

## ESTABLISHING THE EMPLOYER

Caseworkers should ensure that the employer making the work permit application has a UK base and is capable of offering a genuine vacancy to an overseas national. If a UK employer has not made a work permit application in the last 5 years (check gLOBE), they are required to send documents which establish that they are UK based, in accordance with the guidance notes. Some documents are essential, others are preferable to support the application. Should they have cause for doubt, caseworkers may obtain any information at any time, as they deem necessary to establish that an employer is capable of offering the vacancy.

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## Employers not requiring company information

Caseworkers do not need to ask for company information for the following types of employer:

- a) Government Departments, Government Agencies and non-Departmental Public Bodies;
- b) Official public bodies, such as the BBC or ITC;
- c) Local Authorities, Local Education Authorities and Maintained Schools;
- d) Nationalised Industries;
- e) Health Authorities and NHS Trusts;
- f) State funded Universities, Colleges and Research Centres, but not private ones (unless nationally recognised); **NB:** Caseworkers may use the [DCSF Register of Providers](#) on Knowledge Base when assessing applications. See below
- g) Long established, well-known companies and organisations, such as British Petroleum or Oxfam.

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## DCSF Register of Providers

The checks made by DCSF are at least equivalent to the checks that we would make to establish a new company. If the college appears on the Register of Providers, caseworkers can accept that the college is established and the 18-month restriction for a new employer is not required. The list is updated weekly, and there is a 'find' facility so a search can be made using the name of the establishment or the postcode.

**If the establishment does not appear on the list, this does not mean that the college should not be accepted.** It is not a legal requirement that a college be registered, it may just mean that no overseas students have applied for a visa to study there. In this case, caseworkers should establish the college in another way, using evidence from the list of information.

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## **Audited Accounts**

A copy of the latest audited accounts for the UK-based employer can be checked to establish that a company is present and trading in the UK. This may not be enough on its own to establish an employer. The [guidance notes](#) list additional documentation the employer should supply. Caseworkers should check that the employer's and accountant's name are clearly shown and the address of the employer correlates to the details on the application form. The accounts should show the financial period being assessed and will detail the main business of the company. Figures relating to profit and loss and annual turnover should be checked to ensure that the company is in a position to support the employment of the overseas national.

The accounts will show the address of the company, which should be as on the work permit application, also any links with other companies, franchises or subsidiaries. The accounts will also show details of the company's main business, which again should correlate with the information on the application form and relate to the skills and/or experience required of the overseas national. Common sense should be used, however, when dealing with occupations that would be required regardless of the main business, for example, accountant or various management positions.

It should be noted that not all companies are legally required to produce audited accounts. The legal requirement for producing audited accounts depends on a company's level of turnover and balance sheet total. Companies with a turnover of £5.6 million or less and a balance sheet total of £2.8 million or less are exempt from being legally required to provide audited accounts.

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## **Business Accounts**

Where the employer is a smaller company, they should be able to provide business accounts. These will not be audited but may give an indication to the main business activities of the company. Caseworkers should bear in mind that these accounts will have been produced by the company and as such are not independently verifiable. The quality of the document may be a good indicator of the professional status of the company and, taken in conjunction with other evidence, will help to provide a picture of the company making the application. Business accounts alone are not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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## Annual Report

An annual report contains an income statement, a balance sheet, a statement of changes in financial position, an auditor's report and a summary of operations. A copy of the company annual report can be used as evidence of the company address on the application. This may not be enough on its own to establish an employer. The [guidance notes](#) list additional documentation the employer should supply. The annual report may also provide details of the Auditor. The quality of this document will provide a good indication of the quality of the company. The annual report will give details of the main business of the company, links with other companies and may detail projections for the coming financial year. The document should be checked in line with other evidence provided to ensure correlation of details. The annual report will provide a picture of the company which will help determine whether the employer can support the employment of the overseas national.

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## Business Plan

Where the company has only recently been established, caseworkers should request a copy of the business plan. This should show details of the number of staff employed, the products or services, anticipated levels of turnover, income and expenditure, publicity or marketing material. Caseworkers should look at the number of employees in line with the income and expenditure and anticipated levels of turnover and assess the credibility of the company sustaining the employment of the overseas national for the specified period requested on the work permit application. A business plan is a document showing the intentions and aspirations of the business and this alone is not enough to establish a UK-based employer. Caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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## Balance Sheets

Balance sheets are prepared by the employer and will provide a financial picture of the business making the application. Details of income and expenditure, stock and property will be listed. This information can be used to assess the credibility of the company sustaining the employment of the overseas national. A balance sheet alone is not enough to establish a UK-based employer since it is produced by the employer and is therefore not independent. Caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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## Invoices

A business will usually be able to provide invoices for equipment or services. These invoices could be for equipment or services that the company has purchased for their

own use. Invoices are also a good source of evidence for private employers who are not necessarily trading but will require specialist equipment in order to operate from their own home. In this case, the invoices will be from another business to the employer concerned and should show the name and address of the employer making the application. They may be evidence that the employer has set up to trade. Other invoices may be sent to another business for services or goods that the new employer has provided and these show that trading is taking place. Invoices alone are not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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### **Lease, rental or purchase agreement**

Caseworkers should ask for evidence to establish that the company's business premises are genuine. A copy of any lease, rental or purchase agreement of the premises (as proof of ownership) should be made available and should have been signed and dated by all parties concerned.

