



# **SKILLED WORKERS UNDER THE POINTS BASED SYSTEM - (TIER 2) STATEMENT OF INTENT**



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## FOREWORD BY LIAM BYRNE MP

### MINISTER OF STATE FOR BORDERS AND IMMIGRATION



2008 sees the biggest changes to the immigration system for 45 years, to protect our borders and prevent illegal immigration.

As part of this reform we are introducing a points system so that those migrants we need from abroad can work in Britain. The points pass mark for the Skilled Migrant tier (Tier 2) will be based on the work of the Migration Advisory Committee on economic needs and skills shortages and the views of the Migration Impacts Forum which advises the UK Government about the wider social impacts of migration.

In February 2008 we began the rollout of the points system with the Highly Skilled Migrant tier (Tier 1); introducing new sponsor licences for businesses who want to bring in migrants; and big on-the-spot fines for those not obeying the rules and/ or found hiring illegal workers.

This Statement of Intent is one of a series to be published before each points system tier is implemented. It explains how the Skilled Migrant tier (Tier 2) will work. It reflects our current thinking which could change before the tier begins to be implemented in the Autumn of 2008, or at any point afterwards. The Skilled Migrant tier will be implemented alongside the Youth Mobility and Temporary Worker tier (Tier 5).

The Skilled Migrant tier (Tier 2) is aimed at enabling UK employers to recruit individuals from outside the European Economic Area (EEA) to fill a particular job that cannot be filled by a British or EEA worker. On introduction and in common with other parts of the Points Based System, Tier 2 will require migrants to have a sponsor licensed by the UK Border Agency,

who will confirm that the migrant will comply with the terms of their stay whilst in the UK and will leave once their leave has expired.

Tier 2 will also introduce new key measures:

- Migrants will be required to demonstrate **English language competence** to assist with their integration into British life.
- All jobs, not in shortage occupations or Intra Company Transfers, will be required to meet the **Resident Labour Market Test** before a migrant can be recruited. This demonstrates that the employer has advertised the job and been unable to fill it from the resident labour market. We will be setting the minimum period for which the job must be advertised to 2 weeks.
- Migrants, not filling jobs on the shortage occupation list, will be required to earn points through their **qualifications and prospective earnings** – this will include Intra Company Transfers.
- The work of the **Migration Advisory Committee** will better identify those skilled occupations where there are shortages that can be sensibly filled by migration.
- If a migrant wishes to change employers once they are already working in the UK under Tier 2, the new job will now also have to meet the resident labour market test.
- There will be a **maintenance requirement** to show migrants have the ability to support themselves for the first month they are here.

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- Positions to be filled through the **Ministers of Religion sub category** of Tier 2, will also have to meet the Resident Labour Market Test before migrants can be brought in through this route.
  - We are working closely with the **Governing Bodies for Sport** and religious organisations, as well as individual sponsors for both categories, to strengthen the route.
  - In line with a previous Government commitment, Tier 2 will also apply to cover **seafarers on one port voyages**.

Comprehensive guidance will be available before each points tier is implemented and Regulatory and Equality Impact Assessments for the Skilled Migrant tier are being published alongside this statement of intent.

A handwritten signature in black ink, reading "Liam Byrne". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

## INTRODUCTION

1. The future prosperity of the UK depends on building a Britain where people are given the opportunity and encouragement to develop their skills and abilities to the maximum; and then given the support to rise as far as their talents will take them.
2. The quantity and quality of skilled labour available in an economy is crucial to its economic performance and productivity growth. Skilled workers can often adapt faster and more effectively to change, and may be better at implementing new investments and pursuing innovation. A highly skilled workforce enables firms to update working practices and products at the rate demanded by rapidly changing markets, making the economy more flexible and productive in the longer term. Such a workforce is crucial to the UK's ability to respond to the challenges of globalisation in the 21st century.
3. Where a shortage of skilled labour exists this can have a number of possible impacts including reduced output, high vacancy rates, high overtime rates, services outsourced to overseas companies, high salary levels or reduced standards. Overall the risk is that prices are forced up or production decreased, making UK companies less competitive than overseas counterparts, and less responsive to new market opportunities, having a negative impact on our economic strength. In the public sector this can affect the ability to provide key services, including health.
4. This is why the Government has set an ambition of joining the world's "premier league" for skills by 2020. Our determination is backed by financial investment and a range of new approaches to meeting our skills needs.
  - We are funding the Train to Gain initiative to the tune of £440m in 2007/08, rising to over £900m in 2010/2011.
  - We are also joining up the employment and skills systems to produce a new universal adult careers service in England.
  - We have established the new UK Commission for Employment and Skills, which will strengthen the employer voice at the heart of the system across the UK.
5. However, not all the immediate needs in our economy can be met by this development in our skills base. Migration can play a role here. Migrants fill crucial gaps in our economy and in our public services. The Treasury has estimated that migration contributed around 15-20% of trend growth between mid-2001 and mid-2006, in 2006 migrants contributed around £6 billion to output growth. Evidence suggests that migrants have a positive impact on GDP per head directly through their own output and indirectly through the productivity of others.
6. The Skilled Migrant tier (Tier 2) is aimed at enabling UK employers to recruit individuals from outside the European Economic Area (EEA) to fill a particular job that cannot be filled by a British or EEA worker. By filling this job the migrant will contribute to the growth and productivity of the UK without displacing British workers. Tier 2 will ensure that labour migration is complementary to labour market conditions in the UK. The requirements for both entry to and staying on in the UK will be set at levels commensurate with these objectives. Employers across Tier 2 will only be able to bring in migrant workers if they have a sponsorship licence showing that they have been checked out and confirmed as genuine by the UK Border Agency.
7. The Migration Advisory Committee (MAC) will provide independent, transparent and evidence-based advice to government on where labour market shortages exist that can sensibly be filled by migration. It will underpin Tier 2 by advising on which occupations should be designated as shortage occupations.
8. We will monitor constantly Britain's requirements with the help of the MAC and the Migration Impacts Forum (MIF).
9. We are committed to reducing the vacancy rate for those occupations defined as shortage occupations by the MAC and have signed a challenging Public Service Agreement with the Treasury to ensure that those reductions

