

# STATEMENT OF CHANGES IN IMMIGRATION RULES

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

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*Ordered by the House of Commons to be printed  
10 July 2014*

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*(This document is accompanied by an Explanatory Memorandum)*



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A copy of this Statement of Changes can be found on the visas and immigration pages of the gov.UK website at [www.gov.uk/government/collections/immigration-rules-statement-of-changes](http://www.gov.uk/government/collections/immigration-rules-statement-of-changes)

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## <sup>1</sup>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), 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), 22 November 2012 (HC 760), 12 December 2012 (HC 820), 20 December 2012 (HC 847), 30 January 2013 (HC 943), 7 February 2013 (HC 967), 11 March 2013 (HC 1038), 14 March 2013 (HC 1039), 9 April 2013 (Cm 8599), 10 June 2013 (HC 244), 31 July 2013 (Cm 8690), 6 September 2013 (HC 628), 9 October 2013 (HC 686), 8 November 2013 (HC 803), 9 December 2013 (HC 887), 10 December 2013 (HC 901), 18 December 2013 (HC 938), 10 March 2014 (HC 1130), 13 March 2014 (HC 1138), 1 April 2014 (HC 1201) and 10 June 2014 (HC 198).

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<sup>1</sup> This Statement of Changes can be viewed at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>

## **Implementation**

The changes set out in paragraphs 1, 2 and 31 to 48 of this statement take effect on 11 July 2014. However, if an applicant has made an application for entry clearance or leave before 11 July 2014 and the application has not been decided before that date, it will be decided in accordance with the Rules in force on 10 July 2014.

The change set out in paragraph 3 of this statement takes effect on 11 July 2014.

The changes set out in paragraphs 4 to 12 and 49 to 64 of this statement take effect on 28 July 2014 and apply to all applications to which paragraphs 276ADE to 276DH and Appendix FM apply (or can be applied by virtue of the Immigration Rules), and to any other ECHR Article 8 claims (save for those from foreign criminals), and which are decided on or after that date.

The change set out in paragraph 13 of this statement takes effect on 28 July 2014.

The changes set out in paragraphs 14 to 30 of this statement take effect on 28 July 2014 and apply to all ECHR Article 8 claims from foreign criminals which are decided on or after that date.

The change set out in paragraph 65 of this statement takes effect on 1 August 2014. However, if an applicant has made an application for entry clearance or leave before 1 August 2014, Appendix N will be applied as in force on 31 July 2014.

The changes set out in paragraph 66 of this statement take effect on 1 August 2014.

However, if an applicant has made an application for entry clearance or leave relying on an English language test deleted from Appendix O by paragraph 66 the following transitional provisions will apply:

- (a) Appendix O as it applied on 31 July 2014 will apply to a person who makes an application for entry clearance to enter the UK before 22 August 2014; and
- (b) Appendix O as it applied on 31 July 2014 will apply to a person who makes an application for leave to remain in the UK before 1 August 2014.

The transitional provisions set out in the implementation paragraphs of HC 198, laid on 10 June 2014, will not apply to such applications, but will continue to apply to other applications.

## **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 paragraph 245DC(a)(iii), after “taken over,” insert “but working for such business(es) does not include anything undertaken by the applicant pursuant to a contract of service or apprenticeship, whether express or implied and whether oral or written, with another business,”.
2. In paragraph 245DE(b)(iii), after “taken over,” insert “but working for such business(es) does not include anything undertaken by the applicant pursuant to a contract of service or apprenticeship, whether express or implied and whether oral or written, with another business,”.
3. In paragraph 245FB(f), delete “An applicant who has” and substitute “An applicant who is applying for leave to remain and has”.
4. In paragraph 276A delete “and 399A”
5. After paragraph 276A0 insert:

“276A00. Where leave to remain is granted under paragraphs 276ADE-276DH, or where an applicant does not meet the requirements in paragraph 276ADE(1) but the Secretary of State grants leave to remain outside the rules on Article 8 grounds, (and without prejudice to the specific provision that is made in paragraphs 276ADE-276DH in respect of a no recourse to public funds condition), that leave may be subject to such conditions as the Secretary of State considers appropriate in a particular case.”
6. In paragraph 276ADE(1)(vi) for “has no ties (including social, cultural or family) with” substitute “there would be very significant obstacles to the applicant’s integration into”.

