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**SMITH  
STONE  
WALTERS**

UK Immigration Practice

# INSIGHT

UK IMMIGRATION NEWS & VIEWS  
FROM SMITH STONE WALTERS  
SPRING 2016



Employers need  
to *pay* if their  
migrant workers  
are to *stay*

# PRICED OUT

## EMPLOYERS NEED TO PAY IF THEIR MIGRANT WORKERS ARE TO STAY.

*The long-awaited review of the Tier 2 visa route by the Migration Advisory Committee (MAC) was published at last in January 2016. Obligated to provide the government with specific means of restricting the number of non-EEA skilled workers coming to the UK, the paper does not disappoint. That is, unless you happen to be a UK business seeking to build your organisation around highly skilled and talented employees.*

### MORE FINANCIAL BARRIERS

Unashamedly, the MAC's recommended method of restricting the use of the UK's Tier 2 sponsored work scheme is financial. Its 281-page report is littered with proposals that, if implemented by the government, would significantly increase the cost of hiring overseas staff for UK businesses.

As predicted by many, the recommendations include the introduction of a £1,000 Immigration Skills Charge (ISC) payable per migrant for each year they remain under Tier 2 sponsorship.

Running alongside the Chancellor's recently announced Apprenticeship Levy for larger employers, the MAC proposes that this new charge is payable by all employers hiring workers from overseas and that the proceeds are channelled into apprenticeship schemes.

The view taken is that the imposition of the ISC, which would amount to £5,000 for each five-year visa issued, might 'incentivise employers to reduce their reliance on employing migrant workers'.

To raise the costs associated with recruiting Tier 2 migrants even higher, the MAC also endorses the need for employers to substantially increase the minimum level of salary payable to their migrant workers.

At present the minimum earning threshold for a Tier 2 migrant is £20,800. The MAC now considers it reasonable to raise this to £30,000 for experienced hires.

The occupations most heavily impacted by such an increase would be those operating within the public sector, such as nurses, as well as younger people in graduate positions. With their own research indicating that a minimum threshold of £30,000 would exclude 80 per cent of nursing applications as well as over half of primary education teaching professionals, the MAC has sensibly recommended that special considerations are attached to such professions.

### TECH SECTOR TARGETED

In contrast to the Tier 2 (General) route, there is presently no limit on the number of migrants who can enter the UK via the Tier 2 Intra-company Transfer (ICT) route each year. The top ten employers currently using the Tier 2 (ICT) immigration route do so largely for the employment of skilled IT professionals from India. Many of these companies will then temporarily assign specialist migrant staff to a UK client site in order to deliver an agreed IT contract or project commitment.

This fact is not lost on the MAC and has provided a rich opportunity to propose restrictions in this area, especially for those companies using the ICT route for third party contracting.

To stem the flow, the MAC suggests that those employers wishing to bring either short-term or long-term intra-company transferees to the UK to work on a third-party contract should be made to pay the transferee a minimum salary of £41,500.

Alongside this potential £17,000 increase on the current minimum salary threshold, the report advises that third-party contractors are required to pay the aforementioned ISC at an increased rate of £2,000 per migrant per year.

Considering that the majority of intra-company migrant workers coming to the UK to work on a third-party contract do so for a limited period of time only, these measures seem particularly harsh. Tier 2 (ICT) migrants hold no claim to remain permanently in the UK and therefore their long-term effect on net migration figures is somewhat debatable.

*In the year ending August 2015, 72 per cent of all applications within the Tier 2 (ICT) route were made by Indian nationals, 86 per cent of which were working within the IT sector.*

Should these particular recommendations become a reality, many IT companies will be left with no choice but to absorb the substantial extra financial burden of recruiting from overseas if suitable IT skills cannot be found within the UK workforce.

With the MAC also proposing that all migrants wishing to 'intra-company transfer' from an overseas company to its UK branch should be required to have worked for two years in their original post rather than the current period of 12 months, the number of Tier 2 (ICT) applications are surely set to fall.

### IMMIGRATION HEALTHCARE SURCHARGE (IHS)

Many employers will already have seen the cost of employing migrant staff increase dramatically following the introduction of the IHS in April last year.

