STATUTORY INSTRUMENTS

2017 No. 499

IMMIGRATION

The Immigration Skills Charge Regulations 2017

Made - - - -	*29th March 2017*
Coming into force - -	*6th April 2017*

The Secretary of State makes the following Regulations with the consent of the Treasury in exercise of the powers conferred by sections 70A and 74(8) of the Immigration Act 2014(**1**).

In accordance with section 74(2)(ja)(**2**) of the Immigration Act 2014, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Immigration Skills Charge Regulations 2017 and come into force on 6th April 2017.

Interpretation

2. In these Regulations—

"certificate of sponsorship" means an authorisation, allocated by the Secretary of State to a sponsor, in respect of an application, or potential application, for entry clearance or leave to remain;

"the charge" means the charge which a sponsor must pay under regulation 3, and any reference to the amount of that charge is a reference to that charge in pounds sterling;

"immigration rules" means rules made under section 3(2) of the Immigration Act 1971(**3**);

"leave to enter" and "leave to remain" mean leave to enter the United Kingdom and leave to remain in the United Kingdom respectively, given in accordance with the provisions of the Immigration Act 1971 or the immigration rules;

"skilled worker" means an individual who seeks entry clearance or leave to remain in order to undertake employment in a role which—

(**1**) 2014 c. 22. Consent of the Treasury is required by section 70A(5). Section 70A was inserted by section 85(2) of the Immigration Act 2016 (c. 19).
(**2**) Sub-paragraph (ja) was inserted by section 85(3) of the Immigration Act 2016.
(**3**) 1971 c. 77.

(a) is skilled to level 4 or above of the Regulated Qualifications Framework, as applied by the immigration rules(**4**);

(b) is remunerated appropriately, in accordance with the immigration rules(**5**); and

(c) either—

(i) has been the subject of a resident labour market test, as defined in the immigration rules, undertaken by the sponsor, unless an exemption from the obligation to undertake that test applies; or

(ii) is further to an intra-company transfer;

"small or charitable sponsor" means a sponsor that is—

(a) a company subject to the small companies regime under section 381 of the Companies Act 2006(**6**);

(b) a charity within the meaning of section 1 of the Charities Act 2011(**7**), or section 1 of the Charities Act (Northern Ireland) 2008(**8**), or a body entered in the Scottish Charity Register(**9**); or

(c) a person who employs no more than 50 employees;

"sponsor" means a person licensed by the Secretary of State to assign certificates of sponsorship to an individual who is a skilled worker.

Obligation to pay a charge

3. A sponsor must pay a charge to the Secretary of State, in the amount specified in the Schedule, each time it assigns a certificate of sponsorship to a skilled worker.

Exemptions from the charge

4. The obligation to pay the charge does not apply where a sponsor assigns a certificate of sponsorship to a skilled worker—

(a) in respect of an occupation coming within any of the following codes in version 5.1 of the Standard Occupational Classification 2010 Index(**10**)—

(i) 2111 (chemical scientists);

(ii) 2112 (biological scientists and biochemists);

(iii) 2113 (physical scientists);

(iv) 2114 (social and humanities scientists);

(v) 2119 (natural and social science professionals not elsewhere classified);

(vi) 2150 (research and development managers);

(vii) 2311 (higher education teaching professionals);

(b) who is intended to be the subject of an intra-company transfer as a graduate trainee, that being a temporary posting for a period of no more than 12 months, to the United

(**4**) See Appendix J of the immigration rules as in force from 6th April 2017.
(**5**) See Appendix J of the immigration rules as in force from 6th April 2017.
(**6**) 2006 c. 46; section 381 was amended by regulation 6(1) of S.I. 2008/393 in respect of financial years beginning on or after 6th April 2008; section 381 applies to unregistered companies, as defined in regulation 2 of S.I. 2009/2436, with modifications by virtue of regulations 3 to 5, 7 and 9 and paragraph 10(1) of Schedule 1 to those Regulations.
(**7**) 2011 c. 25.
(**8**) 2008 c. 12 (N.I.).
(**9**) See section 3 of the Charities and Trustee Investment (Scotland) Act 2005 (2005 asp 10).
(**10**) Published by the Office of National Statistics on 16th August 2016 and accessible via: http://www.ons.gov.uk/methodology/classificationsandstandards/standardoccupationalclassificationsoc/soc2010/soc2010volume2thestructureandcodingindex .

Kingdom branch of a multi-national organisation as part of a structured graduate training programme, which clearly defines progression towards a managerial or specialist role;

(c) in respect of whom the sponsor has already assigned a certificate of sponsorship ("the first certificate"), but only to the extent that any subsequent certificate of sponsorship is assigned in respect of a period of prospective leave which does not exceed the period in respect of which the first certificate was assigned;

(d) who has leave to enter or leave to remain for the purpose of study;

(e) in circumstances where—

(i) that sponsor has already assigned a certificate of sponsorship to that individual ("the first certificate"); but

(ii) by virtue of paragraph (d), the sponsor was not obliged to pay the charge when the first certificate was assigned; and

(iii) the assignment of any subsequent certificate of sponsorship relates to the same role as the first certificate;

(f) who seeks entry clearance for a period of less than six months.

Consequences of non-payment

5.—(1) Any purported assignment of a certificate of sponsorship is invalid whilst the obligation to pay the charge is outstanding, and the Secretary of State must treat the purported assignment as invalid for as long as that obligation remains outstanding.

(2) But paragraph (1) does not prevent the valid assignment of a certificate of sponsorship when the Secretary of State waives part or all of the charge in accordance with regulation 6.

Refund or waiver of part or all of the charge

6. The Secretary of State may refund or waive part or all of the charge.

Transitional provision

7. A sponsor is not subject to the obligation to pay the charge where—

(a) the sponsor assigns a certificate of sponsorship to a skilled worker who was assigned a previous certificate of sponsorship as a skilled worker before these Regulations came into force;

(b) the skilled worker made an application which relied upon the previous certificate of sponsorship referred to in paragraph (a) which resulted in the grant of entry clearance or leave to remain;

(c) the skilled worker undertook the role in respect of which the entry clearance or leave to remain was granted; and

(d) the skilled worker has not ceased, since being granted the entry clearance or leave to remain referred to in paragraph (b), to have leave to enter or leave to remain by virtue of an application made as a skilled worker.

Robert Halfon
Minister of State
29th March 2017 Department for Education