



Home Office

TIER 2/5
VERSION 10/13

TIER 2 AND 5 OF THE POINTS-BASED SYSTEM POLICY GUIDANCE FOR SPONSORS

This guidance is to
be used for all Tier 2
and Tier 5 applications
made on or after
01 October 2013

CONTENTS

IMPORTANT NOTES	1
CHANGES TO THIS GUIDANCE	3
WHAT IS SPONSORSHIP?	4
CURRENT AVAILABLE IMMIGRATION ROUTES	4
TIER 2: SKILLED WORKERS WITH A JOB OFFER.....	4
TIER 5: TEMPORARY WORKERS	5
HOW DOES SPONSORSHIP WORK?	5
WARNING: CONSEQUENCES OF EMPLOYING MIGRANTS ILLEGALLY	7
ADDITIONAL SERVICES – PREMIUM CUSTOMER SERVICE AND SME+	7
HOW CAN I APPLY FOR A LICENCE?	7
SUPPORTING DOCUMENTS.....	9
HOW MUCH DOES A LICENCE COST?	11
HOW ARE APPLICATIONS CONSIDERED?	12
THE MAIN PRINCIPLE	12
CAN A LICENCE REFLECT THE STRUCTURE OF MY ORGANISATION?	12
WHAT CRITERIA MUST I MEET?.....	14
SUITABILITY CRITERIA.....	15
KEY PERSONNEL	16
AUTHORISING OFFICER	19
KEY CONTACT	19
LEVEL 1 USER	19
LEVEL 2 USER	20
COULD MY LICENCE APPLICATION BE REFUSED?.....	21
WHAT HAPPENS AFTER A DECISION ON MY APPLICATION HAS BEEN MADE?	23
SPONSOR LICENCE NUMBER	24
WHAT ARE SPONSOR RATINGS?	24
CIRCUMSTANCES IN WHICH WE WILL AWARD A B-RATING WHEN YOU APPLY FOR A LICENCE	24
CIRCUMSTANCES IN WHICH WE MAY AWARD A B-RATING WHEN YOU APPLY FOR A LICENCE	24

B-RATED SPONSORS.....	25
SPONSORSHIP ACTION PLANS	25
WHAT IS THE SPONSORSHIP MANAGEMENT SYSTEM (SMS)?.....	27
WHAT IS A CERTIFICATE OF SPONSORSHIP (CoS)?.....	28
EMPLOYING MIGRANTS.....	32
TIER 2 – SKILLED WORKERS	33
CODES OF PRACTICE – CHANGES TO STANDARD OCCUPATIONAL CLASSIFICATION (SOC)	
CODES AND RATES OF PAY	35
RATES OF PAY	36
TIER 2 (GENERAL).....	40
HOW TO APPLY FOR A RESTRICTED CoS	42
RESIDENT LABOUR MARKET TEST - TIER 2 (GENERAL).....	48
EXEMPTIONS FROM THE RESIDENT LABOUR MARKET TEST	48
TIER 2 (INTRA-COMPANY TRANSFERS (ICT))	55
LONG TERM AND SHORT TERM STAFF	56
GRADUATE TRAINEE	57
SKILLS TRANSFER.....	58
TIER 2 (MINISTER OF RELIGION)	60
RESIDENT LABOUR MARKET TEST FOR TIER 2 (MINISTER OF RELIGION) AND TIER 5 (TEMPORARY WORKERS) - RELIGIOUS WORKERS	62
TIER 2 (SPORTSPERSON).....	65
TIER 5 – (TEMPORARY WORKERS) AND YOUTH MOBILITY SCHEME.....	68
TIER 5 - YOUTH MOBILITY SCHEME	68
TIER 5 (TEMPORARY WORKERS)	69
TIER 5 (TEMPORARY WORKERS) – CREATIVE AND SPORTING.....	70
TIER 5 (TEMPORARY WORKERS) – CHARITY WORKERS	75
TIER 5 (TEMPORARY WORKERS) – RELIGIOUS WORKERS.....	75
TIER 5 (TEMPORARY WORKERS) – GOVERNMENT AUTHORISED EXCHANGE (GAE)	77
HOW TO ESTABLISH A SCHEME.....	78
TIER 5 (TEMPORARY WORKERS) – INTERNATIONAL AGREEMENT (IA)	82

EMPLOYEES OF OVERSEAS GOVERNMENTS AND INTERNATIONAL ORGANISATIONS.....	82
CONTRACTUAL SERVICE SUPPLIERS AND INDEPENDENT PROFESSIONALS UNDER INTERNATIONAL AGREEMENTS	83
MAINTENANCE (AVAILABLE FUNDS)	87
MIGRANTS' INITIAL PERMISSION TO STAY.....	88
AFTER ADMISSION TO THE UK: THE BIOMETRIC RESIDENCE PERMIT (BRP).....	88
EXTENSIONS OF PERMISSION TO STAY	88
LEAVING AND RETURNING TO THE UK	89
WHAT HAPPENS IF A MIGRANT'S LEAVE LAPSES OR EXPIRES WHEN THEY ARE NOT IN THE UK?	90
CHANGE OF EMPLOYMENT	92
MIGRANTS WORKING ON A CONTRACT BASIS.....	93
SWITCHING WHILE IN THE UK	94
SUPPLEMENTARY EMPLOYMENT	94
SECONDARY EMPLOYMENT	95
EDUCATIONAL COURSES.....	95
WHAT ARE MY DUTIES AS A LICENSED SPONSOR?	95
WHEN DO MY SPONSOR DUTIES START AND FINISH?	96
DUTIES THAT APPLY TO SPONSORS IN ALL TIERS.	96
RECORD KEEPING DUTIES.....	96
REPORTING DUTIES	97
COMPLYING WITH THE LAW	98
CO-OPERATING WITH US.....	99
TIER-SPECIFIC DUTIES UNDER TIER 2 (GENERAL) AND TIER 2 (ICT).....	99
COMPLIANCE WITH DUTIES	100
CONCERNS OR QUERIES ABOUT DUTIES.....	100
WHAT DOCUMENTS MUST I KEEP NOW THAT I HAVE A SPONSOR LICENCE?.....	100
HOW WILL YOU CHECK THAT I AM COMPLYING WITH MY SPONSOR DUTIES? ...	101
WHAT HAPPENS DURING A CHECK?	102
WHAT HAPPENS AFTER A CHECK?.....	102
DISCREPANCIES OR PROBLEMS DISCOVERED DURING CHECKS.....	102

WHAT WILL HAPPEN IF I DON'T COMPLY WITH MY SPONSOR DUTIES?	103
DOWNGRADING TO A B-RATING.....	104
CIRCUMSTANCES IN WHICH WE WILL DOWNGRADE YOUR LICENCE FROM AN A-RATING, TO A B-RATING.....	105
CIRCUMSTANCES IN WHICH WE MAY DOWNGRADE YOUR LICENCE FROM AN A-RATING, TO A B-RATING.....	105
PROCESS WE WILL FOLLOW IN DECIDING WHAT (IF ANY) ACTION TO TAKE	106
CAN MY LICENCE BE REVOKED AFTER IT HAS BEEN GRANTED?	107
CIRCUMSTANCES IN WHICH WE WILL REVOKE YOUR SPONSOR LICENCE	107
CIRCUMSTANCES IN WHICH WE MAY REVOKE YOUR SPONSOR LICENCE	109
SUSPENDING A LICENCE.....	110
PROCESS WE WILL FOLLOW IN DECIDING WHAT (IF ANY) ACTION TO TAKE	111
WHAT HAPPENS IF MY SPONSOR LICENCE IS REINSTATED FOLLOWING IT BEING SUSPENDED?	112
WHAT HAPPENS TO MY SPONSORED MIGRANTS IF MY LICENCE IS SUSPENDED?.....	113
WHAT HAPPENS TO MY SPONSORED MIGRANTS IF MY LICENCE IS REVOKED?.....	113
SURRENDERING YOUR LICENCE	114
IF MY LICENCE IS REVOKED, CAN I APPLY AGAIN?	114
WHAT HAPPENS IF MY CIRCUMSTANCES CHANGE?.....	115
WHAT HAPPENS IF I BECOME INSOLVENT?	116
WHAT HAPPENS IF I AM INVOLVED IN A MERGER OR TAKEOVER OR DE-MERGER?	118
RENEWING YOUR SPONSOR LICENCE.....	121
HOW TO RENEW YOUR LICENCE.....	122
HOW THE APPLICATION PROCESS WORKS	122
TIMING YOUR LICENCE RENEWAL APPLICATION	124
DECLINING TO RENEW YOUR LICENCE.....	124
AMENDMENTS TO THE SPONSORSHIP POLICY	125
COMPLAINTS.....	125

IMPORTANT NOTES

This guidance is specific to organisations who want to apply for a sponsor licence on or after 01 July 2013, under Tier 2 and/or Tier 5 of the points based system, and to sponsor migrants under those two tiers. It also applies to organisations which have already been granted a sponsor licence under Tier 2 and/or 5 in terms of what we expect from licence holders, the processes they must follow when sponsoring a migrant and how they must comply with all of the duties and responsibilities associated with being a licensed sponsor.

If you also intend to apply for a sponsor licence under Tier 4 you must read the separate guidance for Tier 4 sponsors which has been tailored specifically to Tier 4 and which contains additional and different information and sponsor duties.

All of the appendices mentioned in this guidance are available on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance>

Where this guidance refers to;

- “we” or “us” this means the Home Office; and
- “you” or “your”, this means the sponsor organisation or prospective sponsor organisation; and
- ‘a relevant person’ we mean any owner, director, authorising officer, key contact, level 1 user, or anyone involved in your day-to-day running.

If you intend to sponsor migrants under Tier 2 or Tier 5, you may sometimes need to check how much time they may be allowed to spend in the UK and any other restrictions that may apply to migrants coming to the UK under these Tiers. All of this information can be found in the guidance we produce for migrants who want to apply under Tier 2 and Tier 5 which is available on our website at:

Tier 2 - <http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier2/general/>

Tier 5 – www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier5temporaryworkerguidan1.pdf

and in the Immigration Rules which are available to read on our website at <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules>

The rules that apply to Croatian nationals who want to work in the UK can be found at:

- Worker authorisation, guidance for migrants

www.ukba.homeoffice.gov.uk/eucitizens/croatia/applying

- Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013

www.legislation.gov.uk/ukdsi/2013/9780111539156/contents

If you intend to sponsor, or are already sponsoring a Croatian national, you should read Appendix G of this guidance which briefly sets out the differences between sponsoring a Croatian national and any other non-settled worker. Where this guidance refers to ‘worker authorisation’ this only applies to those Croatian nationals who are required to apply for worker authorisation in the form of a Purple Registration Certificate.

There is more information available to you about how to complete a certificate of sponsorship, including how to complete an application for a restricted certificate of sponsorship under Tier 2

(General). You can find guidance called 'Using the Sponsorship Management System (SMS) – Certificates of Sponsorship' on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance>

CHANGES TO THIS GUIDANCE

In this version of the guidance we have made the following changes:

Tier and Category	Change	Paragraph
All	We have restructured the section on Key Personnel to make it flow more logically and to more clearly set out who can and cannot fill the Key Personnel roles. We have also added further restrictions on who cannot fill these roles.	86-109
Tier 2 (ICT)	We have restructured the sections on the different ICT categories to remove information about documents a migrant may have to supply with their application. This information is available in the guidance for migrants. We have also removed repeated references to the requirements for each category which are set out elsewhere in an appropriate section of this guidance.	335-337
Tier 2 (Minister of Religion) Tier 5 (Religious Worker)	We have specified the period for which a role must be advertised to meet the resident labour market test, where there is a requirement to conduct one.	376

WHAT IS SPONSORSHIP?

1. Sponsorship is based on two fundamental principles:
 - a) those who benefit most directly from migration (that is, the employers, education providers or other bodies who are bringing in migrants) should play their part in ensuring that the system is not abused; and
 - b) we need to be sure that those applying to come to the UK to do a job or to study are eligible to do so and that a reputable employer or education provider genuinely wishes to take them on.
2. Before a migrant can apply to come to, or remain in the UK to work or study, they must have a sponsor. The same applies where a Croatian national who is already in the UK needs to apply for worker authorisation in the form of a Purple Registration Certificate, they must have a sponsor. The sponsor will be an organisation in the UK that wishes to employ, or provide education to a migrant. Sponsorship plays two main roles in the migrant's application process:
 - a) it provides evidence that the migrant will fill a genuine vacancy in the UK that cannot be filled with a suitably qualified or skilled settled worker¹, or that they will be studying for an approved qualification; and
 - b) it involves a pledge from the sponsor that it accepts all of the duties we expect them to fulfil when sponsoring the migrant.

CURRENT AVAILABLE IMMIGRATION ROUTES

3. Prospective sponsors can currently apply for a licence to employ migrants under the following routes

TIER 2: SKILLED WORKERS WITH A JOB OFFER

4. There are four routes within Tier 2 for skilled sponsored workers. They are:
 - a) General - this is the route for skilled workers who have received a job offer from a UK employer. The number of places available under Tier 2 (General) under certain circumstances is restricted to 20,700 for the year from 6 April 2013 to 5 April 2014.

1 1. For the purposes of these guidance notes a 'settled worker' is a person who:

- is a national of the UK;
- is a national of Austria, Belgium, Bulgaria*, Croatia** Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Republic of Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania*, Slovakia, Slovenia, Spain, Sweden or Switzerland with right of residence in the UK; **NB – Although not requiring sponsorship, workers from Bulgaria and Romania must have work authorisation in order to work lawfully, unless exempt. Employers commit an offence by employing Bulgarian or Romanian nationals who have failed to comply with the work authorisation requirements; **NB – workers from Croatia must still be sponsored under Tier 2 or Tier 5 and have work authorisation in order to work lawfully, unless exempt. Employers commit an offence by employing Croatian nationals who have failed to comply with the work authorisation requirements.
- is a British overseas territories citizen, except those from Sovereign Base Areas in Cyprus. (Those included are Anguilla, Bermuda, British Antarctic Territory, British Virgin Islands, British Indian Ocean Islands, Cayman Islands, Falkland Islands and dependencies, Gibraltar, Montserrat, Pitcairn Islands, St. Helena, Ascension and Tristan da Cunha, and Turks and Caicos Islands);
- is a Commonwealth citizen who was allowed to enter or to remain in the UK on the basis that a grandparent was born here;
- has settled status in the UK within the meaning of the Immigration Act 1971, as amended by the Immigration and Asylum Act 1999, and the Nationality, Immigration and Asylum Act 2002.

- b) Intra-Company Transfer (ICT) - this route is for multi-national organisations that need to transfer employees to the UK. There are four sub-categories:
 - I. Long Term staff and Short Term staff – these routes are for established, skilled employees to be transferred to the UK branch of their organisation to fill a post that cannot be filled by a settled worker.
 - II. Graduate Trainee – this route allows the transfer of recent graduate recruits to a UK branch of their organisation, for training purposes.
 - III. Skills Transfer – this route allows the transfer of employees to a UK branch of their organisation to acquire the skills and knowledge that they will need overseas or to impart specialist skills or knowledge to the UK workforce.
- c) Minister of Religion - this route is for ministers of religion undertaking preaching and pastoral work, members of religious orders and missionaries, who want to take up employment, or a post/role within their faith community in the UK.
- d) Sports people - this is for players and highly skilled coaches who want to take up employment in the UK.

TIER 5: TEMPORARY WORKERS

- 5. There are five routes within Tier 5 for sponsored temporary workers. They are:
 - a) Creative and sporting - for creative artists, sports persons and entertainers coming to fulfil short term contracts/engagements in the UK.
 - b) Religious workers - for religious workers where their duties may include preaching, pastoral and non-pastoral work. This includes members of religious orders and missionaries.
 - c) Charity workers - for migrants who want to undertake unpaid work in accordance with the aims of their benign or philanthropic sponsor in the UK.
 - d) Government Authorised Exchange - offers migrants a route to enable a short term exchange of knowledge and best practice through employment whilst experiencing the wider social and cultural setting of the UK.
 - e) International agreement - for migrants who are coming to the UK for a purpose which is covered by obligations contained in an international agreement which the UK is party to.

HOW DOES SPONSORSHIP WORK?

- 6. To get a licence, you must apply to us, supplying specified documents to prove that you are suitable and eligible. These documents are listed in Appendix A which is separate to this guidance booklet. We will carry out appropriate checks before deciding whether to grant you a licence. We may refuse your application if there is anything in your history or your Key Personnel's (see paragraphs 86-109) history that suggests you could be a threat to immigration control or that you would be unable or unwilling to carry out your duties as a licensed sponsor.
- 7. We consider an application to join the sponsor register by assessing whether you meet the requirements below. You must:
 - a) complete the appropriate online sponsor application;
 - b) pay the correct fee;
 - c) provide proof that you are based in the UK (see Appendix A for supporting documents);
 - d) be able to provide original or certified copies of the documents listed in Appendix A,

unless we say otherwise, to establish that you are genuine and operating² or trading lawfully in the UK;

- e) meet the suitability criteria;
 - f) show there are no reasons for us to believe that you represent a threat to immigration control;
 - g) agree to comply with the duties of sponsorship;
 - h) if asked, be able to provide evidence of holding the appropriate planning permission or Local Planning Authority consent to operate your type/class of business at your trading address (where this is a Local Authority requirement);
 - i) where you are a food business, if asked, be able to provide evidence of your registration with or approval from a relevant food authority.
8. Your application for a licence will only succeed if you meet all the above requirements. If you do not meet the requirements your application will be refused. However, if you do not pay the full, correct fee, we will not be able to consider your application and we will reject and return it with any accompanying fee. (Please see paragraphs 22-23 as there are also other circumstances in which we will reject your application rather than refuse it.)
9. Once you have been granted a sponsor licence under Tier 2 and/or Tier 5 you will be able to assign certificates of sponsorship (CoS) to migrants who wish to come to, or stay in the UK to work. We decide how many certificates of sponsorship (CoS) you will be allowed to assign.
10. For migrants, being assigned a certificate of sponsorship (CoS) is an essential part of qualifying for entry clearance (if they are outside the UK), leave to remain (permission to extend their stay while in the UK) or worker authorisation if they are a Croatian national. But there are also other requirements set out in the Immigration Rules (Tier 2 and Tier 5) and the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (Croatian nationals only) that they must meet and their application is likely to be refused if there is anything in their personal or immigration history that suggests that their presence in the UK is not desirable. We make the final decision about who is allowed to come to or stay in the UK.
11. As a licensed sponsor you must comply with certain duties, including, but not restricted to, a duty to inform us if migrants do not turn up for work, or if they are absent without permission for a significant period. You must also keep proper records of the migrants you sponsor, including contact details and a copy of their biometric residence permit (BRP) (previously known as the Identity Card for Foreign Nationals (ICFN)), and supply any documentation to us on request.
12. We will monitor your ongoing ability and willingness to comply with your duties once you are licensed. In particular we will:
- a) set a limit on the number of certificates of sponsorship (CoS) you can assign;
 - b) visit you, to check you are complying with your duties; and
 - c) refer cases for civil penalty action to be taken if we find evidence that you may have employed a migrant worker illegally. We may take prosecution action where appropriate.
13. As a licensed sponsor, we will 'rate' you as either A or B according to our assessment of your ability to fulfil your sponsor duties. If you are B-rated you must comply with a time-limited sponsorship action plan, which you must pay for and which will set out the steps you need to take to gain or regain an A-rating. If you do not comply with this action plan we will revoke your

²..... An organisation is deemed to have been 'operating or trading' in the United Kingdom from the point at which it is incorporated.

licence. (See paragraphs 134-144 for more details.)

14. If you successfully apply for Premium Customer Service or SME+ we will rate you as A (Premium) or A (SME+). (See paragraph 19.)
15. You have a duty to act honestly with us. This includes, for example, not making false statements and ensuring that all essential information is disclosed when either applying for a sponsor licence or when assigning or applying for a certificate of sponsorship (CoS).
16. If we believe that you have not been complying with your duties, have been dishonest in your dealings with us or otherwise pose a threat to immigration control, we will take action against you. The action we take can result in your licence being revoked, suspended or downgraded to a B-rating and/or a reduction in the number of certificates of sponsorship (CoS) you are allowed to assign. Full details of the action we may take and the processes we will follow in such cases are set out in paragraphs 639-681.

WARNING: CONSEQUENCES OF EMPLOYING MIGRANTS ILLEGALLY

17. It is important that all employers (not just licensed sponsors) make sure their employees who are not settled workers are entitled to work for them. We take illegal working very seriously, and impose a range of penalties on those who employ people illegally.
18. Our compliance officers are fully trained in identifying and investigating illegal working, and will not hesitate to refer cases for the issue of a civil penalty, or for prosecution, where appropriate. If you are issued with a Civil Penalty for employing illegal workers you risk having your licence revoked. (See paragraph 642.)

ADDITIONAL SERVICES – PREMIUM CUSTOMER SERVICE AND SME+

19. All sponsors licensed under Tier 2 or Tier 5 who are A-rated and meet the relevant criteria can apply to us for Premium Customer Service (for large organisations) or SME+ (for organisations who paid the lower licence fee at the time of their last application for a sponsor licence). These are packages of benefits available to sponsors which offer enhanced customer service from us. If you successfully apply for Premium Customer Service or SME+, this will be indicated on our public register of sponsors where your sponsor rating will show as A (Premium) or A (SME+) More information on Premium Customer Service and SME+ is available on our website at <http://www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/premium/>

HOW CAN I APPLY FOR A LICENCE?

20. Applications for a licence can only be made and paid for online, using the online sponsor application on our website at <https://www.points.homeoffice.gov.uk/gui-sponsor-jsf/SponsorHome.faces>. You must read these guidance notes carefully before applying. In particular you should read the sections that apply to the Tiers and categories for which you

wish to apply. Appendix A sets out the documentary evidence that you will be required to send to us to validate your application.

21. You must make the application yourself. Whilst a representative may help you to complete your application, they must not submit the application on your behalf. If we find during the consideration of your application that a representative has submitted it on your behalf, we will refuse your application and your fee will not be refunded.
22. Once you have submitted your online application, you must then send in all of the following to validate your application. A valid application must:
 - a) contain the original submission sheet (not a certified copy), which has been signed and dated by the authorising officer (all pages must be sent); and
 - b) contain all of the documents listed on the submission sheet as mandatory documents (originals or certified copies); and
 - c) all be sent in together within 14 calendar days of completion of the electronic application.
23. If any of the items are missing or incorrect, your application will be invalid. We reject all invalid applications and refund the application fee.
24. If there are any documents specified in Appendix A (other than mandatory documents) missing from your application, or if we require any additional documents or information, we will contact you by email. We will give you seven calendar days to send those documents or any information we have requested, to us. If we do not receive them within seven calendar days we will refuse your application and your fee will not be refunded. This means that it is important when you submit your application, that the people you have named as your authorising officer and key contact will be available to deal with any requests we may need to make.
25. We will always email the person you have named as your key contact on your application if we need any further information or documents in connection with your application. We may also email the person you have named as your authorising officer. This is because we have found this to be the most efficient method of contacting applicants and helps us to process applications more quickly.
26. If you gather all the necessary information before starting, the online sponsor application will take approximately 30 minutes to complete.
27. If you have any queries about the application process, please contact us by telephone on 0300 123 4699 or by email at Businesshelpdesk@homeoffice.gsi.gov.uk

WHAT IS A REPRESENTATIVE?

28. A representative is:
 - a) a person who is qualified to provide immigration advice or services in accordance with Section 84 of the Immigration and Asylum Act 1999, by:
 - I. being regulated by the Office of the Immigration Services Commissioner (OISC); or
 - II. exempt from the requirement to be regulated by Ministerial order; or

- III. otherwise compliant with Section 84.
- b) or a person who is a regulated member of a designated professional body, or is working under the supervision of such a person. The bodies listed in the 1999 Act are;
 - I. The Law Society
 - II. The Law Society of Scotland;
 - III. The Law Society of Northern Ireland;
 - IV. The Institute of Legal Executives;
 - V. The General Council of the Bar;
 - VI. The General Council of the Bar of Northern Ireland;
 - VII. The Faculty of Advocates.

29. A representative cannot act on your behalf if they do not fall within one of the above categories or they are not based in the UK. A person may be committing a criminal offence if they act on your behalf without being “qualified” under the Immigration and Asylum Act 1999.

30. Anyone compliant with Section 84 through exemption by a ministerial order still has to comply with OISC code of standards. More information on Section 84 and how representatives can comply with it is on the OISC website at <http://www.oisc.gov.uk>

31. If you are unsure of your representative’s status you should contact the OISC, which has a list of organisations and advisers that they have authorised. You can contact them:

By post: The Office of the Immigration Services Commissioner (OISC)
5th Floor
Counting House
53 Tooley Street
London
SE1 2QN

By phone: 0845 000 0046 (calls charged at local rate)
By fax: 020 7211 1553
By email: info@oisc.gov.uk
Website: www.oisc.gov.uk/

32. The OISC website has links to websites for solicitors, advocates barristers and legal executives and the Community Legal Service. These links can be found at: http://oisc.homeoffice.gov.uk/how_to_find_a_regulated_immigration_adviser/

33. If after obtaining a licence, you wish to use the services of a representative, you must formally appoint one using the sponsorship management system (SMS). We will not deal with any communications from a representative acting on your behalf unless that representative has been formally appointed by you. You can tell us that a representative has helped you to complete your licence application, however you can only formally appoint them at the licence application stage if you also want to appoint them as your key contact and/or your level 1 user.

SUPPORTING DOCUMENTS

34. Appendix A lists the documents you must send to support your licence application and most applications must be supported by a minimum of four documents from the list. Certain documents are always required (mandatory). These are shown as category A documents.

Category B documents are only mandatory for certain types of organisation in certain sectors. Category C documents can be provided in addition to the mandatory documents but cannot replace the mandatory documents. For example, if you are a Registered Charity, you must provide proof of your charitable status. This is a mandatory (category A) document. You will then need to provide three more pieces of documentary evidence which can be either category B or category C documents. In the majority of cases we will only need four pieces of documentary evidence, but we reserve the right to request additional documentation at any time during the application process if necessary. If you fail to send us any documents that we ask for within the given time limit, your application will be refused.

35. We will not accept a Companies House certificate as one of the four documents required as this document is not listed in Appendix A.
36. There may be documents specified in Appendix A listed as category B (primary with exception) which do not appear on the submission sheet which you send to us as part of your valid application. You can choose to send these as additional documents with your application if you wish, but if you don't, and we decide that we need to see them before we can make a decision on your application we will email you to ask for them. For example, evidence of appropriate planning permission or local authority consent to operate your type/class of business at your trading address is a category B document for all organisation types.
37. If you are applying as a head office and all branches or a group of branches, you must submit any legal accreditation for each individual branch within that group.
38. We will reject your application if you do not provide the appropriate mandatory documents.
39. You must send the original documents or certified copies. A certified copy is one that includes a signed statement, either by the issuing authority or by a practicing barrister, solicitor or notary. The certifier must confirm that it is an accurate copy of the original document. Please note that for certified copies, each page of a document submitted must be certified, clearly detailing the certifier's name, signature and the organisation he/she represents. If a certifier's details cannot be verified, the document will be rejected. Sometimes, when a document has more than one page, the certifier does not want to certify every page. We will accept the document if the pages are all attached together (such as stapling) and the top page is certified as described. The certification must also clearly state how many pages have been certified.
40. We are aware that an increasing number of original documents, for example insurance policies, are sent to the customer by email as a .pdf attachment. (Printouts of .pdf files can be certified if the person certifying them has seen the original email containing the .pdf file.)
41. Any documents that we request to see that are not in English or Welsh must be accompanied by a certified translation. The translator's credentials should be provided, along with their official confirmation that the translation is accurate.
42. If you provide certified copies of documents and/or certified translations then please note that we reserve the right to ask for the original documents.

43. We will make further checks if we have any doubts about whether you can meet the requirements for the category in which you have applied. We may email you to ask for more documents or information, for example evidence that you hold the appropriate planning permission or Local Planning Authority consent to operate your type/class of business at your trading address (where this is a Local Authority requirement). If we need to email you to ask for more documents or information we will always email the person you have named as your key contact but we may also email the person you have named as your authorising officer.
44. We return all documents to you by recorded delivery to the address given on your application. If you want the documents to be returned by special delivery, you must enclose a prepaid special delivery envelope.
45. On the online sponsor application, you are asked to indicate which tiers, categories, or sub-categories you wish to be licensed under. You can select as many tiers, categories and sub-categories as you need. If your application is successful these will then be the only tiers, categories and sub-categories that you can sponsor migrants under.
46. Once your sponsor licence has been granted, you can add more tiers, categories and sub-categories to it. For example, if you have registered for Tier 5 (Creative and Sporting), but then want to bring migrants to the UK under Tier 2 (General), you can apply to extend the scope of your existing licence.
47. To do this, your Level 1 user must log in to the online sponsor licence application form (either using your original log in details or by registering again) and then complete a shortened version of the online application which will only allow them to apply to add new tiers or categories to your existing licence. They will not be able to change anything else. You must also pay any additional fee (for example there will be an additional fee if you want to add Tier 2 to an existing licence because the cost of registering for Tier 2 is higher than for Tiers 4 and 5). You must send in any additional mandatory documents that may be required.
48. If you want to apply to add an additional tier or category to your existing licence, but you want different people to act as authorising officer and key contact for the tier or category that you want to add, you must apply for a separate, new licence and pay the appropriate fee where applicable. This is because there can only ever be one authorising officer and key contact named on a sponsor licence.

HOW MUCH DOES A LICENCE COST?

49. There is a fee for initial applications for a sponsor licence or to renew an existing sponsor licence. There may also be a fee to extend the scope of an existing licence. In addition to the licensing fee, you must pay another fee for each certificate of sponsorship (CoS) you assign. Full payment guidance is on our website at <http://www.ukba.homeoffice.gov.uk/aboutus/fees/>
50. The fee for a sponsor licence depends on the size of the organisation that is applying. If you have charitable status or you are subject to the small companies regime as set out in paragraphs 381-384 of the Companies Act 2006 you are eligible to pay the 'small' sponsor licence fee. You can find the relevant part of the Companies Act using this web link.

<http://www.legislation.gov.uk/ukpga/2006/46/part/15/chapter/1/crossheading/companies-subject-to-the-small-companies-regime>

HOW ARE APPLICATIONS CONSIDERED?

51. We consider all licence applications carefully. A key part of our role is to investigate prospective sponsors to ensure we only give licences to genuine organisations that we believe will comply with their duties.
52. We refer all applications for a licence for extensive checks that may include an on-site visit by our compliance officers. This is particularly likely if we know very little about an organisation or have any doubt about whether or not it is genuine.
53. Our compliance officers are trained to refer cases for civil penalties or prosecutions if they find evidence of wrongdoing or criminal activity.

THE MAIN PRINCIPLE

54. When considering your licence application, we ask three main questions.
- a) Are you a genuine organisation operating lawfully in the UK and complying with all appropriate Local Planning Authority regulations? To prove this, you must provide certain documents. These are listed in Appendix A.
 - b) Are you honest, dependable and reliable? To judge this, we look at your history and background, your Key Personnel named on the application and any people involved in your day-to-day running. Any history of dishonesty in previous dealings with us is viewed seriously and may lead to us refusing your application.
 - c) Are you capable of carrying out your duties as a sponsor? We judge this by looking at your processes and human resource practices to ensure that you will be able to fulfil your sponsor duties. We may do this by visiting you either before your licence is granted, or afterwards. If, following a visit, we have significant doubts we may award you a B-rating, or in more serious cases, refuse your application. If you are an existing sponsor and such doubts arise, we will take action against you.

CAN A LICENCE REFLECT THE STRUCTURE OF MY ORGANISATION?

55. If you have a number of different offices, UK-based subsidiaries or entities, locations or campuses (which we call 'branches' in this guidance), you can register in a number of ways, including by:
- a) applying for a single licence that includes your head office and all branches in the UK;
 - b) each branch applying for a separate licence; or
 - c) grouping a number of branches in a single licence (for example, a large UK-wide company might find it more convenient to register all of its operations in a particular region under a single licence).
56. We reserve the right to ask for evidence to show that your head office and/or group of branches listed in your application, for any tier are linked by common ownership or control. (The way we assess common ownership or control of branches is the same way we assess it for applications for a Tier 2 (Intra-Company Transfer) licence and is described in paragraph 331-332.)

57. If you have a number of branches that are individually licensed, and we revoke the licence from one of those branches or downgrade it to a B-rating, we will not automatically remove or downgrade the licences from the other branches, but we will investigate them.

58. If you are licensed as a 'head office and all UK branches' and we revoke your licence or downgrade it to a B-rating, this will apply to all your branches. If we revoke your licence, none of your branches will be able to sponsor migrants. If you have existing migrants when your licence is revoked, we will limit the permission those migrants have to be in the UK, because they will no longer be working for a licensed sponsor. More information on what happens to migrants if we are considering action against you, or if we revoke your licence, is available in paragraphs 685-695.

59. If any of your branches subsequently apply for an individual licence, we will take into account any evidence of previous abuse or non-compliance, and the reasons for it, when we consider the application.

EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES

60. If you are an employment agency or employment business, you can apply for a sponsor licence but only to sponsor migrant workers who will be employed by you in connection with the running of your business. You cannot sponsor a migrant who you then supply to a third party as labour, regardless of any contractual arrangement between the parties involved.

61. If you are an employment agency or business and we grant a sponsor licence to you on this basis, but subsequently find that migrants you are sponsoring have been supplied as labour to a third party, we will revoke your licence.

62. If you are a sponsor that wants to employ a migrant worker who has been supplied to you by an employment agency or business, you can only assign a certificate of sponsorship (CoS) if:

- a) you have full responsibility for deciding the duties, functions and outcomes, or outputs of the job the migrant is doing; and
- b) you are responsible for agreeing the migrant's salary, and for paying that salary to the migrant.

FRANCHISES

63. If you, either as an organisation, a sole trader or partnership have a number of franchises under your control, you can decide whether to apply for a licence as a 'head office and all UK branches' or have each franchise licensed individually.

64. However, if your franchises are separate businesses, not under your control (as the parent organisation), you must have a separate licence for each one.

WHAT CRITERIA MUST I MEET?

65. All applications for sponsorship must meet the criteria for both eligibility and suitability.

ELIGIBILITY CRITERIA

66. To confirm that you are eligible for a licence, you must provide the appropriate supporting documents listed in Appendix A and any additional documents we may request.

67. We will verify these documents to ensure that you are genuine and that you have an operating or trading presence in the UK. If you can provide genuine documents of the appropriate type, this will be enough to meet this requirement. We will then test the suitability criteria. If we find that you have no operating or trading presence in the UK, we will refuse your application. If we find that you have no operating or trading presence in the UK after we have granted a licence, we will revoke your licence.

CHECKS WE MAKE

68. We use methods such as risk assessments to guide our compliance activity so that we focus visits and other activity on the areas of highest risk to the system. If we know little about you or are concerned about the evidence you have provided, we will make further checks that may include an on-site visit. We may also make relevant checks with other government departments, for example HM Revenue and Customs.

69. We ask for a variety of verifiable documents to enable us to consider your application. We may want to check any documents sent to support your application, therefore you must only provide the evidence as described in Appendix A, so that it can be independently verified. However, we reserve the right to request additional documentation at any time during the licence application process or the validity period of your licence.

70. We make further checks in the following circumstances:

- a) Quality assurance checks – we make a quality assurance check on a certain percentage of applications.
- b) Additional checks – if we have reasonable doubts about your application or the documents sent with your application.

