

11 January 2021

3CS Newsletter

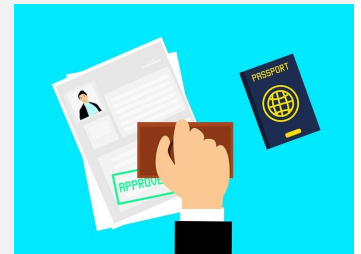
Immigration

Immigration Review of 2020 and what to expect in 2021

As we start 2021, we wish to reflect on some of the significant matters and changes that happened towards the end of 2020 and also look forward to the new circumstances and rules that will apply to businesses this year from an immigration perspective.

As we approached the end of December 2020, the UK and EU agreed to a post-Brexit agreement on trade and other issues after many months of discussions, and the UK left the European Union on 1st January 2021, after completing the transitional period that was agreed in early 2020. In many ways, it was a positive end to the year as it avoided a no-deal scenario and the uncertainties that had been expected.

The UK government also introduced new Immigration Rules with effect from 1st December 2020, enabling businesses to adapt to the new changes of circumstances following the end of freedom of movement of workers from the EU from 1st January 2021. The new rules are in many ways more generous and less restrictive unlike the previous Tier 2 General and Tier 2 ICT rules. Business visas under the points-based system were renamed as Intra Company Transfer (ICT) only for the Tier 2 ICT route and the Tier 2 General route was replaced by the Skilled Worker route.



Here is a summary of the changes:

Skilled Worker visas (formerly Tier 2 General)

- The Home Office removed the requirement for conducting the Resident Labour Market Test ("RLMT"), with effect from 1st December 2020. In summary, the RLMT required an advert to be placed in two locations for at least 28 days each, to ascertain whether any settled workers could carry out the role. Only if there were no settled applicants capable of meeting the advertised requirements, could you then offer sponsorship to a migrant worker (who had to evidence their ability to meet all the requirements of the advertised role). This was therefore a significant burden, in terms of both complexity and time; and so, the news of its removal was welcomed and is good for businesses in the UK.
- Skilled Worker visa applicants can now be sponsored for roles at RQF Level 3, which therefore allows a wide range of jobs to be filled by migrants unlike the previous Tier 2 system which required roles to be at RQF Level 6 or above.
- The ordinary salary threshold for Skilled Worker visas is now at £25,600 per year for experienced workers (or higher, if required by the job code, i.e., "SOC code"), and there is scope for the salary to be as low as £20,480 for new entrants if certain other requirements are met.
- Skilled Worker visas will not be subject to any maximum length of stay (i.e., unlike the 6-year limit that was applicable under Tier 2 (General)) and the 12 months "cooling off" period was removed.
- Salary requirement for Settlement applications was reduced to £25,600 per year (or higher according to the SOC code) - which is lower than the previous minimum for Tier 2 (General) which was £35,800.

Intra Company Transfer visas (formerly the Tier 2 (ICT) route)

- The High Earner threshold (formerly £120,000 per year) was reduced to £73,900 per year – meaning, migrants earning at this level or above will not be subject to a minimum length of service with the company and will be able to remain in the UK for up to 9 years in any 10 years.
- The "cooling off" period was changed, such that ICT migrants will be able to remain in the UK for up to 5 years in any 6-year rolling period (or up to 9 years in any 10-year period for High Earners, as above).

CONTINUED BELOW

This newsletter is designed to provide general information only. It does not constitute legal or other professional advice and thus should not be relied on.

Definitive advice can only be given with full knowledge of all relevant facts. If you would like to discuss any aspect further, please contact us.



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- Even though the above changes that were introduced are in many ways generous and good for businesses, the Home Office released Guidance documents to explain how they will assess applications under the new immigration system to ensure the rules remain robust and they will not be abused or misused, especially with the lowering of the skills level and changes in salary limits. The main points that we will highlight below will be where a sponsor/employer will be required to assign a Certificate of Sponsorship for a migrant to work for their organisation, either under the Skilled Worker route or the ICT route.

The key points of the new Guidance are:

- When assessing the job SOC code you wish to apply to a Certificate of Sponsorship, the Home Office will consider whether the business has shown a genuine need for the job as described.
- Similarly, they may consider whether the migrant has the appropriate skills, qualifications, and experience needed to do the job.
- The Home Office will consider whether the sponsor has a genuine vacancy in their organisation. A “genuine vacancy” is considered to be one which:

- o Requires the migrant to perform the specific duties set out in the Certificate of Sponsorship.
- o Does not include significantly different or lower-skilled duties.
- o Is appropriate to the business considering its business model, business plan, and scale.

- The Home Office considers the following to be examples of roles that are not genuine:

- o Exaggerated job descriptions.
- o A role that was created primarily to enable a migrant to come/remain in the UK.
- o Roles with requirements that are inappropriate for the job, incompatible with the business of the Sponsor, or tailored to exclude settled workers.

- They will also consider whether the most appropriate SOC code has been chosen for the prospective job and they will assess a number of requirements before they pass a decision. An example of one of those requirements is if they suspect that a less appropriate SOC code was chosen simply because the salary requirement is lower, and the most appropriate code was avoided because it has a higher salary limit, then they will reject the visa application.

It will therefore be important to have clear and detailed job descriptions, and a clear explanation of how any prospective roles will fit into your business, to avoid any accusations of non-compliance with the new rules or creation of roles that do not meet the ‘genuine vacancy rules’ by the Home Office. We anticipate that they will be quite tough on this issue moving forward and we have seen changes by them asking various questions and seeking clarifications about prospective vacancies.

Please note that the guidance and policies are subject to change at any time and so it is best to check and consult to get the most up-to-date rules and to avoid any potential problems with the Home Office.

And so, as we start 2021 with the UK outside the EU and with new more flexible immigration rules, we have reasons to be optimistic - especially with a new trade deal with the EU. Businesses now have greater opportunities to sponsor more migrant workers under both the Skilled Worker and ICT visa routes.

For advice on job descriptions, identifying correct SOC codes and roles that are eligible for sponsorship under the new rules, including any other general immigration advice, please speak to one of our team.

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