Lease agreements should be checked to ensure the premises can be used for business. A lease, rental or purchase agreement alone is not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

Tenancies-at-will and licences to occupy usually denote an occupation that can be terminated quickly and/or a short term lease (usually three months). Caseworkers will need to treat with caution such documents and ask employers why a short term tenancy is required and when the employer is expected to obtain more permanent premises.

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### **Utility bills**

Business rates, water and electricity bills, council tax payments etc. should all show the name and address of the employer and provide evidence that the employer operates, and pays bills, from the address on the application. Several public utility bills to the correct employer and address may help to confirm that trading is taking place at the premises. Utility bills alone are not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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### **VAT returns & VAT registration certificate**

If they are not already supplied, copies of the company's VAT registration certificate and VAT returns can be requested from companies legally required to register. Caseworkers should be aware that not all companies are VAT registered. Currently, only companies with an annual turnover of over £64,000 are legally required to register. VAT returns are

evidence that trading is taking place and that the employer is complying with tax regulations. VAT registration documents are applications for the registration of the company, not evidence that trading is involved. VAT returns alone are not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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### **Her Majesty's Revenue and Customs records**

Accounts submitted to Her Majesty's Revenue and Customs (HMRC), a P35 document (employer's annual return to HMRC) and the NESI-8 document from HMRC may also be considered. New companies who employ staff are required to register with HMRC to pay PAYE and NICs (Pay As You Earn and National Insurance Contributions). HMRC requires all people setting up a new business to register with them within three months. When the company is registered, HMRC gives them two reference numbers, the employer's reference number and the accounts reference number. These are normally given on the form NESI-8 or may also be issued on the letterhead of the tax office concerned (some offices no longer use the NESI-8). In both cases, reference numbers will have been issued. Although such information alone would not meet our criteria, it may provide some evidence of a genuine intention to establish the company.

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### **Contracts**

Caseworkers should request copies of any contracts currently held by the company. These should be signed and dated by all parties concerned. The contract should show the deliverables. See [Contract](#).

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### **Certificate of Incorporation**

A Certificate of Incorporation alone is not enough to establish a UK-based employer. Caseworkers should look at any further evidence to establish the employer is genuine. The company may be registered with Companies House and a copy of the Certificate of Incorporation can be requested. Caseworkers may also do a search under the company name on the Companies House web site at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk). The registered office address is simply an address at which company records are stored, and the address to which Companies House letters and reminders are sent.

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### **Certificate of Employers' Liability Insurance**

Most employers are legally required to have obtained employers' liability insurance to insure against liability for injury or disease to their employees arising out of their employment. A certificate of employers' liability insurance alone is not enough to

establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

Employers must use an authorised insurer (details can be found at [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register)) and must be insured for at least £5 million. A copy of the certificate will show that the company making the work permit application is in a position to employ the overseas national. However, the following employers are exempt:

- Most public organisations including government departments and agencies, local authorities, police authorities and nationalised industries;
- Health service bodies, including NHS trusts, health authorities, primary care trusts and Scottish health boards;
- Some other organisations which are financed through public funds, such as passenger transport executives and magistrates' courts committees;
- Family businesses, i.e. if the employees are closely related to the employer (as husband, wife, father, mother, grandfather, grandmother, stepfather, son, daughter, grandson/daughter, stepson/daughter, brother, sister, half-brother/sister). However, this exemption does not apply to family businesses which are incorporated as limited companies.
- Further exemptions are listed at section 3(1)(a) and section 3(1)(b) of the Employers' Liability (Compulsory Insurance) Act 1969, and Schedule 2 to the 1998 Regulations.

It should be noted that the Act does not apply to Northern Ireland. Instead, employers in Northern Ireland have to comply with the Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 and the Employer's Liability (Compulsory Insurance) Regulations (Northern Ireland) 1999, which have similar provisions to the 1969 Act and the 1998 Regulations.

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### **Evidence of registration with Local Authority**

Establishments which serve hot or cold food are required to register with their local authority. Similarly, employers and individuals carrying out acupuncture, electrolysis, cosmetic piercing, tattooing and semi permanent skin colouring are required to register with the local authority.

