

Points Based System to Employing Migrants in the UK

ACE HR Taskforce

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Points Based System to Employing Migrants in the UK

The points based system is a new immigration system separating individuals or migrant workers into five tiers scheme within the Points Based Scheme (PBS).

Tier 1: Highly skilled

Most skilled professionals will automatically have enough points to come to the UK without a job offer and seek work or set up a business. This tier includes entrepreneurs, top scientists and business people. Tier 1 is the first part of the system to be rolled out.

Workers in this category have the most flexibility in the UK and greatest opportunities to settle for good because the system regards them as having the most potential for generating wealth benefiting the UK.

Tier 2: Skilled with job offer

This covers people with qualifications or important work-related experience in a huge range of sectors from health service workers to white collar jobs and the trades. People in this category will be given points on their talents and will be allowed into the UK if they have a job offer in a "shortage area" such as nursing. Tier 2 will come into force in 2008 and employers will need to register as a sponsor. Employers who don't meet strict criteria could be barred from bringing in foreign workers.

Tier 3: Low skilled

Until now, the government has allowed temporary migration from all nationalities to jobs in hospitality, food processing and agriculture. It has now cut these permissions in favour of workers from the expanded European Union, who do not need prior permission to arrive. No date has been set for this tier to be activated and it is believed that vacancies can be filled with EU workers.

Tier 4: Students

This covers those paying for tuition in the UK. Universities and colleges increasingly depend on the income from overseas students; many institutions have developed formal links with counterparts overseas. In previous years student visas have proved controversial, with allegations that it was a route open to abuse.

Tier 5: Temporary workers, youth mobility

This will include professional sports people or professional musicians, who want to "work" in the UK for an event such as the Olympics or a football match, or a concert. The youth mobility aspect is intended to cover cultural exchanges or working holidays by young people. This came into force in November 2008.



TIMEFRAME OF NEW SYSTEM

APPLICATIONS OPEN

Tier 1 (General): highly skilled workers, such as scientists and entrepreneurs	From 29 February 2008
Tier 2: skilled workers with a job offer to fill gaps in United Kingdom labour force	From 27 November 2008
Tier 3: limited numbers of low skilled workers needed to fill temporary labour shortages	This tier is currently suspended
Tier 4: students	Tier 4: students March 2009
Tier 5: temporary workers and youth mobility scheme: people allowed to work in the United Kingdom for a limited period of time to satisfy primarily non-economic objectives	From 27 November 2008

ACE members will mostly be affected by Tier 2.

Definitions: *sponsor – organisation applying to hold a license*
 CoS – certificate of sponsorship
 SMS – sponsor management system (online system)

Tier 2 introduces new measures:

- a) migrants will be required to demonstrate English language competence
- b) all jobs which aren't in shortage occupations or intra company transfers will have to meet the Resident Labour Market Test (RLMT) i.e. that advertising has occurred
- c) migrants not filling shortage occupations will have to earn points through their qualifications and prospective earnings system (includes intra company transfers)
- d) Migration Advisory Committee – looking at shortage occupation list
- e) there will be a maintenance requirement to show migrants they can support themselves for the first month they are here.
- f) once arrived, they will have to get a biometric identity card
- g) Sponsor must alert UKBA if migrant leaves or doesn't turn up to work.

Employers will be able to sponsor skilled migrants to work in the UK in 1 of 3 categories:

- 1) shortage
- 2) where jobs have passed Resident Labour Market Test (demonstration of advertising)
- 3) Intra Company Transfers (must have worked for that organisation overseas for at least 6 months)

No major change so far other than (a), (c), (e) and (f) above.



How will it work?

Employers can apply to bring migrants to the UK by obtaining a license. The employer would then give the migrant a Certificate of Sponsorship which is a virtual certificate/reference number which is obtained online. He will take this to the British Embassy to get an entry clearance visa to enable him to come to the UK.

To be able to come to the UK under Shortage Occupation, Resident Labour Market Test and Intra Company Transfer - migrants must score **70** points or more from the following table.

