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**SMITH  
STONE  
WALTERS**

UK Immigration Practice

# INSIGHT

UK IMMIGRATION NEWS & VIEWS  
FROM SMITH STONE WALTERS  
SPRING 2014

*The new  
immigration  
bill sees the  
light of day*



## THE NEW IMMIGRATION BILL:

# FAIR OR FLAWED

*There is still a considerable way to go until the government's new immigration bill sees the light of day. Before it gains Royal Assent, the bill still has to negotiate its way through the House of Lords. Considering the recent furore the bill generated in the Commons, its continued journey through Parliament is likely to be anything but plain sailing.*

## POSITIVE SLANT

With the next general election not too far away, the Conservatives are somewhat keen to remind the public of the immigration reforms they have made during this Parliament and to re-affirm their claim for being the party most equipped to tackle abuse within the current immigration system.

Their party sees the introduction of this bill as vital if they are going to bring clarity, fairness and integrity to the immigration system, and address long-standing issues that prevent the government's effective operation of immigration controls.

During a recent reading of the bill, Theresa May declared that her party was making good progress with their intended reforms and had transformed the immigration and border system during the last three years.

Changes to the immigration system certainly have been made during their tenancy. The UK Border Agency has been replaced by two new operational commands, tighter controls have been placed on the granting of

students' permission to enter or stay in the UK, and reforms have been made to the family visa system.

Despite these measures, annual net migration figures are still much higher than Mr Cameron declared his party would achieve by 2015. However, with that particular battle all but lost, the measures within this bill are focused on ensuring that those overseas nationals who are refused permission to stay in the UK are denied access to specific services and leave the country at the earliest possible time.

## GREATER CONTROLS

The bill in its current form intends to cut the number of grounds for appeal against deportation from 17 to four and to make it easier to deport foreign criminals by requiring many such individuals to appeal from abroad after deportation.

Along with allowing additional powers to immigration and police officers to search individuals and premises, the bill also intends to force landlords to check whether tenants are in the UK illegally, with those failing to do so

facing large fines in the same way employers do now. Banks will also be required to check an immigrant's legal status before offering accounts, and greater controls will be put in place to prevent sham marriages. The question is: Will such measures deter an illegal migrant intent on remaining in the UK from doing so?

## DO THESE MEASURES GO FAR ENOUGH?

Well, a number of Tory backbenchers did not believe so and therefore tabled a recent amendment to the bill which would have prevented foreign criminals from using Article 8 of the European Convention on Human Rights – a right to a family life – to escape deportation.

Whilst MPs subsequently voted against this proposal, the Home Secretary did placate some of her own party's rebels by successfully tabling another amendment to the bill which will enable her to deprive a person of British citizenship acquired by naturalisation if the person 'has conducted him or herself in a manner which is seriously prejudicial to the vital interests' of the UK.

What is certain is that the future application of any such power will undoubtedly be challenged in the highest court.

The bill now passes over to the House of Lords for review before becoming law. It remains to be seen how the final draft will look, but whatever shape it takes there is no doubt that it will be shrouded in controversy.

## SMITH STONE WALTERS

*In our first 2014 edition of Insight, you will find news and updates on key UK immigration issues as well as a special focus on Europe and the rules relating to EEA nationals and their right of entry and residence in the UK.*

# EUROPE BY NUMBERS

*The European Union needs no introduction but did you know....*

# 28

SOVEREIGN  
MEMBER  
STATES

now make up the European Union (Croatia became the newest member on the 1st July 2013).



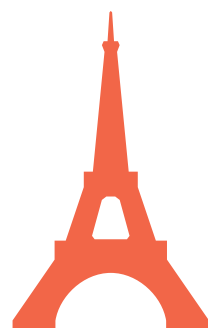
# 31

COUNTRIES

make up the European Economic Area (EEA). The EEA unites the 28 EU member states and the three EFTA states (Norway, Iceland and Liechtenstein) in an internal market governed by the same basic rules.



