



## GES NewsFlash

### United Kingdom – Immigration: Further Announcements on UK Immigration Limit

February 22, 2011

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#### Summary

New details of the government's plans for the permanent limit on non-European Union workers were published by the Home Office on February 16, 2011. The Statement of Intent (link below) sets out information on the proposed changes to the Tier 2 category, including Intracompany Transfers (ICT) and New Hires (General), as well as giving initial details of the government's intention to restrict settlement in the UK.

The full and final guidance on the processes that will apply on April 6, 2011, will be published later in March and, therefore, may be subject to change. The measures outlined in the statement and within this newsflash should not be taken as a definitive account of the requirements that will apply on April 6, 2011.

#### Tier 2 (General) and the Permanent Limit

The limit on Tier 2 (General) migrants will be 20,700 for the year ending March 31, 2012. This limit will be reviewed annually thereafter.

However, the government proposes to divide the Tier 2 (General) category as follows:

- Restricted Certificates of Sponsorship (CoS) for workers based overseas and coming to take employment in the UK — it is this category to which the 20,700 limit will apply.
- Unrestricted CoS for workers already in the UK in an eligible category (such as work permit holders, Tier 1 General, Tier 2, and Tier 4 migrants) that allows them to switch to the Tier 2 (General) category and extend their permission. There will be no limit on this category. Roles attracting a salary of over £150,000 will also fall within the unrestricted category.

Both restricted and unrestricted Tier 2 (General) CoS will need to meet certain

criteria as follows:

- Positions will need to be advertised, with the exception of shortage occupation jobs and roles attracting salaries of over £150,000.
- All jobs will have to be on the Graduate Occupation List (see Appendix A of Statement of Intent), although it will not be necessary for the individual to hold a graduate qualification and experience alone will count.
- All Tier 2 (General) CoS holders will need to score a minimum number of points under the new points systems. Points for qualifications will no longer be awarded; therefore, the need to submit original degree certificates or translations will be removed.

The UK Border Agency (UKBA) will be contacting sponsors over the coming weeks to ask them to indicate the number of unrestricted CoS they will require.

For the restricted CoS, sponsors will need to apply via the monthly application process for each specific post. A timetable for the monthly application process for unrestricted CoS will be published in due course. However, the UKBA expects to be able to start accepting applications for the restricted CoS on March 16, 2011, for consideration in April.

### Monthly threshold

When applying for restricted CoS, applications will be prioritized according to the number of points they score from the specifically constructed allocation points table. The points table includes points for salary, shortage occupations jobs, PhD level positions, and the resident labour market test.

Where the monthly limit is oversubscribed, CoS may be awarded to all applications with sufficient points to place them above the monthly threshold. Sponsors who have applications rejected will be able to re-apply the following month. Applications will not automatically roll over.

Where applications score an equal number of points and granting a CoS to all these applicants would exceed the monthly allocation by 100, all these applications will be refused, and the balance of the monthly allocation left unallocated will be carried forward to the next month.

### Tier 2 Intra Company Transfers (ICT)

As with the Tier 2 (General), all ICTs will need to fall within the Graduate Occupation List. There will be no limit on the number of ICT applications that can be issued; however, the duration of the permits will be capped and a salary threshold applied for ICTs who wish to come for more than 12 months.

**Short-term ICTs** — 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 so that individuals will not be able to apply for another period of leave as a short-term ICT migrant until an additional 12 months has passed.

**Long-term ICTs** — 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 an additional 12-month cooling-off period has passed.

### Indefinite leave to remain

The government previously announced that it will not use the plans proposed by the previous government and that it will launch a consultation on the proposed changes on indefinite leave to remain (ILR) in the summer. However, it has decided to introduce an interim measure on restricting ILR on April 6, 2011. From this date, changes will be introduced as follows:

- A new income requirement for Tier 1 General, Tier 2 General, and work permit holders
- The requirement that only the “Life in the UK” test will meet the requirements for ILR and the English for Speakers of Other Languages courses will no longer be accepted

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/soi-tier2/>

#### **Deloitte's View**

It will be welcome news for employers that the changes relating to Tier 2 under the permanent limit will not be applied retrospectively and will only have an impact on applications made after April 6, 2011. However, it is important to note that the changes to ILR will be applied to all applications made on or after April 6, 2011, regardless of when the applicant first arrived in the UK.

In terms of UK employers being able to plan ahead, the Statement of Intent provides the first indication of how the cooling-off period will be applied to both short-term and long-term ICTs. We anticipate that the 12-month cooling-off period for short-term ICTs is likely to create difficulties for employers who wish to bring short-term project workers into the UK on a recurrent basis. In this respect, a sliding scale approach (for example six months in, six months out) would have been more beneficial to sponsors, but there appears to be no intention at present to implement such an approach.

Similarly, the restriction on long-term ICTs only being able to remain in the UK for five years is likely to impact senior employees, who from a commercial standpoint

are required to remain in the UK beyond that timeframe.

We now await for the publication of the full guidance on March 16, 2011, for confirmation of how the system will operate post April 6, 2011.

### 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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