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occur. Indeed, the periodic publication of the shortage occupation list will be used to assess the effectiveness of migration in supporting the economy and will reflect the impact of other Government interventions, such as investment in skills development, on the labour market and the British economy.

10. Employers will be able to sponsor skilled migrants to work in the UK under three conditions:

- In shortage occupations which the MAC has identified. The MAC will only do this where there is robust, objective evidence around these three key questions: is the occupation a skilled one? Is there a shortage? And is it sensible for that shortage to be filled by migration? Once an occupation is on our shortage list the MAC will keep that evidence under regular review and tell us when that shortage has been filled. It has recently published a report setting out how it will approach its work, including a call for evidence. Its report can be accessed at [www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/mac/](http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/mac/)
- Where jobs have passed the Resident Labour Market Test. This demonstrates that they have advertised the job and been unable to fill it from the resident labour market before a migrant is employed.
- Intra Company Transfers, where the employee is working for the company overseas and the employer transfers the migrant to work in the UK.

11. Alongside the MAC, and also contributing to the Points Based System, the Migration Impacts Forum will tell us where migration is having an impact on local services or areas and will also help us consider the possible impacts of migration policies as we develop them. The membership of the MIF includes front-line practitioners from services across the UK, as well as representatives of employers, trade unions and others.

12. We will keep the criteria for Tier 2 under review, with the help of the MAC and the MIF,

to ensure the system is controlling migration effectively and in the national interest.

13. In 2007 Stephen Ladyman, the then Minister for Shipping, made a commitment to extend the work permits regime to seafarers on one port voyages (for example those servicing offshore installations). That commitment will be fulfilled under Tier 2, which also covers seafarers on the vessels which came under the work permit system.

## PRINCIPLES OF THE SKILLED MIGRANT TIER

14. The new skilled migrant tier will dramatically simplify the immigration system. We will be removing a number of existing immigration categories when the Skilled Migrant tier is introduced. Migrants who would have come to the UK under the following routes may now come under Tier 2 general:
  - Work Permit Employment (excluding temporary assignments of sportspersons and entertainers)<sup>1</sup>
  - Ministers of Religion
  - Airport-based Operational Ground Staff
  - Overseas qualified Nurse or Midwife
  - Sabbatical Posts
  - Seafarers
  - Named researchers
  - Training and Work Experience Scheme
  - Jewish Agency Employees
  - Overseas representatives (news media)
15. These routes will be replaced by Tier 2 Skilled Workers which, as well as the general arrangements, will include two further categories – Sports People and Ministers of Religion.
16. Under the points based system, there are no plans for a separate route for overseas domestic workers in private households but we are conducting research and analysis in respect of the current provisions, which we will publish. We will consider separately, with interested parties, how best to achieve protection for any person, irrespective of how they have entered the UK, who is found to be a victim of trafficking, including overseas domestic workers.
17. Provision will be made outside the PBS for: Aircrew, Civilian Personnel in Foreign Armed Forces, Employees of firms under contract to NATO and Offshore Workers.
18. Time spent in Tier 2 will count towards the period a person needs to be here for before being eligible for settlement. However, this is subject to any future changes of immigration rules.

### TIER 2: SKILLED WORKERS

19. The new Skilled Migrant tier (Tier 2) will enable UK employers to recruit individuals from outside the European Economic Area (EEA) for the purpose of directly employing them to fill a vacancy that cannot be filled by a British or EEA worker. By filling this job the migrant will contribute to the growth and productivity of the UK without displacing British workers.
20. However, there are key hurdles in place to ensure that only migrants that are right for the UK are able to come here:
  - No longer will anyone be able to apply to bring migrants to the UK. A licence will be needed first. No-one will be granted a sponsor's licence without being approved in advance by the UK Border Agency. Licensed sponsors will indicate the migrants they wish us to admit by issuing them with a Certificate of Sponsorship.
  - Everyone wanting to come to the UK under PBS will need **prior entry clearance**, for which they will not be allowed to apply without a Certificate of Sponsorship. However, a sponsorship certificate in no way guarantees that entry clearance will be issued. If an application, and the documents supporting it, are not approved by UK Border Agency staff that application will be refused.

<sup>1</sup> Persons in the entertainments industry who are seeking entry for other than a temporary purpose (i.e. they will not qualify under the relevant Tier 5 provisions) will be assessed against Tier 2 (General) criteria.

