United Kingdom

Executive Summary

The United Kingdom completely overhauled its immigration system for employment related applications in 2008. The introduction of a points-based system, sponsorship licenses, and compulsory identification cards for foreign nationals are all part of the biggest shake up to immigration and border security in 45 years.

The UK government also announced that there would be a cap on the number of non-EU migrants coming to the UK. Since April 2011, there has been a full annual limit on the number of non-EU migrants coming to the UK.

Key Government Agencies

The UK Border Agency was formed in 2008 and is responsible for work formerly carried out by the Border and Immigration Agency, as well as the Foreign and Commonwealth Office’s Visa Services and other agencies.

The UK Border Agency is responsible for processing applications for permission to enter and stay in the country, securing borders and controlling immigration. Officials are also posted at British embassies and consular posts abroad to process visa applications.

Current Trends

The Points-Based System has now replaced almost all of the employment and study related categories, reducing the previous 83 entry routes to five broad categories or tiers. The categories are now: Tier 1 (General) (now closed), Tier 1 (Post Study Work) (closed in April of 2012), Tier 1 (Investor), Tier 1 (Entrepreneur), Tier 1 (Graduate) Entrepreneur, Tier 1 (Exceptional) Talent, Tier 2 (General) and Tier 2 (Intra Company Transfer)(“ICT”), Tier 4 (Students), and Tier 5 (Temporary workers).
Tier 1 (General) replaced the old Highly Skilled Migrant Category but is now only available to those already in the UK as Highly Skilled/Tier 1 (General) migrants who wish to extend their permission within this category. Whilst Tier 1 (Post Study Work) replaced the categories allowing employment upon completion of a degree course in the UK, Tier 2 (General) and (ICT) replaced the old work permit scheme. However the Tier 1 (Post Study Work) has now been deleted for new applicants. Tier 5 is divided into five subcategories covering various categories of temporary work. The Tier 5 (Youth Mobility Scheme) replaced the old Working Holidaymaker Scheme.

Background

British citizens, Commonwealth citizens with the right of abode in the UK, and Irish citizens are not subject to immigration control and do not require permission to enter or remain in the UK. Their passports will not be stamped on entry and they are free to return to the UK however long they stay outside.

Nationals of the European Economic Area (“EEA”) countries, i.e., nationals of the European Union countries - Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden - and the 10 accession countries who joined on May 1, 2004, plus nationals of Iceland, Liechtenstein and Norway are, in general, free to come to the UK with their dependents to reside and work in the UK without any prior formalities. Since May 1, 2011 nationals of the “A8” Accession states which joined the EU in 2004 - the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia - now also have full rights of residence and workers no longer need to register on the Worker Registration Scheme. Croatia is due to join the EU on July 1, 2013.

Certain formalities apply with respect to nationals of Romania and Bulgaria, which acceded to the EU on January 1, 2007. Romanian and Bulgarian nationals, although free to enter and remain in the UK, are required to obtain authorization from UK Border Agency before
commencing work, unless the particular job is exempt from this requirement or unless they had leave to remain granted before December 21, 2006. Swiss nationals also benefit from the same rights as most EEA nationals, although Switzerland is not a member of the EEA.

Nationals of Cyprus and Malta were granted the right to take up employment straightaway across the EU.

Aliens, Commonwealth citizens without the right of abode, and UK passport holders who are not British citizens (*i.e.*, British Overseas Citizens) are subject to immigration control and must obtain permission to enter or remain in the country. Their passports will normally be stamped to indicate how long they can remain and what conditions are attached to such permission.

Citizens of certain countries are termed “visa nationals” and require mandatory entry clearance before traveling to the United Kingdom for any purpose, even as visitors. Other nationals only require an entry clearance if they wish to travel to the UK for a particular purpose. Entry clearance is the process by which a person applies, at a British diplomatic post in their country of residence, for prior permission to enter the United Kingdom.

