

TIER 2 POINTS BASED SYSTEM – a new framework from April 2011

On 23 November 2010, the Home Secretary announced a number of significant changes to the Points Based System, including but not limited to the introduction of the permanent annual limit of 20,700 migrants allowed entry under the Tier 2 (General) route.

Following her announcement, the first quarter of 2011 resulted in the Government consulting across the Tiers and outlining their proposals for change. The changes themselves came in to fruition by the publication of the Statement of Changes to the Immigration Rules (HC 863). These were laid before Parliament on 16 March and came into effect from 6 April 2011.

It is important for sponsors and migrants alike to be aware of the changes and their likely impact on employees and on their future immigration applications.

Closure of Tier 1 (General)

The Tier 1 (General) category was a self-sponsored route to living and working in the UK. It did not require prior employment and sponsorship with a UK based employer or company, and migrants were free to work and undertake business activity in the UK for the duration of their leave.



Tier 1 (General) is now closed to all new applicants. The route closed to overseas applicants on 23 December 2010 and to in-country applicants on 5 April 2011.

Transitional arrangements have been introduced for existing Tier 1 (General) migrants, who will be able to extend their stay and will not be affected by the changes when applying for further leave to remain. The points threshold for an extension will, however, be increased to 100 for non-EEA nationals who were required to obtain 100 points when they first entered the scheme.

Tier 1 (Exceptional Talent)

The UKBA have introduced a new Tier 1 (Exceptional Talent) route. This is a route for exceptionally talented migrants who have been or will be recognised as leaders in their field, namely in the Arts, Sciences or Humanities area. An annual limit of 1000

immigration

places has been allocated to this route.

CHANGES TO TIER 2

Since 6 April 2011, the UKBA have amended the eligibility criteria and introduced a permanent limit on certain Tier 2 applications.

Skill Levels – introducing the “Graduate Occupation List”

The minimum skill level has been raised to “Graduate Level”. Sponsors are now only able to issue a Certificate of Sponsorship (“CoS”) to roles which are listed on the “Graduate Occupation List”, as recommended by the Migration Advisory Committee. Previously, licensed sponsors would attest on the CoS that the vacancy required skills at N/SVQ Level 3 or equivalent.

English Language

Secondly, the minimum level of English language competency for Tier 2 (General) applications has been increased from basic to intermediate level (equivalent to level B1 on the Common European Framework of Reference). Nationals of Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago and The United States of America satisfy the English language requirement by virtue of their nationality. Individuals from countries not listed above need to satisfy the English language standard either by passing an English language test (to a higher level) or by having

completed a degree which was taught in the English language.

Points Test

The UKBA are now applying a new test to all Tier 2 applicants applying for entry clearance or switching employers. The UKBA have replaced the previous Tier 2 matrix, which allowed migrants to gain points for a valid CoS, Qualifications, Prospective Earnings, English language ability and Maintenance to one which allows migrants to claim points for a valid CoS, Prospective Earnings, English language ability and Maintenance.

Sponsors must still take into account the appropriate rates of pay from the relevant Code of Practice.

“Restricted” or “Unrestricted”?

Before the 2010 General Election the Conservative Party were vocal in their support for limiting immigration to the United Kingdom. This policy has since been ratified by the Coalition Agreement. April 2011 has seen this policy implemented, but it is important to note that not all Tier 2 applications are subject to the limits.

Due to certain international agreements and intense lobbying from some business sectors, Tier 2 (Intra Company Transfers) are exempt from the limits. In addition:

- Tier 2 (General) in-country extension applications;
- Tier 2 (General) in-country change of employer applications;
- Individuals switching in-country to Tier 2 (General);

- Those seeking admission to fill a vacancy attracting a salary of £150,000 or more; and
- Tier 2 Sports People and Tier 2 Ministers of Religion

... are not subject to the limit.

Applications for Tier 2 CoS in the circumstances listed above are now known as “Unrestricted” and licensed sponsors are able to issue the CoS without the need for approval from the UKBA.

The limit therefore only affects those seeking admission to the United Kingdom as Tier 2 (General) migrants. These CoS, unsurprisingly are now known as “Restricted”.

How do Sponsors apply for a “Restricted” CoS?

The UKBA operate the limit by requiring sponsors to obtain prior approval from the UKBA using the new monthly application process. A total of 4200 Restricted CoS are available nationwide to all sponsors in the month of April 2011 and 1500 will be available monthly thereafter.

On the 11th of every month, the UKBA now consider all applications for Restricted CoS and applications are scored against a set of criteria. Therefore, licensed sponsors should be aware that the higher the migrant’s prospective salary the greater the likelihood that the UKBA will allow the sponsor to issue a Restricted CoS. As previously, shortage occupations and those jobs at PhD level gain priority. However,

following this the criteria is predominantly based on salary.

Underpinning the structure is a new points table which allow points to be awarded from a minimum of 32 points for a Restricted CoS application (where the RMLT requirement has been met) and which attracts a salary of £20,000 to a maximum of 60 points for a Restricted CoS application (RLMT completed) and attracts a salary of between £100,000 and £149,999. Additional points are awarded to roles on the Shortage Occupation List and roles which are at PhD level and have been advertised.

