

This is a submission concerned with the Statement of changes in Immigration Rules as laid before parliament HC 863 on 16<sup>th</sup> March 2011 & HC 908 on 31<sup>st</sup> March 2011<sup>1</sup>. We would like to bring the following changes urgently to the committee's attention.

“HSMP Forum” is a not-for-profit organisation and has been lobbying the legislature, executive and judiciary by challenging unfair policies, to allow existing legal Skilled Migrants to settle in UK. The organisation's aim is to support and assist migrants under the world-renowned British principles of fair play, equality and justice and believes in challenging any unfair policies which undermines migrants' interests.

The HSMP Forum earlier wrote to the Immigration minister<sup>2</sup> concerned with the proposed changes, before they were to be introduced but the government seems adamant on applying these retrospective changes to existing migrants. We believe the changes concerned are unfair towards existing migrants who are already in the UK and have made a significant contribution towards UK economy.

Our main concern is the retrospective nature of these changes. Tier 1 (General) visa holders who would be applying for Indefinite Leave to Remain (ILR / settlement) as per these changes will have to fulfill a new salary requirement and a new criminality threshold which includes unspent convictions (e.g. driving offences). Tier 1 migrants are required to meet relatively high earnings standards during their visa extensions. This creates a further hurdle retrospectively during settlement and is unfair as it creates uncertainty and disruption to the planned lives of migrants.

We have collected evidence consisting of statements from migrants who have highlighted their hardships due to the above statement of changes. In the current challenging economic environment, many migrants have had to accept salary cuts in order to keep their jobs. There are situations where migrants have been working consistently in a highly skilled capacity for four and a half years, but were made redundant a few months before their eligibility for ILR or in some cases they were forced to accept lower salary packages in order to retain their employment. One such example that is of a migrant working for a local council who had to accept salary cuts to continue employment. Since the salary cuts were made after the migrant's last extension and this means he would not be able to attain the same salary threshold when making his ILR application and therefore would be forced to leave UK.

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<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2011/hc863.pdf?view=Binary>

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2011/hc908.pdf?view=Binary>

<sup>2</sup> <http://www.hsmpforumltd.com/letter%20to%20immigration%20minister%20301110.pdf> .

In another statement, a migrant has been convicted of driving offence and received a court fine. As per the criminality threshold, he would have to wait another four years before he qualifies for ILR and will probably have to leave the country. His children have never lived in his country of origin and can speak only English. He feels these retrospective changes would spell tragedy for his family.

Another Tier 1 migrant has successfully extended his visa after holding on to 3 jobs in order to earn around £40,000 (a salary required for his extension as per Points Based System). Following his efforts and the successful visa extension he would qualify for ILR but now he realizes that he will need to go through the same salary test again. This time, however, difficult market conditions have made it impossible for him to earn the same salary. After living 4 years in the UK and contributing to the UK economy, he cannot qualify for ILR.

In another statement, a Tier 1 migrant informed us that he had to do a second job to ensure he earned the required income criteria to obtain extension on his HSMP visa. That had an adverse impact on his health and was made redundant recently.

In another statement, a Tier 1 migrant told us that he has to avoid any risky career changes even if it is a unique career opportunity. He feels that he needs to be very 'security' conscious and keep his current job and cannot invest in his training and development even if this could result in lower earnings in the long term.

These migrants have invested in the UK after selling off their assets in their country of origin however due to retrospective changes they would now not be eligible for ILR. The new salary requirement for settlement would cause significant hardship for existing migrants, who have planned their lives around the current immigration rules and who have a reasonable expectation of attaining settlement once they fulfill the residency criteria while remaining economically active. Due to these changes, some migrants would be forced to leave the country. There are therefore human rights concerns as to Article 8 of the ECHR. The changes are also against the advice of the government's appointed Migration Advisory Committee who "were reluctant to suggest retrospective changes for migrants already in the UK"<sup>3</sup>

In the past the Joint Parliamentary Committee on Human Rights considered the HSMP changes which were of similar retrospective nature to be unfair and unlawful<sup>4</sup>. The HSMP Forum had won two consecutive legal challenges against the Secretary of State for the Home Department where the court held that the changes applied to existing migrants was unlawful and rank abuse of power<sup>5</sup>. It is ironic that the government still intends to do the same and apply such changes to existing migrants.

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<sup>3</sup> p.226, "Limits on Migration", Migration Advisory Committee report.

<sup>4</sup> <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/173/173.pdf>

<sup>5</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2008/664.html> & <http://www.bailii.org/ew/cases/EWHC/Admin/2009/711.html>

**At present, Tier 2 and Work Permit Holders** qualify for indefinite leave to remain when they complete a residency period and continue to be employed by their immigration sponsor. The government from 6th April is expecting this group to meet an income requirement assigned to their particular job title by the Codes of Practice (for sponsored skilled workers) to qualify for indefinite leave to remain. For many migrants, the current rates of salary defined by the codes of practice are comparatively much higher than the salaries mentioned in their work permits and were approved by the government. These migrants and their dependants will not qualify for settlement if their employers cannot match the required income, and this is an unfair demand considering the current economic climate. This new rule is clearly retrospective given that the Codes of Practice did not exist when the affected group entered the UK.

While transitional arrangements have been proposed to allow them to extend their stay<sup>6</sup>, it is unclear what the nature of this extension will be. In particular, will it be the Tier 2 category? Will time spent in this visa be continuous with their previous visa without restarting the clock for settlement? And more importantly is it still a visa that leads to settlement? Even so, any delay in settlement can lead to financial hardship, as it affects tier 1 and tier 2 migrants' job prospects and university tuition fees for dependants since home students who hold an ILR pay lesser than overseas students. Migrants are also worried about uncertainty of this procedure. The changing nature of the Codes of Practice means that even those that currently meet the salary requirement but have not completed the residency requirement for settlement have no assurance that their salaries will be sufficient when the Codes of Practice are updated in the future. It is bizarre and unfair that these migrants' income is deemed sufficient for work permits but not for settlement in the UK.

We propose that the committee acts fast to raise this matter in the parliament with the Immigration Minister and Home Secretary and insists on ensuring that existing tier 1 and tier 2 migrants are completely exempt from these changes.

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<sup>6</sup> <http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snha-05922.pdf>