

Addendum

Before making an application for a Tier 2 sponsor licence, organisations should consider the additional guidance on the back page of this document. This guidance updates some of the existing guidance elsewhere in this document and/or should be considered in addition to the existing guidance. The topic covered is the sponsorship of Postgraduate Doctors and Dentists who are proposing to undertake specialist training.



Home Office

**UK Border
Agency**

Guidance for Sponsor Applications for Tier 2 and Tier 5 of the Points Based System

**TIER 2 & 5
(SPONSOR)**

This guidance
is to be used
for applications
made on or after
5 October 2009

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IMPORTANT NOTE

1. The following guidance is specific to sponsors who want to apply for a sponsor licence under Tier 2 and/or Tier 5 of the points based system, and to employ migrants under those two tiers. If you also intend to register for Tier 4 you must also read the separate guidance booklet which has been tailored specifically to Tier 4 which contains additional information and additional sponsor duties.

WHAT IS SPONSORSHIP?

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

Current Available Immigration Routes

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

Tier 2: Skilled workers with a job offer

5. There are four routes within Tier 2 for skilled sponsored workers. They are:
- **General** - offers a route of employment for medium to highly skilled workers who have received a job offer from a United Kingdom employer.
 - **Intra-company transfer** - offers overseas companies a route to transfer medium to highly skilled employees to work for the same company in the United Kingdom.

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

- A national of the United Kingdom;
- A national of Austria, Belgium, Bulgaria*, 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 who is exercising an EC Treaty Right in the UK; *NB – Although not requiring sponsorship, workers from the A8 States and the A2 States, unless exempt from worker authorisation, must be registered on the appropriate scheme (WRS or BaRC respectively) in order to work lawfully. Employers commit an offence by employing A8 and A2 nationals who have failed to comply with the requirements of these schemes;
- British overseas territories citizens, 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);
- Commonwealth citizens who were allowed to enter or to remain in the United Kingdom on the basis that a grandparent was born here;
- Has settled status in the United Kingdom 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.

- Ministers of Religion - offers ministers of religion undertaking preaching and pastoral work, members of religious orders and missionaries, a route to take up employment, or a post/role within their faith community in the United Kingdom.
- Sports people - offers players and highly skilled coaches a route to take up employment in the United Kingdom.

Tier 5: Temporary workers

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

- Creative and sporting - offers creative artists, sports persons and entertainers a route for short term contracts/engagements in the United Kingdom.
- Religious worker - for religious workers where their duties may include preaching, pastoral and non-pastoral work. This includes members of religious orders and missionaries.
- Charity workers - offers migrants a route to undertake unpaid work in accordance with the aims of their benign or philanthropic sponsor in the United Kingdom.
- Government authorised exchange - offers migrants a route to enable a short term exchange of knowledge and best practice through employment whilst experiencing the wider social and cultural setting of the United Kingdom.
- International agreement - offers migrants who are legally entitled to do so under international law a route to work in United Kingdom for a limited period of time.

HOW DOES SPONSORSHIP WORK?

7. To obtain a licence, a prospective sponsor must apply to us, supplying specified documents to show that it is eligible. These documents are listed in Appendix A which is separate to this guidance booklet. We will carry out appropriate checks before deciding whether to grant the licence. We may refuse the application if there is anything in the sponsor body's history or the Key Personnel's history, that suggests that it could be a threat to immigration control or that it would be unable or unwilling to carry out its duties.

8. We consider an application to join the sponsor register by assessing whether it meets the requirements below. The prospective sponsor must:

- complete the appropriate online application;
- pay the correct fee;
- provide proof that it is based in the United Kingdom (see Appendix A for supporting documents);
- be able to provide original or certified copies of the documents listed in Appendix A, unless we say otherwise, to establish that it is genuine and operating or trading lawfully in the United Kingdom;
- meet the suitability criteria;
- show there are no reasons to believe that it represents a threat to immigration control; and
- agree to comply with the duties of sponsorship.

9. Applications for a licence are only successful when they meet all the above requirements. Those that do not will be refused. However, if the sponsor does not pay the correct fee, we will not consider the application. We will reject and return it with any accompanying fee.

10. Once licensed under Tier 2 and/or Tier 5 the sponsor are able to assign certificates of sponsorship, to migrants who wish to come to, or stay in the United Kingdom to work.
11. There is a limit on the number of certificates of sponsorship each sponsor under Tier 2 and Tier 5 may assign.
12. For migrants, being assigned a certificate of sponsorship is an essential part of qualifying for entry clearance (if they are outside the United Kingdom) or leave to remain (permission to extend their stay while in the United Kingdom). But there are also other requirements set out in the immigration rules that the migrant must meet. The migrant must score enough points, and is likely to be refused if there is anything in his/her personal or immigration history that suggests that his/her presence in the United Kingdom is not desirable. We will make the final decision about who is allowed to come to or stay in the United Kingdom.
13. Sponsors must comply with certain duties, including a duty to inform us if migrants do not turn up for work, or if they are absent without permission for a significant period. They must also keep proper records of the migrants they have sponsored, including contact details (and, in due course, details of the migrant's ID card) and supply them to us on request.
14. We will monitor sponsors' behaviour and compliance with their duties once they are licensed. In particular we will:
- i. set a limit on the number of certificates of sponsorship it can assign under Tiers 2 and 5, and review its performance after it has assigned a certain number;
 - ii. make visits, pre-arranged or not, to check compliance; and
 - iii. issue civil penalties where we find evidence that the sponsor has been breaching the illegal working regulations. We will also refer the sponsor for prosecution where appropriate.
15. All sponsors will be rated A or B according to our assessment of their ability to fulfil their sponsor duties. A sponsor that is B-rated must comply with a time-limited action plan, which will set out the steps it needs to take in order to gain or regain an A-rating. If the sponsor does not comply with this action plan, it is likely to lose its licence altogether.
16. Where we consider that a sponsor has not been complying with its duties, has been dishonest in its dealings with us or otherwise poses a threat to immigration control, we may withdraw its licence or downgrade it to a B-rating. However, we will give the sponsor an opportunity to explain its case to us before taking any such action.

Warning: Consequences of employing migrants illegally

17. It is particularly important for employers to make sure that employees who are not settled workers are entitled to work for them. We take illegal working very seriously, and impose a range of penalties on those who employ people illegally.
18. Our visiting officers are fully trained in identifying and investigating illegal working, and will not hesitate to refer cases for the issue of a civil penalty, or for prosecution, where appropriate. It is therefore vital that employers comply with the conditions of their licence, and only employ people who are legally allowed to work here.

HOW CAN OUR ORGANISATION APPLY FOR A LICENCE?

19. Applications for a licence can only be made online, using the online application on our website. Prospective sponsors under Tier 2 and/or Tier 5 should read these guidance notes carefully before applying.
20. All applications must be made by the prospective sponsor. A representative may help

the prospective sponsor to complete their application, but may not submit the form on the prospective sponsor's behalf. If a representative does submit an application on behalf of a prospective sponsor, we will reject the application and return it along with any accompanying fee.

21. After submitting the online application, the prospective sponsor must send in their supporting documents and appropriate fee within 10 working days.

22. If the sponsor gathers all the necessary information before starting, the online application will take approximately 30 minutes to complete.

23. If you have any queries about the application process, please contact us by telephone on 0300 123 4699 or by email at SponsorshipPBSenquiries@ukba.gsi.gov.uk

What is a representative?

24. A representative is a person who is 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
- otherwise compliant with Section 84.

OR

25. They are a regulated member of a designated professional body, or are working under the supervision of such a 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;

26. A representative cannot act on behalf of the sponsor if it does not fall within one of these categories or is not based in the United Kingdom. A person may be committing a criminal offence if he/she acts on behalf of the prospective sponsor without being "qualified" under the Immigration and Asylum Act 1999.

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

28. Sponsors who are unsure of their representative's status should contact the OISC, which has a list of organisations and advisers it has authorised.

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

By phone: 0845 000 0046 (calls charged at local rate)

By fax: 020 7211 1553

By email: info@oisc.gov.uk

Website: www.oisc.gov.uk/

29. 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://www.oisc.gov.uk/people_seeking_immigration_advice/how_to_choose_an_adviser/

30. If after obtaining a licence, the sponsor wishes to use the services of a representative, they must formally appoint one using the sponsorship change of circumstances form which can be found on our website at <http://ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/sponsorcircumstancesform> **We will not deal with any communications from representatives acting on a sponsor's behalf unless that representative has been formally appointed by the sponsor.**

Supporting documents

31. Appendix A lists the documents you must send to support your licence application and most applications must be supported by a minimum of four documents from the list. Certain documents are always required (mandatory). These are shown in list A. The documents in list B are only mandatory for certain types of organisation in certain sectors. The documents in list C can be provided in addition to the mandatory documents but cannot replace the mandatory documents. For example, if the prospective sponsor is a Registered Charity, it must provide proof of its charitable status as described in List A. This is a mandatory document. It will then need to provide three more pieces of documentary evidence which can be selected from Lists B and/or C.

32. If an organisation is registering as a head office and all branches or a group of branches, then they must submit any legal accreditation for each individual branch within that group.

33. We will refuse the application if the prospective sponsor does not provide the appropriate mandatory documents.

34. **The prospective sponsor must send the original documents or certified copies.** A certified copy is one that includes a signed statement, either by the issuing authority or by a solicitor or notary, confirming that it is an accurate copy of the original document. Any documents that we request to see that are not in English/Welsh must be accompanied by a certified translation. The translator's credentials should be provided, along with his/her official confirmation that the translation is accurate.

35. We reserve the right to ask for original documents.

36. If the prospective sponsor does not provide us with all the required documents when applying, we will write to request the necessary documents. If the missing documents are not sent within the time allowed, the application will be refused.

37. We return all documents to the prospective sponsor by recorded delivery to the address given on the application. If he/she wants the documents to be returned by special delivery, he/she should enclose a prepaid special delivery envelope.

38. If we doubt whether an organisation meets the requirements for the category in which it has applied and we may ask for more documents and/or make further checks.

39. On the online application, the prospective sponsor is asked to indicate which tiers, categories, or sub-categories it wishes to be licensed for. Prospective sponsors can select as many tiers, categories and sub-categories as they need. These will then be the only tiers, categories and sub-categories that the prospective sponsor can sponsor migrants under.

40. Once a sponsor licence has been granted, the sponsor can add more tiers, categories and sub-categories to their licence. For example, if a sponsor has registered for Tier 5 (Creative and Sporting), but then wants to bring migrants to the United Kingdom under Tier 2 (General), they can apply to extend the scope of their current licence. To do this, the sponsor must go through the application process again, quoting their sponsor licence number where asked, and select the tiers, categories and sub-categories that they wish to add. They must send in any additional mandatory documents that may be required along with any additional fee.

How much does a licence cost?

41. There is a fee for initial applications for a sponsor licence or to renew an existing sponsor licence for Tiers 2 and 5. In addition to the licensing fee, a sponsor must pay another fee for each certificate of sponsorship it assigns. Full payment guidance is on our website at <http://ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/costs>.

HOW ARE APPLICATIONS CONSIDERED?

42. We consider carefully, all applications for a licence. A key part of our role is to investigate prospective sponsors to ensure we only give licences to genuine organisations that we believe are likely to comply with their duties.

43. We refer all applications for a licence for extensive checks that may include an on-site visit by our visiting officers. This is particularly likely if we know very little about an organisation or have any doubt about whether or not it is genuine.

44. Our visiting officers are trained to refer cases for civil penalties or prosecutions if they find evidence of wrongdoing or criminal activity.

The main principle

45. When considering a licence application, we ask three main questions.

- i. **Is the applicant a genuine organisation operating lawfully in the United Kingdom?** In order to prove this, the prospective sponsor must provide certain documents. These are listed in Appendix A.
- ii. **Is the applicant dependable and reliable?** In order to judge this, we look at the history and background of the organisation, its key personnel and of the people who control it. Any history of dishonest conduct or immigration crime is viewed seriously and may lead to us refusing the application.
- iii. **Is the applicant capable of carrying out its duties as a sponsor?** We judge this by looking at the organisation's processes and human resource practices to ensure that it will be able to fulfil its sponsor duties. We may do this by visiting the sponsor either before their licence is granted, or afterwards. If, following a visit, we have significant doubts we may award a B-rating to a prospective new sponsor, or in more serious cases, refuse the application. Where an existing sponsor already has an A-rating, we may downgrade them to a B-rating.

CAN A LICENCE REFLECT THE STRUCTURE OF OUR ORGANISATION?

46. Sponsors that have a number of different offices, United Kingdom-based subsidiaries or entities, locations or campuses (which we call 'branches' in this guidance) can register in a number of ways, including by:

- i. applying for a single licence that includes the head office and all branches in the United Kingdom;
- ii. each branch applying for a separate licence; or
- iii. grouping a number of branches in a single licence (for example, a chain store might choose to register all its branches in London in a single licence).

47. If a prospective sponsor wishes to include any branches in its application, it must send in a covering letter listing the names and addresses of all the branches it wishes to include in the group, along with the supporting documents. We reserve the right to ask for evidence to show that any head office and/or group of branches listed in any application, for any tier are linked by common ownership or control.

48. If a number of branches of the same organisation are individually licensed, and we remove the licence from one of those branches or downgrade the sponsor to a B-rating, we will not automatically remove or downgrade the licences from the other branches, but we may wish to investigate them.

49. If the sponsor is licensed as a 'head office and all United Kingdom branches' and we remove its licence or downgrade the sponsor to a B-rating, this will apply to all the sponsor's branches. If we remove this sponsor from the register, none of its branches will be able to sponsor migrants. If the sponsor has existing migrants when their licence is removed, we will limit the permission those migrants have to be in the United Kingdom, because they will no longer be working for or studying with a licensed sponsor. More information on what happens to migrants if we are considering action against a sponsor, or if we withdraw a sponsor's licence, is available in the Treatment Of Migrants section of this guidance.

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

Employment agencies and employment businesses

51. An employment agency or employment business can apply for a licence as a sponsor only if it intends to employ non-settled workers within its own organisation.

52. Sponsors may assign certificates of sponsorship for migrants who have been supplied to them by an employment agency or employment business only where:

- the sponsor has full responsibility for deciding the duties, functions and outcomes, or outputs of the job the migrant is doing; and
- the sponsor is responsible for agreeing the migrant's salary, and for paying that salary to the migrant.

Franchises

53. If an organisation, sole trader or partnership has a number of franchises under its control, it can decide whether to apply for a licence as a 'head office and all United Kingdom branches' or have each franchise licensed individually.

54. However, if the franchises are separate businesses, not under the control of the parent organisation, they must be licensed as individual sponsors.

WHAT CRITERIA MUST OUR ORGANISATION MEET?

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

Eligibility criteria

56. To confirm that it is eligible to obtain a licence, a prospective sponsor must provide the appropriate supporting documents listed in Appendix A.

57. Our Sponsor Licensing Unit will verify these documents to ensure that the organisation is genuine and has an operating or trading presence in the United Kingdom. If the organisation can provide genuine documents of the appropriate type, this will be enough to meet this requirement. We will then test the suitability criteria.

Checks we make

58. We use methods such as risk assessments to guide our compliance activity so that we focus visits and other activity on the areas of highest risk to the system. If we know little about an organisation or are concerned about the evidence it provides, we refer the application for further checks that may include an on-site visit.

59. We ask for a variety of verifiable documents to enable us to consider the application. We may want to check any documents sent to support the application, therefore the organisation must only provide the evidence as described in Appendix A, so that it can be independently verified.

60. We make further checks in the circumstances listed below:

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

Procedure for making checks

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

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

Standard procedure for verifying documents

62. The procedure for verifying documents is:

- i. the Sponsor Licensing Unit uses a standard format to record the results of enquiries, to ensure we record any feedback consistently;
- ii. if the Sponsor Licensing Unit cannot obtain an immediate answer to enquiries, it will normally wait for a maximum of four weeks for the necessary information;

iii. the Sponsor Licensing Unit may request that a visiting officer visits the organisation.

Outcome of checks

63. There are three possible outcomes of these checks.

- i. **Document confirmed as genuine:** If we are able to conclude that the document is genuine, we will consider the application as normal.
- ii. **Document confirmed as being false:** If we are able to conclude that a document is false, we will refuse the application, whether or not the document is essential to the application.
- iii. **Check inconclusive:** If we are unable to verify that the document is either genuine or false we will not use the document as evidence.

Suitability criteria

64. The suitability criteria determine whether we give the sponsor an A-rating or B-rating, refuse its application or remove its licence. They may also affect the limits and review points we set for certificates of sponsorship that it assigns.

65. To meet the suitability criteria we must be satisfied that:

- i. the sponsor has effective human resource systems in place. We may judge this by visiting the sponsor either before their licence is granted, or afterwards. (More information is on our website at <http://ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/HRandcompliance/>);
- ii. the sponsor has not been given a civil penalty for immigration offences;
- iii. the authorising officer, level 1 user and key contact do not have any criminal convictions in their name for any of the offences listed in Appendix B (convictions which are spent under the Rehabilitation of Offenders Act 1974, will not be taken into account). Any other unspent² convictions could also lead to an application being refused; and
- iv. we do not have any evidence of previous non-compliance.

