

## IMMIGRATION UPDATE – UK'S NEW SINGLE POINTS-BASED IMMIGRATION SYSTEM

In October this year the Home Office published significant changes to the UK immigration rules. These changes demonstrate the Government's commitment to simplifying the rules and set out the foundation of the UK's new Points-Based Immigration System.

The majority of these changes took effect on 1 December 2020 and will apply equally to all nationals (except British and Irish citizens) who want to come to the UK from 1 January 2021 onwards. Here are the main changes that businesses and individuals should be aware of.

### COVID -19 RELEVANT CHANGES

Individuals will not be penalised due to international travel restrictions as a result of the recent pandemic. The new rules will:

- overlook any periods that individuals have stayed in the UK beyond the expiry of their visas between 24 January 2020 and 31 August 2020; and
- discount any absences caused by travel restrictions due to the pandemic from the 180 day absence calculation, in the relevant 12 month periods, when assessing whether an individual qualifies for Indefinite Leave to Remain.

### IRISH CITIZENS

At 11 pm on 31 December 2020, the immigration rules will be updated to confirm that Irish nationals are considered to be settled in the UK and that they will not require a visa to enter or remain in the UK.

There are however a few exceptions as, if the Home Office has ever made a deportation order against an Irish national or a decision to exclude them from the UK and that decision has not been withdrawn, those Irish nationals will need to apply for a visa to enter the UK before they travel.

### Key changes - General

- Overseas migrants will not be penalised for COVID-19 related absences or visa issues.
- The rights of Irish citizens to live and work in the UK is being confirmed.
- EU nationals will not require a pre-approved visa when entering the UK on their passport as a visitor.
- Visitors can study on a course of up to 6 months in the UK.
- Tier 2 (General) was fully replaced by the Skilled Worker category.
- EU nationals will be able to use the UK Immigration: ID Check app to verify their identity.
- Degrees taught in Ireland and Malta can now be used to meet the English language requirement as well as GCSEs, A levels or Scottish Highers in English received by individuals who studied here whilst under the age of 18.
- A new immigration category is being introduced for Hong Kong British Nationals (Overseas).

## VISITORS

EU nationals will be able to enter the UK as visitors without the need to apply for a visa beforehand as long as they are entering on their passport. If an EU national will be traveling to the UK on a valid ID card, they will require prior visa approval before hand.

The permitted business visitor activities will remain the same however other changes to the visitor rules that we should be aware of are:

- Unlike other nationals, EU nationals will not need to apply for a special marriage visit visa if they are getting married or entering into a civil partnership in the UK;
- It is now possible to study on a course of up to 6 months in the UK as a visitor. If the course is for non-recreational study, it must be undertaken at an accredited institution as accepted by the Home Office. This includes overseas medicine, veterinary or dentistry students being able to undertake electives in the UK as long as they are unpaid and not treating patients;
- Volunteering at a charity no longer needs to be incidental to the main reason of someone's visit to the UK; and
- Academic visitors who are experts in their field will be free to extend their stay in the UK for up to 12 months.

## SKILLED WORKERS

By far, the biggest change to the Immigration Rules is the introduction of the new Skilled Worker route. On 1 December 2020, the Tier 2 (General) category was completely deleted from the rules and replaced by the new Skilled Worker route. Any Tier 2 (General) migrants currently in the UK will now be expected to meet the Skilled Worker extension or Indefinite Leave to Remain visa requirements.

EU nationals who intend on arriving in the UK for the first time for work purposes from 1 January 2021 will need to submit an application under this route, along with other overseas nationals. EU nationals with a chipped passport will however have the option of either submitting their biometric information using a new [UK Immigration: ID Check app](#) similar to that used for the EU Settlement Scheme or attending an appointment in line with the usual visa application process.

The Skilled Worker route, similar to Tier 2 (General), will allow individuals to relocate to the UK if they have a permanent offer of employment. Individuals who arrive in the UK under this route will also be able to apply for Indefinite Leave to Remain after a continuous 5 year period. There are however quite a few differences.