Evidence of registration with the local authority can be in the form of a letter, e-mail or a screen dump of the local authority register. This evidence alone is not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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### **Staff Details**

Details of all staff employed by the company can be requested. For example, the person's full name, their National Insurance number, date of birth, nationality and job title of post held. In addition to this, caseworkers can request copies of pay slips for all staff currently employed by the company and a list of work permit holders.

Employers have the right to refuse to provide **personal data** (i.e. names, NI numbers, etc.) of staff who are not work permit holders. In this instance, caseworkers should advise them that they must still provide the information requested, but they may remove any personal data for resident staff.

The number of staff employed by the company should be assessed in line with the number of overseas nationals being recruited. Taken in conjunction with business plan, accounts and floor plan, the information should provide an indication of the credibility of the employer sustaining the employment of the overseas national on the salary stated on the application. Staff details alone are not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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## **Menus & Wine Lists**

Hotel and catering establishments should be able to provide menus and wine lists. The food served should correlate with the skills and experience required of the overseas national and prices should give an indication to the level of the establishment. Menus and wine lists alone are not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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## **Staff Hierarchy Charts**

A hierarchy chart can be used to show that the company has a vacancy which needs filling. The hierarchy chart should show job titles and should also show details of other work permit holders employed by the company. Staff hierarchy charts alone are not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

Employers have the right to refuse to provide **personal data** (i.e. names, NI numbers, etc.) of staff who are not work permit holders. In this instance, caseworkers should advise them that they must still provide the information requested, but they may remove any personal data for resident staff.

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## **Fire Inspection Certificate**



The use of certain types of premises has been designated by the Secretary of State as requiring a Fire Certificate under the Fire Regulations and Fire Precautions Act 1971. A Fire Inspection Certificate alone is not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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### **Local Health Authority Registration**

A number of businesses are required to register with their local health authority. Local health authority registration alone is not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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### **Care Homes - Commission On Social Care Inspection (CSCI) Registration**

All care homes are required by law to be registered with the [CSCI](#). The CSCI certificate will show the address of the care home, the name of a responsible individual and the registered manager of the care home. Any additional conditions of the registration including the services provided by the care home will also be given. Caseworkers should verify that the details provided match with those registered on the CSCI website. If so, the CSCI certificate can be used on its own to establish the employer. If any doubt over the authenticity remains, then caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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### **Copy of the Prospectus**

Caseworkers may request a copy of the prospectus for educational establishments. A prospectus alone is not enough to establish a UK-based employer, caseworkers should ask for additional information to ensure the employer is in a position to offer a genuine vacancy.

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**Sole Representatives** - The Sole Representative provision of the Immigration Rules allows for the admission of a representative of an overseas firm that has no branch, subsidiary or other representative within the UK. If a UK company exists as a legal entity only (e.g. if it has been set up in anticipation of the parent company's expansion into this country), employs no staff and transacts no business, then a sole representative arrangement would still be acceptable. The parent company must be sending the sole representative to the UK in order that they establish a commercial presence for the company in this country in the form of either a registered branch or a wholly owned subsidiary. The sole representative must have been recruited outside of

the UK and joined the parent company overseas. They must hold a senior position and are likely to be someone who has been employed by the parent company for some time. However, those who have a significant shareholding in the parent company are not eligible for entry as a sole representative. The permit free category designed for sole representatives does not cover secretaries or personal assistants accompanying a sole representative. Sole representatives are expected to base themselves in the UK and spend a minimum of 9 months per year in this country - although less time can be spent here if it is proven that it is an essential part of the business for the sole representative to return overseas. Work permits are not required until the sole representative requires additional personnel. We would need to see documentation to show that the company has become established and the criteria for the issue of a work permit would apply.

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### **What to do if?**

**There is more than one employer at an address** - When considering an application from a new employer, a postcode check should be carried out on the gLOBE enquiry screen. If there is more than one employer at this address then the other employer files should be checked to ensure that these premises have been investigated by the Compliance team. Any information from other employer files should be noted in the employer comments section, including if the property is a business centre.

If there are no relevant comments in other employer files at the same address then a copy of the lease and contact details for the 'working at' address should be requested on all cases. The lease should be checked to ensure that the premises can be used for business and that space is available. The address should be contacted to check whether it is a shared premise. If possible, check with the business centre manager who will be able to confirm if the company has a presence at this address. If it is confirmed that the address is a forwarding address only, then the application should be refused as not being a UK based employer and not able to provide a genuine vacancy.

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**The employer appears to be operating from a 'business centre', serviced accommodation or 'virtual office'** - Caseworkers should contact the business centre or serviced accommodation to check the size and nature of the accommodation available to this employer. Some business centres offer mailing services only; others provide only minimal accommodation. Caseworkers should be clear on the type of accommodation available to this employer and how many workers it could accommodate. If doubts persist, consider a referral for a pre-issue check.