SECTION	CERTIFICATE OF SPONSORSHIP	POINT	QUALIFICATIONS	POINTS	PROSPECTIVE EARNINGS	POINTS
A	Shortage Occupation job offer	50	No qualifications	0	£17K - <£20K	5
	Job offer that passes Resident Labour Market Test	30	NVQ 3	5	£20K - <£22K	10
	Intra Company Transfer	30	PhD	15	£24K plus	20
B	Maintenance Requirement (sufficient funds)					10
C	Competence in English					10

Resident Labour Market Test (RLMT)

Must have advertised for at least 2 weeks in JobCentre Plus or a sector specific media approved by the UKBA. The ACE website is an acceptable media for this purpose.

Intra Company Transfers (ICT)

No RLMT is required but have worked for company overseas for at least 6 months. English competency for ICT is only required if the migrant is to stay beyond 3 years.

Competence in English

Must be able to speak English to a basic user standard. This will include:

- an ability to understand and use familiar every day expressions
- ability to understand and use basic phrases to introduce themselves and others
- ask and answer questions about basic personal details



They will have to demonstrate:

- a) pass a test in English language
- b) come from a majority English speaking country
- c) have taken a degree taught in English (properly verified)

Maintenance Requirement

The migrant will have to show he has £800 of funds available for his use plus a further £535 for each dependant that comes with them. The employer will need to check their bank account for this.

HOW WILL IT ALL WORK?

Single Application Process

3 ways

- 1) entering the UK under the skilled migrant tier
- 2) extending a stay in the UK in the skilled migrant tier
- 3) switching whilst in the UK into the skilled migrant tier

Fingerprints of all applicants applying for a visa will be taken. Plus they will need the biometric identity card.

Documentary Evidence

Migrants will provide documentary evidence to support their claim for points.

The employer will be responsible for:-

- a) ensuring that the qualifications are bona fide
- b) ensuring that his English ability is to the level required
- c) ensuring that the migrant has sufficient funds available to maintain himself

In order to assess the qualifications, it might be worth considering joining UK NARIC which is a National Agency managed on behalf of the UK government providing an official source of information on international qualifications. Please see the attached link – the online demonstration is good. Cost: £850 + VAT per year. <http://www.naric.org.uk/index.asp?page=35>

Dependants

Migrants can bring their immediate family with them provided they can maintain them without claiming state benefits.



Initial Leave

Migrants will first be granted 3 years leave to remain in the UK.

Extension of Stay

A migrant will need to have a new certificate of sponsorship in respect of continued employment before he can apply to remain here for longer period of time. His job will need to be genuine and he will need to still have sufficient points. A further RLMT will not be required.

If applying for an extension and he's currently here under the Shortage Occupation list but the job is no longer on this list, then he will have to prove that he has 70 points still but no RLMT will be required (UKBA are considering changing the pass mark number of points for this scenario otherwise it will be impossible to get 70 points).

Change of Employment

If a migrant has come over in Tier 2 and now wants to change employer. The new employer must ensure that their job falls within the shortage criteria or passes the RLMT. Maintenance of qualification evidence will not be required.

APPLYING FOR A LICENSE TO BE A SPONSOR

This is done by making an on-line application and within 10 days of this, one of the following must be sent in:-

If the employer is a private limited company, and has been trading or operating for more than eighteen months at the time of its application, then the following are required:

- a) Proof of registration with a governing body **AND** one of the following
- b) Employer's liability insurance for at least £5 million from an authorised insurer (individuals/companies working under the terms of the Financial Services & Markets Act 2000) **or**
- c) Current Audited Annual Report with name of accountants shown **or**
- d) Certificate of VAT registration confirming VAT registration number, if turnover in excess of £64,000 **or**
- e) Evidence of registration with HMRC as an employer to pay PAYE and NI.

