

March 2020

UK Immigration – Points based system

The Government has released a policy statement regarding a points-based immigration proposed to come into force on 1 January 2021. The proposals largely build on the recent recommendations of the Migration Advisory Committee and will apply to both EEA and non-EEA nationals.

Applicants will require a minimum of 70 points to qualify for permission to work in the UK. Some characteristics are mandatory, with others being 'tradeable,' which will allow some individuals who do not earn £25,600 or above to qualify for sponsorship provided they earn over £20,480 and have other qualifying attributes.

The mandatory characteristics are:

- Job offer by an approved sponsor (20 points)
- Job at an appropriate skill level (20 points)
- English language skills (10 points)

The 'tradeable' characteristics are:

- Salary of £23,040 to £25,599 (10 points)
- Salary of £25,600 or more (20 points)
- Job in a shortage occupation (20 points)
- Education qualification – PhD in a subject relevant to the job (10 points)
- Education qualification – PhD in a STEM subject relevant to the job (20 points)

The resident labour market test will be abolished and there will be no cap on the number of visas that can be issued each year, however, there is no provision for roles deemed to be low skilled, including in social care, construction, retail or hospitality. Further details are expected to be published in the coming months.

Online marketplace BEUC test fails

On 24 February, the European Consumer Organisation (BEUC) published the results of tests conducted by six consumer groups on 250 products (including toys, electrical goods and cosmetics) bought from online marketplaces such as Amazon, AliExpress, eBay and Wish. The findings report that two-thirds of those products failed EU safety laws in some form with possible consequences such as electric shock, fire or suffocation. They include as an example, clothing for children with cords that are too long; increasing the risk of suffocation (14 out of 16 clothing pieces – such as hoodies – fell short of the EU safety prescriptions).

The press release can be read here: <https://www.beuc.eu/publications/two-thirds-250-products-bought-online-marketplaces-fail-safety-tests-consumer-groups/html>

Brexit update: Council officially starts talks on the future of the EU-UK relations

FESI has reported that on the 25 February, the European Council has officially started its talks on the future of the EU-UK relations, formally nominating the European Commission as EU negotiator. Furthermore, the Council has also adopted negotiating directives which constitute a mandate to the Commission for the negotiations. The aim is to establish a free trade agreement with the UK which guarantees that zero tariffs and quotas apply to trade in goods.

FESI states that: *"This agreement should provide for cooperation on customs and regulatory aspects. It should also include effective management and supervision, dispute settlement and enforcement arrangements. Additionally, the document includes provisions for future cooperation in areas such as digital trade (addressing unjustified barriers to trade by electronic means), intellectual property (establish an appropriate mechanism for cooperation and exchange of information), SMEs (fostering cooperation and partnership among SMEs), level playing field (prevent distortions of trade and unfair competitive advantages) and sustainability (ensure that environmental protection is not below the common standards)."*

Appeal dismissed in proceedings for trade mark infringement

In a recent case in the UK Court of Appeal, (*Brealey and another v Nomination De Antonio E Paolo Gensini SNC and another* [2020] EWCA Civ 103 (5 February 2020)) the court dismissed an appeal against a judgment of the Intellectual Property Enterprise Court. The original case involved a claimant bringing proceedings for trade mark infringement and passing off relating to the sale of bundles of charm bracelet links. The bundles combined the claimant's disassembled products with the defendant's products in blister packs and plastic bags.

The original judgement concluded that sales of the claimant's links by the defendant were likely to have damaged the reputation of the claimant's trade marks and evidence that the claimant's bracelets were not always sold in luxury packaging did justify the damage to the marks that was inflicted by the defendant's activities. In relation to passing off, the judge concluded that consumers would not read the defendant's online advertisements with any great care or attention. The defendant must have known that there was a risk of confusion if they did not make it clear that their bundles contained links from different trade sources.

The case confirms that the repackaging of trade-marked goods by third parties and their sale in combination with third party products may constitute trade mark infringement if the circumstances indicate that there is a legitimate reason to oppose such sales such as, in this case, cheap-looking packaging that was liable to undermine the luxury image of the claimant's mark.

