



Home Office

Statement of policy for changes to the points-based system

November 2012

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Introduction

In December, the Government will make changes to the Immigration Rules as part of its ongoing programme of reforms to the immigration system. This Statement of Policy explains the changes that will apply to Tier 1 entrepreneurs and investors, Tier 2 skilled workers, Tier 4 students, Tier 5 youth mobility and temporary workers and those seeking settlement in the UK. The changes were laid before Parliament on 22 November 2012 and the majority will come into force on 13 December 2012. The other changes will come into force from 1 January 2013 and 28 February 2013. The changes are mainly technical and in response to feedback from users. Some changes represent a relaxation of current rules, others a tightening in response to abuse.

The Government has already made changes to the Immigration Rules for workers and students in summary as follows:

- Closed Tier 1 (General) and Tier 1 (Post Study Work), introduced accelerated settlement criteria for Investors and Entrepreneurs and created the Exceptional Talent and Graduate Entrepreneur routes.
- Applied a limit on the number of migrants seeking skilled work through Tier 2, raised the skills levels for skilled workers to graduate level, introduced a maximum of six years leave in Tier 2 (five years for ICTs), applied a 12 month 'cooling off' period and, from 2016, will apply a minimum salary threshold for those seeking settlement from Tier 2.
- Restricted the entitlements of Tier 4 students to work and sponsor dependants, tightened English language requirements and made various changes to the sponsorship regime for educational providers.
- Introduced a new visitor route for "permitted paid engagements" for professionals coming for short-term fee paid activities.

Overview of the changes

The Government has already made significant changes to the Immigration Rules in line with its objective of reducing net migration to sustainable levels and eliminating abuse from the system, whilst ensuring that the UK continues to attract the brightest and the best migrants. The Government is committed to introducing a more flexible and selective immigration system and to reduce bureaucracy for those who administer and use it.

A number of the changes planned have been made in response to feedback from users of the system and are designed to enable sensible decision making and improve customer service.

In summary the main changes are:

- A lowering of the English language requirement for Tier 1 (Entrepreneur) from level C1 (advanced) to level B1 (intermediate), in line with other points-based system categories. This change is being made in response to concerns that the high requirement was a possible deterrent to potentially successful entrepreneurs;
- Ending switching from Tier 4 into Tier 1 (Entrepreneur) unless the migrant has £50,000 funding from a specified source (registered venture capitalist firms, UK Government Departments – which we are expanding to also include Devolved Administration Departments – or listed seed funding competitions);
- The curtailment of a Tier 1 (Investor) migrant's leave if they fail to maintain the required level of investment for the duration of their leave;
- An increase in the maximum stay in the UK for senior intra-company transferees earning £150,000 or above from 5 years to 9 years;
- A change to the operation of the Tier 2 'cooling off period' rule to increase flexibility for some migrants who leave the UK before their visas expire and wish to return 12 months later;
- The introduction of provisions for workers covered by the UK's international trade commitments in Tier 5;
- Allowing absences from the UK of up to 180 days per year for those seeking settlement through Tier 2 and other work routes;
- Accommodating salaries and recruitment practices for barristers sponsored under Tier 2;
- Allowing migrants in Tier 2 and Tier 5 (Temporary Worker) to undertake supplementary employment in a shortage occupation, even if this is a different occupation to the one they are being sponsored to work in. This will provide migrants with more flexibility and help to ease shortages in these occupations.

The measures outlined in this Statement of Policy should not be seen as a definitive account of the requirements that will apply in the future. The definitive version is set out in the Immigration Rules and the formal guidance which are published separately. All Immigration Rules are subject to review and change and applicants must meet the rules in place at the time of application.

Tier 1 – Changes to Investors and Entrepreneurs

Tier 1 of the points-based system caters for high value migrants, and currently consists of five categories: Tier 1 (Exceptional Talent), Tier 1 (General) – closed except for extension applications, Tier 1 (Entrepreneur), Tier 1 (Investor) and Tier 1 (Graduate Entrepreneur).