The MAC's new report now proposes that the £200 IHS currently levied on migrants using the Tier 2 (General) route be extended to include Tier 2 (ICT) visa holders, regardless of the fact that many intra-company transferees receive private healthcare paid for by the employer.

For a family of four temporarily residing in the UK for 3 years, the additional cost of moving to the UK could therefore increase by £2,400 for healthcare alone.

### AND ALL FOR WHAT?

Despite the fact that these proposals will effectively tax many UK companies out of the migrant hire market, the MAC's reports openly admits that any reduction in migrant employment stemming from this route would only modestly contribute to cutting overall net migration figures.

However, since the government is set on reducing the overall number of migrants entering the UK at any cost, it is highly probable that most of the MAC's plans to financially penalise UK employers will indeed be implemented.

So beware! Once the newly proposed ISC and increased minimum salary thresholds are taken into account alongside current IHS costs, the basic cost of moving one IT specialist to the UK for 3 years could increase by over £20,000.

Not only would these costs translate into making the UK one of the most expensive places to hire skilled overseas workers, but they would almost certainly stunt the growth plans of many UK businesses.

Whilst the government may feel that this is a price worth paying, UK employers are the ones who will ultimately foot the bill.

### SMITH STONE WALTERS

*The first Insight of 2016 looks closely at what UK visa holders and sponsor organisations can expect from the world of UK immigration over the coming year. It also unpacks the most recent compliance changes and delivers a fail-safe guide to UK immigration terminology.*

# DO YOU SPEAK UK IMMIGRATION?



*In the ever-evolving sphere of UK immigration, it is important that UK visa holders and employers alike keep up to date with the latest industry movements.*

*This issue's Special Focus unpacks the UK immigration terminology which every migrant and UK sponsor should be familiar with.*

## POINTS-BASED SYSTEM



The Home Office's immigration system for managing applications from people who wish to come to the United Kingdom to work, train or study. UK visa applications accrue points according to a set of strict criteria in order to qualify for consideration.

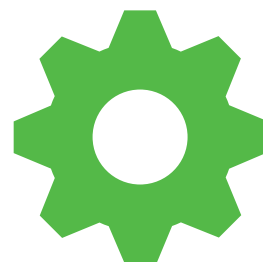
## TIER 2 (GENERAL)

A UK visa category under the points-based system designed specifically for skilled, non-EEA nationals with a UK job offer.



## TIER 2 (INTRA-COMPANY TRANSFER)

A UK visa category of the points-based system for coming to the United Kingdom to work. It's relevant for sponsors who are transferring employees within an organisation to a skilled job under Tier 2.



## LICENSED SPONSOR



An organisation which is licensed by the Home Office's UK Visas & Immigration department to sponsor Tier 2 or 5 migrants to come to the United Kingdom by way of employment under the points-based system.

## SPONSOR DUTIES



As a sponsor of skilled migrants under the points-based system, an employer has a duty to comply with the UK Immigration Rules. Employer responsibilities stretch across areas such as record-keeping, reporting, and cooperating with the Home Office, along with other Tier-specific duties. The Home Office reserves the right to audit the compliance of each sponsor licence holder, so sponsors should ensure that they are compliant at all times.

## AUTHORISING OFFICER



This is a role required within a sponsor organisation as a matter of compliance. The authorising officer is responsible for the activities of anyone acting on behalf of the sponsor to issue certificates of sponsorship.

## CERTIFICATE OF SPONSORSHIP

A 'virtual document' which is assigned by a licensed sponsor to a migrant who wishes to work for them in the UK. The migrant must quote the certificate of sponsorship reference number when applying for permission to enter or remain in the UK under Tier 2 or Tier 5 of the points-based system.



## RESIDENT LABOUR MARKET TEST



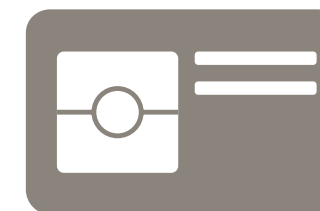
Before employing a migrant worker, many sponsor licence holders will need to prove by way of a resident labour market test (RLMT) that no suitably qualified resident worker could be found to take a particular job.