PROCEDURE FOR MAKING CHECKS

71. The procedure for making checks is broadly the same for all applications, but will vary from case to case. It may involve:

- a) checking details or the correctness or genuineness of documents with other government departments (in the UK and overseas); and
- b) checking the accuracy and genuineness of documents with the issuing organisation, such as banks, universities and professional bodies.

STANDARD PROCEDURE FOR VERIFYING DOCUMENTS

72. The procedure for verifying documents is:

- a) we use a standard format to record the results of enquiries, to ensure we record any feedback consistently;
- b) if we cannot obtain an immediate answer to our enquiries, we will normally wait for a maximum of three weeks for the necessary information;
- c) we may decide that a compliance officer needs to visit you.

OUTCOME OF CHECKS

73. There are three possible outcomes of these checks.

- a) Document confirmed as genuine: If we are able to conclude that the document is genuine, we will consider your application as normal.
- b) Document confirmed as being false: If we are able to conclude that a document is false, we will refuse your application, whether or not the document is essential to your application.
- c) Check inconclusive: If we are unable to verify that a document is either genuine or false we will not use the document as evidence to support your application. If this happens we may ask for further supporting documents.

SUITABILITY CRITERIA

74. The suitability criteria determine whether we give you an A-rating or B-rating, refuse your application or revoke any existing licence you hold. They may also affect the limits and review points we set for certificates of sponsorship (CoS) that you can assign.

75. To assess the suitability criteria we look at whether:

- a) you have effective human resource systems in place to be able to meet, or continue to meet your sponsor duties. We may judge this by visiting you either before your licence is granted, or afterwards. More information is on our website at <http://www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/HR-compliance>
- b) you, or a relevant person have any criminal convictions in their name for any of the offences listed in Appendix B (convictions which are spent under the Rehabilitation of Offenders Act 1974 will not be taken into account). Any other unspent convictions could also lead to an application being refused; and
- c) we have any evidence of previous non-compliance in respect of you, or any relevant person.

76. A conviction is described as unspent if the rehabilitation period associated with it has not yet expired. A rehabilitation period is a set length of time from the date of conviction, according to the sentence imposed. More information on rehabilitation periods is available on the Ministry of Justice website at www.justice.gov.uk/downloads/offenders/rehabilitation/rehabilitation-offenders.pdf

SCORING SYSTEM

77. When deciding the suitability of an application we will assess you against the above factors and use the following scoring system.

78. We give a score of 1, 2 or 3 for:
- a) human resource systems - for example whether you have systems in place that enable you to know when a migrant has not turned up for work, or to identify when their current grant of leave is coming to an end;
 - b) Convictions and civil penalties – whether or not you, or a relevant person have an unspent criminal conviction or have become liable for a civil penalty; and
 - c) migrant compliance – for example whether you are employing any migrants (sponsored or not) who are in breach of their leave, an example might be a migrant with leave as a Tier 4 student working more hours than they are allowed to.
79. If you are selected for a visit, we will score your suitability to be a licensed sponsor as shown below:
- a) 1 - meets all of the criteria.
 - b) 2 - meets only some of the criteria. (You can only score 1 or 3 for criminal convictions and civil penalties).
 - c) 3 - does not meet any of the criteria.
80. We will give you an A-rating if you score 1 in all categories and there are no other reasons for granting a B-rating or refusing your application.
81. We will give a B-rating if you score 2 in any of the above categories and there are no other reasons for refusing your application.
82. We are likely to refuse your application if you score 3 in any of the above categories.
83. It may also be possible for you to get an A or B-rating if you score 1 or 2 for non-compliance but score 3 in human resource systems. In such cases, the compliance officer may still be able to recommend an A or B-rating with an action plan which will last for a fixed period of three months.
84. If the visit is conducted in connection with an application for Premium Customer Service or SME+ and we are satisfied that you are still meeting all of the requirements to keep your existing A rating, we will award your new rating of A (Premium) or A (SME+) as appropriate.
85. Further information on how we assess suitability is on our website at <http://www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/sponsorsandratings>

KEY PERSONNEL

86. The online sponsor application requires you to allocate certain responsibilities to members of your staff, some or all of which will have access to the sponsorship management system (SMS) after a licence has been granted. (Detailed information about the SMS is in paragraphs 145-152.) We call these people 'Key Personnel' and there are four key roles:
- a) authorising officer;
 - b) key contact;
 - c) level 1 user; and

d) level 2 user.

87. Of these roles, only level 1 users and level 2 users will have access to the SMS. If the authorising officer or key contact wish to have access, they must also be set up as a level 1 or level 2 user.

88. Each of your Key Personnel:

- a) must be permanently based in the UK for the duration of the period that they fill the role you have appointed them to.
- b) must meet the requirements on criminal convictions set out in paragraphs 97 and 111.
- c) must be a paid member of your staff or engaged by you as an Office Holder. The only exceptions to this rule are:

i. a level 1 or level 2 SMS user can be an employee of a third party organisation who you have contracted some or all of your HR function to;

ii. a level 2 SMS user can be a member of staff supplied to you, but employed by an employment agency.

iii. an overarching sponsor licensed under Tier 5 (Government Authorised Exchange) can appoint level 2 users within the organisations taking part in the exchange programme. (Full information about the Government Authorised Exchange route is set out in paragraphs 468-495.)

iv. an insolvency professional who has been appointed because you have gone into administration can fill any Key Personnel role

v. a UK-based representative can fill any Key Personnel role except the role of Authorising Officer.

vi. can be a UK-based representative. The only exception to this rule is that your Authorising Officer cannot be a representative. If you already have a sponsor licence but you now want a representative to help assign certificates of sponsorship (CoS), you must add the relevant employees of the representative to the SMS as level 1 or level 2 users.

89. None of your Key Personnel can be:

- a) a representative who is not based in the UK.
- b) a contractor or consultant who is contracted for a specific project.
- c) subject to a Bankruptcy Restriction Order.
- d) subject to a Bankruptcy Restriction Undertaking
- e) subject to a Debt Relief Restriction Order
- f) subject to a Debt Relief Restriction Undertaking.
- g) legally prohibited from being a company director. (The only exception to this rule is for the Key Contact who can be legally prohibited from being a company director but only if that is solely due to them being an undischarged bankrupt or subject to a Debt Relief Order.)

90. Where we use the term 'office holder' this has a specific meaning. If an individual holds an office under one of the following types of appointment, it is likely that they are an 'office holder':

- a) a statutory appointment (e.g. registered company directors or secretaries, board members of statutory bodies, judges or tribunal members, or crown appointments, for example, the police)
- b) an appointment under the internal constitution of an organisation (e.g. club treasurers or trade union secretaries)
- c) an appointment under a trust deed (e.g. trustees)
- d) an ecclesiastical appointment (e.g. members of the clergy)

91. If an individual is an office holder, they are neither an employee nor a worker. However, holding an office does not prevent an individual from becoming a worker or an employee. An individual can be an office holder and an employee if their working arrangements take the form of a contractual relationship and satisfy the test for employee status. More information to help you determine whether a person is an office holder is available on the GOV.UK website at www.gov.uk/employment-status/office-holder.
92. You must name your authorising officer, key contact and level 1 user on the application form. These roles can all be filled by the same person, or by a combination of different people. There can only be one authorising officer and one key contact, but you can appoint additional level 1 users once you have been granted a licence. Level 2 users can only be appointed by a level 1 user so you can only add a level 2 user after your licence has been granted.
93. You must give specific contact details for your Key Personnel both when applying for a licence and when changing any of your Key Personnel (or adding new ones) after you have been granted a licence. The contact address you give for each of your Key Personnel must be either your main address or that of any branch or head office you are including in, or have subsequently added to your licence. All email addresses you provide for all of your Key Personnel must be secure, personal to and only accessible by the named individual.
94. Where you are appointing a level 2 user who is an employee of a third party organisation engaged by you to deliver all or part of your HR function, the address provided must be the main business address of the third party organisation.
95. Where you are appointing a representative to the key contact or level one user roles, the address you give must be the same as the representative's main business address.
96. You are responsible for all actions of anyone you have set up as a user of the SMS, including representatives. If we are considering taking action against you, we will treat anything done by a representative on your behalf as if it was done by you. It is therefore important that you only employ representatives who are reputable, honest and competent. You may want to take precautions including checking the identity of the representative and ensuring that they are suitable to undertake the activity required. If you do not comply with your responsibilities, we will take action against you.
97. We make checks on your authorising officer, key contact and level 1 user and may make checks on your owner(s) or director(s) and any person involved in your day to day running. These include checks against our own records and the police national computer, or its equivalent in Northern Ireland. We will make these checks during the consideration of your application for a sponsor licence or at any time during the lifetime of your licence. We will repeat these checks if new individuals take up any of these roles during the lifetime of your licence. If any of these people have any unspent criminal convictions (regardless of whether you have declared them or not) or have been issued with a civil penalty by us, we may:
- a) refuse your application for a sponsor licence (see paragraphs 111-115); or
 - b) if you have already been granted a licence, refuse to accept a person you subsequently nominate for a Key Personnel role; or
 - c) revoke your licence (see paragraphs 654 - 659).

AUTHORISING OFFICER

98. When applying for a licence you must appoint an authorising officer. You will be held fully responsible for the actions of your authorising officer so we strongly advise that you ensure you give this position to a responsible and competent person.
99. The authorising officer is responsible for deciding how many of your staff need to have access to the SMS and what level of permission they can have. They are responsible for the activities of all SMS users and must comply with our requirements for using the system. If they fail to do this, we will take action against you.
100. The authorising officer does not have automatic access to the SMS. If they require access to the system they will need to be set up as a level 1 or level 2 user. This can be done by naming them as the level 1 user on your application, or adding them as an additional level 1 user or as a level 2 user after your licence has been granted.
101. You must have an authorising officer in place at all times throughout the life of your licence. The nominated person must, at all times meet the requirements set out in paragraphs 88-91. If you fail to have an authorising officer in place who meets those requirements, or fail to notify us of a change in authorising officer, we will take action against you.

KEY CONTACT

102. The key contact is usually the person who will act as the main point of contact between us and you and is the person we will contact if we have any queries about your sponsor licence application, the documents submitted or the payment. (We may also contact your authorising officer if that is necessary.)
103. The key contact does not have automatic access to the SMS. If they require access to the system they will need to be set up as a level 1 or level 2 user. This can be done by naming them as the level 1 user on your application, or adding them as an additional level 1 user or as a level 2 user after your licence has been granted.

LEVEL 1 USER

104. The level 1 user is responsible for conducting your day-to-day sponsorship activities by using the sponsorship management system (SMS) and for setting up accounts for any level 2 users. They can:
- a) view information about your licence;
 - b) access key messages that we post on SMS from time to time;
 - c) request additional level 1 users and add level 2 users to the SMS or remove them;
 - d) assign certificates of sponsorship (CoS) to migrants;
 - e) request an increase in the number of (CoS) that you can assign (your limit);

- f) apply for and assign restricted CoS;
- g) apply for Premium Customer Service and track your application;
- h) apply to renew your licence and track the progress of your application;
- i) pay for a sponsorship action plan;
- j) notify us of minor changes to your details;
- k) notify us of a change of circumstances via the SMS;
- l) report migrant activity to us (for example, inform us if a migrant goes missing or does not turn up for work);
- m) withdraw a CoS;
- n) inform us of changes to work addresses;
- o) amend user details.

105. On the online sponsor application, you can only nominate one level 1 user. However, once your licence has been granted you can appoint additional level 1 users, using the SMS. It is entirely up to you to decide on the number of level 1 users you have. As the authorising officer is responsible for actions of all your SMS users, it is advisable to keep the number of level 1 users to the minimum necessary for effective business operation.

106. You must always have at least one level 1 user in place. This is because it is impossible for you to meet all of your sponsor duties without one. If we find at any time that you do not have any level 1 users in place, we will take action against you.

LEVEL 2 USER

107. Level 2 user access to the SMS can only be granted by a level 1 user. You do not have to have any level 2 users but if you do want any, it is entirely up to you to decide how many you have. As the authorising officer is responsible for the actions of all your SMS users, it is advisable to keep the number of level 2 users to the minimum necessary for effective business operation.

108. You must always have a minimum of one SMS user who is a settled worker. The only exceptions to this rule are:

- a) if you are a diplomatic mission or international organisation licensed under Tier 5 (International Agreement); or
- b) if your Authorising Officer is a person with valid leave as a:
 - I. Representative of an Overseas Business; or
 - II. Tier 1 (Graduate Entrepreneur) migrant; or
 - III. Tier 1 (Entrepreneur) migrant.

109. SMS users must not assign a CoS to themselves or assign a CoS to a close relative or their partner. For the purposes of this guidance, a close relative or partner is a:

- a) Husband;
- b) Wife;
- c) Civil partner;
- d) Unmarried partner;
- e) Same sex partner;
- f) Mother;
- g) Father;

- h) Son or step-son;
- i) Daughter or step-daughter;
- j) Brother or half-brother;
- k) Sister or half-sister.

COULD MY LICENCE APPLICATION BE REFUSED?

110. Not all applications for a sponsor licence will be successful. This section describes the different circumstances that could lead to a licence application being refused.

CIRCUMSTANCES IN WHICH WE WILL REFUSE YOUR APPLICATION

111. We will refuse your application in any of the circumstances below:

- a) If you, or a relevant person submit any false document with your application. If this happens, and we believe that a criminal offence has been committed, we will not hesitate to refer your case for prosecution as well as refusing your application.
- b) If you do not meet the specific requirements that apply to the appropriate tier or category under which you are applying. If you meet the requirements for some of the tiers or categories, but not others, we will only licence you for the tiers or categories under which you qualify.
- c) If you, or a relevant person, have, within the previous 12 months, been issued with a civil penalty under Section 15 of the Immigration, Asylum and Nationality Act 2006 or the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 for employing one or more illegal workers and you are still liable once your objection and appeal rights have been exhausted, and:
 - I. the fine for at least one of those workers was set at the maximum amount. If the fine was paid within the given time limit, your application will be refused if it is made within six months of the date the fine became payable; or
 - II. the fine for at least one of those workers was set at the maximum amount. If the fine was not paid within the given time limit, but was subsequently paid at a later date, your application will be refused if it is made within 12 months of the date the fine became payable; or
 - III. the fine was for a first offence and was set below the maximum amount. If the fine was not paid within the given time limit, but was subsequently paid at a later date, your application will be refused if it is made within six months of the date the fine became payable; or
 - IV. the fine was for a repeat offence and was set below the maximum amount. If the fine was paid within the given time limit, your application will be refused if it is made within six months of the date the fine became payable.
 - V. the fine was for a repeat offence and was set below the maximum amount. If the fine was not paid within the given time limit but was subsequently paid at a later date, your application will be refused if it is made within 12 months of the date the fine became payable. (The date a fine becomes payable is the date on which all of your objection and appeal rights have been exhausted.)
- d) If you, or a relevant person, have not paid an outstanding illegal working civil penalty issued since the penalties were introduced in February 2008 and you are still liable once your objection and appeal rights have been exhausted.
- e) If you, or a relevant person have been issued with a civil penalty for an “offence” in Appendix C other than for employing an illegal worker and have not paid it (unless we

withdrew the penalty or it was cancelled on appeal).

- f) If you, or a relevant person have been convicted of one of the offences below, unless the conviction is spent under the Rehabilitation of Offenders Act 1974. (Convictions may become 'spent' after specified periods of time from the date of conviction if there are no further convictions during that time. Spent convictions are disregarded for certain purposes.)
 - I. Any offence under the Immigration Act 1971; the Immigration Act 1988; the Asylum and Immigration Appeals Act 1993, the Immigration and Asylum Act 1999; the Nationality, Immigration and Asylum Act 2002; the Immigration, Asylum and Nationality Act 2006; or the UK Borders Act 2007;
 - II. Trafficking for sexual exploitation;
 - III. Any other offence which, in our opinion, indicates that you pose a risk to immigration control, for example, offences involving dishonesty or deception, including any of the offences listed in Appendix B. Any other unspent convictions could also lead to an application being refused;
- g) If you, or a relevant person are legally prohibited from becoming a company director (unless this is due to being an un-discharged bankrupt). Please note though, that the authorising officer and any SMS user must not be an un-discharged bankrupt.
- h) If you have previously held a sponsor licence under any Tier and that licence was revoked by us in the six month period prior to the date of your application.

112. When we refer to a civil penalty and to a fine being paid 'within the given time limit' this means that you have either paid the fine in full within that time limit, or you have entered into a repayment plan which is still in force and all of your payments are up-to-date. If you have defaulted on a repayment plan, we will not accept this as payments having been made within the given time limit.

CIRCUMSTANCES IN WHICH WE MAY REFUSE YOUR APPLICATION

113. We may refuse your application in the circumstances listed below:

- a) If you, or a relevant person have a previous record of non-compliance or poor compliance with the duties of sponsorship, or with the work permit arrangements (but see paragraph 111 if you have previously had a sponsor licence and it was revoked).
- b) If you, or a relevant person have previously been asked to provide evidence to allow us to decide whether an organisation was complying with the sponsorship or work permit arrangements and that information was not provided.
- c) If the information available to us suggests that you do not yet have the processes necessary to comply with your duties as a sponsor. For example, an employer's internal communications may not be good enough for it to know if a sponsored migrant has not reported for work.
- d) If you, or a relevant person have previously had a sponsor licence revoked by us. In these cases, you will have to demonstrate that you have put right any issues which led to the revocation of that licence, before we will consider granting a new one. (Please also see paragraph 111 if you have previously had a licence revoked.)
- e) If the Office of the Immigration Services Commissioner (OISC) has removed your authorisation, or the authorisation of any organisation that you, or a relevant person have been involved with in a similar role. (This applies to individuals or organisations that provide immigration advice or services).
- f) If you, or a relevant person, have been dishonest in any previous dealings with us (or the former Immigration and Nationality Directorate, Border and Immigration Agency or UK

Border Agency). Examples of dishonesty include, but are not limited to:

- I. applying for work permits despite not having, or being in the process of establishing, an operating or trading presence in the UK;
- II. having had work permit applications refused on the grounds that your facilities were not large enough to cope with the increased staff and there were no plans to expand to take account of that increase; and
- III. making false statements in any application to us, including an application for a work permit.

114. The exact action we take in one or more of the circumstances above will depend on:

- a) the seriousness of the past conduct (including the conduct that led to any previous revocation of a licence, removal from the register of education or training providers (see above) or termination of authorisation by the Office of the Immigration Services Commissioner), the length of time that has passed since it took place and any mitigating circumstances; and
- b) the seriousness of the issues which led to the revocation of your previous licence, and what you have done since then to improve the situation.

115. If we grant your licence application in these circumstances, we are likely to give you a B-rating.

WHAT HAPPENS AFTER A DECISION ON MY APPLICATION HAS BEEN MADE?

116. We will write to you to inform you:

- a) whether we have granted or refused your licence;
- b) if we have granted a licence, whether we have given you an A-rating or B-rating;
- c) the reasons for the decision, when we have refused your licence or approved it and given a B-rating;
- d) if we have granted a licence, the maximum number of certificates of sponsorship (CoS) you will be allowed to assign.

117. We send all decision letters and return all original documents only to the address given for the authorising officer on your online sponsor application. We do not send decision letters and original documents to any other address. We send all documents by recorded delivery.

IF MY APPLICATION IS REFUSED, CAN I APPLY AGAIN?

118. There is no right of appeal against the refusal of an application for a licence, but you may reapply at any time. However, you will have to ensure that the reasons for your earlier refusal no longer apply. If you cannot do this, you are likely to be refused again. A compliance officer may visit you if you have previously been refused a licence to ensure that you can meet your duties as a sponsor.

119. If we have refused your application because you have previously been issued with a civil penalty you should not reapply within the period specified in paragraph 111. Similarly, if we

have refused your application because you have previously held a sponsor licence and that licence was revoked less than six months ago, you should not reapply until six months after the date we revoked your previous licence – see paragraph 111. If you do reapply before any of these specified periods have expired, we will refuse your application again.

SPONSOR LICENCE NUMBER

120. If your application for a sponsor licence is successful you will receive a sponsor licence number. You must quote this number in all communications with us.

WHAT ARE SPONSOR RATINGS?

121. When we licence a sponsor, we award an A-rating or B-rating. We rate each application on its own merits. The rating reflects, amongst other things, any track record you have in employing migrants. Your rating will appear on the published register of licensed sponsors.

122. You will be awarded an A-rating if you have all the necessary systems in place to meet your duties and there is no evidence of abuse. However, we may give you a B-rating if we find evidence that systems are not in place or are not adequate to meet your sponsor duties, or if you have previous evidence of abuse.

123. If we believe that you are not fully able to comply with your duties, but can demonstrate to us that you are able to make improvements, we will award you a B-rating.

124. Your rating will usually be the same for all the tiers in which you are registered. However, in exceptional cases, if we have identified that there are inadequate systems in place in only one tier, we will apply the B-rating only to that tier.

CIRCUMSTANCES IN WHICH WE WILL AWARD A B-RATING WHEN YOU APPLY FOR A LICENCE

125. We will award a B-rating if:

- a) You, or a relevant person have been issued with a civil penalty for one of the “offences” listed in Appendix C (apart from Employing Illegal Migrant Workers) within the five years ending on the date of application, unless we withdrew that penalty or it was cancelled on appeal; or
- b) you are an existing sponsor applying to renew your licence and are already B-rated (unless we are satisfied that you have successfully met all the requirements of your sponsorship action plan).

126. This is not an exhaustive list of circumstances where a B-rating will be granted.

CIRCUMSTANCES IN WHICH WE MAY AWARD A B-RATING WHEN YOU APPLY FOR A LICENCE

127. We may award a B-rating if, you, or a relevant person have a conviction for offences to do with the running of your/their business and this makes us doubt your suitability as a sponsor. (For example a conviction under the National Minimum Wage Act or for benefit fraud). We do

not take into account convictions that are spent under the provisions of the Rehabilitation of Offenders Act 1974. (Convictions may become 'spent' after specified periods of time from the date of conviction if there are no further convictions during that time. Spent convictions are disregarded for certain purposes).

128. In the circumstances above, we consider, among other things, the seriousness of the offence, for example any penalty or sentence imposed by the court and what you have done since then to improve the circumstances which led to the conviction. For example, if the offence was committed by a member of staff, we would consider any action you may have taken against that person.

B-RATED SPONSORS

129. A B-rating is a transitional rating. You can be B-rated either at the point you are granted a licence, or if you are already an A-rated sponsor and we find that you are failing to comply with your sponsor duties. Paragraphs 642-645 set out in detail when we will, or may downgrade an existing licence to a B-rating.

130. We are likely to inspect B-rated sponsors more frequently and extensively. When deciding what monitoring is necessary, we will be guided by our assessment of the potential risk you may pose to immigration control.

131. If we award a B-rating or downgrade your existing licence to a B-rating, you will not be able to assign any more certificates of sponsorship (CoS) until:

- a) you have demonstrated your commitment to make improvements by signing up to the measures set out in an action plan; and
- b) you have paid the action plan fee.

132. Your action plan will set out the steps you must take to gain or regain an A-rating and it may also include additional sponsor duties. You must comply with all of the points in your action plan within the three month period it is set for.

133. After you have paid your action plan fee, you are not allowed to assign any certificates of sponsorship (CoS) to sponsor any new migrants, but you are allowed to assign CoS for:

- a) a migrant you are already sponsoring who has leave under Tier 2 or Tier 5 and is eligible to apply to extend that leave; or
- b) a migrant who holds a valid Work Permit and is already working for you, to apply under Tier 2 (General) to continue in the same employment with you.

SPONSORSHIP ACTION PLANS

134. If you are a B-rated sponsor we expect you to improve your performance enough to be upgraded to an A-rating within a specified period not exceeding three months. If you do not, your licence will be revoked.

135. If you have been awarded a B-rating, you must adhere to an action plan which will include

all of the steps you must take to enable you to achieve, or return to an A-rating. For example, this might include making specific improvements to your recordkeeping, improving your control over staff you employ to assign certificates of sponsorship (CoS), or improving communication between your different branches so you know when a migrant has not turned up for work.

136. There is a fee for an action plan and the current fee is listed on our website at <http://www.ukba.homeoffice.gov.uk/aboutus/fees>. This fee is to cover the cost of preparing the action plan. Where we decide that a B-rating is appropriate we will write to you to inform you that you have been B-rated and that payment is due for the action plan fee. You will then have three options:

- a) Pay the fee and accept the action plan. If you do this, you must make your payment within 14 calendar days using the 'Action plan details' function in your SMS account. If you make your payment within 14 days you will continue to be a licensed sponsor and we will proceed as set out in paragraphs 137-144: or
- b) Decline to pay the fee.
 - i. If you are not currently sponsoring a migrant you can choose to surrender your licence. To do this, you should select the 'decline' option in the Action Plan payments function in your SMS account. You must also sign the declaration attached to the letter which we sent to you, notifying you of your B-rating. This will confirm that you want to surrender your licence. You must return the declaration to us within 14 calendar days.
 - ii. If you select 'decline' but do not return the declaration to surrender your licence within 14 calendar days, we will immediately revoke your licence; or
- c) Do nothing. If you do not pay the fee within 14 calendar days, your licence will be revoked.

137. Once the fee has been paid, we will send you your action plan and contact you to discuss it, but we have the final say over its contents. You will still not be allowed to assign any CoS to new migrants but you will be allowed to assign any CoS needed for existing migrants as described at paragraph 133. We will agree with you, under the terms of your action plan, how many CoS you can have to cover extension applications during the period covered by your action plan.

138. Your action plan will be set for a fixed period of three months. This is because we believe that three months is the maximum length of time it should take for you to be able to put right any issues that have resulted in you failing to meet your sponsor duties. After the end of this period, we will visit you to check whether you have met all of the requirements set out in your action plan and:

- a) if you have not met the requirements of your action plan we will revoke your licence.
- b) if you have met all of the requirements of your plan and we have no other concerns about you, we will award you an A rating. We will also review your allocation of certificates of sponsorship (CoS) where necessary so that you are able to sponsor new migrants again if you need to.
- c) if we find other areas of non-compliance have arisen which are not addressed by the current action plan, but which are set out in this guidance as circumstances in which we will, or may award a B-rating, then a new, second action plan will be required. If this happens, you must pay for the new action plan.

139. If you specifically request it we will visit you before the end of the three month period, but you should only request this if you are certain that you have already met all of the

requirements set out in your action plan. If you request an earlier visit, we will take the appropriate action set out in paragraph 138, whether or not the three month period has ended. Subject to paragraph 140, we will only visit you once to check that you have met all those requirements.

140. Please note that during the period covered by your action plan, we reserve the right to carry out additional compliance visits if we have any information or evidence to suggest that you may be failing to meet your sponsor duties for a reason which is not covered by your current action plan.

141. We will closely monitor your use of any CoS that you assign whilst you are B-rated and if we find either during the life of your action plan, or later, that you have used any of those CoS to sponsor a new migrant, we will revoke your licence.

142. You can only be B-rated and subject to an action plan:

- a) for a maximum of three months at any one time in respect of any single action plan; and
- b) for a maximum of 2 times during the validity period of your licence.

143. If you have been B-rated and subject to an action plan twice within the validity period of your licence and we have any further concerns about you which are set out in this guidance as circumstances in which we will, or may award a B-rating we will revoke your licence. The validity period of your licence is the four year period for which it was first granted and each subsequent four year period after a successful renewal.

144. When you renew your sponsor licence, if the period covered by your action plan starts during the validity period of your old licence, and ends during the validity period of your renewed licence you will be treated as having been B-rated during the currency of your new licence and this will count towards the total number of times you are allowed to be B-rated during the validity period of your renewed licence.

WHAT IS THE SPONSORSHIP MANAGEMENT SYSTEM (SMS)?

145. Once licensed, you can start using the sponsorship management system (SMS). This is an online tool that allows you to carry out your day-to-day activities and report any changes to us, for example if you change your address. It also allows you to assign certificates of sponsorship (CoS) to migrants who wish to come to, or stay in the UK to work, and to fulfil your reporting duties in respect of your sponsored migrants.

146. Your SMS account is also the primary source of information about your sponsor licence. You can use it to view details such as how many SMS users you have appointed and who they are, the date your licence will expire, the number of CoS you have remaining in your allocation and when that allocation will expire. Your SMS account also has a message board where we post useful messages from time to time. It is important that you access your SMS account on a regular basis to review and update your licence details. We recommend that your level 1 user accesses your account at least once a month.

147. We call a person who has access to the SMS a 'user'. The SMS allows users two different levels of access – 'level 1' and 'level 2'. The level determines the type of access (permissions)

the user has to the system, and the functions they can perform.

148. When we grant your sponsor licence, we also set up your SMS account and send the level 1 user's 'user name' to your authorising officer by post. We send the level 1 user their password by email. (Remember, these are the people you named on your application for a sponsor licence.) Once your level 1 user has successfully accessed your SMS account, they can perform a number of functions (see paragraph 104-106).

149. SMS users must never disclose their password to anyone else. If they do, we will take action against you.

150. You can access the SMS on our website at <https://www.points.homeoffice.gov.uk/gui-sms-jsf/home/SMS-003-Home.faces>

You can also find some helpful guides on our website that explain:

- a) the changes you can report using your SMS account www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/sms and
- b) how to assign a certificate of sponsorship. <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance>

151. You are held fully responsible for the actions of any relevant person, representative or employee who assigns certificates of sponsorship (CoS) on your behalf. Any non-compliance with the rules on assigning CoS will result in us taking action against you. If we find that you are employing an illegal migrant worker because your recruitment practices are negligent, we may issue you with a civil penalty and may refer your case for prosecution.

152. You must have at least one level 1 user in place throughout the life of your licence. If we find that you have no level 1 user in place at all this means that you cannot fulfil your sponsor duties and we will take action against you. We will also take action against you if you have no SMS users in place at all.

WHAT IS A CERTIFICATE OF SPONSORSHIP (CoS)?

153. A CoS is not an actual certificate or paper document, but is a virtual document, similar to a database record. If you have a Tier 2 and/or Tier 5 licence, you will complete a process within the SMS that results in the assignment of a unique CoS reference number. A CoS can only be assigned by a person who has been granted access to the SMS as a level 1 or level 2 user.

154. You must give this reference number to a migrant you intend to sponsor because they must quote it in any application for entry clearance (if outside the UK) or leave to remain under Tier 2 or 5 (if inside the UK) or for worker authorisation if they are a Croatian national. When you give the CoS number to the migrant you should treat it as you would a secure and confidential document.

155. The migrant may also request other information from you that formed part of the process of generating the unique reference number to help them with their application. If you want to give the migrant a copy of their CoS, there is a function within your SMS account that allows you to print a CoS that you have created and saved, or assigned. You can do this by

accessing the 'view CoS' function, where you can then open the CoS and select 'print'. More information on how to use this function is in the relevant SMS user guide which is available on our website at: www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/sms/

156. When a CoS that you have assigned has been used to support an application for leave, or worker authorisation and that application is either granted or refused, it will show in your SMS user account as 'used' and it cannot be used again. The only exception to this is where the CoS has been assigned to and used by a migrant who is a non-visa national and who is entering the UK under the Tier 5 (Creative and Sporting) route, for less than three months. Please see paragraph 458 for further details on this exceptional case. If the migrant's application for leave is refused and they wish to re-apply, you must assign a new CoS to the migrant to send in with their new application.
157. If the migrant's application was rejected or withdrawn, the CoS will still show in your SMS account as 'assigned' and it can be used again to support a further application.
158. Please note, there is a process in place at the port of entry for migrants who are coming to the UK under Tier 5 creative and sporting sub-category, if they have not applied for entry clearance because they are:
- a) non-visa nationals (not nationals of a country whose nationals must always have a visa to enter the UK); and
 - b) seeking entry to the UK for three months or less.
159. Under Tier 5 (Creative and Sporting) you can assign a group CoS to all members of a group. See paragraphs 441-444 for more information about group CoS.
160. A CoS assigned by you under Tier 2 and/or Tier 5 is valid for three months from the date it was assigned. During this three month period a migrant intending to come to the UK under Tier 2 or Tier 5, or apply for worker authorisation (Croatian nationals only) cannot be assigned another CoS by any other sponsor. If the migrant does not use the CoS within this period to make an application, it automatically becomes invalid and will show as 'expired' on your SMS account. Please note that a migrant cannot apply for Tier 2 or Tier 5 leave more than three months in advance of the start date stated on their CoS.
161. When you assign a CoS you must complete the migrant and sponsorship details on the CoS screen within the SMS as well as (where appropriate) details about the job the migrant will do and any salary payments they will receive.
162. The migrant must meet the specific criteria for the relevant tier, category, or sub-category and apply for entry clearance or leave to remain. The fact that a CoS has been assigned, does not guarantee that the migrant will succeed in obtaining entry clearance, leave to remain or worker authorisation.
163. If you are considering assigning a CoS to a migrant, we recommend that you discuss their current immigration status with them, as this may have an effect on any application they make because of the rules on switching from one immigration category to another. The rules on switching are in the relevant guidance for Tier 2 and Tier 5 migrants which can be found on our website using the links at the beginning of this guidance. If the migrant is a Croatian national

you should read Appendix G of this guidance which will help you to decide whether they need to apply for worker authorisation.

HOW MANY CERTIFICATES OF SPONSORSHIP (CoS) WILL I BE ALLOWED TO ASSIGN?

164. When you apply for a licence, we ask you to give us an estimate of the number of CoS you expect to assign in your first year in each tier, category, or sub-category for which you are applying.
165. You must state on your online application how many CoS you think you will need under each Tier and category that you want to register for and you must justify your request. We appreciate that you may not know exactly how many you will need but you must give your best estimate.
166. Please note when you are considering how many CoS you may need for Tier 2 (General), that you can only have an annual allocation for the following, which we call 'unrestricted' CoS (see paragraph 232 for more information on unrestricted CoS):
- a) any migrants who currently work for you under Tier 2 (General) or via a Work Permit, who will need to extend their stay in the UK to continue working for you under Tier 2 (General);
 - b) high earners - by this we mean any migrants you may recruit from overseas where the salary they will receive will be £152,100 or more;
 - c) any migrants you may recruit who are already in the UK under another immigration category and who are allowed to switch into Tier 2 (General). The only exception to this is where the migrant you want to sponsor is currently in the UK as the dependant of another migrant who was last granted leave under Tier 4. These dependants count towards the annual limit under Tier 2 (General) and they must have a restricted CoS to apply for leave (see paragraph 230).
 - d) any migrant you wish to recruit who is a Croatian national and who needs to apply for worker authorisation.
167. We always allocate unrestricted CoS under Tier 2 (General) and all Tier 2 (ICT) CoS in alignment with the financial year. When you ask for CoS under those categories you must tell us how many you think you will need to last until the end of the financial year in which you are applying.
168. You cannot have an annual allocation of CoS to employ new migrants who will be paid less than £152,100 per annum and who:
- a) will apply from overseas for leave to enter the UK under Tier 2 (General); or
 - b) are currently in the UK as the dependant of another migrant who was last granted leave under Tier 4,

Instead you must follow the guidance in paragraphs 244-255 which explains how to apply for these 'restricted' CoS.

169. If we approve your application for a licence, we will then set a limit on the number of CoS you can assign and your request may not be granted in full. The limit may be:

- a) your requested number of CoS; or
- b) a lower limit if you are B-rated (and have paid the fee for a sponsorship action plan), a start-up organisation or have any history of not complying with immigration rules.

170. In setting the limit, we take into account all the circumstances, including your estimated requirements and other factors, for example:

- a) your previous record in dealing with us (including your previous dealings with the work permit arrangements);
- b) the kind of business you conduct;
- c) the extent of the business you conduct; and
- d) the length of time you have been trading.

