



Kemp Little LLP

Raising the Bar for Foreign Nationals to Work in the UK
April 2009



The leading technology focused law firm

Raising the Bar for Foreign Nationals to Work in the UK

Changes to the Immigration Rules with effect from 31 March 2009 have raised the bar for skilled (Tier 2) and highly skilled (Tier 1) migrants to come and work in the United Kingdom under the Points Based immigration system, which was introduced in 2008.

As a reminder, the Points Based System replaced the old work permits system (along with 82 other routes to work or study in the UK) with effect from autumn 2008. The Points Based System consists of 5 tiers, depending on the skills of the migrant and the purpose of their migration to the UK. Migrants must score a certain number of points against set criteria, in order to work in the UK.

Changes to Tier 1 (General)

Tier 1 is designed to allow highly skilled people, investors and entrepreneurs to come to the United Kingdom to look for work or self-employment opportunities. Tier 1 (General) is for general highly skilled migrants (as opposed to investors and entrepreneurs, who have their own Tier 1 categories and rules).

From 31 March 2009, anyone who wishes to work in the UK under the Tier 1 (General) category (including those switching into the Tier 1 (General) category from another category) will need to have a Master's degree and a minimum salary of £20,000 (a £3000 increase on the previous rules) in order to score points for qualifications and earnings.

Migrants applying to extend their permission to stay under Tier 1 (General) will not be affected by the changes.

Changes to Tier 1 (Post-Study Work)

The Tier 1 (Post-Study Work) category allows individuals to remain in the UK to look for work once they have graduated from a university in the United Kingdom.

From 31 March 2009, anyone applying in the Tier 1 (Post-Study Work) category will not be awarded points for Postgraduate Diplomas or Postgraduate Certificates other than Postgraduate Certificates in Education (or PGDEs in Scotland only).

Changes to Tier 2 (General)

Tier 2 enables skilled individuals with a job offer (including ministers of religion and sportspeople) to work in the UK. This Tier replaced the old work permits system. Tier 2 (General) applies to all migrants with job offers under Tier 2 who are not sportspersons, those being transferred from a group company outside the UK (inter-company transfers) or ministers of religion (as these individuals have their own Tier 2 categories and rules).

The major change for employers is a strengthening of the resident labour market test, which ensures that skilled jobs are advertised within the United Kingdom before they can be offered to migrant workers.

An employer cannot now sponsor a migrant to do a job under Tier 2 (General) unless the job has been:

- advertised to settled workers in Jobcentre plus; and
- advertised using one other method permitted by the relevant code of practice published on the UK Border Agency's website.

The Home Office predicts that the new rules would more than halve the number of skilled migrants from 26,000 last year to 14,000 this year. Last year, the number of UK work permits issued to non-EU workers rose from 140,000 to 151,000 in the 11 months to November 2008.

These changes follow the Home Secretary's announcement on 22 February of new measures to "raise the bar" for foreign workers wishing to work in the United Kingdom, as a reflection of the current economic situation.

The possibility of further changes?

The Home Secretary has commissioned a review by the Migration Advisory Committee into the effects of allowing the family members of highly skilled migrants to work in the UK. At present, family members of highly skilled migrants can work in the UK by "piggy-backing" on the highly skilled migrant's permission to work, without needing a separate permission of their own. It may be that in future family members would not be permitted to work in the

UK without obtaining their own permit.

The committee has also been asked to investigate whether Tier 2 (Skilled Migrants) should be limited to occupations with skills shortages such as civil engineers, chemical engineers, maths and science teachers and senior care workers. If this proposal is introduced it could reduce skilled migrants from outside the EU by up to 40,000 a year and would cause a great headache for employers, particularly multi-national companies who frequently transfer staff between, for example, the US and the UK. An estimated 20,000 to 40,000 of the 80,000 skilled workers who entered Britain last year were in areas where there were skills shortages, the Home Office has said.

Kemp Little
Employment Practice



Chris Middleton
chris.middleton@kemplittle.com



Kathryn Dooks
kathryn.dooks@kemplittle.com

This note was prepared by Kemp Little LLP. It is not legal advice or a substitute for it. You may copy any part of it so long as you acknowledge its source. The author asserts his/her moral rights. Kemp Little LLP is a limited liability partnership registered in England & Wales (registered number OC300242) and is regulated by the Law Society. We welcome all feedback and comments.



Kemp Little LLP
Solicitors
Cheapside House
138 Cheapside
London EC2V 6BJ
Tel: 020 7600 8080
Fax: 020 7600 7878
www.kemplittle.com

Kemp Little LLP is a limited liability partnership
Registered number OC300242 England
Registered office as shown