



## GES NewsFlash

### United Kingdom – Immigration – Statement of Changes Laid Before Parliament

March 21, 2011

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#### Summary

The government has laid new immigration rules before Parliament which will take effect on April 6, 2011. The new rules set out how the limit on Tier 2 (General) will operate, as well as the new salary and skill thresholds for Tier 2 skilled workers. It also sets out changes to Tier 1 of the points-based system, in particular the new rules relating to Investors, Entrepreneurs, and the new Exceptional Talent category.

#### Tier 2 (General) Restricted

The limit on Tier 2 (General) restricted migrants has been confirmed at 20,700 for the year ending March 31, 2012, excluding in-country applications for leave to remain and any applications where the applicant will receive a salary of £150,000 or more.

Applications for a restricted Certificate of Sponsorship (CoS) can now be submitted online for consideration under the first monthly threshold. All applications received up to and including April 6, 2011, will be considered on April 11, 2011, with allocations being issued within five working days. 4,200 places have been reserved for the first month, and 1,500 places per month thereafter. From May, the cutoff date for applications will be the fifth day of each month with decisions being made on the eleventh day (or next working day if the eleventh falls on a weekend or bank holiday).

Applicants will be scored against a new points table (see paragraph 82D of the Statement of Changes – a link is provided at the end of this newsflash) with the allocation going to the highest scoring requests. Priority will be given in the first instance to:

- Shortage occupations; and then
- Occupations requiring specific PhD level qualifications; and

- Occupations with higher salaries.

If the limit is undersubscribed in any given month, the surplus will be carried forward to the next month. If the limit is oversubscribed, unsuccessful applications will not be carried forward, but employers will be able to submit requests again in the following month with no charge. It has also been confirmed that if the number of applications scoring a particular number of points would cause a monthly limit to be exceeded by 100 or less, the requests will be granted and the excess deducted from the following month's allocation.

Other key changes include:

- The minimum skills threshold being set at graduate level (although there will no longer be a requirement for applicants to submit evidence of their qualifications);
- A minimum salary threshold of £20,000; and
- The English language requirement being raised from basic to intermediate level.

## Tier 2 Intra Company Transfers (ICT)

ICT migrants will not be subject to the annual limit. The main change to this category relates to the fact that the current category for established staff will now be split into two new categories as follows:

**Short-Term Staff** - All roles with salaries between £24k and £40k will only be able to come to the UK for a maximum duration of one year. In addition, a 12-month 'cooling-off' period will apply where individuals will not be able to apply for another period of leave as a short term ICT migrant until a further 12 months has passed. The cooling off period will apply irrespective of whether the migrant actually spends any time in the UK and will start from the end of the migrant's period of leave.

**Long-Term Staff** - All roles with salaries over £40k will be granted leave for up to three years initially with the possibility of extending the leave for a further two years. However, ICT migrants will have to leave the UK at the end of the five-year period. Again, an individual will not be able to apply for another period of leave as a long-term ICT migrant until a further 12-month 'cooling-off' period has passed. Again, the 12-month 'cooling off' period will apply irrespective of how long the migrant actually spent in the UK and will start from the end of the migrant's period of leave.

The Graduate Trainee and Skills Transfer subcategories will remain and will be subject to the same requirements as the Short-Term Staff subcategory. It will not be possible for applicants to switch between the subcategories, however, an ICT migrant who has previously had leave in one of the Short-Term Staff, Graduate Trainee, or Skills Transfer categories will not be required to spend the 12 months

overseas before returning to the UK in the Long-Term Staff category.

Transitional arrangements will be in place for ICT migrants who are already in the UK under rules in place before April 6, 2011, so further leave to remain applications made by such migrants will be considered against the criteria in place at the time they entered the UK.

### **Investors, Entrepreneurs and Exceptional Talent categories**

The changes also set out the government's steps to make the UK a more attractive prospect for Investors and Entrepreneurs.

