



UK Visas  
& Immigration

## Tier 2 and 5

version 04/14

# Tier 2 and 5 of the Points Based System Guidance for Sponsors

This guidance is to be used for all Tier 2 and Tier 5 applications made on or after 6 April 2014

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## Important notes

This guidance is specific to organisations who want to apply for a sponsor licence on or after 06 April 2014, 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 pages on the GOV.UK website at: [www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators](http://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators)

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 including any owner, director, authorising officer, key contact, level 1 user and anyone involved in your day-to-day running.
- “working days” this means any day other than a Saturday or a Sunday, a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom to which the notice is sent, Christmas Day or Good Friday.
- “relevant offence” this means 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, Nationality and Asylum Act 2006;
  - The UK Borders Act 2007;
  - trafficking for exploitation
  - any offence listed in Appendix B

and any offences of

- espionage/terrorism
- dishonesty (theft, corruption, deception and fraud)
- bribery
- proceeds of crime
- money laundering
- abuse and neglect of children (applies only to applications for Tier 5 (Creative and Sporting))

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 pages on the GOV.UK website at:

- Tier 2 - [www.gov.uk/government/publications/application-to-extend-stay-in-the-uk-form-tier-2](http://www.gov.uk/government/publications/application-to-extend-stay-in-the-uk-form-tier-2)
- Tier 5 – [www.gov.uk/government/publications/guidance-on-application-for-uk-visa-under-tier-5-temporary-worker](http://www.gov.uk/government/publications/guidance-on-application-for-uk-visa-under-tier-5-temporary-worker)

and in the Immigration Rules which are available to read on our pages on the GOV.UK website at: [www.gov.uk/government/collections/immigration-rules](http://www.gov.uk/government/collections/immigration-rules)

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

- Worker authorisation, guidance for migrants  
[www.gov.uk/croatian-national](http://www.gov.uk/croatian-national)
- Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013  
[www.legislation.gov.uk/ukdsi/2013/9780111539156/contents](http://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 online guidance called ‘Using the Sponsorship Management System (SMS) – Certificates of Sponsorship’ at: [www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators](http://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators)

## Changes to this guidance

| Tier & Category | Change   | Paragraph   |
|-----------------|--|---|
| All             | <p>Appendix A. We have restructured Appendix A of this guidance to make it easier to follow. We will now do some online checks instead of asking to see a physical document.</p> <p>There are some examples in Section 1 of how to put your documents together prior to making your application.</p>   | <p><a href="#">Appendix A</a></p> <p><a href="#">8.2-8.3</a></p>    |
| All             | We have changed the way we describe time limits for sending information to us. Instead of calendar days we now use 'working days'  | throughout  |
| All             | Revised policy. We have simplified our policy on criminal convictions.   | <p><a href="#">Annex 1 f)</a></p> <p><a href="#">Annex 5 i)</a></p> |
| All             | Revised policy. We have changed the policy on who your Authorising Officer should be, to emphasise the serious commitment you make to us when we grant a sponsor licence.  | <a href="#">6.13</a>  |
| All             | <p>Change to policy. We will no longer grant a sponsor licence with a B-rating. Applicants must be able to show their ability to be fully compliant with all the sponsor duties before a licence will be granted.</p> <p><u>Transitional arrangements</u></p> <p>Any application from a migrant submitted before 6 April 2014 will be assessed under the rules in place before 6 April 2014.</p> | <p>2.6</p> <p>9.1</p>   |
| All             | <p>Service improvements. You may no longer have to apply for your annual CoS allocation.</p> <p>You may find that certain changes of circumstances you report will update immediately in your SMS account.</p>   | <p><a href="#">23.22</a></p> <p><a href="#">12.3</a></p>            |
| All             | We have deleted some out of date transitional arrangements that were specific to changes we made to the codes of practice in April 2013.   | throughout  |

|                  |   |   |
|------------------|---|---|
| All              | Relaxation of policy. Where you assign a CoS for a migrant to apply for further leave to continue in the same role, if the migrant's original CoS was assigned before 6 April 2013, and the job they have been doing is not contained in one of the SOC 2010 codes in the read-over table in the codes of practice, you can assign a CoS under the most appropriate SOC 2010 code but only if it is clear that the job the migrant is doing did fit in the SOC stated on their original CoS and does not fit in to one of the read-over SOCs. | <a href="#">39.15</a>   |
| All              | We have uprated the minimum salary thresholds for Tier 2 (General) and Tier 2 (ICT) and also refreshed all the salary rates in the codes of practice.<br><br><u>Transitional arrangements</u><br><br>Any application submitted by a migrant on or after 6 April 2014 supported by a CoS assigned before 6 April 2014 will be assessed under the appropriate rate rules in place on the date the CoS was assigned.   | <a href="#">23.12 b)</a><br><a href="#">24.12</a><br><a href="#">28.19 e)</a><br>and throughout |
| All              | Clarification on document keeping where the migrant has a contract of/for employment/service.   | <a href="#">Appendix D</a>  |
| All              | Remove out of date information.   | <a href="#">Appendix G</a>  |
| Tier 2 (General) | New policy. If you apply for a licence under Tier 2 (General) we may refuse your application if we are not satisfied that you can offer genuine employment that meets the Tier 2 (General) requirements on skill level and appropriate rate.  | <a href="#">1.5 d)</a><br><a href="#">9.5 d)</a><br><a href="#">Annex 1 k)</a>                  |
| Tier 2 (General) | New policy. We will refuse any application for a Tier 2 (General) certificate of sponsorship if we are not satisfied that you can offer genuine employment that meets the Tier 2 (General) requirements on skill level and appropriate rate.  | <a href="#">23.20</a>   |
| Tier 2 (General) | Strengthened policy – genuine vacancy. We have documented where we will take action against you if you assign a CoS where there is no genuine vacancy.  | <a href="#">15.12 c)</a><br><a href="#">Annex 5 ad)</a>   |
| Tier 2 (General) | New exemption from the resident labour market. You do not have to conduct a resident labour market test if you are a Higher Education Institution and were previously sponsoring a migrant who is returning to resume their post following a period of academic leave.  | <a href="#">28.10</a>   |

|                                  |  |                           |
|----------------------------------|--|---------------------------|
| Tier 2 (General)<br>Tier 2 (ICT) | You can now assign a Tier 2 (General) or Tier 2 (ICT) – Long Term Staff CoS for any period up to five years. If you assign a CoS for a period in excess of three years and one month you must pay the migrant at the ‘experienced rate’ as set out in this guidance and the codes of practice. | <a href="#">26.4</a>      |
| Tier 2 (ICT)                     | Relaxation of policy. We have widened the policy that requires a migrant to have worked for you for a specific period prior to applying for leave under the Long term Staff or Short term Staff categories.  | <a href="#">30.7b</a>     |
| Tier 2 (Sportsperson)            | Relaxation of policy. The previous policy that permitted football players to move to another club on loan has been extended to all sports but this will only be allowed if your sports governing body permits it.  | <a href="#">32.10</a>     |
| Tier 5 (GAE)                     | We have made the issue of timing more clear for the benefit of prospective sponsors who want to establish a new scheme.  | <a href="#">4.16-4.17</a> |
| Tier 5 (GAE)                     | Revised policy. We have added another category of to the range of acceptable government authorised exchange schemes. Migrants can come to the UK to participate in overseas government sponsored language programmes for up to 24 months.  | <a href="#">37.2 c)</a>   |

# **Section 1: Applying for a licence**

# 1. Introduction

## What is sponsorship?

1.1 Sponsorship is based on two principles:

- a) Those who benefit most directly from migration (employers, education providers or other bodies who are bringing in migrants) should play their part in ensuring the system is not abused.
- b) We need to make sure that those applying to come to the UK for work or to study are eligible and that a reputable employer or education provider genuinely wishes to take them on.

1.2 A migrant must have a sponsor before they can apply to come to, or remain in the UK for work or study. 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. The sponsor will be an organisation in the UK that wishes to employ, or provide education to a migrant. More information on Croatian nationals applying for worker authorisation is available on our pages on the GOV.UK website at: [www.gov.uk/croatian-national](http://www.gov.uk/croatian-national)

1.3 Sponsorship plays two main roles in a migrant's application for permission to come to, or remain in the UK to work or study:

- a) It provides evidence that the migrant will fill a genuine vacancy that can't be filled with a suitably qualified or skilled settled worker, or that they will be studying for an approved qualification.
- b) It involves a pledge from the sponsor that it accepts all of the duties expected when sponsoring the migrant.

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 a right of residence in the UK;
- \*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 and Dependencies 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.

1.4 Separate guidance exists for education providers wishing to sponsor students. This can be found on our pages on the GOV.UK website at: [www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators](http://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators).

1.5 When considering your licence application, we need to establish four things.

- a) Are you a genuine organisation operating lawfully in the UK? 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, the Key Personnel named on your application and any people involved in your day-to-day running. For more information, please see [key personnel](#).
- c) Are you capable of carrying out your sponsor duties? We judge this by looking at your current human resources and recruitment practices to make sure that you will be able to fulfil your sponsor duties. We may do this by visiting you before your licence is granted. We may also visit you after a licence has been granted and if we have any concerns at that point we may take action against you. For more information on the duties of a sponsor, please see [sponsor duties](#).
- d) If you are applying under Tier 2 (General), can you offer genuine employment that meets the Tier 2 (General) skill level and appropriate rates of pay.

## Current available immigration routes for workers

1.6 Prospective sponsors can apply for a licence to employ migrants under the following routes:

### Tier 2: skilled workers with a job offer

1.7 There are four routes within Tier 2 for skilled, sponsored workers. They are:

- a) General - this is for skilled workers who have received a graduate level job offer from a UK employer.
- b) Intra-Company Transfer (ICT) - this is for multi-national organisations that need to transfer employees to the UK. There are four sub-categories:
  - Long Term Staff
  - Short Term Staff
  - Graduate Trainee
  - Skills Transfer
- c) Minister of Religion
- d) Sports person.

## Tier 5: Temporary Workers

1.8 There are five routes within Tier 5 for sponsored temporary workers. They are:

- a) Creative and Sporting
- b) Religious Workers
- c) Charity Workers
- d) Government Authorised Exchange
- e) International Agreement.

For more information on the immigration routes, please see section 4 of this guidance, [assigning a certificate of sponsorship and employing a Tier 2 or Tier 5 migrant](#).

### Using a representative

1.9 You can use the services of a representative to help you complete an on-line application for a sponsor licence, but they can't submit the application on your behalf. If a representative submits your application, it will be refused and your fee will not be refunded.

1.10 A representative is:

- a) a person qualified to provide immigration advice or services in accordance with section 84 of the Immigration and Asylum Act 1999, by:
  - being regulated by the Office of the Immigration Services Commissioner (OISC), or
  - exempt from the requirement to be regulated by ministerial order; or
  - 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 this person. The bodies listed in the 1999 Act are:
  - The Law Society
  - The Law Society of Scotland
  - The Law Society of Northern Ireland
  - The Institute of Legal Executives
  - The General Council of the Bar
  - The General Council of the Bar of Northern Ireland
  - The Faculty of Advocates.

1.11 A representative can't act on your behalf if they do not fall within one of the above categories or 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.

1.12 Anyone compliant with section 84 through exemption by a ministerial order still has to meet the OISC code of standards. More information on Section 84 and how representatives can meet these is on the OISC website at: [www.oisc.homeoffice.gov.uk](http://www.oisc.homeoffice.gov.uk)

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

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](mailto:info@oisc.gov.uk)

Website: [www.oisc.homeoffice.gov.uk/](http://www.oisc.homeoffice.gov.uk/)

1.13 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/](http://oisc.homeoffice.gov.uk/how_to_find_a_regulated_immigration_adviser/)

1.14 If after receiving a licence, you wish to use the services of a representative, you must appoint one using the sponsorship management system (SMS). For more information on the SMS, please see [what is the sponsor management system](#). We will not deal with any communications from a representative acting on your behalf unless they have been appointed by you. You can tell us that a representative has helped you to fill in your licence application, however you can only appoint them at the licence application stage if you also want to appoint them as your key contact and/or your level 1 user.

## **Consequences of employing migrants illegally**

1.15 All employers (not just licensed sponsors) must make sure that their employees are entitled to work for them. We will impose a range of penalties on those employing people illegally.

1.16 Our compliance officers will refer cases of illegal working for prosecution or the issue of a civil penalty. If you are issued with a civil penalty for employing illegal workers your licence may be revoked. For more information on penalties imposed, please see [penalties for illegally employing migrants](#).

## Safeguarding children

1.17 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 make sure suitable care arrangements are in place for a child under 18 who will work in the UK. These include arrangements for their:

- a) travel
- b) reception when they arrive in the UK
- c) living arrangements while in the UK, as well as parental consent to these arrangements.

If you fail to do this, we will revoke your licence.

## Contact point for queries

1.18 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](mailto:BusinessHelpdesk@homeoffice.gsi.gov.uk).

## Fees

1.19 There is a fee for:

- a) initial applications for a sponsor licence
- b) renewing an existing sponsor licence
- c) extending the scope of an existing licence
- d) assigning each certificate of sponsorship (CoS).

Full payment guidance is available on our pages on the GOV.UK website at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277951/wms-fees.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277951/wms-fees.pdf)

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:

[www.legislation.gov.uk/ukpga/2006/46/part/15/chapter/1/crossheading/companies-subject-to-the-small-companies-regime](http://www.legislation.gov.uk/ukpga/2006/46/part/15/chapter/1/crossheading/companies-subject-to-the-small-companies-regime)

## 2. How does sponsorship work?

2.1 To get a licence, you must apply to us using the online application form and supply specified documents to prove that you are suitable and eligible. These documents are listed in Appendix A.

2.2 A sponsor licence is valid for four years, after which it will expire. The only exceptions are if we revoke it or you surrender it before it expires. The four years will run from the date your licence is granted.

2.3 When we consider your application we assess whether you meet the requirements below. You must:

- a) Fill in and submit the online sponsor application. (This includes a declaration from you that you agree to meet all of the duties associated with being a licensed sponsor).
- b) Pay the correct fee.
- c) Provide proof you are based in the UK and provide original or certified copies of the documents listed in Appendix A, unless we say otherwise, to show you are genuine and operating or trading lawfully in the UK. (An organisation is deemed to have been 'operating or trading' in the UK from the point at which it was incorporated).
- d) Meet the eligibility and suitability criteria. For more information, please see [criteria](#).
- e) If asked, provide evidence of holding the appropriate planning permission or Local Planning Authority consent to run your type/class of business at your trading address (if required by your Local Authority).
- f) Where you are a food business, if asked, be able to provide evidence of your registration with or approval from a relevant food authority.

We will also consider any evidence which suggests you may be a threat to immigration control.

2.4 When you complete the online sponsor licence application, you must choose which tiers, categories and sub-categories you wish to be licensed under. You can choose as many tiers, categories or sub-categories as you need, provided you are eligible for them. If your application is successful these will then be the only ones you can sponsor a migrant under.

2.5 Licence applications may be rejected, refused or granted with an A-Rating. For more information about the decision we may make on your application, please see [rating sponsors](#).

2.6 If your application for a licence is granted, you will then be able to assign certificates of sponsorship (CoS) to migrants who wish to work for you. We will decide how many certificates of sponsorship (CoS) you will be allowed to assign. For more information on certificates of sponsorship (CoS), please see [certificate of sponsorship](#).

2.7 As a licensed sponsor you must meet certain duties such as informing us if migrants do not turn up for work or are absent without permission for a significant period. You must keep records on the migrants you sponsor, including up-to-date contact details and a copy of their biometric residence permit (BRP). You must also give any documents to us on request. For more information on biometric residence permits, please see [after admission to the UK – the biometric residence permit](#).

2.8 We will monitor your ability and willingness to always comply with your duties. 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
- c) refer cases for civil penalty action, or possible prosecution if we find evidence that you may have employed migrants illegally.

For more information on sponsor duties, please see [sponsor duties](#).

2.9 Throughout the validity period of your licence we will 'rate' you as either A or B according to our assessment of your ability to comply with your sponsor duties. If you are B-rated you must meet 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 meet the requirements of your action plan we will revoke your licence. For more information on ratings, please see [rating sponsors](#).

2.10 You have a duty to act honestly in any dealings with us. This includes, for example, not making false statements and ensuring all essential information is disclosed when either applying for a sponsor licence or assigning or applying for a certificate of sponsorship (CoS).

2.11 If we believe you have not complied with your duties, have been dishonest or pose a threat to immigration control, we will take action against you. The action 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 can assign. For more information on the action we may take and the processes we will follow in such cases, please see [what will happen if I don't comply with my sponsor duties](#).

### 3. How can I apply for a licence?

3.1 Applications for a licence can only be made and paid for online, using the online sponsor application at: [www.gov.uk/apply-sponsor-licence](http://www.gov.uk/apply-sponsor-licence). You must read these guidance notes before applying, in particular the sections on the tiers and categories you wish to apply for. Appendix A sets out the documentary evidence required to validate your application. You should make sure you will be able to send all of your documents in as soon as you have submitted your application.

3.2 If you have all the necessary information before starting, the online sponsor application will take about 30 minutes to complete.

3.3 You must make the application yourself. A representative can help you to fill in your application, but must not send it on your behalf. If we find this has happened, we will refuse your application and not refund your fee.

3.4 Once you have submitted your online application, you must send the following to validate it:

- a) the original submission sheet (not a certified copy), signed and dated by the authorising officer (all pages must be sent)
- b) all of the mandatory documents listed on the submission sheet (originals or certified copies).

**These must all be sent in together within five working days of the date you submit your online application.**

3.5 If any items are missing or incorrect, your application will be invalid. We reject invalid applications and refund the application fee.

3.6 If there are any documents specified in Appendix A (other than mandatory documents) missing from your application, or if we require any more documents or information, we will contact you by email. We will give you five working days to send the documents or information we ask for. If you do not send the documents or information by this deadline we will refuse your application and your fee will not be refunded. It is important that your authorising officer and key contact are available to deal with any requests we may need to make. For more information on authorising officers and key contacts, please see [authorising officer](#) and [key contact](#).

3.7 We always email the person named as your key contact if we need any further information or documents. We may also email your authorising officer.

3.8 When making a licence application, as well as providing all the documents required in Appendix A, there are specific requirements for the following tiers, categories, or sub-categories.

## 4. Applying for a licence – Tier specific

### Tier 2 Ministers of Religion and Tier 5 (Temporary Workers) – Religious Workers

4.1 To apply for a licence you must be a bona fide religious organisation, which:

- a) Is a registered, excepted or exempt UK charity according to the charity legislation in force in your part of the UK, or is an ecclesiastical corporation (either corporation sole or body corporate) set up for charitable purposes. In Northern Ireland you must have 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 tell us the reason for non-registration).
- 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 common beliefs and practices and where beliefs:
  - include any religious belief or similar philosophical belief in something transcendental, metaphysical or ultimate
  - leave out 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.
- d) Receives financial and material support for your core religious ministry from your congregation or community on a voluntary basis, without promise or coercion.
- e) Does not breach, or encourage others to breach any UK legislation.
- f) Does not work against the public interest, or has a detrimental effect on personal or family life as commonly understood in the UK.

### Tier 2 Intra-Company Transfer (ICT)

4.2 To sponsor migrants under the ICT sub-categories, you must show a direct link by common ownership or control with the overseas entities from which you will bring migrants to the UK. Common ownership or control may be shown by one of the following:

- a) One entity controls the composition of the other entity's board.
- b) One entity can cast, or control the casting of, more than half the maximum number of votes at a general meeting of the other entity.
- c) One entity holds more than half the issued share capital of the other entity (apart from any part of that issued share capital that has no right to take part beyond a set amount in a distribution of either profits or capital).
- 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.
- e) One entity is related to the other entity as both are party to a joint venture agreement.
- f) One entity is related to the other entity in that one is party to a joint venture agreement and

the other is formed by that joint venture agreement.

- g) One entity is related to the other 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.
- h) One entity is related to the other in that one entity is party to an agreement that would make up a joint venture agreement other than for the fact that joint venture agreements are not allowed in the country of operation or that entity is not allowed to enter into joint ventures in the country of operation and the other entity is the entity formed by that agreement.
- i) Where both entities are either accountancy or law firms, one entity is related to the other by agreement which allows both to use a trademark registered or established under UK law and the jurisdiction of the other entity's country of operation.
- j) Where both entities are either accountancy or law firms, one entity is related to the other by agreement which allows both to run 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 consider the receiving entity to be a linked company if it is a registered company and its Articles of Association with the sending entity show a relationship of control (for example, one member has the power to appoint the other's trustees).

4.3 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.

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

## **Tier 2 Sports person and Tier 5 (Temporary Workers) - Creative & Sporting**

4.5 To be allowed to apply for a licence to sponsor sportspeople you must be a sporting body, sports club, events organiser or other organiser operating, or intending to work in the sporting sector. If you are an agent you can't be a sponsor for sports people under this category.

Before applying you must make sure you have an endorsement from the governing body for your sport which must be recognised by us. A governing body is one recognised by one of the home country sports councils (for example Sport England). The list of governing bodies currently recognised by us is in the Appendix M of the Immigration Rules.

4.6 Through its endorsement, the governing body confirms to us that you are a genuine club (or equivalent), and you have a legitimate requirement to bring migrants to the UK as sportspeople.

4.7 If your sport does not have a recognised governing body, you should contact us by email at [PBSsportpolicy@ukba.gsi.gov.uk](mailto:PBSsportpolicy@ukba.gsi.gov.uk) We will consult with the Department for Culture, Media and Sport, the Central Council of Physical Recreation and/or other sports councils to identify if there is a suitable body who could act as our recognised governing body.

4.8 Once a suitable body is identified and we agree 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 referred to as a 'sporting body endorsement' in the online sponsor licence application form.

4.9 If your sport has a governing body but it is not currently recognised by us, you should ask them to contact us by email at [PBSsportpolicy@ukba.gsi.gov.uk](mailto:PBSsportpolicy@ukba.gsi.gov.uk) with a view to them setting up a governing body agreement that meets our requirements.

4.10 If we have had to approve a governing body for your sport which is not yet listed in Appendix M of the Immigration Rules and we then grant your licence application, you may not be able to sponsor migrants straight away. This is because your sport's 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 only updated in April and October each year.

4.11 We will advise you of the date that your governing body will be added to the Immigration Rules but you must remember that although you can start assigning CoS straight away, timing is crucial because:

- a) once a CoS is assigned it will only be valid for three months.
- 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.

|   |
|---|
| <b>Example 1</b>  |
| STEP 1:   |
| 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. |
| STEP 2:   |
| You assign a CoS to a migrant on 2nd January.   |
| RESULT:   |
| The migrant can't apply for leave until 6th April so the CoS you assigned on 2nd January will expire before they can apply.                                   |

|  |
|--|
| <b>Example 2</b>   |
| STEP 1:  |
| 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. |
| STEP 2:  |
| You assign a CoS to a migrant on 2nd January and they apply for leave on 1st March.  |
| RESULT:  |
| The migrant's application will be refused because on 1st March your governing body was not in the Immigration Rules.   |

4.12 When you complete the online application you can only choose 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 choose one from the list provided and then when giving your

reasons for the number of CoS needed, you can list the other sports you want covered on your licence. You must have a governing body endorsement for each sport.

