

Immigration

The new points system

The biggest shake up of the immigration system in 45 years got underway on 29th February 2008 with the introduction of a new points based system to ensure only the best can work in Britain. The overall objective of the points based system is to make it easier to control UK Immigration and tackle abuse, while also helping to identify and attract the most talented workers. Solicitors should be consulted early on in the process and you are advised to seek professional legal advice.

Underpinning the new immigration system is a 5 tier framework. This will help people understand how the system works and direct applicants to the category that is most appropriate for them. The tiers are:

Tier 1

Highly skilled, entrepreneurs, investors and post-study workers;

Tier 2

Skilled workers with a job offer to fill gaps in the United Kingdom labour force;

Tier 3

Limited numbers of low skilled workers needed to fill temporary labour shortages;

Tier 4

Students;

Tier 5

Youth mobility and temporary workers; people allowed to work in the United Kingdom for a limited period of time to satisfy primarily non-economic objectives.

You can only apply for Tier 1 (General) – highly skilled worker now if you are:

- In the United Kingdom and want to make an initial application for Tier 1 (General) – highly skilled worker category;
- Already in the United Kingdom under Tier 1 (General) – highly skilled worker and want to extend your permission to stay within your existing category;
- Already in the United Kingdom under the Highly Skilled Migrant Programme, want to extend your permission to stay and are eligible to switch into Tier 1.

From 1st April 2008 you can apply for permission to enter (known as 'entry clearance') if you are in India and all other countries should be able to apply by the end of the second quarter 2008. The remaining sub-categories of Tier 1 (entrepreneurs, investors and post-study workers) are expected to be introduced by the end of the second quarter of 2008.

Switching into this category

From 29th February 2008, only migrants with Leave to Remain in the UK in one of the following categories will be permitted to switch status within the UK to Tier 1 (General) : highly skilled migrant, Work Permit holder, student (including re-sitting an examination or writing up a thesis), student nurse, participant in the International Graduate, Science and Engineering Scheme, innovator, post-study worker, postgraduate doctor/dentist or Fresh Talent Working in Scotland schemes.

Students in the UK are no longer required to be studying at Degree level or higher, or to have graduated in order to switch status in country.

Working holidaymakers will no longer be able to apply from within the UK and will be required to return to their country of origin to apply for entry clearance.

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Points based assessment

For each tier, applicants need to score enough points to gain Entry Clearance or Leave to Remain in the United Kingdom. Points are awarded based on an objective and transparent criteria.

To be accepted into Tier 1 (General) – highly skilled worker you must score:

- 75 points for your attributes (age, qualifications, previous earnings and experience in the United Kingdom);
- 10 points for English language; and
- 10 points for available maintenance funds.

If you do not score a minimum of 75 points for your attributes, 10 points for English language and 10 points for available maintenance (funds), your application will be refused.

English language requirements

All Tier 1 applicants (except investors) must obtain 10 points by proving their competence in the English language in one of four ways:

- Come from a majority English speaking country specified by the Border & Immigration Agency to be Antigua and Barbuda, Australia, the Bahamas, Barbados, Belize, Canada, Dominica, Granada, Guyana, Jamaica, New Zealand, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago and the USA;
- Holding a Degree which was taught in English (also confirmed in writing by the applicant's University);
- Holding a qualification equivalent to a UK Bachelor's Degree, Master's Degree or PhD from one of the countries specified by BIA (as above, with the omission of Canada and addition of Ireland); or

- Having passed a test in English equivalent to Level C1 of the Council of Europe's Common European Framework for Language Learning (approximately equivalent to a Grade C or above at GCSE).

Maintenance

You must obtain 10 points by evidencing that you have access to a certain level of funds to maintain and accommodate yourself and any dependants while in the UK. If you are applying from overseas, you must show a minimum of £2,800 for yourself and £1,600 for each accompanying dependant.

If you are applying for Leave to Remain in the UK, you must show funds of at least £800 for yourself and £533 for each dependant (or £1,600 for each dependant if the principal applicant has been residing in the UK for less than 12 months).

Supporting evidence

You must send the original document, not a copy. The Border & Immigration Agency will accept certified photocopies of the documents detailed in their Guidance Notes which are needed to validate your application, if your original documents are unavailable at the time you apply. You must, however, tell the Border & Immigration Agency when you will be able to provide the original documents and it is unlikely that your application will be approved until the Border & Immigration Agency have seen the original documents, as they cannot award points to photocopied documentation. A certified photocopy is one that has been signed by either the issuing authority or by a notary as being an accurate copy of the original document.

If you do not provide the Border & Immigration Agency with all the documents they need when you make your application, the case may be refused on the grounds that insufficient evidence has been provided and the fee will not be refunded.

You must provide two recent passport size photographs and your passport, along with proof of the following:

- Qualifications;
- Maternity or adoption-related absence;
- Previous earnings;
- United Kingdom experience;
- English Language;
- Maintenance (funds); and
- HSMP transitional arrangements.

Only evidence specified in the guidance notes published by the Border and Immigration Agency will be accepted.

Appeals

If you are applying from inside the United Kingdom, your right to an appeal and the process you need to follow will depend on the type of application you have made. The Border & Immigration Agency are currently only accepting appeals from those applying inside the United Kingdom (known as 'in-country'). If the Border & Immigration Agency refuse your application to extend your stay in the United Kingdom, you may have the right to appeal. The Border & Immigration Agency will write to you with details of why your application has been refused and the next steps available, including your right to appeal. If you have a right of appeal you will be provided with full details of your rights and an appeal form.

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If you are applying from within India, you have a right to an administrative review. You must request a review of the refusal within 28 calendar days of the date the Refusal Notice was issued.

Settlement

You must complete a continuous period of 5 years in the United Kingdom before you can apply for settlement and you must meet all the requirements of the Immigration Rules before you are eligible to apply. Settlement has been restricted to applicants who demonstrate that they provide an economic benefit to the United Kingdom and that they are prepared to integrate socially.

Concluding summary

Points allow the Border and Immigration Agency to have an objective way of making decisions and to trade off attributes against each other. The highly skilled migrants programme is already based on points and this approach has been found to be successful. The Border and Immigration Agency are able to rely on a more structured and objective decision making process which is more transparent and easier to use for applicants. The points based system is based on the Australian model and has been developed to provide a simpler, clearer and easier to enforce system, superseding the current confusing range of worker entry routes. The new system fits alongside on-going activity to tighten up the UK's immigration controls.

In light of the above, a great deal of care will now need to be taken by you early on in your Immigration process and professional legal advice should be sought as soon as possible.

For further information, please contact:

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