**Tier 1 (Investor)** - Under the revised Tier 1 (Investor) rules, Investors will be able to settle in the UK faster the more money they invest here. Those who invest £5 million will be allowed to settle here after three years and those who invest £10 million or more will be allowed to settle after two years.

This new accelerated right to settlement will apply to those investors already in the UK who have invested large sums of money, as well as new investors to the UK. Investors will also be allowed to spend up to 180 days per year outside of the UK (rather than the previous limit of 90 days) without it affecting their right to settle here.

**Tier 1 (Entrepreneur)** migrants will also be allowed to settle in the UK more quickly if they create 10 jobs or turn over £5 million in a three-year period. In addition, although the standard investment threshold will remain at £200,000, the government will allow high-potential businesses to come to the UK with £50,000 in funding from a reputable organization. Entrepreneurs will also be allowed to enter the UK with their business partners (so applications can be made in pairs) as long as they will have access to joint funds. As with the Investor category, Entrepreneurs will similarly be permitted up to 180 days out of the UK per year.

**Prospective Entrepreneurs** – A new type of visitor visa for prospective Entrepreneurs will be introduced, allowing migrants to enter the UK to secure funding and make arrangements for establishing their business here before switching to a full Tier 1 (Entrepreneur) visa, which can be done in-country.

**Exceptional Talent** – This new category will provide for 1000 exceptionally talented migrants in the sciences or arts to come to the UK to work under Tier 1. The scheme will be administered by competent bodies in the arts and sciences and further details of these organizations will be announced in due course.

### **Indefinite Leave to Remain (ILR)**

Additional requirements are being introduced for Tier 1 (General), Tier 2 (General), Tier 2 (ICT), and work permit holders wishing to qualify for ILR, which are:

- Tier 1 (General) migrants will need to meet the same income criteria that applied when they last extended their permission to stay in the UK;
- Migrants who have been in Tier 2 (General), Tier 2 (ICT), or who have held work permits, will need to be paid the appropriate rate as stated in the codes of practice;
- A new criminality threshold will apply requiring all applicants to be clear of unspent convictions; and
- All applicants will be required to pass the 'Life in the UK' test subject to some transitional provisions.

## Workers Registration Scheme

Finally, it was also announced by the government on March 10, 2011, that the Workers Registration Scheme for workers from Member States that joined the European Union (EU) on May 1, 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia) will close with effect from April 30, 2011. This means that after April 30, 2011, nationals of these countries will no longer be subject to a requirement to register their employment as a condition of working legally in the UK and will be able to work and reside here on the same basis as nationals from other EU Member States.

Link to Statement of Changes:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/>

### Deloitte's View

The Statement of Changes holds no particular surprises following the Statement of Intent published by the government last month, but does most importantly provide some further details regarding the monthly application process for the Tier 2 (General) restricted category – including the schedule of application periods for each month from April and the relevant points tables for both Tier 2 (General) and Tier 2 (ICT). How to make an application under the monthly application process for restricted CoS is set out in the revised Tier 2 policy guidance at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/guidancefrom31mar09/guidance-t25-from-060411.pdf?view=Binary>

It is interesting to note that Tier 2 migrants applying for indefinite leave will have to earn 'at least the UK appropriate rate for the job they are doing'. Whether this provision can be applied retrospectively to those applying under transitional arrangements is questionable and possibly open to challenge.

Confirmation of the changes to the Tier 1 Investor and Entrepreneur categories is

also welcome since it has been eagerly awaited and will now enable both migrants currently in the UK in these categories and those wishing to come here to avail themselves of the new rules.

An announcement regarding the Tier 1 (Post Study) route will be forthcoming along with a wider statement relating to students, but otherwise the landscape for skilled migrants to the UK is now set for the foreseeable future.

### People to contact

If you have any questions concerning the issues in this GES NewsFlash, please contact one of the tax professionals as follows:

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