

United Kingdom – Statement of Changes September 2019

Below are details of the changes described in the alert dated September 11, 2019.

CHANGE	DETAILS	IMPACT
EU Settlement Scheme (EUSS)		
Family members of UK nationals	<ul style="list-style-type: none"> Close family members of UK nationals returning with them from the European Economic Area (EEA) or Switzerland having lived there together while the UK national was exercising their free movement rights will be able to make an application under the EUSS until March 29, 2022 (where that relationship existed on exit day) or until December 31, 2020 (where that relationship established post-exit day) in both deal and no-deal scenarios. 	<ul style="list-style-type: none"> The EUSS is more generous and flexible than family reunification rules under the UK Immigration Rules. For example, it does not impose an GBP 18,600 (or higher if additional children apply) minimum salary threshold, which spouses of UK nationals who did not exercise free movement rights must demonstrate. Eligible close family members who do not apply to the EUSS on time will be subject to stricter requirements under the new UK immigration rules.
Cancellation/ curtailment/ refusal of EUSS status	<ul style="list-style-type: none"> New grounds for cancelling or curtailing EUSS status if status is believed to have been obtained by deception. New discretionary grounds to cancel or curtail EUSS status granted if government believes that conduct is not conducive to public good (which generally means having failed to observe UK law.) Such powers will come into place post Brexit in the event of no-deal scenario; or in the event of a deal, after December 31, 2020. 	<ul style="list-style-type: none"> Previously, only ‘serious criminals’ were expected to be denied status under the EUSS. The introduction of new discretionary grounds to cancel or curtail status on the basis of behavior which is not conducive to public good is much wider and will impact applicants who have breached UK law even if they did not commit a serious offence. It is unclear how strictly discretion will be applied, Fragomen will continue to monitor updates.
Other EUSS changes	<ul style="list-style-type: none"> Clarification of definitions relating to relevant dual nationals, i.e. EEA citizens who are exercising Treaty 	The additional details provide clarity and reassurance for affected EEA citizens and their family members and provides additional flexibility for applicants who

	<p>rights in the United Kingdom who have subsequently naturalised as a British citizen, whose family members can apply under the scheme. This also includes family members of Irish citizens who would qualify under the scheme if they applied, for which they are not required to do.</p> <ul style="list-style-type: none"> • Time spent abroad working offshore (e.g. by North Sea oil workers) will count as a permitted absence from the United Kingdom, meaning that such work can count as residence for the purposes of an EUSS application. • Family member of EEA citizens who have 'ceased activity' e.g. retired from United Kingdom employment, must have been resident in the United Kingdom as their family member at the time that cessation of activity occurred. • Non-EEA family member granted EUSS status whose biometric residence permit is lost or stolen overseas will be able to apply free of charge for an EUSS travel permit to allow them to enter the United Kingdom and apply for a replacement biometric residence permit. 	<p>work offshore.</p>
<p>Tier 2</p>		
<p>Removal of PhD occupations from Tier 2 Cap</p>	<ul style="list-style-type: none"> • PhD level occupations will be exempt from the Tier 2 General Visa limit and therefore will not require a RCoS. • PhD level migrants undertaking research overseas directly linked to their Tier 2 employment may do so without absence being 'counted' for Indefinite Leave to Remain (ILR) 	<ul style="list-style-type: none"> • This should free up places in the monthly allocation process for other skilled roles that contribute to the economy. • The aim of this change is to welcome researchers and other highly-skilled individuals to the United Kingdom. These changes will be implemented