Entrepreneur

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

From 13 December 2012 we will be making the following changes:

- Applicants normally require funding of £200,000, but this is reduced to £50,000 if the funding is from a specified source, which includes UK Government Departments. This provision is being expanded to include funding from Devolved Administration Departments.
- The English language requirement is being lowered from level C1 (advanced) to level B1 (intermediate), in line with the requirement in Tier 2 (General), in response to concerns that the high requirement was a possible deterrent to potentially successful entrepreneurs.
- Migrants in Tier 4 will no longer be able to switch directly into this category; unless they have £50,000 funding from a specified source (registered venture capitalist firms, UK Government or Devolved Administration Departments, or listed seed funding competitions). They will continue to be able to switch into the Graduate Entrepreneur route introduced in April 2012. This change is being made due to concerns about a growing number of students claiming to have £200,000 funding which, on investigation, has proved to be false.
- A rule was introduced on 4 July 2011 stating that no points would be awarded for maintenance funds that are held in a financial institution with which the UK Border Agency is unable to make satisfactory verification checks. A list of financial institutions which do not satisfactorily verify financial statements is published on the UK Border Agency website. This rule is being expanded to include the business funds required for Tier 1 (Entrepreneur).
- A clarification is being made to confirm that points are not awarded for funds which have been promised to other individuals, except where they are applying under the specific provision for entrepreneurial teams.

Investor

This category caters for high net worth individuals making a substantial financial investment in the UK.

From 13 December 2012 we will be making the following changes:

- The current rules require that applicants must either provide evidence of the source of the £1 million funds to invest or evidence that they have held the funds for three months in advance of the initial application. On 6 April 2011 a change was introduced allowing applicants to qualify for accelerated settlement in 2 or 3 years (rather than 5 years) if they invested larger sums of money. A change is now being made to require applicants to provide evidence of the additional funds, in the same way.
- A change is being made to allow a Tier 1 (Investor) migrant's leave to be curtailed if they fail to maintain the required level of investment for the duration of their leave.
- Amendments are being made to state explicitly that points will not be awarded for investments that applicants have taken loans out against, or investments that are held in offshore custody. This is the intention of the current rules, which aim to ensure that the investments are under the applicant's control and are genuinely benefitting the UK.
- An amendment is being made to prevent Tier 1 (Investor) migrants working as professional sportspeople, thereby avoiding the Sports Governing Body endorsement criteria in the dedicated sporting routes in Tier 2 and Tier 5. This mirrors the leave conditions in other Tier 1 categories.
- As with Tier 1 (Entrepreneur), the rule relating to financial institutions which do not satisfactorily verify financial statements is being expanded to cover the funds Tier 1 (Investor) applicants are required to invest.

Tier 2 – Changes to Intra-Company Transfers, the calculation of ‘cooling off’ periods for all Tier 2 categories, barristers and supplementary employment

Tier 2 of the points-based system caters for skilled workers with a job offer, and consists of four categories: Tier 2 (Intra-Company Transfer), Tier 2 (General), Tier 2 (Minister of Religion) and Tier 2 (Sportsperson). The Intra-Company Transfer category consists of four sub-categories: Short Term Staff, Skills Transfer, Graduate Trainee, and Long Term Staff.

From 13 December 2012 we will be making the following changes:

Tier 2 (Intra-Company Transfer) Migrants can stay in the UK for a maximum of 5 years in the Long Term Staff sub-category. The category does not lead to settlement and a 12 month “cooling off period” applies before migrants can return. A change is being made to extend the maximum stay from 5 years to 9 years for very senior staff earning £150,000 a year or more. This change is being made in response to feedback from business. A 9 year maximum meets business needs while maintaining the temporary nature of this category, by preventing applicants qualifying for settlement on the basis of long residency.

A minor change to the operation of the “cooling off period” for all Tier 2 categories is also being made to introduce some flexibility in the way that the start of the cooling off period is determined when it is clear that the applicant has left the UK before the expiry of their leave. This will mean that the cooling off period can start from the earliest date that the applicant can demonstrate that they left the UK, rather than the date of expiry or curtailment of Tier 2 leave. 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 that they have left, and have remained outside, the UK earlier than the expiry of their leave. Examples of acceptable evidence will be set out in guidance. Sponsors will still need to report if a migrant leaves their employment earlier than the end date on their Certificate of Sponsorship, as at present.

Changes are being made to the Codes of Practice, setting out the appropriate salary rates and advertising media for barristers applying under Tier 2. Previously these details were missing from the Codes of Practice as no rates or specific media for barristers had been identified. Changes are also being made to the Resident Labour Market Test (RLMT) for pupillage positions for barristers, exempting these positions from the requirement to be advertised in JobCentre Plus (or JobCentre Online in Northern Ireland) and extending the validity of the RLMT from six months to two years.

