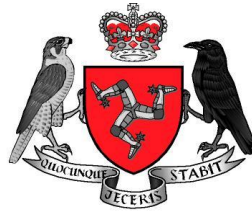


Statutory Document 0288/12



STATEMENT OF

CHANGES

IN IMMIGRATION RULES

Laid before Tynwald on 19th June 2012 under section 3(2) of the
Immigration Act 1971 (an Act of Parliament as extended to the Isle of Man by the
Immigration (Isle of Man) Order 2008 (SI 2008 no. 680))

STATEMENT OF CHANGES IN IMMIGRATION RULES

The Council of Ministers has made the following changes to the Rules laid down by it as to the practice to be followed in the administration of the Immigration Act 1971¹ (of Parliament) as it has effect in the Isle of Man² for regulating entry into and the stay of persons in the Isle of Man and contained in the Statement laid before Tynwald on 17th May 2005³.

The changes in this Statement shall take effect on 1st June 2012

1. Paragraph 6 is amended as follows -

(a) after the definition of "**degree level study**" insert -

"Under Part 8 of these Rules, "**post-graduate level study**" means a course at level 7 or above of the revised National Qualifications Framework or Qualifications and Credit framework, or level 11 or above of the Scottish Credit and Qualifications framework, which leads to a recognised United Kingdom postgraduate degree at Master's level or above, or an equivalent qualification at the same level."

(b) after the definition of "sponsor licence" insert -

"Under Part 6A of these Rules, "Student" means a migrant who was granted leave under paragraphs 57 to 62 of these Rules."

(c) after the definition of a "Tier 5 (Youth Mobility) Temporary Migrant" insert -

"**Deemed sponsorship status**" means that the country or territory is not required to issue its nationals or passport holders with a Certificate of Sponsorship in order to enable a successful application to become a Tier 5 (Youth Mobility) Temporary Migrant and is held by a country or territory listed as such at Appendix G of these Rules."

(d) after the definition of "Work Permit Holder" insert -

Under Part 6A of these Rules, "**Highly Trusted Sponsor**" means a sponsor which is recorded as being "Highly Trusted" on the register of licensed sponsors maintained by the United Kingdom Border Agency.

¹ 1971 c. 77

² See the Immigration (Isle of Man) Order 2008 (S.I. 2008 No 680)

³ S.D. 62/05 amended by S.D.692/05, S.D. 442/06, S.D. 547/06, S.D. 781/06, S.D. 871/06, S.D. 124/07, S.D. 303/07, S.D. 534/07, S.D. 02/08, S.D. 500/08, GC 32/09, GC 35/09, GC 14/10, GC 26/10, GC 02/11, SD 518/11 and SD 40/12.

(e) for the definition of “a **UK recognised body**” substitute –

“A “**UK recognised body**” is an institution that has been granted degree awarding powers by a Royal Charter, an Act of Parliament or the Privy Council. For the purposes of these Rules the Isle of Man Immigration Office will consider the United Kingdom Foundation Programme Office and the Yorkshire and Humber Strategic Health Authority as equivalent to UK recognised bodies.”

(f) after the definition of “Overstayed” or “Overstaying” insert –

“In paragraph 320(22) and 322(12) of these Rules:

(a) “relevant NHS body” means

(i) in relation to England-

(a) a National Health Service Trust established under section 25 of the National Health Service Act 2006 (of Parliament);

(b) a NHS foundation trust. (which shall be construed in accordance with Part 1 of the Health and Social Care (Community Health and Standards) Act 2003 (of Parliament)⁴,

(ii) in relation to Wales-

(a) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (of Parliament)

(b) a National Health Service Trust established under section 18 of that Act,

(c) a Special Health Authority established under section 22 that Act .

(iii) in relation to Scotland-

(a) a Health Board or Special Health Board established under section 2 of the National Health Service (Scotland) Act 1978 (of Parliament),

(b) the Common Services Agency for the Scottish Health Service established under section 10 of that Act,

(c) Healthcare Improvement Scotland established under section 10A of that Act.

(iv) in relation to Northern Ireland-

(a) the Regional Health and Social Care Board established under the Health and Social Care (Reform) Act (Northern Ireland) 2009,

⁴ 2003 c.43

- (b) a Health and Social Care trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 and renamed under the Health and Social Care (Reform) Act (Northern Ireland) 2009 (of the Northern Ireland Assembly)
- (v) in relation to the Isle of Man, the Isle of Man Department of Health established under the Government Departments Act 1987 (of Tynwald)⁵.

“relevant NHS regulations” means

- (i) in the case of England, the National Health Service (Charges to Overseas Visitors) Regulations⁶;
- (ii) in the case of Wales, the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2004⁷;
- (iii) in the case of Scotland, the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989⁸ (as amended)⁹;
- (iv) in the case of Northern Ireland, the Provision of Health Services to Persons not Ordinarily Resident Regulations 2005¹⁰ (as amended)¹¹; or
- (v) in the case of the Isle of Man, the National Health Service (Overseas Visitors) Regulations 2011¹² .”.

2. In paragraph 33C(a) for “Her Majesty’s Inspectorate of Education” substitute -
“Education Scotland”

3. In paragraph 134 -

- (a) Renumber existing sub-paragraphs (v) and (vi) as (vi) and (vii).respectively, and
- (b) After sub-paragraph (iv) (but before renumbered sub-paragraph (vi)) insert –

⁵ 1978 c.29

⁵ S.I. 1991/194 (N.I. 1)

⁵ 2009 c.1

⁵ 1987 c.13

⁶ S.I. 2011/1556

⁷ S.I. 2004/1433

⁸ S.I. 1989/364

⁹ See S.I. 1992/411, S.I. 1994/1770, S.S.I. 2004/369, S.S.I. 2005/445, S.S.I. 2006/141, S.S.I. 2008/290 and, S.S.I. 2011/25

¹⁰ S.R. 2005/551

¹¹ S.R. 2008/377

¹² SD 44/11

“(v) the applicant provides the specified documents as set out in the application form for settlement and accompanying guidance to evidence the employer’s certification in sub-paragraph (iv); and”.

