

Business Immigration: Shaping New Law Into Solution Focussed Advice for Clients

What is the practical impact of the new rules for business visitors on those wishing to undertake business activities in the UK?

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What is the practical impact of the new rules for business visitors on those wishing to undertake business activities in the UK?

1. Reason for the change
2. How the new rules are structured
3. Impact of new suitability grounds
4. Changes in eligibility criteria
5. Overall impact of the changes

Background

- Mark Sedwill, Permanent Secretary at Home Office appointed in 2013, launches “Highway code project”
- Aim to simplify legislation: “the whole of our road traffic legislation would fill the room, but government has simplified it all into a convenient guide”
- Informal consultation into visitor category launched October 2014 by Short Term Migration Policy Team
- Aim to streamline 15 different visitor categories and allow visitors to carry out a range of permitted activities
- New rules brought about by Statement on Changes HC1025 and took effect from 24 April 2015

How are the new rules structured?

- New rules contained in Appendix V
- Additional guidance provided in separate “Guide to the supporting documents guide: Visiting the UK”
- Guidance for Home Office staff also provided in “Visit guidance” (last updated on 8 January 2016)
- Appendix V divided into 9 parts V1-V9, plus 5 sub-appendices VA1 – VA5
- **Mahad [2009] UKSC 16** “the rules are not to be construed with all strictness applicable to the construction of statute...but sensibly according to natural and ordinary meaning of the words used”

What are the new visit categories?

- Part V1 sets out type of visit visas and duration

Type of Visit	Maximum length
Standard	Up to 6 months, except: <ul style="list-style-type: none">• Academic: Up to 12 months (with EC)• Private Medical Treatment: Up to 11 months (with EC)• ADS: Up to 30 days
Marriage/Civil Partnership	Up to 6 months
Permitted Paid Engagement	Up to 1 month
Transit	Up to 48 hours

- Part V3 sets out suitability requirements, incorporating general grounds for refusal and re-entry bans
- Part V9 sets out grounds for cancelling visa / leave

What is extent of duty of disclosure?

- Can refuse application, apply re-entry ban and cancel visa for failure to disclose material fact (V3.6 replicating provision under Part 9, para. 320 (7)) Leads to question what is a material fact?
- **Zamir v SSHD [1980]** sets out duty to answer questions truthfully “but entrant may, or may not know what facts are material. The Immigration Officer does, or ought to know, the matters relevant to the decision”
- **Kaur v SSHD [1998]** would facts “have influenced decision i.e. not decisive to the decision, but relevant to it”
- **Khawaja v SSHD [1983]** “no positive duty of candour”
- Visit Guidance “Visitors can undertake multiple activities whilst they are in the UK, but should be able to explain main reason for coming to UK...It is the applicant’s responsibility to ensure they provide evidence to satisfy you they meet the visit rules”

How do the eligibility requirements differ?

Part V4 – V5 sets out the eligibility requirements:

- V4.2 Genuine intention to visit - Borderline decision grant shorter visa or enter on Code 3
- V4.3 Funds maintenance and accommodation by 3rd party
- V4.5 Prohibited activities: Work
 - i. taking employment in the UK
 - ii. doing work for an organisation or business**
 - iii. establishing or running a business as a self-employed person**
 - iv. doing a work placement or internship**
 - v. direct selling to the public
 - vi. providing good or services
 - vii. unless allowed under permitted activities in sub-appendices 3,4 or 5**

Permitted activities under Visitors Appendix 3

VA 3.5 Business – General Activities

- (a) attend meetings, conferences, seminars, interviews;
- (b) give a one-off or short series of talks and speeches provided these are not organised as commercial events and will not make a profit for the organiser;
- (c) negotiate and sign deals and contracts;
- (d) attend trade fairs, for promotional work only, provided the visitor is not directly selling;
- (e) carry out site visits and inspections;
- (f) gather information for their employment overseas;
- (g) be briefed on the requirements of a UK based customer, provided any work for the customer is done outside of the UK.

Permitted activities under Visitors Appendix 3

Intra-corporate activities:

VA 3.6: An employee of an overseas based company may:

- (a) advise and consult;
- (b) trouble-shoot;
- (c) provide training;
- (d) share skills and knowledge; on a specific internal project with UK employees of the same corporate group, provided no work is carried out directly with clients.

VA 3.7: An internal auditor may carry out regulatory or financial audits at a UK branch of the same group of companies as the visitor's employer overseas.

Permitted activities under Visitors Appendix 3

VA 3.9 Manufacturing and supply of goods to the UK:

An employee of a foreign manufacturer / supplier may:

“install, dismantle, repair, service or advise on equipment, computer software or hardware where it has a contract of purchase or supply or lease with a UK company or organisation”.

VA 3.10 Client of UK export companies

A client of a UK export company may be seconded to the UK company in order to oversee the requirements for goods and services that are being provided under contract by the UK company or its subsidiary company, provided the two companies are not part of the same group. Employees may exceptionally make multiple visits to cover the duration of the contract.

Permitted activities under Visitors Appendix 3

VA 3.11-3.23 Business – Specific sectors

- Scientists and researchers
- Academics
- Legal
- Religion
- Creative
- Sport
- Roles requiring activities in UK – but no movement on global roles
- Work related training – employees of overseas training company added provided delivering training globally

Permitted activities under Visitors Appendix 3

BUT:

V4.6 Permitted activities must not amount to the applicant taking employment, or doing work which amounts to them filling a role or providing short-term cover for a role within a UK organisation.

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Permitted activities under Visitors Appendix 3

VA 3 Activities

No payment from UK source unless :

- Expenses
- Directors fees
- Prize money
- Billing UK client for time in UK where applicant's overseas employer is contracted to provide service
- Payroll through UK

Permitted activities under Visitors Appendix 4 & 5

VA 4 - Permitted Paid Engagements

Payment from UK source permitted for:

1. Academics
2. Lecturers
3. Pilot examiner
4. Lawyer
5. Professional artist, entertainer, musician or sports person

VA 5 - Permit Free Festivals

Payment from UK source for performances permitted

Conclusion

- New rules are more intuitive, but still very subjective
- Broader categories, more flexibility regarding activities
- Consider wider disclosure
- Less guidance, harder to determine rationale, but more opportunity for interpretation
- Modernised Guidance still applies to certain parts, so not one stop shop
- Limited right of appeal, so key as before continues to be to get it right first time

Questions

