

New immigration rules for the UK - a games industry perspective

Last week saw a not greatly publicised change in the UK's immigration rules - the biggest shake up in 45 years. From 27th November a new Points Based System (PBS) comparable to what has been in place in Australia now operates which makes it more difficult for migrants from outside the European Economic Area enter the UK labour market.

Employers have 3 options.

1. Employers can register online as a licensed sponsor and submit support documents. Once approved the employer can issue Certificates of Sponsorship which is the equivalent of the old work permit. This is the "Tier 2" system. Licenses place significant compliance burdens on the Employer as the responsibility for issuing entry clearance passes from the UK Border Agency to individual employers.

<http://www.ukba.homeoffice.gov.uk/employers/points/whatisthepointsbasedsystem/>

2. Employers can take on migrants who have already achieved entry UK clearance by these job seekers obtaining clearance under the Tier 1 system, which is very similar to the Highly Skilled Migrant Programme (HSMP). Another Points Based System, employers can encourage and coax those eligible for entry clearance under these roles to go through the Tier 1 process.

<http://www.ukba.homeoffice.gov.uk/workingintheuk/tier1/general/>

3. For projects of less than 6 months, employers can hire migrants who are "business visitors" to the UK. There are only minor changes to the existing rules in this area. Business visitors must return overseas after 6 months.

<http://www.ukba.homeoffice.gov.uk/visitingtheuk/businessandspecialvisitors/>

Tier 2 - Skilled workers with a job offer

Obtaining a license costs £1000 for most companies and is onerous on companies without developed HR systems. A visit by the UK Border Agency should be expected.

<http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/applyforlicence/>

Once a license is obtained, issuing certificates of sponsorship is not straight forward. The Employer must be satisfied that the job is skilled at N/SVQ level 3 or above, equating approximately to a job requiring a graduate. The job must be paid at the appropriate market rate and there are 20 published occupational codes of practice available that set out minimum rates for thousands of different

jobs. In addition the employer must carry out a "resident labour market test" to prove that there is no one capable of doing the job in the UK. Games industry employers are particularly hampered as none of 20 published occupational codes of practice cover the specific nature of games industry jobs.

<http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/employingmigrants/codesofpractice/>

The closest code for programmers within Information and Communication specifies a minimum salary of £26000 for programmers but makes no mention of art or design roles. In addition the resident labour market test asks, in most instances, for time and money to be spent advertising specific roles nationally in newspapers and online sites that benefit no one. For certain roles where the salary is at least £40000, an employer can use recruitment agencies or headhunters and the agency can carry out a labour market test on behalf of the employer.

50 points is required for a certificate and points are awarded for a combination of satisfying the resident market test (30 points), paying a salary of over £24000 (20 points) and there are additional points on offer for the level of the educational degree. In addition there is an English language test and a requirement for the employee to have minimum funds of £800.

<http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/migrationpoints/tier2skilled/>

After a Certificate of Sponsorship have been issued, the individual applies for entry clearance overseas where biometric data will be taken. National ID cards may be issued at a future date.

After the employee has joined, the employer has ongoing monitoring and reporting duties. In line with a new focus on enforcement of immigration regulations, after failures notably in the catering and hospitality sectors, there are civil penalties of up to £10000 per illegal employee, although this level of fine is unlikely for a first offence.

<http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/sponsorshipduties/>

Tier 1 - Highly skilled workers

The highly skilled worker category is designed to allow highly skilled people to come to the United Kingdom to look for work or self-employment opportunities. It is very similar to the HSMP (Highly Skilled Migrant Programme). Employers hiring employees with tier 1 clearance do not need to be a licensed sponsor. This is a useful alternative to Tier 2.

<http://www.ukba.homeoffice.gov.uk/workingintheuk/tier1/general/>

Tier 1 applicants need to amass 75 points worth of points awarded for the level of qualifications (a PhD is worth 50 points), previous earnings (over £40000 is worth 45 points), Age (under 28 is worth 20 points) and previous UK experience is worth 5 points. In addition applicants must pass an English language test and have a minimum level of own funds - £2800 if applying from outside the UK.
<http://www.ukba.homeoffice.gov.uk/workingintheuk/tier1/general/eligibility/pointassessment/pointsscoretoapply/>

The time it takes to obtain Tier 1 clearance varies by country of applicant but there are advantages to employers in helping organise potential employees go down this route and lawyers and specialist agencies exist to help workers obtain this entry clearance. There are, however, high failure rates on initial submissions as there is a zero tolerance to incorrect applications.

Please find attached a Briefing Note prepared by Osborne Clarke on "Obtaining a Sponsorship License" .

<ftp://81.174.227.45/Elspa/OC- Obtaining a Sponsorship Licence.pdf>