

UK immigration law

News and updates

Tier 1

Investors

In addition to continuing to qualify for indefinite leave to remain (“ILR”) after 5 years if you have invested £1m in the UK, under the recent changes to the immigration rules, investors can now qualify for ILR as follows:

- Those who invest £5m will qualify for ILR after 3 years; and
- Those who invest £10m will qualify for ILR after 2 years.

Under the new changes investors must invest 75% of their investment in UK government bonds or shares in active trading companies (but excluding property investment companies). They will also be permitted to be absent from the UK for 6 months in each qualifying year without falling foul of the rules relating to absences from the UK when applying for ILR.

Entrepreneurs

Entrepreneurs will continue to qualify for entry to the UK and ILR after 5 years if they have access to £200,000 for establishing or taking over a business in the UK. However, under the recent changes introduced entrepreneurs who have access to £50,000 will also qualify for entry if the funding is provided by either:

- Registered venture capitalists; or
- Registered UK entrepreneurial seed funding; or
- A UK Government Department.

Up to two business partners will be able to use the route if they have equal access to the funding.

Under the new changes entrepreneurs can now qualify for ILR after 3 years if they:

- Create ten full-time jobs; or
- Are able to generate £5m of income from business activity within the three year period.

Prospective entrepreneurs

A new visitor category has been introduced for those individuals wishing to come to the UK to secure funding in order to remain in the UK under the Entrepreneur category. Individuals who come to the UK as prospective entrepreneurs can switch to the Entrepreneur category in the UK so long as they are able to meet the requirements.

Exceptional talent

A new category has been created to attract individuals who have won ‘international recognition’ in science and cultural fields. Points will be assessed by competent designated bodies in the arts and science and applicants will need to be endorsed by one of these bodies.

Individuals succeeding under this category will be entry for a period of 3 years initially. Before the expiry of this period, they may apply for an extension of a further 2 years. Once they have completed a total of 5 years they will be able to apply for ILR.

There will be a limit of 1000 grants of entry clearance for the first year. This will be split into 700 for science and 300 for the arts.

General

This category is now closed to new applicants. There are, however, transitional arrangements in place which enable those individuals with existing leave under this category (or its predecessors) to extend their leave. Individuals will be able to extend their stay so long as they are able to meet the same point requirements as in their previous application.

Post-study worker

This category will close in April 2012.

Tier 2

On 6 April 2011 the minimum skill threshold under Tier 2 was raised to graduate level. Certificates of Sponsorship (CoS) assigned to individuals coming to work in the UK after this date must therefore confirm that the job is at graduate level and that the applicant will be paid the appropriate salary as outlined by the UKBA.

In order to qualify you must now score a total of 50 points for Attributes, 10 points for Maintenance [and 10 points for English language if applying under Tier 2 General]. Points are awarded based on the following:

- Certificate of Sponsorship (30 points)
- Appropriate Salary (20 points)
- Maintenance (10 points)
- English Language (10 points) - for Tier 2 General applicants only

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Certificates of sponsorship

From 6 April 2011, there will be two types of CoS: restricted and unrestricted.

- 'Restricted' CoS apply Tier 2 General (Skilled Workers) and are required to be assigned within 3 months of the UKBA allocating the Certificate of Sponsorship to the employer.
- The UKBA will assess applications for 'restricted' CoS once a month.
- 'Unrestricted' CoS apply to all other Tier 2 categories and those Tier 2 General applicants seeking to fill a vacancy attracting a salary of £150,000 or more. These can be allocated without first applying to the UKBA for permission. However, if a sponsor is found to be issuing unrestricted CoS to Tier 2 migrants within the restricted category, the UKBA may consider withdrawing their licence.
- Revised guidance has been published for employers wishing to sponsor migrants from overseas which explains the rules in relation to obtaining restricted and/or unrestricted certificates, how to apply and how the UKBA will consider applications.

Intra-company transfers

The Graduate Trainee and Skills transfer will continue to exist for employees transferring to a branch in the UK. However, the Established Staff category has been replaced by the following two sub-categories:

- Long-term staff – the minimum salary under this category must be at least £40,000 and the appropriate rate for the job. Individuals will be granted initial leave for a maximum of 3 years, with the possibility of staying up to 5 years. After the expiry of the 5 year period, the individual must return overseas and spend at least 12 months there before coming back to the UK under this category.