- All migrants allowed to come here will need to obtain a **biometric identity card**, so we know exactly who they are and what they are entitled to do.
  - As a condition of keeping their licence, sponsors will need to alert us if migrants do not comply with their immigration conditions - for example, if they disappear or do not turn up for their job or course. Any sponsor that does not comply with this requirement will risk losing its licence.
21. As with the other tiers, an applicant wanting to come to the UK under this tier will need to show that he or she has enough **points** to qualify. Points will be awarded according to objective and transparent criteria within a structured decision-making process. Importantly, this will include points related to the Certificate of Sponsorship they receive. No one can qualify under this tier unless they have a Certificate of Sponsorship showing they are coming to fill a qualifying job.
22. The points that are awarded for different attributes and the required pass mark will be kept under review with the help of the Migration Advisory Committee and the Migration Impacts Forum.
23. The points table for Tier 2 is shown below. This has an overall pass mark of 70 points and contains three sections:
- An attributes test based on the Certificate of Sponsorship, the migrant's qualifications and prospective earnings (pass mark 50 points).
  - Two control tests:
    - Maintenance requirements (pass mark 10 points).
    - English language ability (pass mark 10 points).

**At least 70 points are required from this table (including 10 for maintenance and 10 for English)**

All jobs must be at or above NVQ3 skill level and salary must be at or above the appropriate rate

| Section                        | Certificate of Sponsorship  |    | Qualifications (or NARIC equivalents) |    | Prospective Earnings (£) <sup>2, 3, 4</sup> |    |
|--------------------------------|---|----|---------------------------------------|----|---|----|
| <b>A</b><br>(50 points needed) | Offer of job in shortage occupation                               | 50 | No qualifications                     | 0  | 17,000 – 19,999                             | 5  |
|                                | Offer of job that passes Resident Labour Market Test <sup>5</sup> | 30 | NVQ3                                  | 5  | 20,000 – 21,999                             | 10 |
|                                |   |    | Bachelors or Masters                  | 10 | 22,000 – 23,999                             | 15 |
|                                | Intra Company Transfer  | 30 | PhD                                   | 15 | 24,000 +                                    | 20 |
| <b>B</b>                       | Maintenance requirement   |    |                                       |    |   | 10 |
| <b>C</b>                       | Competence in English   |    |                                       |    |   | 10 |

2 Prospective earnings can be adjusted periodically to reflect inflation and / or labour market requirements.

3 These are prospective earnings before tax.

4 Allowances will be taken into consideration in calculation of salary for the appropriate rate requirement and attributes table, further information will be available in the guidance.

5 This requirement will not be necessary for extension applications or for Tier 1 post study migrants switching to Tier 2 who have spent at least 6 months in their job.

24. Within section A of the points table, the migrant must have a Certificate of Sponsorship with a specific job offer. This will be necessary in order to reach the minimum points requirement for this table. The points for this Certificate of Sponsorship will depend on the type of job offer it relates to: this can either be a job offer in a shortage occupation, a job offer that passes the Resident Labour Market Test or an Intra Company Transfer. Each of these is explained in turn below.

### Shortage Occupations

25. The MAC will publish a list of shortage occupations. Where a migrant is applying to enter the UK to fill a job from this list, they will receive sufficient points to proceed without reference to their prospective earnings or qualifications.
26. The initial task of the MAC is to produce shortage occupation lists for the UK and for Scotland only, by June 2008, for use in the new Points Based System for migration. These lists will comprise **skilled** occupations where there are **shortages** that can **sensibly** be filled by enabling employers to recruit migrants from outside the European Economic Area (EEA).
27. The MAC's work plan is available on the UK Border Agency's website:  
[www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/mac/](http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/mac/)

### Resident Labour Market Test

28. We recognise that it may be necessary for an employer to recruit a migrant from outside the EEA to fill a particular job that cannot be filled by a British or EEA worker and is not on the shortage occupation list. However, this will only be possible if, having undertaken a Resident Labour Market Test, the employer is able to show that there is no suitably qualified worker from the UK or EEA available to fill the vacancy.
29. To do this the employer must have advertised the job in JobCentre Plus or advertised the job as agreed in a sector specific Code of Practice.

The job must have been advertised for at least 2 weeks. This measure ensures that resident workers will first have the opportunity to apply for a job before a migrant is recruited to fill it. If the prospective earnings for the job are over £40,000 then there is less likelihood of undercutting the resident labour market. Nevertheless, it is still important that resident workers have an opportunity to apply first and so even these jobs have to be advertised in JobCentre Plus or as agreed in the Code of Practice for a minimum period of one week.

30. When a Sponsor issues a Certificate of Sponsorship on the Sponsor Management System (SMS) they are required to confirm that a Resident Labour Market Test has been conducted or that it does not apply to the application.
31. There is one area where we do not believe that the resident labour market test is required. Under Tier 1 of the PBS, the Post-Study Work category aims to retain the most able international graduates who have studied in the UK. However, this is intended only as a bridge to other categories and people with Post Study Work leave will be able to switch into Tier 2 once they find suitable employment. In keeping with our policy of retaining these individuals, and as they will already be part of the resident labour market, then where they have been doing a job for at least six months, we will not require that job to meet the resident labour market test.

