ESTONIAN MINISTRY OF CULTURE

LATITUDE LAW

MOBILITY OPTIONS FOR CREATIVES AND SPORTSPEOPLE FROM 2021

Why the need for a new approach?

Brexit fully took effect at 11pm on 31 December 2020

Any new arrival to the UK from Estonia from 01 January 2021 is subject to standard immigration rules

This contrasts with EU nationals resident in the UK already, who are (and will remain) able to benefit from their *free movement*

EU nationals did not become *visa nationals* - this means that they can enter the UK visa free for some temporary purposes

However, newly arriving EU nationals are now subject to standard rules and limitations, which can be restrictive

What does this mean for UK events and opportunities?

Before Brexit, EU artists could travel to the UK without a visa and remain here for as long as they chose without any restrictions on activity or payment

Now, arrivals *may* be subject to restrictions, one of the most problematic being in relation to payment

Where events have not been arranged as a commercial enterprise, it is likely that no sponsorship is required

Where the participant will be remunerated or will directly sell to the public, a specific visa may be required

PART ONE – Temporary travel to the UK as a visitor

What is a visa and what is ‘visa-free’ travel?

- A visa is a document issued to a traveller before they leave their home country. It is often (although not always) a sticker in a passport. A visa is ‘entry clearance’; pre-approval for UK travel
- Not all travellers to the UK need visas for every trip. Those who do not require a visa to visit the UK, are called ‘non-visa nationals’
- After Brexit took effect, all EU nationals became non-visa nationals
- This means that Estonian nationals rarely require a visa for short-term UK travel as visitors
- Visas are needed for long-term relocation, and may have some benefit for short-term trips

One-off or short events

- For short events it is often preferable to travel visa free as a **visitor** with no formal sponsorship
- This will restrict travel: visitor entry is permitted for 1 month for some categories, up to 6 months for others
- Visitors should also not have cumulative trips which total more than 6 months in any rolling 12-month period
- Some visitor rules expressly prohibit certain activities, some expressly permit them

Travel as a visitor – pros and cons

Great things about travel as a visitor:

- No visa required – quick and free of charge
- Flexibility for purpose of travel, combining leisure with business activity
- As there is no group UK visa for short trips, travelling visa free simplifies the process for choirs and other groups

Difficulties with visa-free travel:

- Restrictions on activity in the UK
- Restrictions on payment for UK activities
- Potential for refusal at the border if not accepted as a genuine temporary traveller

Visitors – general permissions & restrictions

- Permitted period of entry:
  - 6 months for general visitors
  - 1 month for those admitted for a *Permitted Paid Engagement*
- The **cost of travel, maintenance and accommodation** for the trip can be met by a third party where there is a **genuine professional** (or personal) relationship in existence
- General **prohibitions relating to work and payment**
- But see **specific permissions relating to creatives and sportspeople**

Can visitors ‘work’ in the UK?

V 4.4. ***The applicant must not intend to:***

(a) work in the UK*, which includes:*

(i) ***taking employment*** *in the UK; and*

(ii) ***doing work for an organisation or business*** *in the UK; and*

(iii) ***establishing or running a business*** *as a self-employed person; and*

(iv) doing a ***work placement or internship****; and*

(v) ***direct selling*** *to the public; and*

(vi) ***providing goods and services****,*

unless expressly allowed by the permitted activities in Appendix Visitor: Permitted Activities, Appendix Visitor: Permit Free Festivals or the Permitted Paid Engagements…

V 4.5. Permitted activities must not amount to the visitor undertaking employment, or work which amounts to them filling a role or providing short-term cover for a role within a UK based organisation and where the visitor is already paid and employed outside of the UK they must remain so.

