



IMPLEMENTING THE STUDENT REVIEW – FREQUENTLY ASKED QUESTIONS

These are further to the frequently asked questions on English language, available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/english-clarification.pdf>

EDUCATIONAL OVERSIGHT AND ACCREDITATION

1. How will the new educational oversight arrangements work?

We have announced that the Quality Assurance Agency (QAA) and the Independent Schools Inspectorate (ISI) will extend their activities to cover privately funded providers. We are in discussions with the other approved bodies, including in the devolved administrations. Details of the application process and criteria will be published shortly. You should check the UK Border Agency website regularly, as well as the QAA (www.QAA.ac.uk) and ISI (www.ISI.net) websites.

2. For how long is accreditation from the previous 5 other accreditation bodies valid?

During the transitional period, any sponsor who was accredited by a private accrediting body and whose accreditation lapses will continue to be able to sponsor new students, provided they meet the other requirements such as applying to the relevant approved body by the date to be specified, obtaining Highly Trusted Sponsor (HTS) status in time, and not having their licence suspended or revoked.

If an establishment's accreditation expires, they should apply under the new processes that will be announced shortly. In the meantime, their current accreditation stands.

3. If a college voluntarily withdraws from accreditation during this period, will they similarly be able to sponsor students?

Yes, if they have applied for inspection by one of the approved bodies.

4. And will this be the position if the accreditation body withdraws accreditation?

Yes. Where a college voluntarily withdraws from accreditation, or the accreditation body withdraws accreditation during the interim period, we will ensure that the institution remains compliant with its immigration duties and will take action as appropriate if we find that it is not meeting its duties.

SECURING OUR BORDER CONTROLLING MIGRATION

5. What is the process for institutions that hold HTS status but are accredited by one of the former accrediting bodies and need to renew their HTS status? Can they renew their HTS status before being audited or inspected by the remaining oversight bodies?

These institutions will be permitted to renew their HTS status in the usual way. They will need to apply for and meet the new educational oversight inspection requirements by dates specified by the oversight bodies.

HIGHLY TRUSTED SPONSORS

6. What amendments are to be made to the Highly Trusted Sponsor (HTS) criteria?

We are currently reviewing the HTS criteria and discussing proposals with the sector. We will provide details of any changes to the criteria shortly.

7. I am a B-rated sponsor. How can I obtain HTS status?

B-rated sponsors must first meet their action plan and become A-rated, hold this rating for 6 months, and then apply for HTS.

INTERIM LIMIT

8. How does the interim limit work?

Sponsors affected by the limit have been notified in writing. The implementation timetable is in tranches, as detailed in the statement of intent published in March (<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/march/65-student-visas>).

The changes that are dependent on the sponsor (such as English language) are based on confirmations of acceptance for studies (CASs) issued on or after 21 April 2011. Changes that are dependent on migrants are based on the date when they make their application for leave to enter or remain.

The calculation for the interim limit is based on the number of CASs issued that resulted in a successful application for leave to enter or remain. All sponsors should have now received a letter detailing whether or not the limit applies to them, and their allocation. This was implemented on 21 April 2011.

9. I know of agents or establishments selling CASs overseas to make as much money as possible before closing down. What can I do about this?

The UK Border Agency can act on this if prompted, and such information should be shared via the appropriate channels.

10. Why can't the interim CAS limit only apply to new applications and not those extending?

The CAS limit applies to sponsors who do not currently meet the new sponsor requirements. This is intended to prevent these sponsors from recruiting large numbers of students in the transitional period. The CAS limit applies to both new applications and extensions, as the number of CASs allocated to each sponsor was based on the number they used for both new students and those extending in a 12-month period.

SPONSORSHIP MANAGEMENT SYSTEM – ENQUIRIES

11. Where do we take technical or policy-related enquiries about the sponsorship management system, such as messages from our student systems provider, Oracle?

You should phone our sponsorship and employers' helpline (0300 1234 699).

POST-STUDY WORK

12. What transitional measures are in place for those students who expect to be able to move on to Tier 1 (Post-study work)?

We have given more than a year's notice of the intention to close Tier 1 (Post-study work). Graduates may be eligible to apply up to 1 year after graduation, and we are still accepting applications under this route until we announce the formal closing date.

We will maintain a route for graduates into sponsored, skilled employment through Tier 2.

IMMIGRATION OFFICERS' DISCRETION TO REFUSE

13. What discretion do immigration officers have to refuse an application or to refuse entry based on language proficiency?

The power to refuse a visa application or entry at the border is clearly set out as requiring the student to be able to hold a simple conversation without the assistance of an interpreter. The immigration officer is not making an assessment whether the student is at B1 or B2 level, for example.

14. Will there be any right of appeal or administrative review for those turned away at the airport by an immigration officer, or refused a visa by an entry clearance officer overseas, on the basis of their discretion regarding English language proficiency during interview? Will a subsequent application from the same student be automatically refused?