	<p>applications. If accompanying them, the same applies for dependant partners.</p>	<p>October 1, 2019.</p>
<p>Changes to SoL</p>	<ul style="list-style-type: none"> • The UK government has implemented the MAC's recommendations on the SoL. • The Statement of Changes states that all roles within certain codes will be deemed shortage occupations, particularly in health and social care, engineering and digital technology occupations, where previously some roles were only deemed shortage occupations if the sponsoring business was a "qualifying company". • The Statement of Changes confirms that the "qualifying company" criteria has been removed. For example, a company that employs between 20 and 250 employees and is not more than 25% owned by a company which has one or more other establishments in the United Kingdom and one of those established employs more than 250 employees. 	<ul style="list-style-type: none"> • The amended SoL will allow employers to more easily hire foreign workers to meet labor shortage demands across a wider range of roles, particularly in the health and social care, engineering and digital technology sector which employers have reported they find difficult to fill. • There may be an influx of SoL jobs being recruited for under the Tier 2 General RCoS route, thus increasing the number applications processed in the annual cap. • As priority is given to jobs on the SoL, this may in turn impact smaller organization with lower salary due to the points awarded to them if the cap is reached.
<p>Amendments to Tier 2 (General) Pay Scale Errors</p>	<ul style="list-style-type: none"> • The skill level and applicable minimum salary thresholds for certain Standard Occupational Classification (SOC) codes will be revised to correct pay scale errors. These changes will be in effect starting October 6, 2019. 	<ul style="list-style-type: none"> • Employers will need to continue to ensure that migrants meet the required skill level and salary threshold.
<p>Absences from employment</p>	<ul style="list-style-type: none"> • Tier 2 migrants will not be penalised if they are absent from work due to sickness, statutory parental leave, assisting in a national or international humanitarian or environmental crisis or engaging in legal strike action. • A Tier 2 migrant's application for ILR will not be refused if absences for the 	<ul style="list-style-type: none"> • This will allow impacted migrants to still be eligible to apply for ILR if there is a reduction in salary as a result of a permitted reason.

	<p>above reasons cause their salary to fall below the applicable minimum salary threshold.</p> <ul style="list-style-type: none"> • This change is due to take effect October 1, 2019. 	
English language and Life in the UK Test	<ul style="list-style-type: none"> • Electronic checks will be made by UK Visas and Immigration to verify English Language Test and Life in the UK Test results. 	<ul style="list-style-type: none"> • Applicants will no longer be required to provide their test certificates and will only need to provide their unique reference number for checking. This will reduce the documentary burden and simplify the process for ILR and naturalisation applicants as they will no longer need to produce the original test pass certificates.
Tier 1		
Closure of Tier 1 (Entrepreneur) category for new applications	<ul style="list-style-type: none"> • The Tier 1 (Entrepreneur) category is now closed to most initial applications but remains open to existing Tier 1 (Graduate Entrepreneur) and Tier 1 (Entrepreneur) migrants. 	<ul style="list-style-type: none"> • Migrants that wish to set up or run a business in the United Kingdom should consider applying for an Innovator visa or Start-up visa. Existing Tier 1 (Graduate Entrepreneur) and Tier 1 (Entrepreneur) migrants can continue to extend their visa and potentially apply for settlement in this category.
Tier 1 (Investor) – Investment criteria amended for extension and settlement applications	<ul style="list-style-type: none"> • Applicants under the pre-March 29, 2019 rules can make extension or settlement applications, provided they move their qualifying investments out of UK government bonds before either April 6, 2023 in the case of extension applications, or April 6, 2025 in the case of settlement applications. • Investors who do not meet those deadlines can apply for further extensions and settlement if they meet certain conditions; i.e. invest the full GBP 2 million in qualifying 	<ul style="list-style-type: none"> • Individuals in this category who wish to extend or settle in the United Kingdom are advised to plan to ensure their investments are compliant with the Rules to enable them to further extend in this category and qualify for settlement.