4. In paragraph 245A(a) –

- (a) after “the Lieutenant Governor in” insert “either”; and
- (b) after “the Points-based System Policy Guidance” insert “, or for applications for settlement the application form and accompanying guidance,”.

5. For paragraph 245 CD substitute –

245CD. Requirements for indefinite leave to remain

To qualify for indefinite leave to remain, a Tier 1 (General) Migrant must meet the requirements listed below. If the applicant meets these requirements, indefinite leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements-

- (a) The applicant must not have one or more unspent convictions.
- (b) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.
- (c) The applicant must have spent a continuous period of 5 years lawfully in the Isle of Man, of which the most recent period must have been spent with leave as a Tier 1 (General) Migrant, in any combination of the following categories:
 - (i) as a Tier 1 (General) Migrant,
 - (ii) as a Highly skilled Migrant,
 - (iii) as a Work Permit Holder,
 - (iv) [Not used],
 - (v) [Not used],
 - (vi) as a Writer, Composer or Artist,
 - (vii) as a Tier 2 (General) Migrant, a Tier 2 (Minister of Religion) Migrant or a Tier 2 (Sportsperson) Migrant, or
 - (viii) as a Tier 2 (Intra-Company Transfer) Migrant, provided the continuous period of 5 years spent lawfully in the Isle of Man includes a period of leave as a Tier 2 (Intra-Company Transfer) Migrant granted under the Rules in place before 26 July 2010.

(d) if the applicant has or has had leave as a Highly Skilled Migrant, a Writer, Composer or Artist or as a Tier 1 (General) Migrant under the rules in place before 26 July 2010, and has not been granted leave in any categories other than these under the rules in place since 26 July 2010, the applicant must have 75 points under paragraphs 7 to 34 of Appendix A.

(e) [Not used].

(f) [Not used].

(g) In all other cases than those referred to in (d) above, the applicant must have 80 points under paragraphs 7 to 34 of Appendix A.

(h) The applicant must have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom and Islands, in accordance with paragraph 33BA, unless the applicant is under the age of 18 or aged 65 or over at the time the application is made.”.

6. For paragraph 245GE(f) substitute –

“(f) The cases referred to in sub-paragraph (e) are those where:

(i) the applicant is applying for leave to remain as a Tier 2 (Intra-Company Transfer) Migrant in the Long Term Staff sub-category, and

(ii) the applicant previously had leave as a Tier 2 (Intra-Company Transfer) Migrant under the rules in place before 1 March 2012; and

(iii) the applicant has not been granted entry clearance in this or any other route since the grant of leave referred to in (ii) above; and

(iv) paragraphs (c) to (d) do not apply.”.

7. In paragraph 245GF –

(a) in sub-paragraph (d) for “(b)” substitute “(c)”;

(b) in sub-paragraph (e)(ii) omit “his employer certifies that”;

(c) renumber sub-paragraph (f) as sub-paragraph (g); and

(d) after sub-paragraph (e) (but before renumbered sub-paragraph (g)) insert –

“(f) The applicant must provide the specified documents, as set out in the application form for settlement and accompanying guidance, to evidence the sponsor’s certification in sub-paragraph (e)(ii).”.

8. In paragraph 245HF –

(a) renumber existing sub-paragraph (e) as sub-paragraph (f); and

(b) after sub-paragraph (d) (but before renumbered sub-paragraph (f)) insert –

“(e) The applicant must provide the specified documents, as set out in the application form for settlement and accompanying guidance, to evidence the sponsor’s certification in sub-paragraph (d)(ii)”.

9. In paragraph 245GF(d) for “(b)” - substitute “(c)”.

10. In paragraph “245ZI after “participating countries” insert - “and territories”.

11. In paragraph 245ZJ for “they do not” substitute - “a migrant does not”.

12. In paragraph 245ZK –

- (a) after “if a citizen of a country” insert “or the rightful holder of a passport issued by a territory”;
- (b) after “for citizens of that country” insert “or rightful holders of passports issued by that territory”;
- (c) in sub-paragraph (b)(i) after “citizen of a country” insert “or rightful holder of a passport issued by a territory”;
- (d) renumber sub-paragraphs (c), (d), (e) and (f) as sub-paragraphs (d), (e), (f) and (g) respectively;
- (e) after sub-paragraph (b) (but before renumbered sub-paragraph (d)) insert –
 - “(c) The applicant must be sponsored by his country of citizenship or the territory of which he is a rightful passport holder as follows –
 - (i) if the applicant is a citizen of a country or the rightful holder of a passport issued by a territory that does not have deemed sponsorship status, the applicant must hold a valid Certificate of Sponsorship issued by that country or territory and must use that Certificate of Sponsorship in support of an application lodged in the country or territory of issue; or
 - (ii) if the applicant is a citizen of a country or the rightful holder of a passport issued by a territory that has deemed sponsorship status, his valid passport issued by the country or territory holding such status will stand as evidence of sponsorship and the application for leave may be made at any post worldwide; and”;
- (f) in sub-paragraphs (a) and (b)(ii) and renumbered sub-paragraphs (d), (e) and (f) for “.” substitute “; and”.

