

BREXIT: The 'new' points – based system

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Introduction

The United Kingdom (UK) officially left the European Union (EU) on 31 January 2020, and in doing so entered a withdrawal transition period where freedom of movement is still permitted as the UK continues to be a part of the common market. This transition period officially ends on 31 December 2020 and as of 1 January 2021, free movement will end with a new points-based immigration system ('PBS') taking its place.

EU citizens

The new PBS will not apply to EU citizens (including EEA and Swiss citizens) who began their residence in the UK before 31 December 2020 and who submitted an application under the EU Settlement Scheme ('EUSS') before 30 June 2021, resulting in being granted with pre-settled or settled status.

Settled status is given to those EU citizens who have lived in the UK for a continuous 5 year period, giving them the right to reside in the UK indefinitely. Pre-settled status is granted to those EU citizens who have not yet acquired 5 years' continuous residence, and is valid for 5 years, during which time they are permitted to apply for settled status when they have reached the 5 year mark.

Employers should ensure that their EU employees take advantage of the EUSS whilst it is still available. Providing support for their EU staff to apply for status under the Scheme will be significantly cheaper, quicker, and less tedious than sponsoring them under the new PBS.

Once an EU citizen has held settled status for at least 12 months, he/she is eligible to apply to naturalise as a British citizen. If an EU citizen is married to a British citizen, he/she is eligible to apply to naturalise immediately after being granted with settled status.

Employers who already hold a sponsor licence

Existing Tier 2 (General) and Tier 2 (Intra-Company Transfer) sponsors will automatically be granted with a new Skilled Worker licence or Intra-Company Transfer licence, with an expiry date consistent with their sponsor licence under the current system, and will receive an appropriate allocation of Certificates of Sponsorship ('CoS').

Existing sponsors are currently prohibited from assigning a CoS to a migrant worker for jobs at RQF levels 3 to 5, unless an exception applies and migrants sponsored to undertake jobs at RQF levels 3 to 5 are not permitted to apply for entry clearance / leave to remain until the new PBS comes into effect. Please note that the current list of RQF level 3 to 5 jobs may change before the new PBS comes into effect.

The Home Office has advised that visa applications under the new PBS will be accepted from Autumn 2020, but have yet to provide a specific date.

Employers who do not currently hold a sponsor licence

It is advisable for employers who do not currently have a sponsor licence, to apply for one sooner rather than later. There is no downside to submitting a sponsor licence application under the current PBS (given that existing sponsors will automatically be granted with a new licence under the new system, as explained above), and it is in fact being encouraged by the Home Office to do so, as they predict there being a backlog of sponsor licence applications once the new PBS comes into force in January 2021.

Skilled Workers

Under the new system, an applicant must pass UK criminal background checks and score the requisite number of “mandatory” points and “tradeable” points.

“Mandatory” points

In order to earn the required 50 “mandatory” points under the Skilled Worker route, an applicant must satisfy the following criteria:

1. The applicant must have a job offer from a licensed Sponsor;
2. The job must be at or above the minimum skill level of RQF3 or equivalent (A-level or equivalent qualification); it is the skill level of the job which is important as opposed to the applicant holding a formal qualification; and
3. The applicant must speak English to an acceptable standard (i.e. level B1 CEFR).

“Tradeable” points

In addition to the 50 “mandatory” points, an applicant must also earn an additional 20 “tradeable” points through a combination of points for their salary, a job offer in a shortage occupation or a relevant PhD.

Salary

The 20 additional points are automatically earned if an applicant is paid the higher of the general salary threshold (£25,600) or the “going rate” for their particular job. If an applicant is paid less than £25,600 or the “going rate”, it is still possible to earn the requisite extra 20 points (through a job offer in a specific shortage occupation or by holding a PhD relevant to the job) so long as their annual salary is no less than £20,480.

Resident Labour Market Test

In all occupations, the salary requirement for new entrants will be 30% lower than the rate for experienced workers, however the minimum annual salary of £20,480 must always be paid.

Resident Labour Market Test

Under the new PBS, there will be no requirement for employers to undertake a Resident Labour Market Test (‘RLMT’). The scrapping of the RLMT will remove at least 4 weeks from the overall process of sponsoring skilled workers. It is important to note that sponsors must still be seeking to fill a genuine vacancy which meets the skill and salary thresholds of the new route.

Tier 2 (General) visa cap

The Home Office will be suspending the current cap on Tier 2 (General) visas, meaning there will be no more limit on the numbers of skilled workers who can come to the UK.

English language requirement

The English language requirement will remain for skilled workers under the new PBS. The list of majority English speaking countries will extend to include Ireland and Malta, meaning that migrant workers who are neither British nor Irish and who have studied at Irish / Maltese universities can rely on their qualifications to meet the requirement.

Switching

Under the new PBS, most migrant workers will be allowed to apply to switch from one immigration route to another without having to leave the UK to apply, with the exception of those on short-term routes (i.e. visitors and seasonal workers).

Highly Skilled Workers

Further details of the immigration route for highly skilled workers will be revealed in due course, however it is the Home Office’s current intention to create an unsponsored route to run alongside the employer-led PBS, thereby permitting the most highly skilled workers to migrate to the UK without a job offer.

Unlike the Skilled Worker route, there will be a cap on the number of highly skilled migrant workers allowed to apply for leave in the UK.

The Highly Skilled Worker route will not yet be available in January 2021.

For further information as to how we can help please contact our Immigration team who would be happy to advise, alternatively you can call +44 20 7597 6364 or email enquiries.uk@withersworldwide.com.

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