

Immigration Update

The Immigration Rules will be amended on the 6th April 2013 to simplify the Codes of Practice (the list used to determine the skill level, minimum salary rate for occupations and the acceptable resident labour market test methods for Tier 2 of the Points Based System), increase the minimum salary levels for Tier 2 migrants and introduce new requirements for the resident labour market test. An exemption from the "cooling-off period" will also be established for some Tier 2 migrants.

Changes will also be made to the provisions of the rules concerning settlement and the General Visitor category.

The key points are summarised in more detail below.

Minimum salary thresholds for Tier 2

The minimum annual salary threshold for Tier 2 will increase in line with annual wage inflation as recorded by the Average Weekly Earnings Index.

Visa category	Existing minimum salary threshold	Minimum salary threshold from the 6th April 2013
Tier 2 General	£20,000	£20,300
Tier 2 (General) exempt from the annual limit of Tier 2 Certificates of Sponsorship/resident labour market test	£150,000	£152,100
Tier 2 (ICT) Short-Term Staff	£24,000	£24,300
Tier 2 (ICT) Long-Term Staff (maximum stay of five years in the UK)	£40,000	£40,600
Tier 2 (ICT) Long-Term Staff (maximum stay of nine years in the UK)	£150,000	£152,100

Sponsors will continue to be required to meet the appropriate salary level as per the relevant Standard Occupation Classification (SOC) code which may be higher than the amount stated above.

The appropriate salary rate for each occupation listed in the Codes of Practice will be divided into two categories: "new entrants" and "experienced workers". A "new entrant" is defined as:

- A graduate switching from Tier 4 into Tier 2 under the post-study work provisions;
- Graduate recruits where the employer has used a university "milkround" to satisfy the Resident Labour Market Test;
- Intra-Company Transfer Migrants applying under the Graduate Trainee sub-category; or
- Applicants under the age of 26 on the date of the Tier 2 application.

Applicants extending their grant of leave under Tier 2 in any other circumstances will be classed as an "experienced worker". The "experienced worker" salary thresholds will also apply to Work Permit holders and Tier 2 migrants applying for settlement.

The new Codes of Practice can be found on the UK Border Agency website: please [click here](#).

Changes to the Resident Labour Market Test

From the 6th April 2013, Sponsors will have greater flexibility in choosing the most suitable advertising medium to advertise a role rather than having to follow the prescribed lists as set out in the existing Codes of Practice. Acceptable advertising media will include:

- Newspaper - Must be marketed throughout the UK or throughout the whole of the devolved nation in which the job is located, and published at least once a week;
- Professional Journal - Must be available nationally through retail outlets or through subscription, published at least once a month, and related to the nature of the job i.e. a relevant trade journal, official journal of a professional occupational body, or subject-specific publication;
- Website- Must be one of the following:
 - Universal Jobmatch (or other Jobcentre Plus online service), for jobs based in England, Scotland or Wales;
 - JobCentre Online, for jobs based in Northern Ireland;
 - an online version of a newspaper or professional journal which would satisfy the criteria above;
 - the website of a prominent professional or recruitment organisation, which does not charge a fee to jobseekers to view job advertisements or to apply for jobs via those advertisements; or
 - if the Sponsor is a multinational organisation or has over 250 permanent employees in the UK, the Sponsor's own website.

An exemption to the Resident Labour Market Test will apply to all roles with a salary of £152,100 or more.

Where a Sponsor is required to undertake the Resident Labour Market test, it will be necessary to advertise the role in two different mediums. If the salary is less than £71,000, one of the mediums must be the Job Centre Plus website. The "milkround" provisions will continue to apply for recruiting graduates and Interns.

Transitional Measures

The UKBA has put into place a number of transitional measures to minimise any disruption caused by the introduction of a new Codes of Practice:

- If a sponsor has been allocated a restricted Certificate of Sponsorship before the 6th April 2013, it must be assigned before this date otherwise it will become invalid (before the SOC code on the Certificate of Sponsorship is fixed at the date of allocation and cannot be amended);

- Where a Sponsor assigns a Certificate of Sponsorship before the 6th April 2013, the current Codes of Practice, salary thresholds and advertising criteria will apply, even where the visa or Leave to Remain application is submitted on or after the 6th April 2013;
- The timeframe for requesting restricted Certificates of Sponsorship has been revised to take into account the changes to the Code of Practice. The UKBA will accept restricted Certificates of Sponsorship requests from the 6th April to the 17th April and decisions made on the 19th April. Urgent treatment requests for restricted Certificates of Sponsorship will continue to be accepted in the usual way.

English language requirement

Tier 2 (ICT) migrants extending their stay in the UK beyond three years will be exempt from the English language requirement after the 6th April 2013 if they are earning £152,100 or more.

Change to 12 month "Cooling-off Period"

An exemption from the 12 month "cooling-off" period will be introduced from the 6th April 2013 for Tier 2 (ICT) and Tier 2 (General) migrants earning an annual salary of £152,100 or more.

Settlement

The new Codes of Practice will apply to Work Permit holders or Tier 2 migrants applying for settlement/Indefinite Leave to Remain after the 6th April 2013.

Work Permit holders, Tier 2 (ICT) and Tier 2 (General) migrants will be entitled to apply for settlement whilst on maternity, paternity or adoption leave on the basis that they were paid the appropriate salary rate immediately before the start of that leave. (The current rules specify that in such applications, the applicant is required to be paid the appropriate rate in line with their permission to work at the date of the settlement application which does not take into account the lower pay received whilst on maternity, paternity or adoption leave).

An additional provision has been added to the rules to allow Work Permit holders, UK Ancestry visa holders and Points Based System migrants to use time spent in the Crown Dependencies (the Bailiwicks of Guernsey and Jersey and the Isle of Man) towards the continuous residence period for settlement.

General Visitors

Two additional requirements will be added to the General Visitor criteria. A visitor must be able to establish that if they intend to visit friends or family in the UK, that such individuals have valid leave to remain or permission to reside in the UK themselves at the time of the visit. Also, the visitor must not "intend to live for extended periods in the United Kingdom through frequent or successive visits".

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