Scoring system

66. When deciding the suitability of an application we assess the sponsor against the above factors and use the following scoring system.

67. The only scores a prospective sponsor can be given for criminal convictions are 1 (no convictions) or 3 (one or more convictions found). If a member of the sponsor's staff who has access to the sponsorship management system is found to have an unspent criminal conviction for an offence listed in Appendix B, the prospective sponsor will receive a 3 marking. Any other unspent convictions could also lead to a 3 marking.

68. We give a score of 1, 2 or 3 for human resource systems, civil penalties and non-compliance. If, as part of the licence application process, a prospective sponsor is selected for a pre-license visit, we will score the prospective sponsor's suitability as shown below:

- 1 - meets all of the criteria.
- 2 - meets only some of the criteria.
- 3 - does not meet any of the criteria.

² A conviction is described as unspent if the rehabilitation period associated with it has not yet lapsed. A rehabilitation period is a set length of time from the date of conviction, according to the sentence imposed.

69. We give an A-rating if an organisation receives a 1 score in all of the above categories and there are no other reasons for granting a B-rating or refusing the application.

70. We give a B-rating if an organisation receives a 2 score in any of the above categories and there are no other reasons for refusing the application.

71. We are likely to refuse the application if an organisation receives a 3 score in any of the above categories.

72. It may also be possible for an organisation to get an A or B-rating if it receives a 1 or 2 for receipt of a civil penalty or for non-compliance but receives a 3 in human resource systems. In such cases, the visiting officer may still be able to recommend an A or B-rating with an action plan, which will last a maximum of 12 months but with review points every three months.

73. Further information on how we assess suitability is on our website at <http://ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/sponsorsandratings/>.

WHAT ARE KEY PERSONNEL?

74. The online application requires the prospective sponsor to allocate certain responsibilities to members of its staff, some or all of which will have access to the sponsorship management system after a licence has been granted. (Detailed information on the sponsorship management system is in paragraph 143 onwards.)

We call these 'key personnel' and there are four key roles:

- authorising officer;
- key contact;
- level 1 user; and
- level 2 user.

75. The prospective sponsor must name their authorising officer, key contact and level 1 user on the application form.

76. These roles can all be filled by the same person, or by a combination of different people. There can only be one authorising officer and one key contact, but a sponsor can appoint additional level 1 users once they have been granted a licence. Level 2 users can only be appointed after a licence has been granted. All of these people must be permanently based in the United Kingdom. If the sponsor has contracted their HR function out to a third party organisation, some of the roles can be allocated to employees within that third party organisation.

77. Of these roles, only the level 1 user and level 2 users will have access to the sponsorship management system. 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.

78. The sponsor is responsible for all actions of anyone they have set up as users of the sponsorship management system, including representatives. If we are considering taking action against a sponsor, we will treat anything done by a representative on the sponsor's behalf as if it was done by the sponsor. It is therefore important that sponsors only employ representatives who are reputable, honest and competent. They may want to take precautions including checking the identity of the representative and ensuring that he/she is suitable to undertake the activity required. If the sponsor does not comply with its responsibilities, we will carry out the appropriate compliance activity. This may result in the sponsor having its licence withdrawn or downgraded to a B-rating.

79. The authorising officer is responsible for deciding how many of the sponsor organisation's staff need to have access to the sponsorship management system and what level of permission they can have. The level 1 user is responsible for setting up accounts for all level 2 users.

80. When completing the online application, the sponsor must decide whether the authorising officer will also be the level 1 user, and if they do not wish the same person to fill that role, which staff member to appoint.

81. We make checks on the authorising officer, key contact and level 1 user. These include checks against our own records and the police national computer, or its equivalent in Northern Ireland. If any of these people have any unspent criminal convictions or have been issued with a civil penalty by us in the last six months, we may refuse the application. If we do refuse the application on that basis we will explain this in the refusal letter, however, we will not give any details of the criminal conviction. Detailed information on this is in the Refusals section of this guidance.

82. If the sponsor wants a representative to help assign certificates of sponsorship, it must add the relevant employees of the representative to the sponsorship management system as level 1 or level 2 users. A representative based outside the United Kingdom cannot be added to the sponsorship management system.

Authorising officer

83. All organisations applying for a licence must appoint an authorising officer. The sponsor will be held fully responsible for the actions of its authorising officer; therefore, it should ensure that it gives this position to a responsible and competent person within the organisation.

84. The authorising officer must be a paid staff member or office holder within the sponsor organisation. He/she must not be:

- a representative; or
- a contractor or consultant who is contracted for a specific project: or
- an employee of a third party organisation engaged to deliver all, or part of the sponsor's HR function; or
- a temporary staff member supplied by an agency: or
- an un-discharged bankrupt.

85. An organisation with overseas branches can only appoint an authorising officer who is based in the United Kingdom branch of the organisation.

86. The authorising officer is responsible for the activities of all users of the sponsorship management system. They must comply with our requirements for using the system. If they do not, we will carry out appropriate compliance activity, which may result in the sponsor losing its licence or being downgraded to a B-rating.

87. The authorising officer does not have automatic access to the sponsorship management system. If the authorising officer requires access to the system he/she will need to be set up as a level 1 or level 2 user.

Key contact

88. The key contact is the person who will act as the main point of contact between us and the sponsoring organisation and is the person we will contact if we have any queries about the

sponsor's online application, the documents submitted or the payment. He/she must be a paid staff member or office holder within the sponsor organisation. He/she must not be:

- a contractor; or
- a consultant who is contracted for a specific project; or
- an employee of a third party organisation engaged to deliver all, or part of the sponsor's HR function; or
- a temporary staff member supplied by an agency.

89. A United Kingdom-based representative can act as the key contact.

90. An organisation with overseas branches can only appoint a key contact based in the United Kingdom branch of the organisation.

91. If the authorising officer does not wish to act as the key contact, another person in the organisation must be appointed to this position.

92. The key contact does not have automatic access to the sponsorship management system. If the key contact requires access to the system he/she will need to be set up as a level 1 or level 2 user.

Level 1 user

93. The level 1 user is required to undertake the sponsor's day-to-day activities by using the sponsorship management system. They can:

- i. request additional level 1 users and add level 2 users to the sponsorship management system or remove them;
- ii. assign certificates of sponsorship to migrants;
- iii. request an increase in the number of certificates of sponsorship that a sponsor can assign (its limit);
- iv. notify us of minor changes to the sponsor's details;
- v. complete the change of circumstances section on the sponsorship management system, to ask us to record bigger changes in the sponsor's circumstances;
- vi. report migrant activity to us (for example, inform us if a migrant goes missing or does not attend his/her job or course);
- vii. withdraw certificates of sponsorship;
- viii. inform us of changes to work/study addresses;
- ix. export Management Information (this function will be available at a later date);
- x. amend user details.

94. On the online application, a prospective sponsor can only nominate one level 1 user. However, after obtaining a licence the sponsor can nominate additional level 1 users, using the sponsorship management system.

95. Based on the structure of the business and its needs, it is up to the sponsor to decide on the number of level 1 users. As the authorising officer is responsible for actions of users of the sponsorship management system, it is advisable to keep the number of level 1 users to the

minimum necessary for effective business operation.

96. The Level 1 user must be a paid staff member or office holder within the sponsor organisation, or an employee of a third party organisation engaged by the sponsor to deliver all, or part of their HR function. He/she must not be:

- a contractor; or
- a consultant who is contracted for a specific project; or
- a temporary staff member supplied by an agency:

97. A United Kingdom-based representative can act as the Level 1 user.

98. An organisation with overseas branches can only appoint level 1 users based in the United Kingdom branch of the organisation.

Level 2 user

99. The sponsor can appoint as many level 2 users as it needs. Level 2 users have a more restricted range of permissions than level 1 users. A level 2 user may:

- i. assign certificates of sponsorship to migrants; and
- ii. report migrant activity to us (for example, inform us if a migrant goes missing, or does not attend his/her job or course).

100. As the authorising officer is responsible for actions of all users of the sponsorship management system, it is advisable to keep the number of level 2 users to the minimum necessary for effective business operation.

101. The Level 2 user must be:

- a paid staff member or office holder within the sponsor organisation; or
- an employee of a third party organisation engaged by the sponsor to deliver all, or part of their HR function; or
- a member of staff supplied to the sponsor, but employed by an employment agency.

102. He/she must not be a contractor, or a consultant who is contracted for a specific project.

103. A United Kingdom-based representative can act as the Level 2 user.

104. Under Tier 5 (Government Authorised Exchange) the overarching sponsor can appoint level 2 users within the organisations taking part in the exchange programme.

105. An organisation with overseas branches can only appoint level 2 users based in the United Kingdom branch of the organisation.

COULD OUR ORGANISATION BE REFUSED A LICENCE?

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

Circumstances in which we will refuse an application

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

- i. The prospective sponsor or another relevant person³ submits any **false document** with its application. If this happens, and we believe that a criminal offence has been committed, we will not hesitate to refer the case for prosecution as well as refusing the application.
- ii. The prospective sponsor does not meet the specific requirements that apply to the appropriate tier or category under which it is applying to register. If the prospective sponsor meets the requirements for some of the tiers or categories, but not others, we will only licence it for the tiers or categories under which it qualifies.
- iii. The prospective sponsor or another relevant person, has, within the previous six months, been issued with a civil penalty under Section 15 of the Immigration, Asylum and Nationality Act 2006 for employing one or more illegal workers, and the fine for at least one of those workers was set at the maximum amount (currently £10,000). We will not refuse the application if we withdrew or reduced the fine or it was cancelled or reduced on appeal.
- iv. The prospective sponsor or another relevant person has been issued with a civil penalty for one of the “offences” in Appendix C and has not paid it (unless we withdrew the penalty or it was cancelled on appeal).
- v. The prospective sponsor or another relevant person has been convicted of one of the offences below, unless the conviction is spent under the Rehabilitation of Offenders Act 1974. (Convictions may become ‘spent’ after specified periods of time from the date of conviction if there are no further convictions during that time. Spent convictions are disregarded for certain purposes.)
- vi. Any offence under the Immigration Act 1971; the Immigration Act 1988; the Asylum and Immigration Appeals Act 1993, the Immigration and Asylum Act 1999; the Nationality, Immigration and Asylum Act 2002; the Immigration, Asylum and Nationality Act 2006; or the UK Borders Act 2007;
 - a. Trafficking for sexual exploitation;
 - b. Any other offence which, in our opinion, indicates that he/she poses a risk to immigration control, for example, offences involving dishonesty or deception, including any of the offences listed in Appendix B. Any other unspent convictions could also lead to an application being refused; or
- vii. If the prospective sponsor or another relevant person is legally prohibited from becoming a company director (unless this is because he/she is an un-discharged bankrupt). Please note though, that the authorising officer can not, be an un-discharged bankrupt.

Circumstances in which we will normally refuse an application

108. We will normally refuse an application if the prospective sponsor or another relevant person, has been dishonest in any of its previous dealings with us (or the former Immigration and Nationality Directorate or Border and Immigration Agency). Examples of dishonesty include, but are not limited to:

- i. applying for work permits despite not having, or being in the process of establishing, an operating or trading presence in the United Kingdom;
- ii. having had work permit applications refused on the grounds that the applicant’s facilities were not large enough to cope with the increased staff and there were no plans to expand to take account of that increase; and
- iii. making false statements in any application to us, including an application for

³ In this guidance, “another relevant person” means the sponsor’s (or prospective sponsor’s) authorising officer, key contact or level 1 user.

a work permit.

109. In the cases above, we may grant a licence in exceptional circumstances, such as if a former employee of the organisation was wholly responsible for the dishonesty and was dismissed when it was discovered. However, if we do grant a licence in exceptional circumstances, we may award a B-rating at first.

Circumstances in which we may refuse an application

110. A licence may also be refused in the circumstances listed below.

- i. If the prospective sponsor or another relevant person has a previous record of non-compliance or poor compliance with the duties of sponsorship, or with the work permit arrangements.
- ii. If the prospective sponsor or another relevant person has:
 - a. been asked to provide evidence to allow us to decide whether it was complying with the sponsorship or work permit arrangements; and
 - b. has refused or failed to provide that information.
- iii. If the information available to us suggests that the prospective sponsor does not yet have the processes necessary to comply with its duties as a sponsor. For example, an employer's internal communications may not be good enough for it to know who has reported for work.
- iv. If the prospective sponsor or another relevant person has previously had a sponsor licence withdrawn by us. In these cases, the prospective sponsor will have to demonstrate that they have put right any issues which led to the withdrawal of their previous licence, before we will consider granting a new licence.
- v. If the prospective sponsor, or any organisation that the prospective sponsor or another relevant person has been involved with in a similar role, has been **removed from the register of education and training providers** maintained by the Department for Innovation, Universities and Skills (formerly the Department for Education and Skills).
- vi. If the Office of the Immigration Services Commissioner (OISC) has removed the authorisation of the prospective sponsor or any organisation that the prospective sponsor or another relevant person has been involved with in a similar role. (This applies to individuals or organisations that provide immigration advice or services).

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

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

112. If the licence is granted in these circumstances, we are likely to give the sponsor a B-rating.

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

113. We will write to the prospective sponsor to tell them:

- i. whether we have granted or refused the licence;
- ii. if we have granted a licence, whether we have given the sponsor an A-rating or B-rating;
- iii. the reasons for the decision, when we have refused the licence or approved it and given a B-rating;
- iv. if we have granted a licence, the maximum number of certificates of sponsorship it will entitle the sponsor to assign.

114. We send all decision letters and return all original documents only to the address given for the key contact on the online application. We do not send decision letters and original documents to any other address. We send all documents by recorded delivery.

IF AN APPLICATION IS REFUSED, CAN THE ORGANISATION APPLY AGAIN?

115. There is no right of appeal against refusal of an application for a licence, but refused applicants may reapply at any time. However, they will have to ensure that the reasons for their earlier refusal no longer apply. If they do not, they are likely to be refused again. A visiting officer may visit prospective sponsors who have previously been refused a licence to ensure that they can meet their duties as a sponsor.

116. If we have refused the application because the sponsor has previously been issued with a civil penalty for the maximum amount, the prospective sponsor should not reapply until six months after the relevant fine was issued. If it does reapply before this date, we will refuse it again.

SPONSOR LICENCE NUMBER

117. When an application for a sponsor licence is successful they will be given a sponsor licence number which we will send to them.

118. Sponsor licence holders must quote their sponsor licence number in all communications with us.

WHAT ARE SPONSOR RATINGS?

119. When we licence a sponsor, we award an A-rating or B-rating. We rate each application on its own merits. The rating reflects any track record the sponsor has in employing migrants. The sponsor's rating will appear on the published register of licensed sponsors.

120. If we decide to suspend a sponsor, we remove the sponsor's entry from the public version of the register during the suspension period. If the suspension is lifted we reinstate the sponsor's name on the register along with the ratings awarded.

121. An A-rated sponsor is one that has all the necessary systems in place to meet its duties and with no evidence of abuse. However, we may give a B-rating if a visiting officer finds evidence that systems are not in place or not adequate to meet the sponsor's duties, or if there is previous evidence of abuse.

122. A sponsor's rating will usually be the same for all the tiers in which it is registered. However, in exceptional cases, if a sponsor is performing poorly in its duties in only one tier, we will apply the B-rating only to that tier. For example, we might do this if a college has adequate procedures in place for managing its migrant workers, but not for its overseas students.

Circumstances in which we will award a B-rating

123. We will award a B-rating if:

- i. the prospective sponsor or another relevant person has been issued with one of the “offences” listed in Appendix C within the five years ending on the date of application, unless:
 - a. we withdrew that penalty or it was cancelled on appeal; or
 - b. the sponsor or another relevant person has been issued with a maximum civil penalty within the previous six months, in which case the application will be refused;
- ii. the applicant is an existing sponsor applying to renew its licence and is already B-rated (unless we are satisfied that it has successfully completed its action plan).

Circumstances in which we may award a B-rating

124. We may award a B-rating if, the prospective sponsor or another relevant person has a conviction for offences to do with how it runs its business and this makes us doubt its suitability as a sponsor. (For example a conviction under the National Minimum Wage Act or for benefit fraud). We do not take into account convictions that are spent under the provisions of the Rehabilitation of Offenders Act 1974. (Convictions may become ‘spent’ after specified periods of time from the date of conviction if there are no further convictions during that time. Spent convictions are disregarded for certain purposes).

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

126. The sponsor is **fully responsible** for anything done by an employee who appears to act on the sponsor’s behalf. We may withdraw a sponsor’s licence or downgrade it to a B-rating if it does not comply with the rules on assigning certificates of sponsorship or issuing visa letters.

