



Statement of changes in Immigration Rules

*Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty
August 2010*

(This document is accompanied by an Explanatory Memorandum)

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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 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 (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), 28 June 2010 (HC 59), 15 July 2010 (HC 96) and 22 July 2010 (HC 382).

The changes set out in paragraph 1 in this Statement shall take effect on 9 September 2010.

Paragraphs 360C to 360E of these rules changes apply to any individual who has made further submissions which raise asylum grounds and which fall to be considered under paragraph 353 (to whom paragraphs 360 and 360A Immigration Rules as at 8 September 2010 did not apply), irrespective of the date of the application for permission to take up employment.

These changes do not apply to an asylum applicant who has permission to take up employment as at 8 September 2010.

These changes do not apply to an asylum applicant to whom paragraphs 360 and 360A of these rules changes would otherwise apply but who has applied for permission to take up employment prior to 9 September 2010; paragraphs 360 and 360A Immigration Rules as at 8 September 2010 applied to such an asylum applicant and he will have his application considered under those paragraphs.

The changes at paragraph 2 shall take effect on 20 August 2010.

1. Delete paragraph 360 and substitute:

“360 An asylum applicant may apply to the Secretary of State for permission to take up employment if a decision at first instance has not been taken on the applicant’s asylum application within one year of the date on which it was recorded. The Secretary of State shall only consider such an application if, in the Secretary of State’s opinion, any delay in reaching a decision at first instance cannot be attributed to the applicant.

360A If permission to take up employment is granted under paragraph 360, that permission will be subject to the following restrictions:

- (i) employment may only be taken up in a post which is, at the time an offer of employment is accepted, included on the list of shortage occupations published by the United Kingdom Border Agency (as that list is amended from time to time);
- (ii) no work in a self-employed capacity; and
- (iii) no engagement in setting up a business.

360B If an asylum applicant is granted permission to take up employment under paragraph 360 this shall only be until such time as his asylum application has been finally determined.

360C Where an individual makes further submissions which raise asylum grounds and which fall to be considered under paragraph 353 of these Rules, that individual may apply to the Secretary of State for permission to take up employment if a decision pursuant to paragraph 353 of these Rules has not been taken on the further submissions within one year of the date on which they were recorded. The Secretary of State shall only consider such an application if, in the Secretary of State’s opinion, any delay in reaching a decision pursuant to paragraph 353 of these Rules cannot be attributed to the individual.

360D If permission to take up employment is granted under paragraph 360C, that permission will be subject to the following restrictions:

- (i) employment may only be taken up in a post which is, at the time an offer of employment is accepted, included on the list of shortage occupations published by the United Kingdom Border Agency (as that list is amended from time to time);
- (ii) no work in a self-employed capacity; and
- (iii) no engagement in setting up a business.

360E Where permission to take up employment is granted pursuant to paragraph 360C, this shall only be until such time as:

- (i) a decision has been taken pursuant to paragraph 353 that the further submissions do not amount to a fresh claim; or
- (ii) where the further submissions are considered to amount to a fresh claim for asylum pursuant to paragraph 353, all rights of appeal from the immigration decision made in consequence of the rejection of the further submissions have been exhausted.”

2. In paragraphs (g) and (h) of Appendix E, delete “(a)” and substitute “(f)”.



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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 19 AUGUST 2010 (CM 7929)**

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 this instrument is to make changes to the provision in the Immigration Rules for the Secretary of State to grant permission to work to eligible asylum seekers, and to extend that provision such that it also applies to certain failed asylum seekers who have put forward further submissions which raise asylum grounds.
 - 2.2 This instrument also corrects a drafting error contained in The Statement of Changes in Immigration Rules laid on 22 July 2010 (HC 382).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 This Statement of Changes contains a correction to the changes laid in HC 382 which came into force on 23 July. In order for the correction to be made as quickly as possible, the correction is being brought into force the day after these changes are laid. The other changes contained in this statement will come into force 21 days after they are laid, following the convention.
4. **Legislative Context**
 - 4.1 The Immigration Rules, as laid before Parliament by the Home Secretary, constitute a statement of practice to be followed in the administration of the Immigration Act 1971 for regulating entry into, and stay of persons in, the United Kingdom.
 - 4.2 This Statement of Changes to the Immigration Rules has been incorporated into a consolidated version of the Immigration Rules which can be found under the 'Policy and Law' page at: www.ukba.homeoffice.gov.uk, where there are also copies of all the Statements of Changes in the Immigration Rules issued since May 2003.
 - 4.3 The changes set out in paragraph 1 in this Statement shall take effect on 9 September 2010. The changes at paragraph 2 shall take effect on 20 August 2010.
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 the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
 - *What is being done and why*

