

Tier 1 & Tier 2

Formal Announcement of Changes

CMS Cameron McKenna

Over the last few months, the CMS Cameron McKenna immigration team has produced updates on the proposed changes to PBS through our involvement in policy development with the UKBA.

- [Migration Advisory Committee Report – Tier 1: Recommendations](#)
- [Migration Advisory Committee Report – Tier 2 and Dependents: Recommendations](#)
- [Migration Advisory Committee Report – Tier 2 and Dependents: Government Response](#)
- [Timetable for Implementation of Changes to the Points Based System](#)

The UKBA published details of the policy changes on 18 March. The full text can be found in the [Statement of Policy](#) with detailed guidance to follow on 6 April.

This Law Now will highlight the key changes for employers and Sponsors with effect from 6 April.

Tier 1

A new points table will apply

Highest qualification (or equivalent)		Previous earnings		Age		UK experience	
Bachelor degree	30	Under £25,000	0	Over 40	0	Qualification obtained in the UK (initial applications only) £25,000 or higher previous earnings in the UK	5
	35	£25,000 - £29,999	5	35 to 29	5		
Masters degree	45	£30,000 - £34,999	15	30 to 34	10		
		£35,000 - £39,000	20	29 or under	20		
PhD		£40,000 - £49,999	25	(Age points will be modified accordingly for extension applications)			
		£50,000 – £54,999	30				
		£55,000 - £64,999	35				
		£65,000 - £74,999	40				
		£75,000 - £149,999	45				
		£150,000 or above	75				

Pass mark = 75 points (plus 10 for English language and 10 for Maintenance)

Key points to note

Applicants may now qualify with a minimum of Bachelors degree and appropriate earnings or on the basis of earnings alone in excess of £150,000. This makes the category a useful alternative to the Tier 2 route.

Tier 1 (General) applicants will be granted leave to remain for an initial period of 2 years and then extend for 3 years (as opposed to the current 3+2).

Tier 2

A new points table will apply – as per Tier 1 points table

Sponsorship		Highest qualification (or equivalent)		Prospective earnings	
Job offer in a shortage occupation	50	No qualifications	0	Below £20,000	0
		GCE A-level	5	£20,000 - £23,999	10
Job offer which passes Resident Labour market Test	30	Bachelor degree	10	£24,000 - £27,999	15
		Masters degree or PhD	15	£28,000 - £31,999	20
Switching from a post-study work category	30			£32,000 or above	25
Intra-company transfer	25				

Pass mark = 50 points (plus 10 for English language and 10 for Maintenance)

Key points to note

Minimum earnings threshold now set at £20,000 (although market rates detailed in the Standard Occupation Codes (“SoC Codes”) must be met).

More points (30) awarded for Tier 2 (General) with Resident Labour Market Test (“RLMT”) than for a Tier 2 (ICT) (25).

To mitigate the impact of change, Tier 2 extensions will be awarded 50 points **provided** the employee continues to work in the same role for the same employer and salary is still at market rate.

Changes of Employment

A Sponsor will **not** need to submit a new application for an employee if he changes jobs within the same Sponsor organisation and the new job falls within the same SoC Code unless;

- the salary falls below the level specified on the CoS (other than where it is a result of company-wide reductions defined as acceptable in the Sponsor Guidance or due to maternity or adoption leave) or
- the employee is changing within a SoC code from a job listed on the shortage occupation list to a no shortage occupation role.
- If the change of employment does not meet these conditions, a fresh Tier 2 application will have to be made for an employee

NB: The Sponsor will have a continuing obligation to make a notification on any changes in salary other than bonuses or annual increments.

Practical Examples

Example 1

In December 2008, an employee transfers from the overseas office of an accountancy firm to the London office to work as an accountant under SoC code 2421.

On 7 April 2010, he is offered up a role as an HR Manager for the same firm under SoC code.

This is a change of SoC code – a new Tier 2 application must be made for the employee. As he transferred as a Tier 2 (ICT) a fresh application can be made as a Tier 2 (ICT). No resident labour market test is required.

Example 2

Employee recruited to London office of accountancy firm to work as an accountant as Tier 2 (General) under Soc code 2421 in December 2008

On 7 April 2010 he is offered a HR Manager role as Management Consultant under SoC Code 1135.

Steps for Sponsor

Change of SoC code – new application required

A RLMT will be required as he has not worked outside the UK for the Sponsor for the 12 months immediately preceding the application and did not transfer to the UK as a Tier 2 (ICT) migrant in December 2008.

NB: Sponsor/employee may consider a Tier 1 application based on academic qualifications earnings etc.

Introduction of new sub categories for Graduates and Skills Transfer

As our Law-Now of 17 December highlighted, the UKBA has been working on practical solutions to address the gaps in the PBS.

Please see the summary tables for each category on page 2 of the [Statement of Policy](#). From 6 April there will be 3 sub-categories of Tier 2 (ICT).

1 Established staff

- This is the “traditional” Tier 2 (ICT) route for staff required to transfer to the UK because of their company specific knowledge.

However there are 2 critical changes:

- 12 months experience is required with the organisation overseas (not 6 months as currently)
- Time spent in the UK will **not** count towards the qualifying period for settlement.

NB: This will apply to assignees who apply for Entry Clearance on or after 6 April 2010 irrespective of whether their CoS was issued before this date.

Example

- ICT CoS issued on 1 March on basis of 6 months experience
- Assignee applies for Entry Clearance and pays his fee on 10 April (this is the date of application)
- Application will be refused as he does not meet the requirement 12 months prior experience.

2 Graduate Trainees

- Only applicable to specific graduate level occupations as defined in Appendix A of [Statement of Policy](#)
- Limited to 5 applications per Sponsor per year.

3 Skills Transfer

- Maximum period of 6 months in the UK.
- Limited to graduate occupations as defined in Appendix A of Statement of Policy.

NB: The scheme under consideration for student interns is not covered in the current release of information and we anticipate that further information will follow shortly after 6 April.

And next...

As if this were not enough to absorb, further changes are planned in relation to;

- Tier 1 earnings multipliers.
- The introduction of Highly Trusted Sponsors status for specific Sponsors.
- Investigating the certification of the RLMT at least for employers identified as high risk i.e. checking the advertising and responses received.

Conclusion

There are no “surprises” in the Statement of Policy. However, it is essential that Sponsors and their migrant workers are mindful of the 6 April cut off date and ensure

- Any ICTs which may be impacted by the need for 12 months experience are identified and actioned now
- Any Tier 2 (ICT) migrants who have been issued with a CoS, who may be affected by the new 12 month rule/no route to settlement and who have not filed for entry clearance must do so before 5 April 2010.
- Employers should familiarise themselves with the guidance on changes to employment.

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