**Business Travel**

*Business Visitor Category*

Under revised visitor rules, there has been a separate category for Business visitors since 2008. Foreign nationals coming under the business visitor category can stay for a maximum of six months in any 12-month period. Nationals from certain designated “visa national” countries must apply for a visa before traveling to the UK.

Persons entering under this category must be based abroad and must not be receiving a salary from a UK source. Foreign nationals will only be allowed to undertake certain permissible activities under this category for example, transacting business (*e.g.*, attending meetings
and briefings, fact finding, negotiating or making contracts with UK businesses to buy or sell goods or services). Applicants must not “intend to produce goods or provide services within the UK, including the selling of goods or services direct to members of the public.”

In 2012 UKBA introduced a list of permitted paid engagements which could be undertaken as visitors, including examiners, lecturers, lawyers, arts entertainers and sporting professionals.

Please note that those entering under the visitor category are not otherwise authorized to work in the UK, regardless of whether paid or unpaid.

Training

The visitor category permits foreign nationals to undertake some limited training in techniques and work practices used in the UK. There are strict limits on the scope of training that can be provided under this category, which must be restricted to watching demonstrations and classroom instruction only. On-the-job training in a productive work environment is not permitted and visitor visa holders cannot be paid from any UK source, although they can receive reimbursement for certain expenses.

Employment Assignments

The general rule is that any person who is subject to immigration control cannot take up employment in the UK without a valid work permit or other form of work authorization. The main exceptions to this general rule concern EEA nationals (except Bulgarians & Romanians), Swiss nationals, and Gibraltarians.

Commonwealth Citizens with United Kingdom Ancestry

Upon proof that one grandparent - paternal or maternal - was born in the UK or Channel Islands, a Commonwealth citizen who wishes to take or seek employment will be granted an entry clearance for that purpose and does not require a work permit. Persons entering under this category will be admitted for an initial period of five years.
Representatives of Overseas Businesses

This category, previously named the sole representative category, allows companies without an existing UK operation to send a senior employee to the UK to establish a presence. This category now includes employees of an overseas newspaper, news agency or broadcasting organization. Intending entrants under this category must meet the following requirements:

- Seek entry as a senior employee with full authority to take operational decisions;

- Intend to establish and operate a registered branch or wholly owned subsidiary of their overseas employer (thereby excluding any other legal entity or type of activity) in the same type of business activity as the overseas business;

- Meet the English language requirement or have an academic qualification which is deemed by UK NARIC to be equivalent to a UK Master’s or Bachelor’s degree; and

- Obtain entry clearance prior to entering the UK.

Entrants under this category are admitted for an initial period of three years.

Tier 5 (Youth Mobility Scheme) (Temporary Workers) Creative and Sporting; Government Authorised Exchange and International Agreement

Tier 5 (Youth Mobility Scheme)

This has replaced the previous Working Holidaymaker Scheme. The Youth Mobility Scheme allows young people from participating countries to experience life in the UK. Currently only the following countries are participating in the Scheme: Australia, Canada, Japan, New Zealand, Monaco, South Korea, and Taiwan. British Overseas Citizens, British Overseas Territories Citizens, and British National Overseas passport holders are also allowed to apply.
The Tier 5 -Youth Mobility category is quota based. Visa applications from the above listed countries will be accepted until their country’s annual allocation has been reached. However, there is no quota for applications from British Overseas Citizens, British Overseas Territories Citizens, and British National Overseas. Foreign nationals will be able to take up any work in the UK except self-employment (subject to certain exceptions), working as a professional sportsperson, or working as a doctor in training. Self-employment will only be permitted if the foreign national does not own the permanent premises from which he does business, the total value of the equipment he or she uses does not exceed GBP5000 and there are no employees.