7. Renumber paragraph 276BE as paragraph 276BE(1).
8. In paragraph 276BE(1) for “paragraph 276BE” substitute “this subparagraph”.
9. In paragraph 276BE(1) for “such conditions as the Secretary of State deems appropriate” substitute “a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition”.
10. After paragraph 276BE(1) insert:

“276BE(2). Where an applicant does not meet the requirements in paragraph 276ADE(1) but the Secretary of State grants leave to remain outside the rules on Article 8 grounds, the applicant will normally be granted leave for a period not exceeding 30 months and subject to a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition.”.
11. In paragraph 276DG for “such conditions as the Secretary of State deems appropriate” substitute “a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition”.
12. In paragraph A277C for “paragraph 276BE” substitute “paragraph 276BE(1)”.
13. For paragraph A279 substitute:

“A279. Paragraphs 398-399D apply to all immigration decisions made further to applications under Part 8 and paragraphs 276A-276D where a decision is made on or after 28 July 2014, irrespective of the date the application was made.”.
14. In paragraph 326B, after “Rules” insert “unless the person is someone to whom Part 13 of these Rules applies”.
15. In paragraph A362, for “9 July 2012” substitute “28 July 2014”.
16. In paragraph 378, after “UK Borders Act 2007” insert:

“or where the Secretary of State has certified a protection and/or a human rights claim under section 94 or section 94B of the Nationality, Immigration and Asylum Act 2002”
17. In paragraph 386 for “removal directions or such an appeal is pending” substitute “decision or such an appeal has been brought and has not yet been concluded. This paragraph does not apply if there is no right to appeal the decision, or if the right to appeal is exercisable only after the person has left the United Kingdom, or if a decision is taken to certify an appeal that is in

progress such that the appeal can only be continued after the person has left the United Kingdom”.

18. Before paragraph 398, insert:

“A398. These rules apply where:

- (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom’s obligations under Article 8 of the Human Rights Convention;
- (b) a foreign criminal applies for a deportation order made against him to be revoked.”

19. In paragraph 398(a), after “conducive to the public good” add “and in the public interest”.

20. In paragraph 398(b), after “conducive to the public good” add “and in the public interest”.

21. In paragraph 398(c), after “conducive to the public good” add “and in the public interest”.

22. In paragraph 398, for “it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors” substitute “the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A”.

23. In paragraph 399(a)(ii)(a), for “it would not be reasonable for the child to leave the UK” substitute “it would be unduly harsh for the child to live in the country to which the person is to be deported”.

24. In paragraph 399(a)(ii)(b), for “there is no other family member who is able to care for the child in the UK” substitute “it would be unduly harsh for the child to remain in the UK without the person who is to be deported”.

25. In paragraph 399(b), for “British Citizen, settled in the UK, or in the UK with refugee leave or humanitarian protection” substitute “British Citizen or settled in the UK”.

26. For sub-paragraphs (i) and (ii) of paragraph 399(b), substitute:

- “(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and
- (ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and

- (iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.”

27. For sub-paragraphs (a) and (b) of paragraph 399A substitute:

- “(a) the person has been lawfully resident in the UK for most of his life; and
- (b) he is socially and culturally integrated in the UK; and
- (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.”

28. For paragraph 399B substitute:

“Where an Article 8 claim from a foreign criminal is successful:

- (a) in the case of a person who is in the UK unlawfully or whose leave to enter or remain has been cancelled by a deportation order, limited leave may be granted for periods not exceeding 30 months and subject to such conditions as the Secretary of State considers appropriate;
- (b) in the case of a person who has not been served with a deportation order, any limited leave to enter or remain may be curtailed to a period not exceeding 30 months and conditions may be varied to such conditions as the Secretary of State considers appropriate;
- (c) indefinite leave to enter or remain may be revoked under section 76 of the 2002 Act and limited leave to enter or remain granted for a period not exceeding 30 months subject to such conditions as the Secretary of State considers appropriate;
- (d) revocation of a deportation order does not confer entry clearance or leave to enter or remain or re-instate any previous leave.”

29. Insert new paragraph 399C:

“Where a foreign criminal who has previously been granted a period of limited leave under this Part applies for further limited leave or indefinite leave to remain his deportation remains conducive to the public good and in the public interest notwithstanding the previous grant of leave.”

30. After paragraph 399C insert:

“399D. Where a foreign criminal has been deported and enters the United Kingdom in breach of a deportation order enforcement of the deportation order is in the public interest and will be implemented unless there are very exceptional circumstances.”

31. In Appendix A, in paragraph 36A, delete “the provisions in (b)” and substitute “the provisions in (b)(ii) or (b)(iii)”.
32. In Appendix A, after paragraph 36A, insert:
- “36B. An applicant who is applying for leave to remain and has, or was last granted, entry clearance, leave to enter or leave to remain as a Tier 1 (Post-Study Work) Migrant will only be awarded points under the provisions in (b)(ii), (b)(iii) or (d) in Table 4.”
33. In Appendix A, in the first row of Table 4, delete paragraph (d)(iii) and substitute:
- “(iii) since before 11 July 2014 and up to the date of his application, has been continuously engaged in business activity which was not, or did not amount to, activity pursuant to a contract of service with a business other than his own and, during such period, has been continuously:
- (1) registered with HM Revenue & Customs as self-employed, or
  - (2) registered with Companies House as a director of a new or an existing business. Directors who are on the list of disqualified directors provided by Companies House will not be awarded points,”
34. In Appendix A, in the first row of Table 4, in paragraph (d)(iv), delete “is working” and substitute “since before 11 July 2014 and up to the date of his application, has continuously been working”.
35. In Appendix A, delete paragraph 41-SD(b) and substitute:
- “(b) Where sub-paragraph (a)(iii) above applies and this paragraph refers to the applicant’s business, the business must be a company and the applicant must be registered as a director of that business in the UK, and provide a Companies House document showing the address of the registered office in the UK, or head office in the UK if it has no registered office, and the applicant's name, as it appears on the application form, as a director.”
36. In Appendix A, in paragraph 41-SD(e)(ii), after “the occupation that the applicant” delete “is working in” and substitute “has been working in since before 11 July 2014 up to the date of his application”.
37. In Appendix A, in paragraph 41-SD(e)(iii), after “specified documents” delete “:” and substitute “covering (either together or individually) a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application:”.
38. In Appendix A, delete paragraph 41-SD(e)(iv)-(v) and substitute:

