

Overhaul of the UK Tier 1 Immigration Rules

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Tier 1 is an overarching category of permission to work in the UK that does not depend on having an employer to support or sponsor an individual. Tier 1 in its current form is changing. The UK Government has just released a Statement of Changes to the Immigration Rules. A new 'Appendix W' will be created to replace the Tier 1 (Graduate Entrepreneur) and Tier 1 (Entrepreneur) routes and there are significant changes to the Tier 1 (Investor) scheme.

Tier 1 (Investor)

Currently, all Tier 1 (Investors) must show they have held the funds personally for at least 90 days prior to making a visa application. The main amendment to this category is that for any new applications submitted after the 29th March 2019, this period has been extended to two years. It is important to note that the funds do not have to been held in cash for the entire period, but it must be demonstrated they have belonged to the applicant for this period.

A further significant change relates to the form of eligible investment that applicants need to qualify to extend their visa. Again, for new applicants submitting after 29 March, UK Government Bonds will no longer be deemed a qualifying investment.

There are also changes regarding the information a bank must provide to support an initial application. From 29 March, the bank must confirm in a letter that they have carried out all necessary due diligence checks, including the 'Know your Customer' checks. Given that under the current system, applicants must hold a bank account with an FCA regulated institution, which will have required these checks to be done prior to opening, this should be a formality of adding a sentence to the letter which is already required.

Tier 1 (Start-Up) Visa

Under new provisions, the Graduate Entrepreneur programme will be closed to new applicants and will be replaced by the Tier 1 (Start Up) Visa. This new category has been described by the Home Office as an expanded version of the Graduate Entrepreneur route. This visa type is aimed at entrepreneurs looking to start a business in the UK for the first time and applicants do not have to be graduates and will not require initial funding. Instead, the application is based on an endorsement from certain trusted UK organisations that will endorse the proposed business plan.

Approved applicants will be granted a visa valid for two years (double than that under the current Graduate Entrepreneur route), and will then be expected to switch to a further new visa category – Innovator - to continue growing their business in the UK and then lead to settlement. If they do not hit their milestones to qualify for further endorsement to switch to the Innovator category, there will be no options to extend.

During their 2 year period, applicants must spend most of their time developing their business, but can also take on other work outside their business to support themselves.

It is important to note that just like the current Graduate Entrepreneur, the Start-Up visa does not of itself directly lead to settlement in the UK. As stated earlier Start-Up visa holders will be expected to switch to the Innovator visa after two years, which can lead to UK settlement.



Tier 1 (Innovator)

The Statement of Changes confirm that on the 29th March 2019, the Tier 1 (Entrepreneur) route will be closed to new applicants and replaced with the Tier 1 (Innovator) category. This is a new category (although it shares its name with a visa category that was introduced and then closed in the early 2000's) is intended to attract more experienced applicants that do not need the initial Start Up phase.

In addition to an endorsement similar to that outlined above, applicants must invest £50,000 (reduced from the £200,000 for the Entrepreneur visa) into their business from a legitimate source. If however the individual is in the UK as a Start Up and is transferring to Innovator, no funding will be required if applicants are meeting their business objectives.

Successful Innovators will be granted a visa for 3 years at a time and this will be extendable. However, during this time, Innovators must work entirely on developing their business ventures and may not take on other employment.

The Innovator visa can lead to settlement in the UK after only 3 years. Initial thoughts are that if an endorsement in this category is available from the outset, it would be preferable to applying as an Innovator rather than as a Start Up, as this will lead to settlement sooner.

Endorsing Bodies

The Statement of Changes confirms that certain elements of the new Rules, including those relating to endorsing bodies, will come into effect on the 30th March 2019. Since the first version of this article was published, the policy has been released confirming applications to become an endorsing body are now open.

The Rules stipulate an organisation must either be a higher education institution or an organisation which meets both of the following requirements:

1. The organisation has a proven track record of supporting UK entrepreneurs, including resident workers or it is a new organisation set up for this purpose by another body which has its own track record of this nature.
2. The request to become an endorsing body is supported by a UK or devolved government department as being clearly linked to the department's policy objectives.

The changes also highlight that the organisation must agree to all of the following responsibilities:

- (a) To stay in contact with those they have endorsed at checkpoints 6, 12 and 24 months after their application is granted
- (b) To inform the Home Office if, at these checkpoints, both of the following apply:
 - The individual has not made reasonable progress with their original business venture
 - The individual is not pursuing a new business venture that also meets the endorsement criteria set out in these Worker rules
- (c) To inform the Home Office if an applicant misses any of these checkpoints without the endorsing body's authorisation
- (d) To withdraw its endorsement if either (ii) or (iii) applies, unless it is aware of exceptional and compelling reasons not to withdraw its endorsement, and informs the Home Office of those reasons
- (e) To inform the Home Office if it has any reason to believe that an individual it has endorsed breaches any of their conditions.

However, the newly released policy documents confirm that the Home Office do not expect endorsing bodies to ensure compliance, and will not have any actions taken against them for non-compliance unless there is believed to be systematic abuse. This is significantly different from the responsibilities placed on those who hold a Sponsor Licence. The Home Office also confirm that if you also hold a Sponsor Licence, any actions taken against you regarding compliance will not affect your status.

In respect of who would be suitable to become endorsing bodies, information on who will be considered as suitable by the Home Office is limited, but the Statement of Change gives us examples including

- business accelerators
- seed competitions
- government agencies
- higher education providers

The Statement of Changes further outline three specific endorsement criteria when they come to endorse an application, to be eligible for a UK Start Up or Innovator visa, including:

- **Innovation** – Proof of a genuine, original business plan that meets new or existing market needs and/or creates a competitive advantage
- **Viability** – Applicants must be able to demonstrate the necessary skills, knowledge and experience, plus market awareness, to run a business competently
- **Scalability** – Evidence of structured planning and the potential for job creation and growth into national and international markets. 'International' is only applicable to the Innovator category.

Those endorsing visa applicants must also be 'reasonably satisfied that the endorsee will spend much of their working time in Britain developing business ventures'. It is anticipated that as a part of the endorsement, the endorsing organisation will provide support and guidance and conduct reviews of milestones being met at regular intervals.

Conclusion

Although the devil will be in the detail, and despite policy documents being now published we are confident this will be subject to expansion and change, initial thoughts are that these changes are a positive step as they reduce the investment amount significantly. It is expected that the ability of the applicant to finance the business will be considered but not set at a specific level. Furthermore the business plans are being assessed by those more suited to make this analysis than the Home Office.

It is therefore hoped that these changes will attract more entrepreneurs to start and grow their business in the UK, with a greater focus on development and growth as opposed to initial investment requirements.

Please do contact us if we can assist further or you have any queries regarding the new system.

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Key contacts

If you would like to discuss any aspect of this article please contact:



Gavin Jones
Head of Immigration
T +44 20 7105 7626

gavin.jones@osborneclarke.com



Adam Sinfield
**Senior Immigration
Manager**
T +44 777 081 8966

adam.sinfield@osborneclarke.com



Helga Butler
**Immigration
Manager**
T +44 117 917 3786

helga.butler@osborneclarke.com