If the employer is a plc, then the following are required:

- f) Proof of listing on the London Stock Exchange **AND** one of the following
- g) Employer's liability insurance for at least £5 million from an authorised insurer (individuals/companies working under the terms of the Financial Services & Markets Act 2000) **or**
- h) Current Financial Report or Audited Annual Report with name of accountants shown **or**
- i) Certificate of VAT registration confirming VAT registration number **or**
- j) Evidence of registration with HMRC as an employer to pay PAYE and NI **or**
- k) Latest corporate/business bank statement along with letter from bank setting out the dealings it has had with the organisation including their nature and duration of its dealings.



Employers can apply for a separate license for each branch in the UK or for a license to cover both the head office and each “UK branch”. Each License costs £400 for a “small” sponsor and £1000 for a “large” sponsor. Employers should refer to the Companies Act 2006 for the qualifying criteria for a small company.

If applying for a single license to cover the head office and branches, employers must be aware of the fact that if a license is removed or downgraded to a B rating, this will affect all the employers’ branches. A License lasts for 4 years.

A company that wishes to bring in migrants from within its international or overseas group (Tier 2 Intra Company Transfer) will need to apply for a separate license for this.

Once the licence has been approved, companies must issue each migrant that they wish to sponsor with a Certificate of Sponsorship before they can apply to enter or remain in the UK. Employers are advised to make sure that the migrant is likely to pass the points based assessment so that the Certificate of Sponsorship is not wasted on unsuccessful applications. Current fees for a Certificate of Sponsorship (CoS) is £170.

How will the agency consider an application?

Overriding principles

Is the applicant a bona fide organisation operating lawfully in the UK?

Check: are the documents submitted with the application lawful.

Is the applicant trustworthy?

Check: UKBA to check the history and background of the organisation, key personnel and those in control. Any history of dishonesty/immigration crime will be viewed seriously.

Is the applicant capable of carrying out its duties as a Sponsor?

For this, the sponsor must demonstrate that:

- a) they have effective HR systems in place
- b) they have not been issued with a Civil Penalty for immigration offences
- c) none of the contacts with the UKBA have had any criminal convictions
- d) UKBA has no evidence of any previous non-compliance

(a) and (d) will be marked with 1-3 indicating with:-

1 = meets all the criteria

2 = only meets some of the criteria

3 = does not meet any of the criteria

“A” rating grade will be granted where organisations marked with a 1 scoring in (a) and (d)

“B” rating grade where organisation is marked with a 2 scoring in (a) and (d).

If all positive, the employer will get a Sponsor License Number (SLN). The employer would then have access to the Sponsor Management System (SMS) – web based function which would allow them to undertake day to day activities under sponsorship e.g. Issuing CoS to non-EEA migrants. There will be different levels of user access – Level 1 user and Level 2 user.



Key Personnel

Sponsors must allocate responsibilities and names of individuals under 4 roles:-

The Authorising Officer (AO)

Level 1 User role

Level 2 User role

Key Contact role

This role can be filled by the same person, combination or 4 different people; however all must be based in the UK.

Only Level 1 and Level 2 will have access to the Sponsor Management System.

AO Authorising Officer – responsible for the personnel who use the Sponsor Management System. Will be held fully accountable for Sponsor's actions. Must be a permanent staff member.

Level 1 user – sets up the account and gives the Level 2 user access/permission rights. Carries out day to day operation of sponsor's activities through the Sponsor Management System. Will do the following:-

- add/remove other users from the SMS
- assign CoS to migrants
- request an increase in the Sponsor's limit of CoS
- notify UKBA of changes in the Sponsor's details
- complete change of circumstances forms on the SMS
- report migrant activity to UKBA (if migrant goes missing, leaves, does not attend work etc)

Key Contact – act as main point between UKBA and Sponsor for queries, documents submitted, payments.

Level 2 user – more restricted access to SMS. Can do the following:-

- assign CoS to migrants
- report migrant activity to UKBA (if migrant goes missing, leaves, does not attend work etc)

UKBA will make checks on the AO, Level 1 User and Key Contact against UKBA records, Police National Computer systems etc.