### Intra Company Transfers

32. Due to the specific nature of Intra Company Transfers, which are for employees of multinational companies being transferred by their employer overseas to a skilled post in a UK-based branch of the company, no Resident Labour Market Test will be necessary. Migrants coming to the UK on Intra Company Transfers must have been working overseas for the sponsoring company for at least the previous 6 months, and while in the UK must earn a salary or remunerative package (including specific permitted allowances) appropriate for that job in the UK.

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33. A Sponsor seeking to be authorised to issue Certificates of Sponsorship under the Intra Company Transfer category must confirm at the time of their licence application that they will comply with this set of criteria.
  34. Whether the job is a shortage occupation, has passed the resident labour market test or is an Intra Company Transfer, it must be above the minimum skill level and be paid the appropriate rate for that job in the UK labour market.

### **Skill Level**

35. A job must be at NVQ3 level or above to be considered for this part of the tier. This is to ensure that it is a skilled job. In order to avoid confusion as to what jobs are at this level, and for those which are borderline, the UK Border Agency will publish a list of occupations which are at or above NVQ level 3 and those which fall below this standard. Guidance will also be provided for employers to assess an individual job within these occupations. These lists and guidance will be drawn up with advice from the MAC.

### **Appropriate Rate**

36. Under the requirements of the Resident Labour Market Test the job must be advertised at or above the 'appropriate rate' for that job so as to ensure there is no undercutting of the domestic labour market and that there is a genuine vacancy. The migrant must then be paid at or above the rate at which the job has been advertised. This information will also be used to determine the number of points the migrant receives for 'prospective earnings' on the attributes table.
37. This test will be conducted using the information available from the Annual Survey of Hours and Earnings (ASHE), published by the Office for National Statistics. Any occupation not listed on the Annual Survey of Hours and Earnings may be checked using the appropriate minimum salary figures available on 'Jobs4U', a government-maintained website.

38. There will be compliance checking of the requirement that the person is paid a rate appropriate to the UK.
39. There are three further crucial aspects of Tier 2 – sponsorship, English language requirements and maintenance requirements.

### **Sponsorship**

40. This tier is an employer-led system for skilled migrants with a job offer. Before a migrant is eligible to apply to visit the UK for work under this tier he or she will require a sponsor. The sponsor will normally be a business or educational institution in the UK that wishes to employ a migrant. Sponsorship plays two main roles in the application process:
  - It provides evidence that the migrant will be filling a genuine vacancy in the UK that cannot be filled with a suitably qualified member of the resident labour force; and
  - It involves a pledge from the sponsor that it will accept the responsibilities of sponsorship in respect of the migrant.
41. In order to become a sponsor, the employer will need to apply to the UK Border Agency for a licence, supplying the specified evidence. Once licensed, the Sponsor will only issue Certificates of Sponsorship to those they think will qualify. Nevertheless, it will still be for UK Border Agency to decide whether someone meets the points threshold or not. The number of certificates they will be able to issue will be specified in the terms of their licence.
42. All migrants wanting to travel to the UK under the points system will need prior entry clearance. Migrants will not even be able to apply for a visa without a Certificate of Sponsorship. A Certificate of Sponsorship is not a guarantee of a visa. It acts as confirmation from a licensed sponsor that they wish to bring a migrant to the UK, and that to the best of their knowledge that person meets the rules for the relevant tier and will comply with their conditions of stay. The UK Border Agency will make the final decision on who is allowed to travel here on the basis of their meeting the relevant points criteria.

43. The licensing system for employers who want to become sponsors of migrants under Tier 2 general, including Intra Company Transfer, was launched on 29 February. Employers are now able to apply for licences to issue Certificates of Sponsorship to migrants for these parts of Tier 2. Further information is available on the UK Border Agency website.
44. The system will be extended to allow applications for licences to issue Certificates of Sponsorship to migrants under other parts of PBS later in the year.

### Competence in English Language

45. Requiring migrants to speak English is a key part of the Government's immigration policy. It helps to ensure migrants play a full part in British life outside the workforce.
46. Migrants entering under the skilled worker part of Tier 2 (shortage occupations and resident labour market test) will be required to speak English to a basic user standard. This will include an ability to understand and use familiar everyday expressions and very basic phrases, to introduce themselves and others and ask and answer questions about basic personal details. This is closest to A1 of the Council of Europe scale. We will provide guidance on what other language tests will be accepted as evidence of a sufficiently high level of ability.
47. Intra Company Transferees will only be required to demonstrate the required English language ability if they wish to stay beyond three years.
48. Applicants will need to prove their competence in English language by proving they:
- Have passed a test in English equivalent to the appropriate level,
  - Come from a majority English speaking country<sup>6</sup>; or

- Have taken a degree taught in English (verified using National Academic Recognition Information Centre data).

### Maintenance

49. It is important that migrants are able to support themselves and their dependants as they do not have access to state benefits. We want to guarantee that migrants have sufficient funds to support themselves and any dependants from the point at which they enter the UK until they begin receiving an income. The test will be based on the latest cost of living figures provided in the annual British Council publication "Studying and Living in the United Kingdom".

| Funds Total sum   |      |
|---|------|
| Initial applicants, out of country  | £800 |
| in addition to the £800, applicants will need to show they have a further 2/3 of the funds of the main applicant for each dependant they intend to bring with them. |      |

### TIER 2 CATEGORIES: MINISTERS OF RELIGION AND SPORTS PEOPLE

50. Recognising that formal/academic qualifications (or equivalent) are not necessarily indicators of skills nor predictors of success for either a professional sportsperson or a Minister of Religion, we have made provision for two sub-categories within Tier 2 catering for the specific requirements of these skilled migrants.

