

Q & A from What's happening in immigration law webinar – 7 December 2023

This Q&A covers questions raised in our webinar. This session discussed:

- The Home Office's December 2023 immigration announcement to reduce net migration – for further information on this, see our article [here](#).
- The Migration Advisory Committee's report on shortage occupations
- Recent updates to the Immigration Rules and policy for workers and their sponsors
- Immigration implications when sponsored workers are made redundant
- Changes to the EU Settlement Scheme
- The new Electronic Travel Authorisation for visitors
- Phase-out of physical immigration documents
- Recent and upcoming increases to immigration fees, the Immigration Health Surcharge and illegal working civil penalties

Since the webinar took place, the Home Office published new Immigration Rules on visitors, the Youth Mobility Scheme and other matters of interest to employers. For a summary of these, see our article [here](#).

	Topic	Question	Answer
1.	Five-point plan	Please can you confirm that existing visa holders on £27-28,000 per year will not need to be placed on £38,700 per year (for the same job) when their visas are renewed (i.e. the new salary threshold rules will only apply to new visa holders – not renewal of existing visa holders)?	This will depend on what transitional arrangements are included in the Rules, when published next year. The Home Office has released a factsheet confirming that the scope of any transitional arrangements is yet to be determined. The increase in the threshold is very high so it is to be hoped that there will be transitional arrangements so that people part-way through the process are not excluded from extension/settlement.
2.	Five-point plan	If requesting a sponsorship licence now, will the new Skilled Worker salary threshold apply?	The new general salary threshold is expected to apply for Skilled Worker immigration applications made from April 2024. So, if a sponsor licence is in the pipeline, it will depend on when this is granted and when the Certificate of Sponsorship allocation (for in-country applicants) or defined Certificate of Sponsorship (for entry clearance applicants) is available. These must be in place before an application can be made.

			<p>We need to wait for the Immigration Rules to be published to know exactly what transitional arrangements will be applied, however it is conventional for new Rules of this nature not to be applied to applications submitted before the date the Rule change takes effect, even if the application is decided after this. There may also be further transitional arrangements put in place for people who already have immigration permission that was approved under the relevant current threshold, and who need to make an extension or settlement application in the future.</p>
<p>3.</p>	<p>Five-point plan</p>	<p>What does the increase in the general salary threshold for the Skilled Worker route mean for internships in work?</p>	<p>The details of a specific proposed internship would need to be reviewed on a case-by-case basis, however usually the most appropriate route for internships is the Government Authorised Exchange route.</p> <p>The Skilled Worker route may come into consideration if, for any reason, the proposed engagement is not appropriate for the Government Authorised Exchange route. This could be the case if the post will in fact fill a vacancy in the business's workforce. If the Skilled Worker route is identified as the appropriate option, the individual would need to fulfil the criteria for that route, including salary thresholds.</p> <p>If the Skilled Worker route is the appropriate option, some individuals may qualify at a lower salary threshold than the prevailing main general threshold, if, for example, their circumstances fall under the new entrant tradeable points option. We do not have any details yet regarding whether the general thresholds for all tradeable points options will be affected when the Immigration Rules are amended for Spring 2024. A recent Home Office factsheet confirms that salary discounting will remain for new entrants to the labour market.</p>

4.	Five-point plan	We're in the process of offering Graduate Programme roles starting late 2024, assuming these roles will fall under the same Skilled Worker general threshold of £38,700?	The new general threshold for the Skilled Worker route is due to be implemented in Spring 2024, so individuals starting a graduate programme in late 2024 would need to meet the prevailing salary thresholds, subject to any transitional arrangements. We do not yet have the details of what these will be. Note that some candidates may be able to use the tradeable points option for new entrants, which (subject to amendments to the rules) would mean they may qualify at a lower salary level. Health and Care roles and roles on national pay scales (e.g. teachers) will also be exempt from the new higher threshold.
5.	Five-point plan	<p>Should we be waiting on processing new Skilled Worker visas until the government has updated the details regarding the increased salary details?</p> <p>Will there be any exceptions for visa extensions for Skilled Workers who fall beneath the new minimum salary requirements?</p>	<p>An assessment may need to be made of whether it is possible and desirable to sponsor a person for the full five years at the current salary levels.</p> <p>Employers should also be prepared for the possibility that a higher salary above the current threshold may need to be paid by the time the person is due to settle. We do not know yet what the extent of any transitional arrangements may be for workers who are sponsored before the higher threshold comes into effect.</p>
6.	Five-point plan	As a follow-on from the answer to Question 5, is it possible to renew someone's Skilled Worker visa 'early' i.e. 6/12/18 months before the visa is due to expire in order to use the current Skilled Worker salary thresholds?	Yes, it is possible to make an early application however the considerations around doing so should be assessed on a case-by-case basis. This will be the subject of a forthcoming separate article.
7.	Five-point plan	Will the new general salary threshold for Skilled Worker visas only apply to new entrants to the UK from the date it takes effect, or will it also apply to current sponsored employees (either immediately when the change takes effect, or at the point at which their visa needs to be renewed)?	<p>We need to wait to see what transitional arrangements in the Immigration Rules when they are published.</p> <p>It is also possible the Home Office will publish more detailed policy information on the five-point plan in early 2024, ahead of a Statement of Changes in Immigration Rules. The Government has recently confirmed that further information</p>

