



## IMMIGRATION UPDATE

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# 3HR focus

## IMMIGRATION UPDATE

3HR's thoughts on the Government's Consultation Paper 'EMPLOYMENT-RELATED SETTLEMENT, TIER 5 AND OVERSEAS DOMESTIC WORKERS', issued last month.

### June – September 2011 Consultation Period

The Government appears to be working hard to meet its election promise to significantly reduce immigration. The recent consultation paper issued in June heralds further tightening of the rules and these are due to be announced in the autumn. Furthermore, any changes to be announced will apply, retrospectively, to certain categories of immigrants from April 2011. Interested parties have until 9<sup>th</sup> September to put forward their views to the Government by completing the consultation response form.

### Who may be affected this time?

The Consultation Paper 'Employment-related settlement, Tier 5 and overseas domestic workers' this time focuses on Tier 1, Tier 2, Tier 5 workers, overseas domestic workers and their dependants. The Government is feeling increasing public and political pressure about its inability to demonstrate significant reductions in immigration. There is also the charge that foreign migrants are taking over British people's jobs and exacerbating youth unemployment which reached a figure of 895,000 in April 2011. As a result, any changes to the rules this autumn are likely to be quite strict.

In addition, there is the distinct possibility that Employers may be forced to take on greater sponsorship responsibilities.

### What are the proposed changes?

#### 1. Tier 1

- \* It is proposed that only investors and entrepreneurs will be given a realistic pathway to settlement from entry
- \* the maximum period of stay for exceptional talent migrants may be capped at 5 years with a concomitant restriction on the numbers who would eventually be granted settlement

*This emphasises the Government's strategy of only welcoming those whose presence may benefit the UK. Even those currently classed as exceptionally talented under the new route created in April 2011, whose numbers are capped at 1,000 a year, may not all be allowed to apply for settlement after the 5 years' period.*

#### 2. Tier 2 (General)

- \* the Government wants to make clear that Tier 2 is recognised as a temporary route only and that those in this category should not assume that settlement is automatically available after a certain period
- \* only certain sub-categories might retain an automatic route to settlement
- \* the Government proposes introducing a new category for the most exceptional Tier 2 workers after 3 years and to only allow these migrants to apply for settlement after 5 years
- \* robust selection procedures are proposed so that the numbers permitted to switch to any new route will be limited
- \* they also propose to limit the time in the UK for those who do not switch or qualify to switch to the settlement route after 3 years, to a maximum of 5 years from the date they entered
- \* dependants over 18 may have to pass an English-language requirement to switch into any alternative settlement routes; such requirements may be at a similar level to the current spousal visa requirement (i.e. A1 level)

Please turn over

Following the April 2011 major changes to Tier 2 (Intra-company transfers), the Government is now addressing the Tier 2 (General) category and proposes major changes here also. Significantly, these changes will be made retrospective to those who entered this category since April.

One key proposed change is to make known that this route may well not lead to settlement after the 5 years' period. This would create uncertainty for the migrant who would not have any assurance about applying for future settlement. In fact, the migrants would not know whether they even have the option of applying until after the first 3 years. If an extension application for a further 2 years was then granted, the Government seems to be proposing that this would be under a new category created for the exceptionally talented Tier 2 migrants which should not be confused with the Tier 1 exceptionally talented category.

Tighter requirements are expected so that fewer Tier 2 (General) migrants who may all under the current law apply for settlement after the 5 years to retain the same expectation. Furthermore, the Government plans to restrict those that do not qualify for settlement to a maximum 5 year stay in the UK and in addition stricter requirements for dependants. With their own future unknown in the UK, it may be unlikely that the skilled workers will bring their dependants along even if they decide to come and work in the UK in the first place.

### 3. Tier 5 Temporary workers

- \* the Government is considering whether to restrict the maximum time for Tier 5 temporary workers to 12 months; currently such workers can stay for up to 6 years
- \* if such a time restriction is imposed, it is likely that stringent requirements will apply on bringing in dependants
- \* the Government is also considering raising the required skill levels in the government authorised exchange (GAE) sub-category to graduate level roles N/SVQ level 4 or above

The Government clearly wants 'temporary workers' to really work only for a temporary basis in the UK and this would directly affect such Tier 5 workers and their families. Currently, there are as many as six separate Temporary worker categories and the length of permitted stay in the UK varies with some being able to stay for up to 6 years whilst others are able to apply for settlement after 5 years. All Temporary worker categories (except for the youth-mobility scheme) may be restricted to a maximum stay of 12 months with no rights to extend if the proposed changes go ahead.

Furthermore, as the route really would then be temporary, such workers would not ordinarily be expected/permitted to bring their dependants. Even if entry were permitted, there may well be restrictions placed on them such as to prevent them working.

### 4. Overseas Domestic Workers

- \* the Government is considering abolishing this route in private households or restricting domestic workers' leave to a maximum 6 months' visitor-only status
- \* for those coming in with Tier 1 or 2 migrants or in diplomatic households, the proposed changes would restrict the domestic workers' maximum stay in the UK to 12 months with no possibility of: extension, changing employer or sponsoring dependants- who would in any case not be permitted to work and no right to settlement.

Currently, domestic workers can come into the UK with their Employers and work in households as servants. Each year they could extend their leave to remain and once they have been in the UK for 5 years, apply for settlement. Dependants are allowed to join them at any time and gain settlement together if the main applicant qualifies under the rules.

The Government seems to want to limit the numbers of such unskilled workers coming to the UK and to restrict their stay to maximum of 6 or 12 months. In addition, the changes would apply restrictions on their dependants' stay even if they were permitted to enter in the first place.

### 5. Getting Employers involved

The Government is considering forcing Employers to have a direct role when individuals apply for settlement:

- \* Employers at application time might have to confirm that the resident labour market would be unable to supply a suitable worker
- \* the Employer might be asked to make a financial contribution in support of any permanent visa application in order to demonstrate that settlement is for a true business imperative
- \* the Employer might have to re-confirm the need for a migrant after 3 years and/or at settlement stage
- \* if the Employer is unwilling and the migrant is unable to transfer to an alternative Employer willing to sponsor the settlement application, the application will fail and the migrant would be expected to leave the UK

In addition to Employers' current sponsorship license responsibilities, the Government is considering forcing Employers who want to use overseas migrants to get more involved. This may be a way to dissuade companies from employing overseas migrant workers and to employ British or EU nationals instead. In any case, this would be a serious development for those companies who would need to continue to employ their skilled workers.

With all these changes proposed – many of them radical departures from existing practice - we strongly recommend you consider responding to the consultation before the 9<sup>th</sup> September 2011 deadline. You can respond to the proposals by using the following link: <http://www.ukba.homeoffice.gov.uk/work-routes-consultation>

If you have any queries, please contact the following:



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