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UK immigration: end of year round-up

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## UK immigration: end of year round-up



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RESTRICTED CERTIFICATES OF SPONSORSHIP: the system of applying for restricted certificates of sponsorship was introduced on 6 April 2011. Restricted certificates are required by overseas nationals who will be employed on a salary of less than £150,000 per annum and who are currently living overseas.

The UK Border Agency (UKBA) announced a UK-wide annual allocation for the year commencing 6 April 2011. The total number of certificates available was 20,700. A detailed breakdown of eligibility criteria against which the allocation would be considered was also published. An application for a job that appears on the shortage occupation list will be awarded the maximum number of points, with jobs, mainly in the science and teaching professions, for which a PhD is required, being second in priority. All other applications require a resident labour market test to be undertaken and additional points are then awarded according to the salary on offer for the role.

The allocation was divided into equal monthly quotas with 4,200 certificates being made available for April 2011 and 1,500 per month thereafter. Complicated guidance was published to outline how the certificates would be allocated if the quota was oversubscribed in a particular month. In reality, these processes have not had to be evoked.

In April 2011, only 1,019 certificates were requested (and issued) leaving 3,181 certificates being carried forward to May. The rollover trend has continued in subsequent months culminating in a total of 7,723 certificates being available by September 2011. Unless there is a huge month-on-month increase in requests from UK employers for these restricted certificates, it is likely that all requests will be approved and that a surplus will remain when the allocation year closes in April 2012. The government made a pledge to reduce immigration to 'tens of thousands' and if the allocation of 20,700 is not utilised by April next year, it is feasible that the quota set by ministers for the year beginning 6 April 2012 will be substantially reduced.

The Home Office has also altered the method by which restricted certificates

can be requested. This change took place on 1 October 2011. Such requests are now made via the individual employer's sponsor management system (SMS). Sponsors and users are able to track the progress of the application, including the ability to check when a restricted certificate has been approved and added to the SMS. The cut-off date for applications continues to be the fifth of each month, with the UKBA panel sitting each 11th of that month.

### OCTOBER 2011 CHANGES TO TIER'S 2 AND 5

The UKBA announced a number of changes to the sponsor guidance for Tier 2 and Tier 5 to take effect from 30 September 2011. Below, we set out how some of these changes may directly affect sponsors:

- The UKBA has extended the time frame for keeping documents in respect of migrant workers: if the migrant is sponsored for less than one year, documents must be kept for the duration the migrant is sponsored or until a compliance officer has examined and approved them, whichever is the longer period. If the migrant is sponsored for one year or more, documents must be kept for one year or until a compliance officer has examined and approved them, whichever is the longer period;
- There is now a new duty to inform the UKBA if a migrant sponsored under Tier 2 (General) or Tier 2 (ICT) takes a period of unpaid leave. If this happens, you cannot continue to sponsor them unless an exception applies;
- Sponsors must report to the UKBA if the company sells all or part of their business;
- The UKBA has confirmed its policy to always contact the person named as the key contact in the sponsor licence application;
- There is now updated suitability criteria and scoring system used for assessing the suitability of prospective or existing sponsors;
- Level 1 or Level 2 users of the SMS must not be undischarged bankrupts;

- The UKBA updated its policy regarding how payments are made to migrants. Payments can be made onto a migrant's pre-paid card, for example a FOREX card, but only where sponsors can provide evidence of the amount and frequency of those payments and that they have been made directly to the migrant. The UKBA also require sponsors to keep evidence of these payments;
- Food businesses are now required to be registered or approved by a relevant food authority; and
- The UKBA now suggests ways to deal with circumstances where sponsors know a migrant's salary package may fluctuate, when assigning a certificate of sponsorship or applying for a restricted certificate of sponsorship under Tier 2 (General).

**RECENT EVENTS AT THE UK BORDER AGENCY**

The scandal surrounding the relaxation of border checks, ordered by the home secretary, Theresa May, continues. A pilot scheme was introduced in July to reduce the time spent by border guards checking British and EU nationals' passports as they entered the UK. The 28 ports and airports at which the authorised pilot was used included Heathrow, Gatwick, Calais, Coquelles, Glasgow, Harwich, Manchester, Aberdeen and Cardiff.

In an oral statement to Parliament, Ms May said:

'Border security is fundamental to our national security and to our policy of reducing and controlling immigration. The pilots run by the UK Border Force this summer were designed to improve border security by focusing resources at passengers and journeys that led officers to believe posed the greatest risk.'

Ms May has admitted to allowing some checks on European travellers to be relaxed but says Mr Brodie Clark, head of the UK Border Force, went beyond ministerial guidelines without her approval. Mr Clark was suspended and subsequently resigned.

***'With the tightening of immigration rules and policies in recent years and the government's stance on immigration, the role that the chief inspector plays is important to ensure that decision making is fair.'***

The home secretary contends that:

'... our task now is to make sure that those responsible are punished and to make sure that Border Force officials can never take such risks with border security again. That is what I am determined to do.'

There will be three inquiries into the failings of the UKBA.

The main inquiry will be led by the independent chief inspector of the UKBA, John Vine, who has been appointed to conduct thorough investigation into the workings of the UK Border Force. Mr Vine will investigate the claims that guidance was issued to border guards not to check fingerprints and other personal details against a Home Office database of terror suspects and illegal immigrants. His findings will be published in January 2012.

**INSPECTION PLAN OF THE INDEPENDENT CHIEF INSPECTOR**

The recent revelation that border controls were relaxed this summer to allow thousands of people to enter the UK without proper checks will add to the chief inspector's work this year. In light of recent events, the chief inspector's inspection on ports of entry will no doubt be welcomed.

The role of the independent chief inspector of the UKBA was established by the UK Borders Act 2007 to assess the 'efficiency and effectiveness' of the UKBA. Mr Vine was appointed as chief inspector in 2008 and while responsible to the home secretary, he has an independent role. In May 2011, Mr Vine presented his inspection plan for 2011-12 that sets out the main

areas of focus for reviews and inspections for the year.

The inspection plan for 2011-12 is wide ranging and covers the following: inspections of the day-to-day work of the UKBA across the UK, visa operations overseas, the quality of decisions to determine asylum claims within the fast-track process, decision making on marriage and civil partnership applications both overseas and in the UK, the agency's approach to prosecutions, and assessing casework for people detained in immigration removal centres and prisons.

The reports that the chief inspector publishes in 2011-12 will aim to shed light on the decision making of the agency and assess areas of inconsistency. In 2010-11, the chief inspector identified a number of issues in the way the UKBA operated its visa services overseas and in the next year, there will be a focus on decision making in various posts in Africa, the operation of Tier 4 (student category) and re-inspections of other visa sections.

With the tightening of the Immigration Rules and policies in recent years and the government's stance on immigration, the role that the chief inspector plays is important to ensure that decision making is fair, non-discriminatory and lawful and to report to Parliament and the public when it is not.

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