

Immigration Update

December 2012

Points-based system

The UK immigration system is a points-based system, which is divided into five tiers, with each Tier also having sub-tiers.

- **Tier 1:** Entrepreneurs, investors, exceptional talent and post-study work. Tier 1 is the highly-skilled tier that is aimed at individuals who will contribute to the UK's productivity and growth;
- **Tier 2:** Skilled migrants with job offers who are coming to the UK to fill a gap in the UK labour market (this replaced the old work-permit system);
- **Tier 3:** Low-skilled migrants who are recruited to fill specific temporary labour shortages (this category is currently on hold);
- **Tier 4:** Students; and
- **Tier 5:** Youth mobility and temporary migrants - those coming to the UK for primarily non-economic reasons.

In each of these categories, the migrant has to earn points in order to come to the UK for work or study.

In the case of all tiers except **Tier 1**, migrants must be sponsored before they come to the UK to work or study.

On 22nd November 2012, the UK Border Agency announced changes to the Immigration Rules as part of the Government's ongoing programme of reforms to the immigration system. Those changes will come into effect on 13 December 2012 and will affect all Tiers of the points-based system.

The purpose of the changes is to reduce net migration whilst ensuring the UK continues to attract the brightest and best migrants.

Outlined below are the most significant changes to **Tier 1** and **Tier 2**.

Tier 1 (Investor)

This category caters for high net worth individuals making a substantial investment in the UK. Applicants must have £1million funds to invest in the UK to qualify for a Tier 1 (Investor) visa.

Curtailement of leave for failing to maintain investments:

The requirement that the investment must be maintained for the duration of the investor's leave in this category, which is currently contained in UK Border Agency guidance, has now been incorporated into the Rules.

This means the UK Border Agency can curtail the investor's visa/residence permit if the investor does not maintain the investment for the duration of their stay.

Secured investments and investments in offshore custody will not qualify:

The UK Border Agency has also clarified that loans cannot be secured on the investments relied on to obtain a Tier 1 (Investor) visa and nor can the investments be held in offshore custody. The intention is that investments are under the applicant's control and genuinely benefitting the UK.

Tier 1 (Entrepreneur)

This category caters for those with financial backing or sufficient independent funds, who are coming to the UK to set up, take over or otherwise be actively involved in the running of a business in the UK.

Lower English language level:

The English language requirement has been lowered from level C1 (advanced) to level B1 (intermediate) which brings the English language requirement in line with Tier 2 (General). This change is in response to concerns that the high requirement was deterring potentially successful entrepreneurs.

Tier 4 students prevented from switching:

Tier 4 students will no longer be able to switch into the entrepreneur category unless they are relying on the provision that they have £50,000 funding from a specified source (registered venture capitalist firms, UK Government or Devolved Administration Departments). The idea is that Tier 4 students will use the Tier 1 (Graduate Entrepreneur) route instead.

This change is being made to address concerns about a growing number of students claiming to have £200,000 funding, which, on investigation has proved to be false.

Tier 2

Intra-Company Transfer: Maximum Stay

At present, all Tier 2 intra company transfer (ICT) migrants are subject to a maximum stay in the UK of five years if they entered the UK in this category after 5 April 2011.

Under the proposed rule changes, those senior staff members earning £150,000 or more will be permitted to remain in the UK for up to nine years.

This change is being made in response to feedback from businesses. The UK Border Agency's view is that a nine-year maximum meets business needs whilst maintaining the temporary nature of this category, by preventing applicants qualifying for settlement on the basis of long residency.

Intra-Company Transfer: Cooling-Off Period

Where a migrant leaves the UK on or before the expiry of their visa, a cooling-off period applies to prevent the

migrant from returning to the UK in this category for 12 months.

Some flexibility is being introduced in the way that the start of the cooling-off period is determined, so that the cooling-off period will start to run from when the migrant leaves the UK, instead of the end of their visa. Currently the cooling-off period runs for 12 months from the expiry of the visa.

This change will mean that it is no longer necessary for migrants to rely on curtailment from the UK Border Agency where they depart the UK before the expiry of their leave.

The onus will be on the migrant to demonstrate when they left the UK and have remained outside the UK.

Supplementary Employment:

Currently Tier 2 migrants can only carry out supplementary employment if it is in the same occupation and at the same professional level as the employment they are sponsored to work in.

Following the changes to the Immigration Rules, all Migrants in Tiers 2 may undertake supplemental employment in a shortage occupation, even if this is a different occupation from the one they are being sponsored to work in.

This will provide migrants with more flexibility and help to ease shortages in these occupations.

Settlement

To qualify for Indefinite Leave to Remain in the UK, skilled workers, investors, entrepreneurs and the self-employed must complete a continuous period of lawful residence in the UK.

The continuous period is five years for most categories of migrant. but Tier 1 Investors and Entrepreneurs have an accelerated route to Indefinite leave to Remain of two or three years depending on the level of their investment and/or economic activity in the UK.

The level of permitted absence is not currently specified in the Immigration Rules except in the case of Tier 1 Investors and Entrepreneurs where it is 180 days in a 12 month calendar period. This has led to inconsistency in the absences allowed and uncertainty for applicants.

For all migrants in Tier 2 and other work routes who are eligible to apply to settle in the UK, permitted absences from the UK will increase to 180 days per year over the five years required to qualify. This means migrants can spend

up to 180 days outside the UK each year and still qualify for Indefinite Leave to Remain.

The migrant will need to show that the absence is consistent with their employment e.g. business trips, conferences, annual leave or for serious or compelling reasons such as illness of a close relative.

The current absence allowance will be maintained as it is now for Tier 1 Investors and Entrepreneurs, with no restriction on the reason for the absence.

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