Changes to the provisions for permission to work for asylum seekers and failed asylum seekers

 - 7.1 This Statement of Changes makes an urgent change to the Immigration Rules following a Supreme Court judgment¹ which held that failed asylum seekers who have put forward further submissions which raise asylum grounds should be treated in the same manner as initial asylum seekers for the purposes of Article 11 of the European Council Directive of 27 January 2003 (2003/9/EC) (Reception of asylum seekers) which relates to the granting of access to the labour market.

¹ R (on the application of ZO (Somalia) and others) (Respondents) v Secretary of State for the Home Department (Appellant) [2010] UKSC 36.

- 7.2 Article 11 of the European Council Directive (2003/9/EC) sets out the minimum provisions Member States must put into place to enable asylum seekers to gain access to the labour market. As a minimum standard, permission to work must be granted where a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant. Member States are entitled to set conditions for granting access to the labour market. The article also entitles Member States to give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third country nationals.
- 7.3 This instrument implements the Supreme Court ruling by enabling failed asylum seekers who have put forward further submissions which raise asylum grounds which have been outstanding for a year or more (and the delay cannot be attributed to the applicant) to apply for permission to work. This extends the provisions previously set out in paragraph 360 of the Immigration Rules which only applied to initial asylum applicants whose claim had been outstanding for a minimum of twelve months (and the delay could not be attributed to the applicant).
- 7.4 This amendment also introduces an additional restriction on the type of employment that can be undertaken by those granted permission to work under paragraph 360 of the Immigration Rules. Those granted permission to work under the amended Rule 360 will only be entitled to undertake employment on the list of shortage occupations published by the United Kingdom Border Agency. This approach is consistent with wider labour market and migration policies, ensuring that foreign workers are diverted to occupations where a national shortage of skilled labour has been identified and thereby offer the greatest value to the UK.
- 7.5 These changes do not apply to those asylum applicants who have been granted permission to work prior to the date on which these rules come into force.
- 7.6 These changes do not apply to those asylum applicants to whom paragraphs 360 and 360A of these rules changes would otherwise apply but whose applications for permission to work were made before these rules came into force. Transitional arrangements are in place for these applications for permission to work to be considered under the rules in force as at 8 September 2010 because these rules applied to such asylum applicants.
- 7.7 Applications for permission to work made under paragraphs 360C to 360E of these rules changes will be considered under those paragraphs irrespective of whether the application for permission to work was made before or after these rules came into force. This is because the rules in force as at 8 September 2010 did not apply to such applications.

Changes to the maintenance requirements for dependants of Points-Based System Migrants

- 7.8 The Statement of Changes in Immigration Rules laid on 22 July 2010 (HC 382) set out the periods of time that Points-Based System Migrants and their Dependants are required to have held funds for before submitting their applications. This Statement of Changes contained a drafting error which twice referred to an incorrect paragraph number. These changes correct that error.

8. Consultation outcome

- 8.1 No formal consultation on the change to the provision for the granting of permission to work in Immigration Rule 360 has been undertaken, as this instrument implements the Supreme Court's ruling.

9. Guidance

- 9.1 Information on these changes will be made publicly available through updates to websites and guidance.

10. Impact

10.1 The impact on business, charities or voluntary bodies will be that it restricts the posts that businesses and other employers are able to offer to those granted permission to work under this policy. This change also enables organisations to employ qualifying failed asylum seekers with further submissions outstanding which raise asylum grounds in shortage occupations, something employers have not been able to do in the past.

10.2 The impact on the public sector will be an increase in administration costs.

10.3 An Impact Assessment is available on the United Kingdom Border Agency's website.

11. Regulating small business

11.1 The legislation applies to small businesses, in that they will only be able to employ individuals granted permission to work under these provisions in posts on the list of shortage occupations published by the United Kingdom Border Agency.

12. Monitoring & review

12.1 All the changes introduced by this Statement will be monitored on an on-going basis and reviewed next year.

13. Contact

13.1 Fiona Couper at the United Kingdom Border Agency can answer any queries regarding the instrument.

Tel: 0114 207 3277 or email: Fiona.Couper@homeoffice.gsi.gov.uk