13. In paragraph 245ZV –

- (a) in sub-paragraph (d) after “undertake” insert “a course starting on or before 1st June 2012 which is”;
- (b) after sub-paragraph (d) insert –
 - “(da) If the applicant wishes to undertake a course starting on or after 1st June 2012 which is –
 - (i) undergraduate or postgraduate studies leading to a Doctorate or Masters degree by research in one of the disciplines listed in paragraph 1 of Appendix 6 to these Rules, or
 - (ii) undergraduate or postgraduate studies leading to a taught Masters degree or other postgraduate qualification in one of the disciplines listed in paragraph 2 of Appendix 6 to these Rules, or
 - (iii) a period of study or research in excess of 6 months in one of the disciplines listed in paragraphs 1 or 2 of Appendix 6 to these Rules at an institution of higher education where this forms part of an overseas postgraduate qualification,

the applicant must hold a valid Academic Technology Approval Scheme clearance certificate from the Counter-Proliferation Department of the United Kingdom Foreign and Commonwealth Office which relates to the course, or area of research, that the applicant will be taking and at the institution at which the applicant wishes to undertake it and must provide the specified documents to show that these requirements have been met.”; and

14. For paragraphs 245ZW(c)(iii)(1), (2) and (3) substitute –

- “(1) employment during term time of no more than 20 hours per week and employment (of any duration) during vacations, where the student is following a course of degree level study and is:
 - (a) sponsored by a sponsor that is a UK recognised body or a body in receipt of public funding, as a higher education institution, from the Department for Education and Children
- (2) employment during term time of no more than 10 hours per week and employment (of any duration) during vacations, where the student is following a course of below degree level study and is sponsored by a sponsor that is a UK recognised body or a body in receipt of public funding, as a higher education institution, from the Department for Education and Children

- (3) employment during term time of no more than 10 hours per week and employment (of any duration) during vacations, where the student is following a course of study at any academic level and is sponsored by a sponsor that is a further education college funded by the Department for Education and Children.”.

15. In paragraph 245ZX –

- (a) in sub-paragraph (e) after “undertake” insert “a course starting on or before 1st June 2012 which is”;
- (b) for sub-paragraph (e) substitute –
 - “(e) if the applicant wishes to undertake a course starting on or after 1st June 2012 which is –
 - (i) undergraduate or postgraduate studies leading to a Doctorate or Masters degree by research in one of the disciplines listed in paragraph 1 of Appendix 6 to these Rules, or
 - (ii) undergraduate or postgraduate studies leading to a taught Masters degree or other postgraduate qualification in one of the disciplines listed in paragraph 2 of Appendix 6 to these Rules, or
 - (iii) a period of study or research in excess of 6 months in one of the disciplines listed in paragraphs 1 or 2 of Appendix 6 to these Rules at an institution of higher education where this forms part of an overseas postgraduate qualification,

the applicant must hold a valid Academic Technology Approval Scheme clearance certificate from the Counter-Proliferation Department of the British Foreign and Commonwealth Office which relates to the course, or area of research, that the applicant will be taking and at the institution at which the applicant wishes to undertake it and must provide the specified documents to show that these requirements have been met.”; and

16. For paragraphs 245ZY(c)(iii)(1), (2) and (3) substitute –

“(1) employment during term time of no more than 20 hours per week and employment (of any duration) during vacations, where the student is following a course of degree level study and is :

- (a) sponsored by a sponsor that is a UK recognised body or a body in receipt of public funding as a higher education institution from the Department for Education and Children; or

(2) employment during term time of no more than 10 hours per week and employment (of any duration) during vacations, where the student is following a course of below degree level study and is sponsored by a sponsor that is a UK recognised body or a body in receipt of public funding, as a higher education institution; from the Department for Education and Children,

(3) employment during term time of no more than 10 hours per week and employment (of any duration) during vacations, where the student is following a course of study at any academic level and is sponsored by a sponsor that is a further education college funded by the Department for Education and Children;”.

17. In paragraphs 245ZZB(c)(v)(1) and 245ZZD(c)(v)(1), after “that visa letter” insert - “unless the migrant is studying at an institution which is a partner institution of the migrant’s sponsor”.

18. In paragraphs 281(i)(a)(ii)(b); 284(ix)(a)(ii); 290(vii)(a)(ii); 295A(i)(a)(ii)(b) and 295D(xi)(a)(ii) omit “the Lieutenant Governor considers that”.

19. In paragraphs 281(i)(a)(ii)(c); 284(ix)(a)(iii); 290(vii)(a)(iii); 295A(i)(a)(ii)(c) and 295D(xi)(a)(iii) omit “the Lieutenant Governor considers”.

20. In paragraphs 281(i)(a)(iv), (a)(v) and (a)(vi), 284(ix)(c), (ix)(d) and (ix)(e), 290(vii)(c), (d) and (e), 295A(i)(a)(iv), (a)(v) and (a)(vi) and 295D(xi)(c), (xi)(d) and (xi)(e) –

(a) after “Bachelor’s” insert “or Master’s”; and

(b) after “degree” insert “or PhD”.

21. In paragraphs 281(i)(a)(v)(2); 284(ix)(d)(2); 290(vii)(d)(2); 295A(i)(a)(v)(2) and 295D(xi)(d)(2) for “degree” substitute “qualification”.

22. In paragraph 284(i), for “the leave in question is limited leave to enter as a fiancé or proposed civil partner; and” substitute -

“(a) the leave in question is limited leave to enter as a fiancé or proposed civil partner; or

(b) the leave in question was granted to the applicant as the spouse, civil partner, unmarried or same-sex partner of a Relevant Points Based System Migrant and that spouse or partner is the same person in relation to whom the applicant is applying for an extension of stay under this rule; and”.

23. In paragraph 295D –

- (a) in sub-paragraph (i) –
 - (i) after “limited leave to” insert “enter or”;
 - (ii) after “Rules” insert “other than where as a result of that leave he would not have been in the Isle of Man beyond 6 months from the date on which he was admitted to the Isle of Man on this occasion in accordance with these Rules”; and
- (b) in sub-paragraph (xi)(a)(iii) omit “the Secretary of State considers”.

