

Changes in Immigration Rules affecting Tier 2 (General)

1. These notes accompany a presentation and discussion at a meeting of Kanlungan on Saturday, 26th May 2012.
2. In 2011, the Government conducted a series of major consultations including *Employment-related settlement, Tier 5 and overseas domestic workers* (June 2011) and *Family migration: a consultation* (July 2011). The Government has responded to the first of these, and many of the immigration rules changes introduced in the early part of 2012 stem from this consultation. The Government's response to the second consultation is outstanding, but expected soon.
3. These notes provide a very brief introduction to some of the key changes that have been made, or are to be made, to Tier 2 (General). It is not yet known what changes may be made to the Rules concerning family migration, though it is clear that the Government is thinking about proposals to extend the 'probationary' period for which family migrants must spend on limited leave before they may apply for settlement, to introduce a minimum salary threshold for British or settled sponsors to be joined by their partners (and dependent children) in the UK, and to seek a more restrictive approach to Article 8 (the right to respect of private and family life) by tribunals and courts in immigration cases.
4. The key aim that continues to drive Government immigration policy remains the Conservative party's commitment set out in their 2010 Manifesto:

'Immigration has enriched our nation over the years and we want to attract the brightest and the best people who can make a real difference to our economic growth. But immigration today is too high and needs to be reduced. We do not need to attract people to do jobs that could be carried out by British citizens, given the right training and support. So we will take steps to take net migration back to the levels of the 1990s – tens of thousands a year, not hundreds of thousands.'

Key changes to Tier 2 (General), points based system:

5. There are several changes to Tier 2 (General) introduced by Statements of Changes in Immigration Rules in 2012:
 - the introduction of 'cooling-off' periods;
 - the introduction of a salary threshold for settlement applications;
 - the introduction of mandatory curtailment of leave;
 - the introduction of post-study work opportunities; and
 - an increase in the skills level (NQF) required for applications (from 14 June 2012).

The introduction of 'cooling-off' periods

6. The intention is to introduce a maximum period of continuous leave for a Tier 2 migrant of 6 years, following which a period of 12 months outside of the UK will be required before further leave may be granted under Tier 2. Tier 2 (General) is the focus of these notes, though the Rules as regards Tier 2 (Minister of Religion) and Tier 2 (Sportsperson) are essentially the same.
7. The Rules have been changed by Statement of Changes in Immigration Rules (HC 1888) from 6 April 2012. Applications made on or before 5 April 2012 will be decided under the previous Rules. The intention of the change is reasonably clear, but the relevant Rules are complex. Individuals may need to seek advice to understand how the Rules may affect them. The general intention is that:
 - a. When applying to come to the UK as a Tier 2 (General) migrant, an applicant must not have had entry clearance or leave to remain as a Tier 2 migrant at any time during the 12 months immediately prior to making his or her application.
 - b. An applicant in the UK seeking further leave as a Tier 2 (General) migrant may be granted further leave which would take him or her up to having a maximum of 6 years leave in the UK.

- c. The second of these two stipulations will not apply where the person is seeking to extend his or her leave as a Tier 2 (General) migrant if his or her current Tier 2 leave was made under the Rules as these stood before 6 April 2011 (i.e. the grant was made in respect of an application made on or before 5 April 2011). (There are various other categories in addition to Tier 2 (General) to which this applies.)

The introduction of a salary threshold for settlement applications

8. From April 2016, a new salary threshold is to be introduced for Tier 2 (General) migrants applying for settlement (indefinite leave to remain). That threshold will be £35,000 gross per annum. The Government has said that this salary threshold will remain in place for 2 years from April 2016, and next year it will announce the threshold to be in place from April 2018. The intention is that the salary threshold will in future be known 5 years in advance – i.e. at the beginning of the 5 years period for which a migrant would need to remain in the UK lawfully in order to apply for settlement as a Tier 2 migrant.
9. Some migrants will be exempt from the £35,000 gross per annum threshold requirement. Those sponsored to do jobs that appear or have appeared (during a time when the applicant was sponsored to do that job) on the list of PhD-level occupation codes (see UK Border Agency, Sponsor Guidance) or published shortage occupation list will be exempt. They must still meet the requirement to be paid the appropriate rate as set out in the relevant Codes of Practice.

The introduction of mandatory curtailment of leave

10. From 6 April 2012, the Rules have changed so that where a Tier 2 migrant fails to commence work for his or her sponsor, or ceases to be employed by the sponsor, his or her leave must be curtailed (or its duration varied). However, leave may be varied so as to provide up to 60 days for the migrant to find another sponsor. It will not be mandatory for leave to be curtailed if the migrant is under 18 years of age, has a

child dependant or has an outstanding application for leave to enter or remain or a pending appeal.

Introduction of post-study work opportunities

11. From 6 April 2012, the Rules include provision to permit a Tier 4 (Migrant) (and certain other students) to apply for leave under Tier 2 (General). This is essentially available to those who wish to remain in the UK to work following successfully completing a course leading to a bachelor or post-graduate degree (or having undertaken at least 12 months study in the UK towards a UK PhD).

An increase in the skills levels (NQF) required for applications

12. Tier 2 (General) applications made on or after 14 June 2012 will be subject to a change in the Rules regarding the skills level requirement. This too is relatively complex. However, the basic intention (with some exceptions) is that the job for which the applicant is seeking leave to enter or remain under Tier 2 (General) must be at National Qualification Framework 6. Currently the required level is National Qualification Framework 4.
13. The higher skills level requirement will not apply in a variety of situations where a migrant has leave under Tier 2 (General) and is applying for further leave – where the migrant’s current leave (at the time of his or her application) was granted under the Rules as these stood before 14 June 2012; or he or she is applying for leave to continue to work in the same job (whether or not for the same employer).
14. In its February 2012 report, the Migration Advisory Committee (*Tier 2 limit report*) published as Annex B a list of occupations skilled to National Qualification Framework level 6 and above:
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/limit-tier2-settle/tier2-limit-report?view=Binary>

Please note:

15. Note there have been, and there are further to come, amendments to the maintenance funds requirements under the Rules.

16. Many of the changes referred to in this note are relatively complex. Those who are considering making an application for leave to enter or leave to remain, or who currently have leave which will be expiring soon, will need to seek advice on their particular circumstances.

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26 May 2012