



UK Visas & Immigration

Code of practice for performers in theatre or opera under Tier 2 and Tier 5 (Temporary worker – Creative and Sporting)

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Introduction

This Code of Practice has been drawn up with Equity, Society of London Theatre (SOLT), Theatrical Management Association (TMA), National Campaign for the Arts (NCA) and Independent Theatre Council (ITC) and has been issued by us (the Home Office) to supplement the “Policy Guidance for Tier 2 and Tier 5 Sponsors of the Points-Based System (PBS)” ([sponsor guidance](#)) – available on our (the Home Office) website.

This Code of Practice is for sponsors of nationals from outside the European Economic Area (EEA) who will be working as actors, singers or dancers in theatre or opera under Tier 2 or Tier 5 of the PBS. For dancers in ballet and other dance forms see the Codes of Practice applying to ballet and other dance forms. In this Code of Practice, the term “performer” means actors, singers and dancers in theatre and opera.

The Creative & Sporting sub-category of **Tier 5** (Temporary Workers) is for those coming to the UK for shorter periods of time (the maximum length of leave in this category is 12 months) as well as for those with lower skills levels and potential earnings who would not qualify under Tier 2.

All licensed sponsors will be required to fulfil certain duties; compliance with sector-specific Codes of Practice is one of these duties. Where we (the Home Office) discover that a sponsor has acted in breach of the relevant Code of Practice, we will be able to take action against the sponsor using a range of measures applied according to the nature of

the breach. Further information on the range of action we may take is contained in the [sponsor guidance](#).

This Code of Practice contains a number of categories. Performers falling into one of the categories are deemed to be making an additional contribution to theatre and opera in the UK and not displacing the resident labour force, so are exempt from completing the resident labour market test.

Categories

Sponsors may assign a Certificate of Sponsorship (CoS) to a performer, who will be deemed to be making an additional contribution to the UK labour market when:

1. The performer is required for continuity

This means that the performer will have worked for a period of one month or more during the past year, on the same production outside the EEA prior to the production coming to the UK. The “same production” means one which is largely the same in terms of direction and design as the production outside the EEA.

Evidence

Documentary proof is required to show that the performer is currently working, or has worked, on the same production outside the EEA and has done so, or did so, for at least one month during the past year, for example, a contract of employment, press cuttings or cast list.

2. The performer has international status

This means that the performer is internationally famous in their field (this is different to being well-known only in one country).

Evidence

Documentary proof is required to show that the performer has international status, for example, press cuttings, awards, publicity material, television/radio interviews or programmes.

3. The performer is engaged by a unit company

A unit company is a theatre or opera company which exists in a country outside the EEA and has put on at least one production in that country.

Evidence

Documentary proof is required to show that the company has put on at least one production in its home country, for example, press cuttings, awards, publicity material, television/radio interviews or programmes.

Proof that the individual is engaged by the unit company for the production in the UK, for example, a contract of employment.

4. The performer has a certain attribute unlikely to be available in the EEA

It would not be reasonable to expect the sponsor to engage a non EEA performer because the role requires an attribute which would be unlikely to be available in the EEA labour force, for example, a certain physical appearance, and physical talent, linguistic or vocal skill.

Evidence

Documentary proof is required to show that:

- a) the role requires a certain attribute; and
- b) The individual has that attribute.

5. The performer is the subject of an exchange under one of the UK theatre industry's exchange programmes

The performer satisfies the requirements of either of the exchange programmes with the United States and Australia operated by the theatre industry. Sponsors wishing to use this category must contact Equity in the first instance: Stephen Spence at sspence@equity.org.uk or on 020 76700233. It is advisable to do this as early as possible in the process in order to avoid delay.

Where none of the above categories applies and the role is not on the shortage occupation list, the role should be advertised in accordance with the next section of this Code of Practice.