### Sportspeople

51. This sub-category is for elite sportspeople and coaches who are internationally established at the highest level, whose employment will make a significant contribution to the development of their sport at the highest level in the UK and who intend to base themselves in the UK.

<sup>6</sup> Antigua and Barbuda, Australia, the Bahamas, Barbados, Belize, Canada, Dominica, Grenada, Guyana, Jamaica, New Zealand, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago, the USA.

52. All migrants seeking to enter under this category will need to obtain an entry clearance and will need to show that they have enough points to qualify. Points will be awarded against three sets of objective criteria with an overall pass-mark of 70 points.
53. As with the rest of Tier 2, migrants will require a valid Certificate of Sponsorship, issued for this sub-category, by a sponsor licensed by the UK Border Agency, for which they will receive 50 points. There are also criteria relating to maintenance requirements and competence in English. These are control tests the migrant must meet and are worth 10 points each, as shown below.

| Points under T2 Sportspeople – Pass-mark 70 |                            |           |
|---|----------------------------|-----------|
| <b>A</b>                                    | Certificate of Sponsorship | 50 points |
| <b>B</b>                                    | Maintenance                | 10 points |
| <b>C</b>                                    | Competence in English      | 10 points |

54. Migrants under the Tier 2 sportspeople sub-category will be required to show an English language ability to the same level as Tier 2 general migrants (see above further details). They will also be expected to show maintenance funds of £800 plus additional funds for any dependants.

### Sponsorship for Sportspeople

55. Migrants under this sub-category will need to be sponsored by a club (or equivalent) licensed by the UK Border Agency in order to issue Certificates of Sponsorship under this category.
56. Applications for a licence to issue a Certificate of Sponsorship under this sub-category must be accompanied by approval from the relevant Governing Body for the sport. A Governing Body is one that is recognised by one of the Home Sports Councils (e.g. Sports England).
57. Where a sport does not have a governing body as recognised by the Home Country Sports Councils, the UK Border Agency will request advice from the sports councils and other relevant sporting bodies (e.g. CCPR) as to whether there is an appropriate body.

58. In providing their approval the Governing Body will be vouching that an application is from a bona fide club (or equivalent) which is likely to want to bring migrants to the UK as sportspeople.

59. Where a Certificate of Sponsorship is issued under this sub-category, the sponsor is vouching that the migrant:

- Is qualified to do the job in question.
- Intends to base themselves in the UK.
- Has been approved by the Governing Body for the sport.
- Will comply with the conditions of their permission to stay and will leave the UK when it expires.

The sponsor is also giving an undertaking that it will accept the responsibilities of sponsorship in respect of the migrant.

60. All migrants in this tier must have an endorsement from the appropriate governing body for their sport. This endorsement will confirm that the player or coach:

- Is internationally established at the highest level.
- Will make a significant contribution to the development of their sport at the highest level in the UK.

61. This endorsement will also confirm that it is appropriate to fill the post from outside the EEA.

### Ministers of Religion

62. This category is for those coming to fill vacancies as religious workers with recognised religions. This includes anyone who preaches to their community and/or performs a pastoral role. Tier 5 will cover migrants coming to work temporarily in the UK as a religious worker in a non-pastoral role, where the duties include performing religious rites but not preaching to a congregation.

63. This sub-category replaces the existing arrangements for Ministers of Religion and missionaries.
64. All migrants seeking to enter under this category will need to obtain an entry clearance in the category, and will need to show they have enough points to qualify. Points will be earned against three sets of objective criteria with an overall pass-mark of 70 points.
65. Again migrants will require a valid certificate of sponsorship, issued for this sub-category, by a sponsor licensed by the UK Border Agency, for which they will receive 50 points (section A of the table below). There are also criteria relating to maintenance requirements and competence in English. These are control tests the migrant must meet and are worth 10 points each, as shown below.

| Points under T2 Religion – Pass-mark 70 |                            |           |
|---|----------------------------|-----------|
| <b>A</b>                                | Certificate of Sponsorship | 50 points |
| <b>B</b>                                | Maintenance                | 10 points |
| <b>C</b>                                | Competence in English      | 10 points |