171. Once we have agreed the number of CoS you can assign we will allocate them to your SMS account. You will then have a period of 12 months from the date your licence started, in which to assign them. We call this your 'CoS year'. Remember, for unrestricted CoS under Tier 2 (General) and all CoS under Tier 2 (ICT) the CoS year will always run from 6 April in one year to 5 April the following year so your first allocation under those Tiers will expire on 5 April.

172. If, part-way through your CoS year, you think that you will not have enough to last until the end of your CoS year, you can apply for some more. You can do this using your SMS account. (The only exception to this is if you want any Tier 2 (General) 'restricted' CoS, which you can only apply for using the process set out in paragraphs 244-255.)

173. We consider any request you make for additional CoS using the principles listed above. We may also reduce your limit if your circumstances change taking into account the factors above, (for example if you down-size) or if we believe that you pose a threat to immigration control (for example if, after your original CoS allocation has been agreed, we take action against you as described throughout this guidance.)

174. In addition to setting these limits, we keep your performance under review and we may change the number of CoS you are allowed to assign at any time if we think the circumstances make it necessary.

175. Any CoS that remain unused at the end of your CoS year will be removed from your SMS account. It is not possible to carry over any unused CoS to the next year.

176. At the end of your CoS year, you must tell us how many CoS you will need for the next year and we will ask you to justify your request. This is an annual process that occurs during the life of a sponsor licence. Please note that when you apply for an annual allocation under Tier 2 (General) you cannot have an annual allocation for 'restricted' CoS because you must apply for them separately. (See paragraphs 244-255.)

177. We hold you fully responsible for anything done by a representative, a relevant person, or a person employed by you, who appears to act on your behalf. We may revoke, suspend or downgrade your licence or reduce the number of CoS that you are allowed to assign, if you do not comply with the rules on assigning CoS.

CANCELLING A CERTIFICATE OF SPONSORSHIP (CoS)

178. We can cancel a CoS assigned by you under Tier 2 and/or Tier 5 at any time if we find that you should not have assigned it, for example if it was assigned through misrepresentation or fraud.
179. You can withdraw a CoS that has been assigned to a migrant, but which has not yet been used to support an application for leave to enter, or remain in the UK. This can be done using your SMS account.
180. A migrant can only have one CoS assigned to them at any given time. If you have assigned a Tier 2 or 5 CoS to a migrant who intended to start working for you, but then decided to take up an offer of a job from a different sponsor, they must contact you to arrange for you to withdraw their CoS. This is because the sponsor who they do want to start work for will not be able to assign a CoS to them until you have withdrawn the one that you have assigned. They must make this request to you in writing or by email and give you 5 working days to action their request. If you do not action their request they must send a reminder, after which you will have a further 5 working days to withdraw their CoS.
181. If you refuse, or fail to withdraw the CoS within the specified time, the migrant can contact us and we will cancel it for them, after discussions with you. Failure to take action when receiving such a request from a migrant, within the specified time may lead to us taking action against you.
182. When a CoS is cancelled or withdrawn for any reason, the fee will not be refunded.
183. Once an assigned CoS has been cancelled or withdrawn, we will automatically refuse any application that is supported by that CoS.
184. If the migrant is already in the UK with entry clearance, leave to remain or worker authorisation, we will cancel or reduce their leave, or revoke their worker authorisation if we find that the CoS which supported their application was improperly assigned. If this happens:
- a) their permission to be in the UK will be reduced to 60 calendar days (to give them a chance to find a new sponsor) if they were not actively involved in the CoS being assigned, or issued improperly; or
 - b) immediately ended (curtailed) if they were actively involved; or
 - c) their worker authorisation will be revoked.

EMPLOYING MIGRANTS

185. All migrants you wish to sponsor under Tier 2 and Tier 5 must obtain prior entry clearance before coming to the UK. The only exceptions to this are for:
- a) non-visa nationals (See Appendix 1 of the Immigration Rules) in the Tier 5 creative and sporting category, who are seeking entry for less than 3 months; and

- b) Croatian nationals (who can move and reside freely in any European Union (EU) member state).

186. Migrants applying under Tiers 2 and 5 cannot make a valid application for entry clearance, leave to remain in the UK or worker authorisation (Croatia nationals only) without a CoS. Simply assigning a CoS does not guarantee that any application will be granted and we advise that before assigning one, you ensure that the migrant will meet all of the requirements under the route they intend to apply for. Further information on the exact requirements for migrants is available on our website at <http://www.ukba.homeoffice.gov.uk/visas-immigration/working>

187. A CoS acts as confirmation from you as a licensed sponsor that;

- a) you wish to sponsor a migrant; and
- b) you have met all of the rules set out in this guidance in connection with the information you have entered on the CoS; and
- c) to the best of your knowledge, the migrant will be able to make a successful application for permission to enter, or remain in the UK.

188. We make the final decision on who is allowed to enter or remain in the UK. This decision will be based on the requirements of the Immigration Rules.

TIER 2 – SKILLED WORKERS

189. Tier 2, is the route which enables UK employers to employ nationals from outside the settled workforce and Croatian nationals to fill particular skilled jobs which cannot be filled by settled workers. A migrant sponsored under any Tier 2 category must not displace a suitable settled worker. This means that you can only offer a job to a migrant you wish to sponsor under Tier 2 if there is no suitably qualified settled worker available to fill the vacancy.

190. A settled worker cannot be made redundant to create a vacancy to be filled by a Tier 2 migrant.

191. All payments you make to migrants that you sponsor under Tier 2 (General) and Tier 2 (Intra-Company Transfer (ICT)) must be made into the migrant's own bank account which can either be in the UK or overseas. You must not pay them in cash. Pre-paid cards such as FOREX are acceptable, but you must be able to provide evidence that you have made payments onto the migrant's card.

Safeguarding children

192. Under Section 55 of the Borders, Citizenship and Immigration Act 2009, we must have regard to the need to safeguard children and to promote their welfare. You must ensure that all children under the age of 18 working in the UK have suitable care arrangements in place for their travel, their reception on arrival in the UK and for their living arrangements while in the UK, as well as parental consent to these arrangements. If you fail to do this, we will immediately revoke your licence.

SKILL LEVEL FOR JOBS UNDER TIER 2 (GENERAL) AND TIER 2 (INTRA-COMPANY TRANSFER (ICT))

193. Apart from the exceptions listed in paragraph 194 below, migrants sponsored under Tier 2 (General) and Tier 2 (ICT) can only work in a skilled occupation at or above National Qualifications Framework (NQF) level 6 (or the equivalent in Scotland). This does not mean that the person employed to fill the job must be educated to that level, it means that the work that person will do is pitched at that level.

194. The only exceptions to this skill level rule are where the migrant:

- a) will be sponsored under Tier 2 (General) for a job on the current list of shortage occupations;
 - b) will be sponsored in one of the following creative sector Standard Occupational Classification (SOC) codes
 - I. 3411 – Artists
 - II. 3412 – Authors, writers and translators
 - III. 3413 – Actors, entertainers and presenters
 - IV. 3414 – Dancers and choreographers
 - V. 3422 – Product, clothing and related designers;
 - c) is a Croatian national who needs to apply for worker authorisation. (Croatian nationals can be sponsored to fill vacancies at or above NQF level 4 or the equivalent level in Scotland);
 - d) is already working in the UK under Tier 2 (General) or Tier 2 (ICT) and they first successfully applied under one of those routes under the rules in place between 6 April 2011 and 13 June 2012. In these circumstances, the migrant can be sponsored to fill a vacancy at or above NQF level 4 or the equivalent level in Scotland;
 - e) is already working in the UK under Tier 2 (General), Tier 2 (ICT) or as a Work Permit holder and first successfully applied under one of those routes before 6 April 2011. In these circumstances the migrant can be sponsored to fill a vacancy at or above NQF level 3 or the equivalent level in Scotland;
195. If you are considering sponsoring a migrant who is already in the UK for a job which is below NQF level 6, you will need to find out when they were first granted leave under Tier 2 or the Work Permit arrangements to make sure they will be allowed to take the job you intend to give them. To do this, you should ask them to show you any evidence they have from when they first applied for Tier 2 or the Work Permit arrangements before you assign a CoS to them. If you assign a CoS and their application is refused because the skill level requirement is not met, we will not refund the CoS fee.

196. Further information about which jobs are at these different skill levels is available in the codes of practice and on the list of shortage occupations which are available on our website at:

- a) codes of practice - <http://www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/employingmigrants/codesofpractice>; and
- b) Shortage occupation list - <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/workingintheuk/shortageoccupationlistnov11.pdf>

APPROPRIATE RATE FOR JOBS UNDER TIER 2 (GENERAL) AND TIER 2 (INTRA-COMPANY TRANSFER (ICT))

197. Since 6 April 2011, all migrants that you sponsor under Tier 2 (General) and Tier 2 (ICT) must be paid according to the rules on minimum salary levels. These minimum levels are for gross salary packages including any guaranteed bonuses and any allowances permitted, as detailed in this guidance.

198. Table 1 shows the current minimum salaries which apply.

Table 1.	
Tier 2 (General), except for cases below	£20,300 per annum, or the minimum appropriate rate for the job as set out in the codes of practice, whichever is higher
Tier 2 (ICT) - Short Term, Skills Transfer or Graduate Trainee	£24,300 per annum or the minimum appropriate rate for the job as set out in the codes of practice, whichever is higher
Tier 2 (ICT) - Long Term, except for cases below	£40,600 per annum or the minimum appropriate rate for the job as set out in the codes of practice, whichever is higher
Tier 2 (General) or Tier 2 (ICT) – Long Term, where the migrant applies in the UK and their previous leave was granted under the rules in place before 6 April 2011, in the same category or as a Work Permit holder	Minimum appropriate rate for the job as set out in the codes of practice

CODES OF PRACTICE – CHANGES TO STANDARD OCCUPATIONAL CLASSIFICATION (SOC) CODES AND RATES OF PAY

199. If you have previously used the codes of practice you may know that we made some changes on 6 April 2013. The changes we made are as follows:

- a) All of the SOC codes in the codes of practice were, prior to 6 April 2013, based on a set of data produced by the Office for National Statistics (ONS) called ‘SOC 2000’. They are now based on a more recent set of

- data called 'SOC 2010'. This means that some of the SOC codes you may have used before have changed. See paragraphs 200-201.
- b) We refreshed all of the salary rates in the codes of practice to reflect the current policy on minimum rates of pay that applies to all CoS assigned on or after 6 April 2013. See paragraphs 203-206.
 - c) We removed all of the rules about where jobs can be advertised to meet the requirements of the resident labour market test. All of this information has been simplified and is set out in the Resident Labour Market Test section of this guidance.
 - d) All of the SOC code information is now contained in one document.

SOC CODES

200. Since 6 April 2013, it is possible that some of the SOC codes you have used before may have changed and we strongly recommend that before you assign a CoS, or apply for a restricted CoS, you check the SOC Conversion Table in the current codes of practice. This table allows you to easily look up any SOC that existed under SOC 2000 that you may have used before, and read across to find the SOC 2010 equivalent. This table will also tell you what skill level the new SOC code is. Again it is important that you check because you may find that in a minority of cases, a role you have previously recruited for is now in a SOC which does not meet the minimum skill level requirements set out in paragraphs 193-195.

201. It is important that you choose the SOC code which contains the job description that best matches the role you want to recruit for even if the job title you use is different to the one in the Codes of Practice. Although many SOC codes have not changed we still strongly recommend that you check because if you use the wrong SOC code when assigning a CoS or when making an application for a restricted CoS, this could lead to an application being delayed or refused.

Transitional Arrangements for SOC Codes - Skill Level

202. If you are already sponsoring a migrant whose occupation now falls within a SOC code that no longer meets the requirements on skill level set out in paragraphs 193-195, and they wish to apply to extend their stay to continue in the same job, their application will not be refused on this point.

RATES OF PAY

203. In the codes of practice there are, for most jobs, two different minimum salary rates. One is for 'new entrants' and the other is for 'experienced' staff. These rates have been set to ensure that the resident labour market is not undercut, while providing for new graduate recruitment. The rates of pay stated in the codes of practice are up-to-date and in line with current earnings of settled workers in each occupation. We intend to update these rates annually, each April.

204. The new entrant rate reflects the fact that people entering into employment for the first time, or who are in the early stages of their career are generally paid less than their more experienced counterparts. The new entrant rate can be paid if the migrant was recruited via a milkround and you have met the resident labour market test requirements in respect of that

milkround, or if the migrant is switching into Tier 2 (General) and they were last granted leave to enter, or to stay in the UK under:

- a) Tier 1 (Post-study work); or
- b) Tier 1 (Graduate Entrepreneur)
- c) the International Graduates Scheme; or
- d) the Fresh Talent Working in Scotland Scheme; or
- e) the Science and Engineering Graduates Scheme; or
- f) Tier 4 or as a Student and they have received final results confirming that they have passed and will be (or have been) awarded:
 - I. a UK recognised bachelor's or master's degree; or
 - II. a UK Postgraduate Certificate in Education; or
 - III. a Professional Graduate Diploma of Education; or
 - IV. they have completed a minimum of 12 months study in the UK towards a UK PhD.

205. The new entrant rate can also be paid if the migrant:

- a) will be sponsored under the Tier 2 (ICT – Graduate Trainee) category; or
- b) is under the age of 26 on the date of their application for Tier 2 and they are not applying for an extension of leave that will take their total stay in any combination of Tier 2 leave, or as a Work Permit holder, beyond three years and one month,

206. In all other cases, including where the migrant is applying to extend their stay under any combination of Tier 2 leave, or as a Work Permit holder, beyond three years and one month, even if they meet one of the criteria in paragraphs 204-205, the 'experienced' rate must be paid. For example if they are still under the age of 26. You should not sponsor a migrant who needs to apply for leave under Tier 2 at the new starter rate if you expect that you will want to sponsor them for more than three years and you are not prepared to pay them the experienced rate after this time. Please remember that these rates will be updated every year to reflect the latest available salary data.

207. Under the requirements of the resident labour market test, all jobs must be advertised (when required) at or above the appropriate rate as set out in paragraph 198 to ensure that there has been a genuine attempt to fill the vacancy with a settled worker.

208. There may be occasions where you have advertised at or above the minimum rate quoted in the relevant code of practice, but the salary quoted in your advertisement is below the minimum threshold for Tier 2 (General). For example, if the minimum rate in the codes of practice is £18,000 and that is the rate you quote in the job advertisement, but then the successful applicant is a migrant who will need to apply for leave to enter the UK or for worker authorisation. If such a situation arises, you cannot simply increase the salary to £20,300 to enable the migrant to make a successful application. Instead, you must conduct the resident labour market test again, advertising at the higher salary rate, as there may be settled workers who would apply for the job at that higher rate.

209. When deciding what salary range or package to state in a job advertisement, you should consider whether you are willing to offer a higher salary to a more experienced worker. This is important because the whole point of the resident labour market test is to ensure job opportunities are available to the settled workforce. If you advertise a job at a new starter rate but then recruit a migrant worker at the higher, experienced rate we will not consider

this to have been a true test of the resident labour market because an experienced, settled worker may have applied had you advertised at the higher rate. (Please see the transitional arrangements at paragraphs 213-215 if you started a resident labour market test before 6 April 2013.)

210. Migrants, when taken on, must be paid in line with the rate that was advertised. For example if the advertisement stated a salary range for the post which was in line with a new starter rate given in the codes of practice, you must not then sponsor a migrant and pay them at the experienced rate of pay.

211. Where the migrant will be working in the UK for less than 12 months, the rate of pay must be based on an annual salary. For example earnings of £12,000 on a six month contract would add up to an annual salary of £24,000.

212. For each migrant, you must keep the documents specified in Appendix D.

Transitional arrangements for recruitment exercises which took place before 6 April 2013.

213. If you have conducted a resident labour market test where you placed recruitment advertisements before 6 April 2013, you may find that the salary amount, or salary range that you have advertised for the job is higher, or lower than the minimum allowed for that job in the codes of practice that came into effect on 6 April 2013.

214. If this happens, the salary you state on the CoS must be either within the range that you have advertised, or the minimum set out in the codes of practice, whichever is higher. For example:

- a) the job was advertised with a salary range of £25,000-£27,000 and the minimum rate in the new codes of practice is £27,500, you must pay at least £27,500; or
- b) the job was advertised with a salary range of £25,000-£27,000 and the minimum rate in the new codes of practice is £24,500, you must pay at least £25,000.

215. If you assign a CoS to a high earner, but the recruitment for the position was conducted before 6 April 2013, you can still state a salary figure which is less than £152,100 but it must be still be at least £150,000. If you do assign a high earner CoS in these circumstances you must make sure that you state the period the recruitment exercise took place either in the 'details of labour market test' box, or by adding a sponsor note. If you do not add this information, the migrant's application is likely to be refused.

SALARY INFORMATION ON A COS

216. When you assign a CoS to a migrant, you must give three pieces of information about the migrant's salary package. First, you must give the gross salary figure which must represent the remuneration actually paid to the worker, gross of any tax actually paid in respect of that remuneration (whether paid in the United Kingdom or overseas) and must include any permissible allowances and guaranteed bonuses. Then you must give a separate figure for the total of all allowances and guaranteed bonuses included in the first figure. Finally you must give a detailed breakdown of each allowance and each guaranteed bonus showing what they are for and the value of each one.

217. The figure you give for the gross salary must not be inflated in anticipation of any tax relief, such as relief on expenditure related to the employment, or tax which would be incurred by the employment of a resident worker but which is not incurred in respect of the migrant. For example if the gross salary package is £21,000, but the migrant worker will have the same net package after tax as a resident worker who is paid £25,000 before tax, the CoS must show that the salary package is £21,000, not £25,000.

218. Further guidance on how we take allowances into account is included in paragraphs 240 and 277-278 for Tier 2 (General) and in paragraphs 358-361 for Tier 2 (Intra-Company Transfer) (ICT).

Reductions in Salary

219. If after a migrant has started work for you, you decide to reduce their salary package to a lower rate than you stated on their CoS (for example, because the allowances you are offering them have changed), the new rate that you pay them must meet the current appropriate rate requirements.

220. If the new rate is below the appropriate rate, for example if the migrant's leave was first granted under the rules in place on or after 6 April 2011 and the new rate is less than £20,300, you cannot continue to sponsor them and you must report this to us using your SMS account.

221. One exception to this rule is if you are making a temporary reduction to a sponsored migrant's hours due to the current economic climate. Where this is the case;

- a) the migrant must be continuing to work for you in the same job with reduced working hours; and
- b) the reduced working hours must be part of a company-wide policy to avoid redundancies; and
- c) you must not be treating the migrant more, or less favourably than any settled workers you employ; and
- d) the migrants pay or working hours must not be reduced by more than 30 percent; and
- e) the reduction in pay must be proportionate to the reduction in hours; and
- f) the arrangement must not be in place for more than one year; and
- g) at the end of the arrangement, the migrant's pay will return to at least the level it was before the arrangement was in place.

222. The only other exceptions to this rule are where the reduction is solely due to them taking a period of:

- a) maternity leave;
- b) paternity leave;
- c) adoption leave;
- d) long-term sick leave in excess of one continuous calendar month.

223. If the reduction in salary is due to the migrant being absent from work without pay for one calendar month or more during any 12 month period from 1 January to 31 December for any reason other than for those listed in paragraph 222 (whether over a single period, or multiple periods), you cannot continue to sponsor them and you must report this to us using your SMS account.

224. If the migrant was granted leave under Tier 2 (General) as a 'high earner' and the reduction in salary takes them below the high earner threshold, the migrant must make a new application for leave.

225. If a sponsored migrant wishes to take a longer period of other unpaid leave, for example a

sabbatical, you must stop sponsoring them and report this to us using your SMS account.

TIER 2 (GENERAL)

226. As a Tier 2 (General) sponsor, you will normally be the employer and be responsible for paying the migrant. We are however aware that in certain circumstances, for example in parts of the creative sector, migrants may meet all of the Tier 2 criteria where there is no direct employer/employee relationship. It remains the case that even in such circumstances there must be a sponsor who is able and willing to take on all of the sponsorship duties.

227. There will also be circumstances where there is a clear statutory relationship between the employing body and a publicly funded body, where the publicly funded body has powers to intervene in the running or funding of the employing or paying body. In these cases, the publicly funded body with powers to intervene can be the sponsor. For example a Local Authority has certain reserve powers of control and direction over otherwise self-governing schools, even though it is not the paying body or the employer of teachers in those schools. In such a case, the Local Authority can be the sponsor for migrants employed as teachers. Another example would be where a Strategic Health Authority, through its Deanery, Local Education and Training Board (LETB) or provider/commissioning organisation, has funding control of the speciality training posts for doctors and dentists within NHS Trusts, even though it is not the paying body. In such a case, the Deanery or LETB can be the sponsor.

228. Where a migrant is not your direct employee, we will look especially closely at the arrangement to ensure that you can fulfil all of your sponsor duties. We will monitor you to ensure that you are fulfilling your duties and take action as set out in this guidance if we find that you are not.

THE TIER 2 (GENERAL) ANNUAL LIMIT

229. There is an annual limit on the total number of CoS available to sponsors under Tier 2 (General). For the year from 6 April 2013 to 5 April 2014, the total number of CoS available is 20,700.

230. The following count towards the limit:

- a) CoS for new hires earning under £152,100 per year coming to start work in the UK from overseas.
- b) CoS for the dependant of a migrant who was last granted leave under Tier 4, where that dependant is already in the UK and wishes to switch into Tier 2 (General).
- c) CoS for Croatian nationals.

231. We call those listed in paragraph 230 a) and b) 'restricted' jobs, for which a 'restricted' CoS is required. Although CoS assigned to Croatian nationals count towards the limit, you do not need to apply for a restricted CoS where the migrant is a Croatian national, and you should assign an unrestricted CoS instead.

232. The following are exempt from the limit and we call these 'unrestricted' jobs, for which an 'unrestricted' CoS is required:

- a) New hires - high earners: Where the annual salary for the job is £152,100 or more.
- b) Extensions: Where you need to extend leave for a migrant who is already in the UK working for you and has or was last granted leave under Tier 2 (General) or as a Work Permit holder
- c) Changes of employment: Where a migrant is already in the UK and has, or was last granted leave under Tier 2 (General) or as a Work Permit holder and who wants to:
 - i. change jobs with the same sponsor and the new job is in a different SOC code (see paragraph 561); or

- II. start work for a new sponsor
- d) Those who are switching immigration category: Where a migrant who is already in the UK under another immigration category is eligible to switch into Tier 2 (General). (The only exception to this is where the migrant switching into Tier 2 (General) is in the UK as the dependant of another migrant who was last granted leave under Tier 4. These dependants do count towards the limit which means that you must apply for a restricted CoS for them.)

233. These are the only exemptions and all other Tier 2 (General) CoS will count towards the annual limit.

ALLOCATIONS OF CoS FROM 6 APRIL 2013

234. As described above, all CoS under Tier 2 (General) which are exempt from the limit are called 'unrestricted', the remainder are called 'restricted'. The only exception is where you are assigning a CoS to a Croatian national. It will count towards the limit but you must assign an unrestricted CoS.

UNRESTRICTED CoS

235. As with all other Tiers and categories, when you first apply for a sponsor licence you must tell us on the online application, how many CoS you will need for each Tier and category you are applying for. Similarly, if you are an existing Tier 2 (General) sponsor and your CoS year is coming to an end, you can apply for a 'follow-on' allocation for the next year. (See paragraph 176.) You can have an annual allocation under Tier 2 (General) but only to cover the number of unrestricted CoS you will need. You cannot have an annual allocation of restricted CoS. Any unrestricted CoS we allocate to you can only be used for unrestricted jobs. If you assign an unrestricted CoS to a migrant for a restricted job and that migrant is not a Croatian national we will revoke your sponsor licence.

236. If you are assigning a CoS to a Croatian national, you should use a 'Tier 2 General – switching immigration category' CoS from your unrestricted allocation. This is because you will be able to select from the full range of NQF level 4 SOC codes. Remember, Croatian nationals can work at or above NQF level 4 – see paragraph 194.

237. Before assigning a Tier 2 (General) unrestricted CoS you must ensure that:

- a) you have identified the appropriate type of CoS to assign, for example 'Tier 4 graduate switching into Tier 2'.
- b) the job is at the appropriate skill level (see paragraphs 193-195); and
- c) the vacancy filling process you have used complies with the resident labour market test requirements set out in this guidance (where appropriate); and
- d) the migrant will be paid a salary and/or other allowances at or above the appropriate rate (see paragraph 198).

238. Salary may be paid in the UK or abroad. Where the migrant will be paid abroad in a currency other than pounds sterling, the salary amount entered on the CoS will be based on the exchange rate for the relevant currency on the day the CoS is assigned, taken from the rates published on www.oanda.com

239. The salary package you enter on the CoS may include, in addition to basic pay:

- a) any guaranteed bonuses; plus
- b) any allowances such as London weighting or accommodation allowances which would

also be paid to a settled worker in similar circumstances.

240. The salary package you enter on the CoS must not include:

- a) overtime, bonus or incentive pay which is not guaranteed;
- b) employer pension contributions;
- c) allowances to cover business expenses including travel to and from the migrant's country of residence or home country;
- d) the value of any shares which the migrant receives when offered a job under an employee shareholder employment contract.

RESTRICTED CoS

241. Between 6 April 2013 and 5 April 2014 there are a limited number of restricted CoS available to Tier 2 (General) sponsors each month. The annual limit is 20,700 and they are divided into 12 provisional monthly allocations of 1,725. Each monthly allocation will be reduced by the number of unrestricted CoS assigned to Croatian nationals in the previous month, and further adjusted as described in the following sections of this guidance. For example the monthly total will be increased in line with any restricted CoS which have been returned or reclaimed during the previous month

242. If you need to assign a restricted CoS to a migrant, you must first apply for it using the restricted CoS application process. We cannot guarantee that your application will be successful. Please note that if your licence is B-rated for Tier 2 (General) or suspended, you are not allowed to apply for any restricted CoS.

THE RESTRICTED CoS APPLICATION CYCLE

243. The application process works to a monthly cycle. If your licence is rated A, A (Premium) or A (SME+) for Tier 2 (General) you can make an application using your SMS account. Each application you make will be scored against a set of criteria. On the 11th of each month we will decide how many applications can be approved. We call this the 'allocation date'. (Where the 11th of the month falls on a Saturday, Sunday or on a Bank Holiday in England, applications will be decided on the next working day after the 11th.) If your application is successful, your restricted CoS will appear in your SMS account on the same day that your application is considered (the allocation date).

HOW TO APPLY FOR A RESTRICTED CoS

244. You must apply for a restricted CoS using your SMS account. The application can only be made by a level 1 user. You cannot apply for a restricted CoS if your licence is B-rated or suspended.

245. You should only apply for a restricted CoS if you intend to assign it no more than three months after the allocation date appropriate to your application. If your application is successful, the restricted CoS will be allocated to your SMS account but if you do not assign it after 3 months it will be removed from your account. If a restricted CoS is removed from your account because three months have passed and you still need it, you will have to apply again.

246. When you apply for a restricted CoS you must already have conducted a resident labour market test (where appropriate) that meets the requirements set out in this guidance.

247. When you make your application you must complete all the mandatory fields marked with an asterisk. If you do not complete a mandatory field you will not be able to submit your

application. All of the information you give on the application about salary payments, skill level and the resident labour market test must be in line with how a Tier 2 (General) unrestricted CoS is assigned.

248. There may be circumstances in which we wish to verify the information you have given on your application, for example if we have reasonable doubts about its validity. If we need to make any further checks to verify your application, we may ask you for additional information or documents. You must send us any information or documents that we ask for within 14 calendar days. If you do not send the information or documents within that time limit, your application will be rejected.

249. If you do send the information or documents within the time limit, but the date we receive them is on or after the 5th of the next calendar month, or we are unable to make the necessary verification checks before the allocation date you have applied for, we will hold your application until the following allocation date. If we have been unable to carry out those checks by the following allocation date, your application will be rejected.

CRITERIA

250. Applications for a restricted CoS will be scored and prioritised based on the criteria set out in Table 2

Table 2.			
Type of Job	Points	Salary	Points
Job is on the list of Shortage Occupations	75	£20,300 - £20,999.99	2
Job is at PhD level and is in one of the SOC codes listed in paragraph 251 below this table and a resident labour market test (RLMT) has been conducted (or job is exempt from the RLMT)	50	£21,000 - £21,999.99	3
Job is not in one of the PhD level SOC codes and a RLMT has been conducted (or job is exempt from the RLMT)	30	£22,000 - £22,999.99	4
		£23,000 - £23,999.99	5
		£24,000 - £24,999.99	6
		£25,000 - £25,999.99	7
		£26,000 - £26,999.99	8
		£27,000 - £27,999.99	9
		£28,000 - £31,999.99	10
		£32,000 - £45,999.99	15
		£46,000 - £74,999.99	20
		£75,000 - £99,999.99	25
		£100,000 - £152,000.99	30

251. The PhD level SOC codes are:

- a) 2111 - Chemical scientists
- b) 2112 - Biological scientists and biochemists

- c) 2113 - Physical scientists
- d) 2114 - Social and humanities scientists
- e) 2119 - Natural and social science professionals not elsewhere classified (for Tier 2 this includes researches in research organisations other than universities).
- f) 2150 - Research and development managers
- g) 2311 - Higher education teaching professionals

252. Your application must score points from both columns but can only score points for one entry in the first column. For example if a job is a shortage occupation but you have conducted a resident labour market test, your application will score 75 points from the first column, not 105.

253. We will then add a further score for the salary that will be paid for the job. For example if the job is a shortage occupation and the salary payable is £26,500 your application will score 75 points plus a further 8 points for salary, giving 83 points in total.

254. Your application must score a minimum of 32 points to be treated as valid. You will not be able to submit an application if it scores less than 32 points.

255. We cannot guarantee that any valid application will result in the allocation of a restricted CoS. For example if your application scores 50 points from column 1 but we conduct checks which reveal that you have not completed a resident labour market test correctly, we will not award those 50 points and your application will be rejected.

THE MONTHLY ALLOCATION PROCESS

256. Each application we receive for a restricted CoS will be scored in line with Table 4, in paragraph 250. All applications received up to and including the 5th of each month that are not subject to verification checks, will be considered on the 11th of the same month - the 'allocation date. For example if you apply between 6 September and 5 October, your application will be decided on the 11 October.

257. We will approve valid applications solely on the number of points scored, starting with the highest. In the event that the number of valid applications received is greater than the number of CoS available, those applications scoring the lowest number of points are less likely to be approved.

258. It is possible that in any given month the number of applications will exceed the number of CoS available and we will reach a point where there are more applications that score the same amount of points than we have CoS to available. For example, we have allocated all applications scoring between 105 points (the maximum possible) and 33 points, and are left with more applications that have scored 32 points than we have CoS left to allocate. In the event that this happens, we cannot make a fair and objective decision as to whether any of those applications are in some way more urgent, or worthy than any other, therefore we will either approve all of them, or none of them.

259. We will approve all applications that score the same number of points if it means that we exceed our monthly allocation limit by 100 or less.

a) Example 1: On 11 September 2013, all valid applications scoring between 105 points and 33 points have been approved.

I. we have 150 CoS left to allocate

II. there are 250 valid applications that all score 32 points

In this example we will award CoS to all 250 applicants as it will only lead to our monthly allocation being exceeded by 100.

b) Example 2: On 11 September 2013, all valid applications scoring between 105 points and 33 points have been approved.

I. we have 150 CoS left to allocate

II. there are 400 valid applications that all score 32 points

In this example we will not allocate any CoS for any valid application scoring 32 points because to do so would mean that we would exceed our monthly limit by more than 100. We will however carry over the 150 unallocated CoS to the following month.

260. The decision we make will be based only on the number of points your application has scored. No other information or circumstances will be taken into account and there is no right of appeal. If your application is successful, your restricted CoS will appear in your SMS account on the same day that your application is considered. If your application is unsuccessful, you can apply again at any time.

261. In the event that the monthly allocation process is undersubscribed, we will carry over any CoS that remain unallocated, to the following month. For example if we only receive 1,600 valid applications for the period 6 November 2013 to 5 December 2013, we will allocate 1,600 CoS on 11 December 2013 and the remaining 125 will be carried over to the following month. Any CoS that remain unallocated at the end of each year covered by the limit will not be carried forward to the next year's allocation.

262. There may be particular compelling circumstances where a CoS can be granted exceptionally, before the next round of applications are considered. Any such application will be considered on its individual merits and in line with any relevant policy at the time. It is not possible to draw up a definitive list of circumstances that might be defined as 'particularly compelling', however approvals of such applications should be rare and only for genuine, urgent reasons. Examples might be:

- a) where there have been delays caused by us resulting in a newly licensed sponsor needing a CoS for a migrant who is due to start work before the 11th of the next month.
- b) a consultant surgeon has been recruited and needs to be appointed immediately because they have patients listed for life-saving surgery before the 11th of the following month.

263. We will not consider any application that is made due to delays caused by you that could have been avoided. For example, where a recruitment/appointment was delayed because a member of your staff was absent from work.

264. If you need to apply in such circumstances, you must submit your application as normal via your SMS account, but must also email us at Tier2Limits@ukba.gsi.gov.uk explaining that you want your application to be considered urgently; and the reasons why your application cannot wait until the next allocation date. We may ask for documentary evidence to support your application and we may also need to visit you.

265. We will only consider any such application where, had the application been made earlier, it would have been granted on the last allocation date, but even then there is no guarantee that any application will be granted. Each individual case will be judged on its own merits and we will expect to see robust evidence as to why the application could not have been made earlier and why it cannot wait until the next allocation date.

266. We cannot guarantee a timescale for considering any application for urgent consideration. For example it may take longer if we need to visit you, or request any documentary evidence to support your application. If we cannot verify an application before the next allocation date it will be considered for the one after, but only if we can verify it in time. (See paragraphs 248-249.)

267. Any application for urgent consideration that we refuse will not be carried forward to the

next allocation date for a decision. Where we do grant an application for urgent consideration, we will reduce the next monthly allocation accordingly.

USE OF RESTRICTED CoS

268. If your application for a restricted CoS is successful, you will have three months to assign it to a migrant. If you do not assign it after three months it will be removed from your account.
269. If you have any restricted CoS in your SMS account which are less than three months old, and which you have not yet assigned, and you are downgraded to a B rating for Tier 2 (General) or your licence is suspended, you will not be able to assign them and they will still be removed from your account after three months
270. You can only assign a restricted CoS to fill the restricted job that you described on your application. When you apply for a restricted CoS, the information you give in your application, for example the salary and job description, will appear on the CoS that is allocated to you if your application is successful. When you assign that CoS you will not be able to change any of these pre-populated fields.
271. We accept that there may occasionally be circumstances in which some of the details you enter on a successful restricted CoS application may have changed by the time the CoS is allocated to you, or you come to assign it. Although you cannot amend the pre-populated fields when assigning the CoS, you can add a sponsor note to let us know of the following changes:
- a) Salary decrease - This is only allowed if the lower rate:
 - i. is still at or above the appropriate rate for the job (see paragraph 198); and
 - ii. is within any salary range quoted in the job advertisement (where a resident labour market test has been conducted), for example the job was advertised with a salary range of £25,000-£28,000, your CoS application stated £27,000 and the package you eventually agree with the migrant is £26,000; and
 - iii. would have scored the same number of points in Table 2 as the original figure given on your application.
 - b) Salary increase – where the salary package that you will pay to the migrant is higher than the amount you stated on the application, this is only allowed if the higher rate is still within the salary range quoted in the job advertisement. For example if the job was advertised with a salary range of £25,000-£28,000, your CoS application stated £26,000 and the package you eventually agree with the migrant is £26,750
 - c) Start and end date – you can amend either or both of these dates but you should remember that a restricted CoS must be assigned within three months of it being allocated to your SMS account. After it has been assigned, the migrant then has only three months to use it to support an application for leave.
272. If you do amend the salary rate using a sponsor note, you must also state when adding that sponsor note, the salary range that was advertised.
273. These are the only changes you can make to a restricted CoS when you assign it. If anything else has changed, for example the SOC Code or job description, you must return the restricted CoS to us, conduct a new resident labour market test (where required) and apply again at a later date if necessary.
274. You must only assign a restricted CoS if you intend to employ the migrant on the conditions stated on the application you made for it, or in any sponsor note added in the circumstances permitted in paragraph 271. If we subsequently find that you gave false information on your application for a restricted CoS, for example if:
- a) the salary you pay to a migrant whose application for leave was supported by a restricted

CoS is lower than the salary stated on your application for that CoS or the salary stated in any sponsor note that you have added to that CoS; or

- b) you said you had conducted a resident labour market test that met the requirements of this guidance, but you had not,

we will revoke your sponsor licence.