**Tier 5 (Temporary Workers) Creative and Sporting**

For creative artists, sports persons and entertainers coming to fulfill short-term contracts/engagements in the UK

**Tier 5 (Temporary Workers) Government Authorised Exchange**

Offers migrants a route to enable a short-term exchange of knowledge and best practice through employment whilst experiencing the wider social and cultural setting of the UK

**Tier 5 (Temporary Workers) International Agreement**

For migrants who are legally entitled under international law, to come to work in the UK for a limited period of time

**Tier 1 (Post Study Work)**

This allows international students who have studied in the UK to remain in the UK after the completion of their UK degree to look for work or to work without having a sponsor. Employment as a Doctor or Dentist in Training is not permitted unless the graduate has obtained a degree in medicine or dentistry at Bachelor’s level from a recognized UK institution that holds a Tier 4 license. This category has now been deleted for new applicants.
Tier 1 (General)

This category replaced the Highly Skilled Migrant category and allowed highly skilled people to come to the UK to work or take self-employment.

This category is now closed to new applicants although extensions are permitted.

Tier 1 (Investors)

The old Investor category was replaced with a new Tier (Investor) category under the Points-Based System, but the requirements remain broadly the same. The Investor category is designed for high net worth individuals who are able to make a substantial financial investment in the UK. Under revised rules, effective from April 6, 2011, the base entry level requirements under the Investor category are that applicants will still have to provide evidence that they have capital of GBP1m in their own name which can be transferred to the UK. However if they wish to gain a faster track towards permanent residency by investing at a higher level new investment bands of GBP10m and GBP5m have been introduced. In each case, the applicant is expected to invest 75 percent of the capital in the prescribed qualifying investments within three months of entering the UK. The qualifying investments continue to be UK Government bonds and share capital or loan capital in active and trading UK registered companies (with certain restrictions).

For applicants whose wealth is tied up in long-term investments, where they don’t have sufficient liquid assets available, there is the option of using borrowed funds to meet the investment requirement. Applicants wishing to use borrowed funds will need to show that they have a “personal net worth” which is at least double the level of investment they plan to make. For example, an applicant planning to invest GBP10m using borrowed funds would have to show that he or she has a personal net worth of GBP20m.
The benefit of investing at one of the higher bands will be a faster track to permanent residency. Whereas the amount of time that must be spent in the UK was previously five years, applicants investing GBP10m will qualify in just two years. Similarly, those prepared to invest GBP5m will qualify after three years. It will still be possible to invest at the lower GBP1m level, but the track to permanent residency will then remain at five years. However all applicants, regardless as to the level of investment are required to spend just over 50 percent of their time in the UK over the qualifying period. Investors will be able to spend up to 180 days outside of the UK each year as opposed to previously having to spend 75 percent of their time here.

Investors are admitted for an initial period of 36 months (it was previously 24 months).

**Tier 1 (Entrepreneur)**

The Entrepreneur category is designed for those investing in the UK by setting up or taking over, and being actively involved in the running of, a business in the United Kingdom.

Under the current rules Entrepreneurs are required to show that they have access to GBP200,000 in capital to invest in a new or existing business. In order to make this category more enticing, the Government has reduced the level of investment required to GBP50,000 if the applicant can show that he or she has been promised this level of funds in cash from either:

- A venture capitalist firm regulated by the Financial Services Authority
- A UK entrepreneurial seeding fund competition (which has been endorsed by UK Trade & Investment)
- A UK Government Department for the specific purpose of establishing and expanding a UK business
In addition to creating this new investment limb, a faster track towards permanent residency has also been offered. Previously applicants could only apply for permanent residency after five years. However, under the revised rules a reduced three year track will apply, if the applicant can show that the business has created at least 10 new jobs during the same period. Alternatively, if the applicant can show that the new business had a turnover of at least GBP5m during the three year period of his or her visa, or if an existing business saw an increase in income of GBP5m during the same period, then he or she will qualify for permanent residency at the three year point. In all other cases the applicant will continue to qualify after five years. Like the Investor category, Entrepreneurs will be permitted to spend up to 10 days outside of the UK each year.