- There is now an increased ability to switch into the Skilled Worker category from inside the UK by individuals who would not have been able to under the Tier 2 (General) category. This includes T5 Youth Mobility Scheme or Government Authorised Exchange migrants and those here on an Intra-Company Transfer basis;
- The restriction on a sponsored worker not owning more than 10% of a business' shares where it is a limited company, has been removed;

### Key Changes – Skilled Worker

- It is easier to switch into the Skilled Worker category from inside the UK.
- There is no longer a:
  - cap on the number of shares an employee can own in their sponsor.
  - high earner threshold.
  - 12 month 'cooling-off' period for Skilled Workers.
  - cap on the amount of time an individual can spend in the UK as a Skilled Worker.
- The annual cap on new hires being sponsored in the UK has been suspended although Certificates of Sponsorship still need to be pre-approved by the Home Office.
- The Resident Labour Market Test has been abolished.
- The minimum skill level has been reduced from RQF level 6 to RQF level 3.
- The minimum salary threshold has been reduced to £20,480 for new entrants and £25,600 for experienced workers. These will however still need to meet the minimum going rate for the role on offer.
- Annual allowances and guaranteed bonuses can no longer be included in the gross annual salary figure.

- There is now no 'cooling off period' (previously 12 months) and no maximum period that individuals can remain in the UK as a Skilled Worker (capped at 6 years under the Tier 2 (General) route);
- The annual cap for new hires from overseas has been suspended however, a Certificate of Sponsorship for these individuals will still need to be allocated by the Home Office for the specific job and salary they will be carrying out in the UK. A new "defined" Certificate of Sponsorship process has been introduced to facilitate this.

The Home Office expect this suspension to reduce the end to end process by up to four weeks and have indicated an intention to process any requests within one business day.

- To qualify for a visa under this route, individuals need to show that they score an overall 70 points which will be from a combination of mandatory and tradable points;
- 50 points must be received from mandatory characteristic which are illustrated by the table below:

Characteristics	Comments	Points
<b>Offer of job by approved sponsor</b>	<p>The Resident Labour Market Test has been abolished. Employers therefore do not need to show that there are no settled workers who can carry out the role.</p> <p>The Home Office will however need to be satisfied that the role does genuinely exist, is not a sham and has not been created for the sole purpose of the individual being able to gain a UK visa.</p>	20
<b>Job at appropriate Skill level</b>	<p>The skill level for roles has been reduced from RQF level 6 to RQF level 3.</p> <p>The occupation that a prospective employee is being sponsored to carry out is listed as eligible for sponsorship under the Skilled Worker route.</p> <p>Employers are also be expected to satisfy the Home Office that the appropriate occupation code has been chosen and they are not trying to fit the role into a code which is not at the correct skill level, has a lower salary level and has not been inappropriately classified as a shortage occupation.</p>	20
<b>Speaks English at required level</b>	(see English language section below)	10

- The remaining 20 points must be made up from what the Home Office are calling 'tradable' points. These points are considered 'tradable' as the minimum salary threshold changes depending on the category of role an individual is being sponsored to do.

The general minimum annual salary threshold has been lowered from £30,000 to £25,600 for experienced workers and from £20,800 to £20,480 for new entrants. Individuals will also still need to be paid at or above the minimum salary threshold for the occupation code if this is higher; now termed the "going rate" for the role. These salary levels are however

adjustable depending on the category of role. The below table seeks to illustrate how this will be applied:

Category and tradable points requirements	Comments	Points
<p><b><u>General</u></b></p> <p>Salary equals or exceeds both:</p> <ul style="list-style-type: none"> <li>• £25,600; and</li> <li>• the going rate for the occupation.</li> </ul>		20
<p><b><u>PhD in a subject relevant to the job</u></b></p> <p>Salary equals or exceeds both:</p> <ul style="list-style-type: none"> <li>• £23,040; and</li> <li>• 90% of the going rate for the occupation.</li> </ul>	<ul style="list-style-type: none"> <li>• The occupation must be one listed as eligible for PhD points.</li> <li>• The PhD being relied on must be confirmed as comparable to a UK PhD by UKNARIC.</li> </ul>	10 – for educational qualification 10 – for salary
<p><b><u>PhD in a STEM subject relevant to the job</u></b></p> <p>Salary equals or exceeds both:</p> <ul style="list-style-type: none"> <li>• £20,480; and</li> <li>• 80% of the going rate for the occupation.</li> </ul>	<ul style="list-style-type: none"> <li>• The occupation must be one listed as eligible for PhD points.</li> <li>• The employer will need to provide a credible explanation as to why the qualification must be in a STEM subject.</li> <li>• The PhD being relied on must be confirmed as comparable to a UK PhD by UKNARIC.</li> </ul>	20
<p><b><u>Shortage Occupation</u></b></p> <p>Salary equals or exceeds both:</p> <ul style="list-style-type: none"> <li>• £20,480; and</li> <li>• 80% of the going rate for the occupation.</li> </ul>	<ul style="list-style-type: none"> <li>• The occupation must be one included in the Shortage Occupation List.</li> </ul>	20
<p><b><u>New Entrant</u></b></p> <p>Salary equals or exceeds both:</p> <ul style="list-style-type: none"> <li>• £20,480; and</li> <li>• 70% of the going rate for the occupation.</li> </ul>	<ul style="list-style-type: none"> <li>• As well as graduates completing their studies in the UK and individuals who are under the age of 26, new entrants now include: <ul style="list-style-type: none"> <li>– those offered roles in some postdoctoral positions;</li> <li>– those working in a UK regulated profession so long as they are working towards a recognised qualification for that profession; and</li> <li>– those working towards full registration or chartered status with the relevant professional body for that role.</li> </ul> </li> <li>• The new entrant rate cannot be relied on if the total period of sponsorship at that rate will exceed 4 years in total.</li> </ul>	20

Category and tradable points requirements	Comments	Points
<p><b><u>Health or Education occupation</u></b></p> <p><b>Salary equals or exceeds both:</b></p> <ul style="list-style-type: none"> <li>• <b>£20,480; and</b></li> <li>• <b>the going rate for the occupation.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The role must be included on the list of eligible health and education occupations.</li> <li>• It is possible for Nurses or Midwives salaries to be below the £20,480 requirement for up to 8 months if they are working towards registration with the Nursing and Midwifery Council.</li> </ul>	20

- The Skilled Occupation list sets out the minimum salaries at the going rate for each role including the exact amount for each percentage to be applied. Employers may however need to make adjustments depending on the intended working hours and patterns;
- Gross annual salary figures can no longer include guaranteed bonuses or allowances including accommodation and cost of living allowances. Transitional provisions are however in place for Tier 2 (General) migrants already in the UK whose salary includes these types of payments;
- As a result of the skill level being reduced, additional occupations have been added to the list of those where a criminal record certificate is mandatory for applicants applying from overseas; and
- When applying for Indefinite Leave to Remain, applicants are no longer required to show that they meet a £35,800 minimum salary requirement; only that they meet the minimum salary requirements for the category their role falls within.

## **INTRA-COMPANY TRANSFER AND INTRA-COMPANY TRANSFER GRADUATE TRAINEE MIGRANTS**

This route has been reclassified but is largely remaining the same. It will also be open to EU nationals to apply under in the same way as the Skilled Worker route. The main differences are as follows:

- The minimum salary thresholds have stayed the same however for graduate trainees, the salary on offer will need to be equal to or exceed £23,000 and 70% of the going rate (the new entrant rate) for the occupation;
- The high earner annual salary threshold level is set at £73,900 instead of £120,000;
- There is more flexibility to switch into the Intra-Company Transfer route from inside the UK although the 12 month prior employment requirement must still be met, unless the individual is a high earner;
- The skill level remains the same for Intra-Company Transfers and so not all roles in the Skilled Occupations list will be eligible for sponsorship under this route;
- It is still possible to include some guaranteed allowances in the total gross annual salary figure for individuals applying for visas under these categories. However guaranteed bonus payments can no longer included;
- Work start dates in the UK can no longer be delayed by more than 28 days; and

### **Key Changes – Intra-Company Transfer**

- The high earner threshold has been reduced to £73,900.
- Guaranteed bonuses can no longer be included in the gross salary figure.
- Work start dates in the UK can no longer be delayed by more than 28 days.
- The 12 month 'cooling-off' period has been adjusted.

