



Restrictions on Studies

20th April 2009

This information sheet provides information about the Government's intention to introduce a power to place restrictions on the studies of migrants in the UK.

Borders, Citizenship and Immigration Bill

The Borders, Citizenship and Immigration Bill includes a provision that would allow the UK Border Agency to impose a restriction on studies by any migrant in the UK who has limited leave to enter or remain. On 4 March 2009, during the Committee stage debate in the House of Lords on the Bill, the Minister explained that:

“It is the Government's intention that the restriction on studies would be placed on those migrants granted leave to enter or remain as tier 4 migrants; that is, students. Furthermore, such a restriction will restrict a migrant to studying at a specified institution, rather than restricting their chosen course of study... I can provide an absolutely clear and unequivocal reassurance to the Committee that the Government do not intend to use this provision to prevent students from moving courses within the same sponsoring institution. By imposing a restriction on a migrant, so that he can study only at a specified institution, he would have to apply to the UK Border Agency to vary the conditions of his leave should he wish to change institutions. This will allow the UK Border Agency to check that the institution to which the migrant wishes to move is a bona fide education provider, with a sponsor licence. Having the ability to link a student to a particular licensed institution is integral to the successful operation of tier 4, the student tier of the points-based system.” (Hansard, HL Committee 4 Mar 2009 : Column 777)

ILPA information service

funded by JRCT

www.ilpa.org.uk/infoservice.html

Steve Symonds

ILPA legal officer

020 7490 1553

steve.symonds@ilpa.org.uk

ilpa.org.uk

Immigration Law Practitioners' Association

www.ilpa.org.uk

T 020 7251 8383

F 020 7251 8384

Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.

Tier 4 of the points-based system is that part of the system introduced on 31 March 2009 which relates to students. Background information about this part of the system is given in the August 2008 “Points Based System – Students” information sheet.

Amendments put forward during debate in the House of Lords

During the debate, the opposition put forward amendments to limit the power to place restrictions on studies in four ways. The amendments would not have prevented the Government from achieving what the Minister explained to be the purpose of the new power. However, the Government refused to accept any of the amendments.

The first amendment

This would have meant that a restriction on studies could only be imposed where the leave to enter or remain is granted for the purpose of studies. This would have meant that other migrants, e.g. those granted leave to join family members or to work, could not face restrictions on their studying in the UK. The Minister explained the reasons for resisting this amendment as follows:

“...it is usual practice for the overall architecture of the immigration system to be set out in primary legislation, with the Immigration Rules containing the detail of how the power will apply. While I appreciate that noble Lords may have their reservations about this approach, the ability to amend the Immigration Rules, rather than having to amend primary legislation, is an essential tool which is vital to ensure that necessary legislative changes can be implemented quickly and effectively...”

“...Under the skilled-worker tier, tier 2, of the points-based system, the Immigration

Rules set out the conditions on a migrant's employment, including a restriction on taking any employment other than with his licensed sponsor, supplementary employment that is outside of his normal working hours and voluntary work. We envisage that the condition this clause will allow us to impose on a migrant in relation to his studies will operate in much the same way, with the Immigration Rules specifying where these restrictions will apply, clearly stating that the restriction will be in relation to where the migrant studies and will be imposed on those granted leave to enter or remain under tier 4.” (Hansard, HL Committee 4 Mar 2009 : Columns 777-778)

The second amendment

This would have meant that the only restriction that could be imposed would be to restrict the student to studying at a specific institution. The same reasons for resisting the first amendment were given for resisting the second amendment.

The third amendment

This would have imposed an obligation upon the UK Border Agency to immediately deal with a request by a student for the restriction to be changed so as to allow him or her to begin, or transfer onto, a course at a new institution. The Minister said that there was no greater need for immediate consideration of these requests as compared to many other applications made to the UK Border Agency. He also said that:

“...the revised guidance... that will be published when we make changes to the Immigration Rules in order to impose this condition on tier 4 students, will specify exactly what a student will need to do if he or she wishes to change institution, in terms of the requirement for him to submit a new application to the UK Border Agency. The revised guidance will also make clear the likely timeframes for consideration of an application, so that a student is able to submit his application to allow him to take up his studies at the new institution in good time.” (Hansard, HL Committee 4 Mar 2009 : Column 778)

The fourth amendment

This would have meant that a restriction on studies could not be imposed upon a migrant who has been granted leave to enter or remain to study in the UK before the new power is brought into law. The Minister explained the reasons for resisting this amendment were because it would:

“...seriously undermine one of the key parts of tier 4 of the points-based system, essentially creating two distinct categories of students; namely those granted leave to enter or remain under tier 4 before enactment... and those granted leave under tier 4 after enactment.” (Hansard, HL Committee 4 Mar 2009 : Column 778)

The Minister went on to explain that the restriction would be imposed on students under tier 4 of the points-based system who had been granted leave to enter or remain before the Bill and the power is brought into law. However, students whose leave to enter or remain was granted under the Immigration Rules that applied before the introduction of tier 4 will not have the restriction imposed upon them.

General note

The Minister's response to the amendments means that while the Government's current intentions as to the extent to which the power to restrict migrants' students may be limited, it intends to retain the power to apply the restrictions more broadly. No guarantee has been given as to how quickly applications to change institutions will be dealt with.