“(iv) one or more of the following documents showing trading, which must cover (either together or individually) a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application:

- (1) one or more contracts for service. If a contract is not an original the applicant must sign each page. Each contract must show:
  - (a) the applicant's name and the name of the business;
  - (b) the service provided by the applicant's business;
  - (c) the name of the other party or parties involved in the contract and their contact details, including their full address, postal code and, where available, landline phone number and any email address; and
  - (d) the duration of the contract; or
- (2) one or more original letters from UK-regulated financial institutions with which the applicant has a business bank account, on the institution’s headed paper, confirming the dates the business was trading during the period referred to at (iv) above;”

(v)

- (1) if claiming points for being self-employed, the following specified documents to show the applicant’s compliance with National Insurance requirements:
  - (a) the original bills covering the continuous billing period during which the applicant claims to have been self-employed, if his Class 2 National Insurance is paid by bill;
  - (b) bank statements covering the continuous period during which the applicant claims to have been self-employed, showing the direct debit payment of Class 2 National Insurance to HM Revenue & Customs;
  - (c) all original small earnings exception certificates issued to the applicant by HM Revenue & Customs covering the continuous tax period during which the applicant claims to have been self-employed, if he has low earnings; or
  - (d) if applying before 31 January 2015, the original, dated welcome letter from HM Revenue & Customs containing the applicant's unique taxpayer reference

number, if he has not yet become liable for paying National Insurance, or has not yet received the documents in (\_c);

or

(2)

(\_a) if claiming points for being a director of a UK company at the time of his application, a printout of a Current Appointment Report from Companies House, dated no earlier than three months before the date of the application, listing the applicant as a director of a company that is actively trading and not dormant, or struck-off, or dissolved or in liquidation, and showing the date of his appointment as a director of that company; and

(\_b) if claiming points for being a director of a UK company other than the company referred to in (\_a) above, at any time before the date of his application, a printout from Companies House of the applicant's appointments history, showing that the applicant has held directorships continuously during the period in which he claims to have been a director;

and the evidence at (1) and (2) above must cover (either together or individually) a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application, unless the applicant is claiming points for being self-employed at the time of his application and the evidence consists of documents issued by HM Revenue & Customs referred to at (v)(1)(\_a), (\_c) or (\_d) above, in which case the applicant must submit the most recent document issued before the date of his application;

and”

39. In Appendix A, after paragraph 41-SD(e)(v), insert:

“(vi) if the applicant is currently a director, the following evidence that his business has business premises in the UK and is subject to UK taxation:

(1) a printout of a Companies House document showing the address of the registered office in the UK, or head office in the UK if it has no registered office, and the applicant's name, as it appears on the application form, as a director; and

(2) documentation from HM Revenue & Customs which confirms that the business is registered for corporation tax;

and

- (vii) the following evidence that the business has a UK bank account of which the applicant is a signatory:
  - (1) if the applicant is currently self employed, a personal bank statement showing transactions for his business (which must be currently active), or a business bank statement, or a letter from a UK-regulated financial institution, on the institution's headed paper, confirming that he has a business and acts through that bank for the purposes of that business, or
  - (2) if the applicant is currently a director, a company bank statement showing that the company has a UK account, or a letter from a UK-regulated financial institution, on the institution's headed paper, confirming that the company has a bank account and the applicant is a signatory of that account,

and the evidence at (vi) and (vii)(2) above must relate to a company that is actively trading and not dormant, or struck-off, or dissolved or in liquidation.”

- 40. In Appendix A, at the start of paragraph 42, delete “Points will only be awarded” and substitute “Subject to paragraphs 36A and 36B above, points will only be awarded”.
- 41. In Appendix A, in the first row of Table 5, delete “as set out in Table 4 above”.
- 42. In Appendix A, in the second row of Table 5, delete paragraphs (b) and (c) and substitute:
  - “(b) registered with Companies House as a director of a new or an existing business. Directors who are on the list of disqualified directors provided by Companies House will not be awarded points.”
- 43. In Appendix A, in the third row of Table 5, delete paragraphs (b) and (c) and substitute:
  - “(b) registered with Companies House as a director of a new or an existing business. Directors who are on the list of disqualified directors provided by Companies House will not be awarded points.”
- 44. In Appendix A, in the first row of Table 6, delete paragraphs (b) and (c) and substitute:
  - “(b) registered with Companies House as a director of a new or an existing business. Directors who are on the list of disqualified directors provided by Companies House will not be awarded points.”

