

Annabel Mace, partner in Squire Patton Boggs' Labour & Employment practice group assesses post-Brexit recruitment in the UK. This article first appeared in *The Global Recruiter* and is republished with kind permission.

Notwithstanding the disruption caused by the COVID-19 pandemic, the UK government remains committed to the introduction of a new points-based immigration system applying to new workers from the EU (excluding Ireland) as well non-EU workers with effect from January 2021. Whether this self-imposed deadline will be met remains to be seen given the new rules and procedures still to be finalised and put in place within the next few months. In the meantime, those accustomed to recruiting from outside the UK should prepare for the end of EU free movement and the likelihood that, from next year, a significantly greater pool of candidates will need sponsorship to be able to work in the UK. We've outlined the key practical points for global recruiters:

- This "new" immigration system will, in fact, be an adaptation of the current Tier 2 points-based system. This means an employer-led sponsorship process – EU (excluding Irish) candidates not already living in the UK by 31 December 2020, will need a job offer from a registered Tier 2 sponsor to be able to work in the UK.
- The procedural hurdles of the new system will be similar to those currently in place for non-EU candidates coming to work in the UK. However, the qualifying criteria under the new system means that it will generally be more accessible than the current Tier 2 system:
- The general minimum salary threshold for a work visa will be reduced from £30,000 to £25,600 although this 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 or equivalent and above). This will give a wider number of sectors (including retail, hospitality, construction, and health or social care) the ability to sponsor candidate in roles not previously considered sufficiently skilled for sponsorship. You can use the ONS Occupation Coding Tool to assess whether a job meets the required skill level.
- 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 to fill the role. 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 candidates. As the government has indicated that it intends to reduce overall levels of migration, its choice of wording leaves open the possibility that the cap could be re-introduced at any point.
- On a less positive note:
  - There will be no general low-skilled temporary work visa route. This will have a significant impact on businesses heavily reliant on lower-skilled or lower-paid EU workers, assuming the planned salary and skills threshold reductions do not go far enough to allow for the sponsorship of all or most types of worker in short supply.
  - The Immigration Skills Charge (£1,000 per year of the visa applied for) and the Immigration Health Surcharge (£624 per year) 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).
  - Candidates will need to prove that they speak English which, in some cases, will require completion of a prescribed language test. This could significantly slow down the recruitment process as appointments at approved language test centres are generally in very short supply.

Outside the new points-based system, there are some small immigration-related glimmers of hope for global recruiters:

- The UK government has said that, 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 for recruiters, albeit there are no guarantees that it will materialise. 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. If it can be used by highly skilled workers rather than just exceptionally talented ones, this is good news for recruiters as a wide range of candidates would be able to obtain this type of visa without needing a sponsor as well as allowing them to switch roles and employers without having to obtain a new visa.
- 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. The proposal is reminiscent of the previous Tier 1 (Post Study Work) visa category abolished in 2012.
- 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).

We expect further guidance on the new system to emerge during September – if it is supposed to apply to EU workers from January 2021, practically speaking, it needs to be open for applications from December at the latest. In the meantime, recruiters accustomed to placing a material population of EU candidates should bear in mind:

- The new system will not apply to EU candidates already living in the UK by 31 December 2020 (they will be eligible to apply for pre-settled or settled status under the EU Settlement Scheme). Recruiters will be able to place EU candidates with either pre-settled or settled status without having to consider the requirements of the new immigration system. Potential EU candidates not already living in the UK should be encouraged to relocate to the UK before 31 December 2020, even if their roles don't start until 2021.
- EU candidates already living in the UK by 31 December 2020 should be encouraged to apply under the EU Settlement Scheme for pre-settled or settled status. 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 12 months, it would be sensible not to put off applying until the last minute.
- Where appropriate, end-user clients who do not already have a Tier 2 sponsor licence should be encouraged to apply for one as soon as possible if they intend to make use of the new system. As we approach the end of 2020, if demand for sponsor licences rises as expected, processing times (currently around four weeks) are likely to increase significantly.

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