**Tier 1 (Exceptional Talent)**

The Tier one (Exceptional Talent) category opened on 9 August 2011. This category is intended to encourage exceptionally talented leaders in the fields of science, humanities, engineering and the arts to come to the UK. This new category is not only available to those who have already been recognized in their fields but also to those with the potential to become recognized leaders in their respective fields.

Those wishing to apply under Tier 1 (Exceptional talent) will not need to be sponsored by an employer, but will need to be recommended by one of four competent bodies appointed by the Government. Each competent body will select those who will qualify for recommendation and although the government has allotted a number of places to each body, the competent bodies will be able to transfer additional places to those with more demand if this becomes necessary.

**Tier 2 (General) & Tier 2 (ICT)**

Tier 2 replaced the old work permit scheme, which came into force on November 27, 2008. Employers now need to have a license in order to employ nationals from outside of the EEA. Any existing work permit holders can continue working until the expiry of their current permits.
They will then have to apply for an extension and switch into either Tier 2 (General) or Tier (ICT) depending on what type of work permit application they initially entered under.

The Licensed Sponsor is authorized to use the new Sponsor Management System. This is an on-line platform that allows companies to sponsor non-EEA nationals to come and work in the UK. Therefore, once an employer is registered as a Licensed Sponsor the company will then be ready to sponsor employees from overseas to work in the UK under the Tier 2 categories of the Points Based System. Under this system it is up to the employer to make an assessment as to whether or not an individual meets the published criteria for a certificate of sponsorship (the term for a work permit) to be issued. The company will then be able to issue a certificate and send it to the employee to apply for a visa.

In order to apply for a license, each employer will need to decide who to appoint to the following prescribed roles: (i) Authorizing Officer (“AO”); (ii) Key Contact; (iii) Level 1 User; and (iv) Level 2 User. All four roles can be filled by the same person, by four different people or by a combination of the two. The AO role must be undertaken by a permanent member of staff who is based in the UK. All of the other roles must either be undertaken by a permanent UK-based member of staff or a UK-based legal representative. Background checks and checks on the Police National Computer will be undertaken on all of these key personnel. Each of these roles carries some degree of responsibility for the functioning of the new system.

The “Authorizing Officer” is the most senior role within the new sponsorship system. The Authorizing Officer is responsible for assigning other key personnel and for their conduct. This individual is responsible for the activities of all users under the Sponsorship Management System (including employees and any appointed representatives). However, the Authorizing Officer does not have to be involved in the day to day operation of the Sponsor Management System and does not have automatic access to this system, but could also be a Level 1 or Level 2 User, which would give him/her access.
The “Key Contact” acts as the main point of contact with the UK Border Agency. This individual may be contacted by UK Border Agency for any queries with applications (e.g., requests for documents or payment enquiries). The Key Contact does not have automatic access to Sponsorship Management System, but can be a Level 1 or Level 2 user as well, which would give access.

The “Level 1 User” deals with the day-to-day administrative activities of the Sponsor Management System (e.g., assigning Certificates of Sponsorship to employees/prospective employees, completing change of circumstances forms, adding/removing sponsors from the system). The Level 1 User can also create and remove users from the Sponsor Management System.

“Level 2 Users” undertake the same type of administrative tasks as the Level 1 User, but cannot create and remove users. Any number of Level 2 Users can be appointed. However, as the Authorizing Officer is responsible for all activity by Level 2 Users, it would be advisable to keep the number of users at a manageable level.

In return for being granted a license and the ability to issue certificates of sponsorship, the employer must agree to undertake a number of duties (e.g., recording certain specified information, reporting certain facts to the UK Border Agency, complying with relevant legislation and co-operating with the UK Border Agency).

As part of the licensing process, the UK Border Agency will make an on-site visit to the employer’s business premises to check that it has the systems in place to meet the new obligations that arise from being granted a license. We would therefore recommend that any employer considering applying for a license should undertake a compliance audit before filing their license application.