## IMMIGRATION HEALTH CHARGE



Commonly referred to as the IHS, this charge was introduced in April 2015 to cover the health costs of Tier 2 migrants during their time in the UK. It has since formed a large part of the UK's immigration policy and significantly increased immigration costs for both migrants and UK businesses, raising more than £1,000,000 for the NHS in its first six months.

## BIOMETRIC RESIDENCE PERMIT



Also known as a BRP, this document is similar to a credit card in size and acts as a migrant's final proof of his/her right to live, work or study in the UK. Upon receiving UK immigration approval, migrants are issued with a 30-day vignette which allows them to enter the UK and pick up their BRP from a designated Post Office within 10 days of arrival.





## PROPOSED CHANGES TO TIER 2

*The beginning of 2016 saw the release of the much-anticipated Tier 2 review, conducted by the independent Migration Advisory Committee (MAC).*

*A government-commissioned review has proposed that major changes are made to the Tier 2 immigration route which would substantially alter the face of skilled migration to the UK.*

Amongst others, its chief proposals are as follows:

**Increasing the Tier 2 minimum salary threshold** – The review advises that the current minimum salary threshold of £20,800 for Tier 2 migrants be raised to £30,000.

**The introduction of an Immigration Skills Charge (ISC)** – To reduce the reliance on overseas skills, the review proposes that employers are charged an upfront fee of £1,000 per year for each Tier 2 (General) migrant employee, and an additional charge of £2,000 for each Tier 2 ICT migrant worker employed for third-party contracting.

**A new route for third-party contracting** – An overhaul of this Tier 2 subcategory could be on the cards in order to better represent how it is currently used. The MAC suggests that third-party contracting becomes a separate route in its own right and that the minimum salary threshold for this route is set at £41,500.

**IHS for Tier 2 (ICT) applicants** – It has been recommended that all users of the Tier 2 (Intra-company Transfer) route pay the Immigration Healthcare Surcharge in line with other users of the Tier 2 route.

**A longer qualifying period for Tier 2 (ICT) applicants** – As part of their application, Tier 2 (ICT) applicants must currently prove that they have been working for the company overseas for a period of at least 12 months. The MAC has suggested that this period be extended to two years for both short and long-term ICT applications.

The introduction of these proposals would result in dramatic cost increases for the employers of migrant workers. Many UK sponsor organisations will therefore be anxious to know whether these recommendations will be introduced in April 2016.

It is now up to the government to consider whether or not these recommendations, along with others set out in the review, should be acted upon.

## EXTRA SKILLS LEVY FOR IT SECTOR



The recently-proposed Immigration Skills Charge could be tripled for the employers of Tier 2 (ICT) migrants.

As part of a crackdown on the large number of companies who use this immigration route to transfer employees to a UK branch of their business before subcontracting them out to a third-party project or site, an additional skills levy of up to £2,000 has been recommended for the employers of migrant workers coming to the UK for this purpose.

*“an additional skills  
levy of up to £2,000  
has been recommended”*

Given that a high percentage of Tier 2 (ICT) migrants are employed within the IT and technology sectors, any skills levy, let alone one of such proportions, would severely disadvantage the UK's IT and technology industries.

## IMMIGRATION HEALTH SURCHARGE FOR AUS AND NZ NATIONALS

The UK Immigration Rules are changing and as of 6 April this year, Australian and New Zealand nationals wishing to come to the UK for a period longer than six months, or to extend their current UK visa, will join the ranks of migrants who are already subject to paying an Immigration Health Surcharge (IHS) during the UK immigration process.

*“(The IHS) currently takes the  
form of an upfront fee of £200  
for each valid UK visa year”*

The IHS was introduced in April 2015 and currently takes the form of an upfront fee of £200 for each valid UK visa year. It is currently payable by almost all UK visa applicants applying to stay in the UK for longer than six months, along with current visa holders wishing to extend their stay.

## NEW COSTS FOR UK VISA APPLICATIONS

*New costs for UK visa and immigration applications for 2016 to 2017 have been announced and will come into effect in March this year.*

New UK immigration fees for the year ending March 2017 will apply to UK immigration applications as of 18 March this year and are as follows:

- A small increase (2%) for visit, study and work visas;
- A huge 25% increase for settlement, residence and nationality applications; and
- A targeted increase for premium services, such as the priority visa service.

