



technical update

New points based system for Immigration

New-Points Based system for Immigration

The UK is introducing a new points-based system for immigration similar to the system used in Australia. This has been touted as a radical change with far reaching consequences. This is a basic guide prepared for ACCA employers, ACCA training institutions and international ACCA members and students wishing to work in the UK.

The guide is an introduction only and should not be used as a definitive guide, since individual circumstances may vary. Specific advice should be obtained, where necessary.

Important implications

Any UK business planning to employ foreign workers from outside Europe Economic Area (EEA) and Switzerland will have to apply to the UK Borders Agency (UKBA) for a sponsor licence. This also applies to training institutions whose students come from outside the EEA and Switzerland. It is also important for migrants from outside the EEA and Switzerland wishing to work or study in the UK to be aware of the new system.

The onus is very much on the employer/training institution to establish the credentials of any prospective employee/student, as there is a possibility of facing fines if found to be employing or teaching an illegal worker or student.

EEA

EEA countries are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

Tiers of Entry

The new system is structured into five tiers and is applicable to migrants from outside the EEA and Switzerland.

The basic principle is to apply a points based assessment on migrants prior to their entry into the UK. This will also apply to migrants already in the UK. The new system is to provide a simplified process for individuals who wish to work, train or study in the UK.

This allows free movement within the EEA and Switzerland, though there are certain restrictions on countries that recently joined the EEA. Citizens of one of the following countries, who work for more than a month for a UK employer, will need to register with the Home Office under the 'Worker Registration Scheme'

- Czech Republic
- Estonia
- Hungary
- Latvia
- Lithuania
- Poland
- Slovakia
- Slovenia

Details of the 'Worker Registration Scheme can be found at:

<http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/>

Citizens of Bulgaria and Romania will need a 'Worker Authorisation' document that needs to be completed prior to starting work. Details of the 'Worker Authorisation' can be found at:

<http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/bulgariaromania/liveworkuk/>

There are five tiers that apply to migrants from outside the EEA and Switzerland, with each tier requiring different points. The tiers are:

- Tier 1 – highly skilled workers, for example scientists and entrepreneurs;
- Tier 2 – skilled workers with a job offer, for example teachers and nurses;
- Tier 3 – low skilled workers filling specific temporary labour shortages, for example construction workers for a particular project;
- Tier 4 – students;
- Tier 5 – youth mobility and temporary workers for example musicians coming to play in a concert.

The timetable from the UK Border Agency's website is reproduced below.

Tier	Applications open for sponsors	Applications open for migrants
Tier 1: highly skilled workers	No sponsor needed	Open now
Tier 1: investors, entrepreneurs and post-study workers	No sponsor needed	Open now
Tier 2: skilled workers with a job offer to fill gaps in United Kingdom labour force	28 February 2008	November 2008
Tier 3: limited numbers of low-skilled workers needed to fill temporary labour shortages	This tier is currently suspended	This tier is currently suspended
Tier 4: students	28 July 2008	We are consulting education providers about this and will publish more details in October 2008 *
Tier 5: temporary workers and youth mobility scheme: people allowed to work in the United Kingdom for a limited period of time to satisfy primarily non-economic objectives	28 July 2008	November 2008

* Further guidance can be found at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/rolloutofnewrulesforforeign>

Further details on Tier 4

To summarise the guidance issued for Tier 4, colleges and universities that wish to teach non-EEA and Swiss nationals must be licensed by the UK Borders Agency. Measures to come into effect from March 2009 are:

- all colleges and universities that want to recruit international students will need a sponsor license;
- every student will need a licensed sponsor;
- stricter rules to protect the UK's labour market.

Another useful guide is the UK Borders Tier 4 Implementation plan is available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdcs/statementofintent/pbstier4implementationplan.pdf>

On students, the UK Borders Agency has produced a guide on the grey area of post-study workers. The guide is available at: <http://www.ukba.homeoffice.gov.uk/workingintheuk/tier1/poststudy/>

Further details on Tier 2

There are a number of criteria that need to be looked at when appointing the points, these are allocated between the Job and the Migrant.