Payment for UK activities

*V 4.6. The visitor **must not receive payment from a UK source** for any activities undertaken in the UK, **except for the following**:*

*(a) **reasonable expenses** to cover the cost of their travel and subsistence, including fees for directors attending board-level meetings; or*

(b) international drivers undertaking activities permitted under PA 9.2.; or

*(c) **prize money**; or*

(d) billing a UK client for their time in the UK, where the applicant's overseas employer is contracted to provide services to a UK company, and the majority of the contract work is carried out overseas (payment must be lower than the amount of the applicant's salary); or

(e) multi-national companies who, for administrative reasons, handle payment of their employees' salaries from the UK; or

*(f) **paid performances at a permit free festival** as listed in Appendix Visitor: Permit Free Festivals, where the applicant is an artist, entertainer or musician; or*

*(g) **Permitted Paid Engagements**, where the requirements of V 13.1. to V 13.3. are met.*

Permitted activities: General

General Business Activities

PA 4. A visitor may:

(a) ***attend meetings, conferences, seminars, interviews****; and*

(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; and*

(c) ***negotiate and sign deals and contracts****; and*

(d) attend ***trade fairs, for promotional work only****, provided the visitor is not directly selling; and*

(e) carry out site visits and inspections; and

(f) gather information for their employment overseas; and

(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: Creative

PA 14.1. An artist, entertainer, or musician may:

*(a) give **performances** as an **individual or as part of a group**; and*

*(b) take part in **competitions or auditions**; and*

*(c) make **personal appearances** and take part in **promotional activities**; and*

*(d) take part in **one or more cultural events or festivals on the list of permit free festivals** in Appendix Visitor: Permit Free Festival List.*

*PA 14.2. **Personal or technical staff** or members of the production team of an artist, entertainer or musician may support the activities in PA 14.1. or Appendix V: Visitor at V13.3 (e) provided they are attending the same event as the artist, entertainer or musician, and are employed to work for them outside of the UK.*

*PA.14.3. **Film crew** (actor, producer, director or technician) employed by an overseas company may visit the UK to take part in a location shoot for a film or programme or other media content that is produced and financed overseas.*

Permitted activities: Sports

PA 15.1. A sports person may:

*(a) take part in a **sports tournament or sports event** as an **individual or part of a team**; and*

*(b) make **personal appearances** and take part in **promotional activities**; and*

*(c) take part in **trials** provided they are not in front of a paying audience; and*

*(d) take part in **short periods of training** provided they are not being paid by a UK sporting body; and*

*(e) join an **amateur team or club** to gain experience in a particular sport if they are an amateur in that sport.*

*PA 15.2. **Personal or technical staff** of the sports person, or sports officials, may support the activities in PA 15.1. or in Appendix V: Visitor at V 13.3.(f), if they are attending the same event as the sports person, and personal or technical staff of the sports person must be employed to work for the sports person outside the UK.*

Permitted Paid Engagements

- *A **professional artist, entertainer or musician** coming to carry out an **activity directly relating to their profession**, where they have been **invited by a creative (arts or entertainment) organisation, agent or broadcaster** based in the UK*
- *A **professional sports person** coming to carry out an **activity directly relating to their profession**, where they have been **invited by a sports organisation, agent, or broadcaster** based in the UK.*
- Permitted Paid Engagements are a specific exception to the general rule against a visitor receiving payment for UK-based activities
- Note the restrictions:
    - This is an option reserved for established professionals
    - Activity must be directly relevant to their profession
    - Invitation required from a creative/sports organisation or broadcaster

Permit Free Festivals

- *PFF 1. An **artist, entertainer or musician visiting the UK** to **perform at one or more** of the following permit free festivals **may receive payment** to do so…*
- This is a second exception to the usual rule against payment of UK visitors
- The Permit Free Festival list is available here: https://www.gov.uk/guidance/immigration-rules/-immigration-rules-appendix-visitor-permit-free-festival-list
- The current list confirms all festivals approved under the PFF scheme until April 2022
- If a festival is not listed and wishes to be, it must apply for inclusion on the list, but this will only be for festivals occurring from April 2022

What are the pros and cons of being PPE or PFF?