45. In Appendix A, delete paragraph 46-SD(c)(ii) and substitute:

- “(ii) Evidence that the business has a UK bank account of which the applicant is a signatory:
  - (1) If the applicant is self employed, a personal bank statement showing transactions for his business, or a business bank statement, or a letter from a UK-regulated financial institution, on the institution’s headed paper, confirming that he has a business and acts through that bank for the purposes of that business, or
  - (2) If the applicant is a director, a company bank statement showing that the company has a UK account, or a letter from a UK-regulated financial institution, on the institution’s headed paper, confirming that the company has a bank account and the applicant is a signatory of that account,

and”

46. In Appendix A, in paragraph 46-SD(g)(i)(1), delete “paid by quarterly bill” and substitute “paid by bill”.

47. In Appendix A, in paragraph 46-SD(g)(ii), delete “Directors who are on the list of disqualified directors provided by Companies House will not be awarded points.”.

48. In Appendix A, in paragraph 53(a)(ii), delete “spouse or partner (within the meaning used in Part 8 of these Rules)” and substitute “spouse, civil partner or partner (defined as a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application)”.

49. In Appendix FM in paragraph GEN.1.1. after “rights and freedoms of others” insert “(and in doing so also reflects the relevant public interest considerations as set out in Part 5A of the Nationality, Immigration and Asylum Act 2002)”.

50. In Appendix FM in paragraph GEN.1.1. insert at the end:

“, in line with the Secretary of State’s duty under section 55 of the Borders, Citizenship and Immigration Act 2009”.

51. In Appendix FM after paragraph GEN.1.9. insert:

“GEN.1.10. Where an applicant does not meet the requirements of this Appendix as a partner or parent but the decision-maker grants entry clearance or leave to enter or remain outside the rules on Article 8 grounds, the applicant will normally be granted entry clearance for a period not exceeding 33 months, or leave to enter or remain for a period not exceeding 30 months, and

subject to a condition of no recourse to public funds unless the decision-maker considers that the person should not be subject to such a condition.

GEN.1.11. Where entry clearance or leave to enter or remain is granted under this Appendix, or where an applicant does not meet the requirements of this Appendix as a partner or parent but the decision-maker grants entry clearance or leave to enter or remain outside the rules on Article 8 grounds, (and without prejudice to the specific provision that is made in this Appendix in respect of a no recourse to public funds condition), that leave may be subject to such conditions as the decision-maker considers appropriate in a particular case.

GEN.1.12. In paragraphs GEN.1.10. and GEN.1.11. “decision-maker” refers to the Secretary of State or an Entry Clearance Officer.”.

52. In Appendix FM at the end of paragraph E-LTRP.2.1.(a) insert “or”.
53. In Appendix FM at the end of paragraph E-LTRP.2.1.(b) delete “; or”.
54. In Appendix FM delete paragraph E-LTRP.2.1.(c).
55. In Appendix FM for paragraph E-LTRP.2.2. substitute:

“E-LTRP.2.2. The applicant must not be in the UK –

  - (a) on temporary admission or temporary release, unless paragraph EX.1. applies; or
  - (b) in breach of immigration laws (disregarding any period of overstaying for a period of 28 days or less), unless paragraph EX.1. applies.”.
56. In Appendix FM in paragraph D-LTRP.1.2. for “unless the Secretary of State deems such recourse to be appropriate” substitute “unless the Secretary of State considers that the person should not be subject to such a condition”.
57. In Appendix FM in paragraph D-ILRP.1.3. for “unless the Secretary of State deems such recourse to be appropriate” substitute “unless the Secretary of State considers that the person should not be subject to such a condition”.
58. In Appendix FM delete the heading before paragraph EX.1. and substitute:

“Section EX: Exceptions to certain eligibility requirements for leave to remain as a partner or parent”.
59. In Appendix FM after paragraph EX.1. insert:

“EX.2. For the purposes of paragraph EX.1.(b) “insurmountable obstacles” means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.”.