Advertising

Roles cast after a genuine labour market search within the EEA

Where advertising is required (see above), the role must be advertised to suitably qualified EEA-resident performers in accordance with standard industry practice through at least one of the following: The Stage, PCR, Spotlight, agents and Equity's Job Information Service. In order to comply with equal opportunities legislation, sponsors should avoid using the latter as the sole forum for advertising.

Where advertising is required and it is for the purposes of assigning a Tier 2 CoS, the sponsor must advertise the job in Jobcentre Plus in addition to one of the methods listed above. This is a mandatory requirement except where a Tier 2 exemption applies as stated in the [sponsor guidance](#); any sector specific media may be used as well, but not instead of, this advertising.

A period of at least four weeks should elapse between the date the advertisement appears and the date the CoS is assigned to a non EEA performer for the role concerned.

The advertisement should appear within the six months before the date the CoS is assigned.

Evidence

The sponsor must be able to provide documentary proof that a thorough and genuine search for a performer from the EEA was undertaken prior to casting the performer, which must include:

- the name or description of the specific role; and
- proof that the role was advertised in accordance with standard industry practice through at least one of the channels set out above;

And, if applicable,

- letters from agents confirming that they were approached;
- a list of any EEA performers who were contacted, interviewed, auditioned and/or offered the role; and
- A statement of the reasons why any EEA performer who was auditioned was not suitable.

Salary

Payment of performers should be commensurate with industry standards.

Agreed minimum salaries are set out in Equity's collective agreements, most of which are negotiated with ITC, SOLT and TMA. The current rates of pay can be found at: www.equity.org.uk; www.itc-arts.org; www.solt.co.uk; and www.tmauk.org.

Compliance and Notification

Sponsors must only assign a CoS to performers who meet the requirements of this Code and the other rules relating to the Tier. Sponsors must play their part in ensuring the system is not abused. Sponsors therefore must collate and maintain documentary evidence

demonstrating that the performer meets the requirements for the particular category under which the CoS is assigned. Records may be retained in original or electronic form.

When a sponsor assigns a CoS for someone working as a performer in theatre or opera, Equity will be notified electronically by us. This notification will provide Equity with details of the CoS.

Once this notification has been made, Equity can request that the sponsor demonstrates that the performer falls into one of the categories above by providing the evidence specified above for the category concerned.

Sponsors should ensure that the passing of any personal data relating to the performer to Equity complies with the Data Protection Act 1998.

This evidence is required solely for the purpose of enabling Equity to ascertain whether this Code of Practice has been complied with and will be proportionate depending on the performer and the category concerned. For example, where a performer is of international status, their name may be sufficient. Further evidence may need to be provided in other cases.

We may also ask to see the evidence relating to one or more performers who have been assigned a CoS, as part of our regular checks that sponsors are complying with their duties. We will take into account the views of Equity and the sponsor, assessing all of the available evidence during the course of our checks on sponsors, and will take the final decision as to whether the sponsor has complied with this Code.

Disputes

In the event that Equity, or another third party, believes that:

- a) a performer does not fall within one of the categories above and the role has not been advertised as set out above;
- b) the role has not been advertised as set out above;
- c) evidence requested has not been provided; or
- d) the sponsor has not complied with this Code of Practice in any other way,

Equity, or the third party concerned, will first raise the issue directly with the sponsor.

In cases where no resolution is reached, Equity may refer this to us for a decision on whether the sponsor has failed to comply with this Code of Practice.

In making a final decision, we will carry out our own investigations; examining all relevant evidence and taking into account the views of Equity and the sponsor. We will take the final decision based on our assessment of whether the sponsor has complied with this Code, taking action as appropriate.

Queries regarding this Code of Practice may be addressed to:

- Home Office: BusinessHelpdesk@homeoffice.gsi.gov.uk
- Equity: lmcmullan@equity.org.uk
- ITC: j.elliman@itc-arts.org (NB members only)
- SOLT: louise@solttma.co.uk (NB members only)
- TMA: louise@solttma.co.uk (NB members only)

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