



## **BRIEF EMPLOYERS GUIDE TO SPONSORSHIP UNDER THE POINTS BASED SYSTEM**

### **PART ONE: INTRODUCTION**

#### **Background:**

In Autumn 2008 the current work permit system will be discontinued, along with a number of other immigration categories.

Tier 2 of the new Points Based System will replace this.

If you wish to employ people under Tier 2 you will have to become a registered sponsor in order to obtain Certificates of Sponsorship (a virtual document replacing the current work permit) for any prospective non-EEA applicants.

You will also have to become a sponsor if you wish to employ people under the other tiers (except Tier 1) but the register is currently only open for Tier 2: Skilled Workers and Tier 2: Intra Company Transfers applications.

Once registration opens for the other tiers you will need to make a new application to sponsor under that tier. However, the Home Office will only charge you the difference in cost between the fees. In practice this means that you will only need to pay for the most expensive tier you wish to sponsor under.

**Applications will be made online.**

#### **Sponsor Ratings:**

Sponsors will be rated either A or B. These ratings will be based on whether the sponsor has the correct HR systems to ensure that it will be able to meet its sponsorship duties and whether the sponsor is complying with or has previously complied with the work permit arrangements and other immigration law.

An A rating will usually be given where an organisation meets all the HR / compliance criteria.

A B rating will be given where an organisation meets only some of the criteria.

The B rated organisation will then be given a sponsorship action plan, which sets out the steps they need to take to gain an A rating. If this plan is not followed then it is likely that the sponsor's licence will be revoked.

### **PART TWO: APPLYING:**

#### **Eligibility:**

There are 3 main criteria:

- Are you a genuine organisation operating legally in the UK?
- Are you trustworthy?
- Are you capable of carrying out your sponsorship duties?

The UK Border Agency will assess the history and background of your organisation and key personnel and look at your HR processes to ensure that you are able to carry out your duties.

## **ETC/ Ltd**

248 High Street, Beckenham BR3 1DZ. Tel: +44 20 8663 0055  
Fax: +44 20 8663 0090. [www.etc.co.uk](http://www.etc.co.uk), [www.etcworkpermit.com](http://www.etcworkpermit.com)



### **Documentation:**

Once you have completed your online application form you must send in certified copies of all supporting documentation within 10 days.

A certified copy is one that has been signed either by the issuing authority or by a solicitor or notary as being an accurate copy of the original.

### **Applying as a single body or a number of branches:**

If your organisation has more than one branch and wants to register it's branches separately, every individual branch will have to pay the fee.

Whilst it may seem more economical to just register the Head Office and all branches in one application you must remember that if the Head Office is removed from the register for any reason then all the branches are removed as well.

However, if a number of your branches are individually licensed and one of the branches loses its licence or becomes B rated the UK Border Agency may still investigate other branches of the organisation.

If your business is comprised of franchises, which are separate businesses, then each site will have to apply for it's own licence.

### **The Number of Certificates of Sponsorship:**

When applying for your licence you will be required to give an indication of the number of certificates you expect to issue per year, with justification for your estimates.

Once your application is granted you will be set a limit for the number of certificates you may issue.

You will also have a review point. This means your performance will be reviewed once you have issued a certain number of certificates of sponsorship.

### **Staff Allocation:**

You must allocate some responsibilities to your **UK based** staff members:

- Authorising officer
- Level 1 user
- Level 2 user
- Key contact

You must fill all these roles, and a person can have more than one role.

Level 1 and 2 users will have access to the Sponsor Management System when it becomes available. All users will be subject to criminality checks and a sponsor licence may be refused if a user has been convicted of a criminal offence.

The Sponsor Management System will allow sponsors to:

- Allocate certificates of sponsorship to migrants
- Carry out administrative functions to comply with sponsor duties
- Communicate information to the UK Border Agency

**More information will be available about the Sponsorship Management System at a later date.**

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### **Costs:**

There are 2 different fees for a Tier 2: Skilled Worker application.