			will be made available in January 2024 for at least some elements of the plan.
8.	Five-point plan	Do we have to increase the salary of Skilled Worker sponsored employees?	We need to wait to see what transitional arrangements are included in the Rules. A factsheet released by the Home Office confirms that the salary threshold changes will not be retrospective, which means that the salary of current Skilled Workers will not need to be increased immediately. It may need to be increased to meet the higher general threshold before an extension or settlement.
9.	Five-point plan	Will the general threshold salary requirement of £25,600 to apply for settlement from a Skilled Worker visa be increasing?	We need to wait for the Immigration Rules (or any more detailed policy statement) to be published to know whether any transitional arrangements will be applied, and the extent of them.
10.	Sponsorship	We are finding it hard to manage early careers applications and how to message that we can't/won't be able to sponsor.	<p>This can be a tricky issue for employers because excluding a person from a recruitment process based on their immigration status carries the risk of an employment tribunal claim being made for indirect race discrimination.</p> <p>Historic employment tribunal case law says that recruitment decisions should be based on who is the best candidate for the job, and sponsorship considerations should not be assessed until a late stage in that process.</p> <p>While there is nothing stopping an employer from asking about an individual's right to work status during the recruitment process (whether at the start of the application, or during the interview stage, or at the offer stage), it is important that:</p> <ul style="list-style-type: none"> (a) the question is asked of all candidates; and (b) the employer is aware that a policy of automatically rejecting candidates based on their need from sponsorship may prompt an indirect discrimination claim.

			<p>The question of whether such a claim would be successful is currently untested under the current work visa regime. The historic case law that set the precedent – the 2009 case of <i>Osborne Clarke Services v Purohit</i> – is based on a very different work permit regime. The facts of that case may have been decided differently today. However, that case remains binding case law on tribunals, meaning that a policy of automatically rejecting candidates because they would need sponsorship will attract discrimination risk.</p>
11.	Sponsorship	<p>If an organisation doesn't have a sponsorship licence and is likely to be able to fill a post by recruiting UK nationals, what is the position if they get an application from someone who would require sponsorship? Assuming the role would meet the criteria, are they required to progress the application and (if the non-UK national is the best candidate) potentially have to get a sponsor licence even though there are suitable applicants who wouldn't require sponsorship?</p>	<p>See answer to Question 10 above.</p>
12.	Sponsorship	<p>Is it possible to obtain a sponsor licence for a newly established UK company? If so, are there any financial requirements (capital introduction, revenue etc)?</p>	<p>Yes, it is possible to obtain a sponsor licence as a start-up however one of the main documents that can cause a stumbling block is the requirement to have a current, corporate bank account with an institution registered with both the Financial Conduct Authority and the Prudential Regulation Authority.</p>
13.	Sponsorship	<p>We provided the contact details of sponsor workers when ending their sponsorship. Why do we still receiving that kind of request for providing their contacting details?</p>	<p>The Home Office is acting belatedly on these notifications so are double-checking if previous sponsors have any more recent contact details for the relevant workers. This is so they have the best chance of reaching them when they send notifications, e.g. to cancel the person's immigration permission.</p>

14.	Immigration Health Surcharge	Does the Immigration Health Surcharge Rate increase only apply to new applications? Are those who immigrate before 16 January 2024 locked into the current rates?	Those whose applications are made before the IHS rises will be charged at the current rate. Minimising IHS charges may be a factor in deciding what length of visa to apply for now. For further information, see our article here .
15.	Right to work	Will the online Home Office right to work check system be updated to include full duration of visas and visa types?	<p> Holders of physical immigration documents including Biometric Residence Permits (BRPs), Biometric Residence Cards (BRCs) and passport stamps and stickers (vignettes) will need to register for a UKVI account to access the View and Prove service from the end of 2024. </p> <p> The full duration of visas and any work limitations for BRP and BRC holders are already available for employers to view online, however this is on a legacy system that will be replaced by View and Prove. It is not yet clear whether this system will remain in place for a short period into 2025 while individuals are in the process of registering for UKVI accounts, or if it will be switched off by the end of 2024. </p> <p> We would suggest that employers consider doing online checks on BRP and BRC holders now/throughout 2024 using the current system to spread out the administrative burden of doing a large volume of repeat checks at the end of 2024, and to ensure that the expiry date of permission is correctly flagged. See our article here for further information. </p> <p> Holders of other physical immigration documents will need to ensure they obtain a UKVI account before these cease to be accepted for right to work checks. </p> <p> For all physical document holders, we would suggest that a UKVI account is obtained as soon as possible once the process for this becomes available, and by the end of 2024 at </p>