# 508



MILLION  
PEOPLE

reside in the EU which covers an area of over 4 million km². France is the biggest country and Malta the smallest.

# 88%

OF THE 109.9  
MILLION PEOPLE

seeking entry to the UK in the year ending September 2013 were British, EEA or Swiss nationals and therefore not subject to immigration control.



# 69%

OF EU  
NATIONALS

entering the UK between June 2012 and June 2013 did so for work-related reasons.



# 50.3%



OF SWISS  
VOTERS

recently backed a measure to impose unspecified annual ceilings on all foreign migrants, including Britons and other EU citizens.

# 9TH

MAY

is officially known as Europe Day, an annual celebration of peace and unity in Europe.

# 1

TO  
REMEMBER

the EU's motto is 'United in diversity'.



# 60+

IS THE  
NUMBER  
OF YEARS

the EU has delivered peace, prosperity and stability in Europe.



## NEW IMMIGRATION FEES ON THE WAY



As is usual at this time of the year, the Home Office will be revising its immigration and visa charges from next month. Ahead of an increase in the majority of fees by 4%, the government's response to the recent public consultation on the subject of charging was published on the Home Office website at [www.GOV.UK](http://www.GOV.UK)

From the responses provided, the Home Office welcomed the fact that the majority of respondents indicated they would like to see an enhanced offering of premium services and a simplified fee structure.

As it has always been the government's intention to enhance the menu of immigration services available at the premium end of the scale, some cynics might suggest that the questions raised within the consultation were carefully crafted to generate such a positive response without necessarily indicating the likely cost to migrants when using such services. Regardless of whether this is true or not, it is crucial that the Home Office does not lose sight of the fact that the majority of its customers would simply prefer to use a sensibly priced standard visa service which delivers on time – every time.

## INVENTOR FEARS OVER 'CRISIS IN ENGINEERING'



According to Sir James Dyson, the world-renowned inventor, strict visa rules are forcing foreign students to abandon the United Kingdom, leaving the country with a 'crisis in engineering'.

Writing recently in The Financial Times, Sir James warned that 61,000 engineering vacancies would go unfilled this year due to a lack of domestic engineers and the restrictions placed on foreign students remaining in the UK.

Criticising excessive paperwork for would-be UK employers of foreign students and stricter visa rules, he urged the government to instead encourage the 'world's most promising engineers' to remain in the UK before employers consider relocating their businesses overseas.

In the 12 months to December 2012, almost 210,000 UK study visas were issued. However, this represented a drop of 20% from the previous year.

## UKBA WEBSITE TO BE ARCHIVED

As part of the government's plans to bring all government services into one place, progress is now underway to move the content of the former UK Border Agency's (UKBA) website to [www.GOV.UK](http://www.GOV.UK).

Some of the existing UKBA content has already been moved to [www.GOV.UK](http://www.GOV.UK) ahead of a complete transfer of all the information to this site. Once completed, the government has announced that the former UKBA website will be archived.

*"progress is now underway to move the content of the former UKBA website"*

## BULGARIAN & ROMANIAN 'INVASION' NOT SEEN



*"the number of arrivals in the UK since the last work curbs were lifted are at a "reasonable level"."*

Whilst there are no official or unofficial statistics available, the general consensus is that since transitional arrangements limiting the work that Bulgarians and Romanians can do in the UK were lifted at the beginning of the year, the anticipated influx of immigrants from Bulgaria and Romania has just not materialised.

However, with some Tory rebels prophesying an 'invasion' and seeking to impose new additional controls, David Cameron has sought to play down such attitudes by claiming the number of arrivals in the UK since the last work curbs were lifted are at a "reasonable level".

The prime minister also reaffirmed that the UK had already extended the accession controls to the maximum period of seven years, and any move to retain such measures would be deemed illegal.

## ENGLISH LANGUAGE TESTS SUSPENDED BY HOME OFFICE



Following a recent broadcast of a BBC investigation into visa application fraud, the Home Office has decided to suspend all English language tests run by ETS, one of the biggest English language testing companies in the world.

