



TIER 5 - IMMIGRATION RULES FOR TEMPORARY WORKERS

1 Recap of the Points Based System

The Points Based System (PBS) is the medium for the Government's shake up of the UK's immigration rules and has at the heart of it a sponsorship system to control migration more effectively, tackle abuse and identify the most talented workers and genuine students. The new PBS aims to share the responsibility for non-EEA and Swiss visitors between the UK Border Agency and the sponsoring body. Of particular relevance to boarding schools are Tier 4: Students and Tier 5: Youth Mobility & Temporary Workers.

1.1 Tier 4: Students

As of 22 December 2008 more than 520 universities, colleges and independent schools had applied to join the new Sponsorship Register. Almost 700 more had applied by 2 February 2009. By becoming a Sponsor the educational establishment pledges to take joint responsibility for their foreign students. For further details of Tier 4 and the responsibilities of a Sponsor, go to the Tier 4: Students briefing notes (published by BSA in September 2008) on the BSA website at <http://www.boarding.org.uk/pages/staffdownloads>.

1.2 What is Tier 5?

As of 27 November 2008 Tier 5 is now up and running and as a result, a number of previous routes into the UK often used by young people in their gap years have been abolished, most notably to boarding schools the Gap Year Entrants and the Voluntary Workers visas. Further visas to be encompassed into the new Tier 5 include the Working Holiday, BUNAC and the Japan Youth Exchange schemes. Tier 5 has replaced all these routes with the following two categories:-

1. Youth Mobility Scheme (YMS)	Reciprocal scheme with low risk countries
2. Temporary Workers	Comprises of 5 sub-categories <ul style="list-style-type: none"> • Creative and sporting • Charity workers • Religious workers • Government Authorised Exchange • International Agreement

2. Tier 5: YMS in more detail

The YMS effectively replaces the old Gap Year visa. It allows young people to come into the UK to work. The 3 basic characteristics of Tier 5 are:-

1. The scheme will be open to countries with which the UK has good immigration control arrangements and which offer reciprocal opportunities for UK nationals;
2. Young overseas visitors will be sponsored by their national government; and
3. The number of YMS visitors from each country will be controlled by setting maximum numbers in line with the number of young UK nationals benefiting from similar opportunities overseas.

2.1 The Sponsor

As with Tier 4, every visiting international needs a Sponsor. However, unlike other categories within Tier 5 and the other Tiers, **the Sponsor for the YMS is the applicant's national government and not the school.** Therefore if a school intends to bring in gaps under YMS they do not need to be registered and licensed for Tier 5.

A country wishing to become a Sponsor will be assessed on its eligibility to join the scheme. Most importantly, the country must constitute a low risk in terms of abuse of the UK's immigration controls by its nationals. In other words the country must not be subject to a United Kingdom visa regime and have a risk value below the YMS threshold. This is worked out by a formula set by the Government and unsurprisingly, has not been published. Secondly, they must offer a like for like exchange programme.

Currently, **Australia, Canada, Japan and New Zealand** have joined up to the YMS. A notable **absence** for some schools will be **South Africa**. As members of the YMS the governments of the Australia, Canada, Japan and New Zealand are automatically licensed by the UKBA as Sponsors. However, like all the other Tiers, a non-cooperating Sponsor may be removed from the Scheme for example, if they drop reciprocal provisions for UK nationals or increase their YMS immigration risk value.

2.2 The Certificate of Sponsorship (CoS)

Currently the 4 countries in the YMS do not need to issue a CoS as they have all been assessed in the bracket of lowest risk countries. They are therefore eligible for Deemed Sponsorship status and Gap Year applicants from these countries will be deemed to have been sponsored simply by holding a valid passport from one of the four countries. The number of deemed CoS for each country has not been set but will be no fewer than 1000 per year for each country.

In addition, there is a separate group of potential applicants who do not need a CoS. Young people with passports showing they are a **British Overseas Citizen (BOC)**, a **British Overseas Territories Citizen (BOTC)** or a **British National (Overseas) (BN(O))** can apply. BOC, BOTC and BN(O) applications will not use up a country's quota as these are considered outside the numbers allowed for each sponsoring country. These young people still need to apply for a visa. The difference is that they do not need their home country to sponsor them as they automatically obtain points by holding a valid passport.

2.3 Allocation of Points

Points under Tier 5 - YMS	Pass mark 50
Certificate of Sponsorship, or Deemed Sponsorship, or BOC, BOTC or BN(O) citizens	30
Age (18-30)	10
Maintenance (£1,600)	10

The age of an applicant must be under 31 years at the date of application and above 18 years when the entry clearance becomes valid.

2.4 Applications

Applications by a young person wishing to come over to work in a boarding school should be made directly to their nearest Visa Application Centre (VAC), or, if their country does not have a VAC set up yet, the nearest British mission Visa Section. www.ukvisas.gov.uk/en/howtoapply/wheretooapply/ gives further details.