24. In paragraph 317 –

- (a) in sub-paragraph (i)(a) for “mother or grandmother who is a widow” substitute “parent or grandparent who is divorced, widowed, single or separated”;
- (b) omit sub-paragraph (i)(b);
- (c) renumber sub-paragraphs (i)(c), (i)(d) and (i)(e) as sub-paragraphs (i)(b), (i)(c) and (i)(d) respectively;
- (d) in renumbered sub-paragraph (i)(d) omit “and mainly dependent financially on relatives settled in the Isle of Man”;
- (e) after renumbered sub-paragraph (i)(d) insert -
 - “(e) parents or grandparents travelling together who are both under the age of 65 if living in the most exceptional compassionate circumstances; or”; and
- (f) in sub-paragraph (i)(f) omit “and mainly dependent financially on relatives settled in the Isle of Man”.

25. In paragraph 319C(i) for “the Tier 4 (General) Migrant must be applying for or have entry clearance or leave to remain for a course of study that is longer than six months” substitute –

“(i) The

- (1) Relevant Points Based System Migrant must be applying for a course of study of more than six months duration and must have or have last had entry clearance, leave to enter or leave to remain as a Tier 4 (General) Student or Student for a course of more than six months duration within the three months immediately preceding the date of the application; and
- (2) partner must have or have last had entry clearance, leave to enter or leave to remain as the Partner of a Tier 4 (General) student or student with leave for a course

of more than six months duration within the three months immediately preceding the date of the application; and

(3) Relevant Points Based System Migrant and Partner must be applying at the same time; or

(ii) Relevant Points Based System Migrant must be a Government Sponsored student who is applying for or has entry clearance or leave to remain for a course of study that is longer than six months; or

(iii) the Relevant Points Based System Migrant must be undertaking a course which is 12 months or longer in duration, and is of post-graduate level study, sponsored by a sponsor which is a UK Recognised Body or a body in receipt of funding, as a higher education institution, from the Department for Education and Children.”.

26. For paragraphs 319D(b)(iv) and (v) substitute -

“(iv) if the Relevant Points Based System Migrant is a Tier 4 (General) Student and the partner meets the requirements of paragraphs 319C(i)(i) and:

(1) the Relevant Points Based System Migrant is a Tier 4 (General) Student applying for leave for less than 12 months, no employment, or

(2) the Relevant Points Based System Migrant is a Tier 4 (General) Student who is following a course of below degree level study, no employment.”.

27. In paragraph 319H(i), for “the Tier 4 (General) Student must be applying for or have entry clearance or leave to remain for a course of study that is longer than six months” substitute -

“(i) The

(1) Relevant Points Based System Migrant must be applying for a course of study of more than six months duration and must have or have last had entry clearance, leave to enter or leave to remain as a Tier 4 (General) Student or student for a course of more than six months duration within the three months immediately preceding the date of the application; and

(2) child must have or last have had entry clearance, leave to enter or leave to remain as the child of a Tier 4 (General) Student or student with leave for a course of more than six months duration within the three months immediately preceding the date of the application; and

(3) Relevant Points Based System Migrant and Child must be applying at the same time; or

(ii) the Relevant Points Based System Migrant must be a Government Sponsored student who is applying for or has entry clearance or leave to remain for a course of study that is longer than six months; or

(iii) the Relevant Points Based System Migrant must be undertaking a course which is 12 months or longer in duration, and is of post-graduate level study, sponsored by a sponsor which is a UK recognised body or a body in receipt of funding, as a higher education institution, from the .Department for Education and Children.

(j) A child whose parent is a Relevant Points Based System Migrant, who is a Tier 4 (General) Student or student, and who does not otherwise meet the requirements of paragraph 319H(i):

(i) must have been born during the relevant Points Based System Migrant's most recent grant of entry clearance, leave to enter or leave to remain as a Tier 4 (General) Student or student with leave for a course of more than six months duration; or

(ii) where the Relevant Points Based System Migrant's most recent grant of entry clearance, leave to enter or leave to remain was to re-sit examinations or repeat a module of a course, must either have been born during a period of leave granted for the purposes of re-sitting examinations or repeating a module of a course or during the Relevant Points Based System Migrant's grant of leave for a course of more than six months, where that course is the same as the one for which the most recent grant of leave was to re-sit examinations or repeat a module; or

(iii) must:-

(1) have been born no more than three months after the expiry of that most recent grant of leave; and

(2) must be applying for entry clearance.”.

28. For paragraphs 319I(b)(iii) and (iv) substitute -

“(iii) if the Relevant Points Based System Migrant is a Tier 4 (General) Student and the child meets the requirements of paragraphs 319H(i)(i) or 319H(j) and:

(1) the Relevant Points Based System Migrant is a Tier 4 (General) Student applying for leave for less than 12 months, no employment, or

(2) the Relevant Points Based System Migrant is a Tier 4 (General) Student who is following a course of below degree level study, no employment.”.

29. After paragraph 320(21) insert -

“(22) where one or more relevant NHS body has notified the Lieutenant Governor that the person seeking entry or leave to enter has failed to pay a charge or charges with a total value of at least £1000 in accordance with the relevant NHS regulations on charges to overseas visitors.”.

30. After paragraph 322 (11) insert -

“(12) where one or more relevant NHS body has notified the Lieutenant Governor that the person seeking leave to remain or a variation of leave to enter or remain has failed to pay a charge or charges with a total value of at least £1000 in accordance with the relevant NHS regulations on charges to overseas visitors.”.

31. After paragraph 395, omit the heading “Administrative Removal”.

32. Paragraphs 395A to 395F (including the heading “Procedure” before paragraph 395E) are revoked.

33. Appendix 1 is amended as follows -

in paragraph 1(a)

(i) after “South Africa” insert “South Sudan”.

(ii) next to the entry “Turkey” insert “(except those referred to in paragraph 2(m) of this Appendix)”.

After paragraph 2(l), insert– “(m) those nationals or citizens of Turkey, who hold diplomatic passports issued by Turkey when travelling to the Isle of Man for the purpose of a general visit in accordance with paragraph 41.”.