### INTERNAL INVESTIGATION

Researchers for the Panorama programme identified routine cheating in Government-approved exams whereby, for a fee, criminal immigration agents would help applicants to pass compulsory language tests even if they spoke little or no English.

As a consequence, all immigration applications filed with the Home Office that include evidence for the English language requirement from ETS have been placed on hold pending an internal investigation.

Applicants concerned about the inevitable delay this action will cause to the assessment of their application may be best advised to take a new English language test with another approved provider. Where alternative evidence is provided, the Home Office has confirmed it will be able to progress with the consideration of the application.

[For further advice on this matter, please contact your Smith Stone Walters advisor today.](#)



## EXPAT EXHIBITION – A GREAT SUCCESS!



Smith Stone Walters was delighted to exhibit at the recent American in Britain Annual Expat Conference in London. The 18th event took place in February at the Hotel Russell in Russell Square and was very well attended. Our staff at the event were kept very busy throughout the day and enjoyed the opportunity to discuss all things UK immigration with visitors to our stand. Well done guys!

## HAVE YOU VISITED OUR NEW WEBSITE?

To tie in with our new corporate branding, we have developed a website that is not only fresher but also easier to navigate.

We've got lots of great new content for you too. We know you like to hear about the latest UK immigration news so you'll find a refreshed News section which will be updated more regularly, including a new SSW perspectives section with weekly postings on items related to UK immigration. We have also found room to share news about ourselves!

- So what's new?*  
The website works beautifully on all devices, from handhelds to desktop PCs
- We've put our people at the centre of the website – our staff are amazing and we wish to celebrate that fact
  - We've added brand new sections, including our values and what our clients say about us
  - You can now find us on Google+ and Twitter and you can also sign up to our Insight newsletter for regular updates about UK immigration

We hope you like our new website as much as we do!

*“We’ve put our people at the centre of the website”*



Visit our new website at [www.smithstonewalters.com](http://www.smithstonewalters.com)

## WHAT OUR CLIENTS SAY ABOUT US

*Rob Liu (SSW London) is an amazing immigration consultant and without his contribution, my Tier 2 work permit visa would not have been approved so efficiently. Rob is very efficient, and has great attention to detail. During the application process, he was willing to offer his assistance to me whenever I needed it, and was extremely supportive and patient. I'm feeling really lucky to have Rob as my consultant.*  
*L.L., software firm*

*I'm pleased with the absolute prompt quality & expedited service provided by Ragini Parkar (SSW India). She has guided correctly, promptly, effectively throughout the process and answered all queries at the utmost satisfactory level despite many challenges.*

*Once again excellent service by Ragini and SSW Team.*  
*S.B., investment bank*

*Excellent work, thank you Simon (SSW USA).*  
*R.C., investment bank.*

*It was a pleasure working with Smith Stone Walters, and they really made the process an easy one!*  
*N.E., global internet-related corporation*

*Many thanks for all your help. Everything went very smoothly with my UK entry clearance application!*  
*Y.H., financial services firm*

*I would like to thank the entire team of SSW. I am happy with every support provided.*  
*F.K., underwriting firm*

*Thank you very much for helping me to obtain my visa. Smith Stone Walters has been extremely helpful through this process.*  
*K.T., insurance brokers*

*Ming (SSW Hong Kong) and the rest of the SSW team supported me through what would otherwise have been a complex and time consuming licence & visa application process. Knowing that they are experts in their field alleviated my concerns of following due process and acting within the confines of the immigration regulations which in turn saved a great deal of time.*  
*K.B., global manufacturer*

*“Knowing that they are experts in their field alleviated my concerns”*

## TIER 2 SPONSORSHIP DUTIES – THE GUIDE

Smith Stone Walters is pleased to announce that its revised Tier 2 Sponsorship Duties guide is now available to all its clients.