275. Before either assigning or applying for a restricted CoS you must ensure that:

- a) the job is at the appropriate skill level (see paragraphs 193 - 195); and
- b) the vacancy filling process you have used complies with the resident labour market test set out in this guidance (where appropriate); and
- c) the migrant will be paid a salary package at / or above the appropriate rate (see paragraph 198).

276. Salary can be paid in the UK or abroad. Where the migrant will be paid abroad in a currency other than pounds sterling, the salary amount entered on the CoS will be based on the exchange rate for the relevant currency on the day the CoS is assigned, taken from the rates published on www.oanda.com

277. The salary package you enter on the CoS may include, in addition to basic pay:

- a) any guaranteed bonuses; plus
- b) allowances such as London weighting or accommodation allowances which would also be paid to a settled worker in similar circumstances.

278. The salary package must not include other benefits such as:

- a) overtime, bonus or incentive pay which is not guaranteed;
- b) employer pension contributions;
- c) allowances to cover business expenses including travel to and from the migrant's country of residence or home country;
- d) the value of any shares which the migrant receives when offered a job under an employee shareholder employment contract.

RECLAIMED AND RETURNED COS

279. If we find, after we have granted you a restricted CoS, that it should not have been granted, we will reclaim it from your SMS account. This might happen where we are taking action against you, for example if you made a false statement when applying for the CoS.

280. If, after we have granted you a restricted CoS, you decide that you no longer need it, you must do either of the following:

- a) if the CoS you no longer need formed part of an application for a number of identical CoS, you must first assign the ones you do need and then email us at Tier2Limits@ukba.gsi.gov.uk to let us know that it can be returned; or
- b) if the CoS you no longer need did not form part of an application for a number of identical CoS, you can email us straight away at Tier2Limits@ukba.gsi.gov.uk to let us know that it can be returned.

281. It is important that you let us know about any restricted CoS which can be returned because we can then make them available to other sponsors who need them.

282. The status of any CoS that is returned or reclaimed will be updated in your SMS account so that it will display as 'returned' or 'reclaimed'.

RESIDENT LABOUR MARKET TEST - TIER 2 (GENERAL)

283. The resident labour market test is a process you must follow (unless an exemption applies) before you can assign a CoS under Tier 2 (General). The test is there to protect the settled workforce and means that you must advertise the job you want to recruit for to give settled workers a fair chance to apply. You can only recruit a migrant from outside the settled workforce if:

- a) you have completed a resident labour market test and can show that no suitable settled worker is available to fill the job; or
- b) the job is exempt from the resident labour market test.

284. Where we refer to a suitable settled worker, we mean any settled worker who has the skills and experience you are seeking. If you find that you have more than one candidate who has all the necessary skills and experience that you advertised for, where one of them is a settled worker and the other is a migrant, you must appoint the settled worker even if the migrant is more skilled or experienced than the settled worker. The only exception to this rule is if the job falls within one of the PhD SOC Codes listed in paragraph 251, when you can appoint a migrant if they are the most suitable candidate.

EXEMPTIONS FROM THE RESIDENT LABOUR MARKET TEST

285. This section sets out all of the circumstances in which you do not have to conduct a resident labour market test before you can assign a CoS under Tier 2 (General).

CONTINUING TO WORK IN THE SAME OCCUPATION

286. If the migrant is already working for you and they need to extend their leave to continue working for you in the same occupation, you do not need to conduct a resident labour market test.

SHORTAGE OCCUPATIONS

287. Shortage occupations are ones for which there are not enough settled workers to fill available jobs in particular sectors. You do not have to conduct a resident labour market test before assigning a Tier 2 (General) CoS to fill a job in a shortage occupation. You can only assign a CoS for a job on the shortage occupation list if the migrant is contracted to work for a minimum of 30 hours per week.

288. The Migration Advisory Committee (MAC) make recommendations about shortage occupations and the current shortage lists have been agreed by government and are available on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/workingintheuk/shortageoccupationlistnov11.pdf>. You should note that this document includes a separate list of shortage occupations for Scotland. If you are filling a vacancy which is listed only on the shortage occupation list for Scotland, the vacancy must be in Scotland.

289. These lists are updated periodically. This is because the MAC review the lists regularly and whenever they make any new recommendations that are agreed by government, the lists are updated. More information about the MAC is available on our website at <http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/mac>.

POST-STUDY WORK

290. You do not have to conduct a resident labour market test if a migrant you want to sponsor is applying for Tier 2 (General) leave in the UK and has, or was last granted leave to enter, or to stay in the UK under:

- a) Tier 1 (Post-study work); or
- b) Tier 1 (Graduate Entrepreneur); or
- c) the International Graduates Scheme; or
- d) the Fresh Talent Working in Scotland Scheme; or
- e) the Science and Engineering Graduates Scheme;

or where

- f) they currently have permission to stay in the UK as a Tier 4 migrant or as a student and during their last grant of leave, or a continuous period of leave that includes their last grant of leave, they have received final results confirming that they:
 - I. have passed and will be (or have been) awarded a UK recognised bachelor's or master's degree; or
 - II. have passed and will be (or have been) awarded a UK Postgraduate Certificate in Education; or
 - III. have passed and will (or have been) awarded a Professional Graduate Diploma of Education; or
 - IV. have completed a minimum of 12 months study in the UK towards a UK PhD.

HIGH EARNERS

291. You do not have to conduct a resident labour market where the total salary package that we will take into account for the job will be £152,100 or above. (Under the rules in place before 6 April 2013, high earners must have had a salary package of £150,000 or more.) The same applies if a high earner's salary is reduced to an amount below the high earner threshold – they must make a new application for Tier 2 leave, or worker authorisation (Croatian nationals only) but you do not have to conduct a resident labour market test.

SUPERNUMERARY RESEARCH POSITIONS

292. You do not have to conduct a resident labour market test where the job is in a supernumerary research position and therefore over and above your normal staffing requirements. This will be the case where:

- a) the migrant has been issued a scientific research Award or Fellowship by an external organisation; and
- b) that award is not transferrable and the role would not be filled by anyone else if the migrant withdrew from the project; or
- c) the Award or Fellowship has ended but you are continuing to sponsor the migrant so that they can continue to undertake the same research.

POSTGRADUATE DOCTORS AND DENTISTS IN SPECIALTY TRAINING

293. You do not need to conduct a resident labour market test if:

- a) the migrant will be sponsored as a doctor in Speciality Training where their salary and the costs of their training are being met by the government of another country under an agreement with that country and the UK government;
- b) the migrant has already started Speciality Training as a doctor or dentist in the UK and they are applying to continue that training or return to that training (with the same National Training Number) after an out-of-programme experience. However, you must confirm on the CoS that this exception to the resident labour market test applies.

294. If a Speciality Training doctor or dentist wishes to undertake an out-of-programme

experience in the UK, then the organisation providing the out-of-programme experience will need to become the new sponsor. You, as the current sponsor (usually the Deanery) must notify us that you no longer have sponsorship responsibilities for the migrant because they are taking an out-of-programme experience. (If you are the sponsor that is offering the out of programme experience, you must have conducted the resident labour market test before you assign a CoS.)

295. When the out-of-programme experience in the UK has been completed, the migrant may need to return to their Speciality Training. You must assign a new CoS but will not need to conduct a resident labour market test, as the migrant is returning to their Speciality Training programme on which they already have a place. You must confirm on the CoS that an exception to the resident labour market test applies. If you were the sponsor for the migrant when they did their out-of-programme experience you must notify us that you are no longer sponsoring the migrant.

296. When a postgraduate doctor or dentist is accepted for Speciality Training they are given a National Training Number (NTN). You must produce this on request, as evidence that the doctor or dentist was undertaking Speciality Training before the out-of-programme experience.

REQUIREMENTS FOR THE RESIDENT LABOUR MARKET TEST - TIER 2 (GENERAL)

297. Unless an exemption applies as set out in paragraphs 286-296 all jobs must be advertised to settled workers for 28 calendar days. You can do this in one of two ways:

- a) Advertise the vacancy for a single continuous period, with a minimum closing date of 28 calendar days from the date the advertisement first appeared; or
- b) Advertise the vacancy in two stages with each stage of the vacancy being advertised for no less than 7 calendar days but where both stages added together total a minimum of 28 calendar days. For example, you could initially advertise the vacancy for 14 calendar days. If a suitable settled worker is identified, you can appoint them straight away. However, if no suitable settled worker is identified, you cannot appoint a migrant worker who applies at this stage. You must advertise the vacancy for a further 14 calendar days, making 28 calendar days in total. If no suitable settled workers are identified during either the first or second stage, then the resident labour market test has been passed and you can appoint a Tier 2 migrant.

298. You must place two job advertisements using the method(s) set out in paragraphs 305-322. In many cases, one of those will be an online advertisement using the Jobcentre Plus Universal Jobmatch service or Jobcentre Online for jobs in Northern Ireland because this is mandatory for certain jobs.

299. When conducting the resident labour market test, you can only use the advertising methods set out in this guidance. The job advertisement must be in English, or can be in Welsh if the job is based in Wales, and it must include:

- a) the job title;
- b) the main duties and responsibilities of the job (job description);
- c) the location of the job;
- d) an indication of the salary package or salary range or terms on offer;
- e) skills, qualifications and experience required; and
- f) the closing date for applications, unless it is part of the organisation's rolling recruitment programme. (If it is a rolling recruitment programme, the advertisement should show the

period of the recruitment programme.)

300. All jobs must be advertised online to settled workers through the Jobcentre Plus Universal Jobmatch service (or for jobs based in Northern Ireland, JobCentre Online) to pass the resident labour market test. The only exceptions to this rule are for:

- a) creative sector jobs where the relevant code of practice states that advertising is not required because the migrant will be making an additional contribution to the UK labour market (see the creative sector codes of practice for more information. They can be found on our website at www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/employingmigrants/codesofpractice/);
- b) milkround recruitment exercises;
- c) pupillage positions for trainee barristers;
- d) jobs which fall within the PhD level SOC Codes which are listed in paragraph 251;
- e) jobs where the annual salary package will be £71,000 or more;
- f) jobs where there will be stock exchange disclosure requirements;
- g) jobs in the NHS where the vacancy has been advertised on the NHS Jobs website between 19 November 2012 and 6 April 2014;
- h) jobs where the resident labour market test is not required. (See paragraphs 286-296.)

301. Where advertising online using the Jobcentre Plus Universal Jobmatch service (or for jobs based in Northern Ireland, Jobcentre Online) is not mandatory, you must still advertise the job using two of the methods set out in this guidance and one of them can be online advertising through a Jobcentre if you wish.

302. You cannot refuse to employ a settled worker if they lack qualifications, experience or skills (including language skills) that were not specifically requested in the job advertisement.

303. For each recruitment method, where you have conducted the resident labour market test, you must keep the documents listed in Appendix D.

304. If you fail to advertise a job vacancy in accordance with the resident labour market test requirements set out in this guidance, we will take action against you.

RESIDENT LABOUR MARKET TEST - TIER 2 (GENERAL) ADVERTISING METHODS

305. The following sections describe the different methods of advertising that we accept when you are conducting a resident labour market test. To be clear, unless an exemption from the resident labour market test applies, all jobs must be advertised using two of the methods set out in this section. In many cases this will be mandatory online advertising through Jobcentres, plus one other method. Where advertising through Jobcentres is not mandatory, you can choose any of the permitted media to advertise in so you could choose one national newspaper and one professional journal but we will also accept two advertisements using the same form of media, for example we will accept advertisements on two different websites.

JOBCENTRE PLUS (OR IN NORTHERN IRELAND, JOBCENTRE ONLINE)

306. If the job is based in England, Wales or Scotland, it must be advertised online through the Jobcentre Plus Universal Jobmatch service. Information is available on the GOV.UK website at <https://www.gov.uk/advertise-job> Jobs are advertised online directly by employers using Universal Jobmatch.

307. The maximum standard period for an advertisement to run on Universal Jobmatch is 60 days, but you can set an earlier closing date when you place your advertisement. The closing

date for applications will not be visible unless it is included in the job description so if you advertise a job with a closing date of less than 60 days, you must make sure that the closing date for applications is stated in the job description (see paragraph 299 f)).

308. If the job is based in Northern Ireland it must be advertised through Jobcentre Online. Information on how to advertise a job in Northern Ireland is available on their website at <http://www.employersonlineni.com> Jobs can also be placed by email, fax, or speaking to an advisor on the telephone number given on the website. All jobs are advertised online at <http://www.jobcentreonline.com/JCOLFront/Home.aspx> and are also available in Jobs & Benefits Offices and JobCentres in Northern Ireland.

309. Vacancies advertised on JobCentreOnline in Northern Ireland can run for up to six weeks (employers are normally contacted after two weeks to assess the position) unless you requested a different closing date. The closing date will always be shown on the advertisement.

310. You should be aware that Jobcentre Plus and, Jobs & Benefits Offices and JobCentres in Northern Ireland will only accept online vacancy advertisements when there is a current vacancy at the time the advertisement is placed. If you use rolling recruitment programmes you will need to ensure that your vacancies are placed when there are actual posts to fill. It is important that you adhere to the rules set out by Jobcentre Plus and, Jobs & Benefits Offices and JobCentres in Northern Ireland because if your online vacancy advertisement is refused, you will not be able to meet the resident labour market test criteria and will not be able to assign a CoS for that vacancy.

IMPORTANT NOTE – If you have a vacancy in Northern Ireland you must advertise through Jobcentre Online. If you choose to advertise using Universal Jobmatch as well, you must still also advertise using one other method permitted by this guidance.

NATIONAL NEWSPAPER

311. A national newspaper is one that is published at least once a week and is marketed throughout the UK or throughout the devolved nation in which the job is located. For example, The Scotsman and The Herald are acceptable as suitable national newspapers for jobs which are located in Scotland, the Western Mail for posts in Wales and the Belfast Telegraph for posts in Northern Ireland.

PROFESSIONAL JOURNAL

312. A professional journal is published for a particular field and is available nationally either through retail outlets or subscription. The journal must be published at least once a month and be relevant to the nature of the job, for example it could be:

- a) a relevant trade journal; or
- b) the official journal of a professional occupational body; or
- c) a relevant subject-specific publication.

MILKROUND

313. A 'milkround' is the name popularly given to the annual recruitment programme where employers from a wide range of industrial and commercial sectors visit universities to give presentations and/or interview students, usually as part of university careers fairs. If you use a milkround to recruit new graduates or interns you must visit a minimum of three UK universities, or all UK universities which provide the relevant course, whichever is the lower

number.

314. If you have carried out a milkround as described above, the milkround/graduate recruitment programme does not need to be advertised through Universal Jobmatch, or Jobcentre Online in Northern Ireland, in order for the resident labour market test to be met. However, in addition to visiting the appropriate universities, the milkround/graduate recruitment programme must be advertised through two methods permitted by this guidance, one of which must be one of the following graduate recruitment websites:

- a) www.jobs.ac.uk;
- b) www.milkround.com;
- c) www.prospects.ac.uk;
- d) www.targetjobs.co.uk.

315. You must retain evidence that no suitable settled workers were available to fill the vacancy.

ROLLING RECRUITMENT CAMPAIGNS

316. The points based system has been developed to allow you to recruit skilled migrants to fill specific vacancies that cannot be filled by settled workers. Rolling recruitment programmes exist to allow companies to pick out skilled individuals who might fill future, undefined vacancies rather than specific ones.

317. We understand why you may want to identify migrants through these programmes and we are not seeking to prevent this happening. However when a specific vacancy becomes available, to meet the requirements of the resident labour market test, that vacancy must first be made available to settled workers advertised as set out in this guidance.

RECRUITMENT AGENCY AND HEAD-HUNTERS

318. If you wish, you can use an agency or head-hunter to help with your recruitment. The agency or head-hunter may recruit on your behalf for the post but the recruitment exercise they conduct must meet the requirements of the resident labour market test as set out in this guidance.

319. Where an agency or head-hunter conducts the recruitment exercise on your behalf, you are fully responsible for the resident labour market test and if it is not done according to the rules set out in this guidance, we will take action against you.

INTERNET

320. You can advertise the job online. We do not restrict you to specific websites but whichever one you choose it must be:

- a) The relevant government website hosting jobs advertised through the Jobcentre Plus Universal Jobmatch service, or Jobcentre online in Northern Ireland (in some cases this will be mandatory – see paragraph 300); or
- b) an online version of a national newspaper that would meet the requirements set out in paragraph 311; or
- c) an online version of a professional journal that would meet the requirements set out in paragraph 312; or

d) the website of a prominent or professional recruitment organisation.

321. If you are a multi-national/global operation, or if you have over 250 permanent employees in the UK, you can advertise the job on your own website.

322. If you choose to advertise the job online, the hosting website must not charge a subscription or any other fee to look at their job advertisements or to apply for jobs via those advertisements.

After the resident labour market test has been conducted – assigning a CoS

323. When you assign a CoS, you are confirming that:

- a) you have conducted a resident labour market test as set out in this guidance and have been unable to identify a suitable settled worker to fill the post; or
- b) a resident labour market test is not required (see paragraphs 286-296).

324. All CoS, restricted or unrestricted, must be assigned within six months of the date the vacancy was first advertised. Where the vacancy has been advertised in two stages, as described in paragraph 297, the CoS must be assigned within six months of the date the first of the two advertisements first appeared. The only exceptions to this six month limit are:

- a) where a migrant has been recruited via a milkround, a CoS must be assigned within 48 months of the milkround taking place.
- b) where the job falls within one of the PhD level SOC codes listed in paragraph 251, a CoS must be assigned within 12 months of the start of the recruitment process.
- c) where the migrant has been recruited to a pupillage position for trainee barristers, a CoS must be assigned within 24 months of the pupillage position first being advertised.
- d) where the job advertised is for a rank and file (tutti) orchestral musician, the CoS must be assigned within 24 months of the date the job was first advertised.

This ensures that the results of the advertising reflect the current availability of the skills you require.

325. When you assign a CoS you must:

- a) give full details of the resident labour market test that you have conducted, including:
 - i. the dates the job was advertised;
 - ii. where the job was advertised; and
 - iii. any relevant reference numbers including the Universal Jobmatch, Job ID number, or in Northern Ireland the Jobcentre Online vacancy reference number, as detailed in the SMS guidance:

www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance; or

- b) state why the resident labour market test is not required where applicable.

TRANSITIONAL ARRANGEMENTS FOR JOBS ADVERTISED BEFORE 6 APRIL 2013

326. Prior to 6 April 2013, the resident labour market test only required jobs to be advertised using one method from those listed in paragraphs 305-322 plus advertising online through Jobcentres where that was a mandatory requirement. If you have:

- a) already completed a resident labour market test under the rules in place before 6 April 2013; or
- b) currently have job adverts running that were placed before 6 April 2013,

you do not have to do any further advertising.

327. Any CoS you assign as a result of recruitment exercises conducted or job advertisements placed before 6 April 2013 will be considered under the resident labour market test rules in place before 6 April 2013. For example if you first advertised a PhD level job in February 2013 in a professional journal for 28 days and you now wish to appoint a Tier 2 migrant to the position, you do not have to do any further advertising.

TIER 2 (INTRA-COMPANY TRANSFERS (ICT))

328. Intra-company transfers (ICTs) are for migrants who have been working for multinational organisations and who are being transferred by an overseas employer to a related UK entity. There are 4 sub-categories within this route - Short Term staff, Long Term staff, Graduate Trainee and Skills Transfer.

329. Please note that in this section where we refer to 'employees' who may be 'working for' you, in the context of the ICT arrangements, we mean that to also include partners where you are, for example, a Limited Liability Partnership.

330. This route cannot be used to transfer a migrant who is employed by an organisation which is not linked by common ownership or control, but who has been contracted by their own employer to work for one of the overseas linked entities. For example, Company A overseas and Company B in the UK are linked by common ownership or control. The migrant is employed by company C overseas, which is not linked by common ownership or control to Company A or Company B, but they have been contracted by Company C to work at Company A. This migrant cannot move to Company B via Tier 2 (ICT).

331. To sponsor migrants under any of the ICT sub-categories, you must show that you have a direct link by common ownership or control with the overseas entities from which you intend to bring migrants to the UK. Common ownership or control may be shown if:

- a) one entity controls the composition of the other entity's board; or
- b) one entity is in a position to cast, or control the casting of, more than half the maximum number of votes that might be cast at a general meeting of the other entity; or
- c) one entity holds more than half the issued share capital of the other entity (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- d) both entities have a common parent entity that itself or through other entities meets one of the requirements of a) to c) above in relation to both entities that are the subject of the intra-company transfer; or
- e) one entity is related to the other entity as both entities are party to a joint venture agreement; or
- f) one entity is related to the other entity in that one entity is party to a joint venture agreement and the other entity is the entity formed by that joint venture agreement; or
- g) one entity is related to the other entity by agreement that would constitute a joint venture agreement other than for the fact that joint venture agreements are not permitted in the country of operation or one of the entities is not permitted to enter into joint ventures in the country of operation; or
- h) one entity is related to the other entity in that one entity is party to an agreement that would constitute a joint venture agreement other than for the fact that joint venture agreements are not permitted in the country of operation or that entity is not permitted to enter into joint ventures in the country of operation and the other entity is the entity formed by that agreement; or
- i) where both entities are either accountancy or law firms, one entity is related to the other entity by agreement which allows both entities to use a trademark which is registered or

established under the laws of the UK and the jurisdiction of the other entity's country of operation; or

- j) where both entities are either accountancy or law firms, one entity is related to the other entity by agreement which allows both entities to operate under the same name in the UK and in the jurisdiction of the other entity's country of operation.
- k) in the case of unincorporated associations, we may also consider the receiving entity to be a linked company if it is a registered company and its Articles of Association with the sending entity indicate a relationship of control (for example, one Member has the power to appoint the other's trustees).

332. Where the link between the two entities between which the transfer will take place is that an individual owns shares in each entity, that individual must have a majority shareholding in each entity.

333. When you apply for a licence under Tier 2 (ICT) you must provide the supporting documents listed in Appendix A to confirm the link between you and the overseas entity.

334. Because of the specific nature of these transfers, we do not require you to carry out a resident labour market test. However, there are requirements unique to all four sub-categories which must be met and migrants in all four sub-categories must be paid at least the minimum salary permitted for the sub-category under which they will apply for leave.

335. Under all of the ICT sub-categories, the job the migrant will do must meet the rules on appropriate salary rates and skill level as set out in paragraphs 193 - 195 and 198.

LONG TERM AND SHORT TERM STAFF

336. These two sub-categories are for established employees to be transferred to the UK to fill a post which cannot be filled by a settled worker. Migrants in these sub-categories must have been working for your organisation for at least 12 months immediately prior to their transfer, either:

- a) outside of the UK;
- b) inside the UK, as long as they had permission to work for you as a Tier 2 (ICT) Long Term staff or Short Term staff migrant;
- c) inside the UK, as long as they had permission to work for you as a Tier 2 (ICT) migrant in the Established Staff category under the Rules in place before 6 April 2011;
- d) inside the UK as a Tier 2 (ICT) migrant under the rules in place before 6 April 2010;
- e) inside the UK as an ICT work permit holder;
- f) inside the UK as a Representative of an Overseas Business; or
- g) any combination of the above.

The Long Term staff category can also be used where a migrant is already in the UK under the Rules in place before 6 April 2011 and they need to extend their stay.

337. The only exception to this rule is where the migrant has been:

- a) absent due to a period of maternity, paternity or adoption leave; or
- b) absent due to a period of long-term sick leave that lasted for one month or longer; or
- c) in the UK under the Graduate Trainee or Skills Transfer sub-categories.

338. If any of these are the case, and the migrant has been employed by you as described for at least 12 months out of the last 24 months, then they can still be sponsored as an intra-

company transferee provided they meet all the other requirements for being granted leave. An example might be where a migrant has worked for six months, then taken 12 months maternity leave, then worked for another six months.

LONG TERM STAFF

339. This sub-category must be used if you need to bring an existing employee to the UK and sponsor them under Tier 2 (ICT) for a period of more than 12 calendar months, up to a maximum 60 calendar months (or longer if the migrant is a high earner). However, this route can also be used for periods of less than 12 months and it is up to you and the migrant whether to use this sub-category or the Short Term staff sub-category for periods of less than 12 months.
340. A Tier 2 migrant can have leave granted for a maximum of 60 calendar months under this category. The initial grant of leave will be for any period up to 36 calendar months with the ability to extend up to a maximum of 60 calendar months if necessary.
341. This route must also be used for any migrant who needs to extend their stay in the UK and their previous leave was granted in the Established Staff sub-category, under the Rules in place before 6 April 2011, or as an ICT Work Permit holder. Any migrant applying under the Long Term sub-category in these circumstances will not have to meet the £40,600 minimum salary level, or be working at NQF level 6 (or the equivalent in Scotland) but they must continue to work at or above NQF level 3 (or the equivalent in Scotland) and they will not be limited to a maximum of 60 calendar months.
342. Any previous leave granted under the rules in place on 6 April 2011 in any other ICT sub-category will not count towards the maximum allowed in total. For example if the migrant spent 12 calendar months in the Short Term staff sub-category then left the UK and applied again under the Long Term staff sub-category, they would still be allowed a maximum of 60 calendar months under the Long Term sub-category.
343. Where a migrant leaves the UK after a period of Tier 2 leave granted under the Long Term staff sub-category but you want them to return to the UK at some point in the future, they may be affected by the Tier 2 cooling-off period. More information about the cooling-off period is in paragraphs 552-558.

SHORT TERM STAFF

344. This sub-category should be used if you need to bring existing employees to the UK and sponsor them under the Tier 2 (ICT) for a maximum of 12 calendar months.
345. A Tier 2 migrant can have leave granted for a maximum of 12 calendar months under this sub-category. This means that if the initial grant of leave is for less than that, they can extend it up to a maximum of 12 calendar months if necessary.
346. Where a migrant leaves the UK after a period of Tier 2 leave granted under the Short Term staff sub-category but you want them to return to the UK at some point in the future, they may be affected by the Tier 2 cooling-off period if they wish to return under any Tier 2 category other than ICT – Long Term staff. More information about the cooling-off period is in paragraphs 552-558.

GRADUATE TRAINEE

347. This sub-category allows multi-national organisations to transfer recent graduate recruits to a UK branch of their organisation for the purpose of training. (This route must not be used to fill long-term posts.) Migrants in this sub-category must be coming to the UK as part of a structured graduate training programme with clearly defined progression towards a managerial or specialist role within the organisation. You must not use this route to transfer all of your graduate recruits; it is only for those on accelerated promotion schemes.
348. The migrant must have been employed outside of the UK by you for a minimum of three months immediately prior to coming to the UK. Please note that time spent in the UK under the Skills Transfer sub-category does not count towards the three month qualifying period for the Graduate Trainee sub-category.
349. As the criteria for this scheme are specifically targeted at the very best graduate recruits, sponsors are limited to transferring no more than five migrants per financial year under this sub-category. If you transfer more than five migrants under this sub-category we will take action against you.
350. Where a migrant leaves the UK after a period of Tier 2 leave under the Graduate Trainee sub-category but you want them to return to the UK at some point in the future, they may be affected by the Tier 2 cooling-off period if they wish to return under any Tier 2 category other than ICT – Long Term staff. More information about the cooling-off period is in paragraphs 552-558.

SKILLS TRANSFER

351. This sub-category allows migrants employed overseas to transfer to a UK branch of a multi-national organisation to acquire the skills and knowledge needed to perform in their role overseas, or to impart their specialist skills to the UK workforce. Migrants are not required to have been employed for a minimum period to qualify for this sub-category.
352. The sole purpose of the transfer must be to acquire/impart skills and knowledge, and it should be incidental to the transferee's employment overseas. The transferee's role must be additional to your staffing requirements in the UK, meaning that if it were not for the need for the skills transfer, the role in the UK would not exist.
353. This sub-category must not be used to fill UK vacancies or to displace resident workers by, for example, filling positions in a UK-based project or by rotating the admission of skills transferees to effectively fill long-term positions in the UK.
354. On-the-job training and work for the purposes of skills transfer is allowed as long as the work undertaken is in line with the skills transfer. It would not be acceptable, for example, for a Skills Transfer migrant to come to the UK to learn about your finance systems but then to undertake work in another area of your business whilst in the UK.
355. Acceptable examples of Skills Transfers include:
- a) You are engaged to up-skill a client and need to bring a migrant worker in to facilitate this because the skills are not available in the UK; or
 - b) a migrant worker is brought in to acquire the skills to allow them to fulfil a project or other obligations outside the UK when they return overseas.

356. Where a migrant leaves the UK after a period of Tier 2 leave under the Skills Transfer sub-category but you want them to return to the UK at some point in the future, they may be affected by the Tier 2 cooling-off period if they wish to return under any Tier 2 category other than ICT – Long Term staff. More information about the cooling-off period is in paragraphs 552-558.

EVIDENCE FOR MIGRANTS' APPLICATIONS FOR LEAVE

357. Migrants applying with a CoS assigned under the Long Term staff, Short Term staff and Graduate Trainee sub-categories may have to provide evidence that they have been working for you for the required period, to support their application. The evidence they are asked to provide may include payslips, bank or building society statements or building society pass books. You may have to certify some of that evidence.

SALARY AND ALLOWANCES

358. Migrants in all ICT sub-categories must be paid at the appropriate rate. (See paragraph 198.) Salary may be paid in the UK or abroad. Where the migrant will be paid abroad in a currency other than pounds sterling, the salary amount entered on the CoS will be based on the exchange rate for the relevant currency on the day the CoS is assigned, taken from the rates published on www.oanda.com We take account of:

- a) Basic pay excluding overtime; and
- b) Allowances and guaranteed bonuses. Allowances can include daily payments to cover additional costs of living whilst in the UK but cannot include
 - i. benefits such as overtime, bonus or incentive pay which is not guaranteed,
 - ii. employer pension contributions;
 - iii. allowances to cover business expenses including travel between the source country and the UK;
 - iv. the value of any shares which the migrant receives when offered a job under an employee shareholder employment contract.
- c) In the case of allowances made available solely for the purpose of accommodation, only allowances up to 30% of the total gross salary package is taken into account for the purposes of awarding points and assessing whether the salary passes the appropriate rate test (but see paragraph 360 below). This is whether such allowances are made available in cash or in kind. This means the migrants salary and other (non-accommodation) allowances must be at least 70% of the maximum package that we will take into account. This applies only to applications supported by a CoS assigned under the Long Term staff sub-category.

359. The following sets out two examples of how we will assess a salary and allowances package:

- a) Example 1 – CoS assigned under the Long Term staff category:
accommodation allowances: £14,000
salary and other (non-accommodation) allowances: £42,000

The total salary package offered is:

$$£14,000 + £42,000 = £56,000$$

We calculate the maximum package we can take into account by dividing the salary and

other (non-accommodation) allowances by 70%:

$$£42,000 \div 70\% = £60,000$$

In this example, the total offered is less than the maximum package we can take into account. We will therefore take all of the package into account.

- b) Example 2 – CoS assigned under the Long Term staff category:
accommodation allowances: £21,000
salary and other (non-accommodation) allowances: £24,500

The total salary package offered is:

$$£21,000 + £24,500 = £45,500$$

We calculate the maximum package we can take into account by dividing the salary and other (non-accommodation) allowances by 70%:

$$£24,500 \div 70\% = £35,000$$

In this example, the total package offered is more than the maximum package we can take into account. We will therefore only take into account £35,000 which is below the minimum acceptable rate for the Long Term staff category so the application will be refused.

360. Due to the higher costs of short-term accommodation, where an application is supported by a CoS assigned under the Short Term staff, Graduate Trainee or Skills Transfer sub-categories, we take account of accommodation allowances up to 40% of the gross salary for short-term transfers. This means the migrants salary and other (non-accommodation) allowances must be at least 60% of the maximum package that we will take into account. This applies where either:

- a) the migrant is applying from outside the UK with a CoS that has been assigned for 12 calendar months or less; or
- b) the migrant is applying for an extension that will take their total stay in the UK to 12 calendar months or less.

361. An example of how we will assess a salary and allowances package in these circumstances is as follows:

accommodation allowances: £10,000
salary and other (non-accommodation) allowances: £18,000

The total salary package offered is:

$$£10,000 + £18,000 = £28,000$$

We calculate the maximum package we can take into account by dividing the salary and other (non-accommodation) allowances by 60% instead of 70%:

$$£18,000 \div 60\% = £30,000$$

In this example, the total package offered is less than the maximum package we can take into account. We will therefore take all of the package into account.

TIER 2 (MINISTER OF RELIGION)

362. This category is for those coming to fill vacancies as religious workers within a bona fide religious organisation. The only exception applies to the Ministry of Defence who can apply to be a sponsor under this category provided they will be employing religious personnel. To be able to assign a CoS to a migrant you must hold a licence which includes Tier 2 (Minister of Religion).

363. The Tier 2 (Minister of Religion) category includes anyone undertaking preaching and pastoral work. Pastoral duties include:

- a) leading worship regularly and on special occasions;
- b) providing religious education for children and adults by preaching or teaching;
- c) officiating at marriages, funerals and other special services;
- d) offering counselling and welfare support to members of the congregation;
- e) recruiting, training and co-ordinating the work of any local volunteers and lay preachers.

364. Migrants sponsored under this category may undertake a wider range of other duties in addition to the above.

365. This category is also for migrants coming to the UK as missionaries or as members of religious orders, for example a monastic community of monks or nuns, or a similar religious community involving a permanent commitment.

366. The duties of a missionary need not be restricted to preaching and teaching and may include the organisation of missionary activity, but should not be essentially administrative or clerical in nature, unless filling a senior post. A senior post may be one which does not involve the migrant doing fieldwork themselves but where they will be supervising staff and/or co-ordinating the organisation of missionary work, or will be in charge of a particular activity such as accounts, finance, personnel management or IT. Working full-time as a teacher in a school run by a church or missionary organisation does not count as missionary work, but translating religious texts does count as missionary work and is not classed as clerical work.

367. The work of a member of a religious order must be within the order itself, or outside work directed by the order. Teachers working in schools not maintained by their order must be sponsored under Tier 2 (General). Novices whose training consists of taking part in the daily community life of their order can be sponsored under this category, but anyone studying for a qualification, or undertaking a formal full-time course of study or training in an academic institution not maintained by the order should be sponsored under the Tier 4 student category. People who are not members of a religious order, but who are working or studying within such a community, are not eligible to apply under this category and must be sponsored under the relevant work or study category, for example Tier 2 (General) or Tier 4 (General Student), if they can meet all of the relevant requirements.