PPE allows for more **varied activities** than PFF, covering both **creatives and sportspeople**, and not just specific approved festivals

However, PPE **only covers professionals**, and an **invitation is required** from a UK organisation before travel

PPF is available to **amateurs as well as professionals**, so has more scope in the creative sector

However, PPF **does not include sportspeople**, and only covers the **44 festivals** included on the list

Both PPE and PFF are **visa free**: the traveller should however see a border officer on arrival in the UK and **not use an e-Gate**

Who might not qualify as a visitor?

All people admitted to the UK under the Immigration Rules are subject to **suitability** and **criminality** assessment

These rules have tightened since Brexit, meaning that someone entering without difficulty in the past may find it more difficult in future

Not all planned activities are covered by the Immigration Rules, and not all permitted activities also allow for payment

Where the planned activities cannot fit with visitor rules, the alternative is to secure sponsorship or qualify through another immigration route allowing for longer travel, and increased options for payment

What documents are needed for visitors?

As visitors travel visa free, no documents are reviewed until arrival at the border

All visitors are best advised to travel with proof of their travel itinerary and their UK accommodation plans

PPE visitors should travel with evidence of their planned engagement in the UK including a formal invitation

PPE visitors are also advised to have a short portfolio confirming their professional status (eg critique, reviews, or publicity documents translated into English)

PFF visitors should have confirmation of their booking for the approved festival

Visitor case study 1: PPE

- Mia and Sebastian are accomplished and professional traditional folk dancers
- They plan to take part in a two-week arts festival taking place in the UK in October 2021
- The festival is not included on the list of permit free festivals in the Immigration Rules
- Mia and Sebastian have been offered payment, but need to know whether they can accept this
- The permitted activities for creative visitors allow for performances individually or as part of a group

- However, receiving payment will not be allowed unless an exemption applies
- We know that the festival is not permit free, so this option cannot be relied upon
- *Permitted Paid Engagement* gives the option for payment where the visitor is a professional, as Mia and Sebastian are
- Entering as a PPE visitor limits the permitted duration of the visit to 1 month; the festival is two weeks, so this is acceptable
- No visa is needed for Mia and Sebastian, but they should travel with appropriate evidence and see a border officer (no e-gate)

Visitor case study 2: PFF

- The WOMAD festival has invited an Estonian choir to participate in their next UK event
- The choir is comprised of Estonian nationals without criminal convictions or UK immigration problems
- The choir will be paid for their participation; all travel expenses and UK accommodation will be provided for, and there will also be an appearance fee paid by WOMAD
- Several members of the choir would like to remain in the UK after the festival for a holiday; nobody intends to remain longer than 6 months

- Performance as a group is a permitted activity for any creative visitor
- However, payment beyond expenses will be prohibited unless an exception applies
- WOMAD is included on the PFF list, so payment for this performance is acceptable
- Travel as PFF is a better option as there is no requirement to be a recognised professional artist (as with PPE)
- Fewer documents are needed at the border, meaning there should be less reason for refusal
- Remaining for tourism after the festival is acceptable

PART TWO

Longer Term Visa Options

Obtaining a Sponsor Licence

- For an organisation to obtain a sponsor licence, it must apply to UK Visas and Immigration
- There are different types of licence, covering sponsorship of skilled workers, intra-company transfers, creative and sporting sectors, and temporary migrants to the UK
- Most creative organisations will require a licence for temporary sponsorship only
- There are specific provisions for migrants in creative and arts sectors which have benefits over 'standard sponsorship'

Certificates of Sponsorship

- Certificates of Sponsorship (CoS) are electronic records of who will be sponsored and what they will do
- Each time you wish to support the visa application of an overseas migrant as their sponsor, you must assign a CoS
- The type of sponsorship affects the cost of the CoS - £199 per CoS for long-term sponsorship, but only £21 for temporary skilled migrants / free to certain citizens (not Estonians unfortunately)
- Sponsorship of temporary migrants also negates the need to pay the *Immigration Skills Charge* (a levy otherwise imposed on the relocation of skilled migrants to the UK)

