

Guidance on Recruiting Migrant Workers

The Points Based system is operated by the UK Border Agency (UKBA) and manages the intake of skilled workers with a job offer in the UK. UKBA also deal with extensions to leave requests and existing employment visas.

Harrow Council has a licence to sponsor both Tier 2 and Tier 5 workers. The Tier 2 Migrant Workers must have a minimum skill level to broadly graduate level. This does not mean that each migrant worker has to hold a graduate qualification but must be applying to work in a role broadly equivalent to this.

The job must have been advertised by the Council in accordance with the UK Border Agency Codes of Practice called the Resident Labour Market Test.

Certificates of Sponsorship

Providing a certificate of sponsorship confirms to the UK Border Agency that there is a genuine vacancy in the UK and involves a pledge that the sponsor will accept the responsibilities of sponsoring the applicant. The decision to issue visas remains with the UK Border Agency.

The Points Based system includes two categories of Tier 2 Migrant workers - restricted and unrestricted - with effect from 6th April 2011. Each migrant worker, once offered a post, will need a Certificate of Sponsorship which is used to apply for a visa from the UK Border Agency. Tier 2 workers are initially given 3 years stay, after which a further certificate of sponsorship must be issued in order for them to apply to remain longer in the UK.

The recruiting manager will need to check which category the Certificate of Sponsorship falls into: either Unrestricted or Restricted.

- Once issued, a Certificate of Sponsorship can be withdrawn by the Council but the cost cannot be refunded
- A successful applicant cannot start employment with the Council until a visa has been granted
- Charging remains at existing rates for issuing a certificate of sponsorship. You need to pay for each certificate of sponsorship. Certificates are free for citizens of Croatia, Macedonia and Turkey

Type of certificate	Cost per certificate
Tier 2 Skilled Workers	£199
Tier 4	£21
Tier 5 Temporary Workers, Creative and Sporting jobs	£21

Unrestricted Certificates of Sponsorship

Existing staff or migrant workers already in the UK under Tier 2 fall under the unrestricted category. This will include extensions and changes to employment - as long as the individual's visa was granted before 6 April 2011.

Restricted Certificates of Sponsorship

The Government has introduced an annual limit on the numbers of certificates of sponsorship for migrant workers. This will be a national limit and certificates will be applied for on a monthly pooled basis. This will be called restricted Tier 2 Category.

What is the Restricted Tier 2 criteria?

A key criteria will be whether the job is on the Shortage Occupation list (published on the UK Border Agency website). A new Graduate Occupation list will be introduced in April 2011 and the Shortage Occupation list will be amended to reflect this.

The job must have been advertised according to UK Border Agency Codes of Practice, called the Resident Labour Market Test (if the job is not on the shortage of occupation list). The migrant worker must be employed for a minimum of 30 hours per week.

A test will be applied by UKBA for workers applying initially for entry to the UK and those switching employers - based on a salary threshold of £20,800 for the job or higher and an English Language requirement at intermediate level.

Points Table

The UK Border Agency has a Points Table applicable when the pool of certificates is oversubscribed. It measures language skill, salary for the occupation, and a valid certificate of sponsorship.

Applying for Restricted Certificates of Sponsorship Tier 2

Individual restricted Tier 2 certificates can be applied for from the UK Border Agency on a monthly basis. This cannot be done more than 3 months in advance.

The key points of the system for Restricted Certificates of Sponsorship are:

- Managers ask HR to make an application to the UKBA for a certificate to be allocated. This request can be made through completing the relevant section in the Recruitment Appointment Form, completing the Sponsorship Certificate Checklist and forwarding to HR together with relevant paperwork
- HR will put an application to the UKBA for each certificate required
- UKBA will consider applications on a monthly basis (date to be published)
- The numbers allocated will be set across the UK rather than by individual council and if nationally this number is not fully used one month, they will be added to the following months allocation
- When oversubscribed for certificates of sponsorship, the points table will be applied and UKBA will allocate certificates on this basis;

- A fresh limit on numbers will be set annually by UKBA
- If the Council does not get a certificate allocated, a fresh application will need to be made the following month. This application will be made by HR in consultation with the manager
- The Certificate of sponsorship must be given to the Tier 2 candidate within 3 months of getting it from UKBA

Applying for Unrestricted Certificates of Sponsorship Tier 2:

For Certificates of Sponsorship where the migrant worker wishes to change job, extend their stay or move to a new post, managers should apply via HR for a new Unrestricted Certificate of Sponsorship. Migrant workers must self assess against UKBA's points table.