### Sponsorship for Ministers of Religion

66. Migrants under this sub-category will need to be sponsored by an institution licensed, by the UK Border Agency, to issue Certificates of Sponsorship under this category.
67. Therefore, those wishing to recruit a migrant in a religious capacity will be required to apply to the UK Border Agency for a licence as a sponsor under this tier. Religious institutions wishing to recruit religious workers will need to:
- Provide evidence that they are a bona fide religious institution.
  - Be a registered, excepted or exempt UK charity according to the relevant UK charity legislation in force in its part of the UK. In Northern Ireland the organisation must have obtained charitable status for tax purposes from HM Revenue and Customs.
  - Provide background information about the organisation including details of the parent organisation, and which faith it belongs to.
  - Where there is a set hierarchy within the faith, above the sponsoring body, provide a letter of support from the head of that organisation (or their nominated representative) to confirm that the sponsor is part of that organisation. Where there is no such hierarchy, UK Border Agency will undertake a wider range of checks on a risk assessed basis.
68. Where a Certificate of Sponsorship is issued under this sub-category, the sponsor is:
- Vouching that the migrant:
    - Is qualified to do the job in question.
    - Intends to base themselves in the UK
    - Will comply with the conditions of their permission to stay and leave the UK when it expires.
  - Providing an undertaking that it will accept the responsibilities of sponsorship in respect of the migrant.
  - Providing an undertaking to support or accommodate the migrant.
  - Confirming that they have undertaken a resident labour market test for the role, to ensure the migrant will be filling a genuine vacancy that cannot be filled with a suitably qualified member of the resident labour force. The Resident Labour Market Test requires that, before a migrant can be recruited to fill a job, that job must have been advertised in Job Centre Plus, or as agreed in a Code of Practice, for at least two weeks.
69. Migrants will be required to meet a level of English equivalent to the Council of Europe level B2 because of the need to effectively communicate with worshippers. This is approximately the same level that those seeking entry as ministers of religion must demonstrate under the current rules. They will also be expected to show maintenance funds of £800 plus additional funds for any dependants.

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# HOW THE SKILLED MIGRANT TIER WILL WORK

## SINGLE APPLICATION PROCESS

70. There will be a single application process, whether in or outside the UK. There will also be a single application fee for the principal applicants. We have set fees for the points system by balancing the need to recover the full cost of providing our services while maintaining the global competitiveness of the UK.

## APPLICATION PROCESS

71. There will be three ways of applying under this tier of the points system:
- Entering the UK under the skilled migrant tier (Annex B);
  - Extending a stay in the UK in the skilled migrant tier (Annex C);
  - Switching while in the UK into the skilled migrant tier (Annex D).
72. We will check and record the fingerprints of any applicants applying for a visa. All migrants allowed to come here will need to obtain a biometric identity card, so we know exactly who they are and what they are entitled to do.

## DOCUMENTARY EVIDENCE TO SUPPORT CHECKS

73. Applicants will provide documentary evidence (to be specified in guidance available before implementation) to support their claim for points. We will also make robust checks when prospective migrants apply to ensure that they are genuinely entitled to the points they claim, and that those who may have previously abused the immigration system are excluded. Points will not be awarded if we have reasonable grounds to doubt the evidence is genuine and, having taken reasonable steps to verify its authenticity, have been unable to do so.

## APPEAL PROCESS

74. Section 4 of the Immigration, Asylum and Nationality Act 2006 removes the full right of appeal for those applying from abroad to come to the UK under the points system.

The legislation will take effect as each points system tier is implemented, with transitional arrangements to ensure that applicants do not lose the right of appeal until each tier is fully implemented. Appeal rights will be abolished in the Skilled Migrant tier, except where the appeal is brought on Human Rights or Race Discrimination grounds. Applicants will be able to seek one Administrative Review per application if they feel an error has been made in their decision.

75. Since they retain their appeal rights here will be no Administrative Review for in-country applicants who will keep any existing rights of appeal though, in accordance with section 19 of the UK Borders Act 2007, they will not generally be able to submit new evidence in their appeals.

## SUPPLEMENTARY EMPLOYMENT

76. Tier 2 migrants will be allowed to undertake work supplementary to that for which their Certificate of Sponsorship has been issued. This supplementary employment will not be subject to the resident labour market test nor require the employer to be a sponsor. Supplementary employment must meet the following criteria:
- Must be in the same profession and at the same professional level as main employment.
  - Must not be employed by a recruitment agency, employment agency or any similar business that provides personnel to a client.
  - Must be no more than 20 hours per week.
  - Must be outside of normal working hours.

## DEPENDANTS

77. Successful applicants will be able to bring immediate family (children, spouses, civil partners, same sex partners and unmarried partners) into the UK as long as they can show that they can maintain these dependants without claiming benefits.
78. Therefore, dependants of migrants in the Skilled Migrant tier can come to the UK as migrant in their own right, through this or other

tiers, or to come as a dependant. As a dependant they will be able to seek employment but as this is tied to the leave of the principal migrant they will not be able to switch into any points system tier. If dependants subsequently wish to apply to be in the UK in their own right, they will need to leave the UK in order to apply. This is in line with our policy to export our border controls.

## **INITIAL LEAVE**

79. Successful applicants entering the UK in the Skilled Migrant tier will be granted for the duration of their posting up to an initial period of three years.

## **EXTENSIONS OF LEAVE**

80. If a migrant wishes to apply for an extension to their initial leave to remain they may apply for further leave to remain. Further details on subsequent grants of leave to remain are provided in Annex C.
81. Transitional arrangements will be put in place to handle the transfer from the old to the new systems (Annex D).
82. The Annexes which follow provide more detail on Tier 2:

**Annex A:** The Skilled Migrant tier at a glance  
– summary architecture

**Annex B:** Extending a stay in the UK in the Skilled migrant tier

**Annex C:** Switching while in the UK into/out of the Skilled migrant tier

**Annex D:** Transitional Arrangements

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## COMMENTS ON THIS DOCUMENT

This is not a consultation document. It is aimed at ensuring that those affected by the changes set out in this statement of intent are able to prepare for them in good time. We consulted fully leading up to the publication of the Command Paper 'A Points Based System: Making Migration work for Britain' in March 2006. But if you have any comments on this document, especially on the practical application of any elements of these proposals, you may send them to [tier2@homeoffice.gsi.gov.uk](mailto:tier2@homeoffice.gsi.gov.uk)