An applicant's completed application form (VAF9 and Appendix 7: Tier 5 self assessment form) needs to be supported by original documents and biometric details, which are taken at the VACs or British mission. Any documents submitted in a language other than English or Welsh must be accompanied by a fully certified translation.

Importantly for some schools, an application will be refused if an applicant has already had the benefit of a Working Holiday Maker or Tier 5: YMS visa but previous entry under concessions for the Japan Exchange Scheme, Gap Year Entrants or Research Assistants will not be a bar to an applicant participating in the YMS.

2.5 Successful applications

Successful applicants under the YMS will be given entry clearance for **up to 2 years** and can request their date of travel is postponed for up to 3 months from the first date the visa is valid. However, the entry clearance of 2 years stay cannot be extended nor can a young person switch to another Tier whilst in the UK. More importantly, if a young person stays for less than the full 2 years they will not be able to re-apply under the YMS for the remaining time as only one period of leave in this category is allowed. This may not be an attractive option for some Gap Year students who wish to come over to work at a boarding school for only 1 year. A possible solution to this problem may be the **Tier 5 subcategory of charity worker**, which then leaves the YMS open for a later visit.

3. Tier 5: Charity Workers in more detail

Under Tier 5 Temporary Workers: all responsibility for sponsoring the young person passes back to the school. As under Tier 4, a school therefore needs to be licensed as a Tier 5 Sponsor so they can issue a Certificate of Sponsorship (CoS) to the prospective voluntary worker.

3.1 Charitable Sponsor & CoS

In order to gain a licence as a Sponsor of voluntary workers a school must be a registered, excepted or exempt UK charity. The same 4 key personnel must be identified at the application as with Tier 4, i.e. the Authorising Officer, Level 1 User, Level 2 User and the Key Contact.

The fee for an application is £400. It remains at £400 if a school applies for Tier 4 and 5 licences together. The good news is that there is no additional fee if a school applies to add a Tier 5 licence after having already applied or obtained a Tier 4 licence. Once licensed, a school can issue CoS to its prospective voluntary workers.

3.2 Responsibilities of a Sponsor for voluntary workers

In issuing a CoS a school confirms that:-

1. the visitor is undertaking voluntary fieldwork directly related to the school's charitable purpose
2. will not be paid with the exception of expenses as outlined in s.44 National Minimum Wage Act 1998 (see para 3.3 of this document)
3. will not be taking a permanent position
4. will comply with the conditions of leave under Tier 5

The maximum period allowed under this category is 12 months but it is **not a bar** to a young person applying for a YMS entry at a later date.

All temporary workers in this category will need to obtain entry clearance and attain a pass mark of 40 points as follows.

Points under Tier 5 - charity worker	Pass mark 40
Certificate of Sponsorship	30
Maintenance (£800)	10

3.3 Voluntary workers and earnings restrictions

A voluntary worker does not qualify for national minimum wage under the National Minimum Wage Act 1998 and is not entitled to any monetary payments except for those incurred:-

- in the performance of their duties or a reasonable estimate eg. travel from one site to another, purchasing something as part of their duties
- in order to enable them to perform their duties (no provision for reasonable estimate) eg. cost of travelling to and from work
- for subsistence (no provision for reasonable estimate - these must be actual cost) eg. purchasing additional snacks and drinks

A Gap Year visiting student can also be given benefits in kind, (ie. non monetary benefits) for subsistence or such accommodation as is reasonable in the circumstances of their employment.

In contrast to Tier 5: YMS and despite the addition of Section 14 of the Employment Act 2008 (in force from 14 January 2009), which allows for expenses such as travel costs once within the UK to be recovered from the school, a Gap Year student visiting under a Temporary (Charitable) Worker visa cannot receive any additional payments. To do so would constitute a wage and as a result move a Gap Year student in to the category of 'worker.' The Gap Year student would then be in breach of their temporary visa and the school in breach of their duties as a Sponsor.

Whilst this is therefore an attractive alternative to the YMS if a gap student only wishes to visit the UK for up to 12 months, **no payments other than those listed above can be paid to him/her during their stay.**

Round up of Tier 5

Tier 5 and YMS have been designed to facilitate cultural exchange for young people from countries that join the Scheme. It is worth noting that the PBS is adjustable. The points pass mark for all the Tiers is set by the Government with independent advice from the Migration Advisory Committee on the needs of the economy and from the Migration Impacts Forum on the capacity of society to absorb change. As a result the countries which are part of YMS are also likely to change with more being added each year.

For further details of the Tier 5 and YMS or to keep up with the changes go to www.ukvisas.gov.uk or contact Helen Rideout of Browne Jacobson LLP at hrideout@brownejacobson.com

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