

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Presented to Parliament 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 (HC 523), 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), 24 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), 13 June 2012 (HC 194), 9 July 2012 (HC 514), 19 July 2012 (Cm 8423), 5 September 2012 (HC 565) and 22 November 2012 (HC 760).

Implementation

All changes take effect on 13 December 2012.

This Statement of Changes and an informal consolidation of the Immigration Rules currently in force can be viewed at

<http://www.ind.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

Review

Before the end of each review period, the Secretary of State undertakes to review all of the relevant Immigration Rules including any Relevant Rule amended or added by these changes.

The Secretary of State will set out the conclusions of the review in a report and publish the report.

The report must in particular:

- (a) consider each of the Relevant Rules and whether or not each Relevant Rule achieves its objectives and is still appropriate; and
- (b) 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 6 April 2012, and
- (b) subject to the paragraph below, 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.

“Relevant Rule” means an immigration rule which imposes a net burden (or cost) on business or civil society organisations.

Changes

1. In the Implementation section of the Statement of Changes in Immigration Rules HC 760, the changes in paragraphs 201, 202, 224, 226 to 228, 242, 243, 276, 339 to 341, 345 to 353, 358 to 361, 370 to 388, 392 to 394, and 399 to 441 of that Statement shall apply to all applications decided on or after 13 December 2012, regardless of the date the application was made.
2. Paragraph 102 of the Statement of Changes in Immigration Rules HC 760 shall not have effect.
3. In Appendix A, at the end of paragraph 61A, delete “.” and substitute:

“, except where:

 - (i) the applicant made an application before 13 December 2012 which is undecided or which led to a grant of entry clearance or leave to remain as an Investor or a Tier 1 (Investor) migrant,
 - (ii) the applicant has not been granted entry clearance, leave to enter or leave to remain in any other category since the grant referred to in (i), and
 - (iii) the money is under the applicant’s control, except for the fact that the loan referred to in paragraph (b) in Table 7, paragraph (b) in Table 8 or row 1 of Table 9 has been secured against it.”.
4. In Appendix A, at the end of paragraph 65(a) delete “.” And substitute

“except that investments held in offshore custody shall not be excluded where the applicant made an application before 13 December 2012 which is undecided or which led to a grant of entry clearance or leave to remain as an Investor or a Tier 1 (Investor)

migrant and has not since been granted entry clearance, leave to enter or leave to remain in any other category.”.

5. In Appendix A, at the end of paragraph 65(f), delete “.” and substitute:

“, except where the leverage in question is the security against the loan referred to in paragraph (b) in Table 7, paragraph (b) in Table 8 or row 1 of Table 9 (as appropriate), and paragraph 61A(i)-(iii) apply.”.



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 12 DECEMBER 2012 (HC 820)**

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 apply most of the changes to the Immigration Rules on family and private life contained in the Statement of Changes in Immigration Rules laid on 22 November 2012 (HC 760) to all applications decided on or after 13 December 2012, rather than only to applications made on or after that date. This will provide greater clarity for applicants and for UK Border Agency caseworkers as to the requirements in respect of family and private life applicable to all applications decided from 13 December 2012.
- To apply a transitional concession to Tier 1 (Investor) migrants who entered the route or applied to enter the route before the clarifications in HC 760 regarding loans secured against investments and investments held in offshore custody come into effect on 13 December 2012.
- To ensure that provisions for indefinite leave to remain for a person established in business in the UK under the provisions of an EC Association Agreement continue to have effect.

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

3.1 None.

4. Legislative Context

4.1 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 is also a copy of all the Statements of Changes in Immigration Rules issued since May 2003.

4.2 The changes will come into force on 13 December 2012.

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

Changes relating to the Rules on family and private life

7.1 The Statement of Changes in Immigration Rules laid on 22 November 2012 (HC 760) made a number of changes to the Rules on family and private life. Those changes were described in paragraphs 7.34 to 7.45 of the accompanying Explanatory Memorandum.

