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UK immigration: recent and future changes

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UK immigration: recent and future changes



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‘HM Revenue & Customs staff formally became part of the UK Border Agency in a bid to transform the Agency and strengthen the country’s borders.’

THE BORDERS, CITIZENSHIP AND Immigration Act 2009 (BCI 2009) received royal assent on 22 July 2009, bringing new powers to customs and immigration officers.

Since the creation of the UK Border Agency in April 2008, more than 3,500 officers have been trained in the skills needed to carry out passport and customs checks.

On 5 August 2009 HM Revenue & Customs staff formally became part of the UK Border Agency in a bid to transform the Agency and strengthen the country’s borders and its ability to crack down on those attempting to smuggle drugs and weapons into the UK.

The BCI 2009 brings further changes to the UK immigration rules and systems, with migrants now having to earn the right to stay in the UK.

This article looks at the changes to the points-based system (PBS) recently made by the UK Border Agency and the new requirements for British citizenship brought in under the BCI 2009.

POINTS-BASED SYSTEM (PBS)

Changes to the PBS were made in response to concerns from users to ensure that the system continues to facilitate the trade and travel that benefits the UK, without being left open to abuse. Changes to the system include:

- creating an escalation route for university vice-chancellors and academic registrars through the use of a dedicated mailbox for urgent incidents requiring immediate attention, with a guaranteed response within 72 hours;
- modifying rules on students’ maintenance requirements;
- developing new guidance for ‘milk round’ recruitment campaigns;
- outlining plans to develop the UK Border Agency’s IT system;
- looking to develop new employer-led routes for interns that would complement the existing

government-authorised exchange schemes under Tier 5; and

- making several changes to the guidance for PBS sponsors.

Escalation route for university vice-chancellors and academic registrars

A dedicated mailbox – PBSprioritystakeholderresponse@homeoffice.gsi.gov.uk – has been created to be used by vice-chancellors and academic registrars when all existing communication channels have been used and no resolution of the urgent or critical incident has been forthcoming.

An urgent or critical incident is defined as:

‘A specific incident related to a specific institution that is restricting an international student or students from enrolling at said institution that has not been resolved through the established communication mechanisms.’

Students’ maintenance requirements

From 21 August 2009 students of any age have been able to use a bank account in their parent’s name as evidence that they meet the maintenance requirements.

Milk rounds

Changes have been made to make graduate opportunities more widely available to residents by replacing the need to advertise in Jobcentre Plus with a requirement to advertise through two other mediums, one of which must be a graduate recruitment website.

There will also be a new requirement that the milk round is undertaken in at least three UK universities.

An extension to the period between the milk round taking place and the certificate of sponsorship being assigned will be made, raising it to four years.

Development of the UK Border Agency IT systems

The online tool, sponsorship management system (SMS), that allows licensed sponsors to perform their duties under the PBS with the UK Border Agency has been in use since 27 November 2008, when the PBS began.

It is through the SMS that sponsors can:

- create and assign certificates of sponsorship (CoS) for migrants coming to the UK under Tiers 2 and 5;
- report migrant activity; and
- notify the UK Border Agency of changes to sponsors' key personnel.

Licensed sponsors under Tiers 2 and 5 have full access to create and manage Confirmations of Sponsorship and to fulfill their sponsorship duties.

Tier 4 sponsors, however, have access only to maintain their sponsor details and perform administrative tasks.

In October 2009 changes to the IT system will be made to open the SMS fully to Tier 4 sponsors so they will be able to:

- create Confirmations of Acceptance for studies (CAS);
- prepare and assign CAS either individually or in batches;
- report migrant activity;
- use the bulk data transfer functionality to upload extensible markup language (XML) files of CAS data from their local student systems to the SMS and vice versa; and
- notify the UK Border Agency of changes to sponsors' key personnel.

An upgraded version of the SMS system is also planned for February 2010 and the UK Border Agency is consulting with sponsors over the design process for preferred enhancements that were gathered through a range of stakeholder meetings conducted earlier this year. Details of the February IT changes will be made available over the next few months.