The specific grounds for refusal will dictate any right of appeal. Entry clearance applications refused overseas will normally attract an entitlement to an administrative review. Refusals at the border may attract an appeal in the UK or overseas. Cases where the applicant has attempted deception may mean that further applications are automatically refused, but this will depend on individual circumstances.

DEPENDANTS

15. Can students who are already in the UK as Tier 4 migrants or under the old student route bring their dependants to the UK? What requirements do they need to meet to do so?

Students in the UK can only sponsor new dependants if they meet the new requirements (because they are on a course of study at a Higher Education Institution at or above NQF7 that lasts for 12 months or more, or are government-sponsored students on a course of 6 months or more).

Students who have previously sponsored dependants but who do not meet the new requirements may continue to sponsor dependants; the dependants must apply for new leave within 3 months of the expiry of their previous leave and make the application at the same time as the main applicant.

16. If a student has completed a course of study in the UK and returned home temporarily with their dependants, will they be able to apply for further Tier 4 leave and return with their dependants?

Yes, provided they make the application within 3 months of the expiry of their previous Tier 4 leave and all apply for their visa at the same time.

17. Will the new changes mean that dependants already in the UK will have to return home?

No.

18. What do the provisions for babies born in the UK to Tier 4 migrants actually mean?

Babies born in the UK to a points-based system migrant are not currently required to make an application for leave to remain, though if they travel overseas they need to obtain entry clearance in order to return. The changes to the Immigration Rules in respect of Tier 4 do not amend this position, but ensure that babies are not disadvantaged by the changes compared to other family members.

19. Only students studying postgraduate courses of 12 months or longer will be able to bring their dependants to the UK. Does the 12 months include thesis writing-up time?

We will take the length of course as set out on the CAS by the sponsor. If the institution includes thesis writing-up time as part of the course, we will; if they don't, we won't.

20. Can government-sponsored students bring their dependants?

Yes if they are on a course lasting 6 months or longer.

21. Can student visitors bring their dependants to the UK? If so, how long can their dependants stay for?

Student visitors' dependants can apply to enter the UK as general visitors in their own right. They are allowed to stay for up to 6 months in a 12-month period, but are not allowed to work. Non-visa nationals do not normally need to apply for a visa before they travel to the UK.

MAINTENANCE AND LOW-RISK COUNTRIES

22. Which students will need to show evidence of maintenance funds when applying for a Tier 4 visa?

All students need to meet the requirements of the Immigration Rules and have the required maintenance amounts for at least 28 days prior to making their application. But students from the list of low-risk countries who are coming to study at Highly Trusted Sponsor institutions will be able to make their visa application without submitting their supporting documents in the first instance. We may ask to see documents from some students, either where we may have

concerns or at random, so that we are confident that the streamlined process is not subject to abuse.

23. Will institutions be expected to check maintenance funds of students from low-risk countries, now that the UK Border Agency is no longer asking students who are nationals of these countries to present maintenance documents at the application stage?

Sponsors are expected to ensure that the students they sponsor are able to complete the course. This assessment would normally include both academic and wider factors, such as financial ability. How sponsors do this is up to them, but we will not necessarily expect sponsors to seek copies of bank statements from all students.

24. How regularly will the list of low-risk countries be amended? How much notice will be given in advance of any changes to it?

We will normally only amend the list annually, and will give at least 21 days' notice of the change to the Immigration Rules that specify the countries.

We will not normally add further countries to the list outside the annual review process.

We expect there to be only extremely rare circumstances where countries are taken off the list. In extreme situations we may need to require all students to submit their supporting documents. Should this occur, we will publish this fact on the central and local websites. Although we would not refuse an applicant solely on the basis that they did not submit the supporting documents with their initial application, we would strongly encourage applicants to do so to save time further along the process.

ACADEMIC PROGRESSION

25. Do institutions have to confirm academic progression for all students applying for further leave to remain under Tier 4? What information will institutions have to include on the confirmation of acceptance for studies (CAS) to demonstrate academic progression? Will the method of confirming academic progression change in future with upgrades to IT systems?

Sponsors will need to provide confirmation for all students who are taking their second or subsequent course. This will initially be through a statement in the free text field on the CAS, then – from April 2012 – a tick box on the CAS form.

26. What happens if a student is studying a course at the same level as previously? Can an institution still confirm academic progression? What if the course appears to be in a seemingly unrelated specialism to previous study undertaken?

We understand that studies can move laterally – or in some exceptional cases downwards – but still represent genuine progression. The sponsor needs to be able to justify why this is the case if we ask about this during a compliance visit.

27. Will institutions need to confirm academic progression for students who have undertaken previous study outside the UK (such as a student who has completed an undergraduate degree outside the UK but has applied to study at undergraduate level in the UK)?

No.