7.2 That Statement of Changes provided that those changes to the Rules on family and private life were to take effect on 13 December 2012 and that if an applicant had made an application for entry clearance or leave before 13 December 2012 and the application had not been decided before that date, it would be decided in accordance with the Rules in force on 12 December 2012.

7.3 The changes in HC 760 mainly have the effect of clarifying and simplifying the Rules to reflect operational experience since major changes were implemented on 9 July 2012 and to make the Rules as clear and comprehensive as possible. It is appropriate that UK Border Agency caseworkers should be able to apply those changes to any application relating to family or private life which falls to be decided on or after 13 December 2012.

7.4 To the extent this approach may disadvantage an applicant whose application under the family or private life Rules on or after 9 July 2012 was not decided before 13 December 2012, this is justified because the changes made by the Statement of Changes HC 760 correctly reflect the Secretary of State's view of the proper balance to be struck under Article 8 of the European Convention on Human Rights (the right to respect for private and family life) between individual rights and the public interest, and of how best to safeguard the welfare of children. Published UK Border Agency guidance will make clear to caseworkers that such cases should not be refused because they do not meet a new requirement of the family or private life Rules in force from 13 December 2012 without being given a reasonable opportunity to demonstrate whether they meet that new requirement.

7.5 Applications made before 9 July 2012 under Part 8 (family members) of the Immigration Rules remain subject to the transitional provisions contained in paragraphs A277 to A281 of the Rules.

7.6 Where other applications made before, on or after 9 July 2012 raise issues relating to family or private life, those issues will be decided according to the Immigration Rules in force at the date of decision, in particular by virtue of paragraphs A277C, 326B and 400 of the Rules.

Changes relating to Tier 1 (Investor) of the Points-Based System

7.7 The Statement of Changes in Immigration Rules HC 760 made a clarification regarding the Rules for Tier 1 (Investor). This category of the Points-Based System caters for high net worth individuals making a substantial financial investment in the UK. The Rules previously stated that funds must be under an applicant's own control and that leveraged investment funds are not acceptable. HC 760 clarified that this meant that applicants must not take loans out using their investments as security. HC 760 also clarified that investment funds held in offshore custody would not be allowed. It has since come to light that some Tier 1 (Investor) migrants have taken out such loans in order to fund their investments. Other Tier 1 (Investor) migrants have investments held in offshore custody.

7.8 We accept that the previous Rules and guidance were unclear on these points. Therefore we are introducing a transitional arrangement which waives the requirement in respect of such loans and funds held in offshore custody, for applicants who entered the category (or the previous Investor route) or applied to do so before 13 December 2012, when the clarifications in HC 760 come into force. These applicants can take no other loans against their investments, and the requirements to be in control of their funds and not to leverage investment funds otherwise continue to apply.

Changes relating to indefinite leave to remain for a person established in business in the UK under an EC Association Agreement

7.9 HC 760 deletes this provision from the Rules in error and this Statement reverses the deletion.

8. Consultation

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

9. Guidance

9.1 Information on these changes is being made available to migrants 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 are not expected to have any negative impact on small businesses.

12. Monitoring and review

12.1 The review clauses at the beginning of this Statement of Changes require the Secretary of State to review the operation and effect of the changes in this Statement and lay a report before Parliament within 5 years after these changes come into force and within every five years after that, to the extent that the rules contained in this Statement of Changes remain in force at the review date. 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.

13. Contact

13.1 Queries should be directed to the UK Border Agency's immigration enquiry bureau on 0870 606 7766, or as per the Contact page on the UK Border Agency website at www.ukba.homeoffice.gov.uk/contact/.

13.2 Specific written queries relating to this Statement of Changes should be directed to StatementofChanges@homeoffice.gsi.gov.uk. Please note that this mailbox is only for Parliamentary use and specific technical queries regarding the drafting of this Statement of Changes. It is not a contact point for general enquiries. Queries to this e-mail address from outside Parliament about other immigration issues, including how these changes affect applications, will not receive a response.

13.3 A copy of this Statement of Changes can be found on the UK Border Agency website at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/