1. £300 if you are a small sponsor
2. £1,000 for all other sponsors

A small sponsor is defined as either:

- An organisation not classed as a company under the Companies act 1985/2006, which employs no more than 50 employees.
- A company satisfying 2 of the following 3 conditions:
  - Turnover not more than £5.6 million
  - Balance sheet not more than £2.8 million
  - Number of employees not more than 50
- Most charities

Once you are licensed as a sponsor there will then be a fee payable for each Tier 2: Skilled Worker certificate of sponsorship. This fee will be £170. You may choose to pass this cost on to the applicant if you wish.

### **Representatives:**

You may choose to engage an OISC regulated representative, such as ETCi, to help you with your sponsorship application and subsequent certificate of sponsorship applications under the new points based system.

However, whilst a representative may help you with your initial licence application, they cannot act as the authorising officer or submit the application on your behalf.

In order to use a representative to apply for your certificates of sponsorship you must use the Sponsorship Management System, when it becomes available, to add the representative as a level 1 or 2 user and set the level of access required.

## **PART THREE: SPONSORSHIP DUTIES:**

### **Introduction:**

Once you have been licensed as a sponsor, you will be required to fulfil certain duties to ensure the effectiveness of immigration controls.

Your duties are:

- Record keeping
- Reporting
- Compliance
- Co-operating with the UK Border Agency
- Other tier specific duties

If you fail to comply with any of these duties you may be downgraded from an A rated sponsor to a B rated sponsor or have your licence withdrawn.

### **Record keeping:**

You must keep the following records, to be produced on request:

- A photocopy or electronic scan of each sponsored migrant's passport or UK immigration status document showing evidence of their entitlement to work or study.

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- Up to date contact details for each sponsored migrant (address, phone number, mobile number)
- Copy of migrant's biometric ID card (when they become available)

### **Reporting:**

You must report the following:

- If the migrant does not turn up on their first day of work – within 10 working days.
- If they are absent from work for more than 10 working days without permission
- If their contract ends for any reason – within 10 working days – you must also report the name of any new employer where known
- If they move into another immigration category
- If there are significant changes in circumstances, e.g. change of job / salary
- If you have suspicions that they are breaching their conditions of leave
- If there are any significant changes in the employer's circumstances, e.g. insolvency, take over
- Details of any 3<sup>rd</sup> party, in the UK or abroad that helped in the recruitment of employees.

### **Compliance:**

You must comply with all immigration laws and meet the following obligations:

- Make sure the migrant is legally allowed to do the job, has the right registration or professional accreditation where needed, and keep a copy of the registration document or certificate.
- Stop employing anyone who is not allowed to work for any reason.
- Only issue certificates of sponsorship to those that meet the requirements and are likely to meet the conditions of leave to enter or remain in the UK.

### **Co-operating with the UK Border Agency:**

The sponsor must:

- Allow the Agency's staff access to all of it's premises on demand
- Adhere to any action plan set by the agency
- Seek to minimise the risk of immigration abuse by complying with all Agency guidance

### **Tier Specific Duties:**

Under Tier 2: Skilled workers and Tier 2: Intra Company Transfers you will need to show one of the following when issuing a certificate of sponsorship:

- That you have carried out the Resident Labour Market Test, confirming that there were no suitable EEA applicants.
- That the job is on the list of Shortage Occupations for the UK (or Scotland only) at the date that the certificate of sponsorship is issued.
- In the case of an intra company transfer, that the migrant intends to and is able to do the specific job at NVQ Level 3 or above, and that the migrant is the subject of an intra company transfer, i.e. being transferred from a branch abroad.

Sponsors will also need to be aware of the migrant's current immigration status in the UK if they are considering switching, as switching from some categories may not be allowed. In this situation a certificate of sponsorship may be issued, but a subsequent leave to remain application could be refused.

**Duties under the other tiers will become available at a later date.**