

Q&A from What's happening in immigration Law? 26 March 2024

	Question	Answer
1	Where can I see the new Skilled Worker Rules?	<p>The updated Immigration Rules will be available online from 4 April 2024.</p> <p>You can view the changes to the Rules in the Statement of Changes in Immigration Rules, HC 590. These only outline the changes being made to the existing Immigration Rules rather than showing what they will look like in full. We are happy to assist with any queries on what the new Rules will be and how to interpret them.</p>
2	Who is subject to the salary thresholds under transitional arrangements for Skilled Workers?	<p>Anyone already on the Skilled Worker route or who is assigned a CoS before 4 April 2024 (but due to a planned SMS system outage, the deadline to assign a CoS is brought forward to 19:00 BST on 2 April 2024).</p> <p>These workers continue to benefit from the transitional arrangements provided they have continuous permission under the Skilled Worker route when seeking to extend, change employer (unless their occupation is listed Appendix Skilled Occupations, Table 2a because it is below A-level equivalent following reclassification under SOC 2020) or settle before 4 April 2030.</p>
3	Who is subject to the salary thresholds under the new arrangements for Skilled Workers?	<p>Anyone not subject to a transitional arrangement, who is assigned a CoS on or after 4 April 2024. This includes someone applying for Skilled Worker entry clearance coming to the UK for the first time or someone switching into the Skilled Worker route from within the UK for the first time.</p>
4	If a Skilled Worker is in the UK already and their visa expires after 4 April 2024, can they use the lower salary thresholds under the transitional arrangements?	<p>Yes, they will be eligible to rely on transitional arrangements provided the conditions at Question 2 above are met. Employers should consider seeking legal advice, if needed, to ensure the correct salary threshold is applied to the Skilled Worker in advance of them making their application.</p>

<p>5</p>	<p>Once a Skilled Worker has been in the UK for five years, do we need to review their salary and occupation code again before they apply for indefinite leave to remain (to settle) in the UK? Presumably we would need to consider the most up-to-date SOC rates, which means it could be significantly higher due to further inflationary increase etc?</p>	<p>Yes, and the salary threshold applicable may vary for each Skilled Worker in this position.</p> <p>Under the changed Rules, if a Skilled Worker is subject to transitional arrangements (see Question 2 above for further details), they will need to apply by 3 April 2030 and meet the higher of £29,000 or the going rate listed in Table 2 or 2a of the new Appendix Skilled Occupations.</p> <p>Those who cannot rely on transitional arrangements will need to meet the higher of £38,700 or the going rate listed in Table 1 of the new Appendix Skilled Occupations.</p> <p>There are exceptions to the general rule.</p> <p>Between now and when the worker is due to settle, the Home Office may decide to increase the applicable general and/or going rate salary thresholds again.</p> <p>Employers should consider seeking legal advice, if needed, to ensure the correct salary threshold is applied to the Skilled Worker in advance of them making their application.</p>
<p>6</p>	<p>Is it possible to issue a CoS before an employee on a Student visa completes their course, provided they submit the application for immigration permission within three months? We have an employee who is finishing their course in May and will benefit from the transitional arrangements if their CoS is assigned by 19:00 on 2 April 2024.</p>	<p>All Skilled Worker applicants must ensure they submit their immigration application no more than three months after the date their CoS is assigned.</p> <p>Student visa holders who are applying to switch into the Skilled Worker route from inside the UK must also meet one of the following additional requirements:</p> <ul style="list-style-type: none"> • They must have completed their sponsored course of study; or • They must be studying a full-time degree or higher level course at a Student route sponsor with a track record of compliance, and the CoS must have a start date no earlier than their course completion date; or • They must be studying a full-time PhD at a Student route sponsor with a track record of compliance, and the CoS must have a start date no earlier than 24 months after the start of the PhD course. <p>If the Student visa holder expects to complete their course in May 2024 it should not present a problem for the CoS to be assigned by 19:00 on 2 April 2024.</p> <p>However, the start date should be carefully selected. This must be no earlier than the course completion date, no more than three months after the immigration</p>