To apply for Tier 2, Intra Company Transfer license, also need to prove the link of common ownership with the overseas companies from where overseas migrants are due to come over from. This must be by:-

- common ownership (one must own at least 51% of the other) or,
- both being part of a group of organisations controlled by the same parent or holding organisation or,



The Certificate of Sponsorship (CoS)

Virtual document comprising unique reference number which the sponsor gives to the migrant to enable him to get entry clearance (if outside UK) or leave to remain (if inside UK) to work for the employer. To get the CoS, the employer must complete the migrant and sponsorship details on the SMS plus salary, shortage occupation or RLMT, funding, English ability. If a CoS has been issued, it does not automatically mean that the migrant will get leave to remain or entry clearance. Sponsors must be sure that if currently in the UK, the migrant's current immigration status is one which can be switched into eligible criteria to obtain a CoS. When applying for a license the employer has to indicate how many CoS they are likely to issue in the next 12 months. They will then be allocated a number based on:

- a) The company's previous track record in dealing with the UKBA
- b) Its type of business
- c) The size of the business
- d) The length of time it has been trading

An employer can apply for more CoS during the year if they need to.

The UKBA can cancel a CoS at any time if it feels the migrant is not entitled to it. The Sponsor can too, by advising the details through the SMS. If a CoS is cancelled, then any leave to remain/entry clearance for that migrant is automatically cancelled too.

Reporting Duties

The Sponsor must inform UKBA of the following; numbers in brackets refer to the time limit which the UKBA must be notified:

- 1) if migrant does not turn up to work (10 working days)
- 2) if migrant is absent from work without permission (10 working days)
- 3) if migrant discontinues his work; employment is terminated (10 working days)
- 4) if the employer ceases to sponsor migrant e.g. If migrant moves to an immigration route that does not need a sponsor (10 working days)
- 5) if there are significant changes in the migrant's circumstances e.g. change in job or salary (10 working days)
- 6) any suspicions that migrant is breaching the conditions of his leave
- 7) significant changes in sponsor's circumstances
- 8) suspicions that migrant is engaging in terrorism or criminal activity

A Sponsor must only issue CoS if it believes that the requirements of the specific criteria are being met. UKBA officials may pay pre-arranged or unannounced visits to a Sponsor's premises. The UKBA must be given access to the premises and Sponsors must seek to minimise the risk of immigration abuse.

Monitoring of HR Systems

Employers will normally be rated in the below 5 areas:



Monitoring Immigration Status & Preventing Illegal Employment

Employers must evidence the following:

- keep photocopies of employee passports, showing evidence of entitlement to work
- establish a method of monitoring the dates of any leave to enter/entry clearance/work permit expires => this must be done electronically going forward in pop-ups on the diary system.

Maintaining Migrant Contact Details

Employers must evidence the following:

Keep full contact details – address, landline, mobile number, for all migrants.

This must be done by:

- a) electronically on a self-service system (this would be in cases where the migrant has access to his record) **or**
- b) conduct a regular audit **or**
- c) ensure that the employee is aware that he must notify HR of any changes.

Record Keeping

Employers must provide all documents for migrants that show:

- a) details of the recruitment practice
- b) resident labour market tests for his position if applicable
- c) HR good practice on recruitment and employing migrants
- d) Qualifications, accreditations, original advert for his position, previous employment references.

Migrant Tracking & Monitoring

Employers must show that:

Migrants are monitored sufficiently, e.g. with regular contact if the migrant works at client sites or from home

This must be done by:

Establishing a procedure to ensure that the AO is informed by line manager if migrant is away from work. HR team must monitor attendance on a regular basis and will contact migrant if absence is unauthorised.

Recruitment Practices & Professional Accreditations

Employers must show that:

Migrants are legally entitled to do the job in question and has the appropriate registration and professional qualifications to do so.



To do this they must:

ensure that all professional accreditations/qualifications are checked before migrant starts work; this can be done by NARIC (see page 5)

- copies are kept
- monitor expiry dates and carry out checks to ensure they are renewed
- ensure copies of these documents are available upon request