



Points Based System – General

15th August 2008

The Points Based System is a new system for controlling economic migration to the UK. It will not apply to EEA nationals. It is currently being rolled out. So far, only the part of the system, which is for highly skilled individuals (Tier 1), has been introduced. This information sheet provides general information regarding the Points Based System.

Other information sheets provide information regarding proposals for skilled workers (August 2008), students (August 2008), temporary workers and youth mobility (August 2008) and sponsorship (December 2007).

The Points Based System

The Points Based System is replacing the parts of the Immigration Rules, which have been developed over many years, which set out the requirements for migrants to come to the UK to work or to study or for some other economic-related reasons. It is intended to be easier to understand and manage than the Immigration Rules it is replacing. It is divided into five tiers:

- Tier 1 – highly skilled individuals
- Tier 2 – skilled workers
- Tier 3 – low skilled workers (however, there are no current plans to introduce this Tier)
- Tier 4 – students
- Tier 5 – temporary workers and youth mobility schemes

The basic idea is that the decision on whether a migrant is permitted to come to the UK will depend upon whether he or she has acquired sufficient points. However, how points may be acquired and how many points must be acquired will depend upon under which tier a migrant applies to come to the UK.

A key feature of the Points Based System is that the type of evidence needed to support an application to come to the UK under this system is tightly regulated.

More information is available from the links and documents available on the UK Border Agency website at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdocs/>

Sponsorship

Most of the tiers will require a migrant to be sponsored in order to come to the UK under the Points Based System. The exception is Tier 1.

Sponsorship is meant to enable the UK Border Agency to have greater control of economic migration in two ways. Firstly, only those who are approved by the UK Border Agency will be permitted to sponsor migrants to come to the UK. Secondly, employers and establishments will be required to ensure that sponsored migrants are performing the work or studies for which they have been permitted to come to the UK; and to report to the UK Border Agency.

Further information is available from the December 2007 “Points Based System – Sponsorship” information sheet.

ILPA information service

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www.ilpa.org.uk/infoservice.html

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Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.

Further leave, citizenship and settlement

Only Tiers 1 and 2 will provide opportunities for migrants to become British citizens (by naturalisation) or to become settled (currently known as indefinite leave to remain). However, some migrants in Tier 4 may be able to switch (see below) into Tiers 1 or 2.

Students under Tier 4, who are studying below degree level, will not be permitted to apply for further leave if to do so would involve spending more than 3 years in total on the course for which they have come to the UK. Migrants under Tier 5 will be expected to have left the UK when the period of time for which they were permitted to come to the UK expires.

Switching

When a migrant moves from one category (for which he or she is permitted to be in the UK) to another category – e.g. from student to work permit holder – this is called switching. Under the Points Based Scheme, it will not generally be possible to switch from a non-Points Based System category into a Points Based System category. An exception to this will be provided by some transitional arrangements – see below.

Under the Points Based System, it will not be possible to switch into or out of Tier 5 (or Tier 3 if introduced). It will generally be possible to switch between any of the other tiers. The information provided by the UK Border Agency so far is not clear about whether an individual will be able to switch out of the Points Based System altogether. It is intended that it will not be possible to switch to a visitor category (e.g. for a period of 6 months or less); but it may remain possible to switch to certain family categories (e.g. as a spouse or civil partner).

Where switching is allowed, anyone who wants to switch will need to meet all the requirements for permission to stay in the UK under the category into which he or she wishes to switch.

Transitional arrangements

The Points Based System is replacing the system that has been established under the Immigration Rules over many years. As the Points Based System is rolled out, there will still be some individuals in the UK under those parts of the Immigration Rules that are being replaced. For some of these individuals, the Immigration Rules under which they have been permitted to come to the UK would have allowed them to apply to extend their stay in the UK or switch into other categories.

As the Points Based System is rolled out, there will be transitional arrangements. These arrangements will enable some individuals to extend their stay in the UK. In general, the UK Border Agency says that it will minimise the impact upon individuals already in the UK when changes introducing the Points Based System are introduced. However, it will be necessary to carefully consider the changes that are made; and these individuals will not simply be guaranteed to have the same opportunities to extend their stay that they would previously have had.

Challenging refusals under the Points Based System

In the past, someone who has been refused permission to come to the UK has been able to appeal against this decision from outside of the UK. This right of appeal is being withdrawn. Someone who is refused permission to come to the UK under the Points Based System will instead be allowed to ask the entry clearance post (which dealt with his or her application) to review its decision (administrative review).

Those in the UK, who are refused permission to extend their stay in the UK, will continue to have a right of appeal from within the UK. However, on that appeal they may be excluded from relying upon evidence that was not presented with their application to extend their stay.