

Launch of the Points Based System February 2008

Introduction

The first phase of the Government's new Points Based System (PBS) for UK immigration will be launched on 29 February 2008, commencing with Tier 1 (General) for highly skilled migrants. A Statement of Changes to the Immigration Rules was laid before Parliament on 6 February 2008, setting out the new Rules.

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.

Timeframe for implementation of Tier 1

Tier 1 (General) will replace the current highly skilled migrant programme (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 1 (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 1 (General): highly skilled migrant, innovator, post-study worker, work permit holder, postgraduate doctor/dentist, student (including re-sitting an examination or writing up 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

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least 75 points within the following four categories:

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

However, note that 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 1 (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 will 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 £1600 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 Border and Immigration Agency (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.

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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.

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.

Laura Devine Solicitors

Laura Devine Solicitors is a leading immigration firm, ranked in the top tier of the Legal 500 and Chambers & Partners 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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