Or by post to:

Tier 2 Statement of Intent  
c/o 11 Floor  
Apollo House  
36 Wellesley Road  
Croydon CR9 3RR

## ANNEX A: THE SKILLED MIGRANT TIER AT A GLANCE

|   | Entry to the UK  |                          |             |                 | Extending the period of stay having already had leave in Tier 2  | Permitted Switching   |   | Dependants | Leave |
|---|--|--------------------------|-------------|-----------------|--|---|---|------------|-------|
|   | Specific criteria  | English                  | Maintenance | General Grounds |  | Source categories   | Receiving categories  |            |       |
| <b>General – except Intra Company Transfers</b> | <ul style="list-style-type: none"> <li>Qualifications</li> <li>Prospective Earnings</li> <li>Job Offer/ Sponsor</li> </ul>                         | ✓                        | ✓           | ✓               | <ul style="list-style-type: none"> <li>Certificate of Sponsorship for continuing period.</li> <li>Control tests including appropriate rate.</li> </ul> | <ul style="list-style-type: none"> <li>T2: ICTs</li> <li>T2: Sports</li> <li>T2: Ministers of Religion</li> <li>All Tier 1</li> <li>All tier 4</li> </ul> | <ul style="list-style-type: none"> <li>All highly skilled sub categories, except post study work.</li> <li>Students*.</li> </ul>                      | ✓          | 3+2   |
| <b>Intra Company transfers</b>                  | <ul style="list-style-type: none"> <li>Sponsor</li> <li>6 months with company</li> </ul>   | For leave beyond 3 years | ✓           | ✓               | <ul style="list-style-type: none"> <li>Certificate of Sponsorship for continuing period.</li> <li>Control tests including appropriate rate.</li> </ul> | <ul style="list-style-type: none"> <li>None</li> </ul>  | <ul style="list-style-type: none"> <li>All highly skilled sub categories, except post study work.</li> <li>T2: general</li> <li>Students*.</li> </ul> | ✓          | 3+2   |
| <b>Sports-people</b>                            | <ul style="list-style-type: none"> <li>Governing Body migrant endorsement</li> <li>Governing Body sponsor approval</li> <li>Sponsorship</li> </ul> | ✓                        | ✓           | ✓               | <ul style="list-style-type: none"> <li>Certificate of Sponsorship for continuing period.(incl Governing Body Endorsement).</li> </ul>                  | <ul style="list-style-type: none"> <li>T2: General</li> <li>T2:ICTs</li> <li>T2: Ministers of Religion</li> <li>All Tier 1</li> <li>All tier 4</li> </ul> | <ul style="list-style-type: none"> <li>All highly skilled sub categories, except post study work.</li> <li>Students*.</li> </ul>                      | ✓          | 3+2   |
| <b>Ministers of Religion</b>                    | <ul style="list-style-type: none"> <li>Sponsorship</li> <li>Must be preaching to community or performing a pastoral role.</li> </ul>               | ✓                        | ✓           | ✓               | <ul style="list-style-type: none"> <li>Certificate of Sponsorship for continuing period.</li> </ul>  | <ul style="list-style-type: none"> <li>T2: General</li> <li>T2: ICT</li> <li>T2: Sport</li> <li>All Tier 1</li> <li>All tier 4</li> </ul>                 | <ul style="list-style-type: none"> <li>All highly skilled sub categories, except post study work.</li> <li>Students*.</li> </ul>                      | ✓          | 3+2   |

\* Tier 4, once implemented.

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## ANNEX B:

# EXTENSIONS OF STAY IN THE UK IN THE SKILLED MIGRANT TIER

Migrants in the Skilled Migrant tier will be able to extend their leave. To do so, they will need to pass the test that is in force at the time they apply to extend. This could be different to the test that was in place when the applicant first came to the UK.

### SKILLED MIGRANT, TIER 2 GENERAL (SHORTAGE OCCUPATIONS, RLMT AND ICTS)

#### Specific criteria

The extension test will use criteria similar to those for initial entry:

- The migrant will need to have been issued with a Certificate of Sponsorship in respect of their continued employment before they can make an application for an extension of stay; and
- The job will need to continue to be at a level of NVQ3 or above and be paid at or above the appropriate rate; and
- The applicant will also have to acquire sufficient points under the points table.

However, as the employer will have shown, on the initial application, that the job could not be filled from the resident labour market, a further resident labour market test will not be required. There will also be no need to provide further evidence of 'maintenance' as the individual will have shown that they have been working in the UK and receiving the appropriate rate of pay for that job.

Where a skilled migrant has been given leave to enter to take a job on the shortage occupation list and is applying for an extension to remain in the job but that job is no longer on the shortage list, they will need to meet the points criteria in place but will not be required to meet the resident labour market test.

Where the migrant has been previously granted leave as a Tier 2 migrant they will receive 10 points for English language ability (except in the case of ICTs) as this will have been established previously and will not have to re-prove their qualifications.

However, the number of points which are awarded for these attributes and the pass mark required may change. It is also possible that other factors will be taken into consideration.

