

The following brief sets out a summary of the most recent changes announced on 7 August 2009 to the UK Border Agency ("UKBA") guidance for the employment of foreign skilled workers.

The UK immigration system has been subject to considerable overhaul over the last year. Employers have a legal duty to check that all new employees have the right to work in the UK before employment commences.

The various immigration categories have been largely streamlined to create a Points Based System ("PBS"). The PBS is intended to simplify the way in which non European Economic Area ("EEA") migrants are granted permission to work in the UK.

The PBS consists of five tiers:

TIER	STATUS
Tier 1 Highly skilled workers	Operative
Tier 2 Skilled workers with a job offer (replacing the work permit scheme)	Operative
Tier 3 Low skilled labour route	Currently suspended
Tier 4 Students	Phased development
Tier 5 Youth mobility and temporary workers	Operative

Employers need to apply for a Sponsors Licence in order to employ non EEA migrants in all of the Tiers except Tier 1.

Recruitment

Under Tier 2, a sponsor is only permitted to recruit a non EEA migrant to fill a vacancy if

- it cannot be filled by the resident labour force; and
- the migrant has enough points.

For the purposes of establishing a) the sponsor is usually obliged to advertise in the JobCentre Plus and using at least one of the recruitment methods set out in the relevant Code of Practice, unless:

- the job is for the role of a Director, Chief Executive or Legal Partner where the salary package is for a minimum £13,000 or there are Stock Exchange disclosure requirements; or
- where a migrant is recruited as part of a graduate scheme ('milkround') and has been assigned a Certificate of Sponsorship on or before 31 August 2009.

Salary

A migrant's salary may now be paid by the sponsor from either within or outside the UK.

If a migrant's salary has been reduced due to the economic climate, a change of employment application (and new Certificate of Sponsorship and leave application) will be required unless the migrant:

- has a current grant of leave under Tier 2; and
- continues to do the same job, with reduced working hours; and
- works less hours as part of a company wide policy to avoid redundancies; and
- is not treated more or less favourably than resident workers; and
- pay or working hours are not reduced by more than 30%; and
- any reduction in the migrant's salary is proportionate to the reduction in hours; and
- the arrangements last for no longer than one year.

Intra-Company Transfers ("ICT")

A resident labour market test does not have to be carried out if the migrant is transferred from an overseas employer to a branch of the organisation in the UK (ICT). However, under Tier 2 (ICT) a migrant must not directly replace a settled worker in the UK. A migrant coming to the UK must have worked for the sponsor's organisation for at least six months directly before their transfer. The qualification period includes periods of maternity, paternity or adoption leave.

Promotions

Where a migrant continues to work for the same sponsor, if their position in the sponsors hierarchy changes (i.e. due to promotion), or their core duties and/or responsibilities change, it will be treated as a change of employment. In such a situation, a sponsor has to issue a new Certificate of Sponsorship and the migrant has to make a new application to stay in the UK.

Letter certifying maintenance

When making a visa application, a migrant has to show that they have a minimum of £800 clear funds available to support themselves and £533 for each dependent during the first three months. This requirement can be avoided where an 'A' sponsor provides a letter certifying maintenance. The UKBA guidance states that the letter must now include the migrant's Certificate of Sponsorship reference number.

For further information on any of the issues raised in this article including applying for a Sponsorship Licence, please contact Sally Azarmi or Chetal Patel on 01473 232300 or sally-azarmi@birketts.co.uk or chetal-patel@birketts.co.uk.

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