B-rated sponsors

127. If a sponsor has not fully complied with its duties, but has not acted in a way serious enough for us to withdraw its licence, we will award it a B-rating. We will usually also award a B-rating to sponsors that have previously had a licence withdrawn.

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

129. A B-rated sponsor must also comply with an **action plan** within a set time. The plan will set out the steps the sponsor needs to take in order to gain or regain an A-rating. An action plan for B-rated sponsors may lay down additional duties. If the sponsor does not comply with this plan, it is likely to lose its licence altogether and so be unable to bring to the United Kingdom any migrants who are not settled in United Kingdom.

Sponsorship action plans

130. A B-rating is a **transitional rating**. This means that we expect a B-rated sponsor to have improved its performance enough to be upgraded to an A-rating within a relatively short time. If it does not, it risks having its licence withdrawn.

131. To help the sponsor, we will negotiate an **action plan** that lists the steps the sponsor needs to take to fully comply with its duties and obtain an A-rating. For example, this might include making specific improvements to its recordkeeping, improving its control over the staff employed to assign certificates of sponsorship, or improving communication between different

branches of the business so it knows when a migrant has not turned up for work.

132. The plan will be drawn up jointly by us and the sponsor. However, we have the final say over its contents and may set an action plan even if the sponsor does not agree.

133. If the sponsor fails to comply with an action plan, we may withdraw its licence.

134. The action plan will usually cover a period of about three months, but this may be longer or shorter in appropriate circumstances. At the end of this period, we decide whether the sponsor should be upgraded to an A-rating. If this is not appropriate, we will normally withdraw the sponsor's licence. However, in exceptional circumstances, where significant progress has been made, we may decide to keep the sponsor on a B-rating and draw up a new action plan. In deciding whether to draw up a new action plan, we will take into account all the circumstances, including whether the sponsor has:

- i. made genuine attempts to meet the requirements of the action plan; and
- ii. shown that circumstances outside its control prevented it from meeting the requirements.

135. These are not the only reasons for drawing up a new action plan and the sponsor will have to prove why circumstances justify it.

136. The maximum period that a sponsor can be subject to an action plan is **12 months**. We will review the position every three months. A sponsor that is still B-rated after 12 months will automatically lose its licence.

Other consequences of a B-rating

137. It is likely that B-rated sponsors will be inspected more frequently and extensively. We will be guided by our assessment of the potential risk posed by a B-Rated sponsor, to immigration control, in deciding what monitoring arrangements to impose. For example a limit on the number of certificates of sponsorship they may assign.

WHAT IS THE SPONSORSHIP MANAGEMENT SYSTEM?

138. Once licensed, sponsors can start using the sponsorship management system. This is an online tool that allows them to carry out their day-to-day activities and report changes to the sponsor organisation, for example a change of address. It also allows sponsors to assign certificates of sponsorship to migrants who wish to come to, or stay in the United Kingdom to work and to fulfil their reporting duties in respect of their sponsored migrants.

139. The sponsorship management system allows users two different levels of access - level 1 user and level 2 user. The level determines the type of access (permissions) the user has to the system, and the functions the user can perform. We call a person who has access to the sponsorship management system a 'user'.

140. Sponsors can access the sponsorship management system on our website at <http://ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/sms/>. We send the level 1 user's user name to the authorising officer by post, and we send the level 1 user their password by email. **Level 1 and level 2 users must never disclose their password to anyone else. If they do, we may downgrade an A-rated sponsor to a B-rating, or withdraw a B-rated sponsor's licence.**

141. A sponsor is held fully responsible for the actions of any employee or representative who assigns certificates of sponsorship on its behalf. Any non-compliance with the rules on assigning certificates of sponsorship may result in the sponsor's licence or being withdrawn or downgraded it to a B-rating. If we find the sponsor is employing an illegal migrant worker

because its recruitment practices are negligent, we may issue the sponsor with a civil penalty and may refer the case for prosecution.

What is a certificate of sponsorship?

142. A certificate of sponsorship is not an actual certificate or paper document, but is a virtual document, similar to a database record. Sponsors under Tier 2 and/or Tier 5 complete a process within the sponsorship management system that results in the assignment of a unique certificate of sponsorship reference number.

143. The sponsor must give the reference number to the migrant to enable him/her to apply for entry clearance (if outside the United Kingdom) or leave to remain (if inside the United Kingdom) to work or study with the sponsor. (A Tier 2 or Tier 5 migrant may also request other information from the sponsor that formed part of the process of generating the unique reference number.)

144. A certificate of sponsorship can only be used once. When a migrant applies for leave, their certificate is marked by UK Border Agency as having been used and cannot then be used again. (The only exception to this is where the certificate has been assigned to and used by a migrant who is a non-visa national and who is entering the United Kingdom for less than three months. Please see paragraphs 304-306 for further details on this exceptional case.) If the migrant's application for leave fails and they wish to re-apply, the sponsor must assign a new certificate to the migrant to send in with their new application.

145. Please note, there is a process in place at the port of entry for migrants who are coming to the United Kingdom under Tier 5 creative and sporting sub-category, if they are:

- i. seeking entry to the United Kingdom for three months or less; and
- ii. non-visa nationals (not nationals of a country whose nationals must always have a visa to enter the United Kingdom).

146. Under Tier 5 (Creative and Sporting) a sponsor can assign a group certificate of sponsorship to all members of a group. This may include:

- the migrant's entourage. An entourage can include people whose work is directly related to the employment of an entertainer, cultural artist, sports person or a dramatic production. The person should have proven technical or other specialist skills; and/or,
- all the members of a unit company such as a ballet company or other dance group, circus troupe, orchestra or other group of musicians, or theatre group who are seeking to enter the United Kingdom for the purpose of fulfilling a contractual obligation to perform as a group in the United Kingdom.

147. Each member of the group will be assigned an individual certificate of sponsorship which confirms that he/she is a member of the named group, but there will only be one certificate of sponsorship fee payable which will cover the entire group.

148. When you give the certificate of sponsorship number to the migrant you should treat it as you would a secure and confidential document.

149. A certificate of sponsorship assigned by a sponsor under Tier 2 and/or Tier 5 is valid for three months from the date it was assigned. If the migrant does not use the certificate of sponsorship within this period to apply for entry clearance or leave to remain, it automatically becomes invalid. During this period a migrant intending to come to the United Kingdom under Tier 2 or Tier 5 cannot be assigned another certificate of sponsorship by any other sponsor.

150. If a Tier 2 or Tier 5 migrant does not want to take up the employment because he wishes to take up an offer of a job from a different sponsor, he/she must contact the original sponsor to

cancel/withdraw the certificate of sponsorship.

151. A sponsor that assigns a certificate of sponsorship under Tier 2 and/or Tier 5 needs to complete the migrant and sponsorship details on the certificate of sponsorship screen within the sponsorship management system as well as (where appropriate) details such as salary, skill level, whether the job satisfies the resident labour market test, is an intra-company transfer or is in a shortage occupation.

152. A certificate of sponsorship can only be assigned by a person who has been granted access to the sponsorship management system as a level 1, or level 2 user. Once the process of assigning a certificate of sponsorship has been completed, the sponsor must give the migrant their certificate of sponsorship unique reference number. The migrant must then apply for entry clearance or leave to remain in the United Kingdom and quote the certificate of sponsorship number on his/her application form.

153. Before assigning a certificate of sponsorship to a migrant who is not settled in United Kingdom, the sponsor must meet certain requirements. These depend on the tier, category, or sub-category under which the sponsor is licensed and the certificate is assigned.

154. The migrant must meet the specific criteria for the relevant tier, category, or sub-category and apply for entry clearance or leave to remain. The fact that a certificate of sponsorship has been assigned, does not guarantee that the migrant will succeed in obtaining entry clearance or leave to remain.

155. Sponsors that are considering assigning certificates of sponsorship to migrants already in the United Kingdom and migrants who are considering submitting an application for leave to remain should understand the effect the migrant's current immigration status may have on their application for leave to remain because of the rules on switching.

Multiple periods of employment in the United Kingdom

156. If a migrant sponsored under Tier 2 or Tier 5 is based overseas and needs to enter the United Kingdom on a regular basis, the sponsor can assign a 'multiple entry' certificate of sponsorship. A migrant who has entry clearance, or who has been granted leave to remain in the United Kingdom for more than six months will not have to obtain a new certificate of sponsorship every time he/she is required to work in this country. (Multiple entry certificate holders must obtain prior entry clearance, irrespective of the length of their leave.)

157. This type of certificate of sponsorship is not required by a migrant wishing to travel overseas for leisure or domestic purposes. or where the migrant is based in the United Kingdom and required to travel overseas on business.

158. However, if a migrant does not have entry clearance or has been granted leave to remain for six months or less, that leave will lapse if he/she leaves the Common Travel Area. In these circumstances the migrant will not be able to re-enter the United Kingdom with that leave and will have to apply for fresh leave once the sponsor has assigned a new certificate of sponsorship. (The Common Travel Area is the United Kingdom, Republic of Ireland, the Isle of Man and the Channel Islands.) Please note that there is an exception to this rule which applies only to certain non-visa nationals and is described fully in paragraph 306.

How many certificates of sponsorship will my organisation be allowed to assign?

159. When a prospective sponsor applies for a licence, we ask it to give us an estimate of the number of certificates of sponsorship (or confirmation of acceptance for studies) it expects to assign each year in each tier, category, or sub-category for which it is applying.

160. The number must include existing migrants who will apply for extensions of their

permission to stay and any new migrants it wishes to sponsor. We ask the sponsor to justify the number of certificates of sponsorship it intends to assign.

161. If we approve the application for a licence, we will then decide what limit to set on the number of certificates of sponsorship the sponsor can assign. This may be:

- i. the sponsor's requested number of certificates of sponsorship; or
- ii. a lower limit if the sponsor is B-rated, a start-up organisation or has any history of not complying with immigration rules.

162. In setting the limit, we take into account all the circumstances, including the sponsor's estimated requirements and other factors, for example:

- i. the sponsor's previous record in dealing with us (including its previous dealings with the work permits arrangements);
- ii. its type of business;
- iii. the size of the business; and
- iv. the length of time for which it has been trading.

163. The sponsor may ask us to increase its limit for certificates of sponsorship if it thinks it is too low, or if it reaches its existing limit. It can do this using the sponsorship management system. We consider these requests using the principles listed above. We may also reduce the sponsor's limit if its circumstances change taking into account the factors above.

164. In addition to setting these limits, we keep the sponsor's performance under review.

165. We may move the sponsor's review point up or down, if we think circumstances make it necessary.

166. Once we have agreed the number of certificates of sponsorship a sponsor may assign, they have a period of 12 months from the date their licence started, in which to assign them. Any certificates of sponsorship that remain unused at the end of that 12 month period will be removed from the sponsorship management system. It is not possible to carry over any unused certificates to the next year.

167. At the end of that 12 month period, all sponsors are required to advise us of how many certificates they will need for the next year and they will have to justify their request. This is an annual process that occurs during the life of a sponsor licence.

Canceling a certificate of sponsorship

168. We can cancel a certificate of sponsorship assigned by a sponsor under Tier 2 and/or Tier 5 at any time if we find that the sponsor was not entitled to assign it, for example if it was assigned through misrepresentation or fraud.

169. A sponsor can withdraw a certificate of sponsorship that has been assigned to a migrant, but which has not yet been used to support an application for leave to enter, or remain in the United Kingdom. This must be done using the sponsorship management system.

170. If a migrant under Tier 2 or Tier 5 does not want to take up the employment because he/she wants to take up an offer of a job from a different sponsor, he must contact the original sponsor to cancel/withdraw the certificate of sponsorship. The migrant must make this request to the sponsor in writing/email and give the sponsor 5 working days to action their request. The sponsor must action the request within 5 working days, and if they fail to do so the migrant will be expected to send a reminder following which the sponsor will have a further 5 working days

to implement their request. If they refuse or fail to cancel/withdraw the certificate of sponsorship within the specified time, the migrant can contact the Sponsor Licensing Unit who will cancel/withdraw it for the migrant, after discussions with the sponsor. Sponsors must be aware that failure to take action when receiving such a request from the migrant, within the specified time, may lead to us taking further action against the sponsor. Sponsors must also note that when a certificate of sponsorship is cancelled or withdrawn the fee will not be refunded.

171. Once a certificate of sponsorship assigned under Tier 2 or Tier 5 has been cancelled, we will automatically refuse any application for entry clearance or leave to remain that is supported by that certificate.

172. If the migrant is already in the United Kingdom with entry clearance or leave to remain, we will cancel or reduce his/her leave if we find that the certificate of sponsorship or visa letter on which his/her entry clearance or leave to remain was based was improperly assigned and his/her permission to be in the United Kingdom will be:

- i. reduced to 60 calendar days (to give him/her a chance to find a new sponsor) if he/she was not actively involved in the certificate of sponsorship (or confirmation of acceptance for studies), or visa letter being assigned, or issued improperly; or
- ii. immediately ended (curtailed) if he/she was actively involved.

EMPLOYING MIGRANTS

173. All migrants who wish to come to the United Kingdom under sponsorship must obtain prior entry clearance, with the exception of non-visa nationals in the Tier 5 creative and sporting category, who are seeking entry for less than 3 months. Migrants applying under Tiers 2 and 5 cannot apply for entry clearance or leave to remain without a certificate of sponsorship. A certificate of sponsorship does not guarantee that an entry clearance or leave to remain application will be granted. It is therefore advisable that before assigning a certificate, sponsors ensure that the migrant will meet the requirements for entry clearance or leave to remain. Further information on the exact requirements for migrants is available on our website at <http://ukba.homeoffice.gov.uk/workingintheuk/>.

174. A certificate of sponsorship acts as confirmation from a licensed sponsor that it wishes to bring a migrant to the United Kingdom, and that to the best of its knowledge that person meets the rules for the assignment of the certificate of sponsorship. We make the final decision on who is allowed to travel or remain here. This decision will be based on the requirements of the immigration rules, including whether the migrant has enough points.

TIER 2 – SKILLED WORKERS

TIER 2 (GENERAL)

175. The skilled migrant Tier 2 (General) is the route which enables United Kingdom employers to employ nationals from outside the resident workforce to fill a particular job that cannot be filled by a settled worker.

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

177. There will also be circumstances where there is a clear statutory relationship between the employing body and a publicly funded body, where the publicly funded body has powers to

intervene in the running or funding of the employing or paying body. In these cases, the publicly funded body with powers to intervene can be the sponsor. For example a Local Authority has certain reserve powers of control and direction over otherwise self-governing schools, even though it is not the paying body or the employer of teachers in those schools. In such a case, the Local Authority can be the sponsor for migrants employed as teachers. Another example would be in England where a Strategic Health Authority, through its Deanery or provider/commissioning organisation, has funding control of the further specialised training posts for doctors and dentists within NHS Trusts, even though it is not the paying body. In such a case, the Deanery can be the sponsor.

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

179. To be able to assign a certificate of sponsorship to a migrant the sponsor must hold a licence which includes Tier 2 (General).

180. Before assigning a certificate of sponsorship the sponsor must ensure that:

- the job is at skill level S/NVQ 3 or above;
- the vacancy filling process used by the sponsor complies with the resident labour market test or the job is on the shortage occupation list; and
- the migrant will be paid a salary and/or other allowances at or above the appropriate rate. The salary must comprise of basic pay plus allowances such as London weighting or accommodation allowances which would also be paid to a settled worker in similar circumstances. It does not include other benefits such as overtime, bonus or incentive pay, travel and subsistence including travel to and from the migrant's country of residence, or home country.

181. A migrant with entry clearance or who has been granted leave to remain in the United Kingdom for more than six months, can enter and leave the United Kingdom on multiple occasions. Where the migrant is required to leave and re-enter the United Kingdom on multiple occasions as part of the employment they are coming to undertake, the sponsor may indicate this requirement on the certificate of sponsorship.

Shortage occupations

182. Shortage occupations are ones for which there are not enough resident workers to fill available jobs in particular sectors. Where a migrant is applying to enter the United Kingdom to fill a job in a shortage occupation, they will receive sufficient points to proceed without reference to their prospective earnings or qualifications. The sponsor may only assign a certificate of sponsorship for a job on the shortage occupation list if the migrant is contracted to work for a minimum of 30 hours per week.

183. The Migration Advisory Committee (MAC) made recommendations about shortage occupations and the final shortage lists have been agreed by Government and are available on our website at <http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/employingmigrants/shortageoccupationlist>. Sponsors should note that this document includes a separate list of shortage occupations for Scotland. If a sponsor is filling a vacancy which is listed only on the shortage occupation list for Scotland, the vacancy must be in Scotland.

184. The lists will be updated periodically.

Resident labour market test - Tier 2

185. We recognise that it may be necessary for a sponsor to recruit a migrant from outside the resident work force to fill a particular vacancy that cannot be filled by a settled worker and that is not on the list of shortage occupations. However, this is only allowed if the sponsor has completed the resident labour market test and can show that no suitably qualified settled worker is available to fill the vacancy.