#### SPORT AND RELIGIONS

As with Tier 2 General the extension test will use criteria similar to those for initial entry, however as these sub-categories do not have to meet the same criteria, such as being paid at or above the appropriate rate, the main criteria will be:

- The migrant will need to have been issued with a Certificate of Sponsorship in respect of their continued employment before they can make an application for an extension of stay. For sport this must include Governing Body Endorsement for the extension.
- As with Tier 2 General, where the migrant has been previously granted leave as a Tier 2 migrant they will receive 10 points for English language ability.

#### CHANGE OF EMPLOYMENT

Where someone previously given leave to enter or remain in the Skilled migrant tier (Tier 2) is seeking an extension of stay in respect of a change of employment, their application will be subject to the points test but will receive 10 points for English language ability (except in the case of ICTs) as this will have been established previously and they will not have to re-prove their qualifications or to provide further evidence of 'maintenance'. However, change of employment applications will be subject to the resident labour market test.

## ANNEX C: SWITCHING WHILE IN THE UK INTO AND OUT OF THE SKILLED MIGRANT TIER

Switching (where migrants move while in the UK from one immigration category to another, meeting the initial entry requirements for the new category) in or out of the Skilled Migrant tier sub categories will only be permitted as follows:

| Source (where the person is now)                                | Receiving categories (where they can go)   |
|---|--|
| <b>Tier 2: Skilled migrant (except Intra Company Transfers)</b> | <ul style="list-style-type: none"> <li>• All highly skilled sub categories, except post study work.</li> <li>• Students*. Skilled migrant tier (except Intra Company Transfers)</li> </ul> |
| <b>Tier 2: Skilled migrant, Intra Company Transfers</b>         | <ul style="list-style-type: none"> <li>• All highly skilled sub categories, except post study work.</li> <li>• Skilled migrant tier</li> <li>• Students*.</li> </ul>                       |
| <b>Tier 2: Skilled migrant, Sports people</b>                   | <ul style="list-style-type: none"> <li>• All highly skilled sub categories, except post study work.</li> <li>• Students*. Tier 2 categories</li> </ul>                                     |
| <b>Tier 2: Skilled migrant, Minister of Religion</b>            | <ul style="list-style-type: none"> <li>• All highly skilled sub categories, except post study work.</li> <li>• Skilled migrant tier.</li> <li>• Students*.</li> </ul>                      |
| <b>All tier 1: Highly Skilled sub categories</b>                | <ul style="list-style-type: none"> <li>• All other highly skilled categories except Post Study Work.</li> <li>• Tier 2 (Work Permits prior to the implementation of Tier 2)</li> </ul>     |
| <b>Tier 1: Post Study Work</b>                                  | <ul style="list-style-type: none"> <li>• All other Highly Skilled categories</li> <li>• Skilled Migrant tier (Work Permits prior to implementation)</li> </ul>                             |
| <b>Student (tier 4 once implemented)</b>                        | <ul style="list-style-type: none"> <li>• All highly skilled categories.</li> <li>• Skilled Migrant tier (Work Permits prior to implementation)</li> </ul>                                  |

\* Tier 4, once implemented.

People with leave as Working Holidaymakers, or as doctors in the UK to take the PLAB test or on Clinical Attachment will not be able to switch into any Skilled migrant sub category. Switching into any Skilled migrant category will not be permitted from the low Skilled Migrant tier (Tier 3) or the youth mobility and temporary worker tier (Tier 5) once they are implemented.

Students who have received sponsorship from an overseas Government, or who have an international scholarship, will need to obtain the consent of their sponsoring Government or organisation on the first occasion they apply to switch.

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## ANNEX D: TRANSITIONAL ARRANGEMENTS

We will put in place transitional arrangements to minimise the impact on existing work permit holders, whereby those with existing leave to enter or stay granted under the current work permit arrangements<sup>7</sup> will be able to extend that leave under the Skilled Migrant tier of the PBS.

Where a migrant's work permit leave expires before the Skilled Migrant tier comes into force, migrants will be able to seek an extension of stay under the current work permit arrangements in the normal way.

Where that leave expires after the Skilled Migrant tier comes into force, existing work permit holders will need to seek an extension of stay under the new system. Such applications will be subject to the new control tests:

- the applicant must be in possession of a Certificate of Sponsorship issued by a licensed employer; and
- The Certificate of Sponsorship must confirm that the job is at or above NVQ3 level and will be paid at or above the appropriate rate for the job (the appropriate rate may have changed since the initial leave to enter).

However, for the Tier 2 general category providing the migrant holds a valid work permit, they will not have to meet the Tier 2 general category specific criteria relating to qualifications, prospective earnings, and language requirements.

Migrants using the Ministers of Religion sub-category, will need a Certificate of Sponsorship issued by a registered employer, but will not need to meet the Tier 2 general control tests.

Migrants using the Sports sub-category will need a Certificate of Sponsorship issued by a registered employer, including a Governing Body Endorsement, but will not need to meet the Tier 2 general control tests.

Migrants will be able to apply for one extension to reach the necessary period for settlement (currently 5 years). If they do not wish to proceed to settlement and wish a further extension of leave to remain they must apply under Tier 2 proper.

Where existing work permit holders seek a change of employment after the Skilled Migrant tier comes in to force, they will need to apply under the PBS and meet full Tier 2 criteria, including the attributes test.

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<sup>7</sup> Excluding those already present as holders of Training and Work Experience Scheme (TWES) work permits or multiple entry work permits