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**The employer is operating from a residential address** - A copy of the lease, title deeds or rental agreement for the employer's address **and** the employee's 'working at' address should be requested for all such cases. These documents should be checked to ensure that the premises can be used for business and that space is available for

others to work there, if necessary. Caseworkers should also contact the relevant local authority to check that a business can be run from all relevant premises, as some authorities do not allow businesses to be run from residential addresses.

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**The accounts show a turnover which is not commensurate with the employment of the overseas national** – Caseworkers should assess the credibility of the employer being able to sustain the employment of the overseas national. Any figures given in brackets on a set of accounts indicate a negative value. The company turnover should be viewed in light of the number of employees and the salary proposed to be paid to the overseas national. If the turnover is lower than the proposed salary and the company has not shown a history of trading, caseworkers may consider that the application fall for refusal on genuine vacancy grounds. However, caseworkers should also take into account any future company earnings the employment of the overseas national will generate for the UK based employer. Strong evidence should be provided by the employer such as plans for expansion, projected growth figures and proposed business plan, which show that this assertion is credible. Companies may be supported, in their early stages, by other companies, abroad or in the UK, and the figures given in the accounts may therefore not be the full story. If this is the case, supporting evidence should be requested.

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**The address on the accounts/annual report/utility bills does not match the address on the application** – Caseworkers should query the inconsistency of the information provided. More evidence of the company trading from the address on the application should be requested. If doubt remains regarding the validity of the address on the application, the case may fall for refusal, as the employer cannot be established as genuinely existing at the address provided.

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**The main business of the company shown on the accounts/annual report does not relate to the skills, qualifications and/or experience required of the overseas national** – Depending on the inconsistency, caseworkers may consider the case to fall for refusal under genuine vacancy. If the employer cannot show that the skills of the overseas national are essential to the business, the offer of employment may be seen as false and the case should be refused as a genuine vacancy does not exist. Paragraph P80K should be included in the refusal letter.

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**The business accounts are not audited** – Caseworkers should note that not all employers are legally obliged to provide audited accounts. The legal requirement for producing audited accounts depends on an employer's level of turnover and balance sheet total. Employers with a turnover of £5.6 million or less and a balance sheet total of £2.8 million or less are exempt from being legally required to provide audited accounts.

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**The lease agreement states the premises cannot be used for business** –If the property cannot be used for business, the employer is not in a position to offer a genuine vacancy to an overseas worker and the application should be refused on this basis.

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**The lease agreement is shorter than the period requested for the work permit** – Caseworkers should query this with the employer and be satisfied with the credibility of the explanation before recommending an approval. Many businesses operate on short-term leases, the viability of the business continuing to operate on this basis should be assessed. If not satisfied with the explanation, caseworkers should consult EO/HEOs or Policy and it may be advisable to limit the approval to the length of the lease or a refusal may be appropriate on genuine vacancy grounds.

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**The employer does not have evidence of having met UK legislation (e.g. Fire Inspection Certificate)** – If the employer is required by law to register for any reason, yet cannot provide proof of registration, the caseworker should ask for a satisfactory explanation. Where the explanation is satisfactory, the caseworker should ask for copies of exemptions or the document when the employer receives them. If the response from the employer does not satisfy the caseworker that the employer meets UK legislation, the application should be refused on genuine vacancy and failure to comply with UK legislation.

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**An application is received from a director who has established the business and is found to be holding a work permit for another employer** - The case should be refused. In such an instance, the director of the company is working in breach of their conditions of stay and paragraph P874 should be used. This should not be mistaken for applications where the director of the company has not established the business and has a valid work permit as a director of the company in question. Such individuals will be employees with valid permission and part of their job may entail the recruitment of staff.

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**New employers - the employer has not applied for a work permit before**

If the evidence provided shows that the employer has been actively operating or trading in the UK for at least three years, applications should be caseworked in the normal way; work permits may be approved for periods up to five years.

If the evidence is not clear, caseworkers should request an example of the above documents which demonstrates trading for the previous three years.

Establishing the employer

If the employer has not been actively operating or trading in the UK for at least three years, any approvals should be limited to 18 months. After this period the employer will be required to submit further, up-to-date company information that shows that they continue to be a UK-based employer that is still able to support a genuine vacancy. If limiting the approval to 18 months, caseworkers should include paragraph P70U in the approval letter.

When an application is made for an employer where an 18-month limit already exists, caseworkers should continue to limit approvals to 18 months until this restriction ceases to apply. For example, if a new employer submits an application and then submits a second application one year later, the caseworker should limit any approval for **each** application to 18 months where further company information has not been received (not 18 months for the first one and 6 months for the second).

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**The evidence provided meets the requirements of the work permit criteria and shows that the employer is established in the UK** – Continue the case working process. Caseworkers should ensure that all company information received has been entered on GLOBE with any relevant comments, action or pertinent information such as past refusals.

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