

The government has published further [guidance](#) following its February 2020 [policy paper](#) on the UK's points-based system which will apply to new applicants from the EU (excluding Ireland) and outside the EU from January 2021. What does this mean in practice, and how should employers prepare?

The key points (with our commentary in each case) are:

- **The government has introduced an [Immigration Bill](#) which was approved by the House of Commons on 18 May 2020. It repeals EU free movement and paves the way for a new framework for an employer-led points-based system.** The Immigration Bill will now be subject to further parliamentary scrutiny. Whilst the policy paper outlines the key principles, the Immigration Bill itself does contain any detail relating to the future immigration system. This will be provided for in the Immigration Rules and new policy guidance. It was previously anticipated that these would be in place from this autumn. However, given the impact of the coronavirus (COVID-19) on the ability of Home Office staff to prepare for the new system, it is not certain that this goal will be met.
- **This “new” immigration system will actually be an adaptation of the current Tier 2 points-based system.** The policy paper states: “Employers not currently approved by the Home Office to be a sponsor should consider doing so now if they think they will want to sponsor skilled migrants, including from the EU, from early 2021.”
- **The general minimum salary threshold for a work visa will be reduced from £30,000 to £25,600.** It is worth noting that this threshold will be subject to a number of exceptions:
 - Applicants for a role with a lower salary (subject to a lower limit of £20,480) may still qualify if the role is on the shortage occupation list and/or they have a relevant PhD (extra credit is given for a PhD in a STEM subject)
 - There will continue to be different arrangements for a small number of occupations (such as nurses) where the salary threshold will be based on published pay scales and for “new entrants” (broadly defined as recent UK graduates and those under the age of 26)
 - Applicants will otherwise need to be paid the higher of £25,600 or the specific salary threshold for their occupation (the “going rate”); for example, an experienced IT manager would need to be paid at least £42,800
- **The skills threshold will be reduced from RQF 6 (graduate level and above) to RQF 3 (A level and equivalent or above).** This will give a wider number of sectors (including retail, hospitality, construction, and health or social care) the ability to sponsor workers in roles not previously considered sufficiently skilled for sponsorship. Employers can use the [ONS Occupation Coding Tool](#) to assess whether a job meets the required skill level.
- **There will be no general low-skilled or temporary work route.** This will have a significant impact on businesses heavily reliant on lower-skilled or lower-paid EU workers, assuming the salary and skills threshold reductions mentioned previously do not go far enough to allow for the sponsorship of all or most types of worker in short supply.
- **The current resident labour market test (RLMT) will be abolished.** This means that roles will no longer need to be advertised in a prescribed manner to show that no qualified settled worker is available. This will potentially open up the sponsorship system to a number of employers previously unable (or unwilling) to prove that their preferred candidate is uniquely qualified for the role.
- **The cap on the number of Tier 2 (General) visas granted each year (currently set at 20,700) will be “suspended”.** This annual cap has rarely been met, but removing it permanently would be significant, given that the new system will apply to a much larger pool of EU and non-EU applicants. The government is insisting that it will reduce overall levels of migration, so its wording leaves open the possibility that the cap could be re-introduced at any point.
- **The Immigration Skills Charge and the Immigration Health Surcharge will apply to visa applications on the same basis as they do now.** This means that even if a hard-to-fill role qualifies for sponsorship under the new system, many employers will be unable to afford the associated costs (particularly for lower-paid roles).
- **Applicants will need to demonstrate that they have a job offer from an approved sponsor, that the job offer is at the required skill level (RQF 3 or above), and that they speak English.** This reflects the current system for the sponsorship of non-EU workers (with the exception of the Tier 2 ICT visa route, which does not require specific English language skills).
- **The Migration Advisory Committee (MAC) will maintain a shortage occupation list.** The purpose of the list will no longer be to determine which roles will be exempt from the resident labour market test (as this is being abolished), but rather to indicate which occupations in short supply should be allocated extra points to make up for offering a salary of less than £25,600 (subject to an overall minimum of £20,480). In light of this, the MAC has issued a [call for evidence](#) asking business organisations and employers for their views on which skills are currently in short supply across the UK labour market. The deadline for submissions is 24 June 2020.

