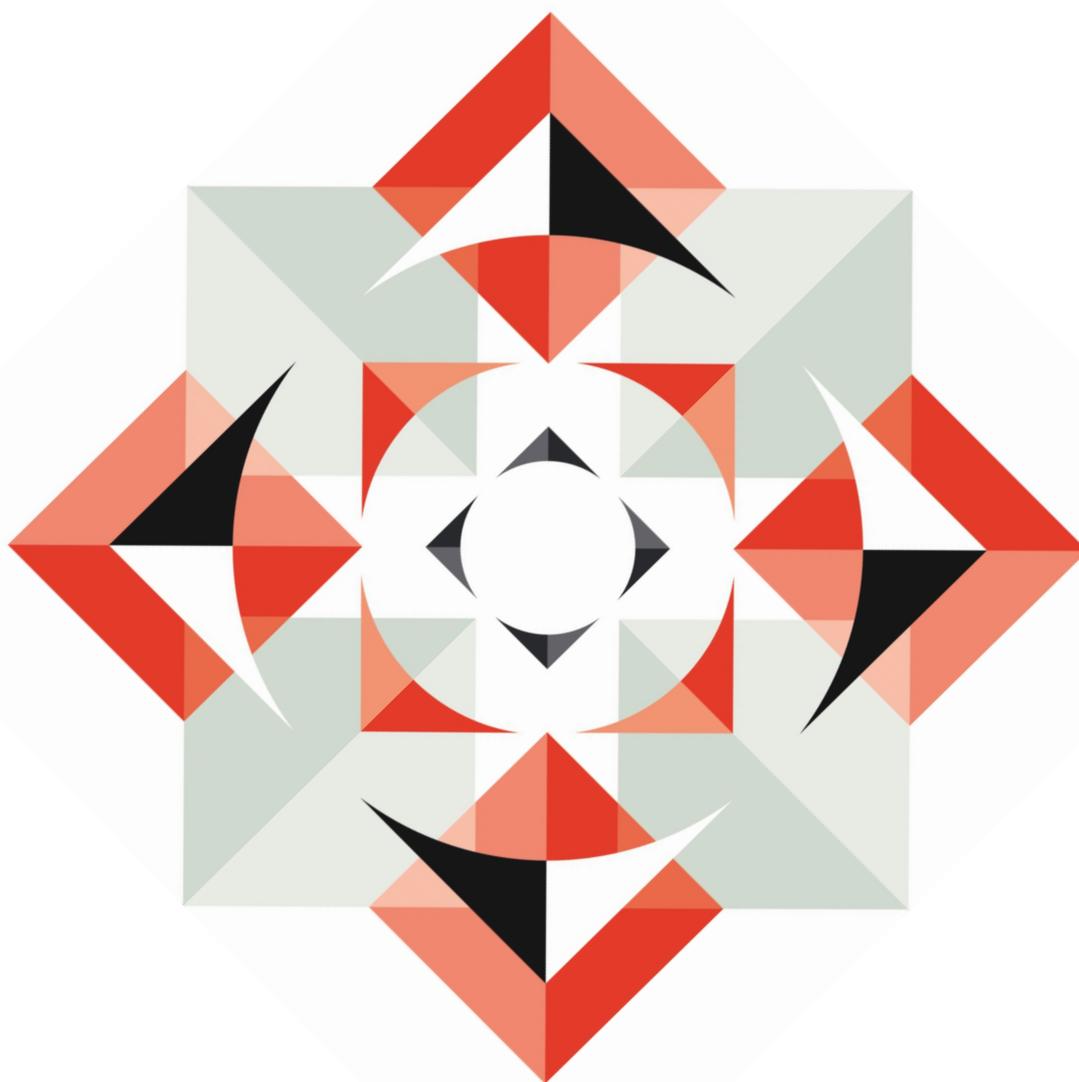


# Sponsoring migrant workers



## ► Inside

The sponsor licence application process  
How sponsorship works  
The visa application process



## Introduction

The process and requirements for sponsoring non-EEA national workers in the UK are complicated. At the same time, the rules are strict, and the consequences of non-compliance could be detrimental to both the employer and its sponsored migrants.

