

Reform of Tier 2 of the UK's Points-Based Immigration System

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In preparation for changes to the UK's point-based immigration system coming into effect from 6 April 2011, the UK Government has published a "statement of intent" which explains how the points-based system is to be changed. The statement of intent is not the definitive position, however, as the changes that it sets out must first be approved by the UK Parliament in mid-March. Once the changes to the points-based system are finalised, detailed guidance will be published by the UK Border Agency.

The changes proposed will affect Tier 1 and Tier 2 of the points-based immigration system. Tier 1 is a route into the UK for "highly skilled workers," and is not contingent on the individual's having a job offer in the UK. Tier 2 is used by "skilled workers" who have been offered a skilled job in the UK and who have been sponsored by their prospective employers.

Tier 2 of the Points-Based System

Beginning on 6 April 2011 the following changes will be implemented:

- An annual limit of 20,700 will be put in place for migrants entering the UK under this route
- Applications for migrants who will be earning a salary of more than £150,000 will not be subject to this limit or to the resident labour market test
- Employers will no longer be granted an annual allocation of Certificates of Sponsorship for migrants who are to be brought into the UK to work for them under Tier 2 (General)
- Employers will need to apply for one of the 20,700 available "Restricted Certificates of Sponsorship" (divided amongst the 12 months) for a Tier 2 (General) migrant in relation to every individual position
- If the number of eligible "Restricted Certificate of Sponsorship" applications exceeds the allocation for a given month, then the applications will be prioritised using a ranking system, which will favour jobs on the shortage occupation list, scientific researchers, and jobs with a higher salary

Furthermore, the eligibility criteria for Tier 2 (General) migrants will become more stringent. Changes to the criteria will include (i) higher minimum skill levels for eligible jobs (i.e., eligible jobs will have to be on the "graduate occupation list"), (ii) a higher English language requirement, and (iii) the cessation of a former system that awarded points for certain qualifications. Changes (i) and (iii) will also apply to Tier 2 (Intra Company Transfer) migrants.

In respect of bringing people into the UK as Tier 2 (Intra Company Transfer) migrants, this will not be subject to an annual limit. However, after 6 April 2011, only Tier 2 (Intra Company Transfer) migrants who will be paid more than £40,000 per year will be able to stay in the UK for more than one year; those paid between £24,000 and £40,000 will only be allowed to remain in the UK for up to 12 months.

Tier 1 of the Points-Based System

Regarding Tier 1, 1,000 visas per annum are to be made available through a new “exceptional talent” route. However, it is as yet unknown whether the current Tier 1 (General) route is to be abolished; information about the new arrangements for Tier 1 will be set out separately.

What Should Employers Do?

The new rules in respect of Tier 1 and Tier 2 migrants will not apply to migrants whose leave to enter the UK is granted prior to 6 April 2011. The most relevant route for many employers is that of Tier 2 (Intra Company Transfer), and, therefore, employers should now carefully consider whether there are any employees within the corporate group who they wish to transfer to work in the UK and whether the applications should be made for such employees prior to 6 April 2011 under the existing, less onerous provisions.

There will also be restrictions on switching, and those not already in Tier 1 (General) (or a pre-points-based system predecessor category) will not be able to switch into it after 6 April 2011. Employers should consider whether any employees with leave to remain under Tier 1 (post-study work), Tier 2, or Tier 4 may wish to switch into Tier 1 (General) before 6 April 2011, after which point they will be permitted to switch into Tier 2 (General).

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