

The UK's new points-based immigration system opened for applications from 1 December 2020. Whilst existing sponsor licence holders have not been required to take any action in relation to their licences or their employees sponsored before 1 December 2020, we have summarised the key changes affecting new applicants as follows:

- **This “new” immigration system is actually an adaptation of Tier 2 of the previous points-based system.** The new Skilled Worker route replaces Tier 2 (General) route and can lead to indefinite leave to remain (settlement). The new Intra-Company route (comprising Intra-Company Transfer and Intra-Company Graduate Trainee) replaces Tier 2 (Intra-Company Transfer) and will not lead to settlement.
- **The general salary threshold under the new Skilled Worker route has been reduced from £30,000 to £25,600.** This threshold is, however, subject to a number of exceptions in the form of “tradeable” points:
  - 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 points are granted for a PhD in a STEM subject).
  - There will continue to be different arrangements for a small number of occupations (such as those in the health or education sectors) 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 project manager would need to be paid at least £40,000.
- **The skills threshold under the new Skilled Worker route has been reduced from RQF 6 (graduate level and above) to RQF 3 (A level and equivalent or above).** This gives 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 match a job to the nearest occupation code. They will then need to review [Appendix Skilled Occupations](#) to check that the job is sufficiently skilled to qualify for sponsorship and confirm the going rate for the role. Applicants will not need to hold an equivalent formal qualification; it is the skill level of the job they will be doing that determines whether the threshold is met.
- Applicants under the new Skilled Worker route must demonstrate that they have a job offer from an approved sponsor, that the role is at the required skill level and meets the general salary threshold or the going rate for the job (whichever is higher), and that they meet the [English language requirement](#).
- **The resident labour market test (RLMT) which applied to most Tier 2 (General) visas has been abolished.** This means that roles no longer need to be advertised in a prescribed manner to show that no qualified settled worker is available. This has opened up the sponsorship system to a number of employers previously unable (or unwilling) to prove that their preferred candidate was uniquely qualified for the role. However, sponsors are still subject to a strict requirement only to assign a Certificate of Sponsorship (“CoS”) where there is a genuine vacancy. Examples of vacancies that are not considered to be genuine include, but are not limited to, a role that does not actually exist; one that contains an exaggerated or incorrect job description to meet the minimum skills threshold or is otherwise a sham; or one that was created primarily to enable an overseas national to come to, or stay in, the UK.
- **The cap on the number of visas granted each year (previously set at 20,700) for most Tier 2 (General) visas has been “suspended”.** Under the Skilled Worker route, there are two types of CoS that can be assigned, known as “defined” and “undefined” CoS. Where the employee is applying from outside of the UK, they will require a defined CoS, which must be requested by the sponsor on a case-by-case basis via the Sponsor Management System (“SMS”). The Home Office is generally able to allocate defined CoS to the sponsor within one or two working days. Where the worker is applying from within the UK (e.g. by way of a change of employment or extension application), the sponsor must assign an undefined CoS from its annual allocation. Assigning the wrong type of CoS can lead to an application being refused and possible revocation of the sponsor licence itself.
- **When assigning a CoS, a sponsor is required to provide the Pay As You Earn (PAYE) scheme reference number under which the worker will be paid.** Where the worker will not be paid through PAYE, the sponsor will must provide an explanation on the CoS.

- **The 12-month “cooling-off period” and six-year maximum length of stay for Tier 2 (General) visas have been removed.** Under Tier 2 (General), these rules required those applying for entry clearance or switching into the route to have not been in the UK with a Tier 2 (General) visa during the past 12 months, and to spend a maximum of six years in that route. The Skilled Worker route does not restrict when applications can be made or restrict the length of stay. This also means that those currently in the UK with a Tier 2 (ICT) visa may switch into the 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 Skilled Worker visa is granted).
- **The remaining complex rules relating to switching have been relaxed.** Most applicants can switch from one immigration route to another without having to leave the UK and without being affected by a cooling-off period. Switching will continue to be prohibited for those in the UK under the category of visitor, short-term student, parent of a child student, seasonal worker, domestic worker or a person with leave outside the Immigration Rules.
- **The Intra-Company route is largely unchanged.** Applicants 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 previous 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 apply to visa applications as before.** 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). In September 2020, the MAC published its [review](#) of the shortage occupation list recommending the addition of a number of occupations. The following roles are being added to the existing [Shortage Occupation List](#) with effect from 6 April 2021: pharmacists, health professionals, physiotherapists, modern foreign language teachers, laboratory technicians, nursing auxiliaries and assistants and senior care workers.
- **The £35,800 salary threshold for indefinite leave to remain (settlement) applications has been removed.** Instead, the sponsored employee must have a salary that equals or exceeds £25,600 per year or the going rate for the occupation (whichever is higher).
- **There is no general low-skilled or temporary work route.** This will have a significant impact on businesses heavily reliant on lower-skilled or lower-paid EEA 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, we are told that a “broader un-sponsored route within the points-based system to run alongside the employer-led system” will be introduced.** 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 previously only open to non-EEA citizens are now open to EEA nationals, such as the T5 route for Temporary Workers including those who may seek to come to the UK under the categories of creative and sporting; charity workers; religious workers; seasonal workers or international agreement.
- **From the summer of 2021, a new [Graduate Route](#) will be available to international students who have a valid Tier 4 or Student visa at the time of application and who have completed a degree at undergraduate level or above at a Higher Education Provider with a track record of compliance.** Successful applicants to this route will be able to stay and work, or look for work, in the UK at any skill level for a maximum period of two years.

- **EEA nationals are 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 only applies 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 who should apply for sponsorship under the points-based system.

- **Overall, those sectors heavily reliant on lower-paid and lower-skilled EEA workers will be the worst affected by the new system.**

Businesses previously used to using the Tier 2 points-based system for non-EEA 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 EEA 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 EEA workers should:**

- 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.
- Account for the considerable extra cost and administrative burden of having to sponsor non-British hires who do not already have the right to work in the UK.
- Continue to support and communicate with their existing EEA 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 coming 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 does not apply to EEA workers already resident 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.

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.

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