

04 December 2020

3CS Newsletter

Immigration

New Immigration Rules Have Commenced

Clients who regularly use the Tier 2 (General) visa route will no doubt have paid significant interest to the recent news that the Resident Labour Market Test ("RLMT") is being removed, with effect from 1st December.

In summary, the RLMT required an advert to be placed in two locations for at least 28 days each, to ascertain whether there were any settled workers who 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 must 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.



The news of the removal of the RLMT will therefore be very welcome news for all. And even if you have not been using Tier 2 (General), with the likelihood being that many more companies will now want to use the new Skilled Worker visa, the news is still to be welcomed.

However, in the lead up to the new Home Office Guidance documents being published, there was concerning talk from the Home Office about there still being some requirement to produce, if asked, details of your recruitment practices, for their assessment. This has led to fears that some form of RLMT might in fact still be required, despite the positive reports of its abolition.

Now that the Guidance documents have been released (and of course, there can be further changes announced at any time, so what is written here is potentially subject to change), we have reviewed the details in order to set out for you a clearer position. The key points of the Guidance are:

- When assessing the job code you have set out on a Certificate of Sponsorship, the Home Office will consider whether you have 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 considers a "genuine vacancy" 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 in light of 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 to the UK;
 - o Job advertisements with requirements that are inappropriate for the job, incompatible with the business of the Sponsor, or tailored to exclude settled workers.

So the question is: what do you need to do to comply with the above, and should you in fact continue with the RLMT, in order to provide the best evidence to the Home Office in relation to the above points? In our view, that would be an over-reaction. The RLMT has been removed, and we would not generally advise clients (in most situations - there are always exceptions for specific cases) to carry out such a burdensome task where the requirement has clearly and deliberately been removed. Instead, it will be important to have clear and detailed job descriptions, and a clear explanation of how this role fits into the business.

For advice on job descriptions and roles that are eligible for sponsorship, please speak to one of our team.

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