Licensed employers are required to assess whether an employee meets the minimum points threshold for a certificate to be obtained. In this respect, points are allocated for three criteria including, personal attributes, English language skills and maintenance. The attributes
include sponsorship, qualifications and prospective earnings. The individual must score a minimum of fifty points under the attributes section and 10 points each for English language skills and maintenance.

It is worth noting that, although the company is responsible for issuing certificates of sponsorship under the system, the UK Border Agency will undertake a review of any decisions made after a certain number of certificates have been issued. If the company is found to have incorrectly issued the certificates or to have been non-compliant with any of the new obligations it could have its license downgraded or even withdrawn. If its license is withdrawn, any existing employees working under a certificate would be required to leave the UK within 28 days. Therefore, it is important for any company using the system to ensure that it is fully compliant with the requirements.

A foreign national who takes up employment in the UK without authorization, in breach of the Immigration Rules is liable to removal and under provisions introduced on February 29, 2008, could be barred from re-entering the UK for a period up to 10 years.

Since January 1997, UK employers faced sanctions under the Asylum and Immigration Act 1996 (“the 1996 Act”) for employing people who did not have the right to work. The 1996 Act provided a defense for UK employers who made an offer of employment conditional upon the production of one of a list of specified documents. The list included an EEA passport or other passport containing an appropriate endorsement that evidenced the foreign national’s right to work in the UK. Provided that such a document was produced, and appeared to be genuine, the UK employer would be protected from prosecution if a copy of that document was made and retained on the foreign national’s personnel file.

That law was replaced by Section 15 of the Immigration, Asylum & Nationality Act 2006, which maintains similar documentary requirements, but requires the checks to be undertaken every 12 months. In addition, the main sanctions for non-compliance have been
moved from the criminal to the civil arena. Section fifteen allows for the imposition of a civil penalty of up to GBP10,000 per offence that may be imposed on the company and criminal penalties of knowingly employing an illegal immigrant including unlimited fines and/or imprisonment of up to two years.

In order to qualify, applicants must score a minimum of 50 points for attributes which includes qualifications, expected earnings and sponsorship. In addition, applicants must score 10 points for maintenance and 10 points for English language ability.

**Tier 2 (General)**

Under Tier 2 (General), sponsors must carry out a resident labor market test (unless the job is a shortage occupation or the job is in the creative sector). In general the post must be advertised on JobCentre Plus and one other specified medium as listed in the UKBA’s Codes of Practice for a four week period, unless the role is above GBP70,000. The salary paid must also match the appropriate rate in the Codes of Practice. The advertising requirement can be waived where the salary is over GBP150,000 per annum.

For the entry clearance application, applicants must provide evidence that they meet the English Language requirement either by passing an approved English test, being a national of a majority English speaking country or holding a degree that was taught in English and is equivalent to a UK Bachelor’s degree or above. The maintenance requirement is met by an A rated sponsor certifying on the Certificate of Sponsorship that it will meet the maintenance requirement for the main applicant and his dependents so no further evidence is required. Please note that the UK government introduced an annual migration limit, effective from April 6, 2011 on Tier 2 (General) applications. This means that an employer must file a request for a restricted Certificate of Sponsorship for each migrant from outside the UK under this category. Only if the Certificate is granted by UKBA can the visa application be filed. UKBA has limited the number of restricted Certificates of Sponsorship to 1,500 globally per month and
applications are only considered once a month, meaning this process can be both uncertain and lengthy. Where the salary offered is over GBP150,000 per annum it is not necessary to apply for a restricted Certificate of Sponsorship but one of the unrestricted allocation can be used.

Tier 2 (General) leads to permanent residence after five years. However if this is not taken up or a migrant leaves the UK earlier an exclusion from returning to the UK under any Tier 2 category applies from the end of the latest period of leave.

**Tier 2 (Intra-Company Transfer)**

This category allows multinational companies to transfer employees from their overseas organization into their UK branch or subsidiary to do a skilled job. Applicants must score a minimum of fifty points for attributes as for Tier 2 (General) and 10 points for maintenance. However, applicants do not have to satisfy the English language requirement under Tier 2 (ICT) until they have been in the UK for more than three years under the Tier 2 (ICT) category.