- **In the longer term, a “broader unsponsored route within the points-based system to run alongside the employer-led system” will be introduced.** This is potentially one of the most significant developments, albeit there are no guarantees that it will be implemented. In line with the recommendations from the Migration Advisory Committee, the government has indicated that this route would “allow a smaller number of the most highly skilled workers to come to the UK without a job offer ... example characteristics for which points could be awarded include academic qualifications, age and relevant work experience.” This is reminiscent of the previous Tier 1 (General) visa category abolished in 2015 and, if it can be used by highly skilled workers rather than just exceptionally talented ones, it would have the benefit of reducing the cost and administrative burden for employers, while allowing applicants to switch roles or employers more easily. However, at the same time, the government has said it will not be introducing a route specifically for self-employed people. It says that they should make use of the Innovator or Global Talent visa routes, though the criteria for these are so prescriptive that, in reality, they will only be available to a very small number of people.
- **Other existing visa routes already open to non-EU citizens will be introduced for EU citizens, such as the current Tier 5 route for temporary workers** (which might include the Youth Mobility Scheme, although this currently only applies to a small number of nationalities).
- **New routes are also under consideration for scientists, graduates and NHS workers but very little detail is currently available.** A new Graduate Immigration route will apparently be available to international students who have completed a degree in the UK from summer 2021. This would enable international students to remain in the UK and work at any skill level for two years after they have completed their studies. If introduced, this would be a positive development for international students, UK universities and employers. The proposal is reminiscent of the previous Tier 1 (Post Study Work) visa category abolished in 2012.
- **EU citizens will be considered “non-visa” nationals, allowing them to visit the UK for up to six months without having to apply for a visa before travelling.** This would only apply to those coming to the UK for tourism or eligible under the UK business visitor rules, and not those coming here for substantive work or to fill a role.
- **The government had previously indicated a period of consultation: “a programme of engagement will begin in March 2020 to raise awareness of the new system, ensuring those affected by the changes are fully aware of what it means for them and understand how the system will operate. We will also work closely with stakeholders to understand their views on the implementation of the points-based system.”** Other than the recent [guidance](#) which offers barely more detail than the February 2020 policy paper, this consultation has not materialised.

- **Overall, those sectors heavily reliant on lower-paid and lower-skilled EU workers will be the worst affected by the proposals.** Businesses already using the current Tier 2 points-based system for non-EU workers may find the new system more accessible and easier to use, given the salary and skills threshold reductions and the abolition of the RLMT. The government has said it will seek to provide a “streamlined and simplified system,” but it has yet to provide any detail on what this means in practice. In the short to medium term, if nothing else, the significant cost and administrative burden of sponsorship is likely to be prohibitive for many sectors reliant on EU workers, and they will inevitably be forced to come up with alternative solutions to fill workforce shortages. Again, beyond the Home Secretary’s helpful statement that businesses “will need to adapt,” no guidance on this is available.

In the meantime, employers reliant on a material population of EU workers should:

- As far as possible, ensure that any new EU hire not already resident in the UK relocates to the UK before 31 December 2020, even if their role cannot start by that date.
- Carry out a review of their hard-to-fill roles based on skill level and salary to determine whether these may qualify for sponsorship under a more accessible Tier 2 system.
- Apply for a Tier 2 sponsor licence as soon as possible, if they do not already have one. As we approach the end of 2020, if demand for sponsor licences rises as expected, processing times (currently around four to six weeks) are likely to increase significantly.
- Account for the considerable extra cost and administrative burden of having to sponsor new EU hires and non-EU hires from 2021.
- Continue to support and communicate with their existing EU workforce about the need to apply under the EU Settlement Scheme for pre-settled or settled status (further guidance can be found in [our Brexit FAQs for EU and EFTA employees](#)). The deadline for applications is 30 June 2021, but given that we do not know how an already stretched Home Office will cope with demand over the next 18 months, it would be sensible not to put off applying until the last minute.

It is important to remember that the points-based system will not apply to EU workers already in the UK before 31 December 2020, who will be able to continue to reside and work in the UK (in any role) by obtaining status under the EU Settlement Scheme. Employers will still, therefore, be able to hire new EU workers with either pre-settled or settled status from January 2021, without having to consider the requirements of the new immigration system.

Our UK Business Immigration team can advise on all your immigration requirements, including sponsor licence applications. For further guidance, please contact [Annabel Mace](#), partner and head of UK Business Immigration, or [Supinder Sian](#), partner.