60. In Appendix FM at the end of paragraph E-LTRPT.3.1.(a) insert “or”.
61. In Appendix FM delete paragraph E-LTRPT.3.1.(c).
62. In Appendix FM for paragraph E-LTRPT.3.2. substitute:  
 “E-LTRPT.3.2. The applicant must not be in the UK –
- (a) on temporary admission or temporary release, unless paragraph EX.1. applies; or
- (b) in breach of immigration laws (disregarding any period of overstaying for a period of 28 days or less), unless paragraph EX.1. applies.”.
63. In Appendix FM in paragraph D-LTRPT.1.2. for “unless the Secretary of State deems such recourse to be appropriate” substitute “unless the Secretary of State considers that the person should not be subject to such a condition”.
64. In Appendix FM in paragraph D-ILRPT.1.3. for “unless the Secretary of State deems such recourse to be appropriate” substitute “unless the Secretary of State considers that the person should not be subject to such a condition”.
65. In Appendix N, after “Mandarin Teachers Programme (University of Ulster)” insert a new entry as follows:

Mathematics Teacher Exchange Programme (England - China)	Mathematics teachers from China will support the teaching and learning of mathematics, and promote their approaches to the teaching of mathematics, in a network of Maths Hubs across England which are funded by the Department for Education (DfE). There will also be reciprocal arrangements for teachers from England to spend time in schools in China.	National College for Teaching and Leadership, Department for Education	Work experience 12 months	England
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66. In Appendix O, in the table, delete the following rows:

Cambridge IGCSE English as a First Language (Syllabus 0500 & 0522)	Cambridge International Examinations	B1 B2	No expiry	Certificate Supplementary Certifying Statement with breakdown of component grades
Cambridge IGCSE English as a Second Language (Syllabus 0510 & 0511)	Cambridge International Examinations	A2 B1 B2	No expiry	Certificate Supplementary Certifying Statement with breakdown of component grades

BULATS Online (certificated version)  Only tests taken with certifying BULATS agents detailed on the BULATS website	Cambridge English (previously known as Cambridge ESOL)	A1 A2 B1 B2 C1 C2	2 years	For tests taken before 6 April 2013: Certificate, Test report form for each component (reading, writing, speaking, listening), Name of test centre, Country where test was taken  For tests taken on or after 6 April 2013: no documents required (Scores will be verified using the Cambridge English online system using name, date of birth and passport number)
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Entry Level Certificate in ESOL Skills for Life	Trinity College London	A1 A2 B1	For UK immigration purposes, the tests are valid for 2 years only	For tests taken before 1 July 2013: Summary slip and certificate  For tests taken on or after 1 July 2013: Certificate which must show the candidate's name, qualification, date of award and the candidate Trinity ID
Level 1 Certificate in ESOL Skills for life	Trinity College London	B2	For UK immigration purposes, the tests are valid for 2 years only	For tests taken before 1 July 2013: Summary slip and certificate  For tests taken on or after 1 July 2013: Certificate which must show the candidate's name, qualification, date of award and the candidate Trinity ID
Level 2 Certificate in ESOL Skills for life	Trinity College London	C1	For UK immigration purposes, the tests are valid	For tests taken before 1 July 2013: Summary slip and certificate

			for 2 years only	For tests taken on or after 1 July 2013: Certificate which must show the candidate's name, qualification, date of award and the candidate Trinity ID
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**EXPLANATORY MEMORANDUM TO  
THE STATEMENT OF CHANGES IN IMMIGRATION RULES  
PRESENTED TO PARLIAMENT ON 10 JULY 2014 (HC 532)**

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:

- amend the Tier 1 (Entrepreneur) category of the Points-Based System. The changes suspend the provision to switch into the category from study categories and the Tier 1 (Post-Study Work) category, except in certain circumstances. These changes are being made in response to evidence of widespread abuse of these provisions, pending further investigation of this abuse and consideration of other remedial measures;
- add a new 12 month “Mathematics Teacher Exchange” scheme between England and China to the list of approved schemes under the Tier 5 Government Authorised Exchange route;
- remove all tests provided by Cambridge International Examinations (“CIE”) and certain tests provided by Cambridge English and Trinity College London from the list of approved English language tests used in various immigration categories, including the Points-Based System and applications by family members;
- align the Immigration Rules on family and private life in Appendix FM and paragraphs 276ADE-276DH with the public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002 which apply to decisions engaging the qualified right to respect for private and family life under Article 8 of the European Convention on Human Rights. The changes also align the Immigration Rules on family and private life in Part 13, which relate to foreign criminals, with the public interest considerations in sections 117B and 117C of the 2002 Act. These considerations are inserted by section 19 of the Immigration Act 2014, which comes into force on 28 July 2014;
- align the Immigration Rules in Part 13 which relate to foreign criminals with the power to certify human rights claims where there is no risk of serious irreversible harm from removal pending appeal contained in section 94B of the 2002 Act. This power is inserted by section 17(3) of the Immigration Act 2014, which comes into force on 28 July 2014; and
- make other minor amendments and updates.

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

3.1. The Committee is invited to note that this Statement of Changes is accompanied by amended guidance relating to the changes to Tier 1 (Entrepreneur) which is being published on the visas and immigration pages of the GOV.UK website <https://www.gov.uk/visasimmigration> on the same date as these changes take effect, namely 11 July 2014. Guidance relating to changes to approved English language test providers will be published on the visas and immigration pages of the GOV.UK website <https://www.gov.uk/visasimmigration> on 1 August 2014.

