



GMS Flash Alert

Immigration Edition

2017-184 | December 13, 2017



United Kingdom – Government Communicates Changes Planned for Immigration Rules

On 7 December 2017, the U.K. government put a Statement of Changes to the Immigration Rules before the House of Commons.¹ Several changes will be implemented by 11 January 2018 and will be phased in from 28 December 2017. The changes cover various categories including those for international workers and students.

WHY THIS MATTERS

The intention is to attract and retain talent in the U.K. by increasing flexibility for businesses wishing to recruit talented students completing degrees in the U.K. by, among other things, introducing a further exemption to the Resident Labour Market Test and allowing some part-time students to secure Tier 4 visas.

Changes to the Tier 1 visa category should attract individuals to the U.K. who are of the greatest value to the U.K. economy and will allow all Tier 1 visa categories accelerated settlement after three years in the United Kingdom.

Details of Changes

Tier 1 (Exceptional Talent)

- There are currently 1,000 places available each year in this category, which allows talented individuals in the fields of science, humanities, engineering, the arts, and digital technology to work in the U.K. without the need to be sponsored for employment in a specific post. The number of places is being doubled to 2,000. To help ensure the places are allocated according to need, the additional 1,000 places will not be allocated between the current five Designated Competent Bodies (DCB) at the start of each year. Instead, they will be drawn on according to a need on a first-come-first-serve basis by any DCBs that have used up their allocations.

- Those endorsed under a DCB “exceptional talent” visa will be able to qualify for “indefinite Leave to Remain” in the U.K. after three years of continuous residence instead of the current five-year requirement. This brings the Tier 1 (Exceptional Talent) category in line with Tier 1 (Entrepreneur) and Tier 1 (Investor) categories for accelerated settlement. Potential future leaders in their field (those endorsed under a DCB’s “exceptional promise” criteria) will continue to qualify for settlement after five years of continuous residence.

Tier 1 (Entrepreneur) and Tier 1 (Investor)

Minor changes are being made to the Tier 1 (Entrepreneur) and Tier 1 (Investor) rules to prevent abuse and clarify the currently rather complex rules.

Tier 2

- Non-PHD students switching from Tier 4 student visas into the Tier 2² (General) in the U.K. will no longer need to show that they have received their final results and will be able to submit their applications once they have completed their courses. This flexibility is being introduced to enable applications to be submitted earlier.
- A Resident Labour Market Test exemption is being added for posts to be held by researcher applicants who are recipients of “supernumerary” research awards and fellowships and for established research team members sponsored by either a higher education institution or a research council. This extends the exemptions which apply to roles relating to a named person where if the migrant did not take the role the role would not exist.
- Pay rates for health-sector workers are being brought into line with pay scales in England and provision is being made to allow nurses to be sponsored under Tier 2 if they are undertaking an approved programme with a view to returning to practice.
- A provision in the Sponsor Guidance, which has caused much confusion since its introduction, is being clarified and incorporated in the Immigration Rules. It restricts to 28 days how long a migrant’s start date may be delayed after the leave has been granted. It also makes clear that it only applies to Tier 2 (General).
- Changes are being made to amend the Tier 2 (Intra-Company Transfer) Long Term staff sub-category to reflect the closure of the Short Term sub-category on 6 April 2017.

Tier 4

- New provisions are being introduced to allow part-time international students to get Tier 4 visas. They will not have work rights, will not be able to bring in dependants, and will not be able to extend their visas while in the U.K., but this still offers increased flexibility compared to the current complete prohibition.
- The rules on academic progression are being updated to allow students to apply for leave to remain from within the U.K. to complete a work placement or a study abroad programme, or to complete their course, after having completed a work placement or study abroad programme.
- A clarification is being made in relation to the maintenance requirements for Tier 4 (General) students to make clear which requirements are relevant to students who study in London and which to students who study outside London.

Indefinite Leave to Remain

- The requirement to have had absences from the U.K. of no more than 180 days per year in order to qualify for settlement, which currently applies to main applicants, is being extended to partners of Points-Based System Migrants. This requirement was introduced previously with retrospective effect and then removed to avoid the retrospective effect. The change now avoids retrospective effect, because only absences from the U.K. during periods of leave granted under the rules in place from 11 January 2018, will count towards the 180 days.
- An amendment is being made so that Tier 2 Migrants are no longer required to have been continuously employed throughout the qualifying period to be eligible for settlement. The policy is that Tier 2 migrants who are no longer working for their Sponsors are subject to curtailment of their visas. However, the existing provision causes unnecessary anxiety for people applying for indefinite leave to remain when they had a gap in employment during which their visa remained valid. As a result, this change is welcome.
- Gaps in time in the U.K. to qualify for indefinite leave to remain will also now be allowed due to dealing with national or international humanitarian crises other than just Ebola.

Other Changes

- The wording in relation to genuine and subsisting relationships for Points-Based System migrants is being brought into line with that for family members applying under Appendix FM.
- The Short Term Study minimum age requirement is being reduced from 18 to 16, to allow those aged 16 and over to apply for the longer English courses and to help ensure the consistent application of the “genuine student rule” across the student visa categories. Short Term Study applicants are also not entitled to take part in any type of work, whether paid or unpaid.
- A change to the visitor rules will enable visitors who hold a standard marriage/civil partnership visit visa to transit to the U.K. without the need to obtain a separate visa. Transit visas will still be available for transit only visits.
- The changes aim to tackle immigration fraud by expanding the 10-year ban when using deception in applications for leave to enter applications and leave to remain.
- The changes will introduce a scheme where entry clearance will be issued electronically and applicants will no longer be required to present their passports or identity documents. (We at KPMG LLP (U.K.) have yet to see how this will work in practice, but it has the potential to considerably speed up application processes and reduce bureaucracy.)

KPMG NOTE

The changes in relation to Tier 1 migrants follow the commitments made in the government’s Autumn budget³ to encourage the best and brightest international scientific and research talent to come and work in the United Kingdom. While they contain few major policy shifts, the sum of the other changes provide welcome clarification where there was previously uncertainty. This is useful amidst the general uncertainty regarding immigration relating to European Economic Area (EEA) and Swiss nationals working in the U.K. in light of Brexit.

FOOTNOTES:

- 1 For “Policy Paper: Statement of changes to the Immigration Rules: HC309, 7 December 2017,” click [here](#).
- 2 For “News Story: Migration Advisory Committee reviews of Tier 2,” click [here](#).
- 3 For coverage of the Autumn budget, see GMS [Flash Alert 2017-175](#), 22 November 2017.

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Contact us

The KPMG Legal Services – Immigration Team has a wealth of experience in transactional, advisory, and compliance assurance services. We will be able to advise your business in relation to practical considerations in light of the above changes, as well as what this means for your long-term recruitment and compliance strategies.

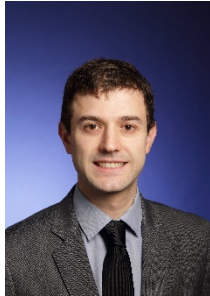
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