4.13 If a sport does not appear on the list on the online application, please contact us by telephone on 0300 123 4699 or by email at [BusinessHelpdesk@homeoffice.gsi.gov.uk](mailto:BusinessHelpdesk@homeoffice.gsi.gov.uk)

## **Tier 5 (Temporary Workers) – Charity Workers**

4.14 To apply for a licence as a sponsor of charity workers you must be a registered, excepted or exempt UK charity in line with 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.

## **Tier 5 creative sector**

4.15 To be allowed to apply for a licence to sponsor creative workers and their entourage, you must be operating, or intending 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. For more information, please see [Tier 5 Creative and Sporting](#).

## **Tier 5 (Temporary Workers) – Government Authorised Exchange (GAE)**

4.16 This category is for migrants coming to the UK through approved schemes that aim to share knowledge, experience and best practice. There are 4 steps to establishing a new Tier 5 (GAE) scheme. You should allow approximately three to four months to get a new scheme agreed and there may then be a further wait before you can start to sponsor any migrants.

4.17 These timings are approximate because it will depend entirely on the strength of the case and the level of detail you first approach us with. However the timings are important because once you have successfully been through the first three steps you will be ready to apply for a sponsor licence, but you can't sponsor any migrants to take part in a new scheme until your sponsor licence has been granted and your scheme added to Appendix N of the Immigration Rules. The Rules are updated twice a year in April and October but in practice, all changes to the Rules must be approximately six weeks ahead of time. This means that if your scheme is approved for example in March, we may not be able to add it to Appendix N until the following October.

### **Step 1: Agree who the overarching body will be**

4.18 If you want to set up a scheme under Tier 5 (GAE) and can't 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 try to find an organisation that may be suitable to be the overarching body. First though, you should look at the schemes we have already approved in case there is one that already covers, or could be expanded to include what you want to do. All existing schemes are listed in Appendix N of the Immigration Rules. If you think one of the existing schemes may be able to accommodate you, you should approach the overarching body to explore possibilities before trying to set up a new scheme.

4.19 If there is no existing scheme that can accommodate your needs, you may want to explore if there is a trade, or sector body that would like to establish a new scheme and act as the overarching body. Alternatively there may be a private recruitment company willing and able to fill

this role, for example if they organise specific kinds of internships for overseas graduates.

## **Step 2: Government department (or executive agency) endorsement**

4.20 Once the overarching body is identified, they must approach a relevant government department (or one of its executive agencies) to ask if they are willing to endorse the scheme.

4.21 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 a contact, you can email us at [Tier5GAEnquiries@ukba.gsi.gov.uk](mailto:Tier5GAEnquiries@ukba.gsi.gov.uk) and we will help you find the right person. We can't give you any indication as to whether the scheme is likely to be approved at that point as we will be guided by the endorsing government department (or its executive agency).

4.22 When you have established which government department or agency to approach, you must write to them giving full details of the scheme. You should explain in full detail:

- a) why the scheme is necessary
- b) what benefits the scheme will offer to your sector and to the UK
- c) what participating migrants will do under the scheme including:
  - details of the roles filled
  - salaries or payments that will be made to participating migrants
  - the skill level of the work they will do
- d) what period of time migrants will spend in the UK under the scheme and why that period is suitable. For more information, please see [Tier 5 \(temporary worker\) – government authorised exchange](#).

4.23 When deciding which schemes to support, government departments (or their executive agencies) choose those that meet the following requirements:

- a) The scheme must not harm the resident labour market. Migrants coming to the UK to take part in schemes must not fill vacancies; they must be over and above any normal staffing requirements (supernumerary).
- b) Any work undertaken must be at a skill level of NQF level 3 (or the equivalent in Scotland) or above. The exception is where the migrant is coming to the UK through a scheme 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 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 EU working time directive.
- e) The scheme must include measures that protect it from abuse.

4.24 They must be confident in your ability to:

- a) act as the sponsor for the scheme
- b) meet all sponsor duties set out in this guidance.

4.25 The government department or executive agency you approach will contact us to discuss whether your requirements meet what is permitted and to consider whether there are any issues in connection with the government's wider aims and objectives for immigration control.

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

- a) the scheme satisfies all requirements that they must meet when choosing schemes to support
- b) the scheme will help them to meet one or more of their published aims or contribute to their wider objectives
- c) they are satisfied that you are capable of meeting your sponsor duties
- d) if large numbers of migrants under the scheme break the Immigration Rules, they agree that we may end it.

### **Step 3: Approval**

4.27 Once the scheme is endorsed by a relevant government department or executive agency, you must send your full proposal and the endorsement from the relevant government department or executive agency to us at: [Tier5GAEEnquiries@homeoffice.gsi.gov.uk](mailto:Tier5GAEEnquiries@homeoffice.gsi.gov.uk). We will have the final say on whether to approve it.

4.28 If approved we will write to the supporting government department or executive agency to confirm it meets our requirements and we agree the terms of the scheme as set out in their letter. They will then send you a copy of that letter.

### **Step 4: Licensing**

4.29 When we have approved your scheme, you can apply for a sponsor licence under Tier 5 (GAE). If you apply before we have approved your scheme, your application will be rejected and your application fee refunded.

4.30 When making your application, you must send in all of the documents as listed in Appendix A of this guidance to validate your application.

4.31 If your licence application is successful, we will allocate some CoS to you to assign to migrants who meet the criteria. However, you can't start any migrants on a new scheme until it has been added to Appendix N of the Immigration Rules. The Rules are only updated twice a year in April and October. We will tell you 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, timing is important:

- a) once you have assigned a CoS, it will only be valid for three months

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.

| <b>Example 1</b>  |
|---|
| <b>STEP 1:</b><br>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. |
| <b>STEP 2:</b><br>You assign a CoS to a migrant on 2nd January.   |
| <b>RESULT:</b><br>The migrant can't apply for leave until 6th April so the CoS you assigned on 2nd January will expire before they can apply.                                   |

| <b>Example 2</b>   |
|--|
| <b>STEP 1:</b><br>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. |
| <b>STEP 2:</b><br>You assign a CoS to a migrant on 2nd January and they apply for leave on 1st March.  |
| <b>RESULT:</b><br>The migrant's application will be refused because on 1st March your governing body was not in the Immigration Rules.   |

## **Tier 5 (Temporary Workers) – International Agreement (IA)**

4.32 To be allowed to apply for a licence to sponsor:

- 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 international organisation recognised by the UK. (An international organisation includes representative offices of 'states' not recognised by the UK) A list of international organisations is available on the GOV.UK website at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257790/exempt-organisations-list.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257790/exempt-organisations-list.pdf). If you are applying as an international organisation, you must be named on this list.

4.33 An application for a sponsor licence amounts to consent to enter your premises and waiver from your Head of Mission, Head of your organisation, of diplomatic immunity and privileges for any matter relating to your application or validity of your sponsor licence.

4.34 When making your application, you must send a signed letter from your Head of Mission, or Head of your organisation, confirming that they:

- a) agree to the application being made
- b) wish to sponsor migrants under Tier 5 (IA)
- c) 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.

## **Sponsoring contractual service suppliers and independent professionals**

4.35 If you have contracted with an overseas supplier for the delivery of services covered by one of the international trade agreements listed in Appendix F of this guidance, and a contractual service supplier or independent professional needs to come to the UK to provide that service to you as the end user of that service, you must sponsor them under Tier 5 (International Agreement).

4.36 If your licence is approved, you can only assign a CoS to a contractual service supplier or independent professional who is coming to the UK to service that specific contract and no others.

## 5. Sponsors structure

### Can a licence reflect the structure of my organisation?

5.1 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
- 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)

5.2 We may ask for evidence to show that your head office and/or group of branches listed, for any tier, are linked by common ownership or control. We assess common ownership or control of branches as we assess it for applications for a Tier 2 (Intra-Company Transfer) licence. For more information please see [Tier 2 \(Intra-Company Transfer\)](#).

5.3 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.

5.4 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 are sponsoring migrants when your licence is revoked, we will limit the permission they have to be in the UK, because they will no longer be working for a licensed sponsor. For more information on what happens to migrants if we are considering action against you, or if we revoke your licence, please see [what happens to my sponsored migrants if my licence is suspended](#) and [what happens to my sponsored migrants if my licence is revoked](#).

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

### Employment agencies and employment businesses

5.6 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 directly employed by you in connection with the running of your business. You can't sponsor a migrant who you then supply to a third party as labour, regardless of any contractual arrangement between the parties involved.

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

5.8 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 you:

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

## **Franchises**

5.9 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.

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

## 6. Key personnel

6.1 The online sponsor application requires you to give 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. For more information on the SMS, please see [section 2](#). We call these people 'Key Personnel' and there are four roles:

- a) authorising officer
- b) key contact
- c) level 1 user
- d) level 2 user

6.2 Only level 1 and 2 users will have access to the SMS. If the authorising officer or key contact wishes to have access, they must also be set up as a level 1 or level 2 user.

6.3 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 [Annex 1](#).
- c) must be a paid member of your staff or engaged by you as an office holder. The only exceptions are:
  - 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 human resources function to.
  - A level 2 SMS user can be a member of staff supplied to you, but employed by an employment agency.
  - An overarching sponsor licensed under Tier 5 (Government Authorised Exchange) can appoint level 2 users within the organisations taking part in the exchange programme. (For more information on the Government Authorised Exchange route, please see [Tier 5 \(temporary worker\) – government authorised exchange](#).)
  - An insolvency professional who has been appointed because you have gone into administration can fill any Key Personnel role.
  - A UK-based representative can fill any Key Personnel role except the role of authorising officer. 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.

6.4 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, or Undertaking

- d) subject to a Debt Relief Restriction Order, or Undertaking
- e) 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.)

6.5 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)

6.6 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 decide whether a person is an office holder is available on the GOV.UK website at [www.gov.uk/employment-status/office-holder](http://www.gov.uk/employment-status/office-holder)

6.7 You must name your authorising officer, key contact and level 1 user on the application form. These roles can be filled by the same person, or a combination of different people. There can only be one authorising officer and one key contact, but you can appoint more 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.

6.8 You must give contact details for your Key Personnel both when applying for a licence and when changing any Key Personnel (or adding new ones) after we have granted a licence. The contact address given 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.

6.9 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 human resources function, the address provided must be the main business address of the third party organisation.

6.10 Where you are appointing a representative to the key contact or level one user roles, the address must be the representative's main business address.

6.11 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. You may want to take precautions, by checking the identity of the representative and ensuring that they are suitable to do the activity required. If you do not meet your responsibilities, we will take action against you.

6.12 We may make checks on you. (We will always check authorising officers, key contacts and level 1 users). These include checks against our records and the police national computer, or its equivalent in Northern Ireland. We will make these checks when considering your application and may repeat them at any time during the life of your licence. We may also carry out checks if new individuals take up roles. If any of these people have an unspent criminal conviction for a relevant offence (regardless of whether you have declared them or not) or have been issued with a civil penalty by us, we will:

- a) refuse your application for a sponsor licence see, [annex 1](#)
- b) if you have already been granted a licence, refuse to accept a person you later nominate for a key personnel role
- c) revoke your licence (for more information, please see [annex 5-6](#), circumstances in which we will or may revoke your sponsor licence.

Under the Rehabilitation of Offenders Act 1974, criminal 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 do not need to be declared to us.

## Authorising officer

6.13 When applying for a licence you must appoint an authorising officer. The person you nominate to this role must be your most senior person responsible for the recruitment of all migrant workers and ensuring that all of your sponsor duties are met. If you do not recruit the migrants you sponsor, this role must be filled by the most senior person responsible for your activity as a licensed sponsor. If there is more than one person who could fill this role, you must decide who to nominate. You are responsible for the actions of your authorising officer so we advise that you ensure you are confident that they fully understand the importance of this role.

6.14 The authorising officer is also 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.

6.15 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.

6.16 You must have an authorising officer in place throughout the life of your licence. The nominated person must always meet the requirements set out in this guidance. If you fail to have an authorising officer in place who meets our requirements, or fail to tell us of a change in authorising officer, we will take action against you.

## Key contact

6.17 The key contact is usually the person who acts as the main contact between us and you. We will contact them if we have any queries about your sponsor licence application, the documents submitted or the payment. (We may also contact your authorising officer if necessary).

6.18 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**

6.19 The level 1 user will undertake your day-to-day sponsorship activities using the sponsorship management system (SMS) and set up accounts for any level 2 users. They can:

- a) view information about your licence
- b) access important messages we post on the SMS
- c) request more level 1 users and add level 2 users to the SMS or remove them
- d) assign certificates of sponsorship (CoS) to migrants
- e) ask for 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 the progress of your application
- h) apply to renew your licence and track the progress of your application
- i) pay for a sponsorship action plan
- j) tell us of minor changes to your details
- k) tell 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

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

6.21 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 you do not have any level 1 users in place, we will take action against you.

## **Level 2 user**

6.22 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, you must decide how many. As the authorising officer is responsible for all the actions of all your SMS users, it is advisable to keep numbers to the minimum necessary for effective business operation.

6.23 You can appoint as many level 2 users as you need. Level 2 users have a more restricted range of permissions than level 1 users. A level 2 user may:

- a) assign certificates of sponsorship (CoS) under Tier 2 and Tier 5, but not restricted CoS under Tier 2 (General)
- b) report migrant activity to us, for example informing us if a migrant goes missing, or does not turn up for work.

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

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

6.25 SMS users must not assign a CoS to themselves or assign a CoS to a close relative or partner. 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

For more information on the sponsor management system (SMS) please see [what is the sponsor management system](#).

## 7. Criteria

7.1 All applications for a sponsor licence must meet the following eligibility and suitability criteria.

### Eligibility criteria

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

7.3 We verify these documents to make sure you are genuine and have an operating or trading presence in the UK. If 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 granting a licence, we will revoke it.

### Suitability criteria

7.4 The suitability criteria determine whether we grant or refuse your application, change the rating of an existing licence or revoke an existing licence. For more information on ratings, please see [rating sponsors](#). It may also affect the limits and review points we set for certificates of sponsorship (CoS) that you can assign.

7.5 To assess suitability criteria we look at whether:

- a) You have human resource and recruitment systems in place to meet, or continue to meet your sponsor duties. We may judge this by visiting you either before or after your licence is granted. More information is on our website at [www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/HR-compliance/](http://www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/HR-compliance/)
- b) You have an unspent criminal conviction for a relevant offence.
- c) We have any evidence of previous non-compliance by you.

### Checks we make

7.6 We use risk assessments to guide our compliance activity and focus that activity on the areas of highest risk. If we know little about you or are concerned with the evidence provided, we will make further checks including an on-site visit. We may also make relevant checks with other government departments.

7.7 If there are differences between what you told us and what our compliance officer finds during a check and this is found before a decision has been made, we will let you know whether we need more information before making a final decision. For more information on compliance visits please see [compliance](#).

7.8 We ask for a variety of verifiable documents to allow us to consider your application. These are all listed in Appendix A and we may check any or all of the documents you send to us. We reserve the right to ask for more documents at any time during the licence application process or the validity period of your licence and sometimes we may ask for other documents which are not listed in Appendix A.

7.9 We make further checks in the following circumstances:

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

## 8. Supporting evidence - documents

8.1 Appendix A lists the evidence we will need from you to support your licence application. Most applications must be supported by a minimum of four pieces of evidence. Some of this evidence will be in the form of a document you must send to us and some will simply be an online check that we can do, without you having to send a document to us. Certain evidence is mandatory, in most cases we will only need a maximum of four pieces of evidence, but we may ask for more if necessary. If you fail to send us any evidence or documents we ask for within the given time limit, your application will be refused.

8.2 Over time, we will start to make more checks online and we are gradually updating Appendix A to show where we will make an online check instead of asking you to send us a document. Where we can conduct an online check, this will count as one piece of evidence.

| <b>EXAMPLE 1</b>  |   |
|---|---|
| You are a charity, registered with the Charities Commission applying for Tier 2 (Sports person).                              |   |
| Appendix A, Table 2 - we must have evidence of your charitable status, but we can check this online.                          | This counts as one piece of evidence.   |
| Appendix A, Table 3 - we must have evidence of your endorsement from the governing body for your sport.                       | You must send us the relevant document. This counts as one piece of evidence.       |
| Table 4   | You must choose 2 more pieces of evidence from Table 4 to bring your total to four. |
| In this example you must send us three documents and we will conduct one online check. Grand total - four pieces of evidence. |   |

8.3 If you are applying as a head office and all branches or a group of branches and you are required to be registered with and/or inspected/monitored by a regulatory body, you must send evidence for each individual branch within that group.

| <b>EXAMPLE 2</b>  |   |
|---|---|
| You are a care home in England applying for Tier 2 (General) with three additional branches included in your application.   |   |
| Appendix A, Table 2 - we must have evidence that you are inspected by the Quality Care Commission (CQC).  | We will check this online, for each care home included in your application. This means we will do four online checks. |
| Appendix A, Table 3   | There are no documents from Table 3 that apply to this application.   |
| Table 4   | You must choose 3 more pieces of evidence from Table 4.   |
| In this example, there are seven mandatory pieces of evidence - one online check on your CQC status, three documents from Table 4 and three additional online checks on the CQC status of the branches named on your application. |   |

8.4 You will see in Appendix A that there may be times when we could do an online check but might need you to help us locate the right information. For example if you need to send us your company accounts, but they are available to view on your website, you will need to let us know your web address so we can find them. In this example you must include a covering letter along with your submission sheet and any documents you are sending to us. We will then search your website for the accounts so you don't have to send them to us.

8.5 If you are sending any documents to us, they must be the original documents or certified copies. A certified copy is one including a signed statement, from either the issuing authority, a practicing barrister, solicitor or notary. The certifier must confirm that it is an accurate copy of the original document. Each page of a document submitted must be certified, detailing the certifier's name, signature and the organisation they represent. If a certifier's details can't be verified, the document will be rejected. Sometimes with long documents, the certifier does not want to certify every page. We will accept the document if the pages are all attached together and the top page is certified as described. The certification must clearly say how many pages have been certified.

8.6 Some original documents, for example insurance policies, are sent to customers 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.

8.7 Any documents or other evidence 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 confirmation that the translation is accurate.

8.8 If you provide certified copies of documents and/or certified translations, we reserve the right to ask for the original documents.

8.9 We make further checks if we have any doubts about whether you can meet the requirements of the category in which you have applied. We may email you to ask for more evidence or information. We always email the person you named as your key contact, but we may also email your authorising officer.

8.10 Any documents you send to us will be returned by recorded delivery to the address given on your application. If you want the documents returned by special delivery, you must enclose a prepaid special delivery envelope.

## **Standard procedure for verifying documents**

8.11 We may check details or the correctness or genuineness of documents:

- a) with other government departments (in the UK and overseas), or
- b) with the issuing organisation, like banks, universities and professional bodies.

8.12 The procedure for verifying documents is:

- a) we use a standard format to record the results of enquiries, to make sure we record feedback consistently
- b) if we can't get an immediate answer to our enquiries, we will normally wait for a maximum of three weeks for the information
- c) we may decide that a compliance officer needs to visit you.

## Outcome of document checks

8.13 There are three possible outcomes after a document check.

- a) Document confirmed genuine: if we conclude the document is genuine, we will consider your application as normal.
- b) Document confirmed as false: if we conclude the 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 whether or not a document is genuine or false we will not use the document as evidence to support your application. We may ask for further supporting documents.

## 9. Rating sponsors

### What are sponsor ratings?

9.1 A sponsor licence can be rated either 'A' or 'B'. An A-rating is awarded when you are first granted a licence on the basis that you have systems in place to be able to meet your sponsor duties. Your licence rating appears on the published register of licensed sponsors. We will not grant a licence if you are not able to achieve an A-rating.

9.2 After your licence has been granted, if we find evidence that you are unable or unwilling to continue to meet your sponsor duties, or we have evidence of immigration abuse, we may downgrade your licence to a B-rating. See [Downgrading your licence rating](#).

9.3 Your rating will usually be the same for all the tiers in which you are registered. In exceptional cases, if we later find that you are not meeting your sponsor duties in only one tier on your licence, we will downgrade that tier to a B-rating.

### Scoring system

9.4 When deciding the suitability of an application or when we carry out checks (including if we visit you) after your licence has been granted we will use the following scoring system when deciding whether to grant your application for a licence.

9.5 We give a score of 'met' or 'not met' for:

- a) Human resource systems - whether you have systems in place that allow you to know when a migrant has not turned up for work, or to identify when their current leave is coming to an end.
- b) Convictions and civil penalties – whether or not you have an unspent criminal conviction for a relevant offence or have become liable for a civil penalty. See [Annex 1](#).
- c) Migrant compliance – 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.
- d) Employment - in respect of Tier 2 (General) licences we may assess whether you can offer genuine employment which meets the Tier 2 (General) criteria on skill level and appropriate rates of pay. This route is for skilled workers and the following are examples of circumstances in which we may not be satisfied you can offer genuine Tier 2 (General) employment. This list is not exhaustive.

| <b>EXAMPLE 1</b>   |
|--|
| You do not currently, or have never employed anyone in a role which meets the current Tier 2 requirements. For example, you are a small retail outlet and currently only have people working for you as shop assistants or in other low-skilled roles. |
| <b>EXAMPLE 2</b>   |
| You tell us you require (or have already sponsored) a person in a managerial role which appears unnecessary, for example you are a small fast food outlet and you tell us you need, or have appointed a full-time HR manager or publicity manager.     |

9.6 If you are chosen for a visit, we will score your suitability to be a licensed sponsor as shown below:

- a) meets all of the criteria
- b) does not meet one or more of the criteria.

9.7 We will grant your licence if you meet all of the criteria and there are no other reasons for granting or refusing your application.

9.8 We will refuse your application if you do not meet one or more of the criteria.

9.9 If we visit you after we have granted you a licence we assess you again against the suitability criteria as well as making any other checks we need to carry out. If we find that you have not met any or all of your sponsor duties, we will take action against you.

# 10. Notification of decision

## What happens after a decision on my application has been made?

10.1 We will write to you to inform you:

- a) whether we have approved or refused your application
- b) the reasons for the decision, when we have refused your application
- c) if we have approved a licence, the maximum number of certificates of sponsorship (CoS) you will be allowed to assign.

10.2 We send decision letters and return all original documents to the address given for the authorising officer on your online sponsor application. We send all documents by recorded delivery.

## If my application is refused, can I apply again?

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

10.4 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 [Annex 1](#). Also, 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. For more information on revocation, please see [revoking a licence](#). If you do reapply before any of these specified periods have expired, we will refuse your application again.

## Sponsor licence number

10.5 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.

## Additional services – premium customer service and SME+

10.6 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 pages on the GOV.UK website at: [www.gov.uk/employer-sponsorship-join-the-premium-customer-service-scheme](http://www.gov.uk/employer-sponsorship-join-the-premium-customer-service-scheme)

## **Section 2: Reporting changes that affect your licence**

# 11. Sponsor management system

## What is the sponsorship management system (SMS)?

11.1 Once licensed, you can use the sponsorship management system (SMS). This online tool lets you carry out day-to-day activities and report any changes to us, for example a change of address. You will also use it 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 for your sponsored migrants. For more information on migrant reporting duties, please see [reporting duties](#). For information on certificates of sponsorship (CoS) please see [certificates of sponsorship](#).