T5 (Creative) Temporary Worker

- Someone who can make a unique contribution to the UK's cultural life, for example, as an artist, dancer, musician or entertainer, or as a model contributing to the UK's fashion industry
- Certificate of sponsorship (CoS) required from a licensed UK-based organisation
- Compliance with published Codes of Practice
- Does not lead to settlement
- Maintenance requirement £1270 / 28 days
- Dependants may apply

T5 (Creative) Requirements

- Apply for CoS no earlier than 3 months before engagements begin
- Shortage occupation OR resident labour market tested
- If CoS records that the applicant is being sponsored for more than one engagement by the same sponsor, there must be no more than 14 days between each individual engagement
- If the applicant has consecutive engagements, each sponsor must assign its own CoS to the applicant
- Maximum 12 months initial sponsorship, extendable upto 24 months

T5 (Sporting) Temporary Worker

- Internationally established at your sport's highest level
- Will make a significant contribution to development / operation of your sport in the UK
- Governing body endorsement required – see Appendix M Immigration Rules
- CoS issued by a UK-based club or organisation
- Upto 12 months validity
- Does not lead to settlement
- Maintenance requirement £1270 / 28 days
- Dependants may apply

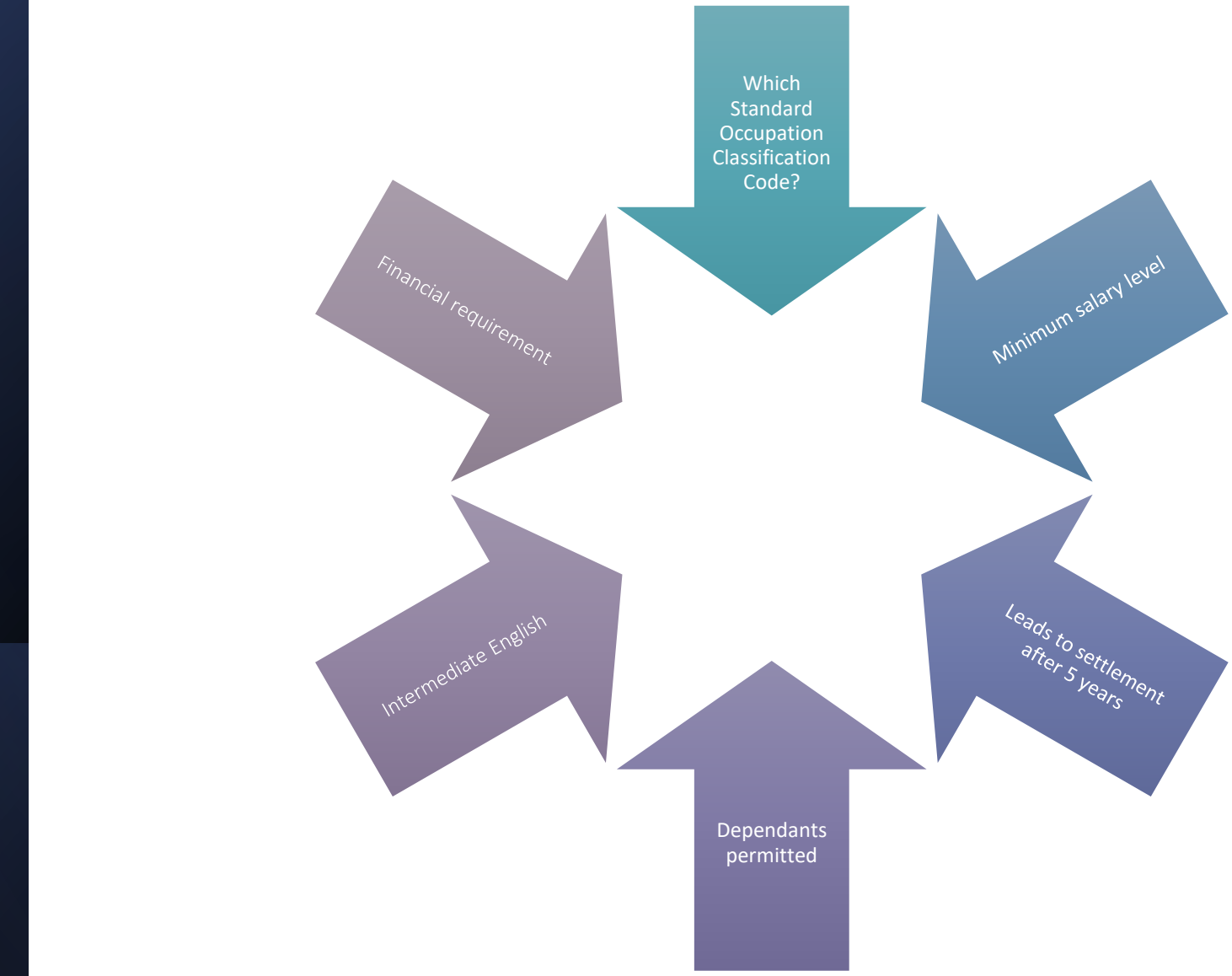
T5 (Sporting & Creative) Visa Exemption

- Exception to entry clearance requirement where:
  - Non-visa national
  - Holds a valid CoS from an approved sponsor
  - If the applicant has consecutive engagements or events, the total length of all the periods of engagement, together with any gap between those engagements, is 3 months or less
  - If the applicant does not have consecutive engagements, the total length of period of engagement, or engagements, is 3 months or less
  - Otherwise meets the requirements to be granted permission as a Sporting or Creative Worker

Long-Term Sponsorship

- Formerly known as Tier 2 – now Skilled Worker or T2 Sporting
- Long-term assignments or roles – maximum 6 years
- CoS issued by employer / sponsoring organisation
- Employer must be licensed specifically for either route
- T2 Sporting must have endorsing body support
- Creative: minimum skill & salary levels

Skilled Worker



T2 (Sporting)

