

Bird & Bird & Business Immigration

The new UK Immigration rules: a Home Office tale



By Tom Mintern
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2020 has been a tumultuous year in every sense and this has been, and continues to be, the case in the immigration world. The end of the Brexit transition period is fast approaching, Covid-19 has had a crippling effect on Home Office systems and migrants' ability to apply for, and preserve, their right to live and work in the UK, and now we have a suite of new Immigration Rules.

Without question, these new rules for a post 1 January 2021 immigration system form an integral part of the biggest shake up to our immigration system in over a decade. Many sponsors, at the same time as grappling with flexible working practices in these uncertain times, will need (with the support of their external advisers) to have a clear understanding of the new immigration regulations which span 514 pages. If this wasn't challenging enough, we are now only weeks away from the 'go live' date; from 9.00am on 1 December 2020, applications can be filed under the new system.

In preparation for 1 December, **Bird & Bird attended a Home Office Q&A session hosted by the Immigration Law Practitioners' Association on 11 November 2020.**

The primary purpose of this article is to share the key points made by the Home Office. *Please bear in mind that the information included in this article may change at any time without notice as the Skilled Worker guidance is yet to be published.*

The Skilled Worker category

- As it currently stands, the **relevant forms** for applicants to apply under the Skilled Worker category will most likely not be made available until 1 December 2020, the same day that applications can first be filed.
- As the Tier 2 (General) visa is automatically being replaced by the Skilled Worker visa, all migrants currently on Tier 2 (General) visas will **no longer have the 6-year limit** on leave from 1 January 2021.
- Migrants can apply for the Skilled Worker category up to 3 months before their work start date and leave will be granted based on the date of expected travel; therefore, it will be possible for a migrant to **start work earlier** than the start date stipulated on their CoS by notifying the Home Office.
- Appendix J of the Immigration Rules will be replaced by a **new "Skilled Occupations" appendix.**
- There will be no specific rules for **high earners.**
- The 10% **shareholding** limit is being abolished.

The Resident Labour Market Test (RLMT)

- Details of what **evidence** sponsors will need to keep will be set out in sponsor guidance, to be published shortly.
- The abolition of the RLMT means the **Home Office will not be prescriptive** over the location and duration of job adverts, and employers will be able to recruit the best candidate, regardless of nationality. The Home

Office will be placing emphasis on the sponsor's general recruitment practice, rather than recruitment for each specific post.

Certificates of Sponsorship (CoS)

- **Unrestricted CoS:** The process will be broadly the same as it is now. When the new route is introduced, sponsors will see their Tier 2 (General) unrestricted allocations automatically replaced with an equivalent number of Skilled Worker CoS. In-year requests can continue to be made. The Home Office do not anticipate a large increase in CoS requests initially (in part due to EU nationals already in the UK being eligible for the EU Settlement Scheme, and those applying from overseas will need a 'Defined' CoS (see further below)). A priority for the Home Office is to improve its processes to cope with increased demand over time; we anticipate that the Home Office's IT system upgrade (scheduled for 2022) is part of this drive.
- **Restricted / Defined CoS:** The process for requesting Defined CoS will be similar to that under the Restricted CoS regime, but the Home Office anticipate that it will be faster and more certain, due to the abolition of the monthly panels and cap. Sponsors will not be required to have identified a candidate but will need to confirm job and salary details. The Home Office aim to turn requests for a Defined CoS around within 1 working day. The Defined CoS will apply to all entry clearance applications under the 'Skilled Worker' category; there is no exemption for 'high earners'. Defined CoS will not apply to other routes (e.g. the Intra Company Transfer route). In response to questions about 'suspending' as opposed to 'abolishing' the monthly cap, the Home Office confirmed that it has no plans to reintroduce the cap at any particular time, but that the situation would continue to be monitored in light of the impact of the new rules together with the long-term impact of the pandemic on the labour market.
- It is possible to **upgrade a CoS** assigned before 1 December to apply under the Skilled Worker route. To do so, sponsors will need to add sponsor note to include relevant PAYE information, and any other information if the applicant is relying on

some of the new tradeable points. There will not be an additional form to complete.

Salary thresholds

- Salaries can be **pro-rated** down if migrants are working less than 39 hours per week, and still get the full 20 points for meeting the Standard Occupational Classification (SOC) rate based on hours worked.
- However, the **general thresholds** which apply to all SOC codes are absolute thresholds and cannot be pro-rated down.
- **Guaranteed bonuses** will not be allowed to be included in the gross pay for an application.

Business visitors

- The 'permitted activities' for business visitors will be **reviewed**. The expectation is that the rules will remain broadly similar to those currently in place.

Priority applications

- Due to disruption caused by Covid-19, it is still **unclear** when the priority service for visa applications will resume in the UK.

For more information, please see the following [video](#) update, where we analyse in more depth the implications of the new Immigration Rules from a legal, logistical and practical perspective.



Contacts

Yuichi Sekine

Head of Business Immigration, UK

Tel: +442079826419
yuichi.sekine@twobirds.com



Jonathan Goldsworthy

Senior Associate, UK

Tel: +442079056389
jonathan.goldsworthy@twobirds.com



Tom Mintern

Associate, UK

Tel: +442079826519
tom.mintern@twobirds.com



twobirds.com

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