- Short-term staff – the minimum salary under this category must be at least £24,000 and the appropriate rate for the job. Individuals will be granted initial leave for a maximum of 12 months. After the expiry of the 12 month period, the individual must return overseas and spend at least 12 months there before coming back to the UK under this category.

In order to score 20 points for the 'appropriate salary' under the Graduate Trainee and Skills Transfer categories, the minimum salary must be at least £24,000.

Skilled worker

Summary of changes from 6 April 2011:

- The shortage occupation list has been revised and came into effect from 6 April 2011. From this date there will be no shortage occupations below graduate level.
- The minimum English requirement has been raised to B1 on the CEFR scale.
- Applicants will no longer be required to provide proof of their qualifications due to the change in the way that points are awarded.
- All employees will be required to receive salary payments into their own personal bank accounts. This will apply across the board and include new and existing sponsored migrants.

Limit on amount of Certificates of Sponsorship

The Skilled Worker category has now been capped at 20,700 up until April 2012. The limit will be split monthly with a maximum of 4200 CoS available in April 2011 and 1500 for each month thereafter.

If the monthly limit is unused by the end of the month, the surplus will roll over into the next month. If a particular month is oversubscribed, individuals will be ranked according to jobs on the shortage occupation, scarcity of skills (scientists, academics and researchers will be afforded an additional premium) and those with a higher salary.

The cap will not apply to those being sponsored on a salary of £150,000 or more.

Applications will not be rolled over. Therefore if an individual is unsuccessful in one month, their employer will be required to submit a new request the following month.

Tier 4

Summary of changes from 21 April 2011

- New sponsors not already on the Tier 4 register of sponsors will be required to meet the new educational accreditation criteria in order to be issued a Tier 4 licence.
- Existing sponsors will be subject to an interim limit on the number of students they can sponsor unless they hold Highly Trusted Sponsor status; and meet the new accreditation criteria.
- Existing sponsors that do not already meet the new accreditation criteria will be required to apply to the relevant inspection body (date to be announced), in order to be able to continue to sponsor new students.
- B rated sponsors will only be able to assign Confirmation of Acceptance to for Studies (CAS) to those students seeking to complete a course and not to new students.

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- Students will have to show proficiency at B1 Level on the CEFR scale if studying at NQF levels 3 to 5.
- Students will have to show proficiency at B2 Level (upper intermediate) on the CEFR scale if studying at NQF level 6 and above. However, there is an exception for higher education institutions who can undertake their own assessment.
- UK Border Agency staff will have the power to refuse entry to students who cannot speak English without an interpreter.

Summary of changes from July 2011

- Where students are starting a new course which is not a step up, sponsors will have to vouch for the academic progression of the student.
- Students will have to declare at the visa application stage that they hold and will continue to hold the required maintenance funds to support themselves and pay for their course.
- Only students attending universities and publically funded further education colleges will be able to work.
- Only postgraduate students at universities or government-sponsored students studying for 12 months or more will be allowed to bring dependants. These dependants will be able to work.

Summary of changes from April 2012

- All education providers wishing to sponsor students must be classed as a "highly trusted sponsor" and accredited by statutory education inspection bodies by the end of 2012.
- Courses offering work placements will have to have a study:work ratio of 66:33 except at higher education institutions.
- Higher level courses, i.e. those at or above degree level (which previously did not have a limit), will be limited to 5 years with exceptions for some courses and PhD students.
- The length of a tier 4 visa will also be reduced for some courses, whilst lower-level courses will remain limited to 3 years.
- The Home Secretary is proposing to create a new entrepreneur route for bright and innovative students who have business ideas 'Innovative Student Entrepreneurs'.

Settlement / indefinite leave to remain / permanent residence

The following changes will affect individuals applying for settlement:

- Applicants will now be required to be clear of any unspent convictions.
- The income criteria will be extended to those on a temporary route.
- All applicants will be required to pass the 'Life in the UK test' prior to obtaining settlement.

For detailed advice please contact Laya by telephone on 020 7105 6178 or 020 7357 9494 or e-mail: Laya Falsafi lf@lzwlaw.co.uk