368. If you want to apply for a licence under this category you must be a bona fide religious organisation, which:

- a) is a registered, excepted or exempt UK charity according to the relevant charity legislation in force in your part of the UK, or is an ecclesiastical corporation (either corporation sole or body corporate) established for charitable purposes. In Northern Ireland you must have obtained charitable status for tax purposes from HM Revenue and Customs. (If you are a charity which is not registered according to the relevant charity legislation you must explain the reason for non-registration in your application); and
- b) is the structure for a faith-based community with a common system of belief and spiritual goals, codes of behaviour and religious practice, which exists to support and/or propagate those common beliefs and practices and where such beliefs:
 - i. include any religious belief or similar philosophical belief in something transcendental,

- metaphysical or ultimate;
- II. exclude any philosophical or political belief concerned with man, unless that belief is similar to religious belief; and
 - c) does not exclude from your community on the basis of gender, nationality or ethnicity; and
 - d) receives financial and material support for your core religious ministry from your congregation or community on a voluntary basis only, without promise or coercion; and
 - e) does not breach, or encourage others to breach any UK legislation; and
 - f) does not operate against the public interest, or in a way that has a detrimental effect on personal or family life as these are commonly understood in the UK.

RESIDENT LABOUR MARKET TEST FOR TIER 2 (MINISTER OF RELIGION) AND TIER 5 (TEMPORARY WORKERS) - RELIGIOUS WORKERS

369. When you are recruiting a person who will be sponsored under Tier 2 Minister of Religion or Tier 5 (Religious Workers) you must conduct a Resident Labour Market Test. Although not all religious occupations are 'jobs' in the traditional sense, this does not mean that the test does not apply and any migrant that you sponsor must not be displacing or denying an opportunity to a suitable settled worker.

370. You must only recruit migrants who will carry out skilled religious duties. Other roles should be filled under another appropriate route. For example, schools that are not maintained by a religious organisation who wish to sponsor a teacher must do so under Tier 2 (General). You should always consider whether the role you are filling is appropriate to the religious tiers as some roles may be more appropriate to Tier 5 (Temporary Workers) – Charity Workers (see paragraphs 459-462). An example might be where you want to sponsor a migrant who:

- a) will do mainly non-pastoral duties such as the production of media products, or domestic work; and
- b) will not receive any payments from you.

371. Any role filled under the Tier 2 and Tier 5 religious categories must not be mainly an administrative or clerical role unless it is a senior post within the organisation, for example a financial controller.

WHEN A RESIDENT LABOUR MARKET TEST IS NOT REQUIRED

372. The only times that a resident labour market test does not have to be conducted are where:

- a) the role you want to fill is supernumerary. This means that the role is over and above your normal requirements and if the person filling the role was not there, it would not be filled by anyone else. One example might be where the migrant will offer pastoral support to members of a church community as part of their own development, but where the work that they do would stop if they were not there and you would not need to replace them if they left; or
- b) the migrant will mainly live within and be a member of a religious order, for example an order of nuns or monks. (A religious order is defined for our purposes as a lineage of communities or of people who live in some way set apart from society in accordance with their specific religious devotion, and which must be part of a bona fide religious organisation, as set out at paragraph 368).

373. A position that is not supernumerary is one that is vital to your requirements and you could not function properly without having someone in that role. Examples might include, but are not limited to:

- a) a pastor or clergyman responsible for leading regular worship or for the pastoral needs of their own, or the wider community. If that person left, but your duties to that community still existed, so you had to find someone to permanently replace them, then the role is not supernumerary;
- b) a teacher in a school or college maintained by a religious organisation. If that person left, but any regular classes that they used to teach had to continue because their students were working towards a formal qualification, for example GCSEs, then the role is not supernumerary;

374. It is your responsibility to justify where you believe that a role is supernumerary. When you assign a CoS for a supernumerary role, you must fully explain in the 'details of labour market test' box or by adding a sponsor note, exactly why the role is supernumerary. Simply stating 'the role is supernumerary' is not enough, you must explain why. Similarly if the migrant will be mainly living within and being a member of a religious order, you must explain this to justify why a resident labour market test is not applicable. If there is no explanation or we are not sure about the explanation you have given, we may ask you for more information but it is also possible that the migrant's application for leave will be refused.

ADVERTISING THE ROLE TO MEET THE RESIDENT LABOUR MARKET TEST REQUIREMENTS

375. Where a role is not supernumerary or does not involve living within and being a member of a religious order, a national recruitment search must always be undertaken. We call this a resident labour market test. You must conduct a resident labour market test to make sure that you are not denying or displacing a settled worker by filling the role with a migrant.

376. The role must be advertised for a minimum of 28 days in a national form of media appropriate to your religion or denomination, for example a magazine, or newspaper such as the Church Times, The Catholic Herald, The Jewish Chronicle etc. Any publication that you advertise in must be available throughout the whole of the UK, or throughout whichever part of the UK the role is situated. For example if the role is in Glasgow, the publication you have used to advertise must be available throughout Scotland. A form of media which is only available in a local area is not acceptable, for example a local or county-wide evening newspaper.

377. If there is no suitable national form of media appropriate to your religion or denomination you can advertise online either through the Jobcentre Plus Universal Jobmatch service, (or in Northern Ireland, JobCentre Online), or in the employment section of a national newspaper. A national newspaper is one that is published at least once a week and is marketed throughout the UK or throughout the devolved nation in which the job is located. For example, The Scotsman and The Herald are acceptable as suitable national newspapers for jobs which are located in Scotland, The Western Mail for posts in Wales and the Belfast Telegraph for posts in Northern Ireland.

378. You can also advertise on your own website if that is how you usually reach out to your community on a national scale, and is where you normally advertise vacant positions. If you do advertise on your own website, the pages containing the advertisement must be free to view. If

your website requires that people using it pay a subscription fee or make a donation then this does not meet the requirements of the resident labour market test and you must also advertise in some other form of national media as described in this section.

379. Where the role is not advertised, you can still meet the requirements of the resident labour market test if you can demonstrate that your own national records of all available individuals show that no suitable settled worker is available to fill the role.

380. After you have conducted a resident labour market test, you must assign a CoS within six months of the date the role was first advertised. When you assign a CoS to a migrant, you must fully explain how you have met the resident labour market test in the 'details of labour market test' box or by adding a sponsor note. You must include the following:

- a) where the role was advertised including any reference numbers; and
- b) the period it was advertised for; or
- c) details of any national records you hold and an explanation of why there is no suitable settled worker available to fill the role.

If any of these details are missing or unclear, we may ask you for more information but it is possible that the migrant's application for leave will be refused.

PAYMENTS YOU MAKE TO SPONSORED MIGRANTS UNDER TIER 2 (MINISTER OF RELIGION) AND TIER 5 (TEMPORARY WORKERS) - RELIGIOUS WORKERS.

381. All migrants that you sponsor under Tier 2 (Minister of Religion) or Tier 5 (Temporary Workers) – religious workers, must receive pay and conditions at least equal to those given to settled workers in the same role. This may be a traditional salary, stipend, customary offering, board and lodgings or a combination of these, but it must comply with or be exempt from the National Minimum Wage regulations.

382. You must also comply with the National Minimum Wage (NMW) regulations where they apply. (You are not allowed to withhold any payments from a migrant if they are entitled to the NMW, just because they are able to support themselves from their own personal funds or donations.) If the NMW regulations do not apply you must explain how and why they do not apply on the CoS either in the 'details of labour market test' box, or by adding a 'sponsor note'.

383. When you assign a CoS under Tier 2 (Minister of Religion) you are confirming:

- a) that the migrant is qualified to do the job in question – for example, is an ordained minister of religion, where ordination is prescribed by a religious faith as the sole means of entering the ministry; or missionaries who have been trained as missionaries, or have worked as missionaries and are being sent to the UK by overseas organisations to work full-time as a missionary;
- b) that the migrant intends to be based in the UK for the duration of their permission to stay; and
 - I. will comply with the conditions of their permission to stay and where they have been granted leave under Tier 2, will leave the UK when it expires; and
 - II. will not be displacing or denying an employment opportunity to a suitably qualified settled worker.
- c) that you have conducted a resident labour market test for the role, where this is required; or
- d) where the role is supernumerary, that the migrant will be additional to your normal staffing requirements and they will not be filling a vacant position that could otherwise be

- filled by a settled worker; and
- e) that you accept the duties of sponsorship in respect of the sponsored migrant; and
 - f) that the migrant will be supported through funds and/or accommodation that are sufficient for them to maintain themselves throughout the duration of the period stated on their CoS, and which are equal to, or exceed those you would normally give to a settled worker in the same role.

384. Migrants must have a valid CoS assigned by you, to be able to apply for leave under Tier 2 (Minister of Religion) or worker authorisation (Croatian nationals only). They must also meet all of the requirements for maintenance (unless they are a Croatian national) and competence in English as set out in the guidance for migrants which is available on our website using the link provided at the beginning of this guidance.

385. The gross salary figure quoted on the CoS must be represent the remuneration actually paid to the worker, gross of any tax actually paid in respect of that remuneration (whether paid in the United Kingdom or overseas) and must include any permissible allowances and guaranteed bonuses. The total of all allowances and guaranteed bonuses paid, and included in that figure, should then be entered in the 'gross allowances' box on the CoS, then broken down and detailed in the free text box that immediately follows.

386. For each migrant sponsored, you must keep the documents specified in Appendix D.

CODES OF PRACTICE – CHANGES TO STANDARD OCCUPATIONAL CLASSIFICATION (SOC) CODES

387. If you have previously used the codes of practice you may know that we made some changes on 6 April 2013, including an update of all of the SOC 2000 codes to reflect the Office for National Statistics' (ONS) more recent set of data called 'SOC 2010'.

SOC CODES

388. In the majority of cases, the SOC code you have used before 6 April 2013 will have been SOC 2444 – Clergy, and this has not changed. However, if you have used other SOC codes in the past and want to use them again, it is possible that they may have changed and we strongly recommend that before you assign a CoS, you check the SOC Conversion Table in the current codes of practice. This table allows you to easily look up any SOC code that existed under SOC 2000 that you may have used before, and read across to find the SOC 2010 equivalent.

389. It is important that you choose the SOC code which contains the job description that best matches the role you want to offer a migrant even if the job title you use is different to the one in the codes of practice. Although SOC 2444 has not changed we still strongly recommend that you check any other SOC codes before you use them again because if you use the wrong one when assigning a CoS, this could lead to the migrant's application being delayed or refused.

TIER 2 (SPORTSPERSON)

390. This category is for elite sports people and coaches who are internationally established at the highest level, whose employment will make a significant contribution to the development of their sport at the highest level in the UK, and who intend to base themselves in the UK.

391. Before you apply for a sponsor licence, you must make sure that you have an

endorsement from the governing body for your sport that is recognised by us. A governing body is one that is recognised by one of the home country sports councils (for example Sport England). The current list of approved governing bodies is in the Appendix M of the Immigration Rules which you can find on our website using the link at the beginning of this guidance.

392. In giving its approval, the governing body confirms that you are a genuine club (or equivalent), and you have a legitimate requirement to bring migrants to the UK as sportspeople.
393. If your sport does not have a sports council recognised governing body, you should contact us by email at PBSsportpolicy@ukba.gsi.gov.uk. We will then consult with Department for Culture, Media and Sport, the Central Council of Physical Recreation and/or other sports councils to identify whether there is an appropriate body who could act as our recognised governing body. We recommend that you allow plenty of time for this process to be completed as it is only the first stage in the process of getting to the point where you can sponsor a migrant.
394. Once an appropriate body has been identified and we have agreed that they can endorse your application, you can make an application for a sponsor licence. You must send in all of the documents listed in Appendix A that are relevant to you including your governing body endorsement which is referred to as a 'sporting body endorsement' in the online sponsor licence application form.
395. If we have had to approve a new governing body for your sport and we then grant your licence application, you may not be able to sponsor migrants straight away. This is because the new governing body must be added to Appendix M of the Immigration Rules before we can grant leave to any migrants in connection with that sport, under Tier 2 (Sport) or Tier 5 (Creative and Sporting). The Immigration Rules are updated in April and October each year so it is important that you bear this in mind before agreeing to sponsor any migrants.
396. We will give you an indication of the date that your governing body will be added to the Immigration Rules but it is important to remember that although you can start assigning CoS straight away:
- a) once you have assigned a CoS, it will only be valid for three months; and
 - b) if a migrant applies for leave using that CoS before your governing body has been added to the immigration Rules, their application will be refused.

Example 1

- c) We grant your sponsor licence in December and allocate some CoS to your SMS account. Your governing body will be added to the Immigration Rules on 6th April.
- d) You assign a CoS to a migrant on 2nd January.
- e) The migrant cannot apply for leave until 6th April so the CoS you assigned on 2nd January will expire before they can apply.

Example 2

- f) We grant you sponsor licence in December and allocate some CoS to your SMS account. Your governing body will be added to the Immigration Rules effective from 6th April.
- g) You assign a CoS to a migrant on 2nd January and they apply for leave under Tier 5 (GAE) on 1st March.
- h) The migrant's application will be refused because on 1st March your governing body was not in the Immigration Rules.

397. When you complete the online application form for a sponsor licence under Tier 2 (Sportsperson), you can only select one sport from the list provided in the section entitled 'sporting body endorsement'. If you want to sponsor migrants under more than one sport, you must select one from the list provided and then when giving your reasons for the number of CoS required, you can list the other sports that you want to be covered for on your licence. You must provide a governing body endorsement for each sport.

398. If a sport does not appear on the list on the online sponsor application, please contact us by telephone on 0300 123 4699 or by email at Businesshelpdesk@homeoffice.gsi.gov.uk

399. When you assign a CoS under this category, you guarantee that:

- a) the migrant intends to be based in the UK for the duration of their permission to stay; and
 - I. has been approved by the governing body for the sport; and
 - II. will comply with the conditions of their permission to stay and, where they have been granted leave under Tier 2, will leave the UK when it expires; and
- b) you accept the duties of sponsorship for the migrant.

400. If you fail to meet any of those duties, we will take action against you.

401. The gross salary figure quoted on the CoS must represent the remuneration you will actually pay to the worker, gross of any tax paid in respect of that remuneration (whether paid in the United Kingdom or overseas) and must include any permissible allowances and guaranteed bonuses. The total of all allowances and guaranteed bonuses paid, and included in that figure, should then be entered in the 'gross allowances' box on the CoS, then broken down and detailed in the free text box that immediately follows.

402. All migrants in this category must have an endorsement from the appropriate governing body for their sport. This endorsement confirms that the sports person meets the governing body endorsement requirements as agreed between us and them and also confirms that:

- a) the migrant is internationally established at the highest level; and
- b) the migrant will make a significant contribution to the development of their sport at the highest level in the UK; and
- c) it is appropriate to fill the post with a migrant who is not settled in UK.

403. When you assign a CoS to a migrant under Tier 2 (Sportsperson), you must enter the migrant's governing body endorsement unique reference number in the appropriate field. A CoS can only be assigned for the period covered by the governing body endorsement. In some circumstances, the governing body may only give the migrant an endorsement for 12 months at a time, regardless of the length of the migrant's contract. If the migrant will continue to be employed beyond the period covered by the governing body endorsement, you must get a new endorsement for a further period and you must assign a new CoS.

404. For each migrant, you must keep the documents specified in Appendix D.

405. Further details of the criteria migrants must meet are in the relevant guidance for migrants, which is available to read on our website using the link at the beginning of this guidance.

CODES OF PRACTICE – CHANGES TO STANDARD OCCUPATIONAL CLASSIFICATION (SOC) CODES

406. If you have previously used the codes of practice you may know that we made some changes on 6 April 2013 including an update of all SOC 2000 codes to reflect the Office for National Statistics' (ONS) more recent set of data called 'SOC 2010'.

SOC CODES

407. In the majority of cases, the SOC codes you have used before will have been:

- a) SOC 3441 – Sports players; and
- b) SOC 3442 - Sports coaches, instructors and officials.

and neither of these have changed. However, if you have used other SOC codes in the past and want to use them again, it is possible that they may have changed and we strongly recommend that before you assign a CoS, you check the SOC Conversion Table in the current codes of practice. This table allows you to easily look up any SOC code that existed under SOC 2000 that you may have used before, and read across to find the SOC 2010 equivalent.

408. Although SOC 3441 and SOC 3442 have not changed we still strongly recommend that you check any other SOC codes before you use them again because if you use the wrong one when assigning a CoS this could lead to the migrant's application being delayed or refused.

Football Loans

409. When a player is moving from your club to another club on a temporary transfer of registration (loan), you must notify us of the migrant's change of location via the SMS.

410. You will continue to retain responsibility for the player and must make arrangements with the loan club so that you can continue to meet your duties. The temporary club does not need to make an application for an individual governing body endorsement, nor does it need to have a sponsor licence. When the player returns from loan, you must update the SMS again with the migrant's updated location details.

411. If the player is permanently transferred to another club, then the original club must notify us of this using their SMS account and the new club must make a fresh application for an individual governing body endorsement on behalf of the player. The new club must be a licensed sponsor and the player's application for leave, or worker authorisation (Croatian nationals only, where applicable) must have been granted before the player can play as a permanent employee of the new club.

412. Players on loan from an overseas club to a UK club must meet all the requirements of Tier 2 or Tier 5 and therefore must have an individual governing body endorsement.

TIER 5 – (TEMPORARY WORKERS) AND YOUTH MOBILITY SCHEME

413. Tier 5 comprises the youth mobility scheme and temporary worker categories, which allow people to travel to the UK for mainly non-economic reasons to satisfy cultural, charitable, religious or international aims.

414. If you only need a temporary service from a migrant who does not meet the Tier 2 conditions you may be able to register under Tier 5.

TIER 5 - YOUTH MOBILITY SCHEME

415. The youth mobility scheme is a cultural exchange scheme which aims to promote the UK overseas and to encourage further trade and tourism. It allows young people, aged between 18 and 30, to travel to the UK for mainly non-economic reasons and offers young migrants from participating countries and territories, opportunities to work temporarily while experiencing life in the UK.

416. The sponsors under the youth mobility scheme are the national governments of the

participating countries and territories, not individual employers or other organisations.

417. Sponsored young people from participating countries and territories are allowed to come to the UK for up to two years, while young UK nationals enjoy similar opportunities in participating countries. These young people are free to do whatever work they like during their stay in the UK, except for setting up their own business, professional sport, or work as a doctor in training. They are also able to study, but this should not be the main purpose of their visit.

418. Further information on the scheme and the requirements migrants must meet to come to the UK under it, are in the Tier 5 Youth Mobility Guidance on our website at www.ukba.homeoffice.gov.uk/visas-immigration/working/tier5/youthmobilityscheme/

TIER 5 (TEMPORARY WORKERS)

419. The temporary worker category offers migrants a range of ways to come to the UK, to work in a wide variety of temporary roles.

420. We recognise that under Tier 5 the sponsor may not always be the employer - in certain circumstances, migrants may meet all of the Tier 5 criteria where there is no direct employer/employee relationship. Even though the direct employer/employee relationship may not exist, there must be a sponsor who is able and willing to take on all of the sponsorship duties. If you are taking on such a role, you will be fully responsible for all of the migrants that you sponsor, even if you are not their employer.

421. Some examples of situations where the sponsor is not the direct employer are as follows:

- a) We are aware of different arrangements in parts of the arts and entertainments sector where a migrant may be employed through an entity such as a Special Purpose Vehicle. In these circumstances we would expect the sponsor to be a producer, co-producer or general management company even though they do not directly employ the migrant.
- b) We recognise that where a musical group or theatre troupe (and their support entourage) is on tour here temporarily, they will not usually be employees of the sponsor.
- c) There will be occasions within the Government Authorised Exchange sub-category, where an overarching sponsor is required to administer schemes and cannot be the direct employer of any migrants it brings in through that scheme.

422. Where a migrant is not your direct employee, we will look especially closely at your arrangements, and monitor you to ensure that you are fulfilling all of your sponsor duties. We will take action against you as set out in this guidance if we find that you are not fulfilling all of your sponsorship duties.

423. When you assign a CoS to a migrant under any sub-category of Tier 5, the gross salary figure quoted on the CoS must represent the remuneration actually paid to the worker, gross of any tax actually paid in respect of that remuneration (whether paid in the United Kingdom or overseas) and must include any permissible allowances and guaranteed bonuses. The total of all allowances and guaranteed bonuses paid, and included in that figure, should then be entered in the 'gross allowances' box on the CoS, then broken down and detailed in the free text box that immediately follows.

Safeguarding Children

424. If you wish to employ persons below the age of 16 you must obtain a licence from the Local Education Authority (LEA) in the area where the person will work. Under Section 55 of the Borders, Citizenship and Immigration Act 2009, we must have regard to the need to safeguard children and to promote their welfare.

425. You must ensure that all children under the age of 18 working in the UK have suitable care arrangements in place for their travel, their reception on arrival in the UK and for their living arrangements while in the UK, as well as parental consent to these arrangements. If you fail to do this, we will immediately revoke your licence.

CODES OF PRACTICE – CHANGES TO STANDARD OCCUPATIONAL CLASSIFICATION (SOC) CODES

426. If you have previously used the codes of practice you may know that we made some changes on 6 April 2013, including an update of the SOC 2000 codes to reflect the Office for National Statistics' more recent set of data called 'SOC 2010'.

SOC CODES

427. Since 6 April 2013, it is possible that some of the SOC codes you have used before may have changed and we strongly recommend that before you assign a CoS with a SOC code you have used before 6 April 2013, you check the SOC Conversion Table in the current codes of practice. This table allows you to easily look up any SOC that existed under SOC 2000 that you may have used before, and read across to find the SOC 2010 equivalent.

428. It is important that you choose the SOC code which contains the job description that best matches the role you want to sponsor a migrant to fill even if the job title you use is different to the one in the codes of practice. Although many SOC codes have not changed we still strongly recommend that you check because if you use the wrong SOC code when assigning a CoS, this could lead to an application being delayed or refused.

TIER 5 (TEMPORARY WORKERS) – CREATIVE AND SPORTING

429. This category is for those who come to the UK to work or perform as sports people, entertainers or creative artists for the following periods of time;

- a) sports people – up to a maximum of 12 months;
- b) creative artists – up to an initial maximum period of 12 months, with the option to extend up to a maximum of 24 months in total.

430. Since 6 April 2012, there is an additional route for certain migrants in the creative sector who will be visiting the UK for one month or less, which allows them to undertake certain permitted paid engagements. If you are considering sponsoring a migrant in the creative sector who does not need to be in the UK for more than one month, you may wish to check whether this visitor route will better meet their needs.

431. More information on this route is available on our website at <http://www.ukba.homeoffice.gov.uk/visas-immigration/visiting/>

WHERE THE MIGRANT WILL BE EMPLOYED WITHIN THE CREATIVE SECTOR

432. To be eligible to apply for licence to sponsor creative workers and their entourage, you must be operating, or intend to operate, in the creative sector. Examples include, but are not limited to a national body, event organiser, producer, venue, agent or other similar organisation. Where applicable, you must commit to following the codes of practice and take into account the needs of the resident labour market in that field. The codes of

practice operate in three specific areas: dance, theatre, and film & television. These are available on our website at <http://www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/employingmigrants/codesofpractice/#header2>

433. When you assign a CoS in either the creative or sporting sector, you are guaranteeing that the migrant:
- is seeking entry to the UK to work or perform in the relevant sector;
 - is not intending to establish a business in the UK;
 - poses no threat to the resident labour market; and
 - will comply with the conditions of their permission to stay and, where they have been granted leave under Tier 5, will leave the UK when it expires.
434. You must keep all the appropriate documents specified in Appendix D.

RESIDENT LABOUR MARKET TEST FOR THE CREATIVE AND ENTERTAINMENT SECTOR

435. Before you assign a CoS under Tier 5 (Creative and Sporting), you must confirm that you have followed the relevant code of practice which sets out whether a resident labour market test must be conducted and how that must be done.
436. If there is no code of practice, you must be able to show that the migrant will not be displacing a settled worker. This could be through having advertised the post such that settled workers could apply, or simply by virtue of the migrant being who they are for example where they are a musician with international status, or they are a member of a unit company. (The Code of Practice for Performers in Theatre or Opera explains in detail what a unit company is and the principles set out in that document can still be applied to other sectors where there is no code of practice).
437. You must explain on any CoS you assign, how you have met the resident labour market test requirements. Examples of how to meet this requirement might be, but are not limited to:
- evidence of any recruitment activity such as advertisements you have placed;
 - written support from an appropriate industry body or sector labour market information which shows that the role being filled could not be filled by a settled worker;
 - evidence that the migrant is internationally famous in their field (this is different to being well-known only in one country);
 - evidence that the migrant is part of a unit company which exists in another country outside the European Economic Area (EEA) and has performed at least once in that country (examples of unit companies include theatre, opera or dance companies, orchestras and other musical groups, circus troupes or acts such as a troupe of acrobats);
 - evidence that the migrant has a certain attribute or appearance that is unlikely to be available in the EEA, for example a certain physical appearance, physical talent, linguistic or vocal skill;
 - evidence that the migrant is required for continuity. This means that the migrant has worked for a period of one month or more during the past year on the same production outside the EEA prior to the production coming to the UK. The 'same production' means one which is largely the same in terms of direction and design as the production outside the EEA..

438. When you assign a CoS, you must state how you have met the requirements of the relevant code of practice. If there is no code of practice you must explain on what basis the migrant will not be displacing a settled worker. For example a statement to the effect that the migrant is internationally famous, or evidence of any advertisements you have placed, or that

the migrant is a member of a unit company or is required for continuity. You can include this information either in the free text box where you normally state which, if any code of practice you have followed or, by returning to the CoS after you have assigned it to add a 'sponsor note'. If you are assigning a group CoS for a unit company, all you need to do is tick the box indicating that the group is established and has performed overseas.

ASSIGNING A COS UNDER TIER 5 IN THE CREATIVE AND ENTERTAINMENT SECTOR

439. Due to the nature of the creative sector, migrants are sometimes required to perform a number of engagements at various venues. If you will be the migrant's only sponsor whilst they are in the UK, and there is no more than a maximum of 14 calendar days between each of the migrant's engagements, you can assign a single CoS to cover the whole period. If the migrant will have more than one sponsor whilst they are in the UK, for example a number of venues, producers or promoters, then it is possible for each of those sponsors to assign a CoS to cover its own show. Where this is the case, none of the CoS can overlap.
440. Any CoS that you assign can include rehearsal periods where required. You must ensure that you only assign a CoS for the period required covering only the period of engagements the migrant has in the UK as described in paragraph 439. If we find on a compliance visit that you have assigned a CoS incorrectly, for example to falsely extend a migrant's stay in the UK, we will take action against you.
441. You can assign a group CoS where it is appropriate to do so. You may want to do this where the migrant you are sponsoring is part of a group. You can also assign a group CoS to include a migrant's entourage. Examples of when you might want to assign a group CoS are:
- a) for all the members of a unit company such as a ballet company or other dance group, circus troupe, orchestra or other group of musicians, or theatre group who are seeking to enter the UK for the purpose of fulfilling a contractual obligation to perform as a group in the UK.
 - b) for people whose work is directly related to the employment of an entertainer, cultural artist, sports person or a dramatic production. Any migrant who is part of an entourage must have proven technical or other specialist skills.
442. You must assign a CoS to each member of the group which confirms that they are a member of the named group and complete all of the relevant details, but you only have to pay one CoS fee which will cover the entire group.
443. Each group member's CoS must show their share of any group fee. If you are not the migrants' direct employer you must find out from the appropriate source, what share of the group fee each migrant will be paid. The only exception to this is where there is no code of practice. In such cases, you may enter a nominal rate of £0.01.

WHERE THE MIGRANT WILL BE EMPLOYED WITHIN THE SPORTING SECTOR

444. This sub-category is for:
- a) sportspeople (and their entourage where appropriate) who are internationally established at the highest level in their sport; and/or
 - b) their employment will make a significant contribution to the development and operation of that particular sport in the UK; and

c) coaches who are suitably qualified to fulfil the role in question.

445. When you apply for a licence under this category, you must send us the documents listed in Appendix A, including an endorsement from the governing body (referred to as the 'sporting body' on the online application) for your sport that is recognised by us. A governing body is one that is recognised by one of the home country sports councils (for example Sport England). For further information you should consult the list of approved governing bodies on our website at <http://www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/employingmigrants/sportsgoverningbodies>

446. To be eligible to apply for a licence under this category to sponsor sports people and their entourage, you must be a sporting body, sports club, events organiser or other organiser operating, or intending to operate in the sporting sector. If you are an agent you cannot be a sponsor for sports people under this category. You must submit the necessary documents as listed in Appendix A, including an endorsement from a governing body for the sport, recognised by us. A governing body is one that is recognised by one of the home country sports councils (for example Sport England). A list of the approved governing bodies is on our website <http://www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/employingmigrants/sportsgoverningbodies>

447. If you want to sponsor migrants for a sport where there is no governing body that we have recognised, you should contact your own governing body listed on the Sport and Recreation Alliance website at <http://www.sportandrecreation.org.uk/> or relevant home sport council's website. You should ask them to contact us at pbssportpolicy@ukba.gsi.gov.uk to apply for recognition.

448. When you complete the online application form for a sponsor licence under Tier 5 (Creative and Sporting), you can only select one sport from the list provided in the section entitled 'sporting body endorsement'. If you want to sponsor migrants under more than one sport, you must select one from the list provided and then when giving your reasons for the number of CoS required, you can list the other sports that you want to be covered for on your licence. You must provide a governing body endorsement for each sport.

449. It is important that you read paragraphs 395-396 of this guidance if you have been through the process of identifying a governing body that was not previously recognised by us and listed in Appendix M of the Immigration Rules. This is because you may not be able to start sponsoring migrants straight away, after your sponsor licence has been granted.

450. Before you can assign a CoS to a migrant under this category, you must have a governing body endorsement for them from the appropriate governing body for their sport. The endorsement confirms that as a player or coach:

- a) they are internationally established at the highest level; and/or
- b) they will make a significant contribution to the development of their sport in the UK.

451. When you assign a CoS to a sports person under Tier 5, you must enter their governing body endorsement unique reference number in the relevant box on the CoS.

452. A migrant who has already been granted leave under Tier 5 for a job as a footballer, may switch into Tier 2 (Sportsperson) provided they will still be employed as a footballer and they can meet the Tier 2 (Sportsperson) migrant requirements.

453. When you assign a CoS in either the creative or sporting sector, you are guaranteeing that the migrant:

- a) is seeking entry to the UK to work or perform in the relevant sector;
- b) is not intending to establish a business in the UK;
- c) poses no threat to the resident labour market; and
- d) will comply with the conditions of their permission to stay and, where they have been granted leave under Tier 5, will leave the UK when it expires.

MIGRANTS' LEAVE UNDER TIER 5 (TEMPORARY WORKERS) – CREATIVE AND SPORTING

454. All migrants who you wish to sponsor under Tier 5 must obtain entry clearance before coming to the UK. The only exceptions to this are for:

- a) non-visa nationals (see Appendix 1 of the Immigration Rules) in the Tier 5 creative and sporting category, who are seeking entry for less than 3 months; and
- b) Croatian nationals (who can move and reside freely in any EU member state).

455. If a Tier 5 migrant does not have entry clearance or has been granted leave to remain for six months or less, that Tier 5 leave will lapse if they leave the Common Travel Area. In these circumstances the migrant will not be able to re-enter the UK with that leave and will have to apply for fresh leave once you have assigned a new CoS. (The Common Travel Area is the UK, Republic of Ireland, the Isle of Man and the Channel Islands.)

456. For non-visa nationals who do not require prior entry clearance and who have been assigned a CoS for a period of less than three months for a job in the creative or sporting sector, there are arrangements in place at the UK border to enable these Tier 5 migrants to gain entry to the UK.

457. They must present their CoS number along with any necessary evidence for the points they are claiming. We recommend you ensure that when assigning a CoS, migrants in these circumstances are familiar with the arrangements and are aware that leave to enter may take a little longer to process due to the checks carried out by the Immigration Officer. You should also make sure that your sponsored migrants have your up-to-date contact details with them in case you need to be contacted. You can find further information on these arrangements in the Tier 5 Guidance for migrants, which is available on our website using the link at the beginning of this guidance.

458. Where a Tier 5 migrant in these circumstances is granted leave to enter for up to three months by an Immigration Officer on arrival in the UK, their leave will automatically lapse once they leave the Common Travel Area. This means that they will not automatically be able to re-enter the UK on the basis of their original grant of leave. However, we acknowledge that the migrant may need to come back to the UK to fulfil their engagements. If this happens, the migrant must tell the Immigration Officer their original CoS number again on arrival at the UK border. The Immigration Officer will ask the migrant to provide their evidence of meeting the maintenance requirements again. The Immigration Officer will carry out checks to ensure that you have not withdrawn your sponsorship of the migrant since the migrant's original entry, and may speak to you again to confirm the details on the CoS. Provided the migrant meets all the criteria, the Immigration Officer will be able to grant leave to allow them to complete the engagements for their sponsor within the period of their original grant of leave. (The common travel area is the UK, Republic of Ireland, the Isle of Man and the Channel Islands.)

TIER 5 (TEMPORARY WORKERS) – CHARITY WORKERS

459. To be eligible to apply for a licence as a sponsor of charity workers you must be a registered, excepted or exempt UK charity according to the relevant charity legislation in force in your part of the UK, or an ecclesiastical corporation (either corporation sole or body corporate) established for charitable purposes. You must provide all of the appropriate documents listed in Appendix A to validate your application.
460. Migrants coming to work temporarily in the UK as charity workers must only be undertaking voluntary activity to carry out fieldwork directly related to the purpose of your charity. You cannot offer paid employment under this route.
461. When you assign a CoS under Tier 5 (Charity Worker), you are guaranteeing that the migrant:
- a) intends to undertake voluntary fieldwork directly related to the purpose of your charity;
 - b) will not be paid or receive other remuneration for their work (with the exception of reasonable expenses outlined in section 44 of the National Minimum Wage Act). Please see <http://www.legislation.gov.uk/ukpga/1998/39/contents> and the revision to that Act at <http://www.legislation.gov.uk/ukpga/2008/24/crossheading/national-minimum-wage-etc>
 - c) will not take up a permanent position; and
 - d) will comply with the conditions of their permission to stay and, where they have been granted leave under Tier 5, will leave the UK when it expires.
462. Migrants entering the UK under the charity workers sub-category will be given a maximum of 12 months' permission to stay. Their dependants are allowed to work if they are accompanying or joining them in the UK.

TIER 5 (TEMPORARY WORKERS) – RELIGIOUS WORKERS

463. This category is for migrants coming to work temporarily in the UK as:
- a) a religious worker where their duties may include preaching, pastoral and non-pastoral work; or
 - b) a religious worker who is employed overseas in the same capacity as they are seeking to come to the UK to work, although the exact detail of their duties in the UK may differ. This employment should be ongoing and the time spent in the UK should be consistent with a break from their employment.
 - c) a member of a religious order such as a monastic community of monks or nuns, or a similar religious community involving a permanent commitment. (A religious order is defined for our purposes as a lineage of communities or of people who live in some way set apart from society in accordance with their specific religious devotion, and which must be part of a bona fide religious organisation.)
464. To be eligible to apply for a licence under this category you must be a bona fide religious institution, which:
- a) is a registered, excepted or exempt UK charity according to the relevant charity legislation in force in your part of the UK, or is an ecclesiastical corporation (either corporation sole or body corporate) established for charitable purposes. In Northern Ireland the organisation must have obtained charitable status for tax purposes from HM Revenue and Customs. If you are a charity which is not registered according to

the relevant charity legislation you must explain the reason for non-registration in your application; and

- b) is the structure for a faith-based community with a common system of belief and spiritual goals, codes of behaviour and religious practice, which exists to support and/or propagate those common beliefs and practices and where such beliefs:
 - I. include any religious belief or similar philosophical belief in something transcendental, metaphysical or ultimate;
 - II. exclude any philosophical or political belief concerned with man, unless that belief is similar to religious belief; and
- c) does not exclude from your community on the basis of gender, nationality or ethnicity; and
- d) receives financial and material support for your core religious ministry from your congregation or community on a voluntary basis only, without promise or coercion; and
- e) does not breach, or encourage others to breach, any UK legislation; and
- f) does not operate against the public interest, or in a way that has a detrimental effect on personal or family life as these are commonly understood in the UK.