The significant fee increase of 25% for those migrants seeking to reside permanently in the UK could easily be construed as an attempt by the government to deter overseas nationals from making the UK their home.

The rise in costs may also affect the flow of skilled workers coming to the UK and risk the loss of overseas talent to competitor economies.



## WELCOME TO OUR UK IMMIGRATION WEBSITE FOR CHINESE SPEAKERS!

We are excited to welcome you to the launch of our new UK immigration website – in Chinese!

Developed to enrich the SSW experience for our Chinese-speaking clients, the website is easy to navigate whilst informing visitors of our specialist corporate and individual UK immigration services.

We hope you enjoy your visit!  
[www.smithstonewalters.com/cn](http://www.smithstonewalters.com/cn)



## WE HAVE MOVED!

SSW began 2016 in style, moving into new business premises in both the London Borough of Bromley and Hong Kong, China.

Our dedicated teams in London, Mumbai, Hong Kong and New York provide international support to you and your UK-bound assignees whilst ensuring that you receive the

friendly, comprehensive and up-to-date service that only a UK specialist can deliver.

Please see Contact Us at the back of Insight for our new London and APAC addresses, or visit us at [www.smithstonewalters.com/contact](http://www.smithstonewalters.com/contact)

## SSW EMPLOYEE VOLUNTEERING AT EPSOM BOOK FAIR!

Every year, staff members at Smith Stone Walters are encouraged to devote a full working day to support our chosen cause, the Rainbow Trust Children's Charity.

Five SSW volunteers recently supported Rainbow Trust's involvement in the Epsom Book Fair by helping to sort a huge number of donated books prior to the event.

Our volunteers were delighted to hear that their time and efforts contributed towards raising a record-breaking £32,000, helping to support more families whose child is suffering from a life-threatening disease.



## SSW AT LONDON'S ANNUAL EXPAT CONFERENCE & EXHIBITION

SSW joined fellow experts from the global mobility industry this February to exhibit at the Annual Expat Conference & Exhibition 2016 in London.

The one-day event, hosted by American in Britain, offered delegates the chance to speak with a wide range of relocation service providers and attend a free seminar programme on topics ranging from third-culture children to UK immigration and compliance.

As the event's only UK immigration specialist, SSW was kept on its toes to the last, advising on a wide variety of UK immigration issues for both corporate and individual delegates.

*Come and see us at future exhibitions and UK immigration events!*



## WHAT OUR CLIENTS SAY ABOUT US...



*We make it our business to deliver each client with a service worth shouting about.*

“ **FANTASTIC**  
**EXCEPTIONAL**  
**INCREDIBLE**  
**PROACTIVE**  
**AWESOME** ”

*'Absolutely awesome service from the team at SSW.'*

*T.M., international financial services firm*

*'Louise (SSW UK) was fantastic, delivering a seamlessly managed and really incredible service. She made a usually painful process so easy.'*  
*G.V., global supply chain management firm*

*'Great service.'*  
*Z.Y., medical research institute*

*'Many thanks to Tess (SSW Hong Kong) for her exceptional assistance. I truly appreciated the prompt proactiveness with which she dealt with my queries.'*

*Y.M., private client*

*'Excellent support and guidance from Ragini (SSW India). Looking forward to working with her again.'*  
*N.H., financial services firm*

*'Jack (SSW USA) was absolutely fabulous, and the process was much faster than I anticipated. This has been the easiest part of my move.'*  
*M.P., global investment bank*



# FOCUS

## *Tier 2 Sponsors: Compliance is becoming tougher than ever*

Whilst the number of UK companies licensed to sponsor employees from outside of the European Economic Area on Tier 2 visas continues to increase, so too does the level of record keeping and reporting required by this scheme.

Introduced to coincide with tougher sanctions for those employers found to be in breach of their sponsor duties, the most recent Tier 2 & 5 sponsor guidance published by UK Visas & Immigration (UKVI) includes a significant number of changes to the compliance regime for sponsor employers.

Maintaining compliance has never been so central to retaining an employer's right to employ migrant workers and sponsors can expect to face greater scrutiny at all stages of the Tier 2 sponsor process.

