

Introduction to the Points Based System Winter 2007

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).

The PBS represents the most significant change in UK immigration law for 40 years, almost entirely replacing the current system. Although intended to bring current work, business, investment and student schemes into a single points-based system, the new scheme 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.

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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 1

The BIA's Statement of Intent, '*Highly Skilled Migrants Under the Points Based System*', sets out the requirements for applications under Tier 1 of the new PBS. Unlike other tiers, no sponsor is required for Tier 1 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 1, 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.

General (highly skilled)

The criteria remain similar to the HSMP, requiring 75 points (which may be attained for age, qualification, past earnings and UK-based qualifications or

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earnings). The provision for the full 75 points to be awarded for a Top 50 MBA will no longer apply.

In addition applicants must prove sufficient proficiency in English language and adequate funds (for which a specific calculation has been introduced).

Entrepreneurs

This sub-category largely mimics the current self-employed business person category. It requires “access” to at least £200,000 (held in a regulated financial institution) which will be invested in establishing/buying/running a business in the UK and employment of two resident workers. The mandatory English language and adequate funds requirements will apply.

Investors

Like the current investor category, the central criterion is possession of £1 million, held in a regulated financial institution and disposable in the UK. However the current prohibition on taking employment will be removed under the PBS. This is the only sub-category within Tier 1 which does not require the applicant to demonstrate knowledge of the English language or the means to financially support him/herself in the UK.

Post-study work

The post study work sub-category replaces the current International Graduates Scheme (IGS).

Leave will be granted for two years (currently only 12 months under IGS). However, unlike the other Tier 1 sub-categories, leave will not be extended and will not count towards the period required for settlement. Such individuals need to switch into other Tier 1 sub-categories or to Tier 2 to remain in the UK.

Settlement

The qualifying period will be five years (as under the present system) but will be restricted to Tier 1 and Tier 2 workers, who demonstrate that they provide an economic benefit to the UK and that they are prepared to integrate socially. The recently introduced English language and knowledge of the UK tests will continue.

English language requirements

All Tier 1 (except Investors) and Tier 2 applicants must demonstrate sufficient English language competency in one of three ways:

- holding nationality of a country defined by 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 degree taught in English (verified by NARIC); or
- having passed a test in English equivalent to level C1 of the Council of Europe’s Common European Framework for Language Learning (equivalent to grade C or above at GCSE).

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Maintenance

All applicants (except investors) must demonstrate sufficient funds to maintain themselves and any dependants in the UK.

Each overseas applicant must show a minimum of £2,800. If the applicant will be accompanied by a dependant an additional £1,600 will be required, with a further £800 for each subsequent dependant.

Applicants switching to the new post study work sub-category from the student category (Tier 4) must show funds of £800 for themselves and each dependant.

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 BIA's initial Statement of Intent on the new Points Based System; it is not exhaustive and individuals should seek specialist advice regarding any specific enquiries they may have about their own circumstances.

Laura Devine Solicitors

Laura Devine Solicitors is a leading immigration firm, ranked in the top tier of the Legal 500 and Chambers directories, and advises on all aspects of UK and US immigration and nationality law. Should you have any queries, please contact any member of the team.

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