Migrants in Tier 2 may take up supplementary employment of up to 20 hours a week in addition to the employment they are being sponsored for, providing it is in the same occupation and at the same professional level. A change is being made so that these migrants can also take up supplementary employment in a shortage occupation, even if this is a different occupation to the one they are being sponsored to work in.

Tier 4 – Changes to low risk nationalities, student loans and taking employment

Tier 4 of the points-based system caters for international students who wish to study in the United Kingdom. It consists of two categories: Tier 4 (General) Student and Tier 4 (Child) Student.

From 13 December 2012 we will be making the following changes:

A minor change is being made to the arrangements for interim limits on those providers yet to obtain Highly Trusted Sponsor status and a satisfactory inspection, review or audit from an educational oversight body. For the very small number of existing sponsors who have not yet achieved both of these new sponsorship standards, and who have a further six months to do so, we will extend the interim limit on the number of international students that can be recruited by them. We expect all sponsors to come out of the interim limit in the early months of 2013.

Tier 4 students have conditions restricting their employment in the UK. Changes are being made to relax the following conditions:

- The current rules prevent Tier 4 (General) Students working as a doctor or dentist in training unless they have been granted leave to do a recognised NHS Foundation Programme. These changes allow students to start working as a doctor or dentist as soon as they have submitted an application in which they are sponsored to do a recognised NHS Foundation Programme, while they are waiting for that application to be decided. This will avoid potential delays for medical degree students in beginning the next stage of their training.
- The current rules also prevent Tier 4 (General) Students from working in self-employment. These changes allow students who have been endorsed by their institution for the Tier 1 (Graduate Entrepreneur) category to work in self-employment when they have submitted their Tier 1 (Graduate Entrepreneur) application and while they are waiting for it to be decided.

From 28 February 2013 we will be making the following change:

The UK Border Agency has recently expanded the list of low-risk nationalities that benefit from a streamlined application process under Tier 4 of the points-based system. Students from these countries are afforded light-touch documentary requirements, including in relation to evidence of maintenance funds, so getting a visa for the UK is swifter and more straightforward. Botswana and Malaysia are now on the list, in addition to 14 pre-existing countries including the US, Canada and Japan. The Agency will continue to review annually the list of countries that can take advantage of these arrangements against its agreed risk criteria, and as abuse is further driven out of the student route we hope more countries can be added.

In some higher risk countries, however, there is evidence of misuse of the current provisions that allow a loan letter to be used to meet maintenance requirements. Student loans from government and other responsible lenders are an important source of student funding for many legitimate students coming to the UK and we will continue to allow them. However we will clarify the Rules to prevent the use of loan letters unless part of an official scheme. Migrants had been obtaining promises of loans from banks, which they did not subsequently take up and were secured on

cash deposits not available to the applicant. In future, only loan letters from an official source will be permitted. Students may also meet the maintenance requirements by holding cash, including a cash loan but not a letter, in their bank account for 28 days.

We intend to use the genuine student rule to prevent abuse of the rules by applicants using certain loan letters to circumvent the maintenance requirements, until we put the matter beyond doubt with the rules change.

Tier 5 – Changes to Government Authorised Exchange schemes, the Youth Mobility scheme and contractual service suppliers

Tier 5 of the points-based system caters for youth mobility and temporary workers coming for primarily non-economic purposes, and consists of two categories: Tier 5 (Youth Mobility Scheme) and Tier 5 (Temporary Workers). The Temporary Workers category consists of five sub-categories: Creative and Sporting, Charity Workers, Religious Workers, Government Authorised Exchange (GAE), and International Agreement. Applicants must have a Tier 5 Sponsor, which is usually their UK employer.

From 13 December 2012 we will be making the following changes:

Government Authorised Exchange Schemes (GAE)

With over 60 Government Authorised Exchange schemes in place, this temporary work route offers a number of opportunities for migrants to train, gain work experience, share knowledge and skills, and experience cultural life in the UK. There are two categories of schemes: 12 month work experience, internship and exchange schemes and 24 month research, fellowship and training schemes in the fields of science and medicine. The following changes are being made to the GAE category:

- Widening the definition of a training programme to include training by HM Armed Forces or UK emergency services. Examples of approved schemes include the Defence Academy and the International Fire and Rescue Training which allow professionals to receive training in this field for up to 24 months;
- Adding a new 12 month work experience/professional teacher training scheme, run between South Korea and University of Chichester, to the list of approved GAE schemes.