3.2. The Home Office regrets that, for the changes to Tier 1 (Entrepreneur), it has not been possible to give the usual 21 days' notice before they take effect. The changes are required urgently to counter abuse in the Tier 1 (Entrepreneur) category and, as with changes to the route laid on 30 January 2013 (HC 943), need to come into force immediately to avoid a surge in abusive applications by those seeking to apply before the changes come into effect. The Explanatory Memorandum to HC 943 stated that previous changes to the category in December 2012 had led to a spike of nearly 3,000 applications when laid with 21 days' notice. It remains a concern that this would be repeated if the changes in this statement were laid with 21 days' notice.

3.3. The correction to the rules relating to Tier 1 (Graduate Entrepreneur) is also being made without the usual 21 days' notice. This correction is in applicants' favour, and is being made quickly to ensure that applications are not refused unnecessarily.

3.4. The changes relating to family and private life will come into force on 28 July 2014, in line with the commencement of section 19 of the Immigration Act 2014. The Home Office regrets that it was not possible to finalise this Statement of Changes on a basis that, consistent with normal practice, would have allowed the changes to be laid at least 21 days prior to their coming into force. This is because many of the changes to the Immigration Rules need to coincide with the coming into force of sections 17(3) and 19 of the Immigration Act 2014 on 28 July 2014.

3.5. However, the substance of those changes which concern the alignment of the Immigration Rules relating to family and private life with sections 117B, 117C and 117D of the Nationality, Immigration and Asylum Act 2002, inserted by section 19 of the 2014 Act, along with section 94B of the Nationality, Immigration and Asylum Act 2002, were extensively debated by both Houses of Parliament during the passage of the Immigration Act.

#### **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 the stay of persons in the United Kingdom.

4.2. This Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules, which can be found in the visas and immigration pages of the GOV.UK website at <https://www.gov.uk/government/collections/immigration-rules> where there are also copies of all the Statements of Changes in Immigration Rules issued since May 2003.

4.3. The changes set out in paragraphs 1, 2 and 31 to 48 of this statement take effect from 11 July 2014. However, if an applicant has made an application for entry clearance or leave before 11 July 2014 and the application has not been decided before that date, it will be decided in accordance with the Rules in force on 10 July 2014.

4.4. The change set out in paragraph 3 of this statement takes effect on 11 July 2014.

4.5. The changes set out in paragraphs 4 to 12 and 49 to 64 of this statement take effect on 28 July 2014 and apply to all applications to which paragraphs 276ADE to 276DH and Appendix FM apply (or can be applied by virtue of the Immigration Rules), and to any other ECHR Article 8 claims (save for those from foreign criminals), and which are decided on or after that date.

4.6. The change set out in paragraph 13 of this statement takes effect on 28 July 2014.

4.7. The changes set out in paragraphs 14 to 30 of this statement take effect on 28 July 2014 and apply to all ECHR Article 8 claims from foreign criminals which are decided on or after that date.

4.8. The change set out in paragraph 65 of this statement takes effect from 1 August 2014. However, if an applicant has made an application for entry clearance or leave Appendix N will be applied as in force on 31 July 2014.

4.9. The changes set out in paragraph 66 of this statement take effect from 1 August 2014. However, if an applicant has made an application for entry clearance or leave relying on an English language test deleted from Appendix O by paragraph 66:

(a) Appendix O as it applied on 31 July 2014 will apply to a person who makes an application for entry clearance to enter the UK before 22 August 2014; and

(b) Appendix O as it applied on 31 July 2014 will apply to a person who makes an application for leave to remain in the UK before 1 August 2014.

The transitional provisions set out in the implementation paragraphs of HC 198, laid on 10 June 2014, will not apply to such applications, but will continue to apply to other applications.

## **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 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**

#### **Changes relating to Tier 1 (Entrepreneur)**

7.1. The Tier 1 (Entrepreneur) category of the Points-Based System caters for those with financial backing (of either £50,000 or £200,000, depending on their circumstances) to set up, take over or otherwise be actively involved in the running of a business in the UK.

7.2. Applicants who are in the UK in a study category (Tier 4 and the older study categories it superseded) can currently apply to switch into Tier 1 (Entrepreneur) if they have access to £50,000 funding to invest in business from:

- one or more registered venture capitalist firms regulated by the Financial Conduct Authority (FCA),
- one or more UK Entrepreneurial seed funding competitions endorsed by UK Trade & Investment, or
- one or more UK Government Departments, or Devolved Government Departments in Scotland, Wales or Northern Ireland.

7.3. Applicants who are in the UK in the Tier 1 (Post-Study Work) category can currently apply to switch into Tier 1 (Entrepreneur) if they:

- have access to £50,000 funding from:
  - one or more registered venture capitalist firms regulated by the Financial Conduct Authority (FCA),
  - one or more UK Entrepreneurial seed funding competitions endorsed by UK Trade & Investment, or
  - one or more UK Government Departments, or Devolved Government Departments in Scotland, Wales or Northern Ireland,
- have access to £50,000 funding from any source, and have already established themselves in business and are working in a skilled occupation, or
- have access to £200,000 funding from any source.