11.2 We call a person who has access to the SMS a 'user'. The SMS allows users two levels of access – 'level 1' and 'level 2'. The level decides the type of access (permissions) the user has to the system and the functions they can perform. For more information on level 1 and level 2 users, please see [level 1 user](#) and [level 2 user](#).

11.3 Your SMS account is also a source of information about your sponsor licence. You can see details on how many SMS users you have appointed and who they are, the date your licence will expire, the number of CoS remaining, and when your allocation will expire. Your SMS account also has a message board where we post useful messages.

11.4 You need to regularly access your SMS account to review and update your licence details and to keep up to date with the latest news and messages, and any changes that may be coming up. We recommend that your level 1 user accesses your account at least once a month.

11.5 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. Once your level 1 user has successfully accessed your SMS account, they can perform a number of functions. For more information on level 1 SMS users please see [level 1 user](#).

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

11.7 You can access the SMS online at:

<https://www.points.homeoffice.gov.uk/gui-sms-jsf/home/SMS-003-Home.faces>

You can also find some helpful guides on our pages on the GOV.UK website that explain:

- the changes you can report using your SMS account
- and
- how to assign a certificate of sponsorship. [www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators](http://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators)

11.8 You are responsible for your actions, and the actions of a 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 you are employing an illegal migrant worker because your recruitment practices are negligent, we may issue you with a civil penalty and refer your case for prosecution.

11.9 You must have at least one level 1 user in place throughout the life of your licence. If we find you have no level 1 user in place at all this means you can't 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.

## **Adding Tiers**

11.10 Once your licence has been granted, you can add more tiers, categories and sub-categories to it. 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 fill in a shortened version of the online application which allows them to apply to add new tiers or categories to your licence. They won't be able to change anything else. You must also pay any extra fee and send in any more mandatory documents that may be needed.

11.11 If you want to apply to add an extra tier or category to your licence, but you want different people to act as authorising officer and key contact for the new tier or category, you must instead apply for a separate, new licence and pay the fee where applicable. This is because there can only be one authorising officer and key contact named on a sponsor licence.

## 12. What happens if my circumstances change

12.1 You must tell us of any changes to your details. We may ask for more details and documents to support the change you are requesting.

12.2 You must use your SMS account, 'request changes to sponsor details' function to:

- a) change your address
- b) change your name
- c) change your existing key contact or authorising officer details
- d) tell us about changes to your structure, such as more branches or sites, or new linked entities in the UK or overseas if you are licensed under Tier 2 (ICT)
- e) tell us if you are convicted of a relevant offence ([see Annex 5](#))
- f) tell us about a change in the status of any registration by a governing body that you need to hold
- g) replace your authorising officer and, or key contact
- h) amend your organisation details, for example notifying us of takeovers and mergers
- i) tell us that you have sold all or part of your business
- j) tell 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.

12.3 The following changes you report may automatically update your SMS account. Changes to:

- a) your main, or head office address.
- b) the address of your Authorising Officer, Key Contact, or Level 1 User, if their new address matches your main or head office address (or the address of your representative for a Key Contact or Level 1 User).

We will write to you if we are able to make these or any other changes automatically.

12.4 If you request a change to the name on your licence, we will need to understand 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, and nothing else is changing, we can change the name on your licence. However, if your change of name is part of a wider change, for example you are involved in a merger or takeover, you may have to apply for a new sponsor licence. The section of this guidance that covers mergers and takeovers explains this in more detail.

12.5 When you send in 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 also have to sign a declaration. For more information on the timescales for reporting changes to us, please see [reporting duties](#).

12.6 There are circumstances when you have to complete more than one action on the SMS. For example, if you tell us of a change of address, you may also need to tell us of a change to the working address for your key personnel. You must request each change separately.

12.7 You can find some online guides which show you how to request changes via SMS on our pages on the GOV.UK website at: [www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators](http://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators).

12.8 The following are circumstances in which you won't be able to use SMS to report or request a change and where you must fill in 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 last 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 last key contact or authorising officer was also the only SMS user and has left your organisation).
- 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 last 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.

For more information on key contacts, authorising officers and level 1 users, please see [key personnel](#).

12.9 The change of circumstances form can be found on our pages on the GOV.UK website at: [www.gov.uk/government/publications/sponsor-change-of-circumstances-form](http://www.gov.uk/government/publications/sponsor-change-of-circumstances-form).

12.10 We may ask for and check documents to support any change you request through the SMS or the change of circumstances form. The documents may be ones other than those listed in Appendix A. When you request a change via SMS, a submission sheet will be produced as a .pdf document if we need a signed declaration and/or any documents to validate your request. If you send the request using the change of circumstances form, we will write to you or e-mail you to tell you what, if any documents we need.

12.11 You must send any declaration, documents if needed and the submission sheet (for requests made via SMS) to us within 10 working days. If we ask for more documents, you must also send these within 10 working days. If you don't send us the information by the given deadline we will refuse your request. If we refuse your request, you can make another one at any time.

## **What happens if I become insolvent?**

12.12 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 tell us within 28 days of going into administration or receivership.

12.13 The insolvency professional appointed as the administrator or receiver must be appointed as your authorising officer (AO). This can be done in two ways:

- a) If they are content for your named level 1 user to stay in that role, then the level 1 user can

use the 'request changes to sponsor details' function within your SMS account to replace your AO.

b) If they do not want your level 1 user to continue to access your SMS account, they must fill in a change of circumstances form to appoint themselves as your new level 1 user. For more information, please see [what happens if my circumstances change](#). They must write 'In Administration' across the top of the Change of Circumstances form so we can make sure that it is dealt with quickly. Once we have approved that change, they can then appoint themselves as the new authorising officer using your SMS account.

12.14 If the administrator or receiver does not want any of your SMS users to continue accessing your SMS account, they must fill in a change of circumstances form to appoint themselves as a new level 1 user. They must decide whether your SMS users should be replaced, or whether they are content for them to keep their level 1 or level 2 SMS access.

12.15 There are different ways in which you can come out of administration (including special administration), or administrative receivership (receivership in Scotland) and some will have an impact on your continuing permission to hold a sponsor licence. The deciding reason will be whether or not you continue to own your business.

## **Company voluntary arrangement (CVA) or debt arrangement scheme (DAS)**

12.16 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 as if you had sold your business and will revoke your sponsor licence. If you are sponsoring any migrants when ownership changes and the new owner wishes to continue employing them, they must apply for a sponsor licence within 28 days of taking ownership. For more information, please see [mergers, takeovers and similar changes](#).

12.17 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.

12.18 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**

12.19 If you go into voluntary or compulsory liquidation you must tell us within 28 days of ceasing trading. If sequestration has been awarded or 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 can't access your SMS account to report this, you must email us at [sponsorsuspensions@homeoffice.gsi.gov.uk](mailto:sponsorsuspensions@homeoffice.gsi.gov.uk) We will then revoke your sponsor licence.

## Sole traders

12.20 If you are a sole trader and you enter into an Individual Voluntary Arrangement (IVA) or a Debt Arrangement Scheme (DAS) 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 sole owner of your business and continue to trade, you must also tell us about this. If this happens, you can keep your sponsor licence.

12.21 If your IVA or DAS results in your business being sold, you must tell us within 28 days. We will then revoke your sponsor licence. If you are sponsoring any migrants when your business is sold and the new owner wishes to continue employing them, they must apply for a sponsor licence within 28 days of taking ownership. For more information please see [mergers, takeovers and similar changes](#).

12.22 If you are a sole trader and a court issues a bankruptcy order against you, or sequestration has been awarded, you must tell us this within 28 days. You won't be able to do this using your SMS account because you won't be permitted to access it. Instead you must email us at [sponsorsuspensions@homeoffice.gsi.gov.uk](mailto:sponsorsuspensions@homeoffice.gsi.gov.uk) telling us the date you ceased trading. We will then revoke your sponsor licence.

## 13. Mergers, takeovers and similar changes

### What happens if I am involved in a merger, takeover or de-merger?

13.1 This section explains what you must do if you are involved in a merger, takeover, de-merger or other similar 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 whose employment is being transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) arrangements or another similar arrangement. For example public servants are not entitled to TUPE protection but it is recommended they are given the same 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 at [www.gov.uk/transfers-takeovers](http://www.gov.uk/transfers-takeovers)

13.2 Your sponsor licence is not transferrable and what happens depends 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
- c) you are splitting out to form new organisations.

13.3 You must report a merger, takeover, de-merger or change of ownership. If you fail to do so, we will take action against you. Any action could lead to the migrants involved having their leave curtailed.

13.4 This report must be made by your level 1 user using your SMS account. If your level 1 user is not available because you have been 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 verify documents to support the change. These may be documents not listed in Appendix A.

13.5 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 controlling number of shares being transferred to a new owner, your sponsor licence will be revoked. The new owners 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.

13.6 If TUPE is triggered or a similar arrangement exists and a sponsored worker moves to you, then you will, from the date of the move, take up full responsibility for them as their new sponsor, and must meet all of the associated duties set out in this guidance.

13.7 Where migrants are being moved 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 an application either for a sponsor licence, or to extend the scope of your existing sponsor licence. Your application must be made within 28 days of the move 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 moved to you, except any that can be sponsored under your existing licence if you have one, will have their leave, or their worker authorisation reduced to 60 days.

13.8 Migrants involved in a merger, de-merger or takeover do 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. The only exception is where the move involves the migrant changing their job or the migrant does not have TUPE or similar protection. For more information, please see [change of employment](#).

## Complete takeovers and mergers

13.9 If you are completely taken over or merged into another organisation and your sponsored migrants are moving to a new organisation you must:

- a) Report the change via SMS, including details of all of your sponsored migrants who will be moving to a new organisation. You must make the report within 28 days of the change.
- b) Use the migrant reporting facility on the SMS to report if any of your sponsored migrants are not moving to the new sponsor - these migrant's leave, or worker authorisation will be reduced to 60 days.
- c) Confirm if you need to surrender your sponsor licence. This can be done using your SMS account or using the change of circumstances form. For more information, please see [what is the sponsor management system](#).

13.10 If you have completely taken over, or merged with another sponsor organisation and their sponsored migrants are moving to you, you:

- a) Must make a valid application for a sponsor licence as set out in [mergers, takeovers and similar changes](#) within 28 days of the date they move to you.
- b) Can use the SMS to apply for an increase in your 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.
- c) Must report the change via SMS, including details of any migrants you have accepted sponsorship responsibility for. You must make the report within 28 days of the change taking place.

13.11 We can give you limited access to the old sponsor's licence on the SMS, so that you can report migrant activity for those whose employment has transferred to you.

## Partial takeovers and de-mergers

13.12 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 some of your sponsored migrants will be moved to a new organisation under TUPE arrangements or similar.

### If the sponsor no longer needs its sponsor licence

13.13 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 migrants moving to the new organisation within 28 days of the change.

b) May want to surrender your licence. This can be done via your SMS account or using the change of circumstances form. For more information, please see [what happens if my circumstances change](#).

13.14 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 can keep your licence if you want to. If you do keep it, we will reduce your allocation of CoS to zero. If you surrender your licence but then need to recruit migrants again in future, you will have to apply for a new licence.

13.15 If you are the new organisation (sponsor) you:

- a) Must make a valid application for a sponsor licence as set out in [what happens if I am involved in a merger, takeover or de-merger](#) within 28 days of the date they move to you.
- b) Can use the SMS to apply to increase your 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.
- c) Must report the change via SMS, including details of any migrants you have accepted full sponsorship responsibility for, within 28 days of the change taking place.

13.16 As the new sponsor you won't be able to report on the migrants that have moved from the old sponsor organisation, because you won't have a SMS record for them. However, you must report on these migrants to meet your sponsor duties and you do this by email to [Tier2&5MigrantRep@ukba.gsi.gov.uk](mailto: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
- d) details of the change (for example, if the migrant has missed 10 expected contacts).

### **If the existing sponsor still needs its sponsor licence**

13.17 If you are the existing sponsor you must:

- a) Report the change via SMS, including details of migrants who will be moving to the new organisation, within 28 days of the change taking place.
- b) Tell us if you need to amend your allocation of CoS - for example, if you will need fewer CoS than was agreed before the change.
- c) Continue to report on any sponsored migrants you are still employing, although you will no longer have any responsibility for reporting on migrants who moved to the new organisation.

13.18 If you are unsure whether, or when you may need to recruit any new migrants in future, we will reduce your allocation of CoS to zero.

13.19 If you are the new organisation (sponsor), you:

- a) Must make a valid application for a sponsor licence as set out in [what happens if I am involved in a merger, takeover or de-merger](#) within 28 days of the date they move to you.
- b) Can use the SMS to apply for an increase in your 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.
- 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.

13.20 As the new sponsor you won't be able to report on the migrants that have moved from the old sponsor organisation, because you won't have a SMS record for them. However, you must report on these migrants to meet your sponsor duties and you do this by emailing us at [Tier2&5MigrantRep@ukba.gsi.gov.uk](mailto: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
- d) details of the change (for example, if the migrant has been absent for more than 10 consecutive working days without your permission).

13.21 If you have a query on this guidance and need to contact us for advice, please see [contact point for queries](#).

13.22 If you need information on the fees for licence applications and services, please see [fees](#).

## **Section 3: Sponsor duties and compliance**

# 14. Sponsor duties

## What are my duties as a licensed sponsor?

14.1 As a licensed sponsor you will benefit directly from migration and we expect you to play your part in ensuring that the system is not abused. This means that you must fulfil certain duties. Some of these duties apply to all sponsors, whilst others are specific to those licensed under certain tiers or categories. The objectives of these duties are to:

- a) prevent abuse of 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
- d) monitor compliance with Immigration Rules.

14.2 This document reflects current policy, but can change at any time. We will let you know of any change through the sponsor management system (SMS) message board. For more information on the SMS, please see [what is the sponsor management system](#).

## When do my sponsor duties start and finish?

14.3 Responsibility starts from the date of issue of a sponsor licence and where they relate to a migrant will cease:

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

# 15. Duties that apply to sponsors in all tiers

## Record keeping duties

15.1 You must keep the following records or documents, and make them available to us 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 available), that show their entitlement to work including their period of leave to remain in the UK. Further details of your responsibilities as an employer, to prevent illegal working are available on our pages on the GOV.UK website at: [www.gov.uk/government/publications/prevent-illegal-working-in-the-uk](http://www.gov.uk/government/publications/prevent-illegal-working-in-the-uk).
- b) Each sponsored migrant's contact details (up to date UK residential address, telephone number, and mobile telephone number)

15.2 You must give us when asked, any documents relating to your sponsored migrants that we consider to be relevant. We might, for example, ask for details of your recruitment practices so that we can make sure that a resident labour market test was conducted correctly.

15.3 Since 2008 we have been introducing biometric residence permits. These are immigration documents which contain details of the holder's immigration status, fingerprints and facial image. Where the migrant has biometric residence permit, you must keep a copy. More information on biometric residence permits is available on our pages on the GOV.UK website at: [www.gov.uk/biometric-residence-permits](http://www.gov.uk/biometric-residence-permits).

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

15.5 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. This should consent to the arrangements for the child's application, travel, reception and care arrangements in the UK. Children aged 16 and 17 have the legal right to live independently in the UK, and may make their own arrangements for accommodation, but they need the consent of their parent(s)/legal guardian to do this and to travel to the UK (if applying from overseas).

## Reporting duties

15.6 You must report certain information or events to us using the Sponsor Management System (SMS), within any time limit set. For more information on the SMS, please see [what is the sponsor management system](#). Any information reported about a migrant's 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 a), b) or c) below, you must include the last recorded residential address and contact telephone number for the migrant, and any personal email addresses you have for them.

15.7 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 for their non-attendance (for example a missed flight).
- b) If a sponsored migrant's contract of, or for employment, or services or registration is terminated earlier than shown on their certificate of sponsorship (CoS), for example if the migrant resigns or is dismissed. You must include the name and address of any new employer that the migrant has moved to, if known.
- c) If you stop sponsoring a migrant for any other reason. For example if;
  - they move into an immigration route that does not need a sponsor
  - they take a period of unpaid leave, which is not covered by the exceptions in [reduction in salary](#).
- d) If there are any significant changes in the sponsored migrant's circumstances, for example:
  - a promotion or change in job title, or core duties, other than those which need a change of employment application
  - a change of salary from the level stated on the CoS, other than changes due to annual increments or bonuses
  - a change of salary from that stated on the CoS due to maternity, paternity or adoption leave, or a period of long-term sick leave lasting one month or longer
  - the location they are employed at changes (including where a sports player moves on loan).
  - the duration of their contract of or for employment or services, is shortened
- e) If a sponsored 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 endorsed under the Tier 1 (Graduate Entrepreneur) route (where applicable) is breaching their conditions of their leave.
- g) Details of any third party or intermediary, whether in UK or abroad, that has assisted you in the recruitment of migrant employees.

15.8 If a sponsored migrant is absent from work for more than 10 consecutive working days without permission, you must report this within 10 working days of the 10th day of absence.

15.9 If there are any significant changes in your own circumstances, for example, if you sell all or part of your business, cease trading, go into administration, substantially change the nature of your business, are involved in a merger or are taken over, you must report this within 20 working days. For more information, please see [reporting changes that affect your licence](#).

15.10 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 misses an expected contact without your permission you must report this by email to [Tier1GradEntAdmin@homeoffice.gsi.gov.uk](mailto: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
- b) if you are continuing to endorse them, why.

15.11 You must give the police any information that suggests any migrant you are sponsoring or endorsing under the Tier 1 (Graduate Entrepreneur) may be engaged in terrorism or criminal activity.

## Complying with the law

15.12 To make sure you are complying with our immigration laws, you must:

- a) Make sure that any migrant you sponsor is legally entitled to do the job and has the right registration and/or or professional accreditation where legally required. For example, if the migrant is working as a doctor, you must make sure that they have the correct registration that allows them to practice in the UK. You must keep a copy of any registration document or certificate, and give this to us on request.
- b) Not employ migrants where they don't have permission to do the job in question, and stop employing any migrants who for any reason are no longer entitled to do the job.
- c) Not assign a CoS where there is no genuine vacancy or role, for example:
  - one which contains an exaggerated or incorrect job description to deliberately make it appear to meet the requirements of the Tier and category you assigned it under when it does not.
  - for a job or role that does not exist in order to enable a migrant to come to, or stay in the UK.
- d) Only assign a CoS to migrants who you believe will meet the requirements of the tier or category, and are likely to comply with the conditions of leave or worker authorisation. The requirements and conditions of leave or worker authorisation are set out in the Immigration Rules and the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (Croatian nationals only).
- e) Comply with UK employment law, for example National Minimum Wage and paid holiday entitlement.
- f) Hold suitable planning permission or Local Planning Authority consent to run your type/class of business at your trading address (where this is a Local Authority requirement).
- g) If you are a food business, be registered with or approved by the relevant food authority.
- h) If you are employing a migrant who is working for you on a Work Permit, you must comply with all associated conditions. For example you must pay them at or above the rate of pay shown on the work permit.
- i) Only assign a CoS to a migrant if you are satisfied that they intend and are able to fill the role.
- j) Where applicable, only assign a CoS for a role which is at or above the minimum skill level as set out in this guidance.

## Co-operating with us

15.13 You must also comply with the following:

- a) allow our staff access to any premises or site under your control, on demand. Visits may be prearranged or unannounced
- b) adhere to any action plan set by us - an action plan for B-rated sponsors may set out extra duties
- c) minimise the risk of immigration abuse by complying with any good practice guidance produced for sponsors, with our agreement.

15.14 All duties listed in this section apply to all sponsors. Those below apply only to Tier 2 (General) and Tier 2 (ICT).

### Tier-specific duties under Tier 2 (General) and Tier 2 (ICT)

15.15 Some Tier 2 (General) migrants are subject to an annual limit. You must apply for a 'restricted CoS' if you wish to sponsor them. Migrants who are not subject to the annual limit can be sponsored using an 'unrestricted CoS. You must also understand the different requirements for assigning a restricted or unrestricted CoS.

You must not assign:

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

15.16 When you assign a CoS under Tier 2 (General) you guarantee one of the following:

- a) You conducted a genuine resident labour market test in accordance with the rules in force at the time.
- b) The job is exempt from the resident labour market test.
- c) The job appeared on the shortage occupation list published by us (or if the job is in Scotland, on the Scotland-only list), on the date that you assigned the CoS.
- d) Where it was a requirement to conduct a resident labour market test, the migrant will be paid in line with the rate you stated when you advertised the job. For more information, please see [transitional arrangements for recruitment exercises which took place before 6 April 2014](#).
- e) The migrant will be paid at or above the appropriate rate (including specific permitted allowances) for that job.
- f) The job is a genuine vacancy. See [complying with the law](#).

For more information on specific permitted allowances and the skill level of jobs, please see section 4 of this guidance, [assigning a certificate of sponsorship and employing a Tier 2 or Tier 5 migrant](#).

15.17 When you assign a CoS under Tier 2 (ICT), you guarantee that:

- a) The job is an intra-company transfer.
- b) Where required, the migrant has been employed for the specified period prior to their move.
- c) Where the migrant will be paid in a currency other than 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/](http://www.oanda.com/)
- d) The migrant will be paid at or above the appropriate rate (including any allowances) for that job as set out in this guidance. For more information on allowances, please see [salary and allowances](#).

## 16. Documents

### What documents must I keep now that I have a sponsor licence?

16.1 To comply with your duties, you must keep certain documents for each sponsored migrant. Appendix D lists these documents and says how long you must keep them. The documents can be kept in paper or electronic form. If kept electronically, you must make sure that all the relevant parts of the document are visible as described in Appendix D.

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

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

16.4 Some of the documents you must keep as part of your sponsorship duties may also need to be kept for other purposes. You must meet any legal requirements for record-keeping set by us or another government department.

16.5 You should read 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 available on our pages on the GOV.UK website at: [www.gov.uk/government/publications/prevent-illegal-working-in-the-uk](http://www.gov.uk/government/publications/prevent-illegal-working-in-the-uk).

16.6 You must 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: [www.ico.org.uk/for\\_organisations/data\\_protection/topic\\_guides/employment](http://www.ico.org.uk/for_organisations/data_protection/topic_guides/employment).

# 17. Compliance

## Concerns or queries about duties

17.1 If you have any queries about your sponsorship duties, please see [contact point for queries](#).

## How will you check that I am complying with my sponsor duties?

17.2 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. This is to make sure that the information you gave is accurate and that you are able and continuing to comply with the duties and responsibilities of a licensed sponsor. We check that:

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

17.3 We may check sponsors at random. If you are checked it does not necessarily mean we have doubts about your compliance as a sponsor. We may make these checks before we make a decision on your licence application or after your licence has been granted, during the validity period of your licence.

## What happens during a check?

17.4 Our compliance officers carry out the checks and they may visit you. If they plan to visit, they usually contact you to arrange a convenient time.

