



Adrian Berry  
Chair  
Immigration Law Practitioners' Association

By e-mail

4 April 2019

Dear Adrian,

**Re: Innovator and Start-up categories**

Thank you for your letter of 28 March.

We note ILPA's point about consultation on the Rules changes. When previous changes to Tier 1 routes have been disclosed, they have tended to result in prolonged application surges ahead of the changes taking effect. Such surges have generally been characterised by poor-quality applications and resulted in delays and uncertainties for applicants, as well as additional costs for the Home Office (and therefore the taxpayer).

We considered a temporary, partial suspension of both the Tier 1 (Investor) category and parts of the Tier 1 (Entrepreneur) category. This would have created the space to hold wider discussions without the risk of such a surge. Ultimately, however, it was decided that continuity of provision for genuine entrepreneurs and investors was the prime objective. We have, however, engaged with a wide selection of partners within government and potential endorsing bodies.

**Guidance**

We note your concerns that we have not published a policy guidance document for applicants. Information for applicants has been published on gov.uk and can be found at:

- <https://www.gov.uk/start-up-visa>
- <https://www.gov.uk/innovator-visa>

Care has been taken to draft the new Appendix W to ensure it is as easy to follow as possible while still being clear and legally robust. Any policy guidance we produced would likely have carried much the same wording and resulted in unnecessary duplication. We believe it is preferable for applicants to be directed to a "single source of truth" rather than the potential confusion of multiple sources. A single source also reduces the risk of inconsistencies arising.

We note your concern about the absence of version information on webpage contents. The webpages show the current information. If (for whatever reason) an applicant wishes to check the policy in place at another given time, they can do so by referring to the archive of the Immigration Rules available at <https://www.gov.uk/government/collections/archive-immigration-rules>.

I can confirm that internal guidance for Home Office caseworkers has also been published externally and can be found at <https://www.gov.uk/government/collections/working-in-the-uk-modernised-guidance>.

## Queries

You raised the following additional queries in your letter:

### **1. What criteria are the Home Office and other Government departments using to assess the suitability of those applying to become endorsing bodies?**

The criteria to become an endorsing body are set out in the Immigration Rules (paragraphs W5.3 and W6.8 of Appendix W) and in the endorsing body guidance at <https://www.gov.uk/government/publications/start-up-and-innovator-endorsing-bodies-guidance>.

In particular, we would highlight the requirements for potential endorsing bodies to have:

- a proven track record of supporting UK entrepreneurs, including resident workers
- the prior support of a UK or devolved government department

Lists of the current endorsing bodies for both categories are also published on gov.uk:

- <https://www.gov.uk/government/publications/endorsing-bodies-start-up>
- <https://www.gov.uk/government/publications/endorsing-bodies-innovator>

### **2. Will an endorsing body be able to charge for its services?**

Endorsing bodies are not able to charge for services specifically relating to their endorsement. There is no provision for them to do so within the immigration and nationality fees system. If such provision became necessary in future, a maximum amount would likely be specified in the fees regulations.

Endorsing bodies can, of course, charge for any other services they provide, so long as the same charges would apply to any resident workers they were providing the same services to.

The incentives to become an endorsing body vary depending on the type of organisation. Business accelerators may wish to do so because they will invest in the businesses they are supporting and benefit from holding an equity stake. Government agencies may wish to do so because it supports their public policy objectives. Higher education institutions may wish to do so because it enhances their offer to international students.

### **3. What level of due diligence will the Home Office and supporting Government departments carry out before granting endorsing body status to an organisation?**

The core criteria to become an endorsing body are set out in the Immigration Rules and the published guidance for endorsing bodies. A key part of these is the support of a UK or devolved government department who can vouch for their activity and the work the organisation does to support UK entrepreneurs. The level of checks we do will vary depending on the type of organisation and how well it is already known to government. We will not add organisations to the list unless we are satisfied they meet the criteria.

While there is no overall limit on the number of places in either category, we are initially allocating a maximum of 25 places to each endorsing body. We will monitor how these places are used before allocating further places, and liaise with an endorsing body if we consider they should modify their approach in any way. Some variation, however, is only to be expected. We do not wish to be too prescriptive in how endorsing bodies apply the criteria; the benefit of their involvement is in drawing on their expertise.

### **4. How does the Home Office propose to avoid any conflicts of interest between the endorsing body and the applicant?**

Endorsement must be based on the criteria set out in the Immigration Rules. However, as the guidance states, endorsing bodies are free to decide whether to accept open applications or to only issue endorsements to business founders they are already working with through their existing activities. This could mean only endorsing those businesses they are actively investing in. This is an acceptable business model (see answer to question 2) and does not necessarily indicate a conflict of interest.