34. In the heading of Appendix 6, for “paragraph 245ZX(e) substitute “paragraphs 245ZV and 245ZX”.

35. At the end of Appendix 6, insert -

“For courses commencing on or after 1st June 2012

1. Doctorate or Masters by Research

JACs codes beginning:

G0 – Mathematical and Computer sciences

I1 – Computer Science

I4 – Artificial Intelligence

I9 – Others in Computer Sciences

2. Taught Masters:

H8 – Chemical, Process and Energy Engineering.”.

36. Appendix A is amended in accordance with paragraphs 37 to 45

37. For paragraph 41(b) substitute -

“(b) The specified documents are provided to show that the applicant has permission to use the money to invest in a business in the Isle of Man; and”.

38. In Table 14 after “Citizen of a country” insert - “or rightful holder of a passport issued by a territory listed”.

39. In paragraph 118(a), after “from the Sponsor” insert –

“unless the applicant is sponsored by a Highly Trusted Sponsor, is a national of one of the countries or the rightful holder of a qualifying passport issued by one of the relevant competent authorities, as appropriate, listed in Appendix H, and is applying for entry clearance in his country of nationality or in the territory related to the passport he holds, as appropriate, or leave to remain in the Isle of Man. The Isle of Man Immigration Office reserves the right to request the specified documents from these applicants. The application will be refused if the specified documents are not provided in accordance with the request made.”.

40. In paragraph 118(c)(i) before “recognised body” insert “UK”.

41. In paragraph 120(b) for “sponsor guidance” substitute “the Tier 4 (Sponsor) Guidance”.

42. In paragraph 120A(b)(i) before “recognised body” insert “UK”.

43. After paragraph 120A(c), insert –

“(ca) A course leading to an approved qualification must be offered by a sponsor that, if approval at a specified level is required from a relevant awarding

organisation, has that approval at the specified level, as set out in the Tier 4 (Sponsor) Guidance published by the Isle of Man Immigration Office.”.

44. After paragraph 120A, insert –

“120B. Points will only be awarded for a valid Visa Letter assigned on or after 1st June 2012 (even if all the requirements in paragraphs 116 to 120A above are met) if the Sponsor has confirmed that the course for which the Visa Letter has been assigned represents academic progress from previous study undertaken during the last period of leave as a Tier 4 (General) Student or as a student, except where:

(i) the applicant is re-sitting examinations or repeating modules in accordance with paragraph 119 above, or

(ii) the applicant is making a first application to move to a new institution to complete a course commenced elsewhere.”.

45. After paragraph 125(b), insert -

“125A. Points will only be awarded for a Visa Letter if the applicant:

(a) supplies, as evidence of previous qualifications, specified documents that the applicant used to obtain the offer of a place on a course from the Sponsor, or

(b) is sponsored by a Highly Trusted Sponsor, is a national of one of the countries or the rightful holder of a qualifying passport issued by one of the relevant competent authorities, as appropriate, listed in Appendix H and is applying for entry clearance in his country of nationality or in the territory related to the passport he holds, as appropriate, or leave to remain in the Isle of Man. The Isle of Man Immigration Office reserves the right to request the specified documents from these applicants. The application will be refused if the specified documents are not provided in accordance with the request made.”.

46. Appendix C is amended in accordance with paragraphs 47 to 56.

47. For the heading to that Appendix **substitute** –

“Appendix C - Maintenance (funds)”.

48. For paragraph 1A, (b) and (c) substitute -

“(b) If the applicant is applying as a Tier 1 Migrant, a Tier2 Migrant or a Tier 5 (Temporary Worker) Migrant, the applicant must have had the funds referred to in

(a) above for a consecutive 90 day period of time, unless applying as a Tier 1 (Investor) Migrant;

(c) If the applicant is applying as a Tier 4 Migrant, the applicant must have had the funds referred to in (a) above for a consecutive 28 day period of time;”.

49. After paragraph 1A(c), insert -

“(ca) If the applicant is applying for entry clearance or leave to remain as a Tier 4 Migrant, he must confirm that the funds referred to in (a) above are:

(i) available in the manner specified in paragraph 13 below for his use in studying and living in the Isle of Man; and

(ii) that the funds will remain available in the manner specified in paragraph 13 below unless used to pay for course fees and living costs;”.

50. After paragraph 1A,(h) insert -

“(i) the end date of the 90-day and 28-day periods referred to in (b) and (c) above will be taken as the date of the closing balance on the most recent of the specified documents, and must be no earlier than 31 days before the date of application.”.

51. For paragraph 11 substitute –

“11. 10 points will only be awarded if the funds shown in the table below are available in the manner specified in paragraph 13 below to the applicant. The applicant must either:

(a) provide the specified documents to show that the funds are available to him, or

(b) where the applicant is sponsored by a Highly Trusted sponsor, is a national of one of the countries or the rightful holder of a qualifying passport issued by one of the relevant competent authorities, as appropriate, listed in Appendix H and is applying for entry clearance in his country of nationality or in the territory related to the passport he holds, as appropriate, or leave to remain in the Isle of Man, confirm that the funds are available to him in the specified manner. The Isle of Man Immigration Office reserves the right to request the specified documents from these applicants to support this confirmation. The application will be refused if the specified documents are not provided in accordance with the request made.”.

52. In paragraph 13 after “show” insert - “or, where permitted by these rules, the applicant confirms that”.

53. After paragraph 13 insert –

“13A. No points will be awarded where the specified documents show that the funds are held in a financial institution with which the UK Border Agency has confirmed it is unable to make satisfactory verification checks. A list of financial institutions which do not satisfactorily verify financial statements is published on the UK Border Agency website.”.