7.4. The rules for the category were tightened in December 2012 and again in January 2013 to attempt to counter abuse. However, UK Visas & Immigration (UKVI) continues to receive very high volumes of applications, around two thirds of which are refused on the basis that UKVI is not satisfied that the applicant genuinely intends to establish a business. Further investigations have identified large numbers of applications under this category to be associated with organised attempts to obtain

leave to remain by fraud. In addition our investigations into those involved in abusing the English language testing regime have identified a significant number of people with invalid or questionable ETS certificates have either obtained, or sought to obtain leave under the Tier 1 (Entrepreneur) route. UKVI checks on the tax status of those who have previously been granted leave to remain under the route also indicate that a significant number are in employment in breach of their conditions.

7.5. Given the scale of the attempted abuse it is necessary to suspend part of this route whilst further investigations are carried out and a review is conducted into what further steps are required to ensure that the operation of this category of stay delivers its purpose.

7.6. We will keep the route open where we believe it is working effectively. These changes amend the above switching provisions so that applicants who are in the UK in a study category will only be able to apply to switch into Tier 1 (Entrepreneur) if they have access to £50,000 funding to invest in business from:

- one or more UK Entrepreneurial seed funding competitions endorsed by UK Trade & Investment, or
- one or more UK Government Departments, or Devolved Government Departments in Scotland, Wales or Northern Ireland.

(The provision for venture capitalist funding is being removed.)

7.7. These changes also amend the above switching provisions so that applicants who are in the UK in the Tier 1 (Post-Study Work) category can apply to switch into Tier 1 (Entrepreneur) if they:

- have access to £50,000 funding from:
  - one or more UK Entrepreneurial seed funding competitions endorsed by UK Trade & Investment, or
  - one or more UK Government Departments, or Devolved Government Departments in Scotland, Wales or Northern Ireland, or
- have access to £50,000 funding from any source, and have already established themselves in a genuine business (which is not de facto employment with another employer) before the date these changes take effect (namely 11 July 2014), and are working in a skilled occupation. Evidential requirements to show that applicants have established themselves in a genuine business are being tightened.

(The provisions for venture capitalist funding and for those with funding not from a specified source, who are not established in a genuine business before 11 July 2014, are being removed.)

7.8. The changes being made are proportionate, given the evidence of high levels of abuse of the existing arrangements by in-country applicants. There are no changes

being made to the provisions for funding from endorsed seed funding competitions or Government Departments, where there is currently no evidence of abuse. There are also no changes being made to the funding provisions for applications from overseas.

7.9. The following minor changes are also being made to this category. These are routine changes, but to avoid confusion by issuing multiple updates of forms and guidance, they are being made at the same time as the changes above:

- Tier 1 (Entrepreneur) Migrants are restricted to working only for their own business. A clarification is being made to confirm that this means they cannot claim to be self-employed yet work in a de facto employment relationship with another employer.
- Clarifications are being made to tables in Appendix A that registration as a director must be with Companies House. The notes to the tables already made this clear, but the amendments show this more clearly in the tables themselves.
- A clarification is being made to the requirement for an applicant to be a director where the funding they are claiming points for is made available to their business, rather than to the applicant by name.
- A minor update is being made to reflect the fact that bills for Class 2 National Insurance contributions are no longer issued quarterly.
- A change is being made so that where an applicant is required to provide evidence of a business bank account, they must be a signatory to that account. This is a minor change which all genuine applicants should already satisfy. As such, it is not considered necessary to give advance notice of this change.
- A minor change is being made to the definition of “partner” where an applicant is relying on funds held in a joint bank account with their spouse, civil partner or partner. This change brings the definition into line with that in the Rules for family members (Appendix FM) where appropriate, and also confirms that the definition only includes partners of Tier 1 Migrants within the meaning of Part 8 of the Rules.

### **Changes relating to Tier 1 (Graduate Entrepreneur)**

7.10. The Tier 1 (Graduate Entrepreneur) category caters for graduates who have been endorsed by UK Higher Education Institutions or by UK Trade and Investment to establish one or more businesses in the UK. A correction is being made to make clear that a requirement, for those last granted as Tier 2 Migrants to have been sponsored as post-doctoral researchers, applies only to applications for leave to remain.

### **Changes relating to Tier 5 (Government Authorised Exchange)**

7.11. Tier 5 of the Points-Based System caters for youth mobility and temporary workers coming for primarily non-economic purposes, and consists of two categories: Tier 5 (Youth Mobility Scheme) and Tier 5 (Temporary Workers).

The Temporary Workers category consists of five sub-categories: Creative and Sporting, Charity Workers, Religious Workers, Government Authorised Exchange, and International Agreement. Applicants must have a Tier 5 Sponsor, which is usually their UK employer. The Government Authorised Exchange route enables people to come to the UK to share knowledge, skills and gain work experience through individual schemes.