France has adopted its anti-waste law

As of the 26th February, an anti-waste law has come into force in France which have a significant impact on the sports, outdoor, clothing and fashion sectors. While most of the articles still need to be implemented by individual decrees, it aims for all plastic to be recyclable by 2025 and will include a ban on designer clothes and luxury goods companies from destroying unsold or returned items. This includes hygiene products and cosmetics. Manufacturers that use plastic in their products will also need to publish the details about the presence of endocrine disruptors.

European Commission's report on due diligence requirements through the supply chain

The European Commission published its study on 24th February examining options for regulating due diligence in companies' own operations and through their supply chains to identify, prevent, mitigate and account for abuses of human rights, including the rights of the child and fundamental freedoms, serious bodily injury or health risks, environmental damage, including with respect to climate.

The study was conducted by the British Institute of International and Comparative Law (lead), Civic Consulting and LSE Consulting and puts forward four different regulatory options. An analysis of the economic impacts, impacts on public authorities, social, human rights and environmental impacts was carried out and a summary table can be found in the report at pages 559-569.

Read the full study here: <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>

Cathay Pacific fined £500,000 by ICO

The fine imposed was issued for security breaches under principle 7 of Data Protection Act 1998. The breach in question was ongoing from 2014 affecting 9.4 million data subjects, 111,578 from the UK, exposing customers details including names, DOB, passport details and addresses. Cathay Pacific self-reported the ICO in 2018 after becoming aware of suspicious activity due to an attack, after which they had engaged a cyber security firm to investigate. The penalty was issued under the old legislation which was in force at the time of the breach.

There are several points to note in regards to this fine:

- the ICO were able to take action against Cathay Pacific in the UK (Hong Kong incorporated company) as it maintains a branch in the UK so is 'established' in the UK;
- the ICO found there were some serious deficiencies including lack of encrypted database backups; lack of multi-factor authentication for VPN access; unnecessarily long retention periods; inadequate anti-virus protection;
- although the ICO noted Cathay Pacific had acted promptly and continued to act fortnightly since the breach and had gone above and beyond they were still fined the maximum penalty under the old legislation due to the nature and seriousness of the breach.

Read the ICO's press release here: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/03/international-airline-fined-500-000-for-failing-to-secure-its-customers-personal-data/>

Future Relationship with the EU

The first round of negotiations between the EU and UK began on 2 March. Given the latest COVID-19 developments, EU and UK negotiators have jointly decided not to hold face-to-face negotiations in London. Both sides are currently exploring alternative ways to continue discussions, including, if possible, the use of video conferences.

It is the government's aim to secure a comprehensive free trade agreement as well as agreement on questions such as fisheries, internal security and aviation. Full details on the future relationship the UK's approach to negotiations has been published here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf

The UK's approach to trade negotiations with the US

A new policy paper has been published setting out the UK's objectives in trade negotiations with United States of America. Read the paper here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869592/UK_US_FTA_negotiations.pdf

Ones to Watch:

ECHA Deadline: The 31st March 2020 is the deadline for evidence to be given to the ECHA on substances in single-use nappies.

End of transition period on restriction on PFOA: The transition period of the regulation on the restriction of perfluorooctanoic acid (PFOA) will come to an end on 4th July 2020. From this date, the manufacture, sales/marketing, and use of PFOA, its salts and PFOA-related substances will be restricted under the EU Regulation 2017/1000.

Russian labelling requirements: The 1st June 2020 is the new effective date of the Russian labelling requirements and SOH as of the effective date (1st June 2020) can be labelled until 1st of July 2020.

Digital Services Tax: The Digital Service Tax will come into effect from 1 April 2020 with a 2% tax on the revenues of search engines, social media services and online marketplaces which derive value from UK users. These businesses will be liable to Digital Services Tax when the group's worldwide revenues from these digital activities are more than £500 million and more than £25 million of these revenues are derived from UK users.