

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 13 March 2006 under section 3(2) of
the Immigration Act 1971*

*Ordered by The House of Commons to be printed
13 March 2006*

(This document is accompanied by an Explanatory Memorandum)

STATEMENT OF CHANGES IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the Rules laid down by him as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395), as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cmnd 2663), 26 October 1995 (HC 797), 4 January 1996 (Cmnd 3073), 7 March 1996 (HC 274), 2 April 1996 (HC 329), 30 August 1996 (Cmnd 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cmnd 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cmnd 3953), 8 October 1998 (Cmnd 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cmnd 4851), 27 August 2001 (Cmnd 5253), 16 April 2002 (HC 735), 27 August 2002 (Cmnd 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 (Cmnd 5829), 24 August 2003 (Cmnd 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 (Cmnd 6297), 24 September 2004 (Cmnd 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) and 1 March 2006 (HC 949).

These changes shall take effect on 3 April 2006.

1. In paragraph 6, after ‘visa nationals’, insert:

“ ‘Non-visa nationals’ are persons who are not specified in Appendix 1 to these Rules”.

2. For paragraph 60(i), substitute:

“(i) was last admitted to the UK in possession of a valid entry clearance in accordance with paragraphs 57-75M or 82-87F of these Rules,

unless the applicant:

- (a) was originally admitted to the UK with entry clearance in accordance with paragraphs 57-75M or 82-87F of these Rules which has since expired, but has subsequently been granted leave to remain in accordance with paragraphs 57-75M or 82-87F of these Rules; or
- (b) is a non-visa national who has been accepted for a course of study at degree level or above, and who entered the UK with leave as a visitor in accordance with paragraphs 40-46F of these Rules on or before 1 July 2006; or
- (c) is a non-visa national who has been accepted for a course of study at degree level or above, and who entered the UK with leave in accordance with the provisions of any category of these Rules, other than paragraphs 40-56J, 104-121, and 135I-135N; or
- (d) is a non-visa national who has been accepted for a course of study below degree level, and has valid leave in accordance with paragraphs 63-87F, Part 2 (other than paragraphs 47-56J), or Parts 4-8 (other than paragraphs 104-121 and 135I-135N) of these Rules, which was granted on or before 22 July 2004; or
- (e) is a non-visa national who has been accepted for a course of study below degree level, and has valid leave as a student to study below degree level in accordance with paragraphs 57-62 and 82-87F of these Rules, which was granted on or before 30 September 2004; and”

3. After paragraph 69P (iii), insert:

“(iii)(a) has leave to enter or remain in the United Kingdom as a work permit holder in accordance with paragraphs 128 to 135 of these Rules; or”.

4. For paragraphs 70 to 75, substitute:

“Requirements for leave to enter the United Kingdom as a postgraduate doctor or dentist

70. The requirements to be met by a person seeking leave to enter the UK as a postgraduate doctor or dentist are that the applicant:

- (i) has successfully completed and obtained a recognised UK degree in medicine or dentistry from either:
 - (a) a UK publicly funded institution of further or higher education; or
 - (b) a UK bona fide private education institution which maintains satisfactory records of enrolment and attendance; and
- (ii) has previously been granted leave:
 - (a) in accordance with paragraphs 57 to 69L of these Rules for the final academic year of the studies referred to in (i) above; and

- (b) as a student under paragraphs 57 to 62 of these Rules for at least one other academic year (aside from the final year) of the studies referred to in (i) above; and
- (iii) holds a letter from the Postgraduate Dean confirming he has a full-time place on a recognised Foundation Programme; and
- (iv) intends to train full time in his post on the Foundation Programme; and
- (v) is able to maintain and accommodate himself and any dependants without recourse to public funds; and
- (vi) intends to leave the United Kingdom if, on expiry of his leave under this paragraph, he has not been granted leave to remain in the United Kingdom as:
 - (a) a doctor or dentist undertaking a period of clinical attachment or a dental observer post in accordance with paragraphs 75G to 75M of these Rules; or
 - (b) a work permit holder in accordance with paragraphs 128 to 135 of these Rules; or
 - (c) a highly skilled migrant in accordance with paragraphs 135A to 135H of these Rules; or
 - (d) a person intending to establish themselves in business in accordance with paragraphs 200 to 210 of these Rules; or
 - (e) an innovator in accordance with paragraphs 210A to 210H of these Rules; and
- (vii) if his study at medical school or dental school, or any subsequent studies he has undertaken, were sponsored by a government or international scholarship agency, he has the written consent of his sponsor to enter or remain in the United Kingdom as a postgraduate doctor or dentist; and
- (viii) has completed his medical or dental degree in the 12 months preceding this application; and
- (ix) if he has previously been granted leave as a postgraduate doctor or dentist, is not seeking leave to enter to a date beyond 3 years from that date on which he was first granted leave to enter or remain in this category; and
- (x) holds a valid entry clearance for entry in this capacity except where he is a British National (Overseas), a British overseas territories citizen, a British Overseas citizen, a British protected person or a person who under the British Nationality Act 1981 is a British subject.