			the latest. This will avoid the possibility of travel being disrupted due to there being no record of the individual on View and Prove.
16.	Right to work	Are IDVT checks worth it or does this cause duplication of work for employers when checking right to work for UK/NI nationals?	This is an assessment that has to be made by the business. Using IDVT can minimise the risk of an employer accepting a fraudulent document. See our article here for a discussion of some of the factors to consider.
17.	Right to work – EEA/Swiss nationals and their family members	For checking the expiry of immigration permission for colleagues with pre-settled status, I thought employers weren't mandated to check current employees' right to works at the time. Is this still the case, and is diarising the expiry of pre-settled status only relevant for new hires since the EU Settlement Scheme came into effect?	<p>Employers were not required to check the UK immigration status of EEA or Swiss nationals whose employment started before 1 July 2021. A right to work check could be performed based on an EEA or Swiss passport or national ID card. For non-EEA family members of EEA or Swiss nationals, checking UK immigration documents issued under the EEA Regulations was also sufficient before 1 July 2021.</p> <p>No right to work check expiry will have been recorded for EEA or Swiss nationals whose employment started on or before 30 June 2021, and who had or went on to obtain pre-settled status under the EU Settlement Scheme. This is because the employer will have had a permanent statutory excuse against liability for an illegal working civil penalty, with no follow-up right to work check required.</p> <p>For non-EEA family members employed on or before 30 June 2021 however, an expiry reminder will have been recorded as those who would have been eligible for pre-settled status will have held documentation under the EEA Regulations with an expiry date attached to it.</p> <p>The risk for employers is that it may come to light at some point that one or more of these individuals does not currently have the right to work, e.g. because they did not apply under</p>

			<p>the EUSS when required to do so. There is guidance in An Employer's Guide to Right to Work checks on what is expected in this scenario.</p>
18.	Electronic Travel Authorisation	Will the Electronic Travel Authorisation (ETA) apply to sponsored workers?	<p>No it will not. It will only apply to individuals who do not have any other visa in place and who are seeking to enter the UK for visitor purposes (including short-term study up to 6 months), non-visa national entering the UK for up to three months as a Creative Worker or for transiting the UK.</p> <p>The ETA is being rolled out on a phased basis and the Home Office's guidance on this is available here.</p>
19.	Visitors	The current visit guidance states that visitors are permitted to undertake activities relating to their employment overseas remotely whilst they are in the UK, such as responding to emails and answering phone calls. However, the main purpose of the trip must be for a 'permitted activity'. How are you advising your clients to manage this conversation with the business? Also, does this apply to both visa nationals and non-visa nationals?	<p>All visitors (visa nationals and non-visa nationals) must restrict their activities to permitted activities. In addition to recreational and family visits, there are a range of general activities permitted for business visitors, and more specific permitted intra-corporate activities. The full range of activities is set out in the Immigration Rules at Appendix Visitor: Permitted Activities.</p> <p>The visit guidance you mention is being incorporated into the above Appendix for visa applications or non-visa national visitor entries to the UK from 31 January 2024. The new Rule simply states that a visitor may 'undertake activities relating to their employment overseas remotely from within the UK, providing this is not the primary purpose of their visit'.</p> <p>This new wording is helpful for individuals, as it confirms they are allowed to carry out any aspect of their overseas job remotely, provided they are primarily in the UK for another permitted activity.</p>

			For UK businesses inviting visitors to the UK it should just be made clear that remote working, although allowed, must be subsidiary to other permitted activities.
20.	Permission to stay	If a sponsored worker was due to leave the UK prior to visa expiry but they have a medical emergency which results in them not being able to travel out of the UK prior to expiry - is there a form of leave available for this type of situation?	They can make an application for permission to stay outside the Immigration Rules.
21.	Future immigration policy	Is there any indication from Labour's policies on immigration that they would make similar changes if they win the next General Election? Or is it likely they'd reverse these new changes?	Labour's policy on immigration will not be made public until they publish their manifesto, however currently 85% of polled voters think that the current Government has lost control of immigration so the general statements from Labour on the issue are likely to be about controlling it. We don't have a clear view yet however of their specific plans. It would seem unlikely that fee changes would be reversed under Labour due to the current state of public finances.

This publication states the position as at December 2023. It provides general guidance only: expert advice should be sought in relation to particular circumstances. Please let us know by email (info@lewisilkin.com) if you would prefer not to receive this type of information or wish to alter the contact details we hold for you. © December 2023 Lewis Silkin LLP.