54. For paragraph 16 substitute –

“16. 10 points will only be awarded if the funds shown in the table below are available in the manner specified in paragraph 21 below to the applicant. The applicant must either:

(a) provide the specified documents to show that the funds are available to him, or

(b) where the applicant is sponsored by a Highly Trusted sponsor, is a national of one of the countries or the rightful holder of a qualifying passport issued by one of the relevant competent authorities, as appropriate, listed in appendix H, and is applying for entry clearance in his country of nationality or in the territory related to the passport he holds, as appropriate, or leave to remain in the Isle of Man, confirm that the funds are available to him in the specified manner. The Isle of Man Immigration Office reserves the right to request the specified documents from these applicants to support this confirmation. The application will be refused if the specified documents are not provided in accordance with the request made.”.

55. In paragraph 21 after “show” insert - “or, where permitted by these Rules, the applicant confirms that”.

56. After paragraph 21 insert –

“21A. No points will be awarded where the specified documents show that the funds are held in a financial institution with which the UK Border Agency has confirmed that it is unable to make satisfactory verification checks. a list of financial institutions which do not satisfactorily verify financial statements is published on the UK Border Agency website.”.

57. Appendix E is amended in accordance with paragraphs 58 to 61.

58. In paragraphs (ba) and (g)(ii) for “Tier 4 Migrant” substitute “Tier 4 (General) Student”.

59. In paragraph (ba)(1) for “.” substitute –

“, and

(2) the applicant must confirm that the funds referred to in (1) above are:

(i) available in the manner specified in paragraph (f) below for use in living costs in the Isle of Man; and

(ii) that the funds will remain available in the manner specified in paragraph (f) below unless used to pay for living costs.”.

60. After paragraph (i), insert -

“(ia) Sufficient funds will not be deemed to be available to the Partner or Child if the specified documents show that the funds are held in a financial institution with which the UK Border Agency has confirmed that it is unable to make satisfactory verification checks, and the Relevant Points Based System Migrant to whom the application is connected has, or is being granted, leave as a Tier 4 (General) student. A list of financial institutions which do not satisfactorily verify financial statements is published on the UK Border agency website.”.

61. In paragraph (j), after “specified documents” insert –

“, unless the applicant is applying at the same time as the relevant Points Based System Migrant who is a Tier 4 (General) student sponsored by a Highly Trusted sponsor, is a national of one of the countries or the rightful holder of a qualifying passport issued by one of the relevant competent authorities, as appropriate, listed in Appendix H, and is applying for entry clearance in his country of nationality or in the territory related to the passport he holds, as appropriate, or leave to remain in the Isle of Man and the applicant is also a national of the same country, and confirms these requirements are met, in which case the specified documents shall not be required. The Isle of Man Immigration Office reserves the right to request the specified documents from these applicants. The application will be refused if the specified documents are not provided in accordance with the request made.”.

62. For Appendix G substitute -

“Appendix G

Countries and Territories participating in the Tier 5 Youth Mobility Scheme and annual allocations, by the United Kingdom, of places for 2012

Countries and Territories with Deemed Sponsorship Status:

- Australia – 32,500 places
- Canada – 5,000 places
- Japan – 1,000 places
- New Zealand – 10,000 places
- Monaco – 1,000 places

Countries and Territories without Deemed Sponsorship Status:

- Taiwan – 1,000 places.”.

63. After Appendix G, insert –

“Appendix H – Applicants who are subject to different documentary requirements under Tier 4 of the Points Based system

An applicant will be subject to different documentary requirements under Tier 4 of the Points Based System where he is a national of one of the following countries and he is applying for entry clearance in his country of nationality or leave to remain in the Isle of Man:

Argentina

Australia

Brunei

Canada

Chile

Croatia

Japan

New Zealand

Singapore

South Korea

Trinidad and Tobago

United States of America

Where an applicant is a dual national, and only one of their nationalities is listed above, he will be able to apply using the different documentary requirements that apply to these nationals, provided he is applying either for entry clearance in his country of nationality listed above or for leave to remain in the Isle of Man.

An applicant will be subject to different documentary requirements under Tier 4 of the Points Based System where he is the rightful holder of one of the following passports, which has been issued by the relevant competent authority, and where he is applying for leave to remain in the Isle of Man or for entry clearance in the territory related to the passport he holds:

- British National (Overseas)
- Hong Kong
- Taiwan (those who hold a passport issued by Taiwan that includes the number of the identification card issued by the competent authority in Taiwan)

Where an applicant is the rightful holder of a passport issued by a relevant competent authority listed above and also holds another passport or is the national of a country not listed above, he will be able to apply using the different documentary requirements that apply to rightful holders of those passports listed in this Appendix provided he is applying either for entry clearance in the territory related to the passport he holds or for leave to remain in the Isle of Man.”.

EXPLANATORY MEMORANDUM

Policy Background

What is being done and why

1.1 A summary of the policy changes contained in this Statement of Changes in Immigration Rules follows:

Amendments to Tier 4 of the Points Based System

Tier 4 of the Points-Based System caters for international students who wish to study in the Isle of Man. As with other parts of the Points-Based System, Tier 4 was implemented in phases, with the introduction of the main policy changes on 31 December 2009. Tier 4 consists of two categories: Tier 4 (General) Student and Tier 4 (Child) Student.