186. The sponsor must have advertised the vacancy as set out in this guidance and in the code of practice specific to the type of job. This includes, for all jobs advertised on or after 31 March 2009, mandatory advertising in Jobcentre Plus (or in Northern Ireland, JobCentre Online) for jobs under Tier 2 (General) plus one other advertising method permitted by the relevant code of practice. The codes of practice can be found on our website at <http://www.bia.homeoffice.gov.uk/employers/points/sponsoringmigrants/employingmigrants/codesofpractice/>. If there is no code of practice for the job/sector you are looking for at the time of advertising, you must still advertise the job using Jobcentre Plus (or in Northern Ireland, JobCentre Online).

187. The vacancy must have been advertised to settled workers. If the salary for the vacancy is £40,000 or under it must be advertised with a minimum closing date of fourteen calendar days from the date the advertisement first appeared. If the salary for the vacancy is over £40,000 it must be advertised with a minimum closing date of seven calendar days from the date the advertisement first appeared.

Requirements for resident labour market test - Tier 2

188. When undertaking the resident labour market test, the sponsor must always use the advertising methods permitted by the code of practice. The advertisement must include:

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

189. All jobs advertised under Tier 2 (General) on or after 31 March 2009 must be advertised to settled workers in Jobcentre Plus (or in Northern Ireland, JobCentre Online) to pass the resident labour market test. In addition, the vacancy must also be advertised using one other method permitted by the relevant code of practice.

190. The only time sponsors may restrict their advertising to only Jobcentre Plus (or in Northern Ireland, JobCentre Online) is when there is no code of practice for the job they intend to recruit for.

191. The only jobs under Tier 2 (General) which do not have to be advertised in Jobcentre Plus (or in Northern Ireland, JobCentre Online) from 31 March 2009 are;

- named researchers; and

- creative sector jobs where the code of practice states that advertising is not required because the migrant will be making an additional contribution to the United Kingdom labour market (see the creative sector codes for more information);
- jobs in the role of director, chief executive or legal partner, where the salary package for the job is £130,000 or above or where there will be stock exchange disclosure requirements.
- milkround recruitment exercises.
- jobs where the resident labour market test does not apply. The test does not apply under Tier 2 (General) when:
 - a. the job is on the shortage occupation list; and/or
 - b. the migrant is switching from Tier 1 (post-study work), the International Graduates Scheme, the Fresh Talent Working in Scotland Scheme or the Science and Engineering Graduates Scheme (see above) **to continue doing the same job with the same employer under Tier 2 and where he/she has been in that job for at least six months directly prior to switching.**
 - c. the migrant has previously qualified as a doctor or dentist in the United Kingdom and has current leave as a post-graduate doctor or dentist; and
- is completing their Foundation Programme F2 year in 2009; and
- they will either be undertaking further specialty training for doctors or dentists, or be employed as a doctor or dentist within the NHS and the job starts between 04 August 2009 and 31 December 2009.
- the migrant has current leave to be in the United Kingdom as a post-graduate doctor or dentist in further speciality training and he/she needs to apply for further leave under Tier 2 (General) so that he/she can complete that training.

192. In all of the above cases, all other resident labour market test requirements as set out in the particular code of practice must still be met.

193. **A certificate of sponsorship must be assigned within six months of the date the vacancy is first advertised.** This ensures that the results of the advertising reflect the current availability of the skills the sponsor requires.

194. The only exceptions to this six month limit are:

- where a migrant has been recruited via a milkround, when a certificate of sponsorship must be assigned within 48 months of the milkround taking place.
- where the post being filled is for a research fellow who will be employed at a Higher Education Institution, when a certificate of sponsorship must be assigned within 12 months of the start of the recruitment process. However, we will exceptionally allow a certificate of sponsorship to be assigned outside of this 12 month limit but only if the certificate of sponsorship is assigned to the migrant on or before 31 December 2009. **From 1 Jan 2010 a certificate of sponsorship must be assigned within 12 months of the start of the recruitment process.**

195. The sponsor cannot refuse to employ a settled worker only because he/she lacks qualifications, experience or skills (including language skills) that were not specifically requested in the job advertisement.

196. A resident labour market test is not required where a migrant currently has permission to stay in the United Kingdom under:

- Tier 1 (Post-study work); or
- the International Graduates Scheme; or
- the Fresh Talent Working in Scotland Scheme; or
- the Science and Engineering Graduates Scheme,
- and he/she wishes to switch into Tier 2 (General) and has been employed in the United Kingdom for a continuous period of at least six months with the same employer, working in the same job, immediately prior to the application being made; or
- the migrant has previously qualified as a doctor or dentist in the United Kingdom and has current leave as a post-graduate doctor or dentist; and
 - is completing their Foundation Programme F2 year in 2009; and
 - they will either be undertaking further specialty training for doctors or dentists, or be employed as a doctor or dentist within the NHS and the job starts between 04 August 2009 and 31 December 2009.
- the migrant has current leave to be in the United Kingdom as a post-graduate doctor or dentist in further speciality training and he/she needs to apply for further leave under Tier 2 (General) so that he/she can complete that training.

197. For each recruitment method, when the sponsor has undertaken the resident labour market test, they must keep the documents listed in Appendix D. Please also refer to the sections on keeping documents, extensions and change of employment for further information on the resident labour market test.

Resident labour market test method - Tier 2

198. When a sponsor assigns a certificate of sponsorship, it is required to confirm that:

- i. it has conducted a resident labour market test and cannot fill the post with a settled worker; or
- ii. the test does not apply to the post. The test does not apply where:
 - the job is on the list of shortage occupations; or
 - the job is an intra-company transfer; or
 - the migrant is switching from Tier 1 (post-study work), the International Graduates Scheme, the Fresh Talent Working in Scotland Scheme or the Science and Engineering Graduates Scheme (see above) to continue doing the same job with the same employer under Tier 2 and where he/she has been in that job for at least six months directly prior to switching; or
 - the test is not required under the relevant creative sector codes of practice.

- the migrant has previously qualified as a doctor or dentist in the United Kingdom and has current leave as a post-graduate doctor or dentist; and
 - is completing their Foundation Programme F2 year in 2009; and
 - they will either be undertaking further specialty training for doctors or dentists, or be employed as a doctor or dentist within the NHS and the job starts between 04 August 2009 and 31 December 2009.
- the migrant has current leave to be in the United Kingdom as a post-graduate doctor or dentist in further speciality training and he/she needs to apply for further leave under Tier 2 (General) so that he/she can complete that training.

Jobcentre plus (or in Northern Ireland, JobCentre Online)

199. Information on how to advertise a vacancy in Jobcentre Plus is available on their website at <http://www.jobcentreplus.gov.uk/JCP/Employers/AdvertiseaVacancy/>. Vacancies can be placed either using their online service (Employer Direct online) or by email, fax, or speaking to an advisor on the telephone number given on the website. All vacancies are advertised on the Jobcentre Plus website and are made available in Jobcentre Plus offices and other locations across the United Kingdom.

200. Information on how to advertise a vacancy in Northern Ireland is available on their website at <http://www.jobcentreonline.com/JCOLFront/Home.aspx>. Vacancies can also be placed by email, fax, or speaking to an advisor on the telephone number given on the website. All vacancies are advertised online at <http://www.jobcentreonlineni.com> and are also available in Jobs & Benefits Offices and JobCentres in Northern Ireland.

201. The standard period for an advertisement to run in Jobcentre Plus is four weeks. If a sponsor advertises their vacancy for the full four weeks the advertisement will not show a closing date. However, employers can request that their advertisement runs for any period of time so sponsors should inform Jobcentre Plus of any different closing date that they require and this will then appear on the advertisement. Vacancies advertised in Northern Ireland will run for a standard two weeks unless a different closing date is requested by the employer. The closing date will always be shown on the advertisement.

202. Sponsors should be aware that Jobcentre Plus and, Jobs & Benefits Offices and JobCentres in Northern Ireland will only accept vacancy advertisements when there is a current vacancy at the time the advertisement is placed. Sponsors who also use rolling recruitment programmes will need to ensure that their vacancies are placed when there are actual posts to fill. It is important that sponsors adhere to the rules set out by Jobcentre Plus and, Jobs & Benefits Offices and JobCentres in Northern Ireland because if their vacancy advertisement is refused, the sponsor will not be able to meet the resident labour market test criteria and will not be able to assign a certificate of sponsorship for that vacancy.

National newspaper or professional journal

203. If the code of practice specifies this, the post may be advertised using a professional journal or the employment section appropriate for the job, of a national newspaper.

204. A national newspaper is one that is available throughout the United Kingdom from a majority of newsagents. The Scotsman and The Herald are acceptable as suitable national newspapers for vacancies in Scotland and is also be acceptable for the bordering counties of

England. The Western Mail for posts in Wales and the Belfast Telegraph for posts in Northern Ireland are also accepted as national advertising.

205. A professional journal is one that is published for that particular field and is available nationally either at a majority of newsagents or through subscription.

Milkround

206. If the code of practice specifies this, the sponsor may recruit using a milkround. 'Milkround' is the name popularly given to the annual recruitment programme where sponsors from a wide range of industrial and commercial sectors visit universities to give presentations and/or interview students, usually as part of university careers fairs. Sponsors using the milkround must visit a minimum of 3 United Kingdom universities.

207. If you have carried out a milkround as described above, the job does not need to be advertised in Jobcentre Plus, or Jobs and Benefits Offices or JobCentres in Northern Ireland, in order for the resident labour market test to be met. However, in addition to the milkround, the job must be advertised through two external recruitment channels permitted by the relevant code of practice, one of which must include one of the recruitment websites listed in that code of practice.

208. Sponsors must retain evidence that no suitable settled workers were available to fill the vacancy.

Rolling recruitment campaigns.

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

210. We understand why a sponsor may want to identify migrants through these programmes and we are not seeking to prevent this happening. However when a specific vacancy becomes available, that vacancy must be made available to resident workers first in order to meet the requirements of the resident labour market test and that must be done by advertising in Jobcentre Plus or, Jobs and Benefits Offices or JobCentres in Northern Ireland.

Recruitment agency

211. If the code of practice specifies this, the sponsor may use an agency to help in the recruitment. The agency may recruit for the post as specified in the code of practice which includes mandatory advertising in Jobcentre Plus or Jobs & Benefits Offices and JobCentres in Northern Ireland where applicable.

Internet

212. If the code of practice specifies this, the sponsor may use the internet to advertise a job. The internet site(s) the sponsor can use are specified in the code of practice.

213. If the sponsoring organisation is a multi-national/global company or a large organisation with over 250 permanent employees in the United Kingdom, it can advertise the post on the employers own website. This is not acceptable for small or medium sized organisations as defined in the online application.

214. NB. Where the code of practice allows for internet advertising, and the sponsor wishes to use one of the websites allowed by the Code, this is in addition to mandatory advertising on the Jobcentre Plus website or with JobCentre Online in Northern Ireland for vacancies under Tier 2

(General).

Head-hunters

215. If the code of practice specifies this, the sponsor may employ the services of a head-hunter to fill a position within the organisation. The head-hunter may recruit for the post either using a national newspaper or professional journal or identify potential candidates through market research in addition to mandatory advertising in Jobcentre Plus or Jobs & Benefits Offices or JobCentres in Northern Ireland where applicable.

Skill level

216. A job must be at S/NVQ level 3 or above to be considered for Tier 2 (General) or Tier 2 (Intra-company transfer). This is to ensure that it is a skilled job.

217. To avoid confusion about which jobs are at this level, further guidance is available in the codes of practice.

218. For each migrant, you must keep the documents stipulated in Appendix D to prove skill level. Please also refer to the sections on keeping documents, extensions and change of employment for further information on the skill level.

Appropriate rate

219. All migrants must be paid an appropriate salary rate to ensure that the domestic labour market is not undercut.

220. Sponsors can assess the appropriate rate by using the information in the codes of practice. Migrants must be paid at least the appropriate rate shown in the code of practice appropriate to the job.

221. Under the requirements of the resident labour market test, all jobs must be advertised at or above the appropriate rate of pay for that job to ensure that there has been a genuine attempt to fill the vacancy with a resident worker. Migrants, when taken on, must be paid at least the rate advertised. Where the migrant will be working in the United Kingdom for less than 12 months, the rate of pay must be based on an annual salary.

222. For example

- earnings of £10,000 on a six month contract would add up to an annual salary of £20,000.

223. For each migrant, you must keep the documents stipulated in Appendix D to prove that you are paying the appropriate rate. Please also refer to the section on keeping documents.

TIER 2 (INTRA-COMPANY TRANSFERS)

224. Intra-company transfers are for migrants who have been working for multinational companies and who are being transferred by an overseas employer to a skilled post in a related United Kingdom entity. To be able to assign a certificate of sponsorship to a migrant the sponsor must hold a licence which includes Tier 2 (Intra-company Transfer)

225. In order to sponsor migrants under intra-company transfer, an entity must show that it has a direct link by common ownership or control with the overseas entities from which it intends to bring migrants to the United Kingdom. Common ownership or control may be shown if:

- i. one entity controls the composition of the other entity's board; or

- ii. one entity is in a position to cast, or control the casting of, more than half the maximum number of votes that might be cast at a general meeting of the other entity; or
- iii. one entity holds more than half the issued share capital of the other entity (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- iv. both entities have a common parent entity that itself or through other entities meets one of the requirements of (i) to (iii) above in relation to both entities that are the subject of the intra company transfer; or
- v. one entity is related to the other entity as both entities are party to a joint venture agreement; or
- vi. one entity is related to the other entity in that one entity is party to a joint venture agreement and the other entity is the entity formed by that joint venture agreement; or
- vii. one entity is related to the other entity by agreement that would constitute a joint venture agreement other than for the fact that joint venture agreements are not permitted in the country of operation or one of the entities is not permitted to enter into joint ventures in the country of operation; or
- viii. one entity is related to the other entity in that one entity is party to an agreement that would constitute a joint venture agreement other than for the fact that joint venture agreements are not permitted in the country of operation or that entity is not permitted to enter into joint ventures in the country of operation and the other entity is the entity formed by that agreement; or
- ix. where both entities are either accountancy or law firms, one entity is related to the other entity by agreement which allows both entities to use a trademark which is registered or established under the laws of the United Kingdom and the jurisdiction of the other entity's country of operation; or
- x. where both entities are either accountancy or law firms, one entity is related to the other entity by agreement which allows both entities to operate under the same name in the United Kingdom and in the jurisdiction of the other entity's country of operation.
- xi. in the case of unincorporated associations, we may also consider the receiving entity to be a linked company if it is a registered company and its Articles of Association with the sending entity indicate a relationship of control (for example, one Member has the power to appoint the other's trustees).

226. The fact that an individual owns shares in two or more companies is not enough for us to consider an application under the intra-company transfer category.

227. When a prospective sponsor applies for a licence under Tier 2 Intra Company Transfer it must provide the supporting documents listed in Appendix A to confirm the link between the overseas entity and the sponsoring organisation.

228. Migrants entering the United Kingdom under Tier 2 (Intra-Company Transfer) must not be directly replacing a settled worker.

229. Because of the specific nature of these transfers, we do not require the employer to carry out a resident labour market test. However, migrants coming to the United Kingdom on intra-company transfer must have been working for the sponsoring organisation for at least six months directly prior to their transfer, either:

- i. Outside of the United Kingdom; and/or

- ii. inside the United Kingdom, as long as he/she had permission to work for the Sponsor as a Tier 2 (Intra-Company Transfer) migrant and/or as a qualifying work permit holder (as long as the work permit was granted because the migrant was the subject of an intra-company transfer); or
- iii. any combination of i) and ii) above.

230. The only exception to this 6 month rule is where a migrant has been absent due to a period of maternity, paternity or adoption leave. If this is the case, and the migrant has been employed by the sponsoring organisation for at least 6 months out of the last 18 months, then they can still be employed as an intra-company transferee provided they meet all the other requirements for being granted leave. An example might be where a migrant has worked for 3 months, then taken 12 months maternity leave, then worked for another 3 months.

231. Migrants in these circumstances may have to provide evidence that they have been working for the employer during the previous six months, with their Tier 2 application. (For example if payslips are generated monthly, each monthly payslip for the period claimed must be provided.) Sponsors may have to certify some of that evidence:

- i. Payslips: These should be either formal payslips or on company-headed paper. If payslips are on un-headed paper or are printouts of online payslips they are required to submit a letter from their employer confirming the authenticity of the payslips. This letter must be on company headed paper and must be signed by a senior official.

OR

- ii. Personal bank or building society statements covering six full consecutive months:

The personal bank or building society statements should clearly show:

- the migrant's name;
- the account number;
- the date of the statement;
- the financial institution's name and logo; and
- transactions by the sponsor covering the six month period.

The most recent statement must be dated within one calendar month of the application.

Ad-hoc bank statements printed on paper bearing the bank's letterhead are also acceptable, but this does not include mini-statements obtained from ATM machines.

