

Points Based System – Tier 2 Skilled Migrant Category Summer 2008

Introduction

In February 2008 the UK Border Agency (UKBA) began the implementation of a new Points Based System (PBS) for immigration. The PBS represents the most significant change in UK immigration law for 40 years, almost entirely replacing 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

Tier 2 (set to be implemented November 2008) will entirely replace the current work permit scheme and will require all applicants to be sponsored.

Tier 2 - Impact on employers

The PBS will involve significant changes for employers wishing to employ foreign nationals in the UK. Employers must register as licensed sponsors if they wish to sponsor any workers under Tier 2 once it replaces the work permit scheme. 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.

Sponsors registration

The application to register as a licensed sponsor must be submitted online and the prescribed supporting documents then sent within 10 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 should be A-rated unless the UKBA 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.

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Sponsor obligations and penalties

The sponsor must maintain specific records of all foreign nationals it sponsors, and report to the UKBA 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). There are extensive record keeping duties in relation to the documentation justifying the issue of each COS (which may include the migrants qualifications, copies of advertisements, copies of all applications received from settled workers).

The sponsor's compliance will be checked (with or without notice to the sponsor). In 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 UKBA and it may limit the number of COS 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 UKBA may examine the compliance of that branch and take any penalties administered into account when other branches of the same group make further applications.

In addition to sponsor licensing sanctions, under the new system of civil penalties, in force since 29 February 2008, employers who engage 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, incur an unlimited fine and be imprisoned.

Statement of Intent: Tier 2

The Tier 2 skilled migrant category is designed to allow UK employers (once approved as registered sponsors) to recruit individuals from outside the EEA.

Criteria

Under Tier 2, migrant applicants must hold a COS and must also attain sufficient points for certain 'attributes' and 'control factors'. The applicant must achieve at least 70 points through a combination of categories for the application to be successful.

Ministers of Religion and Sports people will also need to obtain 70 points under Tier 2 however, the criteria differ slightly from the general Tier 2 skilled migrant.

Sponsors will be required to ensure that certain criteria are satisfied before issuing a COS. Once issued, the migrant must apply to a British Diplomatic Post (BDP) overseas for entry clearance to enter the UK under Tier 2.

The applicant employee must provide specific evidence to demonstrate to the BDP that he has obtained the required points to qualify under Tier 2. It is anticipated that the evidentiary requirements will be very prescriptive and if not strictly adhered to will result in a refusal of the application.

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1. Certificate of Sponsorship

Applicants may earn 30 or 50 points depending on the nature of the COS.

- If the occupation is listed on the **shortage occupation** list (which will be regularly reviewed and updated by the Migration Advisory Committee) the COS attracts the maximum 50 points.
- A COS for an **Intra Company Transfer (ICT)** attracts 30 points (the individual must have been working at an overseas affiliated company (eg parent or subsidiary) of the UK entity for more than six months).
- The UKBA will award 30 points to applicants whose position satisfies the **Resident Labour Market Test (RLMT)**. To satisfy the RLMT, the advertisement must be placed either with JobCentre Plus or advertised in a medium detailed in the UKBA's sector specific Code of Practice (to be published shortly). The job must be advertised for a period of at least two weeks unless the salary for the role will be more than £40,000, in which case the job must only be advertised for one week.

2. Qualifications

Points are awarded according to the level of qualification.

The table below illustrates the minimum qualifications required to attract points.

Qualification	Points awarded
Qualifications equivalent to a UK NVQ3	5
Qualifications equivalent to either a UK Bachelors degree or Masters degree	10
Qualifications equivalent to a PhD	15

3. Prospective earnings

Points are awarded according to the salary for the UK role.

The table below illustrates the minimum income required to attract points:

Prospective earnings	Points awarded
£17,000 - £19,999	5
£20,000 – £21,999	10
£22,000 - £23,999	15
£24,000+	20

English language requirements

Tier 2 applicants applying to either fill a shortage occupation or whose position satisfies the RLMT must demonstrate sufficient English language competency in one of three ways:

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- holding nationality of a country defined by UKBA 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 (either from a listed country or verified by NARIC); or
- having passed a test in English equivalent to level A1 of the Council of Europe's Common European Framework for Language Learning.

Tier 2 ICTs will not be required to satisfy the English Language Requirement on initial application but will need to should they apply to extend their leave in the UK.

Maintenance

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

Each overseas applicant must show a minimum of £800. If the applicant will be accompanied by dependants an additional £533 will be required for each dependant.

Initial approval as a Tier 2 skilled migrant is for up to three years.

Extensions

An extension application must be made to the UKBA prior to the date the Tier 2 skilled migrant's immigration permission expires. The applicant must demonstrate that he has been economically active in the UK since the initial grant of leave. An extension may be granted for up to two years.

Settlement

The qualifying period will be five years (as under the present system) and will extend to 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.

Further assistance

This document briefly outlines the UKBA'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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