The United Kingdom Border Agency has carried out a consultation on reform of the Tier 4 student immigration system from 7 December 2010 to 31 January 2011. The following changes are based on that consultation and are being made to the Tier 4 (General) category, which caters for migrants aged 16 years and over, who wish to come to the Isle of Man for the purpose of study following on from the review of Tier 4:

- Restricting permission to work during studies for students applying for entry clearance or leave to remain:
- Students sponsored by a higher education institution (defined as a UK Recognised Body and or a body in receipt of public funding as a higher education institution) undertaking study at degree level or above will be able to work 20 hours per week during term time and full time during vacations;
- Students sponsored by a higher education institution undertaking study below degree level will be able to work 10 hours per week during term time, and full time during vacations;

- Students sponsored by a publicly funded further education college undertaking a course of study at any academic level will be able to work 10 hours per week during term time, and full time during vacations; and
 - Other students will not be granted permission to work at any time.
-
- Restricting the entitlement to bring dependants (partners and children):
 - We will allow new students sponsored by a higher education institution on a course at level NQF 7 / QCF 7 / SQCF 11 or above lasting 12 months or more to sponsor their dependants.
 - We will also allow new students to bring dependants where they are sponsored to study in the Isle of Man by the Isle of Man Government or another national government on a course that is longer than six months.
 - The dependants of these students will be able to work, subject to the existing restrictions in the Rules.
 - Dependants of students with existing entry clearance or leave to remain in the Isle of Man will be able to stay in the Isle of Man in line with the duration of their leave and any conditions imposed upon it. Dependants with existing leave wishing to extend their stay will be able to do so subject to existing restrictions, provided they apply at the same time as the Tier 4 (General) Student applies to continue their studies, and within three months of the expiry of their existing leave. Provision is also made to allow for grants of entry clearance to be made where children born to a Tier 4 (General) Student during a period of leave are seeking to enter or re-enter the Isle of Man (children born in the Isle of Man in these circumstances are not required to obtain leave to remain).
-
- Students of designated low-risk nationalities attending courses at Highly Trusted Sponsors will not routinely have to present the specified documents at the application stage in respect of their maintenance funds or educational qualifications, although we reserve the right to ask to see those documents. These low risk countries are:
 - Argentina
 - Australia
 - British National Overseas
 - Brunei
 - Canada
 - Chile

- Croatia
- Hong Kong
- Japan
- New Zealand
- Singapore
- South Korea
- Taiwan (those who hold a passport issued by Taiwan that includes the number of the identification card issued by the competent authority in Taiwan)
- Trinidad and Tobago
- United States of America

- Where a student is applying for entry clearance or leave to remain in order to take a further course of study sponsors will have to vouch that the student is making genuine academic progress. This will not preclude students from undertaking courses at the same level where this will develop the breadth or depth of their learning, nor prevent those undertaking re-sits or transferring from one institution to another.

- Students and their dependants will have to declare at the application stage that they hold and will continue to hold the required maintenance funds to cover their course fees and living costs, and that these funds will remain available to them to support themselves in the Isle of Man while they study and to pay for their course.

- No points will be awarded for maintenance where the specified documents show that the funds are held in a financial institution with which the UK Border Agency is unable to make satisfactory verification checks. A list of financial institutions which do not satisfactorily verify financial statements will be published on the UK Border Agency website. This list will be referred to by the Isle of Man Immigration Office when necessary.

- If a Sponsor requires approval at a specified level from a relevant awarding organisation in order to be able to deliver a course that leads to an approved qualification to international students under Tier 4, the Sponsor must have that approval at the specified level in order for points to be awarded.

This Statement sets out some further minor, technical changes to the Rules governing Tier 4.

The following changes are being made:

- To reflect that Education Scotland is the new name for Her Majesty's Inspectorate of Education in sections relating to Tier 4 Child, the Tier 4 interim limit and providers of courses in English for Speakers of Other Languages;
- To amend the definition of "UK recognised body" to confirm that this includes foundation programme offices for post-graduate doctors and dentists, which coordinate these programmes and formally sponsor post-graduate doctors and dentists on a national basis including in the Isle of Man;
- To clarify the definition of who benefits from the streamlined application process for Tier 4. The current definition using the terms "nationality" and "country" does not allow for the individual positions of Hong Kong and Taiwan, which are territories that issue their own passports. These amendments confirms that holders of British National (Overseas), Hong Kong and Taiwan passports can benefit from this process where they are applying in the appropriate territory;

Tier 5 Youth Mobility Scheme

•The Tier 5 Youth Mobility Scheme is a cultural exchange scheme which until now has only been open to countries that are prepared to sponsor their young people and which meet the qualifying criteria for the scheme, namely presenting a low immigration risk, operating effective returns arrangements with the UK and offering a suitable reciprocal scheme. The current rules using the terms "nationality" and "country" do not allow for territories which issue their own passports to participate. These changes extend the scheme to provide for the participation of qualifying territories that issue their own passports.

•These changes introduce and define "Deemed Sponsorship Status" as a status which is conferred upon a country or territory that participates in the Tier 5 Youth Mobility Scheme provided that it is very low risk and the UK has experience of operating the Tier 5 (Youth Mobility Scheme) or one of the preceding youth mobility type arrangements with them. Countries or territories with Deemed Sponsorship

Status do not have to issue Certificates of Sponsorship. Countries and territories that join the Youth Mobility Scheme and with which the UK has no previous experience of operating a youth mobility arrangement do not qualify for Deemed Sponsorship Status and so must issue their nationals or passport-holders with Certificates of Sponsorship. In addition, those Certificates of Sponsorship can only be used in applications made within the national's or passport-holder's own country or territory.

- The changes include the addition of a new participating territory: Taiwan.
- Under the terms of the Youth Mobility Scheme, each participating country or territory accepts that it will receive an annual, minimum of 1,000 places or an allocation equivalent to the last recorded annual number of initial visas granted to UK nationals under their reciprocal scheme/s, rounded up to the nearest 500, if this is larger. These changes set out the country allocations for 2012 in the Rules. Any applicants who apply specifically for the Isle of Man will fall into these allocations.

The Academic Technology Approval Scheme

- In addition, some changes are being made to the list of subjects and course types for which an Academic Technology Approval Scheme (ATAS) certificate will be required. Applicants wishing to undertake certain courses are already required to obtain an ATAS clearance certificate from the Counter Proliferation Department of the Foreign and Commonwealth Office in order to meet the requirements for entry clearance or leave to remain under Tier 4.
- Two additional subject areas requiring ATAS clearance have been added to Appendix 6 for courses with a start date on or after 1 June 2012.
- These changes are unlikely to affect the Isle of Man but are included to keep the Isle of Man in line with the United Kingdom.