If the migrant wishes to submit electronic bank statements from an online account these must contain all of the details listed above. In addition, the migrant must provide a supporting letter from his/her bank, on company headed paper, confirming the authenticity of the statements provided.

OR

- iii. Building society pass book: The building society pass book should clearly show:

- The migrant's name
- The account number
- The financial institution's name and logo; and

- Transactions by the sponsor covering the six month period immediately before the date of the application.

232. The job or offer must be at or above S/NVQ level 3. Salary may be paid in the United Kingdom or abroad. Where the migrant will be paid abroad in a currency other than pounds sterling, the salary amount entered on the certificate of sponsorship will be based on the exchange rate for the relevant currency on the day the certificate is assigned, taken from the rates published on www.oanda.com. We take account of:

- i. Basic pay excluding overtime; and
- ii. Allowances (i.e. daily payments to cover additional cost of living whilst in the United Kingdom but not including expenses to cover travel between the source country and the United Kingdom.) In the case of allowances made available solely for the purpose of accommodation, only allowances up to 30% of the total gross salary package is taken into account for the purposes of awarding points and assessing whether the salary passes the appropriate rate test (but see paragraph 179 below). This is whether such allowances are made available in cash or in kind.

233. For example

- If a migrant's prospective salary plus other (non-accommodation) allowances is £14,000, we take into account a maximum gross salary package of £14,000 / 70% = £20,000.
- In this example, the maximum accommodation allowance we take into account is £6,000 (30% of £20,000).
- If the accommodation allowance offered to the migrant is £6,000 or less, we take all of it into account. If the accommodation allowance is more than £6,000, we only take £6,000 of it into account.

234. In acknowledgement of the higher costs of short-term accommodation, we take account of accommodation allowances up to 40% of the gross salary for short-term transfers where:

- the migrant is applying from outside the United Kingdom with a certificate of sponsorship that has been assigned for 12 months or less; or
- the migrant is applying for an extension that will take their total stay in the United Kingdom to 12 months or less.

235. So in the example above, this means that we take up to £9,333 (40% of £23,333) into account.

236. For each migrant, the sponsor must keep the documents stipulated in Appendix D to prove that the migrant meets the skill level and they are being paid at the appropriate rate. Please also refer to the section on keeping documents.

TIER 2 (MINISTERS OF RELIGION)

237. This category is for those coming to fill vacancies as religious workers within a bona fide religious organisation. To be able to assign a certificate of sponsorship to a migrant the sponsor must hold a licence which includes Tier 2 (Ministers of Religion).

238. Tier 2 (Ministers of Religion) category includes anyone undertaking preaching and pastoral work. Pastoral duties include:

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

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

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

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

242. 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 apply as a teacher under Tier 2 (General). Novices whose training consists of taking part in the daily community life of their order may apply under this category, but anyone studying for a qualification, a formal full-time course of study or training in an academic institution not maintained by the order should apply under the Tier 4 student category. People who are not members of a religious order, but who are working or studying within such a community, are not eligible to apply under this category and must satisfy the requirements of the relevant work or study category.

243. Sponsors wishing to apply for a licence under this category must be a bona fide religious organisation, which:

- i. is a registered, excepted or exempt United Kingdom charity according to the relevant charity legislation in force in its part of the United Kingdom, or is an ecclesiastical corporation (either corporation sole or body corporate) established for charitable purposes. In Northern Ireland the organisation must have obtained charitable status for tax purposes from HM Revenue and Customs. Charities who are not registered according to the relevant charity legislation must explain the reason for non-registration in their application for a sponsor licence; and
- ii. is the structure for a faith-based community with a common system of belief and spiritual goals, codes of behaviour and religious practice, which exists to support and/or propagate those common beliefs and practices and where such beliefs:
 - a. **include** any religious belief or similar philosophical belief in something transcendental, metaphysical or ultimate;
 - b. **exclude** any philosophical or political belief concerned with man, unless that belief is similar to religious belief; and
- iii. does not exclude from its community on the basis of gender, nationality or ethnicity; and
- iv. receives financial and material support for its core religious ministry from its congregation

or community on a voluntary basis only, without promise or coercion; and

v. does not breach, or encourage others to breach any United Kingdom legislation; and

vi. does not operate against the public interest, or in a way that has a detrimental effect on personal or family life as these are commonly understood in the United Kingdom.

244. A sponsor that assigns a certificate of sponsorship under this sub-category is confirming a number of things, as shown below.

i. The sponsor guarantees that the migrant:

a. is qualified to do the job in question – for example, is an ordained minister of religion, where ordination is prescribed by a religious faith as the sole means of entering the ministry; or missionaries who have been trained as missionaries, or have worked as missionaries and are being sent to the United Kingdom by overseas organisations to work full-time as a missionary;

b. intends to be based in the United Kingdom for the duration of his/her permission to stay; and

c. will comply with the conditions of his/her permission to stay.

ii. The sponsor provides an undertaking that it accepts the duties of sponsorship for the migrant.

iii. The sponsor provides an undertaking to support the migrant through funds and/or accommodation that are sufficient for them to maintain themselves throughout the duration of the certificate of sponsorship, and are equal to, or exceed those normally given to a 'resident worker' within the organisation. Migrants who are unable to support themselves could face financial hardship because they do not have access to most state benefits.

iv. The sponsor confirms that the migrant will not be displacing or denying an employment opportunity to a suitably qualified member of the resident labour force. Either:

a. The sponsor must have undertaken an appropriate resident labour market test for the role. The resident labour market test requires that, before a migrant can be recruited to fill a job, that job must have been advertised as agreed in the relevant code of practice, to ensure the migrant will fill a genuine vacancy that cannot be filled with a suitably qualified member of the resident labour force; or

b. The relevant code of practice states that a resident labour market test is not required and the migrant will be additional to the sponsor's normal staffing requirements. They must not be filling a position that would otherwise need to be filled by a resident worker.

245. Migrants will require a valid certificate of sponsorship, assigned for this category, by a sponsor licensed by us. There are also requirements for maintenance (available funds) and competence in English.

246. A migrant with entry clearance or who has been granted leave to remain in the United Kingdom for more than six months, is able to enter and leave the United Kingdom on multiple occasions. Where the migrant is required to leave and re-enter the United Kingdom on multiple occasions as part of the employment they are coming to undertake, the sponsor may indicate this requirement on the certificate of sponsorship.

247. For each migrant, the sponsor must keep the documents stipulated in Appendix D. Please also refer to the section on keeping documents.

TIER 2 (SPORTS PEOPLE)

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

249. Migrants will require a valid certificate of sponsorship, assigned for this category, by a sponsor licensed by us.

250. To be able to assign a certificate of sponsorship to a migrant the sponsor must hold a licence which includes Tier 2 (Sports people).

251. Applications for a licence under this category must be accompanied by documents listed in Appendix A including an endorsement from the UK Border Agency recognised governing body for the sport. A governing body is one that is recognised by one of the home country sports councils (for example Sport England). For further information you should see the list of approved governing bodies on our website at <http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/employingmigrants/sportsgoverningbodies/>.

252. If your sport does not have a sports council recognised governing body, you should contact us by telephone on 0300 123 4699 or by email at EmploymentPolicy@ukba.gsi.gov.uk. We will then consult with Department for Culture, Media and Sport, the Central Council of Physical Recreation and/or other sports councils to identify whether there is an appropriate body who could act as the UK Border Agency recognised governing body.

253. In giving its approval, the governing body confirms that the application is from a genuine club (or equivalent), and that the club has a legitimate requirement to bring migrants to the United Kingdom as sportspeople.

254. Prospective sponsors for Tier 2 (Sports people) can only tick one sport on the online application. For example, if a sponsor wishes to sponsor migrants under football and rugby, they must tick one sport on the application and when giving their reasons for the number of certificates of sponsorship required, the prospective sponsor must list the other sports to be covered in that licence and provide the appropriate governing body endorsement for each of these sports.

255. 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 SponsorshipPBSenquiries@ukba.gsi.gov.uk.

256. Where a certificate of sponsorship is assigned under this category, the sponsor guarantees that the migrant:

- i. intends to be based in the United Kingdom for the duration of his/her permission to stay;
- ii. has been approved by the governing body for the sport; and
- iii. will comply with the conditions of his/her permission to stay and leave the United Kingdom when it expires.

257. The sponsor is also giving an undertaking that it accepts the duties of sponsorship for the migrant.

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

- i. the migrant is internationally established at the highest level; and
- ii. the migrant will make a significant contribution to the development of their sport at the highest level in the United Kingdom; and
- iii. it is appropriate to fill the post with a migrant who is not settled in United Kingdom.

259. A migrant who has already been granted leave under Tier 5 (Creative and Sport) for a job as a footballer, may switch into Tier 2 (Sports people) provided they will still be employed as a footballer and he/she can meet the Tier 2 (Sports people) migrant requirements.

260. A migrant with entry clearance or who has been granted leave to remain in the United Kingdom for more than six months, can enter and leave the United Kingdom on multiple occasions. Where the migrant is required to leave and re-enter the United Kingdom on multiple occasions as part of the employment they are coming to undertake, the sponsor may indicate this requirement on the certificate of sponsorship.

261. When assigning a certificate of sponsorship to a migrant under Tier 2 (Sports people), the sponsor must enter the migrant's governing body endorsement unique reference number on the appropriate screen within the sponsorship management system. A certificate of sponsorship can only be assigned for the period covered by the governing body endorsement. In some circumstances, the governing body may only give the migrant an endorsement for 12 months at a time, regardless of the length of the migrant's contract. If the migrant continues to be employed beyond the period covered by the governing body endorsement, they must get a new endorsement for a further period and the sponsor must assign a new certificate of sponsorship.

262. For each migrant, you must keep the documents stipulated in Appendix D. Please also refer to the section on keeping documents.

263. Further details of the criteria migrants must meet are in the Guidance for Migrants Tier 2 which is available on our website at <http://www.ukba.homeoffice.gov.uk/workingintheuk/tier2/general/applying/>

264. When a player is moving to another club on a temporary transfer of registration (loan), the original club must notify us of the migrant's change of location via the sponsorship management system.

265. The original club will continue to retain responsibility for the player and must make arrangements with the loan club so that the original club can continue to meet its duties. The temporary club does not need to make an application for an individual governing body endorsement. When the player returns from loan, the original club must update sponsorship management system again with the migrant's updated location details.

266. If the player is permanently transferred to another club, then the original club must notify us of this using the sponsorship management system and the new club must make a fresh application for an individual governing body endorsement on behalf of the player. The new club must be a licensed sponsor and all clubs should note that the change of employment process must be fully completed before the player can play as a permanent employee of the new club.

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

TIER 5 – YOUTH MOBILITY SCHEME AND TEMPORARY WORKERS

268. Tier 5 comprises the youth mobility scheme and temporary worker categories, which allow people to travel to the United Kingdom for mainly non-economic reasons.

269. Allowing certain types of temporary worker to come to the United Kingdom helps to satisfy cultural, charitable, religious or international aims.

270. Sponsors who need only temporary service from a migrant who would not meet the Tier 2 conditions might be able to register under Tier 5.

TIER 5 (YOUTH MOBILITY SCHEME)

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

272. The sponsors under the youth mobility scheme are the national governments of the participating countries and not individual employers or sponsors.

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

274. Further information on the scheme and the requirements migrants must meet to come to the United Kingdom under it, are in the Tier 5 Youth Mobility Guidance on our website at <http://ukba.homeoffice.gov.uk/workingintheuk/tier5/youthmobilityscheme/eligibility/>.

TIER 5 (TEMPORARY WORKERS)

275. The temporary worker category offers migrants a range of ways to come to the United Kingdom, to reflect the wide variety of roles that require them to work temporarily in the United Kingdom.

276. The sponsor within Tier 5 will not always be the employer - in certain circumstances, migrants may meet all of the Tier 5 criteria where there is no direct employer/employee relationship. Even though the direct employer/employee relationship may not exist, there must be a sponsor who is able and willing to take on all of the sponsorship duties.

277. We are aware, for example, of different arrangements in parts of the arts and entertainments sector where a migrant may be employed through an entity such as a Special Purpose Vehicle. In these circumstances we would expect the sponsor to be a producer, co-producer or general management company even though they are not directly employing the migrant. There will also be other occasions within Tier 5, for example in the Government Authorised Exchange sub-category, where an overarching sponsor is required to administer schemes and cannot be the direct employer of any migrants it brings in through that scheme.

278. Where a migrant is not a direct employee of the sponsor we will look especially closely at the arrangements and monitor the sponsor to ensure that they are fulfilling all of their sponsor duties, and take appropriate action as set out in this guidance if we find that they are not.

279. Please note also that any sponsor wishing to employ persons below the age of 16 must obtain a licence from the Local Education Authority (LEA) in the area in which the person will work.

TIER 5 (TEMPORARY WORKERS) – CREATIVE AND SPORTING

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

- sports people – up to a maximum of 12 months;
- creative artists – up to an initial maximum period of 12 months, with the option to extend up to a maximum of 24 months in total, where the original sponsor assigns a new certificate of sponsorship for a further period.

281. Their dependants are allowed to work if they are accompanying or joining them in the United Kingdom.

282. To be able to assign a certificate of sponsorship to a migrant the sponsor must hold a licence which includes Tier 5 (Temporary workers) – Creative and sporting.

Where the migrant will be employed within the creative sector

283. This category does not cover individuals who currently enter the United Kingdom under the permit-free concessions for entertainers, including permit-free festivals, and sportspeople. These concessions have been brought within the immigration rules under the revised visitor categories. For further information on how the revised visitor categories work you should see the latest guidance which is available on our website at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter2/Chapter2__visitoridi.pdf?view=Binary

284. In order to gain a licence as a sponsor of creative workers and their entourage, the prospective sponsor must be operating, or intend to operate, in the creative sector. Examples include a national body, event organiser, producer, venue, agent or other similar organisation. Where applicable, the prospective sponsor must commit to following the codes of practice for taking into account the needs of the resident labour market in that field. The codes of practice operate in three specific areas: dance, theatre, and film & television. These are available on our website at <http://www.bia.homeoffice.gov.uk/employers/points/sponsoringmigrants/employingmigrants/codesofpractice/>.

285. Before a sponsor assigns a certificate of sponsorship in these fields, they must confirm that they have followed the relevant code of practice. Where the vacancy is within the creative or entertainment sector and there is no code of practice, you must be able to show that the post could not be filled by a settled worker. Examples of how to demonstrate this are evidence of any recruitment activity, written support from an appropriate industry body or sector labour market information etc.

286. The sponsor must keep the documents stipulated in Appendix D. Please also refer to the sections on keeping documents, extensions and change of employment for further information.

287. Due to the nature of the creative sector, at times a migrant is required to perform a number of engagements at various venues. If the migrant has a single sponsor, for example an agent, and there is no more than a maximum of fourteen calendar days between each engagement, that sponsor can assign a single certificate of sponsorship to cover the whole period. However, if this is not the case and the migrant is sponsored by the individual venues, producers or promoters, then it is still possible for each sponsor to assign a certificate of sponsorship to cover its own show. These certificates of sponsorship must not overlap.

288. If there is no more than a maximum of fourteen calendar days between each engagement, then entry clearance will be granted to cover the whole period. However, if there is a gap of more than fourteen calendar days between engagements in either of the scenario

mentioned above, then this will not be possible and the migrant will have to leave the United Kingdom and apply for entry clearance again.

289. These certificates of sponsorship can include any rehearsal periods required. A sponsor must ensure that they assign certificates of sponsorship only for the period required. If it is found on a compliance visit that a certificate has been assigned wrongly, we will take appropriate action against the sponsor.

290. The sponsor may also assign a group certificate of sponsorship where it is appropriate to do so.

291. When a sponsor assigns a certificate of sponsorship in either the creative or sporting sector, it is guaranteeing that the migrant:

- i. is seeking entry to the United Kingdom to work or perform in the relevant sector;
- ii. is not intending to establish a business in the United Kingdom;
- iii. poses no threat to the resident labour market; and
- iv. will comply with the conditions of his/her permission to stay and leave the United Kingdom when it expires.

Where the migrant will be employed within the sporting sector

292. This sub-category is for:

- sportspeople who are internationally established at the highest level in their sport; and/or
- their employment will make a significant contribution to the development and operation of that particular sport in the United Kingdom; and
- coaches who must be suitably qualified to fulfil the role in question.

293. In order to gain a licence under this category to sponsor sports people and their entourage, the prospective sponsor must be a sporting body, sports club, events organiser or other organiser operating, or intending to operate in the sporting sector. The prospective sponsor must submit the necessary documents as listed in Appendix A including an endorsement from the UK Border Agency recognised governing body for the sport. A governing body is one that is recognised by one of the home country sports councils (for example Sport England). A list of the approved governing bodies is on our website <http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/employingmigrants/sportsgoverningbodies/>.

