

The government has issued [updated guidance for employers](#) on the UK's points-based system, which will apply to new applicants from the EU, the EEA and Switzerland (excluding Ireland), as well as those from outside the EU, from January 2021. Unfortunately, the updated guidance does not tell us much more than we already knew from the July 2020 [policy statement](#) – employers are still waiting for the finer detail of the scheme in the form of comprehensive policy guidance and changes to the Immigration Rules. In the meantime, what do we know so far? What do the changes to the points-based system mean in practice and how should employers prepare? The key points (with our commentary in each case) are:

- **The government's [Immigration Bill](#) is currently at the report stage in the House of Lords and is expected to be granted royal assent in the coming weeks. It repeals EU free movement and paves the way for a new framework for an employer-led points-based system.** Whilst the policy statement outlines the key principles, the Immigration Bill itself does not contain any detail relating to the future immigration system. This will be provided in the Immigration Rules and new policy guidance. It is not clear when this guidance will be published, but it is needed urgently for affected employers to be able to understand the specific requirements of the new system and to prepare and submit applications for non-British/Irish job applicants in advance of 31 December 2020, when EU free movement will come to an end.
- **This "new" immigration system will actually be an adaptation of the current Tier 2 points-based system.** The guidance states: "If you're not already a licensed sponsor and you think you'll want to sponsor migrants through the skilled worker route from January 2021, you should apply now." Employers who already hold a Tier 2 (General) visa sponsor licence will automatically be granted a new Skilled Worker licence when the new system launches. Those who already hold a Tier 2 (Intra-Company Transfer) sponsor licence will automatically be granted a new Intra-Company Transfer licence.
- **The minimum salary threshold under the new Skilled Worker route will be reduced from £30,000 to £25,600.** This threshold will, however, 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 under the new Skilled Worker route 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.
- **Applicants under the new Skilled Worker route 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 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 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 complex rules relating to switching from one immigration route to another will be relaxed.** Most applicants (other than visitors and seasonal workers) will be able to switch from one immigration route to another without having to leave the UK or without being affected by the current 12-month cooling-off period. We are told by the Home Office that this change will also apply to those currently in the UK with a Tier 2 (ICT) visa, enabling them to switch into the new Skilled Worker route and potentially qualify for indefinite leave to remain (settlement) after five years' continuous residence in the UK (running from the date on which the new visa was granted).

- **The cap on the number of Tier 2 (General) visas granted each year (currently set at 20,700) will be “suspended”.** In turn, we understand that this means that although sponsors will still need to request specific Certificates of Sponsorship for those applying from outside the UK, these allocations will be granted on a daily basis rather than on a monthly basis. Under the current system, the requirement for sponsors to request a restricted Certificate of Sponsorship on the fifth of the month can add an extra four weeks to processing times.
- **The Intra-Company Transfer route will remain largely unchanged.** Applicants will require 12 months’ experience working for a business overseas linked by ownership to its UK sponsor (unless their salary will be more than £73,900), their role must be skilled to RQF 6 or above and they must be paid at least £41,500 or the “going rate” for the job, whichever is higher. Applicants can be assigned to work in the UK multiple times, but they will not be able to stay in the UK for more than five years in any six-year period. In a departure from the current rules, applicants paid more than £73,900 (previously £120,000) can stay in the UK for up to nine years in any 10-year period.
- **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). However, those eligible for the new [Health and Care visa](#) will not be required to pay the Immigration Health Surcharge.
- **The Migration Advisory Committee (MAC) will maintain a shortage occupation list.** The list will no longer be used 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). The MAC has just published its [review of the shortage occupation list](#) recommending the addition of a number of occupations, including senior care workers, nursing assistants, butchers, bricklayers and welders.
- **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, EEA and Swiss workers, assuming the salary and skills threshold reductions mentioned above do not go far enough to allow for the sponsorship of all or most types of worker in short supply.
- **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 MAC, 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, EEA and Swiss 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 and graduates, 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, EEA and Swiss 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.

- **Overall, those sectors heavily reliant on lower-paid and lower-skilled EU, EEA and Swiss workers will be the worst affected by the new system.** 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, EEA and Swiss workers, and they will inevitably be forced to come up with alternative solutions to fill workforce shortages.

- **In the meantime, employers reliant on a material population of EU, EEA and Swiss workers should:**

- As far as possible, ensure that any new EU, EEA or Swiss 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 points-based system.
- Apply for a 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 non-British hires from 2021.
- Continue to support and communicate with their existing EU, EEA and Swiss 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 Settlement Scheme FAQs](#)). 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 new points-based system will not apply to EU, EEA and Swiss workers already in the UK before 31 December 2020 – they will be able to continue to reside and work in the UK (in any role) by obtaining status under the EU Settlement Scheme. Employers should not require existing EU, EEA and Swiss employees to prove that they have either pre-settled or settled status.

In addition, the Home Office’s [current guidance](#) indicates that from 1 January 2021, employers must continue to check applicants’ right to work in the same way as they do now until 30 June 2021 and that they cannot require EU, EEA and Swiss citizens to show their status under the EU Settlement Scheme until after 30 June 2021. As the new points-based system is intended to apply to EU, EEA and Swiss citizens relocating to the UK from January 2021, this raises the question of whether and, if so, how employers will be required to check that such applicants arrived in the UK before or after the cut-off date of 31 December 2020. There is currently no formal guidance on this point, but, informally, the Home Office has said that in the case of EU, EEA and Swiss citizens starting work on or before 30 June 2021, employers will not be required to determine when they arrived in the UK, nor will they be penalised for employing anyone not eligible under the EU Settlement Scheme, providing proper right to work checks are carried out on their EU, EEA or Swiss passports or national identity cards. In our view, however, an employer who is actively aware that an EU, EEA and Swiss citizens starting work on or after 1 January 2021 is not eligible under the EU Settlement Scheme and has no other right to work in the UK would be at risk of a civil penalty if it employed them without obtaining a visa under the new points-based system. The Home Office has indicated that more detailed guidance will be issued in relation to this issue in due course and we will continue to update you as matters develop.

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.