In October 2009 the SMS will include a set of functions referred to collectively as bulk data transfer (BDT). This will allow the upload and download of large batches of information to and from the SMS. This is not an automatic transfer of data from a sponsor's student system to the SMS

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and back. A user will need to log into the SMS to facilitate the upload of a bulk data file to the SMS or to export data from the SMS into a file. Using BDT, a sponsor will be able to:

- upload an XML file from their own internal system to pre-populate all of the fields required to create CAS;
- export CAS data from the SMS into an XML file; and
- report student 'no shows' on the SMS by uploading a data file that reports on multiple CAS in a single file.

TIER 2 CHANGES

Advertising/salaries

In July 2009 the UK Border Agency confirmed that migrants under Tier 2 General did not have to be paid in the UK.

40% of a Tier 2 ICT migrant's gross salary can be paid in accommodation allowances when they are applying outside the UK and their certificate of sponsorship is for 12 months or less.

All positions (except those listed under shortage occupation and to be undertaken by a Tier 2 Intra-Company Transfer (ICT) migrant) are to be advertised on Jobcentre Plus, as well as one other source, as detailed in the relevant Code of Practice.

There are new exemptions from the requirement to advertise on Jobcentre Plus:

- a) Where the job is for the role of director, chief executive or legal partner and the salary package is £130,000 or above, or where there will be stock exchange disclosure requirements.
- b) The migrant has been recruited as part of a milk round and the

sponsor assigned a certificate of sponsorship to the migrant on or before 31 August 2009.

- c) The migrant will be employed at a higher education institution as a research fellow.

Certificate of sponsorship

Assigning a certificate of sponsorship for a research fellow must now take place within 12 months of the recruitment exercise starting (the previous time limit was six months). In addition, sponsors may, exceptionally, assign a certificate where the recruitment exercise commenced more than 12 months ago, but only if the migrant is starting work on or before 31 December 2009.

Switching in the UK

For migrants switching from the categories of Tier 1 (post-study work), international graduates scheme, the fresh talent working in Scotland scheme or the science and engineering graduates scheme, there is no longer a requirement to provide a letter from their Tier 2 sponsor verifying employment within the sponsor organisation for the past six months immediately prior to making their application for further permission to remain in the UK.

Tier 2 ICT migrants

Time spent by a migrant on maternity, paternity or adoption leave can now be taken into account when calculating the six-month period an employee must have worked abroad to be able to transfer to the UK as a Tier 2 ICT migrant

New requirement

When an employee's core duties and/or responsibilities change, or where their position in the hierarchy of the sponsoring organisation changes, for example due to a promotion, this is now treated by the UK Border Agency as a change of employment

and a technical change of employment application must be made.

Entry clearance

Some applications have received harsh decisions with refusals made for minor issues, such as omitting a cross in a box to confirm points are being claimed, even though all other information is completed and the original documentation is provided to show the applicant qualifies for the points claimed.

controlled access to citizenship by way of a PBS, ensuring citizenship is reserved for those who earn the right.

A positive aspect of the BCI 2009 is that it will promote the welfare of children and ensure fairness in nationality cases by:

- extending the right to children born abroad to British mothers before 7 February 1961 to register as citizens;

Under the new system applicants will have to pass through three stages:

- 1) temporary residence (five years for economic workers and three years for family of British citizens);
- 2) probationary citizenship (12 months but can be delayed for three years); and
- 3) British citizenship or permanent residence.

‘Points can be removed and citizenship delayed or withheld for people breaking the law. Minor offenders might be required to serve three years’ probation citizenship.’

Only the following will be allowed to naturalise as a British citizen:

- highly skilled and skilled workers under the PBS and their dependants;
- family members of British citizens; and
- refugees and those granted humanitarian protection.

One aspect that continually causes problems is the need for bank statements to meet the maintenance requirement (when employed by a B-rated employer), which must show a minimum sum of £800 (for the main applicant) and £533 (for each dependant) for the past three months prior to submitting an application. The requisite level of funds must be available constantly throughout the three-month period and no allowances are made, even when the money has dropped below the required level for one day due to an administration error and documentary evidence is provided to confirm an error was made and the funds were actually available.

When an A-rated sponsor provides a maintenance letter in support of an employee’s application under Tier 2, they must confirm the certificate of sponsorship number assigned to the employee in their letter.

Processing times for applications vary from country to country and some consular posts insist on original maintenance letters from an A-rated sponsor, although the UK Border Agency’s guidance states that a faxed version of the letter is acceptable and so a copy should also be acceptable.