Contractual service suppliers

The International Agreement sub-category provides for workers who may be admitted under the UK's international commitments, but who are not otherwise covered by provisions in the Rules. Changes are being made to this category to make more specific provision for contractual service suppliers employed by overseas businesses seeking admission in the context of the supply of a service to a UK client and where relevant commitments in certain international trade agreements to which the UK is a party are engaged.

The changes apply the following entry requirements to such workers:

- The worker must be employed by a business which is located on the territory of a country which is party to such an agreement and which has no commercial presence in the EU;
- The service which that business is supplying to the Tier 5 Sponsor is a service which falls within a sector on which the UK has taken commitments in an international trade agreement;

- The service is being supplied pursuant to a contract which has been openly tendered;
- The Tier 5 Sponsor will be the final user of the service (i.e. a business in the UK cannot sponsor the admission of workers under this category which it will then supply, as labour, to a third party);
- The applicant is a national of the country in which the sending business is located;
- The applicant has been employed by the sending business for at least one year prior to the date of the application;
- The applicant meets the specified skills requirements. Applicants will normally be required to possess a degree or equivalent; three years professional experience in the sector concerned and relevant professional qualifications, where they are required for the exercise in the UK of the activity in question.

Applicants meeting these requirements will be admitted for a maximum period of up to six months in any twelve month period.

Supplementary Employment in Tier 5

Migrants in Tier 5 may take up supplementary employment of up to 20 hours a week in addition to the employment they are being sponsored for, providing it is in the same occupation and at the same professional level. As with Tier 2, a change is being made so that Tier 5 migrants can also take up supplementary employment in a shortage occupation, even if this is a different occupation to the one they are being sponsored to work in.

From 1 January 2013 we will be making the following change:

Youth Mobility Scheme (YMS)

The UK's Youth Mobility Scheme offers generous opportunities for young nationals (aged 18-30) sponsored from participating countries (Australia, New Zealand, Canada, Japan, Monaco, Taiwan and South Korea) to come and work in the UK for up to 2 years. Participants can undertake broadly any type of work and some privately funded study and volunteering. Under the terms of the Youth Mobility Scheme, each participating country or territory accepts that it will receive an annual, minimum allocation of 1,000 places or higher allocation equivalent to the last recorded annual number of initial visas granted to UK nationals under their reciprocal scheme/s, rounded up to the nearest 500 places, if this is larger.

The annual allocation of places for 2013 is as follows:

- An increase in the number of places for Australia (from 32,500 to 35,000 places) and Canada (from 5,000 to 5,500 places) as they attracted more British youths under their reciprocal schemes in 2011;
- An increase in the allocation of places for South Korea to give them the minimum annual allocation of 1,000 places.

Allocations for all other participating countries remain the same as those in 2012.

Permissible absences from the UK for work-related settlement (indefinite leave to remain)

To qualify for indefinite leave to remain in the UK, skilled workers, investors, entrepreneurs and self-employed persons must complete a continuous period of lawful residence in the UK. The continuous period is 5 years for most of these groups - for instance Tier 2 (General), Tier 2 (Sportsperson), Tier 2 (Minister of Religion), work permit holders, sole representatives of overseas businesses - but Tier 1 Investors and Entrepreneurs have an accelerated route to indefinite leave to remain of 2 or 3 years depending on the level of their investment and/or economic activity in the UK.

From 13 December 2012 we will be making the following changes:

In practice, we have not taken continuous residence to mean that there can be no absence at all from the UK and have overlooked short absences. The level of permitted absences is not 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 some inconsistency in the absences that have been allowed and uncertainty for applicants. Also, employers have told us that senior executives, researchers and academics often spend longer periods than are generally allowed overseas due to the nature of their work and these absences frequently prevent indefinite leave to remain being granted.

Skilled migrants who settle here are required to have maintained a clear connection with and be contributing to the UK, but need flexibility to be able to travel for their legitimate business. Absences of up to 180 days in each of the calendar periods of 12 months for the qualifying period of continuous residence will therefore be permitted. Absences must be for a reason that is consistent with the person's employment or economic activity – so for example business trips, conferences, research collaborations, periods of annual leave – or for serious or compelling reasons such as the serious 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. Tier 1 Exceptional Talent is being brought into line with that.