How to avoid racial discrimination: List A & List B Pre-employment Checks for all staff

In order to ensure that checks made at the point of recruitment are non-discriminatory it is good practice to apply them to all applicants. All applicants must provide the original document or documents included in List A or List B (see Appendix A) if at all possible at the interview stage but certainly prior to starting employment. Applicants should not be treated less favourably if they produce documents from List A rather than List B. List B applicants will need to produce documentation again, after 12 months, to evidence that they have a right to remain working in the UK.

Applicants unable to produce documentation

It is the applicant's responsibility to produce documentation on time. If an applicant is unable to produce required documentation they should be referred to the Immigration Enquiry Bureau on 0870 606 7766.

How long to keep original documents and copies of documents?

Each migrant worker's personal contact details, including mobile phone number, passport/immigration status document, National Insurance number must be copied, kept and updated as necessary. The copy of the migrant's passport (or immigration status document) must show their period of leave to remain in the UK (permission to stay). This should include page(s) showing leave stamps and the migrant's entitlement to work for the Council as a sponsor.

Original documents should be copied and returned as quickly as possible. Original documents need to be stored in HR on personal files. Copies must be kept for the duration of the employment; or one year. Further specific information needs to be held from any recruitment process involving migrant workers. Please see the Keeping Documents section on UKBA website for more details.

Tier 5: Temporary workers category

Temporary workers - creative and sporting is the specific sub category under the Council's licence. Tier 5 workers must have entry clearance prior to travel to the UK. Managers wishing to recruit a Tier 5 Migrant Worker should seek advice from HR

Penalties

There will be financial penalties for managers employing illegal workers because of poor recruitment practices and potential for prison sentences for those knowingly employing illegal workers. Civil Penalties of up to £10,000 per illegal worker may apply. There is a new criminal offence for knowingly and deliberately employing an illegal migrant worker which has a two year sentence and an unlimited fine.

Further Guidance

The Border and Immigration Agency already provides summary and comprehensive guidance booklets on the current law on preventing illegal working. An employer's helpline service can assist managers and staff with queries on the law on **0845 010 6677** and the employer checking service will continue to verify the entitlement to work of individuals in certain categories at www.bia.homeoffice.gov.uk/employingmigrants

Appendix A

LIST A

This list covers the duration of the employment. You are required to produce one original document from the list below. If you are unable to produce one of these documents, please see List B.

- A passport showing that you are a British citizen, or have a right of abode in the UK.
- A document showing that you are a national of a European Economic Area (EEA) country or Switzerland. This must be a national passport or national identity card.
- A residence permit, registration certificate or document indicating permanent residence issued by the Home Office to a national from an EEA country or Switzerland.
- A passport or other document issued by the Home Office which has an endorsement stating that you have a current right of residence in the UK as the family member of a national from an EEA country or Switzerland who is resident in the UK.
- A passport or other travel document endorsed to show that you can stay indefinitely in the UK, or have no time limit on your stay.
- A passport or Biometric Immigration Document endorsed to show that you can stay in the UK; and that this endorsement allows you to do the type of work we have offered you if you do not have a work permit.

OR

LIST B

This list covers a period of 12 months after which your documents will be re-checked. You are required to produce two original documents from this list, if you cannot produce one original document as detailed on List A from either the first or second combination.

First Combination

A. A document giving your permanent NI number and name. This could be a: P45, P60, National Insurance card, or a letter from a Government agency.

Plus one of the following documents

B. A full birth certificate issued in the UK, which includes the names of your parents; OR

- C. A birth certificate issued in the Channel Islands, the Isle of Man or Ireland; OR
- D. A certificate of registration or naturalisation stating that you are a British citizen; OR
- E. A full adoption certificate issued in the United Kingdom, channel Islands, the Isle of Man or Ireland; OR
- F. A letter issued by the Home Office to the holder which indicates that you can stay indefinitely in the UK, or have no time limit on your stay; OR
- G. An Immigration Status Document issued by the Home Office to you with an endorsement indicating that you can stay indefinitely in the UK, or have no time limit on your stay; OR
- H. A letter issued by the Home Office to you which indicates that you can stay in the UK, and this allows you to do the type of work you being offered; OR
- I. An Immigration Status Document issued by the Home Office to you with an endorsement indicating that you can stay in the UK and this allows you to do the type of work you are being offered
- F. An Application Registration Card issued by the Home Office to an asylum seeker stating that you are permitted to take employment when produced with evidence of verification by the Border and Immigration Employer Checking Service.