		application will be submitted, and no more than six months after the date the CoS is assigned.
7	If someone is already in the UK on a Graduate visa for two years, does this mean they can only apply under the new entrant discount for a further two years?	<p>A person seeking to rely on the new entrant discount is allowed a maximum of four-years with immigration permission as a Skilled Worker, Graduate and/or Tier 2 Migrant. This permission does not need to be continuous to be counted.</p> <p>It is important to carefully calculate the end date of the CoS to ensure the immigration permission that would be granted does not exceed this maximum. The calculation must take into consideration that immigration permission granted under the Skilled Worker route will expire 14 days after the CoS end date.</p>
8	What would be the current rate for an employee on the Graduate route looking to switch at the end the year?	<p>A Graduate visa holder switching at the end of 2024 cannot make use of the transitional arrangements and will be subject to the new salary thresholds set at the 50th percentile.</p> <p>If relying on the new entrant tradeable points option (Option E), their salary must equal or exceed both £30,960 per year or 70% of the going rate for the occupation code.</p> <p>After that, if they are not eligible to rely upon another tradeable points option that attracts a salary discount, the minimum salary for their extension will be £38,700 or the going rate for the occupation code.</p> <p>As a reminder, it is important to ensure the maximum four-year period allowed for new entrants is calculated correctly. See Question 7 above for further information.</p>
9	Does the age limit for new entrant include 26 or is it strictly under 26?	It is strictly for anyone under the age of 26 on the date of application.
10	The going rates for many Skilled Worker occupations are based on a 37.5-hour working week. Can we offer a 35-hour working week if the salary still equates to the relevant going rate, or threshold?	Yes, you can change the number of weekly working hours to lower than 37.5 hours, provided the salary offered is at or above the general threshold or the going rate, whichever is higher. The general threshold cannot be pro-rated, however the going rate can be pro-rated based on the number of hours the applicant will actually work. For example, if the relevant going rate in Appendix Skilled Occupations is £45,000 for a 37.5-hour week, then the pro-rated going rate figure for a 35-hour week will be £42,000.

11	For those on a Health & Care worker visa, if the individual is renewing after 4 April 2024, would we need to now meet that new salary, £23,200 if, for example, they were renewing in October?	<p>Eligible Health & Care workers will apply using tradeable points option K.</p> <p>Under this tradeable points option, the salary must equal or exceed both £23,200 per year and the going rate for the occupation code.</p>
12	What about for those transferring their sponsorship from one employer to another. If after 4 April 2024, would we need to meet the £23,200 for those on the Health and Care visa?	Tradeable points option K will be applied to all eligible Health & Care workers whose CoS is assigned on or after 4 April 2024.
13	For new entrants, is it the general salary threshold AND the going rate threshold that have to be met, or one or the other?	The requirement is for the salary to equal or exceed both £30,960 per year and 70% of the going rate for the occupation code. The higher threshold must be paid.
14	<p>We were in the process of deciding whether to apply to become a Skilled Worker sponsor, because we have two Graduate visa holders working for us that we would like to retain. Now it looks like the cost and burden of becoming a sponsor will be too high.</p> <p>Can we terminate their employment contracts with notice at the expiry of their Graduate visas? They knew from the start that we did not have a licence to sponsor, but we did say we would look into obtaining a licence. We made no guarantees.</p>	<p>You should ensure you ask whether the employees may be eligible for, or have obtained, any other type of visa that would enable them to work (e.g. dependant or partner) before proceeding to termination.</p> <p>Termination of employment based on sponsorship considerations (as here) may generate the risk of an indirect race discrimination claim in the employment tribunal. There may also be the risk of an unfair dismissal claim if the employees have the requisite level of continuous service.</p> <p>Whether your decision to terminate is actually indirectly race discriminatory will turn on whether you can persuade a tribunal that your decision to terminate was “objectively justified”. You would be relying on the cost and burden of becoming a sponsor to underpin your justification arguments. Unfortunately, the law in this area is underdeveloped. What little case law we have is not favourable to employers that attempt to run costs-based arguments. The leading case on this topic is old (and long predates the current, costly sponsorship system), but the case and its principles remain binding on tribunals. Accordingly, there is arguably more scope for success in running costs-based arguments than there once was, but absolutely no guarantees of success.</p>

<p>15</p>	<p>I have an employee who has a wet ink stamp in their passport confirming that they indefinite leave to remain in the UK. How do they apply for a UKVI account?</p>	<p>The Home Office has recently updated its eVisa information guidance. It confirms that if a person has a wet ink stamp in their passport confirming a grant of indefinite leave, they should make a ‘no time limit’ application. Assuming the application is successful, they will get a BRP. Once they have their BRP, they can create their UKVI account.</p> <p>The Home Office plans to stop issuing BRPs before the end of 2024. It is not yet clear what process the Home Office may put in place to set up a UKVI account for individuals who have immigration permission but no BRP by the time BRPs are phased out. On the eVisa information guidance webpage, there is an option to sign up for updates.</p>
<p>16</p>	<p>How long can an employee on Skilled Worker visa remain in the UK if they don't qualify for an extension under the transitional salary threshold?</p>	<p>When a Skilled Worker's sponsorship comes to an end, the sponsor is required to submit a report on the Sponsor Management System within 10 working days of their last day of employment.</p> <p>After the report is made, the Skilled Worker's immigration status will be cancelled if, at the time cancellation is considered, the individual has more than 60 days remaining on their immigration permission. Otherwise, it will simply expire. The Home Office will issue a cancellation notice, usually by email or by post to the Skilled Worker's last known address. The cancellation notice will normally state that the individual's permission will be cancelled so that it will expire 60 days from the date of the cancellation notice.</p> <p>The individual should either submit a fresh immigration application or leave the UK before their immigration permission expires.</p>