Amendments to Tiers 1 and 2 of the Points Based System

- To introduce a requirement for migrants who are applying for settlement in the Isle of Man ('Indefinite Leave to Remain') in the categories of Tier 2 (General), Tier 2 (Intra Company Transfer) of the Points Based System, and Work Permit holders, to

provide specified documents together with their application. This change will enable the Isle of Man Immigration Office to confirm that the migrant is being paid at the appropriate rate, and will prevent abuse of the existing rule which has observed in a small number of cases.

- A correction is being made to the Tier 2 (Intra-Company Transfer) category to correctly indicate that certain migrants who are in the Isle of Man in this category under the Rules in place before 6 June 2011 can continue to apply extend their stay beyond five years.

- Points-Based System Migrants must provide specified documents (such as bank statements) to show that they have held maintenance funds for a specified period of time, ending no earlier than one month before the date of application. Department of Economic Development guidance additionally states that the specified period will be taken as ending from the date of the closing balance of the most recent document. An amendment is being made to bring this existing statement within the Immigration Rules, and to clarify that “no earlier than one month before the date of application” means “no earlier than 31 days before the date of application”.

Amendments to the English language requirements for spouses

- To make two minor changes to the English language requirement for migrants applying for leave to enter or remain in the Isle of Man as the spouse or partner of a British citizen or person settled here. Masters degrees and PhDs taught in English will be accepted as evidence of meeting the requirement. In addition, the references to the Lieutenant Governor will be removed from the English language exemption provisions to clarify that decisions in these circumstances can also be taken by Entry Clearance Officers.

Refusing entry or stay NHS

- The Immigration Rules change will provide that where a person subject to immigration control has failed to pay charges of £1,000 or more due to one or more relevant NHS body in respect of NHS treatment charges invoiced on or after 1st June 2012, the person should normally be refused permission to enter or remain in the country or have their leave cancelled. The Isle of Man Immigration Office will be provided with sufficient data to identify the debtor, namely full name, address,

nationality and date of birth, Medical data will not be provided. This Immigration Rules change is to:

- Deter overseas visitors from misusing the NHS by making it clear that the Isle of Man health services are not an international free for all;
- Encourage overseas visitors to meet their obligations to pay for the NHS services they use;
- Enable the Isle of Man Immigration Office to identify more effectively and take action against migrants with significant unpaid NHS charges; and
- Reassure the public that we are determined to operate fair and robust controls on migrants' access to public benefits and services.

Other amendments

• Previous Rule changes introduced a requirement for Tier 1 migrants to meet a points requirement as part of their application for Indefinite Leave to Remain. This was mistakenly omitted for Tier 1 (General) Migrants but has been inserted by these changes.

• We are making some technical corrections to the provisions for spouses, civil partners, unmarried and same-sex partners. These corrections will put within the rules a concession which has already been operating to clarify rules on switching for an unmarried or same-sex partner already in the Isle of Man with leave to enter exceeding six months in another category. On 6 June 2011, minor changes to the Immigration Rules came into effect updating the spouse and civil partner category. In so doing, a section of the Rules was inadvertently changed. This proposed change will amend this section and reinsert this provision into the Rules.

• We are making some minor changes to Rule 317(i) on applications for indefinite leave to enter or remain in the Isle of Man as a parent, grandparent or other dependent relative of a person present and settled in the Isle of Man. The changes respond to observations made by the Court of Appeal in the case of MB (Somalia) [2008] EWCA Civ 102. Divorced, separated and single parents/grandparents over the age of 65 will now be treated in the same way as widowed parents/grandparents when applying under the Rule. In addition, the Rule is being extended to include parents/grandparents travelling together who are under 65. Amending the wording of Rule 317(i) to incorporate these categories of person will improve the clarity and transparency of the Rule.

- Nationals from Turkey who hold diplomatic passports when travelling to the Isle of Man as a general visitor in accordance with paragraph 41 of the immigration rules will not require a visa. This change is being made following an assessment of the risk posed by specific categories of passport holders.

Nationals and citizens from South Sudan when travelling to the Isle of Man as a general visitor in accordance with paragraph 41 of the immigration rules will require a visa. This change is being made following the division of Sudan into two separate independent states on 9 July 2011.

Both the above changes are made to maintain parity in visa regimes between the UK and Isle of Man.

Deletion of Administrative Removal paragraphs (395A-F)

- Paragraphs 395A, 395B, 395D, 395E and 395F replicate provisions in primary legislation and are therefore not required in the Immigration Rules.

- Paragraph 395C states that before making a removal decision under section 10 of the Immigration and Asylum Act 1999 the Lieutenant Governor must have regard to all relevant factors known to him. Where an application for leave to remain on a temporary basis in the Isle of Man is refused, the Isle of Man Immigration Office asks the migrant to leave the Isle of Man voluntarily and does not always at the same time make a removal decision. In recent judgments in the UK (Mirza [2011] EWCA Civ 159 and Sapkota [2011] EWCA Civ 1320), the Court of Appeal has found that a removal decision should normally be made following a refusal of leave to remain.

- For the majority of migrants who have an application for leave to remain refused there are no additional factors relevant to the decision to remove and the Lieutenant Governor's view is that if there are reasons why a person should not be removed the onus should be on them to make the relevant application rather than require the Lieutenant Governor to have the responsibility of identifying and considering all factors known to him and identifying those which may be relevant. Paragraph 395C is therefore being deleted and the Isle of Man Immigration Office is changing its processes so that refusal and removal decisions can be made as required in the judgment of the Court of Appeal in Sapkota.

- If a migrant has other reasons why they claim they should not be removed from the Isle of Man, for example compassionate factors or protection issues, they should make an application on those grounds, but the burden will be on the migrant to specifically apply for such consideration.