Second Combination

- A. A work permit or other approval to take employment that has been issued by Work Permits UK.
- Plus one of the following documents
- B. A passport or other travel document endorsed to show that you are able to stay in the UK and can take the work permit employment in question: OR
 - C. A letter issued by the Home Office to the holder confirming that you are able to stay in the UK and can take the work permit employment in question.

If you are from the European Economic Community or a Swiss National, you have the right to live and work in the United Kingdom if you have enough money to support yourself without help from public funds.

Appendix B

STEP 1

You must ask all your candidates to show you documents from either list A or list B that prove their entitlement to work in the UK. **The recruiting manager is responsible for ensuring the candidate's legal right to work in the UK. Failure to do this can lead to fine up to £10,000 per worker or unlimited fine and/or prison sentence for knowingly employing an illegal worker. Failure to do this for ALL candidates could be discriminatory.**

If documentation is from List B, HR will carry out new checks after 12 months.

STEP 2

The recruiting manager must be satisfied that their potential employee is the rightful holder of any of the documents they present to you. These documents should also allow them to do the type of work you are offering. It is your responsibility to look carefully at the documents your candidates provide. All the documents they provide must be originals - photocopies, printouts or other copies are not acceptable.

You must carry out the following checks for ensuring the documents are genuine and to retain the statutory excuse:

- **Photographs** - does the candidate look like the photographs on their documents?
- **Dates of birth** - are the dates consistent with the appearance of the candidate?
- **Expiry dates** - if the documents have an expiry date - are they still valid?
- **Stamps and endorsements** - do the passport stamps allow your job applicant to do the type of work you are offering?
- **Appearance**-check appearance of document, has it been tampered with in any way?
- **Biometric details** - Biometric Immigration Document which indicates if stay is permanent or time limited.
- **Names** - is the same name used on all the documents provided? (If the candidate gives you 2 documents, which have different names, you should ask them for further original documents and ask them to explain the reason any discrepancies on the given documents. Further documents could be a marriage certificate, divorce document, deed poll, adoption certificate or statutory declaration.
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STEP 3

When the recruiting manager has checked the candidate's documents and you are satisfied that they are genuine, you must save them by photocopying or scanning them for your records on your computer using secure means, the following parts of all documents shown to you:

For passports and travel documents copies of the following should be taken:

- - The front cover and all of the pages, which give the candidate's personal details. In particular, you should copy any page which provides details of nationality, a photograph, date of birth, date of expiry, biometric details and the page which shows his or her signature

and

- Any page containing a UK government stamp or endorsement, which allows your

candidate to do the type of work you, are offering.

Any other documents should be copied in their entirety.

Photocopies of documents should be securely stored with the employee's personal file in HR for up to a period of two years. Scans of documents should be securely stored on secure media, such as a CD-R. Storage media should ensure that the information cannot be altered, deleted or overwritten once you have saved it.

Finishing the process

You should now have:

- Obtained documents from your candidate
- Checked and examined the original documents, having carried out reasonable steps to ensure the documents relate to the person
- Saved copies securely for your records and should be kept securely for the duration of the employee's employment and for a further two years after their employment has ceased.

Where documents from List B are produced, follow-up checks should be carried out **by HR** at least every 12 months in order for the employee to remain legally employed.

On each occasion that a follow up document check is done, you should repeat the specified steps given above within the given time period and record the date of each subsequent check that has been carried out.

Romania and Bulgaria are known as A2 countries and need additional authorisation from the Home Office to work legally. These workers must produce an Accession Worker Card unless they are exempt and have evidence to prove this on their passport or immigration status document.

If you have followed the steps in this process, then you will have taken appropriate steps to prevent illegal working. If you have carried out these checks and establish that your potential employee is not permitted to work, or is the rightful holder of the document presented, then you are entitled to refuse employment to that person.

If you have queries about documents please contact the Immigration Enquiry Bureau on 0845 606 7766 or the Employers Helpline on 0845 010 6677 or check the UK Border Agency website

<http://www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/>