

Statement of Changes in Immigration Rules

September 2013

Proposed changes to UK Immigration Rules - September 2013

On 6 September a set of changes to the Immigration Rules, due to come into force between 1 October 2013 and 1 January 2014, was laid before Parliament. PwC Legal was actively involved in proposing a number of these changes to the UK Government and we are pleased that so many of them were accepted. We are continuing to work with the Government on potential future amendments to the UK Immigration Rules. We therefore welcome any feedback from individuals and companies on how the UK Immigration Rules are affecting them and how they could be changed to assist business growth.

The upcoming changes to the UK Immigration Rules which are most relevant to business are set out below. Please note, unless specifically indicated to the contrary, all changes will take effect on 1 October 2013.

Tier 2

Shareholding in Sponsors' business

Tier 2 (General) applicants earning £152,100 or more per year may now hold a shareholding in excess of 10% in their Sponsor's business, where this is a private limited company. This is a significant development, enhancing the opportunities available to senior employees. It also brings this category more in line with the Tier 2 (Intra-Company Transfer) category where there is no restriction on the level of shareholding that an applicant may possess.

Removal of English language requirement for Tier 2 (Intra-Company Transfer) (ICT)

Tier 2 (ICT) migrants will no longer need to satisfy the English language requirements when applying to extend their stay beyond three years. This exception previously applied only to those ICT migrants earning over £152,100 per year. This will reduce the burden on employees who may otherwise have been required to undertake a test to evidence their English language ability.

Change to the Resident Labour Market Test (RLMT)

Migrants, who are currently in the UK under the Tier 1 (Graduate Entrepreneur) category, will now be permitted to switch into the Tier 2 (General) route without the Sponsor having to advertise the position in line with the RLMT requirements. Where an individual changes immigration status under this provision, they will be able to benefit from the "new entrant" salary threshold rather than having to meet the higher "experienced worker" pay rates. This change brings the Tier 1 (Graduate Entrepreneur) route in line with other post study work provisions.

Business Visitors

Internal Auditors

An internal auditor from a global corporation, who is being sent to the UK to undertake an internal audit will be able to enter as a business visitor, provided the UK company they are auditing is part of the same group of companies as the visitor's overseas employer. This change, which was proposed by PwC Legal, is a significant addition to the list of permitted activities

that Business Visitors may undertake in the UK. It is further evidence of the UK Government's willingness to allow migrants to enter the UK as Business Visitors where there is no impact on the resident labour market.

Corporate training

Another change to the list of permitted activities for Business Visitors, which was also proposed by PwC Legal, is to extend the types of corporate training that a Business Visitor may receive in the UK. Business Visitors may now undertake publicly available training in the UK provided it relates to the migrant's employment overseas and is delivered by a company whose main activity is not being a training provider. Previously, Business Visitors were only permitted to undertake internal training.

Study in the UK

Business visitors will now be able to undertake formal study whilst in the UK. This is subject to the course duration not exceeding 30 days and either being recreational in nature or provided by either a Tier 4 licence holder or certain accredited institutions.

Other

Specified documentation

Where a certain document is required to support an application, the stipulated format for that document will be the same irrespective of the application category. For example, where payslips are required, they will always be requested in the same format, irrespective of the type of application that is being submitted or the reason why they are being provided, whether to evidence previous employment or current earnings.

In addition, where a specified document does not contain all the required information, rather than returning or refusing the application, the Home Office may, in future, contact the applicant and ask for a new document to be provided containing all the required information.

Alternatively, the Home Office may attempt to verify the missing information by considering other documents submitted with the application or the websites of the issuing organisation or the appropriate regulatory body.

These changes represent a more common sense approach and build on other changes the Home Office has previously made to ensure the Immigration Rules are more consistent and applications are not refused simply because one piece of mandatory information or documentation is missing or is in the wrong format.

On-line bank statements

Under the current Immigration Rules, on-line bank statements submitted in support of an application are only accepted if the account is purely internet based and are accompanied by a letter from the bank confirming their authenticity. In future, electronic bank statements will be accepted for all bank accounts, provided they are accompanied by a letter of authenticity. Although this is a welcome simplification of the Immigration Rules, in practice, the Home Office has always accepted print outs of electronic bank statements accompanied by a letter of authenticity, even where the account is not on-line only.

In-country applications for dependents

Following a recent High Court judgement, the UK Government has decided to amend the Immigration Rules to enable those who are currently legally in the UK, other than as a visitor, to apply to change to the status of a Points Based System dependant while in the UK. Previously, migrants were required to submit this application at a British Diplomatic Post overseas. However, the Government is maintaining the requirement that those wishing to change status from being a dependant to a main applicant in their own right must submit the application overseas.

Financial requirements evidence for family life applications

For those making applications as the dependant of a British citizen or a person present and settled in the UK, the Home Office will accept, as evidence that the applicant satisfies the financial requirements, cash savings held in an investment-based account such as a stocks and shares ISA as well as in a deposit account.

Settlement and Naturalisation applications

From 28 October 2013, there will be two parts to the Knowledge of Language and Life in the UK (KoLL) requirement, both of which must be met by all applicants for settlement and naturalisation, unless the individual is exempt. From this date applicants will be required to pass the Life in the UK test and have a speaking and listening qualification in English at level B1 of the Common European Framework of Reference for Languages (CEFR) or higher, or an equivalent level qualification.

The KoLL requirement can currently be demonstrated either by taking a test, or by obtaining an English for Speakers of Other Languages (ESOL) qualification.

Tier 5 (Youth Mobility Scheme)

From 1 January 2014, Hong Kong is being added to the list of participating countries and territories in the Tier 5 (Youth Mobility Scheme).

Summary

Please note that these changes are due to come into force between 1 October 2013 and 1 January 2014 and may be subject to further amendment prior to implementation. In the meantime, employers should be considering how their business may be affected by these changes and plan accordingly. PwC Legal would be pleased to advise further on these changes and assist companies in developing strategies to minimise any potential adverse impact to their business.

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