The Intra-Company Transfer category has been split into four sub-categories: (i) Long-term Staff; (ii) Short-term Staff; (iii) Graduate Trainee; and (iv) Skills Transfer.

Under the Long-term Staff and Short-term Staff category, this would allow a sponsoring organization to transfer an overseas employee who has been employed by an overseas company for 12 months or more) to transfer to the UK branch or subsidiary.

**ICT Short-term Staff**

Employees must earn a minimum of GBP24,000 per annum and can apply for a maximum visa length of 12 months.

- At the end of the visa the migrant will receive a 12 months exclusion from re entry to the UK as Short-term Staff or Tier 2 General
Visas issued for less than 12 months can be extended up to 12 month limit

Exclusion runs from date of expiry of visa not date of departure from the UK.

Therefore if a migrant leaves the UK early the exclusion could in effect be longer than 12 months

Short-term Staff can return under other categories i.e. as Long-term Staff (but cannot switch in country).

**ICT Long-term Staff**

Employees must earn a minimum of GBP40,000 per annum and can apply for a maximum initial visa of up to three years and can extend up to a total of five years.

- At the end of the visa the migrant will receive a 12 months exclusion from re entry to the UK as Long-term Staff or Tier 2 (General)
- Visas issued for less than three years can be extended up to three and then five years
- Exclusion runs from date of expiry of visa not date of departure from the UK
- Therefore if a migrant leaves the UK early the exclusion could in effect be much longer than 12 months

**Graduate Transfer**

Under the Graduate Transfer category, overseas companies can transfer recent graduates to the UK branch for training as part of a structured graduate training program. The graduate must have been employed by the overseas company for three months before coming to the UK. The maximum period of leave that can be granted under
Graduate Transfer is 12 months and no switching into other immigration categories is permitted. An exclusion from returning to the UK in the Short-term Staff category or Skills Transfer category will be effective from the end of the Graduate Transfer visa.

**Skills Transfer**

The Skills Transfer category allows overseas companies to transfer newly recruited employees (no prior employment with the overseas company is required) to the UK to acquire new skills and knowledge relevant to their new role. The maximum period of leave that can be granted under Skills Transfer is six months and like Graduate Transfer, no switching into other immigration categories is permitted.

Any migrant coming to the UK from April 6, 2010, under the Tier 2 (ICT) will no longer be able to apply for indefinite leave to remain or settlement after five years residency in the UK. However any migrant who is already in the UK before April 6, 2010, and extending their leave under the Intra-company Transfer category will still be able to continue on track to settlement. An exclusion from returning to the UK in the Short-term Staff category or Graduate Trainee category will be effective from the expiry of the visa.

**Other Comments**

The spouses, civil partners or unmarried partners of entrants under all of the categories reviewed in this article, except the visitor some Tier 5 categories, must satisfy the following conditions in order to enter as dependents: (i) they must be married to the entrant or have entered into a civil partnership with the entrant or be the unmarried partner of the entrant and have been living together in a relationship akin to marriage for at least two years; (ii) they must intend to live with each other during their stay; and (iii) they must obtain entry clearance to enter as a dependent spouse or civil partner or unmarried partner. Dependent children under the age of 18 are also permitted and must obtain prior entry clearance.
In addition, non-EU migrants coming to the UK to join their spouses who are British citizens or have settled status are required to pass an English language test and sponsors must meet a financial requirement.

Anyone entering the UK in one of the employment-related categories or as the spouse, civil partner or unmarried partner, with the exception of Tier 5, Tier 1 (Post Study Work) and the Tier 2 (ICT) category, will qualify, along with their dependents, to apply for permanent residency or indefinite leave to remain after completing five years of residence in the UK. Upon being granted permanent residency, they will be free to live and work in the UK without any restrictions.