The types of areas the UK Borders Agency look at regarding the job when awarding points are:

- Certificate of Sponsorship
- S/NVQ level 3
- Salary not less than the appropriate rate of the job

The types of areas the UK Borders Agency look at regarding the Migrant when awarding the points are:

- English language
- Initial leave to enter to a maximum of three years
- Extension for up to a total of five years

Applying for a licence

This is of importance to employers and training institutions whose intake of employees or students are from countries outside the EEA and Switzerland. The UK Borders Agency provides a number of useful guides taking you through the application process. The guides available cover the following topics:

- The type of organisation you are trying to register, for example, a single body, groups of branches, head office, franchises
- Details of the roles of key personnel and contacts, authorising officer, legal representatives and Level 1 and Level 2 users (defined below)
- How staff convictions and civil penalties are viewed and considered
- The licence application process together with the associated costs
- How to withdraw your application and changes in circumstances
- How to reapply after a failed application

Businesses and training institutions wishing to become a sponsor under this system have to meet strict criteria:

- They must register with the UKBA
- In order to be granted a licence the employer's human resources systems and compliance procedures must be satisfactory, and will be checked by UKBA
- Employers must inform UKBA if any workers do not comply with immigration conditions. Failure to report this could result in withdrawal of the licence.

Licences can be applied for Tiers 2, 4 and 5 categorised as follows:

Tier 2

- skilled workers;
- intra-company transfers;
- sports people;
- ministers of religion.

Tier 5

- creative and sporting workers;
- charity workers;
- religious workers;
- international agreement workers.

You can register online at:

<https://www.points.homeoffice.gov.uk/gui-sponsor-jsf/SponsorHome.faces>

The UK Borders Agency's e-mail address for applicants to use if they require any help with a licence application is: sponsorlicensing@ind.homeoffice.gsi.gov.uk

The online registration application is relatively straight forward, a number of users have to be set up, dependent on the user's requirements, for example Level 1 users have greater access and therefore greater responsibility. However, the cost will vary from Tier to Tier and from time to time. For example, the cost of a four year Tier 4 student licence is £400 and is payable in advance.

ID Cards

The Home Secretary set out the details of the progress of the ID cards on 6 November 2008. The scheme is to be expanded to foreign nationals from 25 November 2008.

In line with the new-points based system the UK government is also issuing Identity (ID) Cards, initially to critical worker ID cards under the Critical Workers Identity Card (CWIC) scheme. Both Manchester and London City Airport airside workers have agreed to trial the ID cards leading to the general roll out to airside workers from Autumn 2009. The proposed timetable for the implementation of the ID cards is as follows:

- November 2008 – Foreign nationals travelling and living in the UK
- 2009 – Workers in sensitive roles or locations
- 2010 – Young people who want a card
- 2012 – Enrolment of UK nationals now offering a choice of identity card and/or passport
- 2015 – Wide availability of personalised, joined-up services

Cost

Initial indication is that the ID cards are going to cost around £30. This brings about a number of issues. Firstly, this is an added cost of entering the UK, usually with the cost falling on the individual. Under the CWIC scheme, the question must be asked whether the cost of the ID cards is deductible for tax purposes if paid for by the employee.

The general rule in law that allows an employee to claim an expense as a deduction is detailed in the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") Section 336.

“...the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.”

On the surface, it appears simple, however applying this stringent test is more difficult on examination.

Useful Information

Though these changes are administered by the UK Borders Agency, there are a number of other useful sources of information. Other useful websites are:

- The UK Council for International Student Affairs
<http://www.ukcosa.org.uk/>
- Office of the Immigration Services Commissioner
<http://www.oisc.gov.uk/>
- Details of the ID card can also be obtained from the Business Link website
<http://www.businesslink.gov.uk/>
- There is also an informative document produced by the UK Borders Agency that provides greater details on the ID card together with a specimen of what it will look like.
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/idcardguide>

Finally, as with most government systems, to keep users and implementers in line, there is a regime of penalties. These range from making sure the correct details are included on the ID cards to fraudulent and errant use of the system.

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