

UK immigration: the Points Based System - 2008

Introduction

Impact on employers

Statement of Intent: Sponsorship under the Points Based System

Sponsor obligations and penalties

Statement of Intent: Tier I

Timeframe for implementation of Tier I

Migrants eligible to apply from within the UK

Criteria

Maintenance

English language requirements

Supporting evidence

General grounds of refusal

Single application process

Transitional arrangements

Period of leave

Settlement

Border control

Further assistance

Introduction

In December 2007, the Border and Immigration Agency (BIA) released the first two in a series of Statements of Intent relating to the implementation of a new Points Based System (PBS).

A Statement of Changes to the Immigration Rules was laid before Parliament on 6 February 2008, setting out the new Rules.

The first phase of the Government's PBS for UK immigration was launched on 29 February 2008, commencing with Tier I (General) for highly skilled migrants.

The PBS, which represents the most significant change in UK immigration law for 40 years, will ultimately almost entirely replace the current system and will consist of five tiers (with further subdivisions) comprising:

Tier 1: highly skilled, entrepreneurs, investors and post-study workers;

Tier 2: skilled workers (replaces the work permit scheme);

Tier 3: low skilled;

Tier 4: students;

Tier 5: temporary workers and youth mobility.

With the exception of Tier 1, all applicants must be sponsored by a licensed sponsor.

Impact on employers

The PBS will involve significant changes for employers wishing to employ foreign nationals in the UK. From 2008, such employers must register as licensed sponsors. Notably there will be a greater onus on sponsors to ensure that foreign nationals satisfy entry criteria and comply with the conditions of their immigration permission, backed by increased penalties. It is therefore critical that employers understand the requirements and implement processes to ensure compliance.

Statement of Intent: Sponsorship under the Points Based System

The BIA's Statement of Intent '*Sponsorship under the Points Based System*' sets out the sponsorship requirements for employers and educational institutions.

The application to register as a licensed sponsor must be submitted online and the prescribed supporting documents then sent within 14 days. A sponsor entity with several branches may apply either to have a license for each branch or as a whole entity. A sponsorship licence will be valid for four years, which must be renewed before expiry.

Sponsors will be classed into two ratings, A or B. Most sponsors will be A-rated unless the BIA deems that a sponsor poses certain greater risks, in which case it will be issued with a transitional B-rating.

Once licensed, sponsors will be able to issue a certificate of sponsorship (COS) (an electronic reference number) to the prospective employee/student.

The issue of a COS by the employer/institution will act as a pledge or undertaking that certain conditions are met and therefore represents a significant responsibility for the sponsor. A further Statement of Intent will be published in 2008 detailing the Tier 2 criteria.

Sponsor obligations and penalties

The sponsor must maintain specific records of all foreign nationals it sponsors, and report to the BIA if the migrant fails to satisfy the conditions of immigration permission (e.g. failure to turn up on their first day of employment/study or absence for 10 days or more without permission). In addition, the sponsor must report material changes (such as the migrant's change of address or change of employment).

The sponsor's compliance will be checked (with or without notice to the sponsor). The sponsor will be fully responsible for the actions of any employee acting on the sponsor's behalf, which may affect the sponsor's licence.

In certain circumstances where a sponsor is considered not to be compliant, the sponsor may be downgraded to a B-rating or its license may be withdrawn. Sponsorship may also be suspended for investigation by the BIA and it may limit the number of certificates of sponsorship that a sponsor may issue.

If a license is for one branch of a group with multiple sponsor licences, any penalty will be administered to that branch. However, the BIA may examine the compliance of that branch and take any penalties administered into account when other branches of the same group make further applications.

The BIA will issue formal rules on sponsorship under the PBS in the first quarter of 2008.

In addition to sponsor licensing sanctions, under a new system of civil penalties in force from 29 February 2008, employers who negligently hire illegal workers could face a maximum fine

of £10,000 for each illegal worker. Employers who are found to have knowingly hired illegal workers may be prosecuted and incur an unlimited fine and imprisonment.

Statement of Intent: Tier I

The BIA's Statement of Intent, '*Highly Skilled Migrants Under the Points Based System*', sets out the requirements for applications under Tier I of the new PBS. Unlike other tiers, no sponsor is required for Tier I applications.

The current highly skilled migrant programme (HSMP) and many other existing categories for the self-employed, investors and graduate workers will be subsumed within Tier I, which will comprise the sub-categories outlined below. In all but the post study category, leave will be granted for three years initially, which may be extended for two years, all counting towards the five year residence period required to apply for settlement.

Timeframe for implementation of Tier I

Tier I (General) will replace the current HSMP and will be introduced in three stages, depending upon the applicant's location:

In the UK:	29 February 2008
In India:	1 April 2008
All other countries:	by the end of the second quarter 2008.