Whether you are a UK employer with responsibility for a large expatriate community or a new start-up company seeking to introduce HR practices to meet your immigration duties, our new guide will help you meet your responsibilities and prepare you for the obligatory compliance visit from UK Visa and Immigration officers.



For a free copy of this compliance guide, please call a Smith Stone Walters office today.





*This month's focus is on rules relating to an EEA national's right of entry and residence in the UK.*

The level of EU migration is very much in the news at present. Amongst talk of Romanians and Bulgarians flooding the UK when their temporary work restrictions were lifted at the beginning of the year, we also recently heard of a leaked Home Office plan to supposedly cap the number of European Union migrants to 75,000 per year. What each of these stories fails to mention is that free

movement of persons is one of the fundamental freedoms that underpin the single market doctrine of the EU. As such, all European Economic Area (EEA) nationals have a right of entry and residence in the UK under EU free movement law.

## *Rights of Entry*

EEA nationals are able to enter the UK on production of a valid passport or national identity card. Whilst their initial right of residence is for three months, EEA nationals will have a right of residence beyond the initial three-month period if they wish to exercise a treaty right.

## *What Is 'Exercising a Treaty Right'?*

Under European law, EEA nationals can have a right to reside in a member state if they undertake one of the following:

- work
- are looking for work (i.e. a job seeker)
- study
- are self-employed or
- are self-sufficient.

These are known as treaty rights and are applicable to all EEA nationals except for Croatian nationals. Croatia only became a member of the EU on the 1st July 2013, and Croatian nationals need to obtain an accession worker authorisation document (permission to work) before starting any employment in this country.

## *Family Members*

EEA nationals with a right to live in the UK can be accompanied by their family. Under EU law, family members are defined as:

- spouse (husband or wife) or civil partner
- any children or grandchildren who are under 21 years of age or who are dependent on the EEA national and
- the parents or grandparents of the EEA national, their spouse or civil partner .

Other relatives – including extended family members such as brothers, sisters and cousins – do not have an automatic right to live in the UK. However, they can be considered if they are genuinely dependent on the EEA national.

Family members that are not EEA or Swiss nationals should apply for an EEA family permit before entering the UK. This permit is similar to a visa.

## *What Is an EEA Family Permit?*

An EEA family permit is issued overseas to nationals of countries outside the European Economic Area (EEA) who are family members of EEA nationals.

It is important to note that the non-EEA family member must be travelling to the UK with the EEA national or to

join them in the UK. They are not allowed to use the permit to enter the UK ahead of the EEA national.

## *Can the family members of a British citizen apply via this route?*

A British citizen cannot ordinarily rely on the provisions of European law to bring their non-European family members to the UK. There are provisions for such dependants to apply under British Immigration Rules.

However, the European Court of Justice uphold that British citizens can rely on European law in circumstances where they are returning to the UK in order to work or settle here in a self-sufficient capacity after working in another European Union state. In these circumstances, the returning British citizen has the right to be accompanied by his or her husband, wife or civil partner, if they have previously been living together in the other European Union state.

## *Is it necessary for EEA nationals to formally confirm their right of residence?*

No. Whilst EEA and Swiss nationals can apply for a registration certificate to confirm their right of residence in the UK, under European Law they are not obliged to do so.

When EEA nationals have lived in the UK for a continuous period of five years in accordance with European regulations, they can also apply for a document certifying permanent residence. The application can be filed by completing the EEA3 application form and supplying proof of eligibility, such as proof of employment, throughout the qualifying period.

## *Where can I gain further advice on an EEA national's right of residence?*

The staff at Smith Stone Walters are specialists in advising EEA nationals on their rights to enter, live in and work in the UK. Should you have any further queries regarding this subject, do not hesitate to contact Smith Stone Walters today.

*Moving people to the UK is our business. It is what we do best.*  
[www.smithstonewalters.com](http://www.smithstonewalters.com)



*“EEA nationals with a right to live in the UK can be accompanied by their family”*

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