- The cooling off period has been adjusted. Individuals are now no longer barred from the UK for a 12 month period once they have been in the UK as a Tier 2 migrant. Instead, they will be allowed to hold an Intra-Company Transfer visa for a total of 5 years in any 6 year rolling period or 9 years in any 10 year rolling period if they are a high earner.

## **THE FINANCIAL REQUIREMENT**

The maintenance requirement has been replaced by a new financial requirement in quite a few of the immigration categories including the Skilled Worker, Intra-Company Transfer, Start-Up and Innovator categories. The changes to be aware of include:

- Individuals who have already resided in the UK for a period of 12 months or more are automatically considered to meet the financial requirement;
- Sponsors are still able to certify the financial requirement for those applying under the Skilled Worker, Intra-Company Transfer migrants or sponsored T5 categories;
- Individuals whose financial requirement is not being certified (or where dependants are applying separately) will need to show that the following fund levels have been held by them for a full 28 day period (instead of a consecutive 90 days) before the date of application:
  - £1,270 for the main applicant (increased from £945);
  - £285 for a dependant partner (reduced from £630);
  - £315 for the first dependant child (reduced from £630); and
  - £200 for each additional child ((reduced from £630).
- For the T5 Youth Mobility Scheme category, the financial requirement has been increased from £1,890 to £2,530. The period that these funds need to be held for has also been reduced to 28 days.

## **THE ENGLISH LANGUAGE REQUIREMENT**

This requirement needs to be met by the majority of individuals applying for a long term UK visa. The changes which have been made to this requirement are that:

- Anyone who has previously met the English language requirement at the same level in a previous UK immigration application, will not need to prove this again to the Home Office;
- Malta has been added as a majority English speaking country;
- Degrees taught in Ireland or Malta can also be used to meet the English language requirement as long as they are assessed as comparable to a UK degree by UKNARIC; and
- Applicants who studied in the UK whilst under the age of 18 will be able to use any GCSEs, A levels or Scottish Highers in English to meet this requirement as long as they were issued by an approved awarding bodies.

## **HONG KONG BRITISH NATIONALS (OVERSEAS)**

It is worth noting that there is currently a discretionary immigration category in place for Hong Kong British Nationals (Overseas) who want to relocate to the

UK. This will be formalised and added to the Immigration Rules on 31 January 2021.

Hong Kong British Nationals (Overseas) who are eligible to apply for a visa under this route can move to or remain in the UK on a long term basis. There will be no restrictions on their right to work in the UK and so it will not be necessary to sponsor them under one of the work visa routes.

After a continuous period of 5 years residence in the UK they will also be able to apply for Indefinite Leave to Remain if they meet all the necessary requirements. Individuals may also be able to combine any time spent in the UK under other immigration routes (as long as they led to settlement) towards the continuous 5 year period

Individuals applying for a visa under this category from overseas will have the option of verifying their identity using the UK Immigration: ID Check app or by attending an appointment. To be able to use the app, applicants will need to hold a chipped passport which shows that they are a British National (Overseas), an EU national or have been issued by the Hong Kong Special Administrative Region. To meet the requirements of this category, individuals will need to show that they are:

- 18 years of age or over;
- a British National (Overseas) as recognised under the Hong Kong (British Nationality) Order 1986;
- ordinarily resident in Hong Kong if applying overseas or in the UK and Islands if they are applying from inside the UK;
- able to provide a valid TB certificate if one is required; and
- financially able to support and accommodate themselves for a period of at least 6 months in the UK (credible third party support can be relied on to meet this requirement).

Individuals applying for a visa in this category can also bring their dependants with them. This includes partners, dependent children under the age of 18 (including grandchildren), adult children over the age of 18 born after 1 July 1997 if they still form part of the same household as well as some other extended family members in very limited circumstances.

For more detail on the immigration requirements of the UK's new immigration system, please contact us.

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