17.5 The compliance officer may want to:

- a) verify any information you gave on your sponsor licence application
- b) check that you are complying with all of your sponsor duties (or will be able to comply if they visit before your licence application has been decided)
- c) speak to any migrant workers
- d) speak to any of your employees or colleagues involved in the recruitment of migrant workers.

The compliance officer won't give an indication of their assessment or your ability to comply with sponsor duties during the visit.

17.6 We may also carry out checks on any licensed sponsor by telephone, or by letter, asking for evidence to support any information you have given us either before or after your licence was granted.

17.7 We may also make checks with other government departments.

17.8 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?**

17.9 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 given by you and gathered by us during the check(s). We will then tell you of our decision.

17.10 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**

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

17.12 We may find evidence that you, a representative or a person employed by you who appears to act on your behalf have knowingly deceived us, or cases where we can't verify statements made or documents given to us by these individuals. In these cases we will assess the evidence we have and we may take action against you.

17.13 We may prosecute you, a representative or a person employed by you who appears to act on your behalf under the relevant Immigration Rules or other legislation if you or they have attempted deception. We can refuse future applications involving the same individuals.

## **Allegations of abuse of the sponsorship arrangements**

17.14 If you use deception to get 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, tell the relevant authorities.

17.15 All sponsorship applications are confidential. We won't pass on information sent with your application to anyone except other government departments, agencies and local authorities where it is needed. However, we will publish sponsors' ratings of A and B on the GOV.UK website. For more information on sponsor ratings, please see [rating sponsors](#).

17.16 We treat allegations of abuse of the sponsorship arrangements in confidence. Anyone with information about abuse of the sponsorship arrangements can contact us by email at [BusinessHelpdesk@homeoffice.gsi.gov.uk](mailto:BusinessHelpdesk@homeoffice.gsi.gov.uk)

## **What will happen if I don't comply with my sponsor duties?**

17.17 The 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.

17.18 We have measures to make sure that we enforce sponsors' duties and identify dishonest or incompetent sponsors early. This could result in your licence being revoked, suspended, or downgraded to a B-rating, and/or a reduction in the number of CoS you are allowed to assign. We may issue a civil penalty if you have broken the rules on illegal working. More information on the penalties for employing illegal workers is available on our pages on the GOV.UK website at: [www.gov.uk/government/publications/prevent-illegal-working-in-the-uk](http://www.gov.uk/government/publications/prevent-illegal-working-in-the-uk).

## Penalties for illegally employing migrants

17.19 We take action against those who employ people illegally. You can protect yourself against action by checking documents which show a person's right to work in the UK before recruiting them. We recommend you carry out further document checks every 12 months when we have put a time limit on an employee's stay or work authorisation in the UK.

17.20 If you employ workers illegally you may face 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 an identity document that is false or improperly obtained. 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 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, and then monitor you closely.

17.21 If we find that you have employed someone illegally we may tell other bodies such as:

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

17.22 More information on the penalties for employing illegal workers is available on our pages on the GOV.UK website at: [www.gov.uk/government/publications/prevent-illegal-working-in-the-uk](http://www.gov.uk/government/publications/prevent-illegal-working-in-the-uk).

## 18. Downgrading your licence rating

18.1 If we believe you are not complying with your duties, have been dishonest or pose a threat to immigration control, we may revoke your licence or downgrade it to a B-rating.

18.2 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. Any migrant you are endorsing will have their leave reduced (curtailed) to 60 days. This is to allow them time to seek another route to remain in the UK. If they have been unable to find one after 60 days they must leave the UK or face enforced removal. If we withdraw you from that scheme you can't apply again until the end of the next full financial year. (For example if you are withdrawn from the scheme in October 2014, you can't apply again until April 2016).

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

18.4 For information on the circumstances in which we will downgrade your licence from an A-rating to a B-rating, see [annex 3](#).

18.5 For information on the circumstances in which we may downgrade your licence from an A-rating to a B-rating, see [annex 4](#).

### Process we will follow in deciding what (if any) action to take

18.6 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 circumstances outlined in Annexes 3 and 4. No two cases are alike and we can't 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 consider:

- a) The seriousness of your actions and harm done. We will treat seriously anything you have done or failed to do that 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. We will treat the situation more seriously if you were involved in the actions of your staff or you 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 cancelled it on appeal.

18.7 If we consider downgrading your licence, we will write to you to tell you what action we propose and why, giving you 20 working 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 necessary to respond, including sending evidence. However, we won't hold an oral hearing.

If 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.

18.8 When we receive a response from you, we will consider this and may ask a compliance officer, other law enforcement agency, government department, agency, local authority, the police, foreign government and other body for information. We will tell you of our decision within 20 working days of receiving your response.

18.9 If we do not receive a response from you within the time allowed, we will go ahead with whatever action we believe to be appropriate and will send you our decision in writing.

18.10 Any decision to downgrade your licence will take effect from the date of the letter we send to you to tell you about our decision. We will send this letter by recorded delivery. The section on sponsorship action plans provides more information on how and when you must pay your action plan fee.

18.11 If we award a B-rating you will not be able to assign any certificates of sponsorship (CoS) to sponsor new employees until:

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

## Sponsorship action plans

18.12 A B-rating is a transitional rating. If you are a B-rated sponsor you must 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.

18.13 If you are awarded a B-rating, you must adhere to an action plan which will set out the steps you must take to achieve, or return to an A-rating. For example, this might include making improvements to your recordkeeping, improving your control over staff who assign certificates of sponsorship (CoS), or improving communication between your different branches so you know when a migrant has not turned up for work.

18.14 There is a fee for an action plan. For more information on fees, please see [fees](#). This fee covers the cost of preparing the action plan. Where we decide that a B-rating is appropriate we will write to you to inform you 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, you must make your payment within 10 working 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 below.
- b) Decline to pay the fee:
  - if you are not 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 sent to you, notifying you of your B-rating. This confirms you want to surrender your licence. You must return the declaration to us within 10 working days.

- if you select 'decline' but do not return the declaration to surrender your licence within 10 working days, we will revoke your licence.
- c) Do nothing. If you do not pay the fee within 14 calendar days, your licence will be revoked.

18.15 Once the fee is paid, we will send you your action plan and contact you to discuss it, but we have the final say over its contents. During the period covered by your action plan you can't assign any CoS to new migrants, but can assign a CoS to:

- 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
- 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.

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.

18.16 All action plans are set for a fixed period of three months. We believe that three months is the maximum length of time needed to put right any issues that 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 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 review your allocation of certificates of sponsorship (CoS) where necessary so that you are able to sponsor new migrants again if needed.
- c) If we find other areas of non-compliance have arisen which are not addressed by the current action plan, but 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. You must pay a fee for any further action plan.

18.17 If you request it we will visit you before the end of the three month period, but you should only request this if you are certain you have already met all of the requirements set out in your action plan. If you request an earlier visit, we will take the action set out in paragraph 18.16, whether or not the three month period has ended. Subject to paragraph 18.18, we will only visit you once to check that you have met all those requirements.

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

18.19 We will closely monitor your use of any CoS that you assign whilst B-rated. 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.

18.20 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
- b) for a maximum of 2 times during the validity period of your licence.

18.21 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 [annex 3-6](#) 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.

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

# 19. Revoking a licence

## Can my licence be revoked after it has been granted?

19.1 Certain circumstances can lead to your licence being revoked. If this happens it will be revoked in all the tiers, categories and sub-categories which you are licensed under.

19.2 If we revoke your licence and you are an endorsing body under the Tier 1 (Graduate Entrepreneur) scheme, we will withdraw you from that scheme. Any migrant you are endorsing will have their leave reduced to 60 days. This is 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 days they must leave the UK or face enforced removal.

19.3 For information on the circumstances in which we will revoke your sponsor licence, see [annex 5](#).

19.4 If any circumstances in annex 5 arise, we will revoke your licence straight away. We will write to you to tell you that your licence has been revoked. There is no right of appeal and you won't be allowed to apply again for a sponsor licence for a period of six months from the date your licence is revoked.

19.5 For information on the circumstances in which we may revoke your sponsor licence, see [annex 6](#).

19.6 We can't define in which exceptional circumstances we may not revoke your sponsor licence but when one of the circumstances listed in annex 6 applies, we view this as a serious and will look for evidence that you were either not responsible for what happened or, if you were, you took prompt action to remedy the situation.

For example:

- a) one of your employees was wholly responsible for the dishonesty and 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 put right as soon as possible.

19.7 If the circumstances in annex 6 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. For more information, please see [suspending a licence](#).

19.8 If any circumstances in annex 4 arise and we do not believe it is necessary to suspend your licence, we may downgrade it to a B-rating. For more information, please see [downgrading to a B-rating](#).

## **What happens to my sponsored migrants if my licence is revoked?**

19.9 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 (for example, if the migrant agreed that you would arrange a non-existent job for them so they could come to the UK)
- 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. This is 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 won't reduce it.

19.10 In the first case above, any migrant with Tier 2, Tier 4 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.

19.11 If you are an endorsing body under the Tier 1 (Graduate Entrepreneur) scheme, the same action will be taken on any migrant you are endorsing under that scheme.

19.12 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 and any application they make to come to the UK within the next 10 years may be refused.

19.13 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 the CoS will automatically be refused.

19.14 Where a migrant has already been granted entry clearance when we revoke your licence, if they have not yet travelled to the UK, their entry clearance will be cancelled under paragraph 30A (ii) of the Immigration Rules. If the migrant has travelled to the UK, they will be refused entry to the country under paragraph 321(ii) of the Immigration Rules.

### **If my licence is revoked, can I apply again?**

19.15 Once your licence has been revoked you can't make a further application for a sponsor licence for a period of six months from the date your licence was revoked. If you do make an application before that six month period has passed, it will be refused. The only exception to this is if your licence was revoked in error. If this happens we will contact you to make arrangements for it to be reinstated.

19.16 If you do apply again after six months, we will treat it the same as any other application. You will have to pay the right fee and send in all relevant documents suitable to the tier, category or sub-category you are applying for. You should address any reasons why your previous licence was revoked before you re-apply.

## 20. Suspending a licence

20.1 If we believe 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), we may suspend your licence while we make further enquiries.

20.2 You won't be able to assign any CoS while your licence is suspended. You must continue to comply with all sponsor duties and any 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.

20.3 If your licence is suspended, it is suspended in all the tiers and categories you are licensed under and we will remove your entry from the public version of the register of sponsors during the suspension period.

Migrants who you are sponsoring at the time of the suspension won't be affected, unless we decide to revoke your licence.

20.4 If we decide to revoke your licence, we will write to you to tell you of this. There is no right of appeal and you won't be allowed to apply for a sponsor licence again for a period of six months from the date your licence is revoked.

20.5 If 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 the GOV.UK website.

### Process we will follow in deciding what (if any) action to take

20.6 Where any of the criteria arise listed in annex 6 as those which 'may' result in revocation of your licence, we will first consider downgrading your licence. However, we may immediately suspend your licence. For more information, please see [downgrading to a B-rating](#).

20.7 If we suspend your licence, the process will then continue in one of the following ways:

#### Process 1

20.8 Where we are satisfied that we have enough evidence to suspend your licence without further investigation, we will write to you giving reasons for the suspension.

20.9 You will then have 20 working days from the date of the written notification, to respond in writing to our letter. We may extend this period if we are satisfied that there are exceptional circumstances. You may make any written statements necessary to respond, including sending evidence. However, we won't hold an oral hearing.

20.10 If new evidence comes to light during that 28 day period, we will write to you again, giving you another 28 days to respond.

20.11 When we receive a response from you, we will consider this and may ask any compliance officer, other law enforcement agency, government department, agency, local authority, the police, foreign government and other body for information.

20.12 If we do not receive a response within the time allowed, we will go ahead with whatever action we believe is appropriate and tell 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.)

20.13 We will tell you of our final decision within 20 working days of receiving your response.

20.14 Any action taken 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**

20.15 Where we have evidence that warrants your licence being suspended pending a full investigation, we will write to you giving our initial reasons for suspension and informing you that an investigation will take place. It may not be possible 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 to respond, including sending evidence. Any statement or evidence will be taken into account during the investigation.

20.16 When the investigation has been conducted, we will write to you again, giving reasons for the suspension of your licence.

20.17 You will then have 20 working days from the date of the written notification, to respond in writing to our letter. We may extend this period if we are satisfied that there are exceptional circumstances. You may make any written statements to respond, including sending evidence. However, we won't hold an oral hearing.

20.18 If we identify 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.

20.19 When we receive a response, we will consider it and may ask any compliance officer, other law enforcement agency, government department, agency, local authority, the police, foreign government and other body for information. We will tell you of our decision within 20 working days of receiving your response.

20.20 If we do not receive a response from you we will go ahead with whatever action we believe is appropriate and will tell 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.)

20.21 Any action taken 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 after being suspended?**

20.22 If your licence has been suspended and we do not later revoke it we will reinstate it either as an A-rating or a B-rating.

20.23 If we reinstate your licence with a B-Rating you won't be given a further 28 days to reply as this process will have been completed during the period your licence was suspended.

20.24 Re-instatement with a B-rating means you must comply with an action plan. We may also reduce, or set to zero, the number of CoS you are allowed to assign. For more information on action plans, please see [sponsorship action plans](#).

## **What happens to my sponsored migrants if my licence is suspended?**

20.25 You won't be able to assign any CoS when your licence is suspended.

20.26 While your licence is suspended, if a migrant makes an application supported by a valid CoS that you assigned before your licence was suspended, we won't decide their application until the reason for suspension has been resolved.

20.27 If you are 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 won't decide the case until the reason for the suspension has been resolved.

20.28 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 the UK and start working for you. However, we advise all migrants to check the status of their sponsor's licence before they travel.

20.29 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.

## 21. Surrendering your licence

21.1 If you no longer wish to sponsor migrants, and have no sponsored migrants working for you, you may surrender your licence using your SMS account. When you send the request to surrender your licence we will tell you what documents you must send to us (where appropriate). You will also need to sign a declaration. We will remove your entry from the public register of licensed sponsors. For more information on what to do if you do not have a level 1 user and can't surrender your licence using your SMS account, please see [what happens if my circumstances change](#).

21.2 You may choose to surrender your licence in all the tiers, categories and sub-categories at the same time or surrender just in certain tiers, categories or sub-categories. You must clearly show which part you are surrendering when requesting the change of circumstances using your SMS account.

21.3 When you make this request, you must give evidence that you no longer have responsibility for any migrants who you earlier sponsored. If you do have any migrants, we will revoke your licence at once and remove the migrants' permission to stay in the UK and may remove them from the country.

21.4 If you surrender your licence you can re-apply to join the sponsor register at any time. You will have to pay the right fee and produce all relevant documents appropriate to the tier, category, or sub-category you are applying for.

## 22. Renewing your sponsor licence

22.1 Your licence start and end date, and the date you can make an application to renew your licence, can be viewed using the 'licence summary' function in SMS. Your licence end date is the last date you can make an application to renew your licence. If you do not make your renewal application by this date your licence will expire the following day. If we grant your application to renew your licence, your end date and future renewal date will be updated.

22.2 If you have been granted a licence and later applied for an extra tier, category or sub-category, the expiry date of the original licence will apply to all extra tiers, categories or sub-categories which you added.

22.3 If you do not apply to renew your licence and it expires, you will no longer be a licensed sponsor from the date that it expired. This means that:

- a) You will not be able to access your SMS account.
- b) You can't assign any more CoS .
- c) We will reduce the Tier 2 or Tier 5 leave, or worker authorisation of any migrants you are sponsoring to 60 days, to allow them 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.
- d) Your details will be removed from the online public register of licensed sponsors.

22.4 If you have any sponsored migrants working for you, you must renew your licence before it expires if you want them to continue working for you, even if you don't plan to sponsor any new migrants.

22.5 If you accidentally allow your licence to expire by mistake, but have sponsored migrants who you wish to continue working for you, you must contact us at once to tell us your licence has expired. We will then delay reducing your sponsored migrants' leave (as set out in paragraph 22.3c) for 28 days starting from the date your licence expired. During that time you must make an application for a new licence.

22.6 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 22.3c.

22.7 It is your responsibility to renew your licence and you must make sure you apply in good time. We will send you reminders but if you leave it until the last minute and have a problem, for example if there is a problem with your internet service, we can't stop your licence from expiring.

### How to renew your licence

22.8 You must apply to renew your licence using your SMS account. You will be able to make your renewal application from three months before the expiry date of your licence.

22.9 We will write to you 120 calendar days before the expiry of your licence to confirm your licence expiry date and tell you that you will soon need to apply to renew it. We will write to you again 90 calendar days before the expiry of your licence to remind you to renew your licence.

22.10 More reminders to renew your licence will be sent:

- a) 60 calendar days before it is due to expire
- b) 30 calendar days before it is due to expire
- c) 14 calendar days before it is due to expire

22.11 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 pages on the GOV.UK website at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277951/wms-fees.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277951/wms-fees.pdf). This guidance explains that there are different fees for small and large companies. Understanding the difference is important because if you pay the wrong fee your application to renew your licence may be rejected. For more information on fees, please see [fees](#).

## How the application process works

22.12 The licence renewal function in your SMS account can only be accessed by a level 1 user. You should talk about your licence renewal with your authorising officer before a level 1 user submits your application. When the level 1 user submits the application, they will be confirming that they have the consent of your authorising officer.

22.13 At the end of the process the level 1 user will be asked to make an online payment to cover the licence renewal fee and print off a summary sheet for your information. You do not need to send us any documents at this stage.

22.14 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.

22.15 If your application is accepted, we will temporarily extend the expiry date of your licence to allow us time to conduct any checks we decide necessary before deciding your application.

22.16 The checks we make could include asking you to send us some documents. For example we may want to see any documents listed in Appendix A as mandatory documents for anyone applying for a new sponsor licence. We may also ask for other information or documents not listed in Appendix A. If we write to you to ask for any information or documents, you must send them within five working days.

22.17 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. For more information, please see [downgrading to a B-rating](#)
- c) suspend your licence pending further investigation. For more information, please see [suspending a licence](#)

d) revoke your licence. For more information, please see [revoking a licence](#), and [annex 5-6](#).

22.18 We may visit you when you apply to renew your licence. If you are an A-rated sponsor at the time you apply, and on our visit we have concerns about any of your actions as 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 it to a B-rating. For more information on B ratings, please see [downgrade to B-rating](#)

b) revoke your licence. (More information on when we will, or may revoke your licence is in annex 5 and 6).

22.19 If your licence is B-rated at the time you apply, you will remain under your sponsorship action plan and we won't make a final decision on your application until the period covered by your plan has passed. For example, if your licence is due to expire on 1 December 2014, but you are subject to an action plan until 31 January 2015, we won't make a final decision on your application before 31 January 2015.

22.20 If your licence is suspended but is due to expire, you must still renew it. If you don't renew it and the result of the suspension does not lead to your licence being revoked, we won't be able to reinstate your licence if it has expired.

22.21 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 about 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

22.22 We recommend that you renew your licence early, or at least one month before the expiry date. If you apply in good time, you will have the chance to apply again if your application is rejected or refused. If your licence has expired when we make a decision to reject or refuse your application, you won't be able to make another application to renew your licence.

22.23 If you delay your renewal application and it is rejected, you risk the possibility that your licence expiry date will have already passed and you won't be able to make another application to renew because it will have expired. For more information on the consequences of your licence expiring, please see [renewing your sponsor licence](#).

## Declining to renew your licence

22.24 You may decline to renew your licence because you no longer sponsor any migrants and do not intend to sponsor any in the future.

22.25 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 end, you won't be able to change your mind afterwards and your licence will expire on its due date. Nothing can be done to change or reverse this.

22.26 If you 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. For more information, please see [renewing your sponsor licence](#).

22.27 If you do successfully apply again for a new licence, you can't continue to sponsor migrants as though nothing has happened. You are 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, unless an exemption applies.

22.28 If the resident labour market test shows 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. You must assign a new CoS to them and they must apply 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 make a further application, they will have to leave the UK or face enforced removal.

## **Section 4: Assigning a Certificate of Sponsorship and employing a Tier 2 or Tier 5 migrant**

## 23. Certificate of Sponsorship

### What is a Certificate of Sponsorship (CoS)?

23.1 a CoS is not a paper certificate or document, but a virtual document, like a database record. When you have followed all of the rules set out in this guidance and you are ready to sponsor a migrant under Tier 2 or Tier 5 you must assign a CoS to them using your SMS account. This involves working through a short online form where you give us information about the migrant you want to sponsor and the work they will do. All of the information you enter will be stored and can be viewed by us. A CoS can only be assigned by a person who has access to the SMS as a level 1 or level 2 user.

23.2 When you assign a CoS, a reference number is generated and you must give this number to the migrant you want to sponsor. They must then quote it in their application for entry clearance (if outside the UK) or leave to remain under Tier 2 or Tier 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 a secure and confidential document.

23.3 The migrant may ask for other information that was part of the process of generating the reference number. You can give the migrant a copy of their CoS and there is a function within your SMS account to print any CoS you have assigned. You can do this by using the 'view CoS' function, where you can open the CoS and choose 'print'. For more information on how to use this function, please see the SMS user guide which is available online using the link at the beginning of this guidance.

23.4 When a CoS you have assigned has been used to support an application, it will show in your SMS account as 'used' and it can't then be used again. If the migrant's application is refused and they wish to re-apply, you must assign a new CoS to them to quote on their new application. The only exception 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. For more information on this exceptional case, please see [migrants leave under Tier 5 \(temporary workers\) – Creative and Sporting](#).

23.5 If the migrant's application was rejected or withdrawn the CoS will still show in your SMS account as 'assigned'. It can then be used again to support a further application.

23.6 Processes are in place at the port of entry for migrants who come 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)
- b) seeking entry to the UK for three months or less.

23.7 Under Tier 5 (Creative and Sporting) you can assign a 'group CoS' to all members of a group. For more information about a group CoS, please see [assigning a CoS under Tier 5 in the creative and entertainment sector](#).

23.8 Once you have assigned a CoS, it can be used by the migrant you have assigned it to, to support their application at any time during the three month period from the date it was assigned. During this period a migrant can't be assigned another CoS by any other sponsor. If the migrant

does not use the CoS within this three month period to make an application, it will expire and will show as 'expired' in 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.

23.9 Assigning a CoS does not guarantee that the migrant will succeed in being granted entry clearance, leave to remain or worker authorisation. They must meet all of the criteria for the Tier 2 or Tier 5 leave they are applying for, or for worker authorisation if they are a Croatian national.

23.10 Before assigning a CoS, you should talk to the migrant about their current immigration status, as this may effect any application they make because of the rules on switching from one immigration category to another. The rules on switching are in the guidance for Tier 2 and Tier 5 migrants which can be found on our website. If the migrant is a Croatian national you should read Appendix G of this guidance which will help you to decide if they need to apply for worker authorisation.

## How many CoS will I be allowed to assign?

23.11 When applying for a licence, we ask you for an estimate of the number of CoS you may assign in your first year in each tier, category, or sub-category. You must justify your request.

23.12 When considering how many CoS you may need for Tier 2 (General), you can only have an annual allocation for the following, which we call 'unrestricted' CoS. For more information on unrestricted CoS, please see the [Tier 2 \(General\) limit](#).