294. An agent cannot be a sponsor for sports people under this category.

295. If a prospective sponsor of sports people is intending to sponsor migrants for a sport where there is no governing body that we have recognised for that sport, it should contact its own governing body listed on the Central Council of Physical Recreation website at <http://ccpr.org.uk/>, or relevant home sport council's website. It should ask them to contact us at employmentpolicy@ukba.gsi.gov.uk to apply for recognition.

296. Prospective sponsors can apply for a licence for more than one sport using the same application. For example, if a sponsor wishes to sponsor migrants under football and rugby, they must tick one sport on the form and when giving their reasons for the number of certificates of sponsorship required, they must list the other sports to be covered in that licence.

297. Before a certificate of sponsorship can be assigned to a migrant under this category, the sponsor must have a governing body endorsement for the migrant from the appropriate governing body for his/her sport. The endorsement confirms that:

- the player or coach is internationally established at the highest level; and/or
- the player or coach will make a significant contribution to the development of his/her sport in the United Kingdom.

298. When assigning a certificate of sponsorship to a sports person under Tier 5, the sponsor must enter the migrant's governing body endorsement unique reference number on the appropriate screen within the sponsorship management system.

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

300. When a sponsor assigns a certificate of sponsorship in either the creative or sporting sector, it is guaranteeing that the migrant:

- is seeking entry to the United Kingdom to work or perform in the relevant sector;
- is not intending to establish a business in the United Kingdom;
- poses no threat to the resident labour market; and
- will comply with the conditions of his/her permission to stay and leave the United Kingdom when it expires.

Migrants' leave under Tier 5 (Temporary Workers) – creative and sporting

301. Migrants entering the United Kingdom under the creative and sporting sub-category must obtain entry clearance prior to travelling to the United Kingdom. The only exception to this is for non-visa nationals seeking entry to the United Kingdom, where the certificate of sponsorship assigned to them is for a period of less than three months and for a job in the creative sector.

302. A migrant with entry clearance or who has been granted leave to remain in the United Kingdom for more than six months, can enter and leave the United Kingdom on multiple occasions. Where the migrant is required to leave and re-enter the United Kingdom on multiple occasions as part of the employment they are coming to undertake, the sponsor may indicate this requirement on the certificate of sponsorship.

303. If a migrant does not have entry clearance or has been granted leave to remain for six months or less, that leave will lapse if he/she leaves the Common Travel Area. In these circumstances the migrant will not be able to re-enter the United Kingdom with that leave and will have to apply for fresh leave once the sponsor has assigned a new certificate of sponsorship. (The Common Travel Area is the United Kingdom, Republic of Ireland, the Isle of Man and the Channel Islands.)

304. For non-visa nationals who do not require prior entry clearance and who have been assigned a certificate of sponsorship for a period of less than three months for a job in the creative sector, there are arrangements in place at the United Kingdom border to enable these migrants to gain entry to the United Kingdom.

305. They must present their certificate of sponsorship number along with any necessary evidence for the points they are claiming. We recommend that sponsors ensure that when assigning a certificate of sponsorship, migrants in these circumstances are familiar with the arrangements and are aware that leave to enter may take a little longer to process due to the checks carried out by the immigration officer. They should also make sure that their sponsored migrants have the sponsor's up-to-date contact details with them in case the sponsor needs to

be contacted. Further information on these arrangements is contained in the Tier 5 Guidance for migrants, which is available on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier5temporaryworkerguidance.pdf>.

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

307. Please note that non-visa nationals always need to apply for prior entry clearance (permission to enter) if their certificate of sponsorship has been assigned for a period of more than 3 months.

TIER 5 (TEMPORARY WORKERS) – CHARITY WORKERS

308. Migrants coming to work temporarily in the United Kingdom as charity workers should only be undertaking voluntary activity and not paid employment. The migrant should intend to carry out fieldwork directly related to the purpose of the sponsoring organisation.

309. To gain a licence as a sponsor of charity workers the employer must provide the appropriate documents as listed in Appendix A.

310. To be able to assign a certificate of sponsorship to a migrant the sponsor must hold a licence which includes Tier 5 (Temporary workers) – Charity workers.

311. In assigning a certificate of sponsorship, the sponsor is guaranteeing that the migrant:

- i. intends to undertake voluntary fieldwork directly related to the purpose of the charity sponsoring him/her;
- ii. will not be paid or receive other remuneration for their work (with the exception of reasonable expenses outlined in section 44 of the National Minimum Wage Act), please see http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980039_en_3#pb14-11g44; and the revision to that Act at http://www.opsi.gov.uk/acts/acts2008/ukpga_20080024_en_2#pb2-11g14
- iii. will not take up a permanent position; and
- iv. will comply with the conditions of his/her permission to stay and leave the United Kingdom when it expires.

312. Migrants entering the United Kingdom under the charity workers sub-category will be given a maximum of 12 months' permission to stay. Their dependants are allowed to work if they are accompanying or joining them in the United Kingdom.

TIER 5 (TEMPORARY WORKERS) – RELIGIOUS WORKERS

313. This category is for migrants coming to work temporarily in the United Kingdom as:

- i. a religious worker where their duties may include preaching, pastoral and non-pastoral work; or
- ii. a visiting religious worker who is employed overseas in the same capacity as they are seeking to come to the United Kingdom to work, although the exact detail of their duties in the United Kingdom may differ. This employment should be ongoing and the time spent in the United Kingdom should be consistent with a break from their employment.
- iii. a member of a religious order such as a monastic community of monks/nuns or a similar religious community involving a permanent commitment.

314. Sponsors wishing to apply for a licence under this category must be a bona fide religious institution, which:

- i. is a registered, excepted or exempt United Kingdom charity according to the relevant charity legislation in force in its part of the United Kingdom, or is an ecclesiastical corporation (either corporation sole or body corporate) established for charitable purposes. In Northern Ireland the organisation must have obtained charitable status for tax purposes from HM Revenue and Customs. Charities who are not registered according to the relevant charity legislation must explain the reason for non-registration in their application for a sponsor licence; and
- ii. is the structure for a faith-based community with a common system of belief and spiritual goals, codes of behaviour and religious practice, which exists to support and/or propagate those common beliefs and practices and where such beliefs:
 - a. **include** any religious belief or similar philosophical belief in something transcendental, metaphysical or ultimate;
 - b. **exclude** any philosophical or political belief concerned with man, unless that belief is similar to religious belief; and
- iii. does not exclude from its community on the basis of gender, nationality or ethnicity; and
- iv. receives financial and material support for its core religious ministry from its congregation or community on a voluntary basis only, without promise or coercion; and
- v. does not breach, or encourage others to breach, any United Kingdom legislation; and
- vi. does not operate against the public interest, or in a way that has a detrimental effect on personal or family life as these are commonly understood in the United Kingdom.

315. To be able to assign a certificate of sponsorship to a migrant the sponsor must hold a licence which includes Tier 5 (Temporary workers) – Religious workers.

316. When a sponsor assigns a certificate of sponsorship under this sub-category, it is guaranteeing that:

- i. the migrant is qualified to do the job in question;
- ii. the migrant will not take employment except as a religious worker;
- iii. the migrant will only work at the specified location(s), except where working under the supplementary employment provisions;
- iv. it is giving an undertaking that it accepts the responsibilities of sponsorship for the migrant;
- v. it is giving an undertaking to support the migrant through funds and/or accommodation that are sufficient for them to maintain themselves throughout the duration of the certificate of sponsorship. Migrants who are unable to support themselves could face financial hardship

because they do not have access to most state benefits;

- vi. the migrant will not be displacing or denying an employment opportunity to a suitably qualified member of the resident labour force; and
- vii. the migrant will comply with the conditions of his/her permission to stay and will leave the United Kingdom when it expires.

317. 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 apply as a teacher under Tier 2 (General). Novices whose training consists of taking part in the daily community life of their order may apply under this category, but anyone studying for a qualification, on a formal full-time course of study or training in an academic institution not maintained by the order should apply as a student under Tier 4. People who are not members of a religious order, but who are working or studying within such a community, are not eligible to apply under this category and must satisfy the requirements of the relevant work or study category.

318. Migrants entering the United Kingdom under this sub-category will be granted a maximum of 24 months' permission to stay. Their dependants are allowed to work if accompanying or joining them in the United Kingdom.

TIER 5 (TEMPORARY WORKERS) – GOVERNMENT AUTHORISED EXCHANGE

319. This category is for migrants coming to the United Kingdom through approved schemes that aim to share knowledge, experience and best practice. This category cannot be used to fill job vacancies or provide a way to bring unskilled labour to the United Kingdom.

320. Migrants entering the United Kingdom under the government authorised exchange sub-category will be given a maximum of 24 months' permission to stay. Their dependants are allowed to work if they are accompanying or joining them in the United Kingdom.

321. To prevent potential abuse of this sub-category and the formation of small individual schemes, individual employers and organisations are not allowed to sponsor migrants, even if they are licensed as sponsors under other tiers or other sub-categories of Tier 5. The only exceptions to this are:

- where the employer is an educational institution and is recruiting a sponsored researcher;
- where the employer is a Government Department or an Executive Agency of a Government Department.

322. In all other circumstances, there must be an overarching body to administer the exchange scheme. This overarching body will be the sponsor and must apply for a licence. The scheme and the overarching body must have the support of a United Kingdom government department or one of its executive agencies. The overarching body will assign certificates of sponsorship to migrants who meet the requirements of the scheme.

323. When deciding which exchange schemes to support, government departments are expected to select schemes that meet the requirements below.

- i. The exchange scheme must not harm the resident labour market. Migrants coming to the United Kingdom to take part in work experience schemes must not fill vacancies in the workforce and must do work that is additional to the employer's normal staffing requirements.
- ii. Any work the migrant undertakes must be skilled. Skilled work is currently defined as being equivalent to S/NVQ3 or above. The only exception to this is where the migrant is coming

to the United Kingdom through a scheme set up as part of the EU Lifelong Learning Programme, where the migrant may undertake vocational education and training at a lower skill level.

iii. The employment must conform with all relevant United Kingdom and European legislation, such as the National Minimum Wage Act and the EC working hours directives.

iv. The exchange scheme must include measures that protect it from being abused.

324. To show a government department (or one of its executive agencies) supports the scheme, the relevant accounting officer must write a letter to the Chief Executive of the UK Border Agency, giving details of the overarching body that is running the scheme and officially confirming that:

- i. the exchange scheme satisfies all the requirements to which government departments (and their executive agencies) must adhere when selecting schemes to support;
- ii. the exchange scheme will help the relevant department (or one of its executive agencies) to deliver one or more of its public service agreement (PSA) obligations as set out in the specific delivery agreement for the relevant PSA⁴, or, the exchange scheme will contribute to the department's (or the executive agency's) wider objectives;
- iii. the government department (or one of its executive agencies) is satisfied to the best of its knowledge that the overarching body is capable of meeting its sponsor duties; and
- iv. if significant numbers of migrants under the exchange scheme break the immigration rules, the supporting government department (or its relevant executive agency) will make an appropriate and proportionate contribution to UK Border Agency's enforcement costs and accepts that we may end the scheme.

325. The government department (or its relevant executive agency) must send a copy of the above request letter and the letter of acceptance received from us to the overarching body that administers the scheme.

326. Once the above letters have been received the overarching body must submit an online application for a sponsor's licence and send in the necessary documents as listed in Appendix A, along with a copy of the letter received from us. If approved, the overarching body can act as the sponsor and assign certificates of sponsorship to migrants who meet the criteria. Government Departments and their Executive Agencies, and Higher Educational Institutions recruiting sponsored researchers do not need to submit any specific documents relating to the GAE scheme to support a new application for T5 (GAE) or to add T5 (GAE) to their existing license.

327. The sponsor that assigns a certificate of sponsorship to the migrant is guaranteeing that the migrant:

- i. is seeking entry to the United Kingdom to work or train temporarily here through an approved exchange scheme;
- ii. does not intend to establish a business in the United Kingdom; and
- iii. meets the requirements of the individual exchange scheme.

328. More information on how to set up a scheme under Tier 5 (Government Authorised Exchange) is available on our website at <http://ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/eligibility/tier5govauthorisedexchange/>.

4 Each delivery agreement is on the HM Treasury website at: http://www.hm-treasury.gov.uk/pbr_csr/psa/pbr_csr07_psaindex.cfm

TIER 5 (TEMPORARY WORKERS) – INTERNATIONAL AGREEMENT

329. This category is for migrants who are coming to the United Kingdom under contract to provide a service that is covered under international law, including:

- the General Agreement on Trade in Services (GATS);
- similar agreements between the United Kingdom and another country;
- employees of overseas governments and international organisations; and
- private servants in diplomatic households.

330. In order to gain a licence as a sponsor of private servants in diplomatic households or households of officials working for international organisations, the sponsor must be a diplomatic mission or an international organisation recognised by the United Kingdom. (An international organisation includes the representative offices of those 'states' not recognised by Her Majesty's Government.)

331. A sponsor that assigns a certificate of sponsorship to private servants in diplomatic households, is guaranteeing that the migrant:

- i. is aged 18 or over;
- ii. will be employed as a private servant in the household of:
 - a. a member of staff of a diplomatic or consular mission who has diplomatic privileges and immunity as defined by the Vienna Convention on Diplomatic Relations; or
 - b. an official employed by an international organisation who enjoys certain privileges and immunities under United Kingdom or international law;
- iii. intends to work full-time in domestic employment;
- iv. will not take up any other form of employment for the sponsor other than as a private servant in the specified household; and
- v. will leave the United Kingdom when their permission to stay has expired.

332. In order to gain a licence as a sponsor of employees of overseas governments and international organisations, the prospective sponsor must be a diplomatic mission or an international organisation recognised by the United Kingdom. (An international organisation includes the representative offices of those 'states' not recognised by Her Majesty's Government.)

333. A sponsor that assigns a certificate of sponsorship to employees of overseas governments and international organisations, is guaranteeing that the migrant will:

- i. be under a contract of employment with the overseas government or international organisation;
- ii. not take up any employment for the sponsor other than that for which a certificate of sponsorship was assigned; and
- iii. not try to avoid immigration controls by changing to a different category of worker within the international agreements sub-category after entering the United Kingdom.

334. Diplomatic missions and international organisations must submit a signed letter from the Head of the Mission or organisation, or his or her delegated person, confirming that he or she is

seeking a sponsor licence. Once licensed, a mission or international organisation will be able to apply for a certificate of sponsorship that can be allocated to a prospective worker.

335. To gain a licence as a sponsor of migrants under GATS or other international agreements, the prospective sponsor must show that the job or employment involved is covered by the terms of the agreement concerned. To become a sponsor, the employer must apply to us for a licence under Tier 5, supplying the specified evidence, as mentioned in Appendix A. Once licensed, the sponsor will be able to assign certificates of sponsorship to migrants coming here to work.

336. A sponsor that assigns a certificate of sponsorship is guaranteeing that the migrant:

- i. works for an employer or organisation, of a country that:
 - a. is a member of the World Trade organisation; or
 - b. has a bilateral agreement with the United Kingdom or the European Union; or
 - c. is a member of the European Union;
- ii. will be engaged in work that meets the terms and conditions of the relevant international agreement; and
- iii. where relevant, works for the employer that was awarded the contract or will provide services to the United Kingdom client.

337. Migrants entering the United Kingdom under the international agreement sub-category are able to apply for leave as follows:

- migrants in the General Agreement on Trade in Services (GATS) and similar agreements between the United Kingdom and another country – up to a maximum of 24 months;
- employees of overseas governments and international organisations – up to an initial maximum of 24 months, with the option to make in-country extensions for periods of 12 months at a time up to a total maximum of 72 months;
- private servants in diplomatic households, or households of employees of international organisations – up to an initial maximum of 24 months, with the option to make in-country extensions for periods of 12 months at a time up to a total maximum of 72 months.

338. Their dependants are allowed to work if they are accompanying or joining them in the United Kingdom.

MAINTENANCE (AVAILABLE FUNDS)

339. Migrants in all tiers must show that they have enough money to support themselves and any dependants from the time they enter the United Kingdom until they start to receive an income. Please refer to the migrant guidance which is available on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier2guidance.pdf> (Tier 2) and <http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier5temporaryworkerguidance.pdf> (Tier 5)

Tier 2

340. In order to qualify for entry clearance, or leave to remain in the United Kingdom, under Tier 2, the migrant must meet the maintenance requirements. He/she can do this by:

- demonstrating that he/she has at least £800 of personal funds which have been held for at least three months prior to the date of application; or
- his/her sponsor issuing a letter to the migrant to certify that they will maintain and accommodate the migrant up to the end of his/her first month of employment in the United Kingdom. This letter, which must be sent to the migrant by post or fax, or scanned and emailed, must be on official letter-headed paper or stationery of the sponsor organisation and be signed by a senior official. It must include:
 - a. the migrant's name; and
 - b. the sponsor's name and logo;
 - c. the migrant's certificate of sponsorship reference number; and
 - d. confirmation that the sponsor will maintain and accommodate the sponsored migrant until the end of his/her first month of employment in the United Kingdom if required. The sponsor may limit the amount of the undertaking but any limit must be at least £800.

