



# Employment update

## The new UK immigration regime - what UK employers need to know

Immigration has been a political hot potato for many years. However, a new regime is being introduced to replace the existing immigration regime. It will be based on the Australian points system and is divided into five tiers.

Each tier will have its own application regime and criteria for entry. Those wishing to enter the UK will have to decide which tier applies to them and make an appropriate application.

Tier 1 is already in place. It replaces the Highly Skilled Migrant programme. Those who wish to enter under Tier 1 will need to demonstrate that they are able to score 75 points for attributes based upon their education, previous earnings, UK experience and pay.

For example, a person holding a BA or equivalent will score 30 points and someone with a PhD will score 50 points. In addition applicants will need to satisfy the English language and maintenance requirements.

Those entering under Tier 1 will be able to work in the UK without being tied to a particular employer.

## Employer sponsorship regime

Tier 2 replaces the work permit regime and comes into force at the end of November 2008. However, **employers who rely on non EEA foreign nationals who require a work permit need to act now**. Tiers 2 – 5 rely upon a sponsorship regime. Under Tier 2, those who wish to enter the UK will need to be sponsored by their employer.

Employers have been able, since earlier this year, to apply for sponsor status. This entails making an online application and payment of a fee.

Following the submission of the application, the BIA will carry out checks which may include a visit from a Border and Immigration Authority ("BIA") Compliance Officer who will need to satisfy himself that the employer has systems and resources in place to fulfil a sponsor's duties. Those who apply can receive either an "A" or "B" rating. Those who are rated "B" will be required to take steps to improve their rating. Once registered, sponsors will be monitored by the BIA. Failure to fulfil a sponsor's duties may lead to a downgrading of a sponsor's status or loss of that status.

An application for sponsorship will need to identify members of staff who will fulfil important functions. It is possible for one person to fulfil all of the functions or for each function to be filled by a different person.

**Authorising Officer** - Employers will need to identify an Authorising Officer. This must be a senior and competent member of staff or office holder. The Authorising Officer is responsible for the activity of all users of the sponsorship management system.

**Key contact** - This is the person who interfaces with the BIA.

**Level 1 user** - This person undertakes the sponsor's day to day activities and has complete control of the sponsor management system.

**Level 2 user** - These users have limited rights to assign certificates and report migrant activity.

Having become a sponsor, employers will need to advise the BIA of the likely number of migrant workers it will require, including those on an existing work permit. The BIA will decide, based upon the sponsor's explanation, how many certificates of sponsorship to issue. Sponsors will have to apply for certificates each year and those not used by the end of the year will lapse.

Before issuing a certificate of sponsorship, a sponsor must ensure that the job:

(i) is at a skill level S/NVQ III or above;

(ii) passes the resident labour market test, is on the shortage occupation list or is an intra-company transfer; and

(iii) the salary to be paid to the migrant is at a rate designated as appropriate by the BIA.

Those entering under Tier 2 will have to score 70 points for attributes. The criteria here include sponsorship (50 points for a shortage occupation and 30 if not on the shortage list), qualifications (here a BA or MA scores only 10 points) and prospective earnings over £24,000 score 20 points, with a sliding scale down to £17,000 scoring 5 points.

## The sponsor's role

A sponsor's role is not simply limited to issuing certificates but they will also be required to police their workforce. This will require sponsors to report to the BIA when a Tier 2 employee ceases to be employed by them, if the employee has 10 days unauthorised absence, and whether sponsorship has ceased.

## Inspection of documents

In addition to the new sponsor regime, employers are still obliged to obtain documents from an individual prior to allowing that individual to commence employment. The Immigration, Asylum and Nationality Act 2006 came into force on 29 February 2008 and introduced tough new criminal and civil offences relating to the employment of illegal workers.

## Criminal and civil offences

The new law introduces two new offences, the first knowingly employing an illegal worker which is punishable by an unlimited fine of up to two years' imprisonment. The second, negligently employing an illegal worker which is punishable by a fine of up to £10,000.

Employers are able to raise a defence in relation to the offence of negligently employing a worker provided that they can show they have inspected prescribed documents. The document checks now required are more onerous than those required under the old law.

For all employees employed since 29 February 2008, employers must see an original document or combination of documents from a specified list. If the employee cannot produce those documents, they must produce an original document or combination of documents from a second list, List B. If an employee can only produce a document from List B, this will mean that their permission to work in the UK is time limited.

As a result, an employer is under an obligation to carry out document checking annually in relation to employees who can only produce documents from List B. Employers who see the original documents and take reasonable steps to check the validity of those documents and make copies of them will have a complete defence to prosecutions for negligently employing illegal workers.

If an employer is shown an identity card, passport or travel documents, it should take a copy of the document's front cover, any page containing the holder's personal details including his/her nationality, a photograph, date of birth and signature; any pages containing biometric details, any page containing the date of expiry of the document and any relevant UK immigration endorsements. Where any other documents are shown to the employer then they must be copied in their entirety.

For employees employed prior to 29 February 2008, there is no obligation to carry out further checks provided that copies of documents that needed to be inspected have been inspected and copies taken.

*If you would like to find out more about the changes brought about by the new regime please contact Employment partner:*

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