It would not be acceptable for an endorsing body to withdraw its endorsement solely because of financial issues relating to its investment. This is not a valid reason within the Immigration Rules for withdrawing an endorsement.

### **5. Will an endorsing body be able to offer other services through an associated commercial entity?**

Before approving an endorsing body, we need to be assured that there is no conflict of interest between their acting as an endorsing body and any other services provided by them or any partner organisations, including immigration services.

In particular, the potential endorsing body would need to advise what measures they have to ensure:

- The arm of the organisation providing other services is separate from and has no influence on who is selected for endorsement, such that they could not under any circumstances make an approach to ask for a client to be endorsed
- That when the business assessment is carried out by the endorsing body arm, they are not party to which firm the applicant will use for other services, and have no say over which firm the applicant chose to use (or not use) for any such services
- The endorsing body will not use its status to promote any immigration services

## **6. What happens if an endorsing body loses or withdraws its status?**

If an endorsement has been withdrawn or the endorsing body loses its status, we will consider curtailing the leave of any Start-up migrants or Innovators it had endorsed. We will take account of the particular reasons for withdrawing the endorsement in deciding whether to do this with immediate effect, or to allow the individual to retain part of the remaining duration of their visa.

If the individual has already passed their last checkpoint with the endorsing body, and has not broken any of their leave conditions, we may decide not to curtail their leave. If they still have one or more checkpoints to go, it is likely they would need to secure a fresh endorsement from a new endorsing body. For this reason, the guidance suggests to endorsing bodies that, if they wish to withdraw from the categories, they may wish to consider a phased withdrawal, in which they stop endorsing new applicants but continue to endorse their existing cohorts.

Applicants are able to change endorsing body without having to begin their journey through the categories again, providing they meet the usual criteria for the stage they are applying for (“new business”, “same business” or settlement). In principle, there are no barriers to them doing so. If their reasons for changing endorsing body are not readily apparent (such as where their previous endorsing body is still operating), we may ask for more information about why they are doing so.

## **7. Is the Home Office confident that entrepreneurs looking to start a business in the UK would be able to submit an application from 29 March 2019 or soon after?**

Yes. We already have over 20 business organisations and over 120 higher education institutions on our list of endorsing bodies. While not all are ready to endorse applicants immediately, we are confident that there is a wide spread of endorsing bodies available, in terms of both sectoral and geographical coverage. The list is not fixed and we have received several enquiries from other organisations wishing to be added as endorsing bodies.

## **8. How will the Home Office ensure that there are sufficient numbers of endorsements available to potential applicants?**

We are not seeking to replicate similar numbers of entry clearance grants to those seen in the previous categories. Tier 1 (Entrepreneur) contained a long tail of poor quality businesses which were not innovative and added little economic benefit to the UK. A key purpose of the reforms is to focus the new categories on higher quality applications and businesses. Other countries which operate similar immigration routes typically grant numbers of visas in the low hundreds (or less) each year.

That said, we have no target number of applications and there is no limit on numbers in either of the new categories. Success will be determined by quality, not quantity.

## **9. Under the Innovator and Start-up categories, will applicants be able to join or take over existing businesses?**

The new categories are for applicants coming to the UK to establish a business only, not to join or take over an existing business (for which other immigration categories are

available, such as Tier 2 or Tier 1 (Investor)). The purpose of the new categories is to bring new, innovative business ideas to the UK.

The conditions of leave mirror those in the categories being replaced. Start-up migrants, like Tier 1 (Graduate Entrepreneur) migrants, are able to take up supplementary employment (with no limit on hours) to support themselves, while they get their businesses up and running. Innovators, like Tier 1 (Entrepreneur) migrants, are restricted to working for their own businesses.

We have seen widespread non-compliance in the Tier 1 (Entrepreneur) category, with many applicants working in breach of their conditions. We are keen to prevent the Innovator category being targeted by those whose main goal is to seek paid employment in the UK with existing businesses, rather than establish innovative businesses of their own.

There is, however, nothing to prevent an Innovator establishing multiple UK businesses and working for them all.

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I hope that this reply explains our position and addresses your queries. We are not able to offer a meeting with you at this time, but we are happy to answer any further queries you may have and consider any constructive feedback on the new categories.

Yours sincerely,

**Richard Jackson**  
**Economic Migration Policy Team**