



Equality Challenge Unit

Equality Challenge Unit Update

October 2008

Points-based immigration system for international students and staff: equality implications

The government's reform of UK immigration will have equality implications for international staff and students subject to the new points-based immigration system.

This update gives an overview of the new system, outlines equality implications for higher education institutions and signposts further information. The contents will also be relevant to registry, student services and international office staff. Please circulate this update within your higher education institution (HEI).

The update does not constitute a legal briefing. Detailed legal advice may be advisable on a case-by-case basis.

The points-based immigration system

The government is rolling out a new points-based system for immigration which impacts on highly-skilled staff (Tier 1), staff who are skilled workers with a job offer (Tier 2), students (Tier 4) and sponsored researchers (Tier 5). There will be students and staff subject to immigration control other than the points-based system.

From late November 2008 in line with the Tier 2 arrangements, HEIs wishing to employ staff who are from outside the European Economic Area (EEA) will need to have registered as licensed sponsors. Organisations that are not licensed sponsors will be unable to bring staff into the UK once the new system is in place. The sponsor registration process requires an application to the UK Border Agency (UKBA).

Staff

There is an associated duty to report to UK Border Agency if a member of staff with a Tier 2 visa fails to start work at the HEI, or is absent for a period of 10 working days without prior granted permission.

Students

Initial information about the student category (Tier 4) was published by the Home Office on 30 July 2008 as a statement of intent. A proposed timetable for the implementation of this tier is likely to be published in October 2008 with implementation occurring in 2009/10.

As with Tier 2, all HEIs wishing to enrol students who are subject to immigration control will need to apply to become a licensed sponsor and will be required to undertake monitoring of international students. UKBA has recognised that attendance monitoring is not appropriate for HEIs and instead the focus will be on monitoring the progression of students. Further work is being done to clarify the parameters of this approach for HEIs.

Applying to be a sponsoring institution

Full guidance on applying to be a sponsoring institution for both Tier 2 and 4 can be downloaded from the UKBA website: [Guidance for sponsor applications](#)

Detailed guidance for the sector on employing workers from overseas has been issued by Universities and Colleges Employers Association. For further information email Andrea Lechner (a.lechner@ucea.ac.uk).

Universities UK has produced information for members alerting them to the changes to the system. This is available on the Universities UK members' extranet. Please contact extranet@universitiesuk.ac.uk for access.

The points-based system and existing equalities legislation

Both Tier 2 and Tier 4 of the new system have undergone impact assessment by the Home Office. ECU believes that the new system is not in conflict with existing equalities legislation.

These impact assessments can be downloaded from the UKBA:

[Impact assessment of Tier 2](#)

[Impact assessment of Tier 4](#)

It is noteworthy that the Race Relations Act places a general duty on public bodies to promote equality of opportunity between persons of different racial groups. Whilst the function of immigration is exempt from this duty, employing

staff from overseas must be carried out in a fair and equitable manner and any decisions to reject or dismiss an individual must be based on their immigration status and not race.

Equalities duties of higher education institutions

In order to meet the requirements of existing equalities legislation, HEIs will need to ensure that they discharge their duties as part of the new immigration system in a fair and equitable way.

ECU believes that the equality impact is likely to be limited. It is the monitoring of attendance of international staff and progression of students for immigration purposes which may have equality implications.

The Race Relations Act makes it unlawful for an organisation to treat people differently on the grounds of race or nationality (direct discrimination), or to operate practices or procedures which unjustifiably disadvantage people of one race rather than another (indirect discrimination).

The areas which ECU considers that there may be equality implications are:

1. Making assumptions about a person's immigration status based on their ethnicity or nationality.
2. Unjustified practices and responses which, depending on the circumstance, might include having a strict clocking-in system for staff subject to the requirements of the points-based immigration system but not for other staff.
3. Failure to consider individual circumstances. The guidance from the UKBA indicates that universities should report a student when they have 'missed ten expected interactions (e.g. Tutorials, submission of coursework etc)' (UKBA, [Students under the points based system – \(Tier 4\) Statement of Intent](#)).

In some cases there may be conflict with existing anti-discrimination legislation where institutions are expected to treat students in a non-discriminatory manner and yet apply immigration rules. For example, a student with a disability may be unable to attend classes, and due to the nature of the disability is unable to make prior arrangements to absent themselves. In this case there is potential conflict with the Disability Discrimination Act.

It is general good practice to ensure absence, recruitment and other relevant staff procedures are applied consistently and fairly to all student and employees regardless of immigration status.

Next steps

Equality Challenge Unit will continue to work with Universities UK, Guild HE and UCEA to support the sector to implement their new duties in an equitable way.

Contacts for further information

Further information on equality implications of the new legislation

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About Equality Challenge Unit

Equality Challenge Unit supports the higher education sector in its mission to realise the potential of all staff and students whatever their race, gender, disability, sexual orientation, religion and belief, or age, to the benefit of those individuals, higher education institutions and society.

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