465. Before you assign a CoS under Tier 5 (Temporary Workers) - Religious Workers, you must conduct a resident labour market test where appropriate. See paragraphs 369-380 for full details on how to do this and information about when a role is exempt from the test.

466. When you assign a CoS under Tier 5 (Temporary Workers) – Religious Workers, you are guaranteeing that:

- a) the migrant is qualified to do the job in question; and
- b) the migrant will not take employment except as a religious worker; and
- c) the migrant will only work at the location you have specified unless you tell us of any change of location using your SMS account; and
- d) you accept the responsibilities of sponsorship for the migrant; and
- e) the migrant will be supported through funds and/or accommodation that are sufficient for them to maintain themselves for the full period you have stated on the CoS. (Migrants who are unable to support themselves could face financial hardship because they do not have access to most state benefits.);
- f) the migrant will not be displacing or denying an employment opportunity to a suitably qualified settled worker; and
- g) the migrant will comply with the conditions of their permission to stay and, where they have been granted leave under Tier 5, will leave the UK when it expires.

467. The work of a member of a religious order must be within the order itself, or outside work directed by the order. Teachers working in schools not maintained by their order must be sponsored under Tier 2 (General). Novices whose training consists of taking part in the daily community life of their order can be sponsored under this category, but anyone studying for a qualification, or undertaking on a formal full-time course of study or training in an academic institution not maintained by the order should be sponsored under the Tier 4 student category. People who are not members of a religious order, but who are working or studying within such a community are not eligible to apply under this category and must be sponsored under the relevant work or study category, for example Tier 2 (General) or Tier 4 (General Student), if they can meet all of the relevant requirements.

TIER 5 (TEMPORARY WORKERS) – GOVERNMENT AUTHORISED EXCHANGE (GAE)

468. This category is for migrants coming to the UK through approved schemes that aim to share knowledge, experience and best practice.

469. Since 6 April 2012, all existing and newly approved schemes fall under one of the three following categories:

- a) A Work Experience Programme. These are schemes which offer work experience including volunteering, job-shadowing and internships. Work exchange programmes between the UK and other non-EEA countries are also included in this category. The aim of such a scheme must be for migrants to gain experience of work in the UK. Approved schemes will allow migrants to participate for a maximum of 12 months.
- b) A Research Programme. These schemes are to allow migrants to undertake research programmes and fellowships, on a scientific, academic, medical, or government research project at either a UK Higher Education Institution or another research institution operating under the authority of a relevant government department. (The relevant government department may also be offering financial sponsorship for the institution) Approved schemes will allow migrants to participate for a maximum of 24 months.
- c) A Training Programme. These are schemes which offer formal, practical training in the fields of science and medicine, or where training is delivered by HM Armed Forces or UK Emergency Services. This includes training programmes created for qualifying postgraduate students who need to undergo a period of formal training in order to gain their full qualification before leaving the UK. Approved schemes will allow migrants to participate for a maximum of 24 months.

470. None of these categories can be used to fill job vacancies or to provide a way to bring unskilled labour to the UK. Migrants employed under a Tier 5 GAE scheme are only allowed to fill supernumerary roles. This means that the role is over and above your normal requirements and if the person filling the role was not there, it would not be filled by anyone else.

471. Any work or activity done by migrants participating in a GAE scheme must be at or above NQF level 3 (or the equivalent in Scotland). The only exception to this is for schemes set up as part of the EU Lifelong Learning Programme where the skill level can be lower than NQF level 3 (or the equivalent in Scotland).

472. To prevent potential abuse of this sub-category and the formation of small isolated schemes, individual employers and organisations are not allowed to sponsor migrants under this route for their own employment purposes, even if they are licensed as a sponsor under other tiers or other sub-categories of the points based system. The only exceptions to this are:

- a) where you are a Higher Education Institution (HEI) and are recruiting:
 - I. a sponsored researcher;
 - II. a visiting academic who will give lectures, act as an examiner or work on a supernumerary research collaboration.
- b) where you are a government department or an executive agency of a government department.

473. Apart from the exceptions listed in paragraph 472 the sponsor for a Tier 5 (GAE) scheme

must always be an overarching body which is willing to administer the exchange scheme and act as the licensed sponsor for any migrants participating in the scheme.

474. Since 6 April 2012 there is an additional route available for visiting academics who wish to come to the UK for no more than one month. This allows them to carry out certain permitted paid engagements when in the UK. If you use Tier 5 (GAE) to sponsor such migrants, you may wish to look at the rules for this route as there may be circumstances in which it is beneficial for a migrant to use this route rather than Tier 5 (GAE). More information on this route is available on our website at <http://www.ukba.homeoffice.gov.uk/visas-immigration/visiting>

475. Details of all existing schemes are available on our website at <http://www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/eligibility/tier5govauthorisedexchange/>

HOW TO ESTABLISH A SCHEME

476. There are 4 steps to establishing a Tier 5 (GAE) scheme. We recommend that you work to a timescale of approximately three to four months to be processed and included in the Immigration Rules.

New schemes and changes to existing schemes are to be submitted to the Home Office in writing by:

- 1 January (to be included in Spring Immigration Rules changes)
- 1 July (to be included in Autumn Immigration Rules changes)

The timings are important because once you have successfully been through the first three of the following stages you will be at the point where you are ready to apply for a sponsor licence. You cannot sponsor any migrants to participate in a new scheme until your sponsor licence has been granted and your scheme has been added to Appendix N of the Immigration Rules which are updated twice a year.

Agree who the overarching body will be.

477. If you want to explore the possibility of setting up a scheme under Tier 5 (GAE) and you are not in a position to act as the overarching body, for example if you want a sector-wide scheme but you only represent a small part of your sector, you should make further enquiries to try and find an organisation that may be best-placed to be the overarching body. You may first want to look at the schemes that have already been approved in case there is one that already covers, or could be expanded to include what you want to do.

478. You may want to explore whether there is a specific trade, or sector body that would like to be involved in establishing a scheme and acting as the overarching body. There may also be a private recruitment company willing and able to fill the role of overarching body, for example if they organise specific kinds of internships for overseas graduates.

Endorsement.

479. Once the overarching body has been identified, they must then approach a relevant government department (or one of its executive agencies) to discuss whether they are willing to endorse the scheme.
480. They must decide which government department to approach for support. If you are the prospective overarching body and have identified the relevant government department but do not know who to contact in that department, you can email us at Tier5GAEnquiries@ukba.gsi.gov.uk and we will help you make contact with the right person. Please note that we are not able to give you any indication of whether the scheme you are proposing is likely to be approved. We will be guided by the endorsing government body (or its executive agency) and cannot discuss potential approval before a scheme has been endorsed.
481. When you have established which government department or executive agency you intend to approach, you must write to them giving full details of the scheme you want to establish. You should explain:
- a) why you believe the scheme is necessary; and
 - b) what benefits the scheme will offer to your sector and to the UK; and
 - c) precisely what participating migrants will do under the scheme including:
 - i. details of the roles being filled; and
 - ii. salaries or payments that will be made to participants; and
 - iii. the skill level of the work they will do; and
 - d) what period of time participating migrants will spend in the UK under the scheme and why that period of time is appropriate. Any period you request must fall within the maximum period available for the type of scheme you want to establish, as set out in paragraph 469.
482. When deciding which schemes to support, government departments (or their executive agencies) are expected to select schemes that meet the following requirements:
- a) The scheme must not harm the resident labour market. Migrants coming to the UK to take part in work experience schemes must not fill vacancies in the workforce and must do work that is additional to your normal staffing requirements.
 - b) Any work the migrant undertakes must be at a skill level of NQF level 3 (or the equivalent in Scotland) or above. The only exception to this is where the migrant is coming to the UK through a scheme set up as part of the EU Lifelong Learning Programme, where the migrant may undertake vocational education and training at a lower skill level.
 - c) The scheme must help the government department (or its executive agency) meet one of more of its published aims or contribute to its wider objectives.
 - d) The employment must conform to all relevant UK and European employment legislation, such as the National Minimum Wage Act and the EU working time directive.
 - e) The scheme must include measures that protect it from being abused.
483. They must also have confidence in your ability to act as the sponsor for the scheme and your ability to meet all of the duties connected with being a licensed sponsor as set out in this guidance. You should therefore also include details about how you will do this.
484. The government department or executive agency that you approach will then make contact with us to discuss whether your requirements fit within what is permitted and whether it

fits within the government's wider aims and objectives in respect of immigration control.

485. If the government department (or one of its executive agencies) decides to endorse the scheme, their relevant Accounting Officer must send a letter of endorsement to our Director for Immigration Operations, UK Visas and Immigration Service, giving your details as the overarching body and officially confirming that:

- a) the exchange scheme satisfies all the requirements that they must adhere to when selecting schemes to support;
- b) the exchange scheme will help them to deliver one or more of their published aims or contribute to their wider objectives;
- c) they are satisfied to the best of their knowledge that you are capable of meeting your sponsor duties; and
- d) if significant numbers of migrants under the exchange scheme break the immigration rules, they accept that we may end the scheme.

Approval

486. Once the relevant government department or executive agency has endorsed the scheme, we will have the final say on whether it will be approved or not.

487. If we approve your scheme, we will write to the supporting government department or executive agency to confirm that it meets the requirements set out in this guidance and that we agree with the terms of the scheme as set out in their letter to us. They will then send you a copy of that letter.

Licensing

488. When we have approved your scheme, you can apply for a sponsor licence under Tier 5 (GAE).

489. When you make your application, you must send in all of the required documents as listed in Appendix A of this guidance to validate your application. When you reach the end of your online application, you will see a 'submission sheet' which you must print off and send in with your documents. The submission sheet will tell you that you must send in the letter from the government department endorsing your scheme, but you do not need to send it because we will already have it. (We plan to make a change to submission sheet as soon as we are able, to prevent any confusion on this point.)

490. It is possible for you to apply for a licence under Tier 5 (GAE) before you have gone through the process of seeking endorsement from a government department. If you do this, we will not process your application until your scheme has been endorsed and we have written to the relevant government department to confirm that it has been approved. If we do not approve your scheme we will reject your application.

491. We may visit you before we grant a licence to make sure that you understand what is expected of you as a licensed sponsor under Tier 5 (GAE) and to check that you have the right systems in place to be able to meet all of your sponsor duties. It is important that every scheme has measures built in to prevent it from being abused. For example, if the migrants you want to sponsor will be placed with employers who are scattered across the UK, you must

be able to show us how you will keep track of them and know whether they have disappeared, or failed to turn up when expected.

492. If your licence application is successful, we will allocate some CoS to you and you will then be able to assign them to migrants who meet the criteria. However, you cannot start any migrants on a new scheme until it has been added to Appendix N of the Immigration Rules which are updated twice a year in April and October. We will give you an indication of the date that your scheme will be added to the Immigration Rules but it is important to remember that although you can start assigning CoS straight away:

- a) once you have assigned a CoS, it will only be valid for three months; and
- b) if a migrant applies for leave under Tier 5 (GAE) before your scheme has been added to the immigration Rules, their application will be refused.

Example 1

- c) We grant your sponsor licence in December and allocate some CoS to your SMS account. Your scheme will be added to the Immigration Rules effective from 6th April.
- d) You assign a CoS to a migrant on 2nd January.
- e) The migrant cannot apply for leave to participate in your scheme until 6th April so the CoS you assigned on 2nd January will expire before they can apply.

Example 2.

- f) We grant you sponsor licence in December and allocate some CoS to your SMS account. Your scheme will be added to the Immigration Rules effective from 6th April.
- g) You assign a CoS to a migrant on 2nd January and they apply for leave under Tier 5 (GAE) on 1st March.
- h) The migrant's application will be refused because on 1st March your scheme was not in the Immigration Rules.

493. When assigning a CoS to a migrant who will participate in a Tier 5 (GAE) scheme, you are guaranteeing that the migrant:

- a) is seeking to work or train here temporarily, through an approved exchange scheme; and
- b) does not intend to establish a business in the UK; and
- c) meets the requirements of the individual exchange scheme; and
- d) will not participate in any activities as part of the scheme, that have not been endorsed by your sponsoring government department or approved by us; and
- e) will not participate in that work or training for a period longer than has been approved for your scheme; and
- f) will comply with the conditions of their permission to stay and, where they have been granted leave under Tier 5, will leave the UK when it expires.

494. If you assign a CoS for a period that is longer than has been approved for your scheme we will take action against you. We will also speak to your endorsing government department with a view to deciding whether they wish to continue endorsing your scheme.

495. You will be held responsible for all of the migrants you sponsor under the scheme you have established so it is important that you work closely with any other bodies or organisations where your sponsored migrants are placed. If we find at any time that you do not have sufficient control over your scheme, for example if migrants are not doing work that you have said they will do, we will take action against you.

TIER 5 (TEMPORARY WORKERS) – INTERNATIONAL AGREEMENT (IA)

496. This category is for migrants who are coming to the UK under contract to provide a service to you that is covered under international law. This includes:

- a) employees of overseas governments and international organisations;
- b) private servants in diplomatic households;
- c) migrants coming to the UK to service contracts awarded under specific international trade agreements.

497. Migrants sponsored under Tier 5 are entitled to work in the UK for varying lengths of time depending on what they will be employed to do. More information about how long a migrant can be sponsored for under Tier 5 (IA) is available in the policy guidance for Tier 5 migrants and in the Immigration Rules and the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013. Links to all of these are given at the beginning of this guidance.

498. Any employment undertaken by a Tier 5 (International Agreement) migrant must conform to all relevant UK and European employment legislation, such as the National Minimum Wage Act and the EU working time directive.

EMPLOYEES OF OVERSEAS GOVERNMENTS AND INTERNATIONAL ORGANISATIONS.

499. To be eligible to apply for a licence as a sponsor of:

- a) employees of overseas governments;
- b) employees of international organisations;
- c) private servants in diplomatic households or households of officials working for international organisations,

you must be a diplomatic mission or an international organisation recognised by the UK. (An international organisation includes the representative offices of those 'states' not recognised by Her Majesty's Government.) A list of international organisations is available on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/ecis/ecg/exempt-organisations-list.pdf>

If you are applying as an international organisation, you must be named on this list.

500. An application for a sponsor licence amounts to express consent to enter your premises and waiver from your Head of Mission, or the Head of your organisation, of diplomatic immunity and privileges in connection with any matter relating to your application or the continuing validity of your sponsor licence, as set out in this guidance.

501. When you make your application, you must send us a signed letter from your Head of Mission, or the Head of your organisation, confirming that:

- a) they agree to the application being made;
- b) they wish to sponsor migrants under Tier 5 (IA);
- c) they accept the sponsorship requirements and give us express consent to enter your premises, and waiver of diplomatic immunity and privileges to allow us carry out any

compliance activity as set out in this guidance.

502. Once licensed, you will be able to assign CoS to migrants under this Tier and category.

503. When you assign a CoS to employees of overseas governments and international organisations, you are guaranteeing that the migrant will:

- a) be under a contract of employment with the overseas government or international organisation; and
- b) not take up any employment for the sponsor other than that for which a CoS was assigned; and
- c) will comply with the conditions of their permission to stay and, where they have been granted leave under Tier 5, will leave the UK when it expires.

504. When you assign a CoS to a private servant, you are guaranteeing that the migrant:

- a) is aged 18 or over;
- b) will be employed as a private servant in the household of:
 - i. a named member of staff of a diplomatic or consular mission who has diplomatic privileges and immunity as defined by the Vienna Convention on Diplomatic Relations; or
 - ii. a named official employed by an international organisation who enjoys certain privileges and immunities under UK or international law;
- c) intends to work full-time in domestic employment;
- d) will not take up any other form of employment other than as a private servant to a named individual in the specified household; and
- e) has a written statement of terms and conditions for the work they will do; and
- f) where they have been granted leave under Tier 5, will leave the UK when their permission to stay has ended or when the named member of staff they are working for leaves the UK, whichever is sooner.

505. When you assign a CoS to a private servant, you must add a sponsor note giving the name of the migrant's employer who must be a person who meets the requirements set out in paragraph 504b. The migrant must include their written statement of terms and conditions for the work they will do with their application for leave to enter the UK. This written statement must be exactly as set out in the guidance for Tier 5 migrant applications and the Immigration Rules. You can find both of these on our website using the links at the beginning of this guidance. If the private servant is a Croatian national, details of the evidence they must provide to support an application for worker authorisation are set out in the relevant application form which is available on our website at www.ukba.homeoffice.gov.uk/eucitizens/croatia/applying

CONTRACTUAL SERVICE SUPPLIERS AND INDEPENDENT PROFESSIONALS UNDER INTERNATIONAL AGREEMENTS

506. Tier 5 (International Agreement) can be used if you need to bring a migrant to the UK to service a contract covered by the UK's commitments under an international trade agreement. The contract must be for a period of 12 months or less. This route must not be used for intra-company transferees who must be sponsored under Tier 2 (ICT).

507. The UK has commitments under:

- a) the General Agreement on Trade in Service (GATS);
- b) the EU-Chile Free Trade Agreement
- c) the EU-CARIFORUM Economic Partnership Agreement;
- d) the EU-Andean Free Trade Agreement.

to allow employees of an overseas business and self-employed persons to come to work in the UK, where that overseas business or self-employed person is established on the territory of a country that is a contracting party to one of these trade agreements, and is supplying a service to a UK client.

508. These workers are referred to in the trade agreements and in this guidance as 'contractual service suppliers' and 'independent professionals'. The commitments that the UK has under these trade agreements mean that these migrants can only come to work in the UK if:

- a) they are a contractual service supplier, which means that they must be employed by a business which is established on the territory of a country which is party to one of these agreements and which has no commercial presence in the European Union; or
- b) they are an independent professional, which means they are established as a self-employed person on the territory of a country other than a European Union member state, which is party to the EU-CARIFORUM Economic Partnership Agreement or the EU-Andean Free trade Agreement; and
- c) the service being supplied to you falls within a sector in which the UK has taken commitments under one of the agreements listed in paragraph 507.

509. The migrant must be a national of the country in which:

- a) the sending business is located (for contractual service suppliers); or
- b) they are established as a self-employed person (for independent professionals).

510. Appendix F to this guidance sets out the sectors covered and the countries in which the contractual service supplier or independent professional must be established.

511. The service being supplied to you must be in line with a genuine contract covering a period of 12 months or less, which has been awarded through an open tendering or other procedure and where you will be the final user of the service. You cannot sponsor a contractual service supplier or independent professional if you will then supply them as labour, to a third party.

512. Where the migrant is a contractual service supplier, they must have been employed by the sending business for at least one year immediately prior to the date of their application for leave. Contractual service suppliers and independent professionals must also meet the specific skills requirements set out in paragraphs 514-515.

513. Migrants may be granted Tier 5 leave to work as a contractual service supplier or independent professional under these arrangements for a maximum of six months in any 12 month period. If they are initially granted leave for a period of less than six months, they can apply again in the UK to extend their stay up to the maximum period allowed.

Skills and Experience

514. Any migrant applying for leave as a contractual service supplier or independent professional must have a university degree or a technical qualification demonstrating knowledge of an equivalent level. The only exceptions to this rule are for contractual service suppliers where:

- a) the migrant is coming to the UK to provide advertising and translation services, they must have relevant qualifications; or
- b) the migrant is coming to the UK to provide management consulting services, or services related to management consulting, they must have a university degree (not a technical qualification); or
- c) the migrant is coming to the UK to provide technical testing and analysis services, they must have a university degree or a technical qualification demonstrating technical knowledge; or
- d) the migrant is coming to the UK to provide chef de cuisine services, they must have an advanced technical qualification; or
- e) the migrant is coming to the UK to provide fashion model services or entertainment services (other than audiovisual services) there is no requirement for them to have any specific qualifications.

515. They must also have relevant professional qualifications, where they are legally required in the UK, to carry out the work they will do, and:

- a) three years relevant experience in the sector concerned if they are a contractual service supplier (unless they are supplying chef de cuisine services under the EU-CARIFORUM agreement, in which case the migrant must have six years experience as a chef de cuisine); or
- b) six years relevant experience in the sector concerned if they are an independent professional.

Sponsoring Contractual Service Suppliers and Independent Professionals

516. If you have contracted with an overseas supplier for the supply of services covered by one of the international trade agreements listed in paragraph 507, and a contractual service supplier or independent professional needs to come to the UK to provide that service to you, you must sponsor them under Tier 5 (International Agreement). If you cannot make a successful application for a sponsor licence they will not be able to come to the UK to service your contract.

517. The documents you must send to us to support your sponsor licence application are set out in Appendix A to this guidance. Where the online application prompts you to tell us how many CoS you will need in your first year as a licensed sponsor, the number you request must reflect the nature and duration of the contract you have entered into with the overseas supplier.

518. If your licence application is approved, you can only assign a CoS to a contractual service supplier or independent professional who is coming to the UK to service the contract you told us about when you applied for your sponsor licence.

519. If during the validity period of your licence, you want to bring contractual service suppliers or independent professionals to the UK under a new contract, you must tell us about the new contract first and you must not assign any CoS in connection with that contract until we have agreed that the contract meets all of the requirements set out in this guidance. You can use your SMS account (request change of circumstances function) to tell us about any new contract. Once you have reported this to us we will contact you to ask for supporting evidence and you must send us any documents or information that we ask for within the time limit specified. You must not assign any CoS in connection with the new contract until we tell you that you can.

520. If you assign a CoS to a migrant in connection with a contract that:

- a) you have not told us about; or
- b) that you have told us about, but we have not yet confirmed that you can assign a CoS in connection with that contract; or
- c) that we have told you does not meet the requirements set out in this guidance,

we will revoke your sponsor licence.

521. When you assign a CoS you are guaranteeing that:

- a) the migrant is employed by a business or is a self-employed person established on the territory of a non-European Union country that is a party to:
 - I. the General Agreement on trade in Service (GATS); or
 - II. the EU-CARIFORUM Agreement; or
 - III. the EU-Chile Free Trade Agreement; or
 - IV. the EU-Andean Free Trade Agreement
- b) will be engaged in work that is covered by the UK's commitments under one of those agreements; and
- c) will comply with the conditions of their permission to stay and will leave the UK when it expires.

Important notes about assigning a CoS to a contractual service supplier or independent professional

522. When you are assigning a CoS you will come to a box that asks you to tell us how much the migrant will be paid. This is a mandatory field on the CoS which means you must enter a figure. We know that you will not be paying a salary to the migrant so you can enter a nominal figure, for example £0.01.

523. You must also make it clear in the 'summary of job description' box that the CoS is for either a 'contractual service supplier' or 'independent professional' by entering one of those exact phrases. If you forget to add this information before you assign the CoS, you can retrieve it from within your SMS account and add a 'sponsor note' afterwards that simply says 'contractual service supplier' or 'independent professional'. Once you have assigned the CoS you can add a 'sponsor note' at any time before the migrant uses it to make an application for Tier 5 leave. If it is not clear from the CoS that the migrant is a contractual service supplier or independent professional, their application may be delayed or refused.

MAINTENANCE (AVAILABLE FUNDS)

524. Migrants in all tiers must show that they have enough money to support themselves and any dependants from the time they enter the UK until they start to receive an income. Please refer to the migrant guidance which is available on our website via the web links listed at the beginning of this guidance. You can find the guidance for dependants of Tier 2 and Tier 5 migrants on our website at <http://www.ukba.homeoffice.gov.uk/visas-immigration/partners-families/migrant-workers-students/>
525. To qualify for entry clearance, or leave to remain in the UK, under Tier 2 or Tier 5, the migrant must meet the maintenance requirements set out in the policy guidance for migrants and in the Immigration Rules. Croatian nationals applying for worker authorisation do not have to meet any maintenance requirements.
526. As their sponsor, if your licence is rated A, A (Premium) or A (SME+), you can certify maintenance for any migrant that you sponsor under Tier 2 or Tier 5. You can also certify maintenance for the dependants of any Tier 2 migrant but you cannot certify maintenance for the dependants of a Tier 5 migrant.
527. If you want to certify maintenance for a migrant (and under Tier 2, for their dependants), all you need to do is 'tick' the relevant box on the migrant's CoS when you assign it.
528. If you do certify maintenance on a migrant's CoS, you are confirming that you will maintain and accommodate the migrant up to the end of their first month of employment in the UK if required. You may limit the amount of the undertaking but any limit must be at least £900. If you also certify maintenance for a Tier 2 migrant's dependants you are confirming that you will maintain and accommodate them for the first month of any leave that is granted to them. You may limit the amount of the undertaking but any limit must be at least £600 per dependant.
529. When you tick the relevant box on a Tier 2 CoS, you are automatically certifying maintenance for both the migrant and, under Tier 2, their dependents. If you do not wish to certify maintenance for your sponsored migrant's dependents you must add a 'sponsor note' to the CoS, stating this.
530. If you certify maintenance for any migrant under Tier 2 or Tier 5, it is your duty to make them aware that they must not claim state benefits. If they do claim state benefits, with your knowledge, we will take action against you.
531. If you do not wish to certify maintenance at all, then the migrant and any of their dependants must all meet the maintenance requirements as set out in the relevant guidance document and the Immigration Rules and provide the required evidence with their application for leave.

MIGRANTS' INITIAL PERMISSION TO STAY

532. Migrants under Tier 2 and Tier 5 cannot apply for initial leave more than three months in advance of the date their employment is due to commence, as stated on the CoS. You must make sure that the timing of your recruitment exercise and the date you assign the CoS does not place the migrant in a situation whereby they cannot make a successful application for leave to enter or remain in the UK.

533. A Croatian national can move and reside freely in any EU member state so may make their application for a Purple Registration Certificate in the UK. If you are sponsoring a Croatian national who needs to apply for worker authorisation, they cannot start work until they have received their Purple Registration Certificate.

534. If a Croatian national does start work before their Purple Registration Certificate has been received, both they and their employer may be committing an offence. Please see our guidance called Preventing Illegal Working which is available on our website at www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking

AFTER ADMISSION TO THE UK: THE BIOMETRIC RESIDENCE PERMIT (BRP)

535. Since 2008, certain foreign nationals applying for leave to remain in the UK have been required to apply for a biometric residence permit (formerly known as the identity card for foreign nationals). This now includes all Tier 2 and Tier 5 migrants. Before receiving the permit, the migrant must give their fingerprints and facial image, have their identity confirmed and a successful decision made on their application. This allows us to be sure of the identity and entitlements of everyone who is here under the points-based system. Further details on biometric residence permits and who must apply for them are available on our website at <http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/do-i-need-brp/>

536. We recommend that you do not allow a migrant to start work until the migrant has received their permit and you have seen it. Although the migrant will receive a letter from us prior to the permit being issued, that letter will only confirm that the migrant's application has been approved. It will not state the dates of any leave granted. If the migrant does start work before the permit has been received, it is at your own risk, as sight of the permit allows you to establish a statutory excuse as a defence against any allegation of employing an illegal worker. (Please refer to the guidance on Preventing Illegal Working which is available on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking> .)

EXTENSIONS OF PERMISSION TO STAY

537. A migrant who has come to the UK under Tier 2 or Tier 5 can apply for an extension of their permission to stay (this is known as further leave to remain).

538. Where the migrant is already working for you and they wish to extend their current period of leave, for example if their contract is extended, you must assign a new CoS for the

extended period. Under Tier 2 and Tier 5 the requirements for the extension applications are similar to those for initial entry. They are that:

- a) the migrant has been assigned a CoS for their continued employment in the same role (or another role within the same SOC code) before making an application for an extension of stay (see paragraphs 199-202 for transitional arrangements for Tier 2 in respect of changes to the SOC codes from 6 April 2013); and
- b) the job continues to be at the appropriate skill level (see paragraph 203 for transitional arrangements in respect of changes to the SOC codes from 6 April 2013 that may have led to the skill level of a particular job being assessed as lower than it previously was); and
- c) the migrant will continue to be paid at or above the appropriate rate (see paragraphs 204-206 which sets out when the 'experienced' rate must be paid to a Tier 2 migrant).
- d) in the case of a private servant sponsored under Tier 5 (International Agreement), that they will continue to work for the same employer who was named on their original CoS.

539. If you originally conducted a resident labour market test before you first sponsored the migrant, you do not have to do another one.

540. We will only extend a migrant's permission to stay up to the maximum time allowed under the relevant Tier and/or sub-category.

541. We recommend that when you assign a CoS to extend a migrant's leave, the start date you give on the CoS should be the day after their current leave expires. For example, if the migrant's current leave expires on 31 December 2013, the start date on the CoS should be 1 January 2014.

542. If the migrant is a Croatian national and:

- a) their original worker authorisation was granted for a specific period which was less than 12 months; and
- b) you want to continue sponsoring them beyond that period; or
- c) they are changing employment and are required to make a new application,

they must apply for a further worker authorisation supported by a new CoS.

543. If you knowingly employ a Croatian national who does not have the correct worker authorisation, you could be committing a criminal offence and we may take action against you.

LEAVING AND RETURNING TO THE UK

544. If the work that you are sponsoring a Tier 2 or Tier 5 migrant to do means that they will need to travel in and out of the UK on a regular basis, you can choose to tick the 'multiple entry' box when you assign their CoS. If you do this, it does not involve any additional benefits or restrictions on the migrant's ability to travel, but it does help to indicate their intentions and likely travel plans to us. 'Multiple entry CoS' holders must, like other applicants, obtain prior entry clearance.

545. An example of when you might want to assign a multiple entry CoS would be under Tier 2 (Intra-Company Transfer), where the migrant will be required to spend part of their time working in the UK and part of their time working for their overseas employer. Another example might be where the migrant you are employing needs to travel overseas on business.

546. This type of CoS is not needed by a migrant wishing to travel overseas for leisure or domestic purposes during the period that you are sponsoring them. If for example, they take annual leave and return home during that period, they can still return to the UK to resume work as long as their grant of leave is still valid. This type of CoS is also not needed if the migrant is a Croatian national as they are free to move and reside freely in any EU member state.

547. If a Tier 2 or Tier 5 migrant does not have entry clearance or has been granted leave to remain in the UK for six months or less, their leave will lapse if they leave the Common Travel Area. This means they will no longer have valid leave to enter the UK so if they want to return, they must apply again.

548. The Common Travel Area is the UK, Republic of Ireland, the Isle of Man and the Channel Islands. There is one exception to this rule which applies only to certain non-visa nationals and is described fully in paragraph 458.

549. Please note that if a migrant has been assigned a multiple entry CoS, this does not override the rules on periods of unpaid leave which are described in paragraph 223-224.

WHAT HAPPENS IF A MIGRANT'S LEAVE LAPSES OR EXPIRES WHEN THEY ARE NOT IN THE UK?

550. If a Tier 2 or 5 migrant's leave lapses, or expires whilst they are not in the UK they will not be able to re-enter the UK unless they make a successful further application for leave which must be supported by a new CoS. They may also be affected by the Tier 2 cooling off period.

551. It is important to make sure that if your Tier 2 sponsored migrant is travelling overseas for any reason and you are intending to continue sponsoring them when they return, that you both fully understand the potential implications of their leave lapsing or expiring when they are not in the UK.

The Tier 2 Cooling Off Period

552. The cooling off period does not apply to migrants who are in the UK under Tier 2 and are applying for an extension of their existing leave or making a change of employment application.

553. The cooling off period will apply where:

- a) the migrant is overseas and their previous grant of Tier 2 leave has expired or lapsed; or
- b) the migrant is in the UK and had a previous period of Tier 2 leave, but then switched into a different immigration category and now wishes to apply again under Tier 2.

554. The Tier 2 cooling off period starts from the day after the migrant's previous leave under Tier 2 ended. If their leave has expired or lapsed, this will be the date that their leave expired or lapsed.

555. If the migrant's previous grant of leave under Tier 2 was reduced, for example if they had worked in the UK before with leave under Tier 2 and:

- a) the work they came to do was completed early; and
- b) their sponsor notified us of this; and
- c) we reduced their leave to 60 days,

the cooling off period starts from the day after their reduced period of leave expired - at the end of the 60 days.

556. Where the migrant left the UK before their last period of Tier 2 leave expired, the cooling off period can start earlier than the date their leave expired but only if they can provide evidence of them having not been in the UK with Tier 2 leave for a period immediately prior to that date. Acceptable evidence may include, but is not limited to:

- a) travel tickets or boarding card stubs, but **only** if you, or the migrant's previous sponsor also submitted an SMS report at the time, confirming that their employment in the UK had ended;
- b) exit or entry stamps in the migrant's passport which confirm that they were not in the UK;
- c) a letter from the migrant's overseas employer confirming the date they started work overseas, after returning from the UK;
- d) any other evidence that shows the migrant was not in the UK.

Where evidence is produced and accepted, we will calculate the cooling off period to start from the earliest date supported by that evidence.

557. There are a limited number of circumstances in which the cooling off period does not apply. They are:

- a) where the migrant is in the UK and is applying for an extension to their existing leave;
- b) where the migrant is in the UK and is making a change of employment application;
- c) where the migrant is applying as a high earner – this means someone whose gross salary package that we will accept for a Tier 2 application is £152,100 or higher.
- d) where the migrant is applying under the Tier 2 (ICT- Long-Term Staff) route and their last grant of Tier 2 leave was as an intra-company transfer migrant under the rules in place before 6 April 2011, or in one of the following intra-company transfer categories:
 - i. Skills Transfer;
 - ii. Graduate Trainee;
 - iii. Short-Term Staff.

558. If you want to sponsor a migrant under any sub-category of Tier 2, they should be able to tell you if they have had a period of leave under Tier 2 before, so that you can check whether they are eligible to make a further application.

CHANGE OF EMPLOYMENT

559. If a migrant is sponsored under Tier 2 or Tier 5 changes employer (where the conditions of their leave allow this), they must make a new application supported by a CoS from their new sponsor. The only exception to this is where they are moving to a new sponsor with TUPE or similar protection to continue in the same job, due to a takeover, merger or de-merger or any other circumstances in which Transfer of Undertaking Protection of Employment (TUPE) is triggered.

560. Where:

- a) you are already sponsoring a migrant who wants to continue working for you in a new job within the same SOC code that you quoted on their CoS; or
- b) a migrant is transferring to you with TUPE or similar protection and as part of the transfer deal they are moving into a new job within the same SOC code that was on the CoS assigned to them by their previous sponsor,

they do not have to make a new application unless they are changing from a job which is on the list of shortage occupations, to one that is not. In all cases, the rate of pay for their new job must meet the appropriate rate requirements set out in this guidance.

561. If a sponsored migrant is changing occupations and will still be employed by you, but their new job is in a different SOC code, a new application must be made. The same applies where a migrant is affected by TUPE being triggered and as part of any move under TUPE or similar arrangements, they change occupations and the new job is in a different SOC code - they must make a new application.

562. In all cases where a sponsored migrant must make a 'change of employment' application, you must conduct a resident labour market test (where this guidance requires it) before you assign a new CoS to them. For example, if a migrant you are already sponsoring under Tier 2 (General) wants to continue working for you, but in a different occupation which is in a different SOC code to the one you quoted on their original CoS, you cannot simply give them the job and assign a new CoS to them straight away unless there is an exemption from the resident labour market test.