- a) Any migrants already working 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.
- b) High earners – any migrants you may recruit with an annual salary of £153,500 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 is in the UK as the dependant of another migrant who was last granted leave under Tier 4 and will be paid less than £153,500. These dependants count towards the annual limit under Tier 2 (General). They must have a restricted CoS to apply for leave. For more information, please see [the Tier 2 \(General\) limit](#).
- d) Any migrant recruited who is a Croatian national and needs to apply for worker authorisation.

23.13 We allocate unrestricted CoS under Tier 2 (General) and all Tier 2 (ICT) CoS in line with the financial year. When you ask for CoS under those categories you must tell us how many you may need to the end of the financial year in which you are applying and justify why you need them.

23.14 You can't have an annual allocation of CoS to employ new migrants who:

- a) will be paid less than £153,500 per annum and who will apply from overseas for leave to enter the UK under Tier 2 (General), or
- b) are now in the UK as the dependant of another migrant who was last granted leave under Tier 4 and will be paid less than £153,500.

Instead you must follow the guidance which explains how to apply for these 'restricted' CoS. For more information, please see [the restricted CoS application cycle](#) and [how to apply for a restricted](#)

## [CoS.](#)

23.15 If we approve your licence, we will 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 the Immigration Rules.

23.16 In setting the limit, we consider:

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

23.17 Once we agree the number of CoS you can assign we will allocate them to your SMS account. You have 12 months from the date your licence started, in which to assign them. We call this your 'CoS year'. 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 in the following year. Your first allocation under those Tiers will run out on 5 April.

23.18 If, part-way through your CoS year, you think you won't have enough to last until the end of your CoS year, you can apply for more. You do this using your SMS account. The exception is if you want any Tier 2 (General) 'restricted' CoS, which you can only apply for using the process in [the restricted CoS application cycle](#) and [how to apply for a restricted CoS](#).

23.19 We may reduce the number of CoS you are allowed to assign if your circumstances change taking into account the reasons above, (for example if you down-size) or if we believe you pose a threat to immigration control (for example if, after your original CoS allocation, we take action against you as described throughout this guidance).

23.20 We also keep your performance under review and may change the number of CoS you can assign at any time if circumstances make it necessary. We reserve the right to refuse any request or application for a Tier 2 (General) CoS if we are not satisfied that you are able to offer genuine employment that meets the Tier 2 (General) requirements on skill level and appropriate rates of pay.

23.21 Any CoS that remain unused at the end of your CoS year will be removed from your SMS account. You can't carry over any unused CoS to the next year. At the end of each CoS year, you can apply for a further allocation for the next CoS year if you think you will need some, using your SMS account. This is an annual process that occurs during the validity period of your licence.

23.22 In some circumstances you will not have to apply for your next year's allocation; we will simply give you a further years allocation which will be equal to the number of CoS you assigned in the previous year. If we are able to do this, we will write to you and let you know. If we haven't told you that we will do this, you must apply as usual towards the end of your CoS year.

23.23 You are responsible for anything done by a representative or a person employed by you, who appears to act on your behalf. We may revoke, suspend or downgrade your licence or cut the number of CoS you can assign, if you do not comply with the rules on assigning or applying for an allocation of CoS.

## **Cancelling a CoS**

23.24 We can cancel a CoS assigned by you if we find it should not have been assigned, for example if it was assigned through misrepresentation or fraud.

23.25 You can withdraw a CoS assigned to a migrant, 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.

23.26 A migrant can only have one CoS assigned to them at any given time. If you have assigned a CoS to a migrant who intended to start working for you, but then decided to take up a job offer with a different sponsor, they must contact you to arrange the withdrawal of their CoS. This is because the sponsor who they want to start work for will not be able to assign a CoS to them until you have withdrawn the one you assigned. They must request this in writing or by email giving you 5 working days to action this. If you do not action their request they must send a reminder, after which you will have a further 5 working days.

23.27 If you refuse, or fail to withdraw the CoS within the set time, the migrant can ask us to cancel it. We will not cancel it until we have talked to you about why you have not done as they have asked. Failure to action this request from a migrant, within the set time, may lead to us taking action against you.

23.28 When a CoS is cancelled or withdrawn, the fee won't be refunded and we will refuse any application that is supported by that CoS.

23.29 If a migrant is 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 the CoS which supported their application was improperly assigned. If this happens:

- a) their permission to be in the UK as a Tier 2 or Tier 5 migrant 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.

## 24. Sponsoring migrants

24.1 All migrants you wish to sponsor under Tier 2 and Tier 5 must have been granted entry clearance before coming to the UK. The exceptions 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
- b) Croatian nationals (who can move and reside freely in any European Union (EU) member state).

24.2 Migrants can't make a valid application for entry clearance, leave to remain in the UK under Tier 2 or Tier 5 or for worker authorisation (Croatian nationals only) without a CoS. For more information on worker authorisation is available on our pages on the GOV.UK website at: [www.gov.uk/croatian-national](http://www.gov.uk/croatian-national).

24.3 A CoS is confirmation from you as a licensed sponsor that;

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

24.4 We make the final decision on who is allowed to enter or remain in the UK and this will be based on the requirements of the Immigration Rules. Assigning a CoS does not guarantee an application will be granted.

### Tier 2 – skilled workers

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

24.6 A settled worker can't be made redundant to create a vacancy to be filled by a Tier 2 migrant.

### Skill level for jobs under Tier 2 (General) and Tier 2 (Intra-Company Transfer (ICT))

24.7 Apart from the exceptions listed 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.

24.8 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
  - 3411 – Artists
  - 3412 – Authors, writers and translators
  - 3413 – Actors, entertainers and presenters
  - 3414 – Dancers and choreographers
  - 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.

24.9 If you sponsor a migrant who is already in the UK you will need to find out when they were first granted leave under Tier 2 or the Work Permit arrangements to work out whether they are allowed to take the job you intend to offer them. You should ask for any evidence they have from when they first successfully applied for Tier 2 or the Work Permit arrangements before assigning a CoS. If you assign a CoS and their application is refused because the skill level requirement is not met, we won't refund the CoS fee.

24.10 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 - [www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators](http://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators); and
- b) shortage occupation list - [www.gov.uk/government/publications/tier-2-shortage-occupation-list-from-6-april-2013](http://www.gov.uk/government/publications/tier-2-shortage-occupation-list-from-6-april-2013).

## Appropriate rate for jobs under Tier 2 (General) and Tier 2 (Intra-Company Transfer (ICT))

24.11 Since 6 April 2011, all migrants sponsored under Tier 2 (General) and Tier 2 (ICT) must be paid in line with the rules on minimum salary levels. These levels are for gross salary packages including any guaranteed bonuses and any allowances permitted by this guidance.

24.12 Table 1 shows the current minimum salaries which apply:

|  |   |
|--|---|
| Tier 2 (General), except for cases below   | £20,500 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   | £24,500 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   | £41,000 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  |

24.13 All payments you make to migrants that you sponsor under Tier 2 (General) and Tier 2 (Intra-Company Transfer (ICT)) must be made into their own bank account 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 give evidence that you have made payments onto the migrant's card.

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

## 25. Standard occupational classification (SOC) codes

25.1 When you assign a CoS you must choose the SOC code which contains the job description that best matches the role you want to recruit for. The Codes of Practice contain information about each SOC code and sample job titles and duties that fit within each code. You should be able to find the correct SOC code by searching the Codes of Practice for job titles or key words.

25.2 You may find that if you search for job titles, the SOC code containing that job title does not match the duties that the migrant will perform. This is because different employers use the same job title to describe different jobs, or use generic job titles that cover several different jobs. If this happens you should search further, for example using key words, for a job description that matches the migrant's duties.

25.3 If you use the wrong SOC code when assigning a CoS or applying for a restricted CoS, this could lead to an application being delayed or refused.

### Transitional arrangements for SOC codes – skill level

25.4 If you are already sponsoring a migrant whose CoS was assigned before 6 April 2013 and their occupation now falls within a SOC code that no longer meets the requirements on skill level, and they wish to apply to extend their stay to continue in that job, their application won't be refused on this point. For more information, please see [skill level for jobs under Tier 2 \(General\) and Tier 2 \(intra-company transfer \(ICT\)\)](#).

## 26. Rates of pay

26.1 In codes of practice, for most jobs, there are two different minimum salary rates. One is for 'new entrants' the other for 'experienced' staff. These rates have been set to make sure that the resident labour market is not undercut. The rates of pay are up-to-date and in line with current earnings of settled workers. These rates are update every April.

26.2 The new entrant rate reflects the fact that people in the early stages of their career are generally paid less than their more experienced counterparts. The new entrant rate can be paid if you have met the resident labour market test by carrying out a milkround, or the migrant is switching into Tier 2 (General) and was last granted leave to enter, or 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
- 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:
  - a UK recognised bachelor's or master's degree, or
  - a UK Postgraduate Certificate in Education, or
  - a Professional Graduate Diploma of Education, or
  - they have finished a minimum of 12 months study in the UK towards a UK PhD.

26.3 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.

26.4 In all other cases, including where the migrant is applying for a period of leave which will bring their total stay under any combination of Tier 2 leave, or as a Work Permit holder, beyond three years and one month, the 'experienced' rate must be paid. An example would be if they are still under the age of 26, but are applying to extend their stay in Tier 2 to five years the 'experienced' rate must be paid. Another example would be if you assigned a CoS for a period in excess of three years and one month.

26.5 You should not sponsor a migrant at the new starter rate if you expect that you will want to sponsor them for more than three years and you will not 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.

26.6 Under the rules of the Tier 2 (General) resident labour market test, jobs must be advertised at or above the appropriate rate to make sure you have made a genuine attempt to fill the vacancy with a settled worker. Migrants must be paid in line with the rate that was advertised. 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 £13,000 on a six month contract would add up to an annual salary of £26,000. For more information on the rate, please see [appropriate rate for jobs](#)

## Transitional arrangements for recruitment exercises which took place before 6 April 2014

26.7 If you have conducted a resident labour market test where you placed advertisements before 6 April 2014, you may find that the salary amount, or range stated in your advertisements is higher, or lower than the minimum allowed for that job in the current codes of practice. This is because we update the salary rates in the codes of practice every April.

26.8 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 current codes of practice, whichever is higher. For example:

| EXAMPLE 1   |
|---|
| The job was advertised with a salary range of £25,000 - £27,000 and the current minimum rate in the codes of practice is £27,500. |
| RESULT: You must pay at least £27,500.  |

| EXAMPLE 2   |
|---|
| The job was advertised with a salary range of £25,000 - £27,000 and the current minimum rate in the codes of practice is £24,500. |
| RESULT: You must pay at least £25,000.  |

26.9 If you assign a CoS to a high earner, but the recruitment for the position was conducted before 6 April 2014, you can still state a salary figure which is less than £153,500 but it must still be at least £152,100 if the recruitment exercise took place between 6 April 2013 and 5 April 2014.

If you assign a high earner CoS in these cases you must tell us on the CoS 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

26.10 When you assign a CoS to a migrant, you must give three pieces of information about the salary package:

- a) First you must give the gross salary figure which must represent the total amount paid to the worker, gross of any tax paid (whether paid in the UK or overseas) and must include any permitted allowances and guaranteed bonuses.
- b) Second, you must give a separate figure for the total of all allowances and guaranteed bonuses.
- c) Finally, you must give a detailed breakdown of each allowance and each guaranteed bonus showing their value.

26.11 The figure given for the gross salary must not be inflated in expectation of any tax relief, such as relief on expenditure related to the employment, or tax incurred by the employment of a resident worker, but not incurred for a 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.

26.12 Salary may be paid in the UK or abroad. Where the migrant will be paid from abroad in currency other than pounds sterling, the salary entered on the CoS must 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/](http://www.oanda.com/).

26.13 The salary package on the CoS may include, in addition to basic pay any:

- a) guaranteed bonuses
- b) allowances such as London weighting or accommodation allowances which would also be paid to a settled worker.

26.14 The salary package 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.

26.15 For more information on how we take allowances into account, please see [evidence for migrants application for leave](#).

## **Reductions in salary**

26.16 If you decide to cut a migrant's salary package to a lower rate than you stated on their CoS (for example, because allowances offered have changed), the new rate that you pay to them must meet the current appropriate rate requirements.

26.17 If the new rate is below the appropriate rate, you can't continue to sponsor them and you must report this to us using your SMS account.

26.18 There is an exception to this rule if you are making a temporary reduction to a migrant's hours due to the current economic climate. Where this is the case:

- a) the migrant must be working in the same job with reduced working hours
- b) the reduced hours must be part of a company-wide policy to avoid redundancies
- c) you must not treat the migrant more, or less favourably than settled workers you employ
- d) the migrants pay or working hours must not be cut by more than 30 per cent
- e) the reduction in pay must be proportionate to the reduction in hours
- f) the arrangement must not be in place for more than one year
- 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.

26.19 The only other exceptions to this rule are:

- a) where the reduction is due to the migrant taking a period of:
  - maternity leave
  - paternity leave
  - adoption leave
  - long-term sick leave in excess of one continuous calendar month
- b) In the case of a Tier 2 (ICT) migrant where the reduction is due to them not being physically present in the UK.

26.20 If the reduction in salary is due to the migrant being absent from work without pay for one month or more during any 12 month period from 1 January to 31 December, other than for the reasons listed above (whether over a single or multiple periods), you can't continue to sponsor them and you must report this using your SMS account.

26.21 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 using your SMS account.

26.22 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.

## 27. Tier 2 (General)

27.1 As a Tier 2 (General) sponsor, you will normally be the employer and responsible for paying the migrant. However there are certain circumstances, for example in parts of the creative sector, where there is no direct employer/employee relationship. In such circumstances the migrant must still have a sponsor that is able and willing to accept all of the responsibilities and duties associated with being their sponsor.

27.2 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 can intervene in the running or funding of the employing or paying body. In these cases, the publicly funded body can be the sponsor. For example a Local Authority has powers of control and direction over self-governing schools, so the Local Authority can sponsor teachers in these schools. Another example is where a Strategic Health Authority, through its Deanery, Local Education and Training Board (LETB) or provider/commissioning organisation, has funding control of training posts for doctors and dentists within NHS Trusts, even though it is not the paying body. In this case, the Deanery or LETB can be the sponsor.

27.3 Where a migrant is not your direct employee, we will look closely at the arrangement to make sure that you can fulfil your sponsor duties. We monitor you to make sure that you are fulfilling your duties and take action if we find that you are not.

### The Tier 2 (General) annual limit

27.4 There is an annual limit of 20,700 CoS available to sponsors under Tier 2 (General). The limit runs from 6 April each year to 5 April the following year.

27.5 The limit applies to:

- a) CoS for new hires earning under £153,500 per year coming 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) and will be paid less than £153,500.
- c) CoS for Croatian nationals.

27.6 We call those listed above 'restricted' jobs, for which a 'restricted' CoS is needed.

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

- a) New hires – high earners: Where the annual salary for the job is £153,500 or more.
- b) All applications by migrants who are applying from within the UK, including those extending their stay in Tier 2, changing employer, or switching immigration category. The only exception to this is where the migrant switching into Tier 2 (General) is in the UK as a dependant of another migrant who was last granted leave under Tier 4 and will be paid less than £153,500. These dependants do count towards the limit and you must apply for a restricted CoS for them.

27.8 Although a CoS assigned to a Croatian national counts towards the limit, you do not need to apply for a restricted CoS for them and should assign an unrestricted CoS instead.

## 28. Resident labour market test

### Resident labour market test - Tier 2 (General)

28.1 The resident labour market 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 chance to apply. You can only recruit a migrant 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.

28.2 A suitable settled worker means any settled worker who has the skills and experience you are seeking. If you find that you have more than one candidate with all the necessary skills and experience you advertised for, where one 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. The only exception is if the job falls within one of the PhD SOC codes listed below, when you can appoint a migrant if they are the most suitable candidate.

28.3 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 researchers in research organisations other than universities)
- f) 2150 - Research and development managers
- g) 2311 - Higher education teaching professionals.

### Exemptions from the resident labour market test

28.4 This section sets out where 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

28.5 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

28.6 Shortage occupations are ones where there are not enough settled workers to fill available jobs in particular sectors. The shortage lists are reviewed regularly. The current versions are available on our pages on the GOV.UK website at: [www.gov.uk/government/publications/tier-2-](http://www.gov.uk/government/publications/tier-2-)

[shortage-occupation-list-from-6-april-2013](#). 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.

28.7 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 will work for a minimum of 30 hours per week.

## Post-study work

28.8 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 one of the following:

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

or where

f) they have, or were last granted 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 they:

- have passed and will be (or have been) awarded a UK recognised bachelor's or master's degree, or
- have passed and will be (or have been) awarded a UK Postgraduate Certificate in Education, or
- have passed and will be (or have been) awarded a Professional Graduate Diploma of Education, or
- have finished a minimum of 12 months study in the UK towards a UK PhD.

## High earners

28.9 You do not have to conduct a resident labour market test where the total salary package for the job will be £153,500 or above. This also applies if a high earner's salary is cut to an amount below the high earner threshold that applied on the date their original CoS was assigned – 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.

## Academic leave

28.10 You do not have to conduct a resident labour market test if you are a Higher Education Institution and were previously sponsoring a migrant who is returning to resume their post following a period of academic leave. The migrant must have previously been granted entry clearance or leave to remain as a Tier 2 (General) migrant and the break in their employment must have been solely due to a period of academic leave. This does not override the rules on cooling off periods which will still apply if the migrant is still applying to return to the UK.

## Supernumerary research positions

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

- a) the migrant has been issued a scientific research Award or Fellowship by an external organisation
- b) that award is not transferrable and the role wouldn't 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 this research.

## Postgraduate doctors and dentists in speciality training

28.12 You do not need to conduct a resident labour market test if the migrant:

- a) 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 the UK government.
- b) 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. You must confirm on the CoS that this exception to the resident labour market test applies.

28.13 If a speciality training doctor or dentist wishes to undertake an out-of-programme experience in the UK, then the organisation providing this will need to become the new sponsor. You, as the current sponsor (usually the Deanery) must tell 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).

28.14 When the out-of-programme experience in the UK has finished, the migrant may need to return to their speciality training. You must assign a new CoS but won't need to conduct a resident labour market test, if the migrant is returning to the same training programme. 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 tell us that you are no longer sponsoring the migrant.

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

## How to carry out the resident labour market test - Tier 2 (General)

28.16 Unless an exemption applies all jobs must be advertised to settled workers for 28 calendar days. For more information on exemptions, please see [exemptions from the resident labour market test](#). You can advertise jobs in 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.
- b) Advertise the vacancy in two stages, with each stage being advertised for no less than 7 calendar days but where both stages total a minimum of 28 calendar days. For example, you could at first advertise the vacancy for 14 calendar days and appoint any suitable settled worker who applies. If no suitable settled worker applies, you can't appoint a migrant worker at this stage as you must advertise the vacancy for a further 14 calendar days, making 28 calendar days in total. If no suitable worker settled applies during either the first or second stage, then the resident labour market test has been passed and you can appoint a Tier 2 migrant.

28.17 You must place two advertisements using the methods set out in this guidance. 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. This is mandatory for certain jobs. For more information on advertisement methods, please see [resident labour market test Tier 2 \(General\) advertising methods](#).

28.18 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 Welsh if 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. For more information, please see [rates of pay](#)
- e) skills, qualifications and experience needed
- f) the closing date for applications, unless it is part of a rolling recruitment programme. (If it is a rolling recruitment programme, the advertisement should show the period of the recruitment programme).

28.19 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). The only exceptions to this rule are for:

- a) Creative sector jobs where the code of practice says that advertising is not needed because the migrant will be making an extra contribution to the UK labour market (see the creative sector codes of practice for more information). They can be found on our pages on the GOV. UK website at: [www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators#codes-of-practice](http://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators#codes-of-practice).
- b) Milkround recruitment exercises.
- c) Pupillage positions for trainee barristers.

- d) Jobs which fall within the PhD level SOC codes. For more information, please see [criteria](#).
- e) Jobs where the annual salary package will be £71,600 or more.
- f) Jobs where there will be stock exchange disclosure requirements
- g) Jobs in the NHS where the vacancy is advertised on the NHS Jobs website between 19 November 2012 and 1 October 2014.
- h) Jobs where the resident labour market test is not needed For more information, please see [exemptions from the resident labour market test](#).

28.20 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 and one can be online advertising through Jobcentres.

28.21 You can't refuse to employ a settled worker if they lack qualifications, experience or skills (including language skills) that were not asked for in the job advertisement.

28.22 The salary rate in your advertisement must be a true reflection of what you are prepared to pay and the rate you ultimately pay must be in line with the rate that was advertised. You can't advertise at a low rate, for example the new starter rate and then offer a higher rate to a migrant to allow them to make a successful application. An example of this would be if you advertised a salary rate of £22,000-£25,000. You can only sponsor a migrant if the salary you state on their CoS is within that range. If you want to pay a higher salary, you must conduct the resident labour market test again, advertising at the higher rate as there may be settled workers who would apply for the job at the higher rate.

28.23 When deciding the salary range to put in a job advertisement, you should consider if you are willing to offer a higher salary to a more experienced worker. This is important because the purpose of the resident labour market test is to make sure job opportunities are made available to the settled workforce. (Please see the transitional arrangements if you started a resident labour market test before 6 April 2014). For more information, please see [transitional arrangements for recruitment exercises which took place before 6 April 2014](#).

28.24 For each recruitment method, where you have conducted the resident labour market test, you must keep the documents listed in Appendix D. If you fail to advertise a job vacancy in line with the requirements set out in this guidance, we will take action against you.

## **Resident labour market test Tier 2 (General) – advertising methods**

28.25 The following sections describe the different methods of advertising we accept when conducting a resident labour market test. Unless an exemption 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. We will also accept two advertisements using the same form of media, for example advertisements on two different websites.

## Jobcentre plus (or in Northern Ireland, Jobcentre online)

28.26 If the job is based in England, Wales or Scotland, it must be advertised online through the Jobcentre Plus Universal Jobmatch service. Information on how to do this is on the GOV. UK website at [www.gov.uk/advertise-job](http://www.gov.uk/advertise-job). Jobs are advertised online directly by employers using Universal Jobmatch.

28.27 The standard period for an advertisement to run on Universal Jobmatch is 60 days, but you can set earlier closing dates. The closing date for applications won't 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 it is stated in the job description.

28.28 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 [www.employersonlineni.com/](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 [www.jobcentreonline.com/JCOLFront/Home.aspx](http://www.jobcentreonline.com/JCOLFront/Home.aspx) and are also available in Jobs & Benefits Offices and JobCentres in Northern Ireland.

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

28.30 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 make sure that your vacancies are placed when there are actual posts to fill. You must adhere to the rules set out by Jobcentre Plus and, Jobs & Benefits Offices and JobCentres in Northern Ireland. If your online vacancy advertisement is refused, you won't be able to meet the resident labour market test criteria and won't be able to assign a CoS.

