

Legal update: November 2016 – a month of change.

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During November, the Home Office introduced a wealth of new rules and regulations relevant to sponsors.

The month started with the publication of the long-awaited Autumn Statement of Changes to the Immigration Rules (HC 677) and finished under a deluge of new sponsor and policy guidance documents.

The headline changes from both the Immigration Rules and new guidance documents that are of most relevance to our education sector and business clients are as follows:

Tier 4

- The vexed topic of ‘academic progression’ has been revisited by the Home Office. They have previously confirmed that academic progression does not need to be demonstrated in cases where students are applying for further leave to remain to do a re-sit or re-take. In late but welcome news, the Home Office has confirmed that this also now extends to circumstances where the student is applying for further leave to remain because of having previously re-sat exams or re-taken modules.
- The new rules also confirm that academic progression is deemed to be satisfied in cases where the student applies for further leave and is progressing from Bachelors to Masters level, or Masters to PhD level, as part of an integrated Masters, or integrated Masters and PhD programme. The sponsor must however undertake an assessment of the student’s ability to complete the higher level course before assigning the CAS and the CAS must confirm this assessment. The new Sponsor Guidance states that the course must be a fully integrated course and cannot be two separate courses placed back to back. Universities should expect the HEAT team to check that they are making thorough assessments and complying in full with these rules when they carry out compliance visits.

Please note that if a student otherwise wishes to move from a lower level course to a higher level course (for example, Bachelors to Masters) without having successfully completed the lower level course, then the sponsor will need to comply with paragraphs 5.96 – 5.107 of document 2 of the Tier 4 Sponsor Guidance. The SMS should be updated accordingly and clear records of any assessments performed by the sponsor should be placed on the student’s file in the event of a compliance visit by UKVI officers. Sponsors that allow a student to move from a lower level course to a higher level course in circumstances that do not comply with the Sponsor Guidance will be risking enforcement action by UKVI.

- In a further change, applicants who are relying on the SELT exemption on the basis that they have obtained a relevant qualification in a majority English-speaking country must include an original document from UK NARIC which confirms the assessment of the equivalency of the qualification. In cases where the applicant is relying on a qualification obtained in the UK, the qualification must be a Bachelors, Masters or PhD and cannot be an equivalent qualification. Of course, the above provisions do not change an HEI sponsor’s ability to make their own assessment as permitted under the Rules.

Tier 2

- The minimum salary under the Tier 2 (General) category has increased to £25,000 from £20,800 in relation to applications for those classed as ‘experienced workers’ filed from 24 November 2016 onwards. The minimum salary requirement will rise again, to £30,000, in April 2017.

Those who had already obtained leave under Tier 2 (General) before 24 November 2016 will not have to meet the new minimum salary requirement should they need to extend their leave to remain under Tier 2 (General).

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However, a worker who is sponsored between 24 November 2016 and April 2017 (who must be paid a minimum of £25,000 initially) and who will need to extend their leave will be required to have an annual salary of at least £30,000 by the time that application to extend is filed.

Of course, employers must in any event pay the minimum salary as referred to in the relevant SOC code for the specific role and in many cases, the minimum salary for experienced workers is already higher than £30,000. In addition, all applicants who wish to settle in the UK must meet the minimum salary threshold when they apply for Indefinite Leave to Remain (this is currently £35,000 and will increase to £36,900 by 2019).

- For 'new entrants' (which includes those switching into Tier 2 (General) from Tier 4 and those aged 26 and under), the minimum salary requirement will remain at £20,800. There are also transitional arrangements for a small number of other workers including some teaching staff.
- The higher rate salary threshold, which is currently £155,300, will reduce to £120,000 in April 2017.
- The minimum salary requirement for new applicants under the Tier 2 (ICT) Short-term staff category has increased to £35,000 in relation to applications made after 24 November 2016. Please note that on the same date the Tier 2 (ICT) Skills-transfer sub-category ceased to exist in relation to new applicants.
- Graduates from UK universities who have returned overseas will have their applications weighted more favourably by the Home Office when an application for a Restricted Certificate of Sponsorship (RCOS) is made. This change will take place from the December RCOS panel onwards.
- The salary threshold for those sponsored under the Tier 2 (ICT) Graduate Trainee route is being reduced from £24,800 to £23,000 and sponsors are able to offer up to 20 places as opposed to 5 under the previous rules. Graduates under this programme will also be able to change occupation either within or at the end of the programme without the need for the sponsor to carry out a RLMT.
- Applicants switching from Tier 4 to Tier 2 can no longer rely on a qualification obtained via supplementary study in cases where the sponsor is relying on an exemption to the Resident Labour Market Test.
- Sponsors under Tier 2 should also note that the Immigration Skills Charge is being introduced in April 2017. This additional fee of £1,000 (or £364 for small companies and charitable organisations) per person per year of leave will add significantly to the cost of hiring overseas talent. Sponsors may wish to review their new hire requirements, and also the number of migrants who will need to extend their leave, in order to assess if any applications can be made prior to April.

28 days 'grace' period replaced by tighter regime

As from 24 November 2016, applicants who make an application under the Points Based System after the expiry of their current leave to remain risk a refusal decision unless:

- a) the application is filed within 14 days after the expiry of leave; and
- b) the applicant has a good reason, beyond the control of the applicant or their representative, for the delay.

Applicants could previously file an application up to 28 days after the expiry of leave without having to provide any explanation.

Employers are reminded that in order to comply with Sections 15 and 21 of the Immigration Asylum and Nationality Act 2006, workers must have valid leave to remain in the UK (including leave under section 3C of the Immigration Act 1971) at all times. A worker who makes an application after the expiry of their leave will be working unlawfully even if the application is made within 14 days and there is a good reason.

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If you need advice on any of these changes, please contact us.

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