The remaining sub-categories of Tier I (entrepreneurs, investors and post-study workers) are expected to be introduced by the end of the second quarter of 2008.

Migrants eligible to apply from within the UK

From 29 February 2008, only migrants with leave to remain in the UK in one of the following categories will be permitted to switch status within the UK to Tier I (General): highly skilled migrant, innovator, post-study worker, work permit holder, postgraduate doctor/dentist, student (including re-sitting an examination or writing a thesis), student nurse or participant in the International Graduate, Science and Engineering or Fresh Talent Working in Scotland schemes.

Most significantly, working holidaymakers will no longer be able to apply from within the UK and will be required to return to their country of origin to apply for entry clearance. On a more positive note, students in the UK are no longer required to be studying at degree level or higher or to have graduated in order to switch status in-country.

Criteria

The criteria remain similar to the HSMP, requiring the applicant to obtain at least 75 points within the following four categories:

- qualifications;
- earnings;
- UK experience;
- age.

However, the HSMP MBA provision, under which the full 75 points required can be obtained for qualifications alone if the applicant holds an MBA from one of the specified Top 50 MBA institutions globally, will no longer exist under Tier I (General).

Maintenance

In addition to earning 75 points in the categories detailed above, the applicant must obtain 10 points by evidencing that he has access to a certain level of funds to maintain and accommodate himself and any dependants while in the UK. This represents a substantial

departure from the more flexible current regime (under which no set sum is prescribed) and may adversely affect some applicants from less affluent countries.

Each overseas applicant must show a minimum of £2,800 for himself and £1,600 for each accompanying dependant.

Applicants applying for leave to remain in the UK must show funds of at least £800 for themselves and £533 for each dependant (or £1,600 for each dependant if the principal applicant has been residing in the UK for less than 12 months).

English language requirements

All Tier 1 applicants (except Investors) must obtain 10 points by demonstrating sufficient English language competency in one of four ways:

- holding nationality of a country specified by the BIA as a majority English speaking country (Antigua and Barbuda, Australia, the Bahamas, Barbados, Belize, Canada, Dominica, Grenada, Guyana, Jamaica, New Zealand, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago, and the USA);
- holding a qualification equivalent to a UK Bachelor's degree, Master's degree or PhD from one of the countries specified by BIA (as above, with the omission of Canada and addition of Ireland);
- holding a degree which was taught in English (also confirmed in writing by the applicant's university); or
- having passed an English language test equivalent to level C1 of the Council of Europe's Common European Framework for Language Learning (approximately equivalent to grade C or above at GCSE).

Supporting evidence

Only evidence specified in the guidance notes (to be published by BIA shortly) will be accepted.

The documentary requirements are likely to be even more prescriptive than under the HSMP. Failure to provide the necessary documentation may result in an invalid or refused application.

General grounds of refusal

Where an applicant meets all the points criteria, an application may nevertheless be refused under revised general grounds of refusal. These grounds are substantially more draconian than any previous measures. For entry clearance applications (of all types, not merely under the PBS) the new general grounds provide for mandatory refusals for certain previous breaches of the Immigration Rules. A 10 year bar on entry clearance to the UK will be applied if the applicant has previously been removed from the UK (note for example that refusal of entry is usually accompanied by removal directions).

Single application process

Applications submitted under the PBS will involve a single process, fusing the substantive points consideration component with the immigration decision (granting/refusing of leave) component (currently two separate applications for HSMP cases). This will mean that failure to meet the points criteria may result in a refusal endorsement in the applicant's passport which must be declared in any future application.

Transitional arrangements

Very limited transitional arrangements will be in place for individuals who are in the process of applying under the HSMP scheme before 29 February 2008.

Period of leave

Leave to remain for Tier I (General) migrants will initially be granted for three years, with extensions being granted for a further two years (or three years in certain circumstances for applicants previously granted leave in another permissible immigration category), reversing the current periods for HSMP.

Settlement

The qualifying residence period will remain five years but will be restricted to applicants who demonstrate that they provide an economic benefit to the UK and that they are prepared to integrate socially. The English language and knowledge of life in the UK tests (introduced in 2007) will continue.

Border control

New border control measures will tighten the UK borders and bring logistical/timing considerations which employers and individuals will need to accommodate in planning.

In particular, by spring 2008, all entry clearance applicants will be required to have finger scans and a digital photograph taken before travelling to the UK and biometric requirements will be extended to in-country applicants in due course. Ultimately identity cards bearing this data will replace the current passport vignettes.

Further assistance

This document briefly outlines the Statement of Changes to the Immigration Rules for the PBS Tier I (General) immigration category; it is not exhaustive and individuals should seek specialist advice regarding any specific enquiries they may have about their own circumstances.

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