 245ZV(k) of the immigration rules following an interview. This will give the applicant full opportunity to address any concerns raised by the application. These changes are intended to operate as a supplement to the current sponsorship controls, to be used sparingly, based on risk assessments, to tackle any remaining abuse in Tier 4. They will help protect education providers who have made an offer of a place in good faith, from applicants seeking to abuse the student visa route. Applicants from low-risk countries (listed in Appendix H to the Immigration Rules) who already benefit from a streamlined visa application process will be exempt from the genuine student test.

8. Consultation

8.1 The changes in this Statement have not been subject to consultation as this would be disproportionate given the limited nature of the changes.

9. Guidance

9.1 Information on these changes is being made available to migrants, sponsors and UK Border Agency staff, through updates to websites and guidance.

10. Impact

10.1 There is limited or no impact on business, charities, the public sector or voluntary bodies, such that an impact assessment is unnecessary.

11. Regulating small business

11.1 The changes do not alter the requirements on small businesses.

12. Monitoring and review

12.1 The changes do not require a review.

12.2 All the changes made by this Statement will be monitored on an on-going basis.

13. Contact

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