Following approval of a Restricted CoS application, the Licensed Sponsor is required to issue the CoS within 3 months of its allocation by the UKBA, otherwise it will be returned to the UKBA to be used in subsequent monthly allocations.

Where the monthly allocation is oversubscribed, the application will only be approved by the UKBA where the monthly allocation is exceeded by no more than 100. In a month where this occurs, the following month's allocation will be reduced by the exceeding amount.

Where applications score the same number of points and straddle the monthly allocation limit by over 100, all applications with the same number of points will be refused.

Furthermore, licensed sponsors should be aware that if they have

applied for a Restricted CoS but they are not allocated a Restricted CoS in that month, they will be required to re-apply in the following month's allocation as their application will not be automatically carried forward.

Tier 2 (Intra Company Transfers)

The UKBA have made significant changes to the Tier 2 (Intra-Company Transfer) route which include differing requirements for transfers depending on whether they are required for more or less than 12 months, and the UKBA has also restricted their ability to return to the UK in this category. The "Established Staff" category has now been replaced by two new categories "Long-Term Staff" and "Short-Term Staff". Both still require migrants to be employed by the overseas entity for at least 12 months.

Short Term Staff applicants may be granted leave in the UK for a maximum of 12 months, after which time they will be required to spend a minimum 12 months overseas before they can return in this sub-category. A minimum salary threshold of £24,000 will be applied and, in addition, the salary must be equivalent to the UK appropriate rate for the job.

Long Term Staff applicants may be granted leave in the UK for a maximum of 3 years and 1 month, with a possible extension up to a maximum of 5 years, after which time they will be required to spend a minimum 12 months overseas before

they can return as a Tier 2 (Intra-Company Transfer) Migrant. A minimum salary threshold of £40,000 will be applied and, in addition, the salary must be equivalent to the UK appropriate rate for the job.

It is important to be aware that the minimum 12 month time frame they now have to spend overseas will commence from the expiry date of their visa, not the date that they will depart the UK.

Closure of Worker Registration Scheme

The Worker Registration Scheme (WRS) will close on 30th April 2011.

WRS is a transitional scheme which was introduced in 2004 when eight countries joined the European Union. Known as "A8 countries" they are:

- Czech Republic
- Estonia
- Hungary
- Latvia
- Lithuania
- Poland
- Slovakia
- Slovenia

Nationals of these countries are required to register under the scheme if they commence employment in the UK. Under the terms of the Treaty of Accession, the UK cannot apply transitional restrictions on A8 national's access to the labour market for more than seven years.

Therefore from the end of April, A8 nationals will be able to access the UK labour market on the same terms as other EEA citizens. Work seekers will also enjoy the same entitlements to out of work benefits as other EU nationals. It should be noted that the restrictions that apply to Bulgarians and Romanians (who joined the European Union later) still apply and citizens from these countries must obtain work authorisation and follow the correct registration procedures.

Settlement Applications

In November 2010 the Home Secretary set out the Government's intention to restrict settlement (also known as indefinite leave to remain or permanent residence) and to end the link between temporary migration and staying in the UK permanently.

The UK Border Agency will consult during the course of 2011 on reforms to the law on settlement, however from April 2011 there has been a preliminary tightening of the settlement rules.

Migrants making applications for leave to enter the UK or further leave to remain in an alternative immigration route must be aware that the opportunity to apply for settlement and the requirements for such applications may change.

Changes to Settlement Rules from April 2011

The Statement of Changes published on 16 March 2011 also made changes to settlement applications which came into effect on 6 April 2011. The four key changes are as follows:

Income Requirement

The UKBA has introduced a new income requirement for Tier 1 (General), Tier 2 (General) and work permit holders applying for settlement.

The income provisions require applicants to prove that they have taken skilled or highly skilled work in the UK. When applying for settlement, the rules now impose the following requirements:

- Tier 1 (General) migrants need to score points against the same criteria as their last application in respect of previous earnings;
- Tier 2 (General) and work permit migrants must be paid the appropriate salary for the occupation as set out in the relevant Code of Practice for sponsored skilled workers when applying to settle (in practice this will have to be confirmed in a letter from their sponsor).

English language

Applicants for settlement under Tier 1, Tier 2 and work permit arrangements are now only able to meet the Knowledge of Life in the UK retirement by completing the Life in the UK Test. They can no longer rely on taking an English for Speakers of Other Languages (ESOL) with citizenship course. This is to ensure that all applications meet at least English level B1 (Council of Europe).

Criminality Threshold

All migrants now have to be free of unspent convictions when applying for settlement. Those who are not, and who have no other legitimate basis of stay in the UK, will be expected to leave the UK.

Accelerated Routes to Settlement

The UKBA have introduced accelerated routes to settlement for Tier 1 (Investor) and Tier 1 (Entrepreneur) migrants who meet enhanced criteria (i.e. for greater investment in the UK for Investors, or the creation of more jobs and increased turnover for entrepreneurs).