This Inbrief introduces the Points-Based System. It explains the sponsor licence application process and the process for sponsoring workers under Tier 2. It also reviews the Tier 2 visa application process.

This Inbrief is intended as general guidance only. A member of Lewis Silkin's immigration team would be happy to advise on your organisation's specific requirements, including how to apply for your sponsor licence and sponsor non-EEA nationals to work.

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## The Points-Based System

Many migrants come to the UK under one of the five categories, or tiers, of the Points-Based System:

- > Tier 1 – high-value migrants
- > Tier 2 – sponsored workers
- > Tier 3 – low-skilled workers (not operational)
- > Tier 4 – students
- > Tier 5 – temporary workers

This Inbrief covers Tier 2 sponsored workers.

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## Applying for a sponsor licence

An organisation does not necessarily have to sponsor a migrant in order to employ them. Some migrants already have the right to work in the UK, including most dependants.

If an organisation needs to sponsor a migrant worker, it must obtain a sponsor licence from the Home Office. With a sponsor licence, organisations have access to an online system, through which they can issue certificates of sponsorship to overseas workers. Each worker uses a certificate of sponsorship to apply for their visa to the UK.

When an organisation applies for its licence it must demonstrate that it has the necessary HR and management systems in place to meet recordkeeping, reporting and compliance duties imposed by the Home Office.

Recordkeeping duties include keeping up-to-date contact details for sponsored migrants. Reporting duties include notifying the Home Office if a sponsored migrant is absent from work for 10 days without permission.

The most important system is a document-checking system that ensures organisations do not and will not have any illegal workers.

The Home Office might send a representative to the premises to check that these systems are in place before it grants the licence. The Home Office might also visit after the licence has been granted.

Once the systems are in place, an organisation can start preparing the licence application.

The first step is to gather the required documents in support of the application. If the organisation is a limited liability company, these documents will include its latest Audited Annual Accounts/Report with the name of its accountants clearly shown.

If the organisation is obliged to be registered with a governing or accrediting body then it will also need to provide evidence of registration.

Other documents include evidence that the organisation has at least £5 million of Employer's Liability Insurance from an authorised insurer. The sponsors policy guidance on the Home Office website includes precise details of the required documents.

The following roles must be allocated to people within the organisation:

- > Authorising officer – he or she will be responsible for ensuring that the organisation uses its licence in accordance with its duties and responsibilities. The authorising officer is required to review all sponsorship activities. This is a role with significant responsibility
- > Key contact – he or she will be the person the Home Office contacts whilst considering the application. The key contact can be the same person as the authorising officer
- > Level 1 user – he or she will be the person who has access to the online system and is able to issue the certificate of sponsorship to overseas workers. This is also a role of considerable responsibility and should only be filled by someone who is familiar with the duties and responsibilities involved in using the licence, and knows when it is permissible to issue a certificate of sponsorship. The level 1 user can be the same person as the key contact and/or the authorising officer

The next step is to complete the online application form. The form can be saved, which is helpful as some of the questions require a little research. For example, the dates of birth, and nationality/ies of the authorising officer, key contact and level 1 user, and how many non-EEA nationals are currently employed.

The online application form refers to the duties



and responsibilities involved in holding a licence. The authorising officer will have to sign up to these duties and responsibilities.

Once the online application form is completed, the supporting documents and the application fee must be sent to the Home Office. The application fee is £536 if the organisation is a small employer or £1476 if the organisation is a large employer. The organisation is likely to be considered a large employer if it has over 50 employees.

### What happens once the application is submitted?

The Home Office will investigate whether the organisation is fit to be granted a licence. It might verify the supporting documents submitted. A representative may visit the organisation's premises to ensure the required systems are in place. The representative might ask to see how an employee's right to work is checked before employment commences and how the organisation has diarised to re-check employees on temporary visas at least once every 12 months.

The Home Office will write with its decision. It will state in the same letter how many unrestricted certificates of sponsorship the organisation may issue over the first 12 months.

If the Home Office approves the application, it will grant a licence with 4 years validity.