Leave to enter as a postgraduate doctor or dentist

71. Leave to enter the United Kingdom as a postgraduate doctor or dentist may be granted for the duration of the Foundation Programme, for a period not exceeding 26 months, provided the Immigration Officer is satisfied that each of the requirements of paragraph 70 is met.

Refusal of leave to enter as a postgraduate doctor or dentist

72. Leave to enter as a postgraduate doctor or dentist is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 70 is met.

Requirements for an extension of stay as a postgraduate doctor or dentist

73. The requirements to be met by a person seeking an extension of stay as a postgraduate doctor or dentist are that the applicant:

- (i) meets the requirements of paragraph 70 (i) to (vii); and
- (ii) has leave to enter or remain in the United Kingdom as either:
 - (a) a student in accordance with paragraphs 57 to 69L of these Rules; or
 - (b) as a postgraduate doctor or dentist in accordance with paragraphs 70 to 75 of these Rules; or
 - (c) as a doctor or dentist undertaking a period of clinical attachment or a dental observer post in accordance with paragraphs 75G to 75M of these Rules.
- (iii) if he has not previously been granted leave in this category, has completed his medical or dental degree in the last 12 months;
- (iv) would not, as a result of an extension of stay, remain in the United Kingdom as a postgraduate doctor or dentist to a date beyond 3 years from the date on which he was first given leave to enter or remain in this capacity.

Extension of stay as a postgraduate doctor or dentist

74. An extension of stay as a postgraduate doctor or dentist may be granted for the duration of the Foundation Programme, for a period not exceeding 3 years, provided the Secretary of State is satisfied that each of the requirements of paragraph 73 is met.

Refusal of an extension of stay as a postgraduate doctor or dentist

75. An extension of stay as a postgraduate doctor or dentist is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 73 is met.”.

5. After paragraph 75G (iv), insert:
 - “; and
 - (v) if he has previously been granted leave in this category, is not seeking leave to enter which, when amalgamated with those previous periods of leave, would total more than 6 months.”
6. In paragraph 75H, for “up to a maximum of 6 months”, substitute “up to a maximum of 6 weeks at a time or 6 months in total in this category.”.
7. After paragraph 75K(v), insert:
 - “; and
 - (vi) if he has previously been granted leave in this category, is not seeking an extension of stay which, when amalgamated with those previous periods of leave, would total more than 6 months.”
8. In paragraph 75L, after “may be granted an extension of stay for the period of their clinical attachment or dental observer post”, insert “up to a maximum of 6 weeks at a time or 6 months in total in this category.”.
9. For paragraph 135O (i), substitute:
 - “(i) has successfully completed and obtained either:
 - (a) a UK recognised degree (with second class honours or above), Master’s degree or PhD in a subject approved by the Department for Education and Skills for the purposes of this scheme at either:
 - (i) a publicly funded institution of further or higher education; or
 - (ii) a bona fide private education institution which maintains satisfactory records of enrolment and attendance; or
 - (b) a UK recognised Master’s degree or PhD in any subject, where study for this qualification commenced on or after 1 May 2006, at an institution which is on the Department for Education and Skills’ Register of Education and Training Providers, and is either:
 - (i) a publicly funded institution of further or higher education; or
 - (ii) a bona fide private education institution which maintains satisfactory records of enrolment and attendance; and”
10. After paragraph 206G, insert:

“206H. The requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a Postgraduate Doctor or Dentist are that the applicant:

 - (i) entered the United Kingdom or was given leave to remain as a Postgraduate Doctor or Dentist in accordance with paragraphs 70 to 75 of these Rules; and
 - (ii) has the written consent of his official sponsor to such self employment if he is a member of a government or international scholarship agency sponsorship and that sponsorship is either ongoing or has recently come to an end at the time of the requested extension; and
 - (iii) meets each of the requirements of paragraph 201 (i) - (x).”
11. In paragraphs 207 and 208, for “or 206G” substitute “206G, or 206H”.
12. In paragraphs 134(i), 142(i), 150(i), 158(i), 159G(i), 167(i), 176(i), 184(i), 192(ii), 209(i), 222(i) and (ii), 230(i), 238(i), 264, 267, 269(i), 255, 255A, and 255B for “4 years” (wherever appearing), substitute “5 years”.
13. For paragraph 134(ii), substitute:
 - “(ii) he has met the requirements of paragraph 128(i) to (v) throughout the 5 year period; and”.
14. In paragraphs 135B, 137, 145, 162, 171, 179, 204, 215, 225, and 233 for “12 months”, substitute “2 years”.
15. For paragraph 135G(i), substitute:
 - “(i) he has spent a continuous period of 5 years in the United Kingdom in this capacity, or has had a continuous period of at least 5 years’ leave to enter or remain in the United Kingdom which is made up of periods of leave granted as a highly skilled migrant in accordance with paragraphs 135A to 135F of these Rules, as a work permit holder under paragraphs 128 to 134 of these Rules, or as an innovator under paragraphs 210A to 210H of these Rules; and”
16. In paragraphs 142(ii), 150(ii), 158(ii), 159G(ii), 167(ii), 176(ii), 184(ii), 209(ii), 210G(ii), 230(ii), 238(ii), 269(ii), 255A and 255B for “4 year”, substitute “5 year”.
17. In paragraphs 156 and 159E, after “not exceeding 12 months”, insert “at a time”.
18. In paragraph 174B, for “12 months”, substitute “3 years at a time”.
19. In paragraph 187, for “4 years”, substitute “2 years”.

20. In paragraph 190, for “4 years”, substitute “3 years”.
21. In paragraph 207, after “not exceeding 3 years”, insert “at a time”.
22. For paragraphs 209(iii) and 222(iii), substitute:
“(iii) submits audited accounts for the first 4 years of trading and management accounts for the 5th year.”.
23. In paragraph 210B, for “18 months”, substitute “2 years”.
24. In paragraph 210E, for “30 months”, substitute “3 years at a time”.
25. In paragraph 210G(i), for “4 years leave”, substitute “5 years”.
26. In paragraph 228, delete the word “maximum”, and after “period”, insert “not exceeding 3 years at a time”.
27. In paragraph 284(i), after ‘fiancé’ insert ‘or proposed civil partner’.

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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 13 MARCH 2006 (HC 974)**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Statement of Changes in Immigration Rules contains the following six policy changes:

- For all employment related categories of entry to the UK the qualifying period for settlement ('indefinite leave to remain') is now 5 years.
- A change to the provisions for Postgraduate Doctors and Dentists, so that only those doctors and dentists who have completed their medical or dental degree in the UK will be eligible for leave in this category, and then only to complete the two-year Foundation Programme.
- A change to the Science and Engineering Graduates scheme to incorporate provisions announced in the Chancellor's Pre Budget Report on 5 December. This will enable all Master's and PhD students to apply to work in the UK for 12 months after they complete their studies, regardless of the subject they have studied.
- A change to prevent non-visa nationals in the UK as visitors from being able to switch into the student category for courses above degree level. This change also moves the transitional provisions for the October 2004 (CM 6339) Rules change from guidance notes into the Immigration Rules.
- A technical amendment to the civil partner provisions to include the term 'proposed civil partner' in one paragraph which was omitted when the civil partners changes were originally laid on 24 October 2005 (HC 582).
- A technical amendment to allow work permit holders to switch into the Overseas Nurses Programme to undertake a period of supervised practice or midwife adaptation training.