**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 advertise using one other method allowed by this guidance.

## National newspaper

28.31 A national newspaper is one published at least once a week and marketed throughout the UK or throughout the devolved nation in which the job is located. For example, The Scotsman and The Herald are 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

28.32 A professional journal is one 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 job, for example:

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

## Milkround

28.33 A 'milkround' is an annual recruitment programme where employers from a range of 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.

28.34 The milkround or graduate recruitment programme does not need to be advertised through Universal Jobmatch or Jobcentre Online in Northern Ireland, to meet the resident labour market test. However, in addition to visiting the suitable universities, the milkround or 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](http://www.jobs.ac.uk)
- b) [www.milkround.com/](http://www.milkround.com/)
- c) [www.prospects.ac.uk/](http://www.prospects.ac.uk/)
- d) [www.targetjobs.co.uk/](http://www.targetjobs.co.uk/)

28.35 You must keep evidence to prove that no suitable settled workers were available to fill the vacancy.

## Rolling recruitment campaigns

28.36 Rolling recruitment programmes allow companies to pick out skilled individuals who might fill future, undefined vacancies rather than specific ones.

28.37 We understand why you may want to identify migrants through these programmes and we don't want to stop this happening. However to meet the requirements of the resident labour market test, when a specific vacancy becomes available it must be advertised as set out in this guidance to give settled workers a chance to apply.

## Recruitment agency and head-hunters

28.38 You can use an agency or head-hunter to help with your recruitment. They may recruit for the post on your behalf, but the recruitment exercise must meet the requirements of the resident labour market test.

28.39 Where an agency or head-hunter conducts the recruitment exercise, you are fully responsible for the resident labour market test. If it is not done in line with the rules, we will take action against you.

## Internet

28.40 You can advertise the job online. We do not restrict you to specific websites, but it must be one of the following:

- 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). For more information, please see [how to carry out a resident labour market test Tier 2 \(General\)](#).
- b) An online version of a national newspaper that would meet the requirements. For more information, please see [national newspapers](#).
- c) An online version of a professional journal that would meet the requirements. For more information, please see [professional journal](#).
- d) The website of a prominent or professional recruitment organisation.

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

28.42 If you advertise the job online, the website must not charge a subscription or any fee to look at job advertisements or to apply for jobs via these advertisements.

## 29. Tier 2 (General) certificate of sponsorship (CoS)

29.1 When you assign a Tier 2 (General) 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. For more information, please see [resident labour market test](#).

29.2 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, for more information, please see [how to carry out a resident labour market test](#), the CoS must be assigned within six months of the date the first of the two advertisements appeared. Exceptions to this six month limit are where:

- a) A migrant is recruited via a milkround, a CoS must be assigned within 48 months of the milkround taking place.
- b) The job falls within one of the PhD level SOC codes listed in this guidance, a CoS must be assigned within 12 months of the start of the recruitment process. For more information on the codes, please see [criteria](#).
- c) 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) 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 makes sure the results of advertising reflect the current availability of the skills you need.

29.3 When you assign a CoS you must:

- a) give full details of the resident labour market test conducted, including:
  - the dates the job was advertised
  - where the job was advertised
  - 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; or
- b) say why the resident labour market test is not needed where applicable.

### Transitional arrangements for jobs advertised before 6 April 2013

29.4 Before 6 April 2013, the resident labour market test only needed jobs to be advertised using one method from those listed in this guidance, plus advertising online through Jobcentres where mandatory.

29.5 Any CoS assigned 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 at the time the job was advertised. This arrangement will only apply if there is an exemption which allows a CoS to be assigned more than 12 months after the job was first advertised.

## Unrestricted CoS

29.6 As with all other Tiers and categories, when you apply for a sponsor licence you must tell us how many CoS you will need for each Tier and category you are applying for. Also, if you are an 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 23.13) You can have an annual allocation under Tier 2 (General) but only to cover the number of unrestricted CoS you need. You can't 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.

29.7 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 choose from the full range of NQF level 4 SOC codes. (Croatian nationals can work at or above NQF level 4. For more information, please see [skill level for jobs under Tier 2 \(General\) and Tier 2 \(intra-company transfer \(ICT\)\)](#).

29.8 Before assigning a Tier 2 (General) unrestricted CoS you must make sure that:

- a) You have identified the right type of CoS to assign, for example 'Tier 4 graduate switching into Tier 2'.
- b) The job is at the right skill level. For more information, please see [skill level for jobs under Tier 2 \(General\) and Tier 2 \(intra-company transfer \(ICT\)\)](#).
- c) The vacancy filling process used complies with the resident labour market test requirements (where required).
- d) The migrant will be paid a salary package at or above the appropriate rate. For more information on rates, please see [appropriate rates for jobs under Tier 2 \(General\) and Tier 2 \(intra-company transfer \(ICT\)\)](#).

## Restricted CoS

29.9 Between 6 April 2014 and 5 April 2015 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 monthly allocations of 1,725. Each allocation will be reduced by the number of unrestricted CoS assigned to Croatian nationals in the last month. The monthly total will be increased in line with any restricted CoS which have been unallocated, returned or reclaimed during the last month. Only a A-rated sponsor can apply for a restricted CoS.

29.10 If you need to assign a restricted CoS to a migrant, you must apply for it using the restricted CoS application process. We can't guarantee your application will be successful. 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

29.11 The application process works to a monthly cycle. You can make an application at any time using your SMS account. Each application we receive will be scored against a set of criteria. On the 11th day of each month we will decide how many applications made on or before the 5th of the same month can be approved. We call this the 'allocation date'. (If the 11th of the month falls on

a Saturday, Sunday or Bank Holiday in England, applications will be decided on the next working day.) If your application is successful, your restricted CoS will appear in your SMS account on the relevant allocation date.

## How to apply for a restricted CoS

29.12 You apply for a restricted CoS using your SMS account. The application can only be made by a level 1 user. There is no fee to apply for a restricted CoS.

29.13 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 not assigned after three months it will be removed from your account. If a restricted CoS is removed and you still need it, you will have to apply again.

29.14 When you apply for a restricted CoS you must have conducted a resident labour market test (where suitable) that meets the requirements in this guidance.

29.15 When you make your application you must fill in all mandatory fields marked with an asterisk. If you do not you won't be able to submit your application. All information you give on salary payments, skill level and the resident labour market test must be in line with how a Tier 2 (General) unrestricted CoS is assigned. For more information, please see [Tier specific duties under Tier 2 \(General\) and Tier 2 \(Intra-Company Transfer \(ICT\)\)](#).

29.16 We may wish to check the information you send with your application, for example if we have doubts about its validity. If we need to make any checks, we may ask for more information or documents. You must send us any information or documents within 10 working days. If you do not your application will be rejected.

29.17 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 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

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

| <b>Table 2.</b>  |               |                           |               |
|--|---------------|---------------------------|---------------|
| <b>Type of Job</b>   | <b>Points</b> | <b>Salary</b>             | <b>Points</b> |
| Job is on the list of Shortage Occupations   | 75            | £20,500 -<br>£20,999.99   | 2             |
| Job is at PhD level, and is one of the SOC codes listed in paragraph 28.3 and a resident labour market test (RLMT) has been conducted (or job is exempt from the RLMT) | 50            | £21,000 -<br>£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 -<br>£22,999.99   | 4             |
|  |               | £23,000 -<br>£23,999.99   | 5             |
|  |               | £24,000 -<br>£24,999.99   | 6             |
|  |               | £25,000 -<br>£25,999.99   | 7             |
|  |               | £26,000 -<br>£26,999.99   | 8             |
|  |               | £27,000 -<br>£27,999.99   | 9             |
|  |               | £28,000 -<br>£31,999.99   | 10            |
|  |               | £32,000 -<br>£45,999.99   | 15            |
|  |               | £46,000 -<br>£74,999.99   | 20            |
|  |               | £75,000 -<br>£99,999.99   | 25            |
|  |               | £100,000 -<br>£153,499.99 | 30            |

29.19 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.

29.20 We then add a further score for the salary 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.

29.21 Your application must score a minimum of 32 points to be valid. You won't be able to send an application if it scores less than 32 points.

29.22 We can't guarantee 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 right, we won't award those points and your application will be rejected.

## The monthly allocation process

29.23 Each application received for a restricted CoS will be scored in line with Table 2. See [criteria](#). All applications received up to and including the 5th of each month that are not subject to checks, will be considered on the 11th of that month - the 'allocation date'. For example if you apply between 6 September and 5 October, your application will be decided on the 11 October. Please note that the monthly application cycle for April and May 2014 will be:

- a) applications received between 6 April and 16 April 2014 will be decided on 18 April 2014.
- b) applications received between 17 April and 5 May 2014 will be decided on 11 May 2014.

29.24 We will approve valid applications solely on the number of points scored, starting with the highest. If the number of valid applications received is more than the number of CoS available, those applications scoring the lowest points are less likely to be approved.

29.25 We may reach a point where there are more applications that score the same amount of points than we have CoS 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. If this happens, we can't make a fair decision as to whether any of these are more urgent, or worthy than others. Therefore we will either approve all of them, or none of them.

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

| <b>EXAMPLE 1</b>  |
|---|
| On 11 September 2014, all valid applications scoring between 105 points and 33 points have been approved.             |
| We have 150 CoS left to allocate.   |
| There are 250 valid applications that all score 32 points.  |
| RESULT: We will award CoS to all 250 applicants as it will only lead to our monthly allocation being exceeded by 100. |

| <b>EXAMPLE 2</b>   |
|--|
| On 11 September 2014, all valid applications scoring between 105 points and 33 points have been approved.  |
| We have 150 CoS left to allocate.  |
| There are 400 valid applications that all score 32 points.   |
| RESULT: We won't allocate any CoS for any valid application scoring 32 points because we would exceed our monthly limit by more than 100. We will carry over the 150 unallocated CoS to the following month. |

29.27 The decision we make is based on the number of points your application has scored. Nothing else 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 relevant allocation date. If unsuccessful, you can apply again at any time.

29.28 If the monthly allocation process is undersubscribed, we will carry over any CoS that remain unallocated, to the following month. Any CoS that remain unallocated at the end of each year covered by the limit won't be carried forward to the next year's allocation.

29.29 There may be compelling circumstances where a CoS can be granted exceptionally, before the next allocation date. Applications will be considered on merit and in line with relevant policy. It is not possible to give a full list of circumstances that might be defined as ‘compelling’, however approvals should be rare. Examples might be:

- a) where delays caused by us resulted 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 at once because patients need life-saving surgery before the 11th of the following month.

29.30 We won’t consider any application made due to delays caused by you that could have been avoided. For example, where a recruitment/appointment was delayed because your staff were absent.

29.31 If you need to apply in this circumstance, you must send your application using your SMS account, and also email us at [Tier2Limits@ukba.gsi.gov.uk](mailto:Tier2Limits@ukba.gsi.gov.uk) asking for your application to be considered urgently; and the reasons for this. We may ask for documentary evidence to support your application and may visit you.

29.32 We only consider applications where, had they been made earlier, it would have been granted on the last allocation date, However, there is no guarantee that any application will be granted. Each case will be considered on its merits and we expect robust evidence as to why the application couldn’t have been made earlier.

29.33 We can’t guarantee a timescale for considering urgent applications. For example it may take longer if we need to visit you, or ask for documentary evidence to support your application. If we can’t 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. For more information, please see [how to apply for a restricted CoS](#).

29.34 Any application for urgent consideration that we refuse will be carried forward to the next allocation date for a decision. Where we do grant any applications for urgent consideration, we will reduce the next monthly allocation accordingly.

## Reclaimed and returned CoS

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

29.36 If you decide that you no longer need a restricted CoS, you must do one of the following:

- a) if the CoS is part of an application for a number of identical CoS, you must first assign the ones you do need then email us at [Tier2Limits@ukba.gsi.gov.uk](mailto:Tier2Limits@ukba.gsi.gov.uk) to let us know that it can be returned.
- b) if the CoS did not form part of an application for a number of identical CoS, you can email us at [Tier2Limits@ukba.gsi.gov.uk](mailto:Tier2Limits@ukba.gsi.gov.uk) to let us know that it can be returned.

29.37 You must let us know about any restricted CoS which can be returned. We can then make them available to other sponsors.

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

## Use of restricted CoS

29.39 Remember, 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.

29.40 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.

29.41 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.

29.42 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:
  - Is still at or above the appropriate rate for the job. For more information, please see [appropriate rate for jobs under Tier 2 \(General\) and Tier 2 \(intra-company transfer \(ICT\)\)](#).
  - 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.
  - 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.

29.43 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.

29.44 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.

29.45 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 29.42-43. 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.

## 30. Tier 2 (Intra-Company Transfer (ICT))

30.1 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 employer. There are four sub-categories within this route - Short Term Staff, Long Term Staff, Graduate Trainee and Skills Transfer.

30.2 Where we refer to 'employees' who may be 'working for' you, in the context of the ICT arrangements, this also includes partners where you are, for example, a Limited Liability Partnership.

30.3 This route can't 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 can't move to Company B via Tier 2 (ICT).

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

30.5 Under all the ICT sub-categories, the job the migrant will do must meet the rules on the skill level and appropriate salary rates as set out in this guidance. For more information, please see [skill level for jobs under Tier 2 \(General\) and Tier 2 \(intra-company transfer \(ICT\)\)](#), and [appropriate rate for jobs under Tier 2 \(General\) and Tier 2 \(intra-company transfer \(ICT\)\)](#).

### Long term and short term staff

30.6 These two sub-categories are for established employees to be transferred to the UK to fill a post which can't be filled by a settled worker. Migrants must have been working for your organisation for at least 12 months, either:

- a) outside the UK; or
- 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
  - a Tier 2 (ICT) migrant in the Established Staff category under the rules in place before 6 April 2011
- c) a Tier 2 (ICT) migrant under the rules in place before 6 April 2010
- d) an ICT work permit holder
- e) as a Representative of an Overseas Business; or
- f) any combination of the above.

30.7 The 12 month period above must be:

- a) a continuous period of 12 months immediately prior to the date of their application for leave; or
- b) an aggregated period of 12 months if the migrant has, during their continuous employment, lawfully worked for you in the UK with leave in an immigration category which is not listed above. For example as the dependant of another migrant.
- c) an aggregated period of at least 12 months within a 24 month period immediately prior to the date of their application for leave if, within the 12 months immediately prior to their application they have been:
  - absent due to a period of maternity, paternity or adoption leave; or
  - absent due to a period of long-term sick leave that lasted for one month or longer; or
  - working for you in the UK under the Graduate Trainee or Skills Transfer sub-categories.

30.8 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.

## Long term staff

30.9 This sub-category must be used if you need to transfer existing employee to the UK and sponsor them under Tier 2 (ICT) for a period of more than 12 months, up to a maximum 60 months (or longer if the migrant is a high earner). This route can also be used for periods of less than 12 months if you wish. It is up to you and the migrant to decide whether to use this sub-category or the Short Term Staff sub-category for periods of less than 12 months.

30.10 A migrant can have leave granted under this category for any period of time up to a maximum of 60 months in total. If the migrant is a high earner, they can extend their stay up to a maximum of nine years.

30.11 This route must also be used for any migrant who needs to extend their stay in the UK and their last leave was granted in the Established Staff sub-category, under 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 won't have to meet the £41,000 minimum salary level, or be working at NQF level 6 (or the equivalent in Scotland). However, they must continue to work at or above NQF level 3 (or the equivalent in Scotland) and they won't be limited to a maximum of 60 months.

30.12 Any earlier leave granted under the rules in place on 6 April 2011 in any other ICT sub-category won't count towards the maximum allowed in total. For example if the migrant spent 12 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 months under the Long Term sub-category.

30.13 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 in future, they may be affected by the Tier 2 cooling-off period. For more information on the cooling-off period, please see the [Tier 2 cooling-off period](#).

## Short term staff

30.14 This sub-category can be used if you need to transfer existing employees to the UK and sponsor them under the Tier 2 (ICT) for a maximum of 12 months.

30.15 A Tier 2 migrant can have leave granted for a maximum of 12 months under this sub-category. If the initial grant of leave is for less than that, they can extend it up to a maximum of 12 months.

30.16 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 in the future, they may be affected by the Tier 2 cooling-off period if they return under any Tier 2 category other than ICT – Long Term Staff. For more information on the cooling-off period, please see the [Tier 2 cooling-off period](#).

## Graduate trainee

30.17 This sub-category can be used to transfer recent graduate recruits to the UK for training, for any period up to a maximum of 12 months. (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 progression towards a managerial or specialist role within the organisation.

30.18 You must not use this route to transfer all of your graduate recruits. It is only for those on accelerated promotion schemes.

30.19 The migrant must have been employed outside of the UK by you for a minimum of three months before coming to the UK. 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.

30.20 This route is specifically targeted at the best graduate recruits and you are limited to transferring no more than five migrants per financial year under this sub-category. If you transfer more than five graduate trainees we will take action against you.

30.21 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 in the future, they may be affected by the Tier 2 cooling-off period if they return under any Tier 2 category other than ICT – Long Term Staff. For more information, please see the [Tier 2 cooling off period](#).

## Skills transfer

30.22 This sub-category can be used to transfer existing employees to the UK, for any period up to a maximum of 6 months, to acquire the skills and knowledge needed to do their job overseas, or to provide their specialist skills to the UK workforce. Migrants do not need to have been employed for a minimum period to qualify for this sub-category.

30.23 The purpose of the transfer must be to acquire or share skills and knowledge and must be incidental to the transferee's employment overseas. The transferee's role must be over and above your staffing requirements in the UK (supernumerary). In other words, if the skills transfer was not needed, the role in the UK wouldn't exist.

30.24 This sub-category must not be used to fill UK vacancies or to displace resident workers. For example, filling positions in a UK-based project or by rotating the admission of skills transferees to fill long-term positions.

30.25 On-the-job training and work is allowed if it is undertaken in line with the skills transfer. For example it wouldn't be acceptable for a Skills Transfer migrant to come to the UK to learn about your finance systems but then undertake work in another area of your business in the UK.

30.26 Acceptable examples of Skills Transfers include:

- a) you are engaged to up-skill a client and need to bring a migrant worker in to help because the skills are not available in the UK, or
- b) a migrant worker is brought in to acquire the skills needed to allow them to fulfil a project or other obligations outside the UK when they return overseas.

30.27 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 in the future, they may be affected by the Tier 2 cooling-off period if returning under any Tier 2 category other than ICT – Long Term Staff. For more information, please see the [Tier 2 cooling off period](#).

## Evidence for migrants' applications for leave

30.28 Migrants with a CoS assigned under the Long Term Staff, Short Term Staff and Graduate Trainee sub-categories may have to give us evidence to prove that they have been working for you for the required period, to support their application. The evidence may include payslips, statements or building society pass books. You may have to certify that evidence.

## Salary and allowances

30.29 Migrants in all ICT sub-categories must be paid at the appropriate rate. For more information on rates, please see [appropriate rate for jobs under Tier 2 \(General\) and Tier 2 \(intra-company transfer \(ICT\)\)](#). 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 entered on the CoS must 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](http://www.oanda.com). We take account of:

- a) Basic pay excluding overtime.
- b) Allowances and guaranteed bonuses. Allowances can include payments to cover extra costs of living whilst in the UK but can't include:
  - benefits such as overtime, bonus or incentive pay which is not guaranteed
  - employer pension contributions
  - allowances to cover business expenses including travel between the source country and the UK
  - the value of any shares which the migrant receives when offered a job under an employee shareholder employment contract.
- c) Accommodation allowances, but only up to a maximum of 30% of the total gross salary package (but see paragraph 30.31 below). This is whether allowances are made available in cash or kind. This means the migrants salary and other (non-accommodation) allowances

must be at least 70% of the maximum package that we take into account. This applies only to applications supported by a CoS assigned under the Long Term Staff sub-category.

| <b>EXAMPLE 1</b>  |
|---|
| <p>STEP 1: You assign a CoS under the Long Term Staff Category</p> <p>The CoS details the following figures:</p> <p>Salary and other (non-accommodation) allowances total £42,000</p> <p>Accommodation allowances total £14,000</p> |
| <p>STEP 2: Add these two figures together to get the total package offered = £56,000</p>  |
| <p>STEP 3: We calculate the maximum package we can take into account by dividing the salary and other (non-accommodation) allowances by 70%</p>   |
| <p><math>£42,000 \div 70\% = £60,000</math></p>   |
| <p>RESULT: The total offered is less than the maximum package we can take into account. We will therefore take all of the package into account.</p>   |

| <b>EXAMPLE 2</b>   |
|--|
| <p>STEP 1: You assign a CoS under the Long Term Staff Category</p> <p>The CoS details the following figures:</p> <p>Salary and other (non-accommodation) allowances total £24,500</p> <p>Accommodation allowances total £21,000</p>                          |
| <p>STEP 2: Add these two figures together to get the total package offered = £45,500</p>   |
| <p>STEP 3: We calculate the maximum package we can take into account by dividing the salary and other (non-accommodation) allowances by 70%</p>  |
| <p><math>£24,500 \div 70\% = £35,000</math></p>  |
| <p>RESULT: The total 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.</p> |

30.30 Due to higher costs for 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. 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 months or less, or
- b) the migrant is applying for an extension that will take their total stay in the UK to 12 months or less.

**EXAMPLE 3**

STEP 1: You assign a CoS under the Short Term Staff Category

The CoS details the following figures:

Salary and other (non-accommodation) allowances total £18,000

Accommodation allowances total £10,000

STEP 2: Add these two figures together to get the total package offered = £28,000

STEP 3: We calculate the maximum package we can take into account by dividing the salary and other (non-accommodation) allowances by 60% (instead of 70%)

$$£18,000 \div 60\% = £30,000$$

RESULT: 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.

## 31. Tier 2 (Minister of Religion)

31.1 This category is for those coming to fill vacancies as religious workers in bona fide religious organisations. 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.

31.2 The Tier 2 (Minister of Religion) category includes anyone doing 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) leading at marriages, funerals and other special services
- d) offering counselling and welfare support to members of the organisation
- e) recruiting, training and co-ordinating work of local volunteers and lay preachers.

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

31.4 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.

31.5 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 mainly administrative or clerical, 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. In addition, they may be in charge of 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.

31.6 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 is taking part in the daily community life of their order can be sponsored under this category, but anyone studying for a qualification on a formal full-time course or training in an academic institution not maintained by the order should be sponsored under Tier 4. People who are not members of a religious order, but who are working or studying within such a community are not allowed to apply under this category. They must be sponsored under the relevant work or study category if they can meet all of the requirements.

### **Resident labour market test for Tier 2 (Minister of Religion) and Tier 5 (Temporary Workers) - Religious Workers**

31.7 When 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. Any migrant you sponsor must not displace a suitable settled worker.

31.8 You must only recruit migrants who will carry out skilled religious duties. Other roles should be filled under another suitable 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 consider whether the role is suitable to the religious tiers. Some may be more suitable to Tier 5 (Temporary Workers) – Charity Workers. For more information, please see [Tier 5 \(temporary workers\) – charity workers](#). An example is where you want to sponsor a migrant who:

- a) will do mainly non-pastoral duties such as produce media products, or domestic work
- b) won't receive any payments from you.