7.12. The change adds a new 12 month “Mathematics Teacher Exchange” scheme between England and China to the list of approved schemes under the Tier 5 Government Authorised Exchange route. This scheme is funded by the Department for Education (DfE) and will be run by the National College for Teaching and Leadership which is an executive agency of the DfE. The scheme aims to share learning and best practice regarding the teaching of mathematics in schools in England and China.

### **Changes relating to approved English language tests**

7.13. Applicants in various immigration categories are required to prove their English language ability. One way in which they may do so is by passing an English language test approved by the Secretary of State for these purposes. The approved tests, and the levels of English that they are accepted for, are set out in Appendix O to the Immigration Rules.

7.14. Changes are being made to remove all tests provided by Cambridge International Examinations (CIE) from the list of approved English language tests on 1 August 2014. This is a scheduled withdrawal at this provider’s request.

7.15. Changes are also being made to remove specific tests provided by Cambridge English (the BULATS Online test) and Trinity College London (ESOL Skills for Life tests) from the list of approved English language tests on 1 August 2014. These changes are being made at the providers’ requests. Other listed tests from these two providers will continue to be accepted.

### **Changes relating to family and private life**

7.16. These changes make technical amendments to the Immigration Rules on family and private life in Appendix FM and paragraphs 276ADE-276DH to align these with the public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002 for decisions engaging the qualified right to respect for private and family life under ECHR Article 8. These considerations, inserted by section 19 of the Immigration Act 2014 which comes into force on 28 July 2014, give the weight of primary legislation to Parliament’s view of what the public interest under Article 8 requires, in particular in respect of controlling immigration to safeguard the UK’s economic well-being. The amendments to the Immigration Rules on family and private life in Appendix FM and paragraphs 276ADE-276DH made by this Statement of Changes do not represent any substantive change to the policies reflected in the Statement of Changes HC 194 which came into force on 9 July 2012, but ensure consistency of language with that used in section 19 of the 2014 Act, which now provides statutory underpinning for those policies.

7.17. These changes also make amendments to the Immigration Rules on family and private life in Part 13, which relate to foreign criminals, to align these with the public interest considerations in sections 117B and 117C of the Nationality, Immigration and Asylum Act 2002 for decisions engaging the qualified right to respect for private and family life under ECHR Article 8 and to allow non-suspensive appeals for those being deported in section 94B of the Nationality, Immigration and Asylum Act 2002.

7.18. The ECHR Article 8 considerations, inserted by section 19 of the Immigration Act 2014 which comes into force on 28 July 2014, give the weight of primary legislation to Parliament's view of what the public interest under Article 8 requires in particular in respect of preventing disorder or crime. In addition, this Statement of Changes makes amendments to set out clearly the practice the Secretary of State will follow when an ECHR Article 8 claim from a foreign criminal succeeds and leave to enter or remain is to be granted.

7.19. The non-suspensive appeals provision, inserted by section 17(3) of the Immigration Act 2014, allows the Secretary of State to certify an appeal where an individual is liable to deportation when, despite the appeals process not having been begun or not having been exhausted, removal of a person to the country or territory to which they are proposed to be removed, pending the outcome of an appeal in relation to their claim, would not be unlawful under section 6 of the Human Rights Act 1998, for example the individual would not face a real risk of serious irreversible harm if removed.

## **8. Consultation**

8.1. As the changes to Tier 1 (Entrepreneur) are required urgently to counter abuse, they have not been the subject of a formal public consultation.

8.2. The changes to the Immigration Rules on family and private life in paragraphs 276AO to 276DG, Appendix FM and Part 13 are to align the rules with primary legislation coming into force on the same date. They have therefore not been the subject of a formal public consultation.

8.3. The other changes are updates to existing lists and do not change existing policies. They have not therefore been the subject of a formal public consultation.

## **9. Guidance**

9.1. Guidance will be updated and placed on the GOV.UK website.

## **10. Impact**

10.1. These changes will have 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 Tier 1 (Entrepreneur) category is used by migrants establishing or taking over small businesses. The changes to this category are concerned with countering

abuse and will have limited or no impact on genuine small businesses which are already established. The other changes will also have limited or no 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 all of the relevant Immigration Rules, including any Rules amended or added by the changes in this Statement and lay a report before Parliament within five years of 6 April 2012 and within every five years after that. Following each review the Secretary of State will decide whether the relevant Immigration Rules should remain as they are, be revoked or be amended. A further Statement of Changes would be needed to revoke or amend the relevant Rules.

## **13. Contact**

13.1. Queries should be directed to the Home Office's contact centre on 0300 123 2241, or as per the 'Contact UKVI' section on the visas and immigration pages of the GOV.UK website at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>.

13.2. Specific written queries relating to this Statement of Changes should be directed to [StatementofChanges@homeoffice.gsi.gov.uk](mailto: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 visa and immigration pages of the GOV.UK website at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>.