

Changes to Immigration Rules in the Care Sector

An Introduction to the Guide

This guide is intended for background reading only and should not be relied upon as legal advice. You should contact us for advice on your specific circumstances.

After months of consultation the Migration Advisory Committee (MAC) has finally published proposals for a revised shortage occupation list. The new list retains the role of Care Assistant as a skilled occupation that remains in shortage in the UK. However, for the first time, the list includes Care Assistants at a reduced qualification and experience threshold.

During the consultation, representatives from the care sector related their difficult experiences of recruiting from the resident population. Therefore, the MAC concluded that it would be sensible to fill the shortage of Care Assistants using non-EEA migrant workers.

Previously, a skilled Senior Care Worker had to be qualified to NQF (National Qualification Framework) level 3 and have three years relevant experience. The MAC has considered this requirement to be prohibitive and unfair to care workers, citing other carer skills as more relevant. Therefore, the qualification threshold has been changed to a relevant NVQ Level 2+ or equivalent qualification, plus at least two years' relevant experience. The minimum hourly rate has also been cut from £8.80 to £7.80.

Implications for employers / sponsors

It is easier for employers / sponsors to obtain a Tier 2 Sponsorship Certificate if the occupation is on the skilled shortage list as the Government has already accepted that there are insufficient people from the resident labour market to fill vacancies in these occupations. As a result, there will be no need for the position to be advertised in accordance with the resident labour market test requirements. However, the migrant must still have the necessary points to come and work in the UK.

Sponsors should also refer to Section Q of the Tier 2 Codes of Practice. This provides detailed information concerning the occupation, the appropriate salary rates and the evidence they need to keep to show that the shortage occupation criteria have been met.

Some debate has been raised in relation to the revised list. Despite the MAC's recommendation that 'Care Assistants' should be included on the shortage list, the UK Border Agency list still currently relates to "skilled senior care workers" who possess "all the supervisory responsibilities". This will no doubt cause some confusion and debate as Care Assistants, unlike Senior Care Assistants, do not usually have supervisory experience. It remains to be seen how this apparent conflict will be resolved; we will of course keep you updated on future developments.

Nonetheless, this revised list will be welcomed in the care sector. The revision of the minimum salary figure to £7.80 will also offer some help to hard-pressed care providers and should enable overseas staff to be employed and contribute positively to the UK care system.

The revised list will apply to all Certificates of Sponsorship assigned on or after 14 December 2009. Applications based on Certificates of Sponsorship assigned before this date will be considered against the shortage occupation list in place at the time.

Briefing Note December 2009

Summary:

An introduction to recent changes in immigration rules relating to employing staff in care homes

For detailed advice on all Care Sector matters please contact:

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