- For elite sportsmen and women or qualified coaches
- Endorsement from your sport's UK governing body required
- "Developing your sport at the highest level"
- Upto 3 years' initial validity
- Financial and basic English language requirements
- Parental consent if aged under 18
- Leads to settlement after 5 years, at which point minimum salary requirement of £35,800 per year
- Minimum residence requirement if seeking to settle
- English language to level B1 CEFR & Life in the UK test

Non-sponsored options – Global Talent

- Global Talent is an exclusive visa route, restricted to the "brightest and best"
- Applicants require endorsement in one of the qualifying sectors
- For Arts and Culture, the endorsing body is Arts Council
- Not available to sportspeople
- Applicants can be either established exceptional talent, or show exceptional promise in their early career
- Qualifying criteria is strict and often includes nomination or receipt of prestigious awards
- Long-term option, so good for those looking to relocate

Non-sponsored option 2 – Frontier Workers

- Eligible if you've done genuine and effective work in the UK before 31 December 2020 & you've worked here in the 12 months preceding date of your application (subject to exceptions)
- For those primarily resident outside the UK
- <180 days in UK in last year, but may still qualify if you've returned home regularly
- Doesn't give a right to reside in the UK – only to work here
- Doesn't lead to settlement
- No fee payable for this work permit
- Family members are not covered

Short Term Sponsored Work Case Study

- Border Theatre Productions wishes to invite artists to the UK on a regular basis, from all parts of the world, for individual performances not linked to a permit-free festival
- Engagements will be at a single venue, runs will last 6-8 weeks
- The artists will be paid by BTP
- What sponsorship option is best?

- Check if any EU performers are able to enter and work without sponsorship
- For others, T5 (Creative) temporary worker is the relevant sponsorship route
- Consider timescale for obtaining a T5 sponsor licence
- Certificates of sponsorship (CoS) may be issued upto 3 months before engagement begins
- Visa-free entry is possible – CoS activated at the UK Border – no e-gate!

Thank You

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