563. If the new job is not exempt from the resident labour market test, then you must conduct one and you can only appoint that same migrant if there are no suitable settled workers available to fill the post. Failure to conduct a resident labour market test in these circumstances will result in action being taken against you.

564. If you assign a CoS to a migrant to change employment, they must then make a new application. Their application must be granted before they can start work in their new job. (See also paragraph 536 or 533-534 where the migrant is a Croatian national.) This applies regardless of whether the new job is with the same sponsor or with a new sponsor. In the mean time, the migrant can continue working in their original job, for their original sponsor (provided their previous leave or authorisation has not expired) until the start date of the new job, which should be the start date given on the new CoS.

565. If you are intending to sponsor a migrant under Tier 2 who is already in the UK under Tier 2 having been sponsored by someone else, you need to be aware of the rules that limit a

migrant to a maximum of six continuous years leave under Tier 2. These rules are explained in full in the guidance for Tier 2 migrants and in the Immigration rules. Links to both of these are listed at the beginning of this guidance.

Transitional arrangements for changes of job within the same SOC code

566. Paragraph 560 describes how a migrant can change jobs within the same SOC code without having to make a change of employment application. Paragraphs 199-202 explain how we have updated the SOC code data to SOC 2010 and that some jobs will have moved into a different SOC code from 6 April 2013.

567. If you are sponsoring a migrant whose original CoS was assigned before 6 April 2013, and you want to move them to a new job that used to be in that same SOC code, they will not have to make a change of employment application if their new job falls within one of the equivalent SOC 2010 codes. You can check this easily by looking at the SOC Conversion Table in the codes of practice. For example, if the migrant's original job fell within SOC 1123 – Managers in Mining and Energy, and their new job falls within:

- a) SOC 1123 – Production managers and directors in mining and energy; or
- b) SOC 2424 – Business and financial project management professionals,

they will not have to make a change of employment application.

MIGRANTS WORKING ON A CONTRACT BASIS

568. Where a migrant is working on a contract basis and is being supplied to one organisation by another organisation, their sponsor must be whoever has full responsibility for determining the duties, functions and outcomes, or outputs of the job the migrant is doing.

569. An example of this would be where Company A has a contract with a client - Company Z to deliver a bespoke IT solution within an agreed timescale. A migrant who is sponsored by Company A to work on that project, may be sent to work for the duration of the contract at Company Z's premises, but they remain employed by Company A throughout the period of the contract and Company A is fully responsible for deciding their duties, functions, outputs or outcomes. In this example, Company A must be the migrant's sponsor.

570. You are only allowed to assign a CoS if it is clear that you have full responsibility for deciding the duties, functions and outcomes or outputs of the job. Where the sponsored migrant is carrying out work for a third party on your behalf, they must be contracted by you to provide a time-bound service or deliver a time-bound project on your behalf. This means a service or project which has a specific end date after which it will have ended or the service provided will no longer be operated by you or anyone else. They must not be:

- a) agency workers, regardless of any contract between you and any employment agency or employment business (see paragraphs 60-62); or
- b) contracted to undertake an ongoing routine role or provide an ongoing routine service for the third party, regardless of the length of any contract between you and any other party.

571. If the migrant is working on a self employed basis, there must be a contract for employment/services between you and the migrant. This contract must clearly show;

- a) the names and signatures of all parties involved (normally, this will only be you and the

- migrant); and
- b) the start and end dates of the contract; and
- c) details of the job, or piece of work that the migrant has been contracted to do; and
- d) an indication of how much the migrant will be paid.

572. Where we think that you are supplying a migrant to another organisation, we reserve the right to ask for confirmation from that other organisation, that:

- a) the migrant works autonomously and you, as the sponsor, have full control over their duties, functions, outputs or outcomes; and
- b) the migrant is not being supplied to undertake a routine role.

SWITCHING WHILE IN THE UK

573. Switching is the term we use when a migrant who is already legally in the UK changes immigration status from one immigration status to another. We will only approve an application for a migrant to change immigration category while in the UK if they:

- a) meet the specific requirements of the immigration rules to be given permission to stay in the UK within the category that they are switching into; and
- b) are already in the UK within one of the categories that allows them to switch into the category they want to switch into while in the UK.

574. If you want to sponsor a migrant under Tier 2 or Tier 5 who is already in the UK under another immigration category, you should check that the migrant's current immigration status allows them to switch into Tier 2 or Tier 5. This is particularly important if the migrant you want to employ is in the UK as the dependant of another migrant. This is because any dependant switching into Tier 2 (General) counts towards the limit under Tier 2 (General) which means they will need a restricted CoS. (See paragraph 203.)

575. Further guidance on the current switching rules is available in the migrant policy guidance and the Immigration Rules. There are web links at the beginning of the guidance to all the relevant guidance.

SUPPLEMENTARY EMPLOYMENT

576. Migrant's sponsored under Tier 2 and Tier 5 are allowed to undertake other work which is supplementary to that for which their CoS was assigned. The only exception to this for private servants sponsored under Tier 5 (International Agreement) who are not allowed to take supplementary employment.

577. This supplementary employment does not have to meet the resident labour market test requirements and the employer does not have to be a licensed sponsor. Supplementary employment must:

- a) be in the same profession and at the same professional level as the work for which the migrant's CoS was assigned; or
- b) be a job which is on the list of shortage occupations published on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/workingintheuk/shortageoccupationlistnov11.pdf> (if the occupation concerned is removed from the list of shortage occupations, the migrant must cease that employment); and

- c) be no more than 20 hours a week; and
- d) be outside of normal working hours for which the migrant's CoS was assigned.

578. Migrants do not need to advise us of any supplementary employment they undertake, as long as it meets the above stated criteria.

579. A migrant should advise their new employer that the employment is supplementary employment so that they can make the necessary checks in accordance with the recommendations we make in our guidance for employers on illegal working. That guidance is available on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking>

SECONDARY EMPLOYMENT

580. Once a migrant sponsored under Tier 2 has used their CoS to gain leave to enter or remain in the UK, or worker authorisation, and has started work for you, they are allowed to take other employment which does not meet the supplementary employment criteria.

581. Any secondary employment must be with a licensed sponsor and the migrant must be able to meet the criteria relevant to the category in which their secondary employment falls. The secondary employer must have recruited them in accordance with the rules set out in this guidance. The secondary employer must then assign a new CoS to the migrant so that they can submit a fresh application to vary their existing leave or worker authorisation. (Please note that a second CoS cannot be assigned until the migrant has used their first one.)

EDUCATIONAL COURSES

582. Migrants sponsored under Tier 2 and Tier 5 may undertake courses of study if they wish. There is no limit on the number of hours they can study or the type, or level of course, however we would expect that any study done does not interfere with their ability to carry out the job they have been employed to do. Courses of study may be undertaken anywhere the migrant chooses and do not have to be with a sponsor that is licensed under Tier 4.

WHAT ARE MY DUTIES AS A LICENSED SPONSOR?

583. The system of sponsorship requires those who most directly benefit from migration, those who are sponsoring migrants, to play their part in ensuring that the system is not abused. You are required to fulfil certain duties. Some of these duties apply to all sponsors, whilst others are specific to sponsors who are licensed under certain tiers or categories. You must meet all of your duties to ensure immigration controls remain effective. The objectives of these duties are to:

- a) prevent abuse of the assessment procedures;
- b) capture early, any patterns of migrant behaviour that may cause concern;
- c) address possible weaknesses in process which can cause those patterns; and
- d) monitor compliance with immigration rules.

2.

584. This document reflects our current policy, but may be subject to change at any time.

WHEN DO MY SPONSOR DUTIES START AND FINISH?

585. Responsibility for the undertakings commence from the date of issue of a sponsor licence and where they relate to a migrant will cease:

- a) when you notify us that the migrant has ceased to be in your employment; or
- b) when the migrant leaves the UK and their entry clearance or leave to remain lapses; or
- c) when the migrant is granted further leave to remain with a different sponsor or in another immigration category; or
- d) where the migrant is a Croatian national, after they have worked lawfully in the UK for a period of 12 continuous months; or
- e) if you surrender your licence; or
- f) if we revoke your licence.

DUTIES THAT APPLY TO SPONSORS IN ALL TIERS.

RECORD KEEPING DUTIES

586. You must keep the following records or documents, and make them available to our officials on request: (See also, Appendix D – record Keeping)

- a) a photocopy or electronic copy of the relevant page, or pages, of each sponsored migrant's passport, worker authorisation (Purple registration Certificate) or UK immigration status document and biometric residence permit (if they have one), that show evidence of their entitlement to work including their period of leave to remain in the UK. If you are an employer you should be aware of your responsibility to help prevent illegal working in the UK. Further details of your responsibilities are provided on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking>
- b) each sponsored migrant's contact details (UK residential address, telephone number, and mobile telephone number). These details must always be up to date.

587. You must provide such documents relating to sponsored migrants as we consider relevant. We might, for example, ask for details of your recruitment practices so that we can ensure that a resident labour market test has been conducted correctly, where appropriate.

588. Since 2008 we have been gradually introducing biometric residence permits (previously known as Identity Cards for Foreign Nationals (ICFN)). These are immigration documents which contain details of the holder's immigration status, together with their fingerprints and a facial image. Where the migrant has biometric residence permit or an ICFN, you must keep a copy of it. More information on biometric residence permits is available on our website at <http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/do-i-need-brp/>

589. If you are endorsing a migrant under the Tier 1 (Graduate Entrepreneur) route, you must keep evidence of the selection process that resulted in that endorsement.

590. If you sponsor a child aged under the age of 18, you must keep a copy of the letter from their parents or legal guardian, or just one parent if that parent has sole legal responsibility for the child, consenting to the arrangements that have been made in respect of the child's application, travel, reception and care arrangements in the UK. Please note that 16 and 17 year olds have the legal right to live independently in the UK, and so may make their own arrangements for accommodation. However, they require the consent of their parent(s)/legal guardian to do this and to travel to the UK (if applying from overseas).

REPORTING DUTIES

591. You must report certain information or events to us using the SMS, within any time limit specified. Any information you report to us about migrants' non-attendance, non-compliance or disappearance will be used to take enforcement action against them. If you are reporting any of the events in paragraphs 592 a), b) or c), 593 or 597 or 598, you must also include the last recorded residential address and contact telephone number that you have for the migrant. Also, although we do not require that you keep a record of migrants' personal email addresses, if you have one, you should also include this in your report. We require this information to allow us to exercise our functions as a government department.

592. You must report the following within 10 working days:

- a) if a sponsored migrant does not turn up for their first day of work. You must include any reason given by the migrant for their non-attendance (for example a missed flight);
- b) if a sponsored migrant's contract of/for employment/services or registration is terminated earlier than was indicated on the CoS, for example where the migrant resigns or is dismissed. You must include the name and address of any new employer that the migrant has moved to, if you know it;
- c) if you stop sponsoring the migrant for any other reason for example if;
 - I. the migrant moves into an immigration route that does not require a sponsor; or
 - II. the migrant takes a period of unpaid leave, which is not covered by the exceptions in paragraph 222;
- d) if there are any significant changes in the sponsored migrant's circumstances, for example:
 - I. a promotion or change in job title/core duties, other than those which require a change of employment application.
 - II. a change of salary from the level stated on the migrant's CoS, other than changes due to annual increments or bonuses;
 - III. a change of salary from the level stated on the migrant's CoS due to a period of maternity, paternity or adoption leave, or a period of long-term sick leave that lasted for one month or longer;
 - IV. the location the migrant is employed at changes;
 - V. the duration of their contract of/for employment/services is shortened.
- e) the migrant's employment is affected by TUPE or similar provision being triggered. For example if you are involved in a merger or demerger.
- f) any information which suggests that a sponsored migrant, or a migrant you are endorsing under the Tier 1 (Graduate Entrepreneur) route (where applicable) is breaching the conditions of their leave;
- g) details of any third party or intermediary, whether in the UK or abroad, that has assisted you in the recruitment of migrant employees or students.

593. If a migrant sponsored under Tier 2 or Tier 5 is absent from work for more than 10 consecutive working days without your permission, you must report this within 10 working days of the 10th day of absence.

594. If there are any significant changes in your own circumstances, for example, if you sell all or part of your business, cease trading, substantially change the nature of your business, are involved in a merger or are taken over, you must report this within 28 calendar days.

595. If you become insolvent you must tell us within 28 days if you:

- a) go into administration (including special administration) or administrative receivership (receivership in Scotland); or
- b) enter into a Company Voluntary Arrangement or Debt Arrangement Scheme; or,
- c) go into liquidation or sequestration is awarded, or
- d) become bankrupt;

but please see paragraphs 708-709 if you are unable to report this to us.

596. If you go into administration (including special administration) or administrative receivership, you must also tell us who has been appointed as the administrator within 28 days of them being appointed, but please see paragraphs 708-709 if you are unable to report this to us.

597. If you are endorsing a migrant under the Tier 1 (Graduate Entrepreneur) route, you must have contact with them at least once a quarter. If a migrant that you are endorsing misses an expected contact without your permission you must report this by email to Tier1GradEntAdmin@homeoffice.gsi.gov.uk within 3 months of the missed contact. You must include in your report:

- a) whether or not you are continuing to endorse the migrant; and
- b) if you are continuing to endorse them, why.

598. You must also give the police any information you may have that suggests that any migrant you are sponsoring, or any migrant you are endorsing under the Tier 1 (Graduate Entrepreneur) route may be engaging in terrorism or other criminal activity.

COMPLYING WITH THE LAW

599. To ensure that you are complying with our immigration laws, you must also fulfil the following duties:

- a) to ensure that any migrant you sponsor is legally entitled to do the job in question and has the appropriate registration and/or professional accreditation where this is legally required. For example, if the migrant is coming to work as a doctor, you must ensure that they have the correct registration to entitle them to practice as such in the UK. You must keep a copy of any appropriate registration document or certificate, and supply it to us on request;
- b) not to employ any migrant where the conditions on the migrant's leave or the migrant's lack of leave do not permit them to do the job in question, and to stop employing any migrant who ceases, for any reason, to be entitled to do the job in question;
- c) only to assign CoS to migrants who, to the best of your knowledge and belief, will meet the requirements of the tier or category under which the CoS is assigned, and are likely

to comply with the conditions of their leave or worker authorisation. The requirements and conditions of leave or worker authorisation are set out in the Immigration Rules or the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (Croatian nationals only).

- d) comply with all aspects of UK employment law, for example on the National Minimum Wage and paid holiday entitlement.
- e) to hold the appropriate planning permission or Local Planning Authority consent to operate your type/class of business at your trading address (where this is a Local Authority requirement).
- f) where you are a food business, to be registered with or approved by the appropriate food authority.
- g) where you are employing a migrant who is working for you on a Work Permit, you must comply with all of the associated conditions, for example you must be paying them at or above the rate of pay shown on the Work Permit.

CO-OPERATING WITH US

600. To allow us to manage the sponsorship system properly, you must also comply with the following duties:

- a) allow our staff access to any of your premises or any site under your control, on demand. Visits may be either prearranged or unannounced;
- b) adhere to any action plan set by us - an action plan for B-rated sponsors may lay down additional duties;
- c) seek to minimise the risk of immigration abuse by complying with any good practice guidance that we or any sector body may produce for sponsors in particular tiers or sectors, with our agreement.

601. All of the duties listed in this section apply to all sponsors. Those set out below apply only to Tier 2 (General) and Tier 2 (ICT).

TIER-SPECIFIC DUTIES UNDER TIER 2 (GENERAL) AND TIER 2 (ICT)

602. If you are licensed to sponsor migrants under Tier 2 (General) you must only assign a CoS to a migrant if you are satisfied that the migrant intends, and is able to do the specific skilled job you are recruiting them to do which must be at or above the appropriate skill level. You must also familiarise yourself with the different requirements for assigning a CoS under Tier 2 General in respect of where a job, or CoS is 'restricted' or 'unrestricted'. You must not:

- a) assign a restricted CoS to a migrant for any job other than the one you described in your application for that restricted CoS.
- b) assign a restricted CoS where an unrestricted CoS would be required.
- c) assign an unrestricted CoS to a migrant where a restricted CoS would be required.

603. When you assign a CoS under Tier 2 (General) you are guaranteeing that:

- a) where required, you have conducted a genuine resident labour market test in accordance with this guidance and where the job was advertised under the rules in place before 6 April 2013, the relevant code of practice; or
- b) the job is exempt from the resident labour market test; or
- c) where applicable, the job appeared on the list of shortage occupations published by us (or if the job is in Scotland, on the Scotland-only list), on the date that you assigned the CoS; or

- d) where you were required to conduct a resident labour market test, the migrant will be paid in line with the rate at which the job was advertised (see paragraph 213-215 if you first advertised the job before 6 April 2013); and
- e) the migrant will be paid at or above the appropriate rate (including any specific permitted allowances) for that job as set out in this guidance;
- f) the job is a genuine vacancy;
- g) the job is at or above the minimum skill level permitted, as set out in this guidance.

604. When you assign a CoS under Tier 2 (ICT), you are guaranteeing that:

- a) the job is an intra-company transfer; and
- b) where there is a requirement that the migrant must have been employed for a specific period prior to their transfer, that condition has been met;
- c) where the migrant will be paid in a currency other than pounds sterling, the salary amount entered on the CoS is based on the exchange rate for the relevant currency on the day the CoS was assigned, taken from the rates published on www.oanda.com; and
- d) the migrant will be paid at or above the appropriate rate (including any specific permitted allowances) for that job as set out in this guidance.

605. If you are licensed to sponsor migrants under Tier 2 or Tier 5 you must only assign a CoS to a migrant if you are satisfied that the migrant intends to, and is able to do the specific skilled job which (where applicable) must be at or above the minimum skill level as set out in this guidance.

COMPLIANCE WITH DUTIES

606. If you fail to comply with any of your duties, we will take action against you. That action could result in your licence being revoked, suspended or downgraded to a B-rating, and/or a reduction to the number of CoS you are allowed to assign.

CONCERNS OR QUERIES ABOUT DUTIES

607. Please ask us if you (or your representatives) have any queries about your duties as a licensed sponsor. You can speak to us on 0300 123 4699 or you can email us at Businesshelpdesk@homeoffice.gsi.gov.uk. If your licence is rated A (Premium) or A (SME+) you can raise any queries you have with your licence manager.

WHAT DOCUMENTS MUST I KEEP NOW THAT I HAVE A SPONSOR LICENCE?

608. To comply with your duties, you must keep certain documents for each sponsored migrant. Appendix D, which is separate to this guidance, lists these documents and states how long you must keep them. The documents can be kept in either paper or electronic form. If you are keeping the documents electronically, you must ensure that all the relevant parts of the document are clearly visible as described in Appendix D.

609. There is no prescribed method for storing the documents, but you must be able to make them available to us on request. If you fail to keep any documents specified in Appendix D and/or fail to provide any documents to us when requested, we will take action against you.

610. Any documents that we ask to see that are not in English or Welsh must be accompanied by a certified translation. The translator's credentials should be provided, along with their official declaration that the translation is accurate.

611. You should note that some documents you must keep as part of your sponsorship duties may also need to be kept for other purposes. You must ensure that you meet any other legal requirements for record-keeping, or ones set by us or another government department.

612. You should also see our guidance on preventing illegal working, which recommends specific documents you should keep and the format in which they should be kept. You have responsibilities for this under regulations made under section 15 of the Immigration, Asylum and Nationality Act 2006 and the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013. The guidance is on our website at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/>

613. You should also be aware of the recommendations associated with the Data Protection Act and storing documents that include details of your employees. More information on data protection in an employment context is on the website of the Information Commissioner's Office at: http://www.ico.gov.uk/Home/for_organisations/topic_specific_guides/employment.aspx

HOW WILL YOU CHECK THAT I AM COMPLYING WITH MY SPONSOR DUTIES?

614. We may visit you to carry out checks before a decision on your licence application has been made. We may also conduct checks after the decision has been made. The purpose of these checks is to make sure that the information you gave on your licence application is accurate and that you are able or are continuing to comply with all of the duties and responsibilities associated with being a licensed sponsor. We will check that:

- a) the information you have given us is accurate and complete;
- b) you are able to offer employment;
- c) you are genuine and are trading or operating lawfully in the UK;
- d) there are no reasons to believe that you as a prospective sponsor or existing sponsor represent a threat to immigration control; and
- e) you are committed to complying, or are complying with all of the duties of sponsorship.

615. You agree to co-operate with these checks when you submit your sponsor licence application.

616. We may choose to check organisations at random. If you are checked it does not necessarily mean we have any doubts about your compliance as a sponsor. We may make these checks at any time during the application process or during the validity period of your licence.

WHAT HAPPENS DURING A CHECK?

617. Our compliance officers carry out the checks. If they plan to visit, they usually, though not always, contact you to arrange a mutually convenient time.

618. The compliance officer will then gather material to support the information provided on your online sponsor application. They may also wish to speak to migrant workers, colleagues and managers involved in the recruitment of migrant workers. The compliance officer will not give an indication of their assessment of your ability to comply with your sponsor duties at the time of the visit.

619. If we doubt any aspect of your application, we will make further checks, which may involve a visit to your premises to ensure that you are capable of meeting your duties as a sponsor.

620. We may also do follow-up checks on any licensed sponsor. We may make a check by telephone, in person or by letter and will ask for evidence to support any information you gave at the time of your application. This is to verify that the information you provided on the online sponsor application was full and accurate and that you are complying with all of your duties and responsibilities as a licensed sponsor.

621. We may also make checks with other government departments, for example HM Revenue and Customs.

622. The compliance officer or any third party working on our behalf, visiting your premises will have official Home Office identification. If you doubt that the official is genuine, you should contact us by telephone on 0300 123 4699.

WHAT HAPPENS AFTER A CHECK?

623. If we have carried out a check before making a decision on your application, we will make that decision based on all of the information provided by you and gathered by us during the check(s). We will then notify you of our decision.

624. If we visit you after we have already approved your application, we will write to you to let you know the outcome of the check.

DISCREPANCIES OR PROBLEMS DISCOVERED DURING CHECKS

625. We expect that checks will often not reveal any problems. In these cases, we will inform you of the outcome in writing.

626. If there are differences between what you told us and what our compliance officer finds during a check and we find these before a decision has been made on your application, we will let you know whether we require more information before making a decision on your

application.

627. If we find discrepancies on your application after a decision has already been made we will take action against you.

628. There may be occasions when we find evidence that you, a representative, a relevant person or a person employed by you who appears to act on your behalf have knowingly deceived us, or when we cannot verify statements made or documents provided to us by any such individual. In these cases we will assess the evidence we have and we may take action against you.

629. Where appropriate, we may prosecute you, a representative, a relevant person or a person employed by you who appears to act on your behalf under the relevant immigration rules or other legislation if you or any such individual have been shown to have attempted deception. We reserve the right to refuse future applications involving the same individuals.

ALLEGATIONS OF ABUSE OF THE SPONSORSHIP ARRANGEMENTS

630. If you use deception to obtain a licence you may be committing a criminal offence. The compliance officer will consider information about abuse of the sponsorship arrangements and investigate and, if appropriate, inform the relevant authorities of their findings.

631. We treat all sponsorship applications as confidential. We will not pass on information sent with your application to anyone except to other government departments, agencies and local authorities where this is necessary to enable them to carry out their functions. However, we will publish sponsors' ratings of A and B on our website.

632. We treat any allegation of abuse of the sponsorship arrangements in the strictest confidence. Anyone with information about abuse of the sponsorship arrangements can contact us by email at Businesshelpdesk@homeoffice.gsi.gov.uk

WHAT WILL HAPPEN IF I DON'T COMPLY WITH MY SPONSOR DUTIES?

633. The vast majority of those who employ overseas workers are honest and willing to comply with their duties. Because sponsorship transfers a significant amount of responsibility for selecting migrants to sponsors, we have a duty to ensure that we deal appropriately with the minority who do not comply with their duties.

634. We have therefore introduced measures to ensure that we enforce sponsors' duties and identify dishonest or incompetent sponsors early and revoke their licences. As well as any enforcement action we may take against you if we find you are breaching your duties, we may also issue a civil penalty if you have broken the rules on illegal working. More information on the penalties for employing illegal workers is on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking>

PENALTIES FOR ILLEGALLY EMPLOYING MIGRANTS

635. We take tough action against those who illegally employ people. You can protect yourself against possible action by checking documents to establish a person's right to work in the UK before you recruit a new member of staff. We recommend that you also carry out further document checks at least every 12 months when we have put a time limit on an employee's stay or work authorisation in the UK.

636. If we find you are employing workers illegally you may face any of the following penalties.

- a) We may revoke your sponsor licence.
- b) We may issue you with a civil penalty fine for up to £10,000 for each illegal worker.
- c) You may be prosecuted for having in your possession or under your control without reasonable excuse, an identity document that is false or was improperly obtained or that belongs to someone else. You may go to prison for up to two years and receive an unlimited fine.
- d) You may be prosecuted for knowingly employing an illegal migrant worker. You may go to prison for up to two years and/or receive an unlimited fine.
- e) You may be disbarred as a company director or officer as a result of being convicted of knowingly employing an illegal migrant worker.
- f) You may be disqualified from forming or managing a company.
- g) You may be prosecuted for facilitation or trafficking and if convicted, you may go to prison for up to 14 years and/or receive an unlimited fine.
- h) We may give you a formal written warning for employing an illegal worker, after which we will monitor you closely.

637. If we find that you have employed someone illegally we may inform other bodies such as:

- a) the Gangmasters Licensing Authority (GLA);
- b) the Office of the Immigration Services Commissioner (OISC); or
- c) another government body.

638. More information on the penalties for employing illegal workers is on our website at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking>.

DOWNGRADING TO A B-RATING

639. Where we believe that you have not been complying with your duties, have been dishonest in dealing with us or pose a threat to immigration control, we may revoke your licence or downgrade it to a B-rating.

640. If we downgrade your licence to a B-rating and you are also an endorsing body under the Tier 1 (Graduate Entrepreneur) scheme, we will withdraw you from that scheme and any migrant you are endorsing will have their leave reduced (curtailed) to 60 days to allow them to seek another route under which they can remain in the UK. If they have been unable to do this after 60 days they must leave the UK or face enforced removal. If we withdraw you from that scheme you cannot apply again until the end of the next full financial year. (For example if you are withdrawn from the scheme in October 2013, you cannot apply again until April 2015.)

641. If you are rated A (Premium) or A (SME+) and we downgrade your licence to a B-rating, we will terminate your customer services benefits package.

CIRCUMSTANCES IN WHICH WE WILL DOWNGRADE YOUR LICENCE FROM AN A-RATING, TO A B-RATING

642. We will downgrade your licence if:

- a) you have certified that a migrant will not claim state benefits, and that migrant then does claim benefits, with your knowledge.
- b) you fail to provide any documents listed in Appendix D of this guidance, to a compliance officer within the specified time limit;
- c) as a result of information available to our compliance officers, we are not satisfied that you are using the processes or procedures necessary to fully comply with your sponsor duties.
- d) you are a food business that is required to be registered by an appropriate food authority and either you have never registered, or you have, but that registration has been withdrawn.
- e) you pay any of your migrants sponsored under Tier 2 (General) and/or Tier 2 (ICT) in cash.
- f) you fail to assign a new CoS (and conduct a resident labour market test where applicable) to any migrant that needs to make a change of employment application (see paragraphs 559-561 for when a change of employment application is required).
- g) you assign any Tier 2 (General) CoS stating that the vacancy was in a shortage occupation, when it was not.
- h) you assign any Tier 2 (General) CoS for a job that is on the shortage occupation list for Scotland only, and the job is not based in Scotland.
- i) you assign any Tier 2 (General) CoS stating that the job is exempt from the resident labour market test (as set out in this guidance) and it was not.
- j) you assign any Tier 2 (General) CoS stating that you have completed a resident labour market test and either:
 - I. the test you conducted did not meet the requirements set out in this guidance; or
 - II. you had not conducted a test.

CIRCUMSTANCES IN WHICH WE MAY DOWNGRADE YOUR LICENCE FROM AN A-RATING, TO A B-RATING

643. We may downgrade your licence if you, or a relevant person, have been convicted of serious offences to do with how you run your business and this makes us doubt your suitability as a sponsor (such as a conviction under the National Minimum Wage Act or for benefit fraud). We do not take into account convictions that are spent under the provisions of the Rehabilitation of Offenders Act 1974. (Convictions may become 'spent' after specified periods of time from the date of conviction if there are no further convictions during that time. Spent convictions are disregarded for certain purposes.)

644. In the circumstances above, we will take into account, among other things, how serious the offence was, the penalty the court imposed and, if the offence was committed by an individual member of staff, any action you took against that person.

645. We may also downgrade your licence to a B-rating if;
- a) You sponsor more than five migrants in the Tier 2 (ICT – Graduate Trainee) category with start dates in the same financial year.
 - b) You fail to keep any of the documents specified in Appendix D of this guidance
 - c) You fail to comply with any of your sponsor duties.

PROCESS WE WILL FOLLOW IN DECIDING WHAT (IF ANY) ACTION TO TAKE

646. Unless revocation of a licence is mandatory, we will take all the facts of the case into account when deciding what action to take against you under one or more of the above circumstances. No two cases will be alike, so we cannot list all the circumstances in which we will revoke your licence, suspend your licence, downgrade your licence, limit the number of CoS you are allowed to assign or take no action. We will consider:

- a) the seriousness of your actions and the harm done. We will treat seriously anything you have done or failed to do that has resulted in migrants going missing;
- b) whether your actions are part of a consistent or sustained record of non-compliance or poor compliance or are a single event;
- c) any action you have taken to minimise the consequences of what you have done or failed to do. For example, it may help if you tell us quickly that migrants you are sponsoring have stopped turning up for work. If an individual member of your staff is responsible for the problem, we will take into account any action you have taken against that person for example if you have dismissed the person, moved them to another area of work, or retrained them, as appropriate. However, we will treat the situation more seriously if we are sure you were involved in the actions of your staff or deliberately ignored what they were doing;
- d) any civil penalties you have been issued with for an “offence” listed in Appendix C unless we withdrew the penalty or it was cancelled on appeal.

647. If we are considering downgrading your licence, we will write to you to tell you what action we propose to take and why, giving you 28 calendar days from the date of that letter to respond in writing. We may extend this period at your request if we are satisfied that there are exceptional circumstances. You may make any written statements you think are necessary to respond, including sending evidence. However, we will not hold an oral hearing.

648. If any new evidence comes to light during that 28 day period, we will write to you again, giving you another 28 days to respond on the new evidence.

649. When we receive a response from you, we will consider the response and may ask any relevant compliance officer, other law enforcement agency, government department, agency, local authority, the police, foreign government and other body for information. We will notify you of our decision within 28 calendar days of receiving your response.

650. If we do not receive a response from you within the time allowed, we will proceed with whatever action we believe to be appropriate and will notify you of our decision in writing. (Appropriate action may be that we revoke your licence, or suspend it, or downgrade it and/or reduce the number of CoS you are allowed to assign. Or to take no further action.)

651. Any decision to downgrade your licence will take effect from the date of the letter we send you to tell you about our decision. We will send this letter by recorded delivery. Please see the section of this guidance entitled Sponsorship Action Plans for more details including how and when you must pay your action plan fee.

CAN MY LICENCE BE REVOKED AFTER IT HAS BEEN GRANTED?

652. There are certain circumstances which could lead to your licence being revoked. If your licence is revoked it will be revoked from all the tiers, categories and sub-categories in which you are registered.

653. If we revoke your licence and you are also an endorsing body under the Tier 1 (Graduate Entrepreneur) scheme, we will withdraw you from that scheme and any migrant you are endorsing will have their leave reduced to 60 days to allow them to seek another route under which they can remain in the UK. If they have been unable to do this after the 60 day period they must leave the UK or face enforced removal.

CIRCUMSTANCES IN WHICH WE WILL REVOKE YOUR SPONSOR LICENCE

654. We will revoke your licence if:

- a) we find, after your licence has been granted, that you gave false information on your sponsor licence application, or in support of your licence application, and had you given the correct information we would have refused your application.
- b) you stop trading or operating for any reason including if:
 - I. you sell your business (this includes circumstances where this happens as a result of you becoming insolvent);
 - II. you go into liquidation, or sequestration is awarded and you cease to trade as a result of that;
 - III. a court issues a bankruptcy order against you;
 - IV. you cease to have an operating/trading presence in the UK.
- c) you stop being accredited or registered with any body that you need to be accredited or registered with to obtain a licence.
- d) you, or a relevant person are issued with a civil penalty for employing one or more illegal workers, and the fine for at least one of those workers stood at the maximum amount once your objection and appeal rights have been exhausted;
- e) you, or a relevant person are issued with a civil penalty as above for a first offence, where the fine is below the maximum amount, and you have failed to pay the fine in full or set up a payment instalment plan with us, by the 29th day after you are notified of liability which may be after an initial objection or appeal determination.
- f) you, or a relevant person, are issued with a civil penalty as above for another offence within the period that your sponsor licence is valid and you are still liable once your objection and appeal rights have been exhausted.
- g) you, or a relevant person are paying a civil penalty fine by an agreed payment instalment plan and you breach the conditions of that plan.
- h) you, or a relevant person, are convicted of one of the following offences (unless the conviction is spent under the Rehabilitation of Offenders Act 1974):
 - I. any offence under the Immigration Act 1971, the Immigration Act 1988, the Asylum and Immigration Appeals Act 1993, the Immigration and Asylum Act 1999,

the Nationality, Immigration and Asylum Act 2002, the Immigration, Asylum and Nationality Act 2006, or the UK Borders Act 2007;

- II. trafficking for sexual exploitation; or
 - III. any other offence which, in our opinion, indicates that you pose a risk to immigration control, for example, offences involving dishonesty or deception, including any of the offences listed in Appendix B. Any other unspent convictions could also lead to an application being refused.
- i) you have been B-rated and have not met all of the requirements of your action plan within the specified period, which will not exceed three months.
 - j) you have been B-rated twice before during the validity period of your licence and we find again that you have failed to meet your sponsor duties to the extent that, but for it being our policy that a third instance of B-rating will result in revocation, we would award a B rating again.
 - k) you have been awarded or downgraded to a B-rating and have failed to pay the action plan fee within 14 calendar days.
 - l) an SMS user that you have appointed who is not a settled worker, assigns their own CoS or assigns a CoS to a close member of their family or their partner.
 - m) you are a B-Rated sponsor and have used a CoS that we have granted specifically to extend an existing migrant's leave, to sponsor a new migrant.
 - n) you give false information on an application for a Tier 2 (General) restricted CoS;
 - o) you employ a migrant in a job that does not meet the appropriate skill level requirements as set out in this guidance.
 - p) you assign an unrestricted Tier 2 (General) CoS to a migrant who will be employed to do a restricted job unless the migrant is a Croatian national.
 - q) you assign a restricted Tier 2 (General) CoS to a migrant and the salary stated on that CoS is lower than the salary stated on the application you made for that CoS or any sponsor note you have added to it.
 - r) you use a restricted Tier 2 (General) CoS to fill a vacancy other than the one specified in your application for that CoS.
 - s) you assign a restricted Tier 2 (General) CoS to a migrant and on the application for that CoS you stated that you had conducted a resident labour market test and either;
 - I. the test you conducted did not meet the requirements set out in this guidance; or
 - II. you had not conducted a test.
 - t) you assign any Tier 2 (General) CoS to a migrant and state on that CoS that the job was exempt from the resident labour market test (as set out in this guidance) and it was not.
 - u) you do not hold, or you cease to hold appropriate planning permission or Local Planning Authority consent to operate your type/class of business at your trading address (where this is a Local Authority requirement).
 - v) you fail to meet the requirements set out in paragraph 192 and/or paragraphs 424-425 concerning the safeguarding of children.
 - w) you are an employment agency or business and you have supplied migrants that you are sponsoring to a third party as labour.
 - x) you are a food business that is required to be approved by a relevant food authority and either you have never been approved, or you have, but that approval has been withdrawn.
 - y) you sponsor a migrant under Tier 5 (International Agreement) as a contractual service supplier or independent professional to service a contract that:
 - I. you have not told us about; or
 - II. you have told us about, but we have not yet confirmed that you can assign a CoS in connection with that contract; or
 - III. we have told you does not meet the requirements set out in this guidance.