341. If the sponsor does not wish to certify maintenance in this way, the migrant must meet the maintenance requirements as set out above, and in the Tier 2 migrant guidance which is available on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier2guidance.pdf>. If the sponsor also certifies maintenance for any of the migrant's dependants, it may limit the amount of the undertaking but any limit must be at least £533 per dependant.

342. Please note, sponsors are only allowed to certify a migrant's (and his/her dependants') maintenance if they are A-Rated when the certificate of sponsorship is assigned. Sponsors cannot certify maintenance if they are B-Rated when the certificate of sponsorship is assigned.

343. Sponsors that certify that migrants meet the maintenance test under Tier 2 should note that it is their duty to make migrants aware that they should not claim state benefits. If the migrant does claim benefits, with the knowledge of the sponsor, we will take action which may lead to their licence being downgraded or withdrawn.

Tier 5 - Temporary Workers

344. In order to qualify for leave to enter or remain in the United Kingdom, under Tier 5 - temporary workers, the migrant must meet the maintenance requirements. He/she can do this by:

- demonstrating that he/she has at least £800 of personal savings which have been held for at least 3 months prior to the date of application; or
- his/her sponsor indicating on the certificate of sponsorship that it has certified the migrant's maintenance.

345. If the sponsor does not wish to certify maintenance in this way, the migrant must meet the maintenance requirements as set out above, and in the Tier 5 Migrant Guidance which is available on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier5temporaryworkerguidance.pdf>.

346. Please note, sponsors are only allowed to certify a migrant's maintenance if they are A-Rated when the certificate of sponsorship is assigned. Sponsors cannot certify maintenance if they are B-Rated when the certificate of sponsorship is assigned.

347. Sponsors that certify that migrants meet the maintenance test under Tier 5 should note

that it is their duty to make migrants aware that they should not claim state benefits. If the migrant does claim benefits, with the knowledge of the sponsor, we will take action which may lead to their licence being downgraded or withdrawn.

MIGRANTS' INITIAL PERMISSION TO STAY

348. Successful migrants who enter the United Kingdom under Tier 2 (Skilled workers) will initially be given permission to stay for up to three years, depending on the length of their expected employment here.

349. Successful migrants under Tier 5 - temporary workers will receive permission to stay for the length of their certificate of sponsorship, or for the initial maximum length of time allowed under the relevant category.

350. Migrants under Tier 2 and Tier 5 cannot apply for initial leave more than three months in advance of the date their employment is due to commence, as stated on the Certificate of Sponsorship. Sponsors should be familiar with the rules on when a Certificate of Sponsorship can be assigned and how long it is valid for and make sure that the timing of their recruitment exercise does not place the migrant in a situation whereby their Certificate of Sponsorship has become invalid by the time they are allowed to apply for leave because there are potential consequences for both the migrant and the sponsor.

For example (1)

- 2 Feb 2009 – 15 Feb 2009 – vacancy advertised as per code of practice.
- 16 March 2009 – migrant offered job to start 11 Dec 2009 and Certificate of Sponsorship assigned.
- Certificate of Sponsorship is now valid for 3 months.
- Earliest date migrant can apply for leave is 11 Sept 2009
- Scenario 1 – Migrant applies for leave before 11 Sept 2009 – their application will be rejected as it has been made too early.
- Scenario 2 – Migrant applies for leave after 11 Sept 2009 – their application will be refused as their Certificate of Sponsorship expired on 16 June 2009.

351. In this example the migrant cannot possibly apply for their leave at the correct time because the sponsor has assigned their Certificate of Sponsorship too early. In addition, if the sponsor simply assigned a new Certificate of Sponsorship on 11 September they would then be in breach of the resident labour market rules which say that a Certificate of Sponsorship must be assigned within 6 months of the vacancy first being advertised. The only way for the sponsor to proceed would be to conduct a new resident labour market test for this job. In other words, the entire recruitment exercise would have to be done again and if the migrant is again the successful applicant, the sponsor would have to assign a new Certificate of Sponsorship.

For example (2)

- 2 Feb 2009 – 15 Feb 2009 – vacancy advertised as per code of practice.
- 16 March 2009 – migrant offered job to start 10 August 2009.
- Certificate of Sponsorship is now valid for 3 months.
- Earliest date migrant can apply for leave is 10 May 2009.

- Scenario 1 – Migrant applies for leave before 10 May 2009 – their application will be rejected as it has been made too early.
- Scenario 2 – Migrant applies for leave after 10 May 2009 and before 16 June 2009 – their application will be processed as normal.
- Scenario 3 – Migrant applies for leave after 16 June – their application will be refused because their Certificate of Sponsorship has expired.

After admission to the United Kingdom: the identity card for foreign nationals

352. Starting from 25 November 2008, certain foreign nationals applying for leave to remain in the United Kingdom will be required to have an identity card for foreign nationals. Before receiving the card, the migrant must give his/her fingerprints and facial image, have their identity confirmed and a successful decision made on their application. This will increasingly allow us to be sure of the identity and entitlements of everyone who is here under the points-based system. Further details on identity cards for foreign nationals are available on our website at <http://ukba.homeoffice.gov.uk/managingborders/idcardsforforeignnationals>.

EXTENSIONS OF PERMISSION TO STAY

353. A migrant who has come to the United Kingdom under Tier 2 and some categories of Tier 5 can apply for an extension of his/her permission to stay (this is known as further leave to remain).

354. Where the migrant is already working for, or studying with the sponsor and he/she wishes to extend his/her current period of leave, for example if his/her contract or course of study is extended, the sponsor must assign a new certificate of sponsorship (or issue a new visa letter) for the extended period.

355. Under Tier 2 the requirements for the extension test are similar to those for initial entry. They are that:

- i. the migrant has been assigned a certificate of sponsorship for his/her continued employment in the same role before making an application for an extension of stay; and
- ii. the job continues to be at a level of S/NVQ3 or above and be paid at or above the appropriate rate.

356. Another resident labour market test will not be required because the sponsor will have shown on the initial application that the job could not be filled from the resident labour market.

357. Under Tier 5 we will only extend permission to stay to reach the maximum time allowed under the relevant sub-category. However, a migrant can leave the United Kingdom and reapply for entry clearance on a new certificate of sponsorship after their maximum stay has been reached. There is no minimum time limit required to be spent abroad before reapplying for entry clearance under Tier 5 temporary worker category. Please note that any non-visa national who initially entered the United Kingdom under the Tier 5 Creative and Sporting category for less than three months, without having to apply for prior entry clearance (permission to enter), is not allowed to apply for an in-country extension to their leave.

358. Migrants under Tier 2 and Tier 5 cannot apply to extend their leave more than 3 months in advance of the expiry date of their current leave. Sponsors should bear this in mind when deciding when to assign the new certificate of sponsorship and are reminded that a certificate of sponsorship must be used within 3 months of it being assigned.

For example.

- i. The migrant's current leave expires on 30 Sept 2009 and the sponsor wants to extend the contract for a year. The new certificate of sponsorship should start from 1 Oct 2009 but we recommend that it is not assigned any earlier than 1 July 2009. If it was assigned any earlier and the migrant attempted to use it before 1 July 2009 to apply to extend their leave, their application would be refused;
- ii. The migrant's current leave expires on 30 Sept 2009 and the sponsor wants to extend the contract for a year. The new certificate of sponsorship should start from 1 Oct 2009. If the sponsor assigns the new certificate of sponsorship early, say on 30 March 2009, it will expire on 29 June 2009 before the migrant can use it to apply to extend his/her leave.

359. Please refer to the section 'Certificate of sponsorship' for further information about extending leave.

CHANGE OF EMPLOYMENT

360. If a migrant sponsored under Tier 2 or Tier 5 is changing jobs, the new job must have been subject to a resident labour market test (where appropriate) which has shown that no suitable settled workers are available to fill the post.

361. Where the migrant is continuing to work for the same sponsor, but their core duties and/or responsibilities change, or where their position in the hierarchy of the sponsoring organisation changes, for example due to a promotion, this is treated as a change of employment.

362. The (new) sponsor must issue a new certificate of sponsorship and the migrant must then make a new application for leave. The migrant's application for leave must be approved by us before they can start work in their new job. This applies regardless of whether the new job is with the same sponsor or with a new sponsor. In the mean time, the migrant can continue working in their original job, for their original sponsor (provided their previous leave has not expired) until the start date of the new job, which should be the start date given on the new certificate of sponsorship.

363. The migrant will automatically receive points for English language ability because he/she will have shown this for the initial application, although this does not apply to migrants who came to the United Kingdom on an intra-company transfer. He/she will also not have to give evidence of maintenance.

364. Migrants under Tier 5 temporary workers category can apply for change of employment whilst in the United Kingdom, however, we will only grant permission to stay to reach the maximum time allowed under the relevant sub-category and they will not be able to switch into another tier, category or sub-category. The only exceptions to this are:

- i. migrants who have already been granted leave under Tier 5 (Creative and Sport) for a job as a footballer who want to switch into Tier 2 (Sports people). This is allowed provided the migrant will still be employed as a footballer and he/she can meet the Tier 2 (Sports people) migrant requirements; and
- ii. migrants who have already been granted leave under Tier 5 (Temporary worker) – Government Authorised Exchange (where a suitable scheme exists) as an overseas qualified nurse, who want to switch into Tier 2 (General) as an overseas qualified nurse or midwife. This is allowed provided that the migrant has completed their registration with the Nursing and Midwifery Council and he/she can meet the Tier 2 (General) migrant requirements.

365. Due to the current economic climate, some employers are temporarily reducing workers'

hours to avoid making redundancies. A change of employment application is **not** required if:

- the migrant has a current grant of leave under Tier 2; and
- the migrant is continuing to work in the same job, with reduced working hours; and
- the migrant's reduced working hours are part of a company-wide policy to avoid redundancies; and
- you are not treating migrant workers more, or less favourably than resident workers; and
- the migrant's pay or working hours do not reduce by more than 30%; and
- any reduction in wages is proportionate to the reduction in hours; and
- the arrangements will be in place for no more than one year.

MIGRANTS WORKING ON A CONTRACT BASIS

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

367. An example of this would be where Company A has a contract with Company Z to deliver a piece of work. A migrant who is sponsored by Company A, may be sent to work for the duration of the contract with Company Z, but they remain employed by Company A throughout the period of the contract and Company A is fully responsible for deciding the migrant's duties, functions, outputs or outcomes. In this example, Company A remains as the migrant's sponsor.

368. We only allow the sponsor to assign a certificate of sponsorship if it is clear that they have full responsibility for deciding the duties, functions and outcomes or outputs of the job. Where the sponsored migrant is carrying out work for a third party on behalf of the sponsor, the migrant must be contracted by the sponsor to provide a time-bound service or deliver a time-bound project on behalf of the sponsor. They may not be contracted as agency workers or to undertake a routine role for the third party, which is not related to the delivery of a time-bound service by the sponsor.

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

- the names and signatures of all parties involved (normally, this will only be the sponsor and the migrant); and
- the start and end dates of the contract; and
- details of the job, or piece of work that the migrant has been contracted to do; and
- an indication of how much the migrant will be paid.

SWITCHING WHILE IN THE UNITED KINGDOM

370. Switching is the term we use when a migrant who is already legally in the United Kingdom changes immigration status from one immigration category to another. When the migrant does this, he/she must meet the initial entry requirements for the new category.

371. Migrants must meet certain requirements when changing their immigration status and we will impose certain restrictions. We will only approve an application for a migrant to change immigration category while in the United Kingdom if he/she:

- i. meets the specific requirements of the immigration rules to be given permission to stay in the United Kingdom within the category that he/she is switching into; and
- ii. is already in the United Kingdom within one of the categories that allows switching into another category while in the United Kingdom.

372. A person who is in the United Kingdom without having leave to enter or remain for his/her current stay cannot be given leave to remain in certain categories, and we will refuse these applications.

373. Sponsors may wish to ensure that the migrant's current immigration status allows him/her to switch into the desired immigration category. If the migrant's immigration status is not in one of the eligible categories, he/she will not be allowed to switch and we are likely to refuse the application for leave to remain.

374. Further guidance on the current switching rules is on our website at: <http://ukba.homeoffice.gov.uk/workingintheuk/>.

SUPPLEMENTARY EMPLOYMENT

375. Tier 2 and Tier 5 migrants are allowed to undertake other work which is supplementary to that for which his/her certificate of sponsorship was assigned. This supplementary employment does not have to meet the resident labour market test and the employer does not have to be a sponsor. Supplementary employment must:

- i. be in the same profession and at the same professional level as the work for which the certificate of sponsorship was assigned;
- ii. be no more than 20 hours a week; and
- iii. be outside of normal working hours for which his/her certificate of sponsorship was assigned.

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

377. A migrant should advise his/her new employer that the employment is supplementary employment so that the employer can make the necessary checks in accordance with its obligations under the prevention of illegal working directive.

SECONDARY EMPLOYMENT

378. Once a Tier 2 migrant has used their certificate of sponsorship to gain leave to enter, or remain in the United Kingdom, and started work for their sponsor, they are allowed to take other employment which does not meet the supplementary employment criteria. For example, employment in a different profession.

379. Any secondary employment must be with a licensed sponsor and the migrant must pass the points test and meet the criteria relevant to the category in which their secondary employment falls. The secondary employer must have recruited him/her in accordance with this sponsorship guidance and the relevant code of practice for the sector. The secondary employer must then assign a new certificate of sponsorship to the migrant. The migrant must then submit a fresh application to vary his/her existing leave. (Please note that a second certificate of sponsorship cannot be assigned until the migrant has used their first one.)

EDUCATIONAL COURSES

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

WHAT ARE OUR ORGANISATION'S DUTIES AS A LICENSED SPONSOR?

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

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

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

When do a sponsor's duties start and finish?

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

- i. when the sponsor notifies us that the migrant has ceased to be in their employment; or
- ii. when the migrant leaves the United Kingdom and their entry clearance or leave to remain lapses; or
- iii. when the migrant is granted further leave to remain with a different sponsor or in another immigration category; or
- iv. if the sponsor surrenders its licence; or
- v. if we withdraw the sponsor's licence.

Duties that apply to sponsors in all tiers.

Record keeping duties

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

- i. a photocopy or electronic copy of each sponsored migrant's passport or United Kingdom immigration status document (and in time, his/her ID card), showing evidence of his/her entitlement to work including their period of leave to remain in the United Kingdom. Sponsors who are employers should be aware of their responsibilities to help prevent illegal working in the United Kingdom. Further details of these responsibilities are provided on our website at <http://ukba.homeoffice.gov.uk/employers/preventingillegalworking>.

- ii. each sponsored migrant's contact details (United Kingdom residential address, telephone number, and mobile telephone number). These details must **always be up to date**.
 - a. All sponsors must provide such documents relating to sponsored migrants as we consider relevant. We might, for example, ask for details of the sponsor's recruitment practices so that we can ensure that the resident labour market test is being applied correctly, where appropriate.
 - b. From 2008 we have been gradually introducing **ID cards** for foreign nationals. This is a new type of immigration status document which contains details of the holder's immigration status, together with their fingerprints and a facial image. Where the migrant has an **ID card**, the sponsor is required to keep a copy of it. More information on identity cards is available on our website at <http://ukba.homeoffice.gov.uk/managingborders/idcardsforforeignnationals>

Reporting duties

- c. All sponsors must report the following information or events to us, within any time limit specified. Information about migrants' non-attendance, non-compliance or disappearance will be used to take enforcement action against them:
 - if a sponsored migrant does not turn up for his/her first day of work. The report must be provided within 10 working days and must include any reason given by the migrant for his/her non-attendance (for example a missed flight);
 - if a migrant sponsored under Tier 2 or Tier 5 is absent from work for more than 10 working days without the sponsor's permission - the report must be provided within 10 working days of the 10th day of absence;
 - if a sponsored migrant's contract of/for employment/services or registration is terminated (including where the migrant resigns or is dismissed). Such a report must be given within 10 working days of the event in question, and should include the name and address of any new employer that the migrant has moved to, if the sponsor knows it;
 - if the sponsor stops sponsoring the migrant for any other reason (for example, if the migrant moves into an immigration route that does not require a sponsor, or the migrant's period of leave to remain in the United Kingdom comes to an end) the report must be provided within 10 working days;
 - if there are any significant changes in the sponsored migrant's circumstances, for example:
 - a change of salary from the level stated on the migrant's certificate of sponsorship, other than changes due to annual increments, bonuses or natural progression within the same job provided this progression is at the same level and is not a promotion. (Promotions are treated as a change of employment – please see the Change of Employment section of this guidance starting at paragraph 355.);
 - the location the migrant is employed at changes, or if the duration of their contract of/for employment/services is shortened. The report must be provided within 10 working days;
 - any information which suggests that a sponsored migrant is breaching the conditions of his or her leave, the report must be provided within 10 working days;

- if there are any significant changes in the sponsor's circumstances, for example, if the sponsor ceases trading or becomes insolvent, substantially changes the nature of its business, is involved in a merger or is taken over, the report must be provided within 28 calendar days;
 - details of any third party or intermediary, whether in the United Kingdom or abroad, that has assisted it in the recruitment of migrant employees or students.
- d. The sponsor must also give the police any information it may have that suggests that the migrant may be engaging in terrorism or other criminal activity.

