

Legal update: Immigration
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Following the changes to the Immigration Rules implemented on 6 April 2011, including the execution of an annual cap of 20,700 migrants to work in skilled professions under Tier 2 (General) of the Points Based System, the coalition government continues to identify further restrictions in order to achieve its stated aim of reducing annual net migration to below 100,000 by 2015.

Changes to Tier 4 of the Points Based System

A major public consultation concerning the reform of Tier 4 of the Points Based System ran from 7 December 2010 to 31 January 2011. Initial changes to the Immigration Rules were subsequently implemented on 21 April 2011, including the introduction of an interim limit on sponsors who did not meet new accreditation criteria and changes to the English language requirement so that those coming to the UK to study at degree level will have to demonstrate their ability to speak English at an upper intermediate level. Further amendments were laid before Parliament by Immigration minister Damien Green in a written ministerial statement on 13 June 2011 and will come into effect on 4 July 2011. These revisions include:

- restricting work entitlements to those studying at Higher Educational Institutions and publically funded further education colleges only;
- restricting the sponsorship of dependants to those studying at post-graduate levels at a Higher Educational Institutional and on a course lasting for 12 months or longer and Government sponsored students on courses lasting six months or longer;
- requiring institutions to vouch that a student's new course represents genuine academic progression;
- ensuring that maintenance funds are genuinely available to applicants by introducing a declaration on visa application forms;
- the commitment to publish a list of financial institutions that are considered to not verify financial statements to a satisfactory standard in the majority of a sample of cases;
- introducing a streamlined application process for those considered to be 'low risk' nationals (including Australian and US nationals) applying to attend a course at a highly trusted sponsor. Applicants under this route will be required to submit fewer evidential documents;
- extending the list of courses for which students must receive Academic Technology Approval Scheme (ATAS) clearance;
- restricting the ability to deliver accountancy courses accredited by the Association of Chartered Certified Accountants (ACCA) to those sponsors accorded platinum or gold status; and
- clarifying the position of overseas universities with campuses in the UK.

Whilst a number of these changes appear to have been implemented in order to restrict abuse of the student migration system, it is equally apparent that changes to working entitlements and the sponsorship of migrants' dependants in particular are provisions primarily motivated by the coalition government's commitment to the reduction of net migration. Indeed, the UK Border Agency has stated

that it is expected that these new policies are likely to lead to a net reduction of around 230,000 student migrants over the full term of the current government, a figure inconsistent with the commitment of an annual reduction of 70,000 to 80,000 student migrants given by the Home Secretary Theresa May on 22 March 2011.

The forthcoming changes have led to comment from the higher education sector that the coalition government is jeopardising an industry worth £40 billion annually to the UK economy. Additionally, an official UK Border Agency published impact statement indicates that reforms will cost more than £3.2 billion over the next four years in economic output and a further £330 million in lost tuition fees and immigration application fees. Jonathan Portes of the National Institute of Economic and Social Research has expressed concern that the impact statement shows that 'changes to student visa rules will reduce growth and exports'. It certainly appears that the amendments due to be implemented to the student migration system are inconsistent with the coalition government's priority of economic recovery, as well as with the stated aim of continuing to attract 'the brightest and the best' migrants to the UK.

Consultation on employment-related settlement

A 12 week public consultation on reforms to the routes to indefinite leave to remain in the UK - commonly referred to as settlement - available to migrants who have come to the UK under employment based routes was launched on 9 June 2011. The consultation will address Tiers 1, 2 and 5 of the Points Based System and Overseas Domestic Workers. Damien Green has asserted that the consultation is based at breaking the link between temporary and permanent migration and expressed the concern that 'settlement has almost become automatic for those who choose to stay'. The consultation document outlines a number of proposals for consideration. These include the following:

- defining Tier 2 as 'temporary' in order to end any assumption that settlement will be available for migrants who enter the UK under this category;
- considering whether certain categories of Tier 2 migrants of particular economic or social value to the UK should retain an automatic route to settlement;
- the creation of a new category which would allow the most exceptional Tier 2 migrants to switch into after three years in order to allow them to apply for settlement. Other Tier 2 migrants would be allowed to stay in the UK for a maximum period of five years after which they and their dependants would be expected to leave;
- the introduction of a new English language requirement for adult dependants of Tier 2 migrants applying to switch into a settlement route;
- considering restricting the maximum period of leave in Tier 5 (Temporary Workers) to 12 months, as well as removing their ability to sponsor dependants and raising the minimum skill level in the government authorised exchange scheme to graduate level; and
- abolishing the route for overseas domestic workers or considering restricting leave to a six month period as a visitor or 12 month where accompanying a Tier 1 or Tier 2 migrant, as well as ceasing to grant settlement to domestic workers in diplomatic households.

It is apparent that these proposals have the potential to significantly restrict the routes to settlement for those who have entered the UK under employment based routes, although further detail regarding the implementation of such proposals will not be available until the conclusion of the consultation on 9

September 2011 and parliamentary approval of the subsequent statement of changes to the Immigration Rules.

There continues to be disquiet in the business community that the coalition government's economic policies restrict growth of business due to the lack of flexibility in recruitment that they have caused, a perspective previously corroborated by the Business Secretary Vince Cable. Whilst the proposals outlined in the consultation document would be unlikely to be of relevance to businesses seeking to employ overseas migrants on a short term basis, they would certainly be of concern to organisations with long term business strategy and recruitment considerations. It is arguable that multi-national organisations may potentially be discouraged from the continuation and establishment of overseas businesses in the UK as a result of the restrictions that these proposals would cause.

Conclusion

It is apparent that the coalition government is continuing to implement robust changes to UK immigration law in order to achieve their commitment of reducing net migration to the tens of thousands by the time of the next general election. However, the success of these policies to date may be brought into question. The Office for National Statistics figures published on 26 May 2011 state that net migration to the UK has increased by almost 100,000 to 243,000 in the past 12 months. This is partially due to a reduction in levels of emigration. Whilst these figures indicate that attaining an annual net migration to the UK of less than 100,000 is unlikely to be an attainable target within the stated timeframe, it additionally indicates that increasingly forceful immigration policies are likely to be implemented if the government is to continue to pursue its stated aim.

Matthew Wills, a legal assistant at Laura Devine Solicitors, contributed to this article.