A SYSTEM OF ‘EARNED CITIZENSHIP’

The government’s view is that the BCI 2009 will introduce a radical new approach to

- enabling children of foreign and Commonwealth members of the armed forces to register as British citizens; and
- allowing children of British citizens to register at any time until the age of 18. (At the moment registration must have been made within 12 months of birth.)

The BCI 2009 will require all newcomers to:

- speak English;
- work hard and pay taxes;
- obey the law;
- demonstrate active citizenship by volunteering to be involved in the community;
- spend five years as temporary residents before becoming probation citizens;
- be denied several benefits until they become full British citizens; and
- be asked to pay into a special fund to ease public service pressures.

Changes

Changes will only affect people who will be applying for permanent residence and citizenship from summer 2011.

A new points-based test for citizenship will award migrants points for economic contribution, skills and English language proficiency.

Points can be removed and citizenship delayed or withheld for people breaking the law. Minor offenders might be required to serve three years’ probation citizenship and extra time could be imposed on those convicted of a serious offence.

Current rules

Under the current system, foreign nationals have to pass the life in the UK test, which requires English language proficiency. They must show they are economically active and paying taxes.

They also need to prove they have funds to maintain themselves without claiming any public funds. It is therefore unlikely that applicants will be granted permanent residence if they claim benefits. Economic migrants currently have access to the NHS and have the right to send their children to government schools.

Applicants who do not obey the law face the risk of deportation and it is unlikely that an application for indefinite leave to remain by serious offenders will be successful.

Currently foreign nationals may apply for indefinite leave to remain after five consecutive years in the UK, with a further 12 months before they are eligible for naturalisation. The family members of British citizens can apply after two years for indefinite leave to remain. Refugees are granted permanent residence on arrival.

The temporary residence stage leading to indefinite leave to remain is equivalent to a probation stage in nature.

In light of the above it does not seem that there are significant changes to the current policy, except for the requirement for volunteering work.

Public consultation

The government launched a 12-week public consultation on 3 August 2009 on the proposals for a new points-based test for citizenship that will build on the principle that citizenship must be earned. In this consultation the UK government invited public views on:

- introducing a new points test for earned citizenship;
- delivering the earned citizenship in partnership with local authorities;
- supporting those who are on the path to citizenship to integrate into their new communities; and
- managing the impact on the developing world.

There are concerns about the potential negative impact that active citizenship may have on both voluntary organisations and migrants.

These organisations will be burdened with the extra administration of obtaining references for the migrants to ensure that there is no safety risk involved. They will also have to verify and check the voluntary

work, to be able to report whether the migrant has met the requirements for citizenship.

There is also a real possibility that volunteers will not be committed to the cause for which they volunteered and will only get involved to achieve citizenship.

‘The new rules might alienate individuals and damage community relations. Economic migrants are contributing to the tax and national insurance systems, as well as making huge financial contributions to their community.’

It might be difficult for probation citizens to find the time for voluntary activities due to work or family commitments.

The new rules might alienate individuals and damage community relations. Economic migrants are contributing to the tax and national insurance systems, as well as making huge financial contributions to their community by paying council tax and spending money in local areas.

Recent reports show that there is an increase in the outflow of economic migrants. More migrants are spending short periods in the UK and the migrants who are most likely to leave are the highly skilled that contribute the most to the UK economy.

The government considers that the new changes to citizenship will have a positive impact on immigration for developing countries, as returning immigrants will take increased skills back to their countries, which will have a positive effect on the workforce drain in those countries.

The government is convinced that this new PBS will give more control over the numbers

of migrants who will be allowed to settle in the UK.

Costs of the new policy

The UK Border Agency will have to bear the cost of implementing the policy, which will require set-up training and additional case work.

The public sector will be burdened with further costs to enable risk assessment of those undertaking active citizenship.

There will also be the potential cost of lost productive output when economic migrants have to be absent from work to take part in volunteering.

CONCLUSION

The UK Border Agency clearly wishes to provide an application process that will be faster and simpler, encouraging those who have settled in the UK to integrate fully in society.

It remains to be seen if the new system will be more complex and unnecessarily increase the time migrants have to spend in the UK before they will be eligible for citizenship and whether or not this may deter highly skilled migrants from coming to the UK.

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