If a sponsor doesn't meet the duties and responsibilities of holding a licence, it might lose its licence. Any sponsored employees will have to find a new sponsor or leave the UK within 60 days.

### Sponsoring migrants under Tier 2

The total number of certificates of sponsorship available to sponsors wishing to sponsor new hires earning under £159,600 is limited to 20,700 annually. Therefore, certificates of sponsorship for these new hires are called 'restricted'. Sponsors must request restricted certificates of sponsorship from the Home Office as they are needed.

Certificates of sponsorship for other migrants, such as transfers from overseas companies or migrants who are already in the UK, are unrestricted. Unrestricted certificates of

sponsorship are allocated on an annual basis. Sponsors can also request additional unrestricted certificates of sponsorship as needed.

It is very important that an organisation only issues a certificate of sponsorship in the correct circumstances:

- > The role must be at skill level NQF6 or above, or at NQF4 (Creative). Appendix J of the Immigration Rules lists roles at level NQF6 or above or at NQF4 (Creative)
- > The migrant must be paid the appropriate rate for the role. A minimum salary requirement of £20,800-£41,500 applies, depending on the subcategory of Tier 2. Appropriate rates specific to each role, and to the migrant's level of experience, must also be met. These rates are listed in the codes of practice at Appendix J of the Immigration Rules

A sponsor should only issue a certificate of sponsorship where it has undertaken a resident labour market test, the worker is being transferred from a related overseas company, the worker will be earning at least £159,600 or the worker is coming to fill a shortage occupation.

Fulfilling the resident labour market test usually involves advertising the role on Universal Jobmatch and via another method set out in Appendix A of the Immigration Rules. If, after advertising, the organisation is unable to find a suitable UK or EU/EEA worker to fill the role, then it may issue a certificate of sponsorship to an overseas worker.

The Intra company transfer route is available if the worker has been employed by an overseas entity that has a direct link to the organisation through common ownership or control. A minimum period of 12 months employment at the overseas entity is usually required.

A shortage occupation is one that is included on the shortage occupation list in Appendix K of the Immigration Rules.

The organisation pays a £199 fee every time it issues a certificate of sponsorship.

### What happens once the certificate of sponsorship has been issued?

The employee and his or her family members will apply for their visas or passport stamps.

The employee's visa application will be assessed on a points basis. He or she must qualify for 70 points to be eligible for a visa.

Fifty of those points must be awarded on the basis of attributes. For example, if the overseas worker has been issued a certificate of sponsorship to fill a shortage occupation he will automatically earn the necessary 50 points.

If the overseas worker has been issued a certificate of sponsorship under an Intra company transfer arrangement or following a resident labour market test, then he or she will be awarded 30 points for attributes. The overseas worker will be issued a further 20 points for attributes where the proposed salary is at an appropriate level.

Most overseas workers must demonstrate English language ability to earn another 10 points. Intra company transferees are exempted from having to demonstrate English language ability.

Tier 2 applicants who need to demonstrate English language ability must do so by one of the following three ways:

- > Proving that they are a citizen of a country that the Home Office has deemed to be majority English speaking
- > Proving that they have completed a degree taught in English that has been verified by the UK's National Academic Recognition Information Centre (NARIC) or
- > Proving that they have passed a test in English that establishes their ability to speak English at the appropriate level on the Council of Europe scale

The overseas worker must demonstrate that they have sufficient funds to maintain themselves and their family upon arrival into the UK. In order to earn the last 10 of the 70 points, every applicant will need to demonstrate that he or she has at least £945 available before entering the UK. If the overseas worker wishes to bring family to the UK, he or she will have to

show that there is an additional £630 available, per family member. Alternatively, an A-rated sponsoring employer can indicate, on the certificate of sponsorship, that it undertakes to maintain and accommodate the overseas worker.

If the overseas worker is granted a visa, it will be valid for up to 5 years. Towards the end of those 5 years, the worker and any dependants will need to submit further immigration applications. The organisation may need to issue the overseas worker a new certificate of sponsorship.

Overseas workers first sponsored under the Tier 2 Intra company transfer subcategory after 6 April 2010 cannot settle in the UK. Other Tier 2 migrants may be eligible for settlement.

For further information on this subject please contact:

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