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Changes to the Immigration Rules

The Minister of State for Immigration (Damian Green): I am today laying before the House a Statement of Changes to the Immigration Rules pertaining to Tier 1 and Tier 2 of the Points Based System. Copies of which will be available from the Vote Office.

On 28 June the Home Secretary announced in the House of Commons that the Government would introduce an interim limit on economic migration in anticipation of the introduction of a permanent limit in April 2011. This limit applied to out-of-country main applicants to Tier 1 (General) between 19 July 2010 and April 2011 and numbers entering through this route would be equal to those entering in the equivalent period for 2009/10. The limit also applied to number of migrants who can be offered jobs by sponsor employers through Tier 2 (General). This route was to be reduced in the interim period by 1,300 migrants, the equivalent of a 5% reduction across the relevant routes of Tiers 1 and 2.

The first of the changes in the Statement of Changes to the Immigration Rules will close the Tier 1 (General) category of the Immigration Rules to persons applying from outside the United Kingdom. I am taking this step as a result of the volume of applications that have been received since 19 July 2010, the date I set the interim limit on Tier 1 General.

The second of these changes, specifying the level of the Tier 2 (General) interim limit in the Immigration Rules, is being made to take account of the Divisional Court judgement of 17 December 2010 in the cases brought by the Joint Council for the Welfare of Immigrants and the English Community Care Association. The Divisional Court determined that in order for the Government's interim limit policy to have legal effect the level of the limit should be specified in the Immigration Rules, as opposed to UK Border Agency guidance.

The Statement of Changes remedies the matter. The interim limit on Tier 2 (General) will apply from 21 December 2010 until 5 April 2011. The level of the limit is 10,832 and will apply to the number of Certificates of Sponsorship available to licensed Tier 2 (General) sponsors. The changes will take effect immediately to ensure that employers and other users of the UK's immigration system have certainty about its operation. I would welcome the opportunity to debate these Immigration Rules changes should Members choose to pray against the Statement of Changes.

The Home Secretary has been granted a certificate to appeal; either directly to the Supreme Court if it grants permission or, if not, to the Court of Appeal.

Tier 1 General will be closed to out of country applications because of the number of applications that have been received since 19 July 2010. The route is not being closed in response to the Divisional Court's decision.

The Statement of Changes to the Immigration Rules laid before Parliament on 28 June 2010 was constructed to provide for the application of interim limits on the number of applications for entry clearance granted under the Tier 1 (General) category. Under the Immigration Rules as amended by the changes made on 19 July applications over and above this upper interim limit would be rolled over for consideration in a subsequent grant period. However, as the Home Secretary announced to Parliament on 23 November, the Government has decided Tier 1 (General) route will not continue in its current form and will be refocused as a route aimed at entrepreneurs, investors and the exceptionally talented. This means that there will be no additional allocation of places under the Tier 1 (General) category under which rolled over applications could be considered once the current interim limit is reached.

We should not continue to accept applications under the existing route if they cannot be granted once the current interim limit is reached. We expect, taking into account current trends in applications and refusal rates, the interim limit to be reached imminently. The Statement of Changes to the Immigration Rules therefore removes existing provision for the granting of entry clearance in the Tier 1 (General) category.

I regret that, given the difficulty in anticipating the date on which the interim limit would be reached, it has not been possible to observe the usual convention of laying such a Statement of Changes before Parliament 21 days in advance of its entry into force. I also wish to clarify that the numerical limit applied to Tier 1 applications under the interim limit is 5,100 and not 5,400 as the Merits of Statutory Instruments Committee has previously been informed. The latter figure was the limit that would have applied if interim limits had commenced on 1 July 2010, whereas in fact they commenced on 19 July 2010.

This change is effective from 23 December and applications for entry clearance as a Tier 1 (General) migrant made on or after that date will not be accepted. Applications for entry clearance as a Tier 1 (General) migrant made before that date will still be considered against the existing Immigration Rules. These changes do not apply to those who have existing leave in the Tier 1 (General) category and require an extension of stay, nor do they apply to those presently in the United Kingdom in another category of stay and are applying for a variation of leave as a Tier 1 (General) migrant.

As noted above, Tier 1 of the Points Based System will be redesigned to make enhanced provision for entrepreneurs and investors and to incorporate new provisions for the exceptionally talented. This will ensure that Tier 1 continues to offer a route for those who are able to make the greatest economic contribution to the United Kingdom. These changes will be introduced in April next year and I will announce the detail of these new arrangements to parliament in due course.