	<p>investments before they apply for further extensions and maintain the full GBP 2 million investment for the qualifying period required for settlement.</p>	
<p>Tier 1 (Exceptional Talent) – changes requested by Tech Nation (Designated Competent Body)</p>	<ul style="list-style-type: none"> • An applicant must now have three rather than two letters of support provided by established organizations in the digital technology sector. • Tech Nation has asked that the phrase ‘product-led digital technology company’ is added to the requirements to ensure the route is used by migrants with the ‘appropriate skill’ set. 	<ul style="list-style-type: none"> • The documentary requirements have become slightly more rigorous for the Tech Nation visa. • The most impactful change relates to the new requirement for applicants to have experience in ‘product led’ companies. Applicants will need show the commercial value of previous work in order to meet the ‘product-led’ requirement brought in by the new changes. This could also further prohibit certain experts, e.g. information technology engineers, from qualifying for endorsement from Tech Nation.
<p>Tier 1 (Exceptional Talent) – changes requested by Royal Society, The Royal Academy of Engineering, and The British Academy (Designated Competent Bodies)</p>	<ul style="list-style-type: none"> • To encourage more applications from individuals with science, engineering and humanities skills to take advantage of a simpler process, the following changes will be made: <ul style="list-style-type: none"> ○ Expansion of the list of peer-reviewed fellowships to include fellowships awarded by the National Institute for Health Research; list of peer-reviewed fellowships to include fellowships awarded by the National Institute for Health Research; ○ Expansion of the criteria to include applicants who have held a peer-reviewed fellowship in the 12 months immediately prior to date of application; and 	<ul style="list-style-type: none"> • The government wants to attract the ‘brightest and the best’ in selected fields to the United Kingdom and has therefore made it easier for individuals with the right skill set to apply for this visa. Eligible applicants can benefit from more generous provisions and a simpler and faster application process.

	<ul style="list-style-type: none"> Expansion of the application criteria to allow a wider range of eligible senior academic or research positions to qualify. 	
Start-up and Innovator		
Business activities can be started earlier due to changes in rules relating to Tier 4 (General) students	<ul style="list-style-type: none"> Individuals who hold a Tier 4 (General) visa who have submitted a Start-up application with the support of an endorsing body may commence their business activities while their application is pending. 	<ul style="list-style-type: none"> Eligible applicants can take advantage of this rule change to begin working on their business activities as soon as they have submitted their Start-up visa application.
Start-up visa requirements relaxed for Tier 4 (General) students on a doctorate extension scheme	<ul style="list-style-type: none"> Tier 4 (General) students on a doctorate extension scheme who may have previously established a UK business are now able to apply for a Start-up visa. 	<ul style="list-style-type: none"> These individuals can benefit from the ability to switch into the Start-up category, which was previously not possible if they had previously set up a business in United Kingdom.
Endorsing body qualifying criteria clarified	<ul style="list-style-type: none"> Applicants under this route can only apply if they are endorsed by an organization approved by the Home Office, known as an 'endorsing body.' Organizations interested in becoming an endorsing body must have support from a core department led by a UK or devolved government minister, or a regionally devolved authority led by a directly elected mayor. Requests to become an endorsing body may be refused due to criminality, actions or behavior which are non-conducive to the public good. Requests may also be refused due to potential or actual conflicts of interest, or conflicts with the purpose of the categories or with wider immigration 	<ul style="list-style-type: none"> A higher level of scrutiny will be applied to applications for endorsing status. Endorsing bodies applicants should ensure that the necessary support has been obtained and due diligence carried out internally to ensure the application for endorsing status has the best possible chance of success.

	policy.	
24-month 'checkpoint' requirement removed for Start-up category	<ul style="list-style-type: none"> A checkpoint between an applicant and their endorsing body will not be required after 24 months in the Start-up category, only in the Innovator category. Checkpoints refer to contact between the endorsing body and the applicant at set time frames during which the endorsing body monitors the applicant's progress and determines if they still meet the requirements or if endorsement needs to be withdrawn or reported. 	<ul style="list-style-type: none"> The removal of the mandatory 24-month checkpoint for the Start-up category will save time and reduce the monitoring burden on the endorsing body. It will also make the process more convenient for both the applicant and the endorsing body. However, applicants and endorsing bodies for the Innovator category will not benefit from the relaxed rules.
Administrative Review (procedure to challenge visa denials in the United Kingdom)		
Administrative reviews must be submitted online	<ul style="list-style-type: none"> Administrative reviews must be submitted online. 	<ul style="list-style-type: none"> It is critical that administrative reviews are submitted in advance of the deadline using the online form (unless exemption applies) for it to be considered a valid request by UKVI.
New right of Administrative review under EUSS	<ul style="list-style-type: none"> A right of administrative review has been provided to individuals who have had their status under EUSS cancelled at the border by an Immigration Officer on the basis that they no longer meet the requirements for that status. 	<ul style="list-style-type: none"> Affected individuals now have a mechanism to challenge status cancellations at the border.