655. If any of the circumstances in paragraph 654 arise, we will revoke your licence with immediate effect. We will write to you to inform you that your licence has been revoked. There is no right of appeal to this decision and you will not be eligible to apply again for a sponsor licence for a period of six months from the date your licence is revoked.

CIRCUMSTANCES IN WHICH WE MAY REVOKE YOUR SPONSOR LICENCE

656. We may revoke your licence if:

- a) you, or a relevant person are dishonest in any dealings with us. This includes, among other things:
 - I. making false statements, or failing to disclose any essential information, when applying for a sponsor licence; or
 - II. making false statements, or failing to disclose any essential information, when assigning a CoS or issuing a visa letter (for example falsely claiming to have complied with the resident labour market test).
- b) you, or a relevant person are convicted of an offence that we consider to be serious. We do not take into account convictions that are spent under the Rehabilitation of Offenders Act 1974.
- c) you, or any organisation that you or a relevant person have been involved with in a similar role has its authorisation removed by the Office of the Immigration Services Commissioner (OISC) under the Immigration and Asylum Act 1999. (This applies to individuals or organisations that provide immigration advice or services.)
- d) you fail to pay a migrant sponsored under Tier 2 or Tier 5 at least the the appropriate rate for the job they are being sponsored to do, as set out in this guidance and the codes of practice.
- e) you fail to provide any documents listed in Appendix D of this guidance, to a compliance officer within the specified time limit.
- f) you, or a relevant person become legally prohibited from acting as a company director.
- g) you, or a relevant person become an un-discharged bankrupt.
- h) you fail to comply with any or all of your sponsor duties.
- i) we find that you have no level 1 user in place that meets the requirements set out in paragraphs 88-91.
- j) you have no SMS users in place.
- k) as a result of information available to our compliance officers, we are not satisfied that you are using the processes or procedures necessary to fully comply with your sponsor duties.
- l) we find that migrants you have sponsored have not complied with the conditions of their permission to stay in the UK, or the conditions of their grant of worker authorisation and you have not been following good practice guidance set out by us or a relevant sector body.
- m) you assign a CoS under Tier 5 (GAE) for a period longer than has been authorised for your scheme and it has been used successfully in an application for leave.
- n) any of your level 1 or level 2 users disclose their SMS password to another person.
- o) you sponsor more than five migrants in the Tier 2 (ICT – Graduate Trainee) category with start dates in the same financial year.
- p) the role undertaken by a migrant you have sponsored does not meet:
 - I. the job description in the Code of Practice containing the SOC code stated on the CoS you assigned to them (unless this is solely due to the transition from SOC 2000 to SOC 2010); and/or
 - II. the job description on the CoS that you assigned to them.

- q) you have no authorising officer in place that meets the requirements set out in paragraphs 88-91.
- r) you do not supply, when requested and within the specified time limit, any document we request to support any change you have reported via the SMS or the sponsor change of circumstances form.

657. We cannot define precisely in which exceptional circumstances we may not revoke your sponsor licence but when one of the above circumstances applies, we view this as a serious problem and will look for evidence that you were either not responsible for what happened or, if you were, you took prompt and effective action to remedy the situation when it came to light. For example:

- a) one of your employees was wholly responsible for the dishonesty and that person was dismissed when it came to light; or
- b) a migrant was paid the wrong salary because of a problem with your payroll system but this was corrected as soon as possible.

658. If any of the circumstances in paragraph 656 arise and we believe that the evidence we have shows that you are breaching your duties and/or pose a threat to immigration control, we will suspend your licence. (See paragraphs 660-685.)

659. If any of the circumstances in paragraph 656 arise and we do not believe it is necessary to suspend your licence, we are likely to downgrade your licence to a B-rating. (See paragraphs 639-651.)

SUSPENDING A LICENCE

660. If we have reason to believe that you are breaching your duties and pose a threat to immigration control (for example, assigning CoS to migrants who do not qualify to come to the UK), to the extent that we may need to consider revoking your licence, we may suspend your licence while we make further enquiries.

661. You will not be able to assign any CoS while your licence is suspended. You must continue to comply with all of your sponsor duties and any other requirements set out in this guidance, throughout the period of suspension. If your licence is due to expire during the period of suspension, you must still apply to renew it if you want to keep it.

662. If your licence is suspended you will be suspended in all the tiers, categories and sub-categories in which you are licensed and we will remove your entry from the public version of the register of sponsors during the suspension period.

663. Migrants who you are sponsoring at the time of the suspension will not be affected, unless, when we finish considering the case, we decide to revoke your licence.

664. If after an investigation, we decide to revoke your licence, we will write to you to inform you that your licence has been revoked. There is no right of appeal against this decision and you will not be eligible to apply for a sponsor licence again for a period of six months from the date your licence is revoked.

665. If, after an investigation, we decide not to revoke your licence we will lift the suspension and reinstate your entry on the public version of the register of sponsors on our website.

PROCESS WE WILL FOLLOW IN DECIDING WHAT (IF ANY) ACTION TO TAKE

666. Where any of the criteria arise which are listed in paragraph 656 as those which 'may' result in revocation of your licence, we will first consider downgrading your licence (see paragraphs 639-651). However, we may immediately suspend your licence.

667. If we suspend your licence, the process will then continue in one of the following two ways:

Process 1

668. Where we are satisfied that we have enough evidence to suspend your licence without the need for further investigation, we will write to you giving detailed reasons for the suspension.

669. You will then have 28 calendar days from the date of the written notification, to respond in writing to our letter. We may extend this period at your request if we are satisfied that there are exceptional circumstances. You may make any written statements you think are necessary to respond, including sending evidence. However, we will not hold an oral hearing.

670. If any new evidence comes to light during that 28 day period, we will write to you again, giving you another 28 days to respond on the new evidence.

671. When we receive a response from you, we will consider the response and may ask any relevant compliance officer, other law enforcement agency, government department, agency, local authority, the police, foreign government and other body for information.

672. If we do not receive a response from you within the time allowed, we will proceed with whatever action we believe to be appropriate and will notify you of our decision in writing. (Appropriate action may be to re-instate your licence with either an A-rating or a B-Rating, or to revoke it and/or reduce the number of CoS you are allowed to assign.)

673. We will notify you of our final decision within 28 calendar days of receiving your response.

674. Any action we take as a result of our decision will take effect from the date of the letter we send to you, informing you of our decision. We will send this letter by recorded delivery.

Process 2

675. Where we have evidence that warrants your licence being suspended pending a full investigation, we will write to you giving our initial reasons for the suspension and informing you that an investigation will take place. It may not be possible at that point to say how

long the investigation will take, but we will update you on our progress at regular intervals. During this period, you can make any written statements you think are necessary to respond, including sending evidence. Any statement or evidence you send to us during this period will be taken into account during the investigation.

676. When the investigation has been conducted, we will write to you again, giving detailed reasons for the suspension of your licence.

677. You will then have 28 calendar days from the date of the written notification, to respond in writing to our letter. We may extend this period at your request if we are satisfied that there are exceptional circumstances. You may make any written statements you think are necessary to respond, including sending evidence. However, we will not hold an oral hearing.

678. If we identify any further reasons for the suspension of your licence during that 28-day period, we will write to you again, giving you another 28 days to respond in writing to the additional reasons.

679. When we receive a response from you, we will consider the response and may ask any relevant compliance officer, other law enforcement agency, government department, agency, local authority, the police, foreign government and other body for information. We will notify you of our decision within 28 calendar days of receiving your response.

680. If we do not receive a response from you within the time allowed, we will proceed with whatever action we believe to be appropriate and will notify you of our decision in writing. (Appropriate action may be to re-instate your licence with either an A-rating or a B-Rating, and/or reduce the number of CoS you are allowed to assign, or to revoke your licence.)

681. Any action we take as a result of our decision will take effect from the date of the letter we send to you, informing you of our decision. We will send this letter by recorded delivery.

WHAT HAPPENS IF MY SPONSOR LICENCE IS REINSTATED FOLLOWING IT BEING SUSPENDED?

682. If your licence has been suspended and we do not subsequently revoke it we will reinstate it either as an A-rating or a B-rating.

683. If we reinstate your licence with a B-Rating you will not be given a further 28 days to make representations as this process will have been completed during the period your licence was suspended

684. Re-instatement with a B-rating means you must comply with an action plan (see paragraphs 134-144). We may also reduce, or set to zero, the number of CoS you are allowed to assign.

WHAT HAPPENS TO MY SPONSORED MIGRANTS IF MY LICENCE IS SUSPENDED?

685. You will not be able to assign any CoS when your licence is suspended.

686. If, after your licence is suspended, a migrant makes an application supported by a valid CoS that you assigned before your licence was suspended, we will not decide their application until the reason for suspension has been resolved.

687. If you are also an endorsing body under the Tier 1 (Graduate Entrepreneur) scheme and a migrant applies for Tier 1 leave with a valid letter of endorsement from you, we will not decide the case until the reason for the suspension has been resolved.

688. If a migrant has already been granted entry clearance on the basis of a CoS assigned by you but they have not yet travelled to the UK, they will be allowed to enter and start working for you. However, we advise all migrants to check the status of their sponsor's licence before they travel and decide for themselves whether or not they want to travel to the UK.

689. During the time that your response is being prepared or considered, migrants who have been assigned a CoS by you and are already in the UK are not told about the suspension.

WHAT HAPPENS TO MY SPONSORED MIGRANTS IF MY LICENCE IS REVOKED?

690. If we revoke your licence, we will:

- a) Immediately end (curtail) the permission to stay in the UK, or worker authorisation of any migrants whom we believe were actively involved (complicit) in any dishonesty by you (for example, if the migrant agreed that you would arrange a non-existent job for them so they could come to the UK); and
- b) reduce the length of the worker authorisation, or permission to stay in the UK of any other migrants (those who were not actively involved) to 60 calendar days, to give them a chance to find a new sponsor. (If the migrant has less than 60 days of their leave or worker authorisation remaining, we will not curtail).

691. In the first case above, any migrant with Tier 2 or Tier 5 leave will have to leave the UK or face enforced removal. In the second case above, they will also have to leave or face enforced removal if, at the end of the 60 calendar days, they have not found a new sponsor.

692. If you are an endorsing body under the Tier 1 (Graduate Entrepreneur) scheme, the same action will be taken in respect of any migrant you are endorsing under that scheme.

693. We will take action against any migrant with Tier 1, Tier 2 or Tier 5 leave who remains in the UK after their permission to stay here has expired. This may result in migrants being detained and removed from the country. Any applications they make to come to the UK within the next 10 years may also be refused.

694. If your licence is revoked, any CoS you have assigned automatically become invalid. This means that any application for entry clearance, leave to remain or worker authorisation made on the basis of such a CoS will automatically be refused.

695. Where a migrant has already been granted entry clearance when we revoke your licence, the entry clearance will be cancelled under paragraph 30A (ii) of the immigration rules, if they have not yet travelled to the UK. If the migrant has travelled to the UK, they will be refused entry to the country under paragraph 321(ii) of the immigration rules.

SURRENDERING YOUR LICENCE

696. If you no longer wish to sponsor migrants, and have no sponsored migrants currently working for you, you may surrender your licence. If you wish to surrender your licence, you must do this via your SMS account. When you submit the request to surrender your licence we will tell you what documents you must send to us (where appropriate) and you will also have to sign a short declaration. We will then remove your entry from the public register of licensed sponsors. (Please see paragraphs 708-709 which explain what to do if you do not have a level 1 user and cannot surrender your licence using your SMS account.)

697. You may choose to surrender your licence in all the tiers, categories and sub-categories you are licensed at the same time or you may choose to surrender part of your licence in certain tiers, categories or sub-categories. You must clearly indicate which part you are surrendering when submitting the change of circumstances via your SMS account.

698. When you make this request, you must provide evidence that you no longer have responsibility for any migrants whom you may have previously sponsored. If you do have any such migrants, we will immediately revoke your licence and remove the migrants' permission to stay in the UK and may remove the migrants from the country.

699. If you surrender your licence you can re-apply to join the sponsor register at any time. You will have to pay the appropriate fee and produce all relevant documents appropriate to the tier, category, or sub-category you are applying for.

IF MY LICENCE IS REVOKED, CAN I APPLY AGAIN?

700. Once your licence has been revoked you cannot make a further application for a sponsor licence for a period of six months from the date your licence was revoked. The only exception to this is if your licence was revoked in error. If this happens we will contact you to make arrangements for your licence to be reinstated.

701. If you do apply again after six months, we will treat it as a fresh application. You will have to pay the appropriate fee and produce all relevant documents appropriate to the tier, category, or sub-category you are applying for.

WHAT HAPPENS IF MY CIRCUMSTANCES CHANGE?

702. As part of your duties, you must notify us of any changes to your details, for example if you want to change your key contact or authorising officer, or if you change your address. We may ask for more details and we may ask for documentary evidence to support the change you are requesting.

703. You must use your SMS account 'request changes to licence details' function to:

- a) change your address;
- b) change your name;
- c) change your key contact or their details;
- d) tell us about changes to your structure, such as more branches or sites, or new linked entities if you are licensed under Tier 2 (ICT);
- e) tell us about any criminal convictions; and
- f) tell us about a change in the status of any registration by a governing body that you are required to hold.
- g) replace your authorising officer and/or key contact;
- h) amend the details of your authorising officer and/or key contact;
- i) amend your organisation details, for example notifying us of takeovers and mergers; and
- j) tell us that you have sold all or part of your business;
- k) notify us of any other changes to your circumstances, for example adding or removing a representative or surrendering your licence.

All of these changes must be requested by a level 1 user.

704. If you request a change to the name on your licence, we will need to understand exactly why you are changing your name because in some circumstances, you may have to apply for a new licence. For example, if the only reason you are changing your name is because you are incorporating yourself for the first time, having not been incorporated in the past, and nothing else at all is changing other than your name, we can change the name on your licence. However, if there are also changes to your structure, for example if you are involved in a merger or takeover, you must read the section of this guidance that covers mergers and takeovers and it is possible that you may have to apply for a new sponsor licence.

705. When you submit the changes we will tell you what documents you must send us to support your request. For some changes, for example replacing your authorising officer or surrendering your licence, you will also have to sign a short declaration.

706. There are circumstances when you will have to complete more than one action on the SMS. For example, if you notify us of a change of address, you may also need to notify us of a change to the working address for your Key Personnel. You must request each change separately.

707. You can find some helpful guides on our website which show you how to request changes via SMS using this link www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/sms/

708. The following are circumstances in which you will not be able to use SMS to report or request a change and where you must complete a change of circumstances form:

- a) replace the level 1 user when you have no other level 1 user to do this via the SMS

(for example when the previous level 1 user was the only SMS user and has left your organisation);

- b) replace the key contact or authorising officer when you have no level 1 user to do this via the SMS (for example when the previous key contact or authorising officer was the only SMS user and has left your organisation); or
- c) appoint a representative as the level 1 user when you have no other level 1 user to do this via the SMS (for example when the previous level 1 user was the only SMS user and has left your organisation);
- d) surrender your licence if you have no level 1 user who can report this via your SMS account.

709. The change of circumstances form can be found on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/sponsors/sponsorcircumstancesform>

710. We may ask for (and check) documents to support any change you request through the SMS or the change of circumstances form. The documents we ask for may be ones other than those listed in Appendix A. When you request a change via SMS, a submission sheet will be generated as a .pdf document if we need a signed declaration and/or any documents to validate your request. If you submit the request using the change of circumstances form, we will write to you or e-mail you to advise what (if any) documents we need.

711. You must send any declaration, documents (if required) and the submission sheet (for requests made via SMS) to us within 10 working days. If we then ask you to send us any more documents, you must also send them to us within 10 working days. Where you are required to send anything to us within 10 working days, and you fail to do so, your request will be refused. If your request is refused you can make another request at any time.

WHAT HAPPENS IF I BECOME INSOLVENT?

712. If you go into administration (including special administration), or administrative receivership (receivership in Scotland) you must tell the administrator or receiver that you are a licensed sponsor and that this guidance requires you to tell us within 28 days of going into administration or receivership.

713. The insolvency professional appointed as the administrator or receiver must be appointed as your authorising officer (AO). This can be done in one of two ways:

- a) If they are content for your named Level 1 user to remain in that role, then the Level 1 user can use the 'request changes to sponsor details' function within your SMS account to replace your existing AO.
- b) If they do not want your existing Level 1 user to continue to access your SMS account, they must complete a change of circumstances form to appoint themselves as your new Level 1 user (see paragraphs 708-709). They must write 'In Administration' across the top of the Change of Circumstances form so we can ensure that it is dealt with as quickly as possible. Once we have approved that change, they can then appoint themselves as the new authorising officer using your SMS account.

714. If the administrator or receiver does not want any of your existing SMS users to continue accessing your SMS account, they must complete a change of circumstances form to appoint themselves as a new Level 1 user. They must decide whether your existing SMS users should be replaced, or whether they are content for them to keep their level 1 or Level 2 SMS access.

715. There are different ways in which you can come out of administration (including special administration), or administrative receivership (receivership in Scotland) and some of these will have an impact on your continuing permission to hold a sponsor licence. The deciding factor will be whether or not you continue to own your business.

Company Voluntary Arrangement (CVA) or Debt Arrangement Scheme (DAS)

716. If you enter into a CVA, you must tell us within 28 days of this being agreed and also tell us if it has resulted in a change of ownership. Where there is a change of ownership, we will treat this in the same way as if you had simply sold your business and we will revoke your sponsor licence. If you are sponsoring any migrants at the point where ownership changes and the new owner wishes to continue employing them, the new owner must apply for a sponsor licence within 28 days of the day they took ownership. (See paragraph 730).

717. If the CVA amounts to an agreement with your creditors, but no change in ownership, then you can continue to hold your sponsor licence. You can also remove the administrator from the position of AO and appoint either your original AO or a new one. You must do this using your SMS account.

718. If you enter into a Debt Payment Programme under DAS and there is no change in ownership, you can continue to hold your sponsor licence.

Liquidation or Sequestration

719. If you go into voluntary or compulsory liquidation you must tell us within 28 days of the date you cease trading. If sequestration has been awarded or if you have signed a Trust Deed and either of these means you cease trading, you must tell us within 28 days of the date you cease to trade. If you or any appointed insolvency professional cannot access your SMS account to report this, either you or your appointed insolvency professional must email us at sponsorsuspensions@homeoffice.gsi.gov.uk We will then revoke your sponsor licence.

Sole Traders

720. If you are a sole trader and you enter into an Individual Voluntary Arrangement (IVA) or a Debt Arrangement Scheme (DAS), in connection with your business, you must tell us using your SMS account within 28 days. If your IVA or DAS amounts to an agreement with your creditors where you remain as the sole owner of your business and you can continue to trade, you must also tell us about this. If this happens, you can keep your sponsor licence.

721. If your IVA or DAS results in your business being sold, you must tell us about this within 28 days. We will then revoke your sponsor licence. If you are sponsoring any migrants at the point where your business is sold and the new owner wishes to continue employing them, the new owner must apply for a sponsor licence within 28 days of the day they took ownership. (See paragraph 730).

722. If you are a sole trader and a court issues a bankruptcy order against you, or sequestration has been awarded, you must tell us within 28 days of this happening. You will

not be able to do this via your SMS account because you will not be permitted to access it. Instead you must email us at sponsorsuspensions@homeoffice.gsi.gov.uk to tell us about this and you must tell us the date you ceased trading. We will then revoke your sponsor licence.

WHAT HAPPENS IF I AM INVOLVED IN A MERGER OR TAKEOVER OR DE-MERGER?

723. This section explains what you must do if you are involved in a merger, takeover, de-merger or other structural change, for example if you sell all or part of your business, or the controlling number of shares in your business. It also explains what you must do if you lose or accept sponsored migrants who are transferring employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) arrangements.

724. The same applies if you lose or accept sponsored migrants who are moving under TUPE or similar arrangements. For example Public Servants are not entitled to TUPE protection but it is recommended that they are given equivalent protection in the Cabinet Office paper 'Staff Transfers in the Public Sector Statement of Practice – January 2000'. You can find more information about TUPE on the Gov. UK website www.gov.uk/transfers-takeovers

725. Your sponsor licence is not transferrable and what happens to it will depend on whether:

- a) you sell all or part of, or the controlling number of shares in your business or organisation;
- b) you are being taken over completely or in part by another organisation; or
- c) you are splitting out to form additional, new organisations

726. It is your duty to report a merger, takeover or de-merger or change of ownership and if you fail to do so, we will take action against you. Any action we take could also lead to the migrants involved having their leave curtailed.

727. This report must be made by your level 1 user using your SMS account. If your level 1 user is no longer available because you have been completely taken over or merged into another organisation, we will accept the report from the level 1 user at the new sponsor organisation. Once you have reported the change, we will ask for (and seek to verify) documents to support the change you are reporting and these may be documents that are not listed in Appendix A of this guidance.

728. If there is a change in ownership of your organisation or business, for example if it sold as a going concern or a share sale results in the majority number of shares being transferred to a new owner, your sponsor licence will be revoked. The new owners of the business must then apply for a new sponsor licence (unless they already have one) if they wish to continue employing any migrants that you were sponsoring before the change of ownership.

729. If any situation occurs which triggers a TUPE or similar arrangement and a sponsored worker transfers to you, then you will, from the date of the transfer of employment, take up full responsibility for them as their new sponsor, and you must meet all of the requirements set out in this guidance in respect of any such transferees.

730. In all cases where migrants are being transferred to you under TUPE or similar arrangements, but you do not already have a sponsor licence under the tiers and categories needed to sponsor them, you must make a valid application either for your first sponsor licence, or to extend the scope of your existing sponsor licence within 28 days of the transfer

taking place. If you:

- a) do not make a valid application within 28 days; or
- b) do make a valid application, but that application is refused,

all of the migrants who have transferred to you, except any that can be sponsored under your existing licence if you have one, will have Tier 2 or Tier 5 leave or worker authorisation reduced to 60 days.

731. Any migrant involved in a merger, de-merger or takeover does not need to make a new application for leave, or worker authorisation and the new sponsor does not have to assign a new CoS to them unless the transfer also involves the migrant changing jobs or the migrant does not have TUPE or similar protection. See the section on Change of Employment at paragraphs 559-561.

COMPLETE TAKEOVERS AND MERGERS

732. If you are being completely taken over or merged into another organisation and your sponsored migrants are transferring to a new organisation you must:

- a) report the change via SMS, including full details of all of your sponsored migrants who will be transferring to a new organisation. You must make the report within 28 days of the change taking place; and
- b) use the migrant reporting facility on the SMS to report whether any of your sponsored migrants are not transferring to the new sponsor - these migrants' Tier 2 or Tier 5 leave, or worker authorisation will be reduced to 60 days.
- c) confirm if you need to surrender your sponsor licence. This can be done via your SMS account or using the change of circumstances form – see paragraphs 708-709.

733. If you have completely taken over, or merged with another sponsor organisation and their sponsored migrants are transferring to you, you:

- a) must make a valid application for a sponsor licence as set out in paragraph 730, within 28 days of the date they transfer to you; or
- b) can use the SMS to apply for an increase in your current allocation of CoS, if you already have a sponsor licence, and the change means that you may need to recruit more migrants in the future; and
- c) must report the change via SMS, including full details of any migrants you have accepted full sponsorship responsibility for. You must make the report within 28 days of the change taking place.

734. We can give you access to the old sponsor's licence on the SMS, so that you can report migrant activity for the sponsored migrants who have moved and we will arrange this when asked.

PARTIAL TAKEOVERS AND DE-MERGERS

735. This section explains what must happen if you are partially taken over or if you are splitting out to form one or more new organisations and at least some of your sponsored migrants will be transferred to a new organisation under TUPE arrangements or similar.

If the existing sponsor no longer needs its sponsor licence

736. If you are the existing sponsor, and the change means that you will no longer have any sponsored migrants, you:

- a) must report the change via SMS, including details of any migrants who will be transferring to the new organisation, to us within 28 days of the change taking; and
- b) may want to surrender your licence. (This can be done via your SMS account or using the change of circumstances form – see paragraph 708-709).

737. If the change leaves you with no sponsored migrants, but you are not sure whether you will need to sponsor any new migrants in the future, you may decide to keep your licence but the decision is entirely up to you. If you do keep your licence, we will reduce your current allocation of CoS to zero. If you decide to surrender your licence but then need to recruit migrants again in the future, you will have to apply for a new licence.

738. If you are the new organisation (sponsor) you:

- a) must make a valid application for a sponsor licence as set out in paragraph 730, within 28 days of the date they transfer to you; or
- b) can use the SMS to apply for an increase in your current allocation of CoS, if you already have a sponsor licence and the change means that you may need to recruit more migrants in the future; and
- c) must report the change via SMS, including details of any migrants you have accepted full sponsorship responsibility for. You must make the report within 28 days of the change taking place.

739. As the new sponsor you will not be able to report in the usual way on the migrants that have transferred from the old sponsor organisation, because you will not have a SMS record for them. However, you must report on these migrants to continue to meet your sponsor duties and you must do this by email to Tier2&5MigrantRep@ukba.gsi.gov.uk giving:

- a) the old sponsor organisation's name;
- b) the old sponsor organisation's licence number (if known);
- c) the migrant's details; and
- d) details of the change (for example, if the migrant has missed 10 expected contacts).

If the existing sponsor still needs its sponsor licence

740. If you are the existing sponsor you must:

- a) report the change via SMS, including details of any migrants who will be transferring to the new organisation), to us within 28 days of the change taking place; and
- b) notify us if you need to amend your current allocation of CoS - for example, if you will need fewer CoS than was agreed before the change; and
- c) continue to report as usual on any sponsored migrants you are still employing, although you will no longer have any responsibility for reporting on migrants who have moved to the new organisation.

741. If as the existing sponsor you are unsure whether, or when you may need to recruit any new migrants in the future, we will reduce your current allocation of CoS to zero.

742. If you are the new organisation (sponsor), you:

- a) must make a valid application for a sponsor licence as set out in paragraph 730, within 28 days of the date they transfer to you; or
- b) can use the SMS to apply for an increase in your current allocation of CoS, if you already have a sponsor licence and the change means that you may need to recruit more migrants in the future.; and
- c) must report the change via SMS, including details of any migrants you have accepted full sponsorship responsibility for. You must make the report within 28 days of the change taking place.

743. As the new sponsor you will not be able to report in the usual way on the migrants that have transferred from the old sponsor organisation, because you will not have a SMS record for them. However, you must report on these migrants to continue to meet your sponsor duties and you must do this by emailing us at Tier2&5MigrantRep@ukba.gsi.gov.uk giving:

- a) the old sponsor organisation's name;
- b) the old sponsor organisation's licence number (if known);
- c) the migrant's details; and
- d) details of the change (for example, if the migrant has missed 10 expected contacts).

RENEWING YOUR SPONSOR LICENCE

744. A sponsor licence lasts for four years, after which it will expire. The only exception to this is if we revoke it or you surrender it before it expires. The four years will run from the date on which your licence was granted.

745. Your licence start and end date, and the date that you can make your application to renew your licence, can be viewed using the 'Licence summary' function in SMS. Your licence end date is the last date that you can make an application to renew your licence using your SMS account. If you do not make your application by this date, your licence will expire on the following day. If we grant your application to renew your licence, your end date and future renewal date will be updated.

746. If you have been granted a licence and subsequently applied for an additional tier, category or sub-category, the expiry date of the original licence will apply to all additional tiers, categories or sub-categories which you have added.

747. If you do not apply to renew your licence and it expires at the end of the four year period, you will no longer be a licensed sponsor from the date that it expired. This means that:

- a) you will no longer be able to access your SMS account;
- b) you cannot assign any more CoS; and
- c) we will reduce the Tier 2 or Tier 5 leave, or worker authorisation of any migrants you are currently sponsoring to 60 days, during which time they are allowed to find a new sponsor. If a migrant with Tier 2 or Tier 5 leave does not make a further application before their leave expires they must leave the UK or face enforced removal; and
- d) your details will be removed from the online public register of licensed sponsors.

748. If you have any sponsored migrants working for you, you must apply to renew your licence before it expires if you want them to be able to continue working for you, even if you don't plan

to sponsor any new migrants in the future.

749. If you unintentionally allow your licence to expire, but you have sponsored migrants who you wish to continue working for you, you must contact us straight away to tell us that your licence has expired unintentionally. We will then delay reducing your sponsored migrants' leave (as set out in paragraph 747 c)) for a period of 28 days starting from the date your licence expired. During that period you must make an application for a new licence.

750. If these circumstances, if you do not apply for a new licence within 28 days, we will then reduce the leave of all migrants who have been working for you as set out in paragraph 747 c).

751. It is entirely your responsibility to make sure that you renew your licence and we cannot stress strongly enough how important it is that you apply in good time. We will send you a series of reminders but if you leave it until the last minute and then have a problem, for example if there is an interruption with your internet service, we cannot stop your licence from expiring.

HOW TO RENEW YOUR LICENCE

752. You must apply to renew your licence using your SMS account. The functionality to make a renewal application will be available in your SMS account from three months before the expiry date of your licence.

753. We will write to you 120 calendar days in advance of the expiry date of your licence to confirm your licence expiry date and tell you that you will soon need to apply to renew it.

754. We will write to you again 90 calendar days before the expiry date of your licence to remind you again and to let you know that you can now make an application using your SMS account.

755. We will write again to remind you that your licence is due for renewal:

- a) 60 calendar days before it is due to expire; and
- b) 30 calendar days before it is due to expire; and a final reminder will be sent
- c) 14 calendar days before it is due to expire.

756. There is a fee for renewing your licence. The fee will be the same as it would be if you were applying for a licence for the first time. Details of all our fees are available on our website at <http://www.ukba.homeoffice.gov.uk/aboutus/fees> This web content also explains that there are different fees for small and large companies. Understanding this distinction is important because if you pay the wrong fee your application to renew your licence may be rejected.

HOW THE APPLICATION PROCESS WORKS

757. The licence renewal function in your SMS account can only be accessed by a level 1 user. You should discuss your licence renewal with your authorising officer before a level 1 user

submits it. When the level 1 user submits the application, they will be confirming that they are doing so with the consent of your authorising officer.

758. The application is simple and will only take around 5 minutes to complete. At the end of the process the level 1 user will be prompted to make an online payment to cover the licence renewal fee and to print off a summary sheet to keep for your own information. You do not need to send us any documents at this stage.

759. If you pay;

- a) the small licence fee when you should have paid the large fee, your application will be rejected.
- b) the large fee when you should have paid the small fee, your application will be accepted and we will refund the difference to you.

760. If your application is accepted, we will temporarily extend the expiry date of your licence to allow us time to conduct any checks that we decide are necessary before granting your application.

761. The checks we make once we have temporarily extended your licence could include asking you to send us some documents. For example we may want to see again, any documents listed in Appendix A as mandatory documents for anyone applying for a new sponsor licence. We may also ask for other information documents that are not listed in Appendix A. If we write to you to ask for any information or documents, you must send them to us within seven calendar days.

762. If you do not send the documents within this time, we will take action against you. We may:

- a) reduce your CoS allocation;
- b) downgrade your licence to a B-rating (see paragraphs 639-651).
- c) suspend your licence pending further investigation (see paragraphs 660-685).
- d) revoke your licence (see paragraphs 652-659).

763. We may want to visit you in connection with your application to renew your licence. If you are an A-rated sponsor at the time you apply and we conduct a visit as part of considering your application, and as a result we find that we have concerns about any aspect of your actions as a licensed sponsor, for example if you have failed to meet any or all of your sponsor duties, we will either:

- a) grant your application to renew your licence but downgrade your existing licence to a B-rating; (More information on what being B-rated means is in paragraphs 134-144.); or
- b) revoke your existing licence. (More information on when we will, or may revoke your licence is in paragraphs 652-659).

764. If your licence is B-rated at the time you apply, you will remain subject to your sponsorship action plan and we will not make a final decision of your application until the period covered by your action plan has passed. For example, if your licence is due to expire on 1 December 2013, but you are subject to an action plan until 31 January 2014, we will not make a final decision on your application before 31 January 2014.

765. If your licence is suspended but is due to expire, you must still apply to renew it. If you don't apply to renew it and the result of the suspension does not lead to your licence being revoked, we will not be able to reinstate your licence if it has expired.

766. If we have granted you access to a dormant sponsor licence because you have been involved in a merger, takeover or other restructuring exercise, you do not need to do anything in respect of that dormant licence expiring. You will continue to be able to access it until the last grant of leave for a migrant sponsored under that licence has expired.

TIMING YOUR LICENCE RENEWAL APPLICATION

767. You must apply to renew your licence before the date that it will expire. We strongly recommend that you make your application to renew your licence at the earliest opportunity, and in any event, at least one month before the expiry date. If you apply in good time, it is likely that you will have the chance to apply again if your application is rejected or refused. If your licence has expired by the time we make a decision to reject or refuse your application, you will not be able to make another application to renew your licence.

768. If you delay making your renewal application and it is then rejected, you will be risking the possibility that your licence expiry date will have already passed and you will not be able to make another application to renew it because it will have expired. The consequences of your licence expiring are set out in paragraphs 747-751.

DECLINING TO RENEW YOUR LICENCE

769. You may choose to decline to renew your licence because you no longer sponsor any migrants and do not intend to sponsor any in the future.

770. The renewal function in your SMS account includes an option to 'decline' to renew your licence. If you choose to decline and work through this process to its completion, you will not be able to change your mind afterwards and your licence will simply expire on its due date. Nothing can be done to change or reverse that situation.

771. We strongly advise that you think carefully about whether you want to decline to renew your licence and that this is discussed between your authorising officer and the level 1 user who will complete this process via your SMS account. (When the level 1 user declines to renew, they will be confirming that they are doing so with the consent of your authorising officer.)

772. If you do decline to renew your licence, either deliberately or in error, once it has expired we will reduce the leave of any migrant you were sponsoring to 60 days (see paragraph 747).

773. Even if you successfully apply again for a new licence, you cannot just continue to sponsor them as though nothing had happened. You will be in the same position as a newly licensed sponsor and if you want to employ a migrant again, you must first conduct a resident labour market test as set out in this guidance, unless an exemption applies.

774. If the resident labour market test proves that there are no suitable settled workers available to fill the post, or there is an exemption from the resident labour market test, only then can you continue to employ that migrant but you must assign a new CoS to them and they must then apply again for leave to remain in the UK before their current leave expires. If a Tier 2 or Tier 5 migrant's leave expires before they can make a further application, they will have to leave the UK or face enforced removal.

AMENDMENTS TO THE SPONSORSHIP POLICY

775. This guidance is available to download at any time from our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/>. We may amend it at any time. You and other interested parties should check the website regularly for the most up-to-date version. We will tell you about any changes to your duties by emailing your authorising officer.

776. Where possible, we will consult sponsors through our established stakeholder taskforces before making any major changes. However, we may occasionally need to amend the guidance at short notice to deal with situations that have arisen, which means that we may not be able to consult in those cases.

COMPLAINTS

777. If you are dissatisfied with any aspect of our service you can make use of our complaints procedure. More information about this is on our website at <http://www.ukba.homeoffice.gov.uk/aboutus/contact/makingacomplaint/>.