

IMMIGRATION UPDATE – THE NEW POINTS BASED SYSTEM.

On Friday 29th February, 2008 a new Australian – style points based system was introduced by the UK government which changed the entire Immigration System to one based on points. The system is intended to be more consistent, straightforward and transparent. The 2 stage process previously required for Work Permits and HSMP applications is now replaced by a single application process. It is intended that by using a points based system there will be a more objective and transparent decision making process.

Under the new PBS, the crucial application will always be made by the individual seeking entry or Leave to Remain under one of the 5 points based application “Tiers”.

The PBS replaces more than 80 previous routes into the UK for the purpose of work and study. It has been split into the following Tiers:-

Tier 1 *Highly-skilled individuals, to contribute to growth and productivity.*

Applicants under this category do not require a job offer or sponsorship from a UK organisation. The phased implementation of this Tier began on the 29th February, 2008 with the introduction of the Tier 1 ‘General’ sub category, replacing the HSMP application for individuals applying from within the UK. The whole of Tier 1 is now operational and rolled out worldwide.

Tier 2 *Skilled workers with a job offer to fill gaps in the UK labour force.*

Applications made under this Tier will require sponsorship from the employing organisation. The phased implementation of this Tier began on 29th February, 2008 with the launch of the sponsor’s application procedure for UK employers. The Tier will be fully operational as from the 27th of November, 2008 and will replace the previous Work Permit system.

Under transitional provisions if a Work Permit has been granted the Work Permit holder can apply for entry to the UK for Entry Clearance after 27th October 2008 without being caught up in the PBS. If a candidate has a Work Permit for 6 months or less and is a non-Visa national and requires leave to enter the UK after leaving the UK during the currency of that permit he/she will need to make a fresh application at Port for Leave to Enter.

For any further information about the transitional provisions on Tiers 2 and 5, please consult us.

Tier 3 *Low skilled workers to fill specific temporary labour shortages.*

Applications under this Tier will also need to be sponsored by employers. This Tier is at present on hold until further notice in view of the influx of persons from within the Greater European Economic Community and may be activated when relevant temporary labour shortages are identified.

Tier 4 *Students.* Applications made under this Tier will need to be sponsored by the educational institution through a certificate of sponsorship.

Tier 5 *Youth mobility and temporary workers.* People coming to the UK to satisfy, in the main, non-economic objectives.

Most applications seeking Entry to the UK under the PBS will require a certificate of sponsorship. This will need to have been issued to them by their potential employers, or educational institution in the UK. Applicants under Tier 1 will not require a certificate of sponsorship as they will be able to apply based purely on their own attributes and achievements.

Before being able to issue certificates of sponsorship, employers and educational institutions will need to obtain and maintain a place on the National Sponsors Register. This will involve making a fairly involved application, supported by business related documents and agreeing to what is effectively a code of practice, including a number of responsibilities and obligations, such as reporting, record keeping and compliance related activities. There will also be specific additional duties associated with each Tier under which the organisation wishes to sponsor migrants. In order to maintain their position on the register they will need to comply with all of these responsibilities.

Missionaries, members of religious orders and other religious workers in non – pastoral roles that do not involve preaching to a congregation will qualify as temporary workers under Tier 5 – religious workers, and voluntary workers taking part in temporary work will qualify under Tier 5 charity workers scheme, Au Pairs and Gap Year Students and Japan Youth Exchange Schemes will qualify under Tier 5 Youth Mobility Scheme. Au pairs will qualify under Tier 5 Youth Mobility Scheme.

UK Ancestry Visas will be kept. The Government announced in its response to the Path to Citizenship Consultation, that it would retain the UK Ancestry Visa outside the points based system. The previous category of retired persons of independent means has been abolished. Further the age of marriage has been raised from 18 to 21 with respect to both the foreign and UK resident spouse/ partner

Some Home Office policies such as DP3/96 – Policy on Marriage, have been revoked.

There are also a number of other categories that previously stood on their own but now will have to be subsumed into one of the 5 Tiers as from 27th November 2008. The new immigration rules HC1113 (in operation as from 25th and 27th November 2008), abolish amongst other categories, the working holiday and the training and work experience visas and also the student internship scheme. Domestic workers will not be able to change employers in-country. The previous working holiday maker scheme under the Immigration Rules HC395 as amended is replaced by a youth mobility scheme that covers only 4 countries: Australia, Canada, Japan and New Zealand.