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

## **When a resident labour market test is not required**

31.10 A resident labour market test is not required where:

- a) The role is supernumerary. This means it is over and above normal requirements and if the person filling the role was not there, it wouldn't be filled by anyone else. One example might be where the migrant offers pastoral support to members of a church community as part of their own development, but the work would stop if they were not there and you wouldn't replace them.
- 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. For more information, please see [Tier 2 \(minister of religion\)](#)).

31.11 A position that is not supernumerary is one vital to your requirements. 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 those duties still existed and 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 classes they taught had to continue, then the role is not supernumerary.

31.12 You must justify that a role is supernumerary. When assigning a CoS for a supernumerary role, you must fully explain in the 'details of labour market test' box (Tier 2) or by adding a sponsor note (Tier 5), why the role is supernumerary. Stating 'the role is supernumerary' is not enough, you must explain why. Also if the migrant mainly lives within a religious order, you must say this to justify why a resident labour market test is not applicable. If there is no explanation or we are not sure about any explanation you have given we may ask you for more information and it is possible that the migrant's application for leave may be refused.

## **Advertising the role to meet the resident labour market test requirements.**

31.13 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.

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

31.15 If there is no suitable national form of media for your religion you can advertise online either through the Jobcentre Plus Universal Jobmatch service, (or in Northern Ireland, JobCentre Online), or the employment section of a national newspaper. A national newspaper is one 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 for jobs located in Scotland, The Western Mail for posts in Wales and the Belfast Telegraph for posts in Northern Ireland.

31.16 You can also advertise on your own website if this 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 people to pay a fee or make a donation to be able to view an advertisement for a vacant role then this does not meet our requirements so you must also advertise in some other form of national media as described in this section.

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

31.18 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 assigning a CoS you must explain how you met the resident labour market test in the 'details of labour market test' box (Tier 2) or by adding a sponsor note (Tier 5). You must include:

- a) where the role was advertised including any reference numbers
- 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 these details are missing or unclear, we may ask 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.**

31.19 All migrants sponsored 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 must comply or be exempt from the National Minimum Wage regulations.

31.20 You must comply with the National Minimum Wage (NMW) regulations where they apply. (You are not allowed to withhold payments from a migrant if they are entitled to the NMW, just because they 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 in the ‘details of labour market test’ box (Tier 2), or by adding a ‘sponsor note’ (Tier 5).

31.21 When assigning a CoS under Tier 2 (Minister of Religion) you confirm:

- a) That the migrant is qualified to fill the role – for example, is an ordained minister of religion, where ordination is prescribed 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 throughout the period they have permission to stay and:
  - 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
  - won't be displacing a suitable settled worker.
- c) That you have conducted a resident labour market test for the role, where this is required.
- d) That where the role is supernumerary, the migrant will be additional to your normal staffing requirements and they won't be filling a vacant position that could otherwise be filled by a settled worker.
- e) That you accept the duties of sponsorship.
- f) That the migrant will be supported through funds and/or accommodation that are enough to maintain themselves throughout the period of their permission to stay, and are equal to, or exceed those you would normally give to a settled worker in the same role.

31.22 Migrants need a valid CoS, to be able to apply for leave under Tier 2 (Minister of Religion), or worker authorisation (Croatian nationals only). They must also meet all 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.

31.23 The gross salary figure on the CoS must represent what you will pay to the migrant, gross of any tax paid (whether paid in the UK 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 be entered in the ‘gross allowances’ box on the CoS, then broken down and detailed in the free text box that follows.

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

## **Codes of practice – standard occupational classification (SOC) codes**

31.25 When you assign a CoS you must choose the SOC code which contains the job description that best matches the role you want to recruit for. The Codes of Practice contain information about each SOC code and sample job titles and duties that fit within each code. You should be able to find the correct SOC code by searching the Codes of Practice for job titles or key words.

31.26 You may find that if you search for job titles, the SOC code containing that job title does not match the duties that the migrant will perform. This is because different employers use the same job title to describe different jobs or use generic job titles that cover several different jobs. If this happens you should search further, for example using key words, for a job description that matches the migrant's duties.

## 32. Tier 2 (Sportsperson)

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

32.2 When assigning a CoS you are guaranteeing that:

- a) the migrant intends to be based in the UK for the duration of their stay; and
  - has been approved by the governing body for the sport
  - 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
- b) you accept the duties of sponsorship.

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

32.4 The gross salary figure on the CoS must represent what you will pay to the migrant, gross of any tax paid (whether paid in the UK 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 be entered in the 'gross allowances' box on the CoS, then broken down and detailed in the free text box that follows.

32.5 All migrants in this category must be endorsed by the appropriate sports governing body. This confirms that they meet the governing body endorsement requirements as agreed between us and them, and confirms that:

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

32.6 When you assign a CoS to a migrant under Tier 2 (Sportsperson), you must enter the governing body endorsement reference number in the appropriate field. A CoS can only be assigned for the period covered by the governing body endorsement. Some governing bodies may only give 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 this period and must assign a new CoS.

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

### **Codes of practice – standard occupational classification (SOC) codes**

32.8 When you assign a CoS you must choose the SOC code which contains the job description that best matches the role you want to recruit for. The Codes of Practice contain information about each SOC code and sample job titles and duties that fit within each code. You should be able to find the correct SOC code by searching the Codes of Practice for job titles or key words.

32.9 You may find that if you search for job titles, the SOC code containing that job title does not match the duties that the migrant will perform. This is because different employers use the same job title to describe different jobs or use generic job titles that cover several different jobs. If this happens you should search further, for example using key words, for a job description that matches the migrant's duties.

## **Sports players moving on loan**

32.10 Where the relevant Governing Body permits it, sports players can move on loan to another club but only if they will return to their original club after the period of the loan. If your player is moving on loan you must report this to us using your SMS account within 10 working days of the move.

32.11 During the loan period, you continue to be responsible for the player and must make arrangements with the loan club so that you can continue to meet your duties. The loan club does not need to make an application for a governing body endorsement, nor have a sponsor licence. When the player returns from loan, you must report this to us using your SMS account within 10 working days.

32.12 If your player is permanently transferred to another club, you must tell us using your SMS account and the new club must make an application for a governing body endorsement on behalf of the player. The new club must be a licensed sponsor and the player must make a new application for leave or for worker authorisation (Croatian nationals only, where applicable). The player must have been granted leave to play for their new club before they play for them.

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

## 33. Tier 5 Youth Mobility Scheme and Temporary Worker categories

33.1 Tier 5 is made up of 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.

33.2 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)

33.3 The youth mobility scheme is a cultural exchange scheme which aims to promote the UK overseas and to encourage 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.

33.4 The sponsors under the youth mobility scheme are the national governments of participating countries and territories, not individual employers or other organisations.

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

33.6 Further information on the scheme and the requirements migrants must meet are in the Tier 5 Youth Mobility Guidance which is available on our pages on the GOV.UK website at: [www.gov.uk/tier-5-youth-mobility](https://www.gov.uk/tier-5-youth-mobility).

### Tier 5 (Temporary Workers)

33.7 The temporary worker tier offers migrants a range of ways to come to the UK, to work in a variety of temporary roles.

33.8 We recognise that under Tier 5 the sponsor may not always be the employer. In some circumstances, a migrant may meet all of the Tier 5 criteria where there is no direct employer/employee relationship. Even though an employer/employee relationship may not exist, there must be a sponsor who is able and willing to take responsibility for them and meet all of the duties associated with being their sponsor. If you are taking on this role, you will be responsible for the migrants you sponsor, even if you are not their employer.

33.9 Examples of where the sponsor is not the direct employer include:

- a) In parts of the arts and entertainments sector a migrant may be employed through an entity such as a Special Purpose Vehicle. If this is the case, we expect the sponsor to be a producer, co-producer or general management company even though they do not directly employ the migrant.

b) Where a musical group or theatre troupe (and their support entourage) is on tour here temporarily, they won't usually be employees of the sponsor.

c) There will occasions within the Government Authorised Exchange sub-category where an overarching sponsor must administer schemes but can't be the direct employer of any migrants it sponsors to participate in its scheme.

33.10 Where a migrant is not your direct employee, we will look closely at your arrangements and monitor you to make sure that you are fulfilling your sponsor duties. We will take action against you if you are not fulfilling all your sponsorship duties.

33.11 When you assign a CoS to a migrant under any sub-category of Tier 5, the gross salary figure on the CoS must represent what you will pay to the migrant, gross of any tax paid (whether paid in the UK 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 be entered in the 'gross allowances' box on the CoS, then broken down and detailed in the free text box that follows.

## **Codes of practice – standard occupational classification (SOC) codes**

33.12 When you assign a CoS you must choose the SOC code which contains the job description that best matches the role you want to recruit for. The Codes of Practice contain information about each SOC code and sample job titles and duties that fit within each code. You should be able to find the correct SOC code by searching the Codes of Practice for job titles or key words.

You may find that if you search for job titles, the SOC code containing that job title does not match the duties that the migrant will perform. This is because different employers use the same job title to describe different jobs or use generic job titles that cover several different jobs. If this happens you should search further, for example using key words, for a job description that matches the migrant's duties.

## 34. Tier 5 (Creative and Sporting)

34.1 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 choice to extend up to a maximum of 24 months in total

34.2 Since 6 April 2012, there is an extra route for 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 if this visitor route will better meet their needs.

34.3 More information on this route is available on our pages on the GOV.UK website at: [www.gov.uk/permitted-paid-engagement-visa](http://www.gov.uk/permitted-paid-engagement-visa).

### Where the migrant will be employed within the creative sector

34.4 . Where appropriate, you must follow the codes of practice and consider the needs of the resident labour market in that field. The codes of practice cover three specific areas: dance, theatre, and film & television. These are available on our pages on the GOV.UK website at: [www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators#codes-of-practice](http://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators#codes-of-practice).

34.5 When you assign a CoS in 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
- d) will meet with the conditions of their permission to stay and, where granted leave under Tier 5, will leave the UK when it expires.

34.6 You must keep all the required documents specified in Appendix D.

### Resident labour market test for the creative and entertainment sector

34.7 Before you assign a CoS under Tier 5 (Creative and Sporting), you must confirm you have followed the relevant code of practice which says if a resident labour market test must be conducted and how.

34.8 If there is no code of practice, you must show that the migrant won't be displacing a settled worker. This could be through having advertised the post to let settled workers apply, or by virtue of the migrant being who they are, for example a musician with international status, or a member of a unit company. (The Code of Practice for Performers in Theatre or Opera explains what a

unit company is and the principles set out in that document can be applied to other sectors where there is no code of practice).

34.9 You must explain on the CoS how you have met the resident labour market test. Examples include: but are not limited to:

- a) Evidence of recruitment activity such as advertisements placed.
- b) Written support from a suitable industry body, or sector labour market information showing that the role couldn't be filled by a settled worker.
- c) Evidence that the migrant is internationally famous in their field (this is different to being well-known only in one country).
- d) 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).
- e) 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, talent, linguistic or vocal skill.
- f) Evidence that the migrant is needed 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 before the production came to the UK. The 'same production' is one which is largely the same in terms of direction and design as the production outside the EEA.

34.10 When you assign a CoS, you must tell us how you have met the requirements of the relevant code of practice. If there is no code of practice you must explain how the migrant won't be displacing a settled worker. For example a statement 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 needed for continuity. You can include this information either in the free text box 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 confirming that the group is established and has performed overseas.

## **Assigning a CoS under Tier 5 in the creative and entertainment sector**

34.11 Due to the nature of the creative sector, migrants are sometimes needed to do a number of engagements at various venues. If you will be the migrant's only sponsor in the UK and there is no more than a maximum of 14 days between each engagement, you can assign a single CoS to cover the whole period. If the migrant will have more than one sponsor while in the UK, for example a number of venues, producers or promoters, then each of those sponsors can assign a CoS to cover its own show. Where this is the case, none of the CoS can overlap.

34.12 Any CoS you assign can include rehearsal periods. You must make sure that you only assign a CoS for the period needed, covering only the period of engagements the migrant has in the UK as described in paragraph above. If we find you have assigned a CoS incorrectly, for example to falsely extend a migrant's stay in the UK, we will take action against you.

34.13 You can assign a group CoS where appropriate. You may want to do this where the migrant is part of a group and this can also include their migrant's entourage. Examples of when you might assign a group CoS are:

- a) For all the members of a unit company such as a ballet company or dance group, circus troupe, orchestra or group of musicians, or theatre group who are seeking to enter the UK to fulfill a contractual obligation to perform as a group.
- 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.

34.14 You must assign a CoS to each member of the group which confirms they are a member of the named group and fill in all relevant details, but you only have to pay one CoS fee to cover the entire group.

34.15 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 what share of the group fee each migrant will be paid. The exception to this is where there is no code of practice. In these cases, you may enter a nominal rate of £0.01.

## **Where the migrant will work within the sporting sector**

34.16 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 sport in the UK
- c) coaches who are suitably qualified to undertake the role in question.

34.17 All migrants in this category must be endorsed by the appropriate sports governing body. This confirms that they meet the governing body endorsement requirements as agreed between us and them and 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

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

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

34.20 When you assign a CoS in 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
- 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**

34.21 All migrants sponsored under Tier 5 must have been granted entry clearance before coming to the UK. The only exceptions are:

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

34.22 If a Tier 5 migrant does not have entry clearance or has been granted leave to remain for six months or less, their Tier 5 leave will end if they leave the Common Travel Area. The migrant won't 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).

34.23 For non-visa nationals who do not need prior entry clearance and who have been assigned a CoS for less than three months for a job in the creative or sporting sector, there are arrangements at the UK border to allow these migrants to gain entry to the UK.

34.24 They must present their CoS number, and any evidence for the points they are claiming. We recommend you make sure that when assigning a CoS, migrants understand these arrangements and that leave to enter may take a little longer to process due to the checks that the Immigration Officer must carry out. We recommend that your sponsored migrants have your contact details in case they need to contact you. Further information on these arrangements is available in the Tier 5 Guidance for migrants, available on the GOV.UK website.

34.25 Where a Tier 5 migrant in these circumstances is granted leave to enter for up to three months, their leave will end once they leave the Common Travel Area. This means that they won't automatically be able to re-enter the UK on the basis of their original leave. We know 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 give evidence of meeting the maintenance requirements again. They will carry out checks to make sure that you have not withdrawn your sponsorship since the migrant's original entry. We may speak to you again to confirm the details on the CoS. If the migrant meets all the criteria, we will be able to grant leave to allow them to finish the engagements for their sponsor within the period of their original grant of leave.

## 35. Tier 5 (Temporary Workers) – Charity Workers

35.1 Migrants coming to work temporarily in the UK as charity workers must only be doing voluntary activity to carry out fieldwork directly related to the purpose of your charity. You can't offer paid employment under this route.

35.2 When you assign a CoS under Tier 5 (Charity Worker), you are guaranteeing that the migrant:

- a) intends to undertake voluntary fieldwork related to the purpose of your charity
- b) won't 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 [www.legislation.gov.uk/ukpga/1998/39/contents](http://www.legislation.gov.uk/ukpga/1998/39/contents) and the revision to that Act at [www.legislation.gov.uk/ukpga/2008/24/crossheading/national-minimum-wage-etc](http://www.legislation.gov.uk/ukpga/2008/24/crossheading/national-minimum-wage-etc) won't take up a permanent position
- c) will comply with the conditions of their permission to stay and, where granted leave under Tier 5, will leave the UK when it expires.

35.3 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 with or joining them in the UK.

## 36. Tier 5 (Temporary Workers) – Religious Workers

36.1 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.
- 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 detail of their duties in the UK may differ. This employment should be ongoing and the time spent in the UK should be in line 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).

36.2 Before you assign a CoS under Tier 5 (Temporary Workers) - Religious Workers, you must conduct a resident labour market test where appropriate. For more information on how to do this and when a role is exempt from the test, please see [resident labour market test for Tier 2 \(minister of religion\) and Tier 5 \(temporary workers\) – religious workers](#).

36.3 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
- b) the migrant won't take employment except as a religious worker
- c) the migrant will only work at the location given unless you tell us of any change of location using your SMS account
- d) you accept the responsibilities of sponsorship for the migrant
- e) the migrant will be supported through funds and/or accommodation that are enough for them to maintain themselves for the full period on their CoS (Migrants sponsored under this route do not have access to most state benefits)
- f) the migrant will not displace a suitably qualified settled worker
- 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.

36.4 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 in an academic institution not maintained by the order should be sponsored under Tier 4. People who are not members of a religious order, but who are working or studying within a community are not allowed to apply under this category and must be sponsored under the relevant work or study category if they can meet all of the requirements.

## 37. Tier 5 (Temporary Workers) – Government Authorised Exchange (GAE)

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

37.2 Since 6 April 2012, all existing and newly approved schemes fall under three categories:

- a) A work experience programme. These schemes 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 is for migrants to gain experience of work in the UK. Approved schemes will allow migrants to take part for a maximum of 12 months.
- b) A research programme. These schemes allow migrants to undertake research programmes and fellowships on a scientific, academic, medical, or government research project at a UK Higher Education Institution or another research institution operating under the approval of a relevant government department. (The relevant government department may also offer financial sponsorship for the institution.) Approved schemes allow migrants to take part for a maximum of 24 months.
- c) An overseas language programme. These schemes are professional language training programmes that are fully or partially paid for by an overseas government or an organisation affiliated to an overseas government for up to 24 months.
- d) A training programme. Approved schemes allow migrants to take part for a maximum of 24 months and offer formal, practical training in the fields of science and medicine. This includes
  - training delivered by HM armed forces or UK emergency services
  - training programmes created for qualifying postgraduate students who need to undergo a period of formal training to gain their full qualification before leaving the UK.

37.3 These categories can't 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 wouldn't be filled by anyone else.

37.4 Any work or activity done by migrants on a GAE scheme must be at or above NQF level 3 (or the equivalent in Scotland). The exception is for schemes set up as part of the EU Lifelong Learning Programme where the skill level can be lower. The Codes of Practice lists all jobs which are at NQF Level 3 and above.

37.5 To stop potential abuse of this sub-category and the creation of small, isolated schemes which are similar to each other, individual employers and organisations are not allowed to sponsor migrants under this route, 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:
  - a sponsored researcher
  - 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.

37.6 Apart from the exceptions listed above, the sponsor for a Tier 5 (GAE) scheme must be an overarching body which administers the exchange scheme and acts as the licensed sponsor for any migrants in the scheme.

37.7 Since 6 April 2012 there is an extra 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 paid engagements. If you use Tier 5 (GAE) to sponsor migrants, you may wish to look at the rules for this route as it may be better for a migrant to use this route rather than Tier 5 (GAE). More information on this route is available on our pages on the GOV.UK website at: [www.gov.uk/permitted-paid-engagement-visa](http://www.gov.uk/permitted-paid-engagement-visa).

37.8 Details of all schemes are available on our pages on the GOV.UK website at: [www.gov.uk/government/publications/tier-5-government-authorised-exchange-schemes](http://www.gov.uk/government/publications/tier-5-government-authorised-exchange-schemes).

37.9 When you assign a CoS to a migrant who will take part in a Tier 5 (GAE) scheme, you are guaranteeing that the migrant:

- a) is seeking to work or train here temporarily through an approved scheme
- b) won't establish a business in the UK
- c) meets the requirements of the scheme
- d) won't take part in any activities as part of the scheme, that have not been endorsed by your sponsoring government department or approved by us
- e) won't take part in work or training for a period longer than approved for the scheme
- 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.

37.10 If you assign a CoS for a period longer than approved for your scheme we will take action against you. We will also speak to your endorsing government department and ask them if they wish to continue endorsing your scheme.

37.11 You are responsible for all of the migrants you sponsor under the scheme. It is important that you work closely with other bodies or organisations where your sponsored migrants are placed. If you do not have enough control over your scheme, for example if migrants are not doing work you said they would, we will take action against you.

## **38. Tier 5 (Temporary Workers) – International Agreement (IA)**

38.1 This category is for migrants coming to the UK under contract to give a service to you which 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.

38.2 More information about how long a migrant can be sponsored for under Tier 5 (IA), is available in the guidance for Tier 5 migrants, the Immigration Rules and the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013.

38.3 Any employment undertaken by a Tier 5 (International Agreement) migrant must conform to 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.**

38.4 When you assign a CoS to an employee of an overseas governments or international organisation, you are guaranteeing that the migrant will:

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

38.5 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:
  - a named member of staff of a diplomatic or consular mission who has diplomatic privileges and immunity defined by the Vienna Convention on Diplomatic Relations, or
  - 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) won't take up any other employment other than as a private servant to a named individual in the given household
- e) has a written statement of terms and conditions for their work
- f) where 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.

38.6 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 meet the requirements set out above. 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 as set out in the guidance for Tier 5 migrant applications and the Immigration Rules. If the private servant is a Croatian national, details of the evidence they must give to support an application for worker authorisation are set out on our pages on the GOV.UK website at: [www.gov.uk/croatian-national](http://www.gov.uk/croatian-national).

## **Contractual service suppliers and independent professionals under international agreements**

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

38.8 The UK has commitments under the:

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

to allow employees of an overseas business and self-employed people to work in the UK, where they are established on the territory of a country that is a contracting party to these trade agreements, and is delivering a service to a UK customer.

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

- a) They are a contractual service supplier, meaning they must be employed by a business established on the territory of a country which is party to one of these agreements and has no commercial presence in the European Union.
- b) They are an independent professional, meaning 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.
- c) The service supplied falls within a sector in which the UK has taken commitments under one of the agreements listed above.

38.10 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).

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

38.12 The service supplied must be in line with a genuine contract covering 12 months or less, which has been awarded through open tendering and where you will be the final user of the service. You can't sponsor a contractual service supplier or independent professional if you will then supply them as labour, to another organisation.

38.13 Where the migrant is a contractual service supplier, they must have been employed by the sending business for at least one year before the date of their application for leave. Contractual service suppliers and independent professionals must also meet the skills requirements set out in this guidance.

38.14 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 first 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.

## **Skills and experience**

38.15 Any migrant applying for leave as a contractual service supplier or independent professional must have a university degree or a technical qualification showing knowledge at the same level. The exceptions are where contractual service suppliers will provide one of the following:

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

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

## Sponsoring contractual service suppliers and independent professionals

38.17 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 party to one of the following:
  - the General Agreement on trade in Service (GATS)
  - the EU-Chile Free Trade Agreement
  - the EU-CARIFORUM Free Trade Agreement
  - 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
- c) will comply with the conditions of their permission to stay and will leave the UK when it expires.

38.18 If you want to bring contractual service suppliers or independent professionals to the UK under a new contract, you must tell us about this and not assign any CoS in connection with this until we have agreed it meets 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 reported we will ask you for supporting evidence and you must send us any documents or information within the time limit set.

38.19 If you assign a CoS in connection with a contract that:

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

we will revoke your sponsor licence.

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

38.20 When assigning a CoS you come to a box that asks you to tell us how much the migrant will be paid. This is mandatory and you must enter a figure. We know that you won't be paying a salary to the migrant so you can enter a nominal figure, for example £0.01.

38.21 You must also say in the 'summary of job description' box that the CoS is for either a 'contractual service supplier' or an 'independent professional' by entering one of those phrases. If you forget before you assign the CoS, you can retrieve it from within your SMS account and add a 'sponsor note' that says 'contractual service supplier' or 'independent professional'. Once assigned, 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.