### *The key changes employers should note:*

- **Disclosure and Barring Service (DBS)** – Sponsored migrants must be DBS checked if undertaking a regulated activity in relation to children or where it is a requirement for their UK role, and UK employers are now required to retain proof that this check has been undertaken.
- **Role-specific documentation** – Employers must retain a detailed and specific job description alongside copies of any qualifications and/or employment references which confirm that the migrant holds skills necessary to the role. These documents will allow a UKVI auditor to verify that both the role and sponsored employee meet the scheme's rules.
- **Advertising** – Where a vacancy has been advertised on Jobcentre Plus or Jobcentre online, the sponsor must keep a screenshot of the detailed advert taken on the day upon which the vacancy is first advertised.
- **Duties of the Authorising Officer** – the Home Office now expects a sponsor's Authorising Officer (AO) to check the activities of the Sponsor Management System (SMS)

## *In this edition, we focus on UK immigration compliance and the increasingly stringent demands on the employers of Tier 2 migrants*

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on a monthly basis. This check should centre on ensuring that any Certificates of Sponsorship (CoS) issued by their staff have been correctly assigned. In the event of a UKVI audit, we recommend that a record of these (AO) checks be retained to demonstrate compliance. Given that most AOs hold senior positions within the UK business, this new requirement is seen as a significant step by the UKVI to ensure those nominated key personnel linked to the licence are more conversant with their company's day-to-day SMS activities.

- **Reporting** – Sponsors must now inform the Home Office if a CoS is assigned to a person who is a family member of anyone else in a small or medium-sized sponsor organisation, or if the sponsor is aware of a family relationship within a large organisation.
- **Licence suspension** – The new guidance confirms that, should the Home Office refuse to grant an entry or leave to remain application because it does not consider the role in question to be a genuine vacancy, it may suspend the sponsor's licence while the issue is investigated.
- **Ability to provide genuine employment** – The new guidance now affirms the UKVI's intention to assess a sponsor's ability to provide genuine employment as part of a sponsor licence application.

### *Tech Roles*

The guidance also now contains a section relating to sponsors wishing to recruit a Tier 2 (General) migrant for a specific digital technology role listed on the shortage occupation list.

In these instances, the sponsoring entity must be a 'qualifying company', meeting a number of strict criteria and the role in question must require a professional with at least five years' experience (including demonstrable team leading experience).

In order for a sponsor to meet its compliance obligations for this type of migrant hire, references from the individual's past employer(s) will need to be retained on file alongside relevant evidence, enabling the sponsor to demonstrate that the job requires a level of expertise which cannot be found in the resident labour market.

## *Preparing for a Compliance Visit*

The rules pertaining to sponsoring migrant workers are becoming increasingly challenging to adhere to, and no less important. All UK employers who have secured a sponsorship licence can at some stage expect to receive a visit from Home Office or UKVI representatives.

UKVI is entitled to carry out compliance visits to the premises of licensed sponsors at any time. It may wish to carry out a visit as part of its pre-licence checks, or following an application to renew a licence. These visits can either be pre-arranged or unannounced.

Whilst some Tier 2 and 5 sponsors are yet to experience a UKVI visit, the authorities do aim to visit all licensed sponsors at some stage during the life of their licence. Sponsors should therefore be mindful of their duties and responsibilities, and able to show that they are compliant at all times.


## *Smith Stone Walters – we can help*

Talk to Smith Stone Walters for support in complying with your duties as an employer of an expatriate workforce. Our bespoke Immigration Audit Service is tailored to meet your business needs and budget, whilst helping you to avoid incurring business-threatening penalties.

Our dedicated team of trained professionals will ensure that you maintain ongoing compliance under the points-based system. Should we identify any issues in regard to non-compliance, our staff will work with you to improve your processes.

Whether you require a peace-of-mind soft audit or a fully outsourced compliance and document retention solution, we have the answers.

Smith Stone Walters is a licensed sponsor and takes this responsibility seriously. Let us help you do the same.



*“The guidance also now contains a section relating to sponsors wishing to recruit a Tier 2 (General) migrant for a specific digital technology role”*

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