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

3.1 None.

4. Legislative Background

4.1 The Immigration Rules are the Rules made under section 3(2) of the Immigration Act 1971. These constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom. Under section 3(2) the Secretary of State is obliged "... from time to time (and as soon as may be) lay before Parliament statements of the Rules, or any changes in the Rules, laid down by him as to the practice to be followed in the administration of this Act ..".

4.2 This Statement of Changes in Immigration Rules will be laid on 13 March. All the changes will take effect on 3 April.

4.3 This Statement of Changes in Immigration Rules was incorporated into a consolidated version of the Immigration Rules, which can be found under the 'Laws & Policy' page at: www.ind.homeoffice.gov.uk, where there are also copies of all the Statement of Changes in Immigration Rules issued since May 2003.

5. Extent

5.1 This Statement of Changes in Immigration Rules applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

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

Settlement

- In its February 2005 paper ‘Controlling Our Borders: the Five Year Strategy for Asylum and Immigration’, the Government set out its view that permanent migration must also be a journey towards being as socially integrated as possible. Those in employment related routes to settlement will now have to spend 5 years working in the UK before being eligible to apply for settlement. This brings us in line with the European norm for these purposes and also helps to ensure that settlement is a final stage in an on-going process of building up an attachment to the UK.
- A 5-year qualifying period leads to a pattern of leave being granted of 2-years followed by 3 years. This will be of benefit to those setting up in business or entering as investors, innovators and in a self-employed capacity where a 2-year initial leave period for establishing oneself is more realistic. The only group required to make an additional application under these changes are those applying under the UK ancestry provisions. This is because the alternative would have been to grant up to 5 years leave to enter from the beginning and this is regarded as too long a time for most groups to be without contact with the authorities.
- The change is not regarded as controversial. In order to qualify for settlement after 4 years applicants were required to show that they will remain in employment or viable self-supporting activity for the foreseeable future. We are simply asking this state of affairs to continue and to be marked after 5 years instead of four.
- The European norm will become established as a right under the Free Movement of Persons Directive for EEA nationals exercising treaty rights after 30 April 2006. The Government does not feel that there are any benefits to be had by the UK maintaining a 4 year provision for such nationals; even more so given its wish to increase the qualifying period to 5 years for others anyway.

Postgraduate Doctors and Dentists

- The current Postgraduate Doctor and Dentist category is a longstanding one which enables overseas doctors and dentists to come to the UK to train here for long periods. Doctors and dentists in non-training posts at the same grades as those covered by this category are currently considered under employment provisions and different requirements apply.
- Both the needs and the structure of the health service and medical training programmes have changed considerably since this category was introduced, as have the immigration provisions for overseas nationals who want to work in the UK. In addition, the number of places in UK medical and dental schools has increased, meaning that there are now more UK graduates seeking relevant training posts. There is therefore no longer a need for a specific category in the Immigration Rules to enable doctors and dentists who are overseas nationals to train in the UK for many years.
- These changes mean that only those doctors and dentists who have completed their medical or dental studies in the UK will be eligible for leave as a Postgraduate Doctor or Dentist, and then only to complete their two year Foundation Programme.

- Overseas doctors and dentists will still be able to train in the UK, but they will be considered to be in employment for immigration purposes and will need to meet the relevant requirements of the Immigration Rules, such as the work permit system.
- These changes have been prompted by a request from the Department of Health, given the needs and structure of the health service and medical training programmes. It will clarify the immigration provisions as there will no longer be different requirements for those in training and non-training posts at the same grade after the Foundation Programme. The Department of Health announced these changes to the medical community on 7 March.
- In addition, we have taken this opportunity to clarify the provisions for those undertaking periods of clinical attachment or dental observer posts in the UK, so that that maximum amount of leave better reflects the intention of these posts as being for short periods only. We have also included provisions for Postgraduate Doctors and Dentists to switch into leave as a Person Intending to Establish Themselves in Business, which has been stated in the Immigration Rules for Postgraduate Doctors and Dentists since July 2005.