## 39. General information

### Maintenance (available funds)

39.1 Migrants in all tiers must show that they have enough money to support themselves and any dependants when they enter the UK, until they start to receive an income. Please see the migrant guidance available on our website. Guidance for dependants of Tier 2 and Tier 5 migrants is on our pages on the GOV.UK website at: [www.gov.uk/government/publications/guidance-for-dependants-of-uk-visa-applicants-tiers-1-2-4-5](http://www.gov.uk/government/publications/guidance-for-dependants-of-uk-visa-applicants-tiers-1-2-4-5).

39.2 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 guidance for migrants and the Immigration Rules. Croatian nationals applying for worker authorisation do not have to meet any maintenance requirements.

39.3 If your licence is rated A, A (Premium) or A (SME+), you can certify maintenance for any migrant sponsored under Tier 2 or Tier 5. You can also certify maintenance for dependants of any Tier 2 migrants but not dependants of Tier 5 migrants.

39.4 If you want to certify maintenance for a migrant (and under Tier 2, for their dependants), you just need to 'tick' the relevant box on the CoS you assign.

39.5 If you certify maintenance you confirm that you will maintain and accommodate them up to the end of their first month of employment in the UK if needed. You may limit the amount of the undertaking, but any limit must be at least £900 (£945 if the migrant's application is made on or after 1 July 2014). If you certify maintenance for a Tier 2 migrant's dependants you confirm that you will maintain and accommodate them for the first month of any leave that is granted to them. You may limit this, but it must be at least £600 (£630 if the dependant's application is made on or after 1 July 2014) per dependant.

39.6 When you tick the relevant box on a Tier 2 CoS you are automatically certifying maintenance for both the migrant and their dependants. If you do not wish to certify maintenance for dependents you must add a 'sponsor note' to the CoS, saying this.

39.7 If you certify maintenance you must make sure the migrants are aware that they must not claim state benefits. If they do claim state benefits, with your knowledge, we will take action against you.

39.8 If you do not wish to certify maintenance at all, then the migrant and their dependants must all meet the maintenance requirements as set out in the relevant guidance and the Immigration Rules, and give us the required evidence with their application for leave.

### Migrants' initial permission to stay

39.9 Migrants under Tier 2 and Tier 5 can't apply for initial leave more than three months in advance of the date their employment starts, as stated on their CoS. You must make sure the timing of your recruitment and the date you assign the CoS does not put the migrant in a situation where they can't make a successful application for leave to enter or remain in the UK.

39.10 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 can't start work until they have received their Purple Registration Certificate.

39.11 If a Croatian national starts 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 pages on the GOV.UK website at: [www.gov.uk/government/publications/prevent-illegal-working-in-the-uk](http://www.gov.uk/government/publications/prevent-illegal-working-in-the-uk).

## After admission to the UK: the Biometric Residence Permit (BRP)

39.12 Since 2008, certain foreign nationals applying for leave to remain in the UK have to apply for a biometric residence permit. 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 for leave. Further details on biometric residence permits and who must apply for them are available on our pages on the GOV.UK website at: [www.gov.uk/biometric-residence-permits](http://www.gov.uk/biometric-residence-permits).

39.13 You should not allow a Tier 2 or Tier 5 migrant to start work until they receive their permit and you have seen it. Although the migrant will receive a letter from us before the permit is issued, this will only confirm that their application has been approved. It won't say the dates of leave granted. If the migrant does start work before the permit has been received, it is at your 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 pages on the GOV.UK website at: [www.gov.uk/government/publications/prevent-illegal-working-in-the-uk](http://www.gov.uk/government/publications/prevent-illegal-working-in-the-uk)).

## Extensions of permission to stay

39.14 A migrant under Tier 2 or Tier 5 can apply for an extension of their permission to stay (known as further leave to remain).

39.15 Where the migrant is already working for you and wish to extend their 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 extension applications are that:

- a) The migrant has been assigned a CoS for their continued employment in the same role before making an application for an extension of stay. If the migrant's original CoS was assigned before 6 April 2013, and the job they have been doing is not contained in one of the SOC 2010 codes in the read-over table in the codes of practice, you can assign a CoS under the most appropriate SOC 2010 code but only if it is clear that the job the migrant is doing did fit in the SOC stated on their original CoS and does not fit in one of the read-over SOC codes; or
- b) The migrant has been assigned a CoS for their continued employment in another role within the same SOC code that was on their original CoS before making an application for an extension of stay;

and

- c) The job is still at the appropriate skill level see [transitional arrangements for SOC codes – skill level](#) 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 before).

d) The migrant will continue to be paid at or above the appropriate rate. For more information on when the 'experienced' rate must be paid to a Tier 2 migrant, please see [rates of pay](#).

e) In the case of a private servant sponsored under Tier 5 (International Agreement), that they will continue to work for the employer named on their original CoS.

39.16 If you originally conducted a resident labour market test before you started sponsoring the migrant, you do not have to do another one.

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

39.18 When you assign a CoS to extend a migrant's leave in the same tier and category, the start date on the CoS should be the day after their current leave expires.

39.19 If the migrant is a Croatian national and:

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

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

39.20 If you employ a Croatian national and know they don't have the right worker authorisation, you could be committing a criminal offence and we may take action against you.

## **Leaving and returning to the UK**

39.21 If a Tier 2 or Tier 5 migrant needs to travel in and out of the UK on a regular basis in connection with their job, you can choose to tick the 'multiple entry' box when assigning their CoS. If you do this, it does not involve any extra benefits or restrictions on the migrant's ability to travel, but does help to show their intentions and likely travel plans to us. 'Multiple entry CoS' holders must, like other applicants, obtain prior entry clearance.

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

39.23 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 end if they leave the Common Travel Area. They will no longer have valid leave to enter the UK so if they want to return, they must apply again.

39.24 The Common Travel Area is the UK, Republic of Ireland, the Isle of Man and the Channel Islands. The one exception applies to certain non-visa nationals. For more information, please see [migrants leave under Tier 5 \(temporary workers\) – Creative and Sporting](#).

39.25 If a migrant has been assigned a multiple entry CoS, this does not override the rules on periods of unpaid leave. For more information, please see [reduction in salary](#).

## What happens if a migrant's leave lapses or expires when they are not in the UK?

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

### The Tier 2 cooling off period

39.27 If a migrant has been sponsored under Tier 2 and their leave has ended or expired, they must wait 12 months before applying again under any Tier 2 category. We call this the 'Tier 2 cooling off period'.

39.28 The cooling off period applies where the migrant:

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

39.29 The Tier 2 cooling off period starts the day after the migrant's last leave under Tier 2 ended or expired.

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

- a) the work they came to do finished early
- b) their sponsor notified us of this
- 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.

39.31 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 give us evidence of them having not been in the UK with Tier 2 leave for a period before that date. Evidence may include, but is not limited to:

- a) travel tickets or boarding card stubs, but **only** if you, or the migrant's last sponsor also sent an SMS report at the time, confirming their employment in the UK had ended
- b) exit or entry stamps in the migrant's passport confirming 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) other evidence that shows the migrant was not in the UK.

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

39.32 The cooling off period does not apply where the migrant is:

- a) in the UK and applying for an extension to their existing leave
- b) in the UK and is making a change of employment application
- c) applying as a high earner – someone whose gross salary package accepted for a Tier 2 application is £153,500 or higher
- d) 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:
  - Skills Transfer
  - Graduate Trainee
  - Short-Term Staff.

39.33 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 if they are allowed to make a further application.

## Change of employment

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

39.35 Where:

- a) You are already sponsoring a migrant who wants to continue working for you in a new job within the same SOC code quoted on their CoS.
- b) A migrant transferring to you with TUPE or similar protection and as part of the transfer they move into a new job within the same SOC code that was on the CoS assigned to them by their last 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.

39.36 If a sponsored migrant is changing occupations and will still be employed by you, but their new job is in a different SOC code, they must make a new application. The same applies where a migrant is affected by TUPE and as part of their transfer they change occupations and the new job is in a different SOC code.

39.37 Where a sponsored migrant must make a 'change of employment' application, you must first conduct a resident labour market test (if 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 can't 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.

39.38 If the new job is not exempt from the resident labour market test, then you must conduct one and can only appoint that same migrant if no suitable settled workers are available to fill the post. If you don't conduct a resident labour market test in these circumstances we will take action against you.

39.39 If you assign a CoS to a migrant to change employment, they must then make a new application. Their application must be approved before they can start work in their new job. (where the migrant is a Croatian national, please see [after admission to the UK: the biometric residence permit \(BRP\)](#), and [migrants initial permission to stay](#). This applies whether the new job is with the same sponsor or a new sponsor. The migrant can continue working in their original job, for their original sponsor (provided their last leave or authorisation has not expired) until the start date of the new job, as stated on their new CoS.

39.40 If you sponsor a migrant under Tier 2 who is already in the UK under Tier 2 having been sponsored by someone else, you need to know about the rules that limit a migrant to a maximum of six continuous years leave under Tier 2. These rules are explained in the guidance for Tier 2 migrants and in the Immigration Rules.

## **Transitional arrangements for changes of job within the same SOC code**

39.41 If you sponsor a migrant whose original CoS was assigned before 6 April 2013 using a SOC 2000 code, and you want to move them to a new job that used to be in the same SOC code as the one on their CoS, they won't have to make a change of employment application if the new job falls within one of the equivalent SOC 2010 codes. You can check this 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 won't have to make a change of employment application.

## **Migrants working on a contract basis**

39.42 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 the duties, functions and outcomes, or outputs of the job.

39.43 An example is where Company A has a contract with a client - Company Z - to deliver an IT solution within agreed timescales. A migrant who is sponsored by Company A to work on that project, may be sent to work for the length of the contract at Company Z's premises, but they remain employed by Company A throughout the period of the contract. As Company A is fully

responsible for their duties, functions, outputs or outcomes, Company A must be the migrant's sponsor.

39.44 You can only assign a CoS if you have full responsibility for deciding the duties, functions and outcomes or outputs of the job. Where the 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 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. For more information, please see [employment agencies and employment businesses](#)
- b) Contracted to undertake an ongoing routine role or to provide an ongoing routine service for the third party, regardless of the length of any contract between you and another party.

39.45 If the migrant is self employed there must be a contract for employment/services between you and the migrant. This contract must show:

- a) the names and signatures of all involved (normally, you and the migrant)
- b) the start and end dates of the contract
- c) details of the job, or piece of work the migrant has been contracted to do
- d) an indication of how much the migrant will be paid.

39.46 Where we think that you are supplying a migrant to another organisation, we may ask for confirmation from the other organisation, that:

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

## Switching while in the UK

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

- a) meet the requirements of the Immigration Rules to be allowed to stay in the UK within the category that are applying to switch into
- b) are already in the UK within one category that allows them to switch into the category they are applying to switch into.

39.48 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 their current immigration status allows them to switch into Tier 2 or Tier 5. This is important if the migrant 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. For more information, please see the [Tier 2 \(General\) annual limit](#).

39.49 Further guidance on switching rules is available in the migrant policy guidance and the Immigration Rules. See weblinks at the beginning of this guidance.

## Supplementary employment

39.50 Migrants sponsored under Tier 2 and Tier 5 are allowed, in limited circumstances to undertake other work in addition to that which their CoS was assigned for. We call this supplementary employment. The exception is for private servants sponsored under Tier 5 (International Agreement) who are not allowed to take supplementary employment.

39.51 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. This list is available on our pages on the GOV.UK website at: [www.gov.uk/government/publications/tier-2-shortage-occupation-list-from-6-april-2013](http://www.gov.uk/government/publications/tier-2-shortage-occupation-list-from-6-april-2013) (if the occupation is later removed from the list of shortage occupations, the migrant must cease that employment)
- c) be for no more than 20 hours a week
- d) be outside of the normal working hours for which the migrant's CoS was assigned.

Migrants do not need to advise us of any supplementary employment they undertake as long as it meets these criteria.

39.52 A migrant should advise their new employer that the employment is supplementary to the work they are being sponsored to do so that their supplementary employer can make the necessary checks recommended in our guidance for employers on illegal working. That guidance is available on our pages on the GOV.UK website at: [www.gov.uk/government/publications/prevent-illegal-working-in-the-uk](http://www.gov.uk/government/publications/prevent-illegal-working-in-the-uk).

## Secondary employment

39.53 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, they are allowed to take other employment which does not meet the supplementary employment criteria. We call this secondary employment.

39.54 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 line with the rules set out in this guidance. The secondary employer must assign a new CoS to the migrant so that they can send a fresh application to vary their existing leave or worker authorisation. (Please note that a second CoS can't be assigned until the migrant has used their first one).

## **Educational courses**

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

## Annex 1– Circumstances in which we will refuse your application

|    |   |
|----|---|
| a) | If you submit any false document with your application. If this happens, and we believe that a criminal offence has been committed, we will refuse your application and refer your case for prosecution.  |
| b) | If you do not meet the requirements of the 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) | <p>If you have, 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 illegal workers and you are still liable once your objection and appeal rights have been exhausted, and the fine:</p> <ul style="list-style-type: none"> <li>▪ 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</li> <li>▪ 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 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</li> <li>▪ 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 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</li> <li>▪ 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</li> <li>▪ 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 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).</li> </ul> |
| d) | If you have not paid an outstanding civil penalty issued for employing an illegal migrant worker and you are still liable once your objection and appeal rights have been exhausted.  |
| e) | If you have been issued with a civil penalty in the five year period immediately prior to your application for one of the “offences” in Appendix C (apart from employing an illegal migrant worker).  |

|    |   |
|----|---|
| f) | <p>If you have an unspent criminal conviction for a relevant offence.</p> <p>Relevant offences are:</p> <p>any offence under</p> <ul style="list-style-type: none"> <li>▪ the Immigration Act 1971;</li> <li>▪ the Immigration Act 1988;</li> <li>▪ the Asylum and Immigration Appeals Act 1993;</li> <li>▪ the Immigration and Asylum Act 1999;</li> <li>▪ the Nationality, Immigration and Asylum Act 2002;</li> <li>▪ the Immigration, Asylum and Nationality Act 2006;</li> <li>▪ the UK Borders Act 2007</li> <li>▪ trafficking for sexual exploitation</li> <li>▪ any other offence listed in Appendix B.</li> </ul> <p>and any offences of</p> <ul style="list-style-type: none"> <li>▪ espionage/terrorism</li> <li>▪ dishonesty (theft, corruption, deception and fraud)</li> <li>▪ bribery</li> <li>▪ proceeds of crime</li> <li>▪ money laundering</li> <li>▪ abuse and neglect of children (applies only for Tier 5 (Creative and Sporting))</li> </ul> |
| g) | <p>If you are legally prohibited from becoming a company director (unless this is due to being an un-discharged bankrupt). Please note that the authorising officer must not be an un-discharged bankrupt.</p>  |
| h) | <p>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.</p>   |
| i) | <p>If your application is submitted by a representative.</p>  |
| j) | <p>If we have asked you to send us any documents or information to validate or support your application and you do not send the documents or information within the given time limit.</p>   |
| k) | <p>If you are applying under Tier 2 (General) and we are not satisfied that you can offer genuine employment that meets the Tier 2 (General) requirements.</p>  |
| l) | <p>If you have no operating or trading presence in the UK.</p>  |

\*When referring to a civil penalty and a fine being paid 'within the given time limit' we mean 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.

## Annex 2 – Circumstances in which we may refuse your application

We may refuse your application in the circumstances listed below:

|    |  |
|----|--|
| a) | If you have a previous record of non-compliance or poor compliance with the duties of sponsorship, or with the work permit arrangements (but see annex 1 if you have previously had a sponsor licence and it was revoked).   |
| b) | If you 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 have previously had a sponsor licence revoked by us. In these cases, you will have to show 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 annex 1 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 have been involved with in a similar role. (This applies to individuals or organisations that provide immigration advice or services).   |
| f) | <p>If you 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:</p> <ul style="list-style-type: none"> <li>▪ applying for work permits despite not having, or being in the process of establishing, an operating or trading presence in the UK</li> <li>▪ 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</li> <li>▪ making false statements in any application to us, including an application for a work permit.</li> </ul> |
| g) | <p>The exact action we take in one or more of the circumstances above will depend on the seriousness of:</p> <ul style="list-style-type: none"> <li>• the past conduct (including the conduct that led to any previous revocation of a licence, removal from the register of education or training providers 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</li> <li>• the issues which led to the revocation of your previous licence, and what you have done since then to improve the situation.</li> </ul>   |

## Annex 3 - Circumstances in which we will downgrade your licence to a B-rating

We will downgrade your licence if:

|    |   |
|----|---|
| a) | You have certified that a migrant won't 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 <a href="#">change of employment</a> ).   |
| 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: <ul style="list-style-type: none"><li>• the test you conducted did not meet the requirements set out in this guidance; or</li><li>• you had not conducted a test.</li></ul> |
| k) | If we have asked you to send us any documents or information and you do not send the documents or information within the given time limit.  |

## Annex 4 - Circumstances in which we may downgrade your licence to a B-rating

We may downgrade your licence to a B-rating if:

|    |  |
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| 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.  |

## Annex 5 - Circumstances in which we will revoke your licence

We will revoke your licence if:

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| a) | We find, after your licence has been granted, that you gave false information on your sponsor licence application, or in support of your sponsor 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: <ul style="list-style-type: none"><li>▪ you sell your business (this includes circumstances where this happens as a result of you becoming insolvent)</li><li>▪ you go into liquidation, or sequestration is awarded and you cease to trade as a result of that</li><li>▪ a court issues a bankruptcy order against you</li><li>▪ you cease to have an operating/trading presence in the UK.</li></ul> |
| c) | You stop being accredited or registered with any body that you need to be accredited or registered with to get a licence.   |
| d) | You 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 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 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 are paying a civil penalty fine by an agreed payment instalment plan and you breach the conditions of that plan.  |
| h) | You are issued with a civil penalty for one of the 'offences' in Appendix C (other than for employing an illegal migrant worker) unless we withdrew the penalty or it was cancelled on appeal.  |

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| i) | <p>If you are convicted of a relevant offence.</p> <p>Relevant offences are:</p> <p>Any offences</p> <ul style="list-style-type: none"> <li>▪ the Immigration Act 1971;</li> <li>▪ the Immigration Act 1988;</li> <li>▪ the Asylum and Immigration Appeals Act 1993;</li> <li>▪ the Immigration and Asylum Act 1999;</li> <li>▪ the Nationality, Immigration and Asylum Act 2002;</li> <li>▪ the Immigration, Asylum and Nationality Act 2006;</li> <li>▪ the UK Borders Act 2007</li> <li>▪ trafficking for sexual exploitation</li> <li>▪ any other offence listed in Appendix B.</li> </ul> <p>and any offences of</p> <ul style="list-style-type: none"> <li>▪ espionage/terrorism</li> <li>▪ dishonesty (theft, corruption, deception and fraud)</li> <li>▪ bribery</li> <li>▪ proceeds of crime</li> <li>▪ money laundering</li> <li>▪ abuse and neglect of children (applies only for Tier 5 (Creative and Sporting))</li> </ul> |
| j) | You have been B-rated and have not met all of the requirements of your action plan within the specified period.   |
| k) | 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.  |
| l) | You have been awarded or downgraded to a B-rating and have failed to pay the action plan fee within 10 working days.  |
| m) | 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.   |
| n) | 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.  |
| o) | You give false information on an application for a Tier 2 (General) restricted CoS.   |
| p) | You employ a migrant in a job that does not meet the skill level requirements as set out in this guidance.  |
| q) | 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.   |
| r) | 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.  |

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| s)  | You use a restricted Tier 2 (General) CoS to fill a vacancy other than the one specified in your application for that CoS.  |
| t)  | 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: <ul style="list-style-type: none"> <li>• the test you conducted did not meet the requirements set out in this guidance; or</li> <li>• you had not conducted a test.</li> </ul>  |
| u)  | You assign any Tier 2 (General) CoS to a migrant and tell us on that CoS that the job was exempt from the resident labour market test (as set out in this guidance) and it was not.   |
| v)  | 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).   |
| w)  | You fail to meet the requirements set out in <a href="#">safeguarding children</a> .  |
| x)  | You are an employment agency or business and you have supplied migrants that you are sponsoring to a third party as labour.   |
| y)  | 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.  |
| z)  | You sponsor a migrant under Tier 5 (International Agreement) as a contractual service supplier or independent professional, to service a contract that: <ul style="list-style-type: none"> <li>▪ you have not told us about; or</li> <li>▪ you have told us about, but we have not yet confirmed that you can assign a CoS in connection with that contract; or</li> <li>▪ we have told you does not meet the requirements set out in this guidance.</li> </ul> |
| aa) | You cease to have (or we find that you have never had) an operating or trading presence in the UK.  |
| ab) | You are an employment agency or employment business and we grant a sponsor licence to you on this basis, but later find that a migrant you are sponsoring has been supplied to a third party as labour.   |
| ac) | If we have asked you to send us any documents or information and you do not send the documents or information within the given time limit.  |
| ad) | You assign a CoS for a vacancy that was not genuine. For example where: <ul style="list-style-type: none"> <li>▪ it contains an exaggerated or incorrect job description to deliberately make it appear to meet the requirements of the Tier and category you assigned it under when it does not.</li> <li>▪ it is for a job or role that does not exist in order to enable a migrant to come to, or stay in the UK.</li> </ul>                                 |

## Annex 6 - Circumstances in which we may revoke your licence

We may revoke your licence if:

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| a) | You are dishonest in any dealings with us. This includes, among other things: <ul style="list-style-type: none"><li>▪ making false statements, or failing to disclose any essential information, when applying for a sponsor licence; or</li><li>▪ making false statements, or failing to disclose any essential information, when assigning a CoS (for example falsely claiming to have complied with the resident labour market test).</li></ul> |
| b) | You, or any organisation that you 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 give immigration advice or services).  |
| c) | You fail to pay a migrant sponsored under Tier 2 or Tier 5 at least the appropriate rate for the job they are being sponsored to do, as set out in this guidance and the codes of practice.  |
| d) | You fail to provide any documents listed in Appendix D of this guidance, to a compliance officer within the specified time limit.  |
| e) | You become legally prohibited from acting as a company director.   |
| f) | You become an un-discharged bankrupt.  |
| g) | You fail to comply with any or all of your sponsor duties.   |
| h) | We find that you have no level 1 user in place that meets the requirements set out in <a href="#">level 1 user</a> .   |
| i) | You have no SMS users in place.  |
| j) | 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.   |
| k) | 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.   |
| l) | 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.  |
| m) | Any of your level 1 or level 2 users disclose their SMS password to another person.  |
| n) | You sponsor more than five migrants in the Tier 2 (ICT – Graduate Trainee) category with start dates in the same financial year.   |

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| o) | <p>The role undertaken by a migrant you have sponsored does not meet:</p> <ul style="list-style-type: none"> <li>▪ the job description in the codes 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</li> <li>▪ the job description on the CoS that you assigned to them.</li> </ul> |
| p) | <p>You have no authorising officer in place that meets the requirements set out in <a href="#">authorising officer</a>.</p>  |
| q) | <p>You do not supply, when asked 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.</p>   |