Science and Engineering Graduates Scheme (SEGS)

- The Chancellor's Pre Budget Report published on 5 December 2005 included the announcement of a provision to "allow all international students on completion of a post-graduate degree, or an undergraduate degree in a shortage sector, to work in the UK for up to 12 months" (section 3.101). We are updating the SEGS to reflect this provision.
- SEGS already enables overseas students who have been awarded an undergraduate degree (at 2:2 or above), Master's degree or PhD in a subject which is approved by the Department for Education and Skills for the purposes of this scheme to work in the UK for up to 12 months after their studies. They can switch into other immigration categories to continue to work in the UK beyond this 12 months.
- These changes apply to all Master's degree and PhD students commencing their studies in the UK on or after 1 May 2006. They will be eligible to apply for SEGS regardless of the subject they have studied. This new provision is part of measures the Government is taking to make the UK a more attractive study destination and to encourage more international students to come to the UK to study. There are separate provisions in place to enable those overseas students already studying in the UK to work here after their studies.

Students

- Whilst the 2004 Rules change (CM 6339) on switching by non-visa nationals has gone some way to moderate abuse, scope for misuse of the student route clearly persists in our switching arrangements. The Home Office is publicly committed to introducing mandatory entry clearance for students as part of the points-based system for managed migration in order to decrease opportunities for abuse and regularise the routes by which students enter the UK.
- These provisions therefore restrict the ability to grant leave as a student to those applicants who were admitted to the UK with prior entry clearance as a student or prospective student.
- Previously, non-visa nationals who were admitted to the UK as visitors could be granted leave as a student if they had been accepted on a course of degree level or above. All other visitors (visa nationals, and non-visa nationals accepted for courses below degree level) were prohibited from gaining leave as a student without having the necessary entry clearance. This change removes the more favourable Rules for non-visa national visitors who have been accepted for courses of degree level or above, so that they too must have entry clearance as a student or prospective student before they will be allowed to switch into the student category.

- Non-visa nationals who were granted leave to enter as a visitor before 1 July 2006 will not be subject to this Rules change and will continue to enjoy the same rights as before (defined under Rules change CM6339 which took effect on 1 October 2004).
- Non-visa nationals with prior leave to remain *except as visitors* will still be able to switch into the student category without requiring entry clearance as a student or prospective student, subject to having been accepted on a course of study of degree-level or above.
- We have also taken this opportunity to insert the transitional arrangements stemming from CM6339 into paragraph 60 (i).

Civil Partnership

- The changes to the Immigration Rules to include provision for civil partners came into effect on 5 December 2005. Due to an oversight, the term 'proposed civil partner' was not included in paragraph 284(i). In practice, applications have not been penalised because this term was not included but this amendment now brings 'proposed civil partners' in line with 'fiancés'.

Overseas Nurses Programme

- In order to practice in the UK, all overseas qualified nurses must be registered with the Nursing and Midwifery Council (NMC).
- A nurse who holds an overseas nursing qualification may be required by the NMC to undertake a specified period of supervised practice or midwife adaptation training before they can be registered. Those individuals required by the NMC to complete a period of supervised practice or midwife adaptation training are admitted to the UK, or given leave to remain, under a permit-free employment category.
- At present, there is no provision within the Rules for an individual to switch immigration categories from a work permit holder to the Overseas Nurses Programme as a supervised practice nurse or midwife undertaking adaptation training. Some overseas qualified nurses enter the UK as work permit holders to work in the care sector but subsequently seek to undertake a period of supervised practice in order to take employment as a registered nurse in the NHS. Work Permits (UK) approved approximately 2,500 work permit applications for senior carers between April 2004 and March 2005.
- The NMC would like to be able to recruit overseas qualified nurses who are in the UK as work permit holders (e.g. senior carers) without the individual being required to leave the UK and apply for entry clearance.
- There is no policy reason for the Home Office to prevent work permit holders switching immigration status to supervised practice nurses. In October 2004 we did tighten up switching provisions to severely limit the exercise of discretion to authorise switching into employment categories. However, that was in the context of limiting switching from temporary migration routes to permanent ones. This is not the case here.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this Statement of Changes in Immigration Rules as it has no impact on business, charities or voluntary bodies.

9. Contact

- 9.1 Queries should be addressed to the Home Office's Immigration and Nationality Enquiry Bureau on telephone: 0870-6067766 or by e-mail: indpublicenquiries@ind.homeoffice.gsi.gov.uk