Complying with the law

- e. To ensure that they are complying with our immigration laws, sponsors must also fulfil the following duties:
- i. to ensure that a migrant who is coming to work is legally entitled to do the job in question and has the appropriate registration and/or professional accreditation where this is legally required. For example, if the migrant is coming to work as a doctor, the sponsor must ensure that he/she has the correct registration to entitle him/her to practice as such in the United Kingdom. The sponsor must keep a copy of any appropriate registration document or certificate, and supply it to us on request;
 - ii. not to employ a migrant if the conditions on the migrant's leave (or the migrant's lack of leave) mean that he or she is not allowed to undertake the work in question, and to stop employing any migrant who ceases, for any reason, to be entitled to undertake the work;
 - iii. only to assign certificates of sponsorship to migrants who, to the best of the sponsor's knowledge and belief, will meet the requirements of the tier or category under which the certificate is assigned, and are likely to comply with the conditions of their leave. The requirements and conditions of leave are set out in the immigration rules.

Co-operating with us

- f. In order to allow us to manage the sponsorship system properly, all sponsors must also comply with the following duties:
- i. allow our staff access to any of its premises on demand. Visits may be either prearranged or unannounced;
 - ii. adhere to any action plan set by us, an action plan for B-rated sponsors may lay down additional duties;
 - iii. seek to minimise the risk of immigration abuse by complying with any good practice guidance that we or any sector body may produce for sponsors in particular tiers or sectors, with our agreement.

385. The above duties apply to all sponsors. Those set out below apply only to certain tiers.

Duties specific to sponsors under Tier 2 and Tier 5

Tier 2 – Skilled workers

386. Sponsors who are licensed to sponsor migrants under Tier 2 (General) and Tier 2 (Intra-company transfers) should only assign a certificate of sponsorship to a migrant if the sponsor is satisfied that the migrant intends to, and is able to, do the specific skilled job in question, which must be of at least S/NVQ skill level 3. The sponsor must indicate when assigning a certificate of

sponsorship that:

- i. the sponsor has carried out the resident labour market test in accordance with this guidance and the codes of practice; and the migrant will be paid at or above the rate at which the job has been advertised; or
- ii. the job concerned appears on the list of shortage occupations published by us (or if the job is in Scotland, on the Scotland-only list), at the date that the sponsor assigns a certificate of sponsorship in respect of that job; or
- iii. the job is an intra-company transfer.

387. Sponsors must also indicate that:

- i. the migrant will be paid at or above the rate (including any specific permitted allowances) appropriate for that job in the United Kingdom;
- ii. the job is a genuine vacancy;
- iii. the job is at S/NVQ level 3 or above.

388. For **Tier 2 (Intra-company transfers)**, the migrant must have been working for the overseas linked company (as defined in the intra-company transfer definition) for at least the last six months, directly prior to the certificate being assigned. Where the migrant will be paid abroad in a currency other than pounds sterling, the salary amount entered on the certificate of sponsorship should be based on the exchange rate for the relevant currency on the day the certificate is assigned, taken from the rates published on www.oanda.com.

389. For **Tier 2 (Sports people)** seeking to establish themselves in the United Kingdom, the sponsor must confirm that the migrant has an endorsement from the governing body for that sport, that he/she is internationally established at the highest level, and that he/she will make a significant contribution to the development of his/her sport at the highest level in the United Kingdom.

390. Where the migrant being sponsored is under **Tier 2 (Minister of Religion)**:

- i. The sponsor guarantees that the migrant:
 - is qualified to do the job in question;
 - intends to be based in the United Kingdom for the duration of his/her permission to stay; and
 - will comply with the conditions of his/her permission to stay.
- ii. The sponsor provides an undertaking that it accepts the duties of sponsorship for the migrant.
- iii. The sponsor provides an undertaking that it will support the migrant.
- iv. The sponsor confirms that it has undertaken a resident labour market test for the role, to ensure the migrant will not be displacing or denying an employment opportunity to a suitably qualified member of the resident labour force.

Tier 5 – Temporary worker categories

391. An A-rated sponsor assigning certificates of sponsorship to migrants applying under Tier 5 temporary workers can certify that their migrants will not claim benefits while they are in the United Kingdom. This will allow the migrants to earn points for maintenance, without having to

demonstrate that they have sufficient funds. It is the sponsor's duty to make migrants aware that they should not claim state benefits. If the migrant does claim benefits, with the knowledge of the sponsor, we will take action which may lead to their licence being downgraded or withdrawn.

392. **Creative and Sporting:** Sponsors of creative workers in areas of dance, theatre and film and television must commit to following the appropriate code of practice for the sector, for taking account of the needs of the resident labour market in those fields.

393. For sports people, the sponsor must be able to prove that the migrant is internationally established at the highest level in their sport and/or their employment will make a significant contribution to the development and operation of that particular sport in this country; and for coaches who must be suitably qualified to fulfil the role in question. Tier 5 sporting migrants must have a governing body endorsement to gain entry clearance or leave to remain. The code of practice for the particular sport must be met before assigning a certificate of sponsorship.

394. A certificate of sponsorship may only be assigned in this sub-category if the migrant:

- i. is seeking entry to the United Kingdom to work or perform in the relevant sector;
- ii. is not intending to establish themselves in business in the United Kingdom;
- iii. poses no threat to the resident labour force; and
- iv. will comply with the conditions of their permission to stay and leave the United Kingdom when it expires.

395. **Charity workers:** A certificate of sponsorship may only be assigned in this sub-category if the migrant:

- i. is intending to undertake voluntary fieldwork directly related to the purpose of the charity sponsoring them;
- ii. will not be paid or otherwise remunerated for their work (with the exception of reasonable expenses outlined in section 44 of the National Minimum Wage Act http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980039_en_3#pb14-l1g44) and the revision to that Act at http://www.opsi.gov.uk/acts/acts2008/ukpga_20080024_en_2#pb2-l1g14;
- iii. will not take up a permanent position; and
- iv. will comply with the conditions of their permission to stay and leave the United Kingdom when it expires.

396. **Religious workers:** A certificate of sponsorship may only be assigned in this sub-category if:

- i. The sponsor is vouching that the migrant is qualified to do the job in question and does not intend to take employment except as a visiting religious worker or a religious worker;
- ii. the migrant will only work at the specified location(s), except where working under the supplementary employment provisions;
- iii. the sponsor is giving an undertaking that it accepts the responsibilities of sponsorship in respect of the migrant;
- iv. the sponsor is providing an undertaking to support the migrant through funds and/or accommodation that are sufficient for them to maintain themselves throughout the duration of the certificate of sponsorship;
- v. the sponsor is confirming that the migrant is not displacing or denying an employment opportunity to a suitably qualified member of the resident labour force; and

vi. the sponsor is confirming that the migrant will comply with the conditions of their permission to stay and leave the United Kingdom when it expires.

397. **Government authorised exchange:** To assign a certificate of sponsorship in this sub-category, the overarching body must vouch that the migrant:

- i. is seeking entry to work or train temporarily in the United Kingdom through an approved exchange scheme;
- ii. is not intending to establish themselves in business in the United Kingdom; and
- iii. meets the requirements of the individual exchange scheme.

398. **International agreement:** A sponsor that assigns a certificate of sponsorship to private servants in diplomatic households, is guaranteeing that the migrant:

- i. is aged 18 or over;
- ii. will be employed as a private servant in the household of:
 - a. a member of staff of a diplomatic or consular mission who has diplomatic privileges and immunity as defined by the Vienna Convention on Diplomatic Relations; or
 - b. an official employed by an international organisation who enjoys certain privileges and immunities under United Kingdom or international law;
- iii. intends to work full-time in domestic employment;
- iv. will not take up any other form of employment for that sponsor other than as a private servant in the specified household; and
- v. will leave the United Kingdom when their permission to stay has expired.

399. A sponsor that assigns a certificate of sponsorship to employees of overseas governments and international organisations, is guaranteeing that the migrant will:

- i. be under a contract of employment with the overseas government or international organisation;
- ii. not take up any employment for the sponsor other than that for which a certificate of sponsorship was assigned; and
- iii. not change to a different category of worker within the international agreements sub-category after entering the United Kingdom.

400. A sponsor that assigns a certificate of sponsorship to migrants under GATS or other international agreements, is guaranteeing that the migrant:

- i. works for an employer or organisation, or is a national of a country that:
 - a. is a member of the World Trade organisation; or
 - b. has a bilateral agreement with the United Kingdom or the European Union; or
 - c. is a member of the European Union;
- ii. will be engaged in work that meets the terms and conditions of the relevant international agreement; and
- iii. where relevant, works for the employer that was awarded the contract or will provide services to the United Kingdom client.

Compliance with duties

401. If the sponsor fails to comply with any of its duties, it may be downgraded to a B-rating or have its licence withdrawn.

Concerns or queries about duties

402. Sponsors should raise any queries they have about their duties as sponsors or those of their representatives with us. They will be supported by our regional teams of visiting officers who will provide advice and act as a general point of contact. Sponsors who are employers may wish to be aware of the Employer Checking Service offered by us which is being developed to help identify whether a migrant is permitted to work in the United Kingdom. Information on the service can be found on our website at <http://ukba.homeoffice.gov.uk/employers/employersupport/ecs/>

WHAT DOCUMENTS MUST OUR ORGANISATION KEEP NOW THAT WE HAVE A SPONSOR LICENCE?

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

404. There is no prescribed method for storing the documents, but the sponsor must be able to make them available to us on request.

405. Sponsors should also see our guidance on preventing illegal working, which gives details of specific documents they must keep and the format in which they must be kept. Sponsors have responsibilities for this under regulations made under section 15 of the Immigration, Asylum and Nationality Act 2006. The guidance is on our website at: <http://ukba.homeoffice.gov.uk/employers/preventingillegalworking/>

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

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

408. Sponsors must ensure that all documents are kept according to the requirements of the Data Protection Act. More information on data protection in an employment context is on the website of the Information Commissioner's Office at: http://www.ico.gov.uk/Home/for_organisations/topic_specific_guides/employment.aspx

HOW WILL UK BORDER AGENCY CHECK THAT OUR ORGANISATION IS COMPLYING WITH ITS SPONSOR DUTIES?

409. We may carry out visiting officer checks before a decision on the sponsorship application has been made. We may also conduct checks after the decision is made. The purpose of such checks is to make sure that the information given on the sponsorship application is accurate. We will check that:

- i. the information given about the sponsor is accurate and complete;

- ii. the sponsor is able to offer employment;
 - iii. the organisation is genuine and is trading or operating lawfully in the United Kingdom;
 - iv. there are no reasons to believe that the prospective or existing sponsor represents a threat to immigration control; and
 - v. the organisation is committed to complying or is complying with the duties of sponsorship.
410. The organisation agrees to co-operate with these checks when it submits the sponsor online application.

411. We may choose to check organisations at random. If we check an organisation it does not necessarily mean we have any doubts about it. We may make these checks at any time during the application process or during the validity of the licence.

What happens during a check?

412. Our visiting officers carry out the checks. If they plan to visit, they usually, though not always, contact the sponsor to arrange a mutually convenient time.

413. The visiting officer will then gather material to support the information provided on the online application. He/she may also wish to speak to migrant workers, colleagues and managers involved in the recruitment of migrant workers.

414. If we doubt any aspect of the application, we will make further checks, which may involve a visit to the premises to ensure that the organisation is capable of meeting the duties of a sponsor.

415. We may also do follow-up checks on licensed sponsors. We may make a check by telephone, in person or by letter and will ask for material to support the information the sponsor gave at the time of the application. This is to verify that the information provided on the online application was a full and accurate description of the organisation and that the duties are being met.

416. The officer or any third party working on our behalf, visiting a sponsor's premises will have official UK Border Agency identification. If a sponsor doubts that the official is genuine, it should contact us by telephone on 0114 207 2900 or by email at SponsorLicensingEnquiries@ukba.gsi.gov.uk.

What happens after a check?

417. If we have carried out a check before making a decision on your application, visiting officers will report their findings to the Sponsor Licensing Unit.

418. The Sponsor Licensing Unit will then make the decision on the application using all of the information provided and will notify the prospective sponsor of the outcome.

419. If we have already approved the application, the Sponsor Licensing Unit will write to the sponsor to let it know the outcome of the check.

Discrepancies or problems discovered during checks

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

421. If there are differences between what the sponsor told us and what our visiting officer finds during a check and we find these before a decision has been made on your application,

the Sponsor Licensing Unit will let the prospective sponsor know whether it requires more information before making its decision on the application.

422. If we find differences on the application after a decision has already been made and the migrant worker has taken up post, the visiting officer will work with the sponsor to help the organisation find ways to meet its duties.

423. This may take the form of downgrading the sponsor from an A-rating to a B-rating and giving the sponsor an action plan it must carry out within a certain time to return it to an A-rating. If the visiting officer recommends downgrading the sponsor from an A-rating to a B-rating, and the Sponsor Licensing Unit agrees, the sponsor will be given 28 calendar days to give us its views and any new evidence before we make a decision.

424. However, there may be occasions when we find evidence that a sponsor or representative has knowingly deceived us, or when we cannot verify the statements made on the application. In these cases the visiting officer will make recommendations to the Sponsor Licensing Unit and the Sponsor Licensing Unit has the right to remove the sponsor from the register and therefore cut short the permission that any migrant workers have to remain in the United Kingdom. We will inform the sponsor of our proposed action in writing and give it 28 calendar days to give us its views and any new evidence before we make a decision.

425. Where appropriate, we may prosecute sponsors (or representatives) under the relevant immigration rules or other legislation. If a sponsor or representative has been shown to have attempted deception, we reserve the right to refuse future applications involving the same sponsor or representative.

Allegations of abuse of the sponsorship arrangements

426. A sponsor that uses deception to obtain a licence may be committing a criminal offence. The visiting officer will consider information about abuse of the sponsorship arrangements and investigate and, if appropriate, inform the relevant authorities of his/her findings.

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

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

WHAT WILL HAPPEN IF OUR ORGANISATION DOESN'T COMPLY WITH ITS SPONSOR DUTIES?

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

430. We have therefore introduced measures to ensure that we enforce sponsors' duties and identify dishonest or incompetent sponsors early and withdraw their licences and punish them. As well as any enforcement action we may take against sponsors we find breaching their duties, we may also issue a civil penalty if they have broken the rules on illegal working. More information on the penalties for employing illegal workers is on our website at <http://ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/currentguidanceandcodes/summaryguidance0208.pdf?view=Binary>

Civil penalties for illegal working: Consequences of employing migrants illegally

431. When migrants work in the United Kingdom when they have no permission to do so, we take this very seriously and impose a range of penalties on those who employ people illegally. Sponsors must therefore make sure that their migrants who are not settled in United Kingdom are entitled to work for them.

432. Our visiting officers are fully trained in identifying and investigating illegal working and may issue civil penalties or refer cases for prosecution where appropriate. Sponsors must therefore comply with the conditions of their licences and only employ people who are legally allowed to work in the United Kingdom.

433. The government's action plan for preventing illegal working sets out a range of penalties. If we find sponsors are in breach of their duties we may visit their premises to help them to comply with the law. More information on the penalties for employing illegal workers is on our website at <http://ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/currentguidanceandcodes/summaryguidance0208.pdf?view=Binary>

434. Sponsors may face any of the following penalties:

- **written warning for employing an illegal worker**, followed by close attention from our enforcement and compliance teams;
- **being downgraded on the sponsorship register**. Sponsors' ratings are published on our website, and prospective migrants will be able to see them. A B-rating will involve a detailed action plan of measures that the employer must comply with;
- **licence cancelled and removed from the sponsorship register**, so an employer is unable to bring any migrant worker to the United Kingdom or keep any existing migrant;
- **served with an on-the-spot fine** (known legally as a civil penalty) – if we find the employer is employing an illegal migrant worker, because of negligent recruitment practices we may issue him/her with a civil penalty for each illegal worker (under section 15 of the Immigration, Asylum and Nationality Act 2006). A sliding scale allows heavier penalties for repeat offenders;
- **prosecuted for having in his/her possession or under his/her control without reasonable excuse an identity document that is false or improperly obtained or that belongs to someone else**, which may result in an employer being imprisoned for up to two years and/or receiving an unlimited fine (under section 25 of the Identity Cards Act 2006);
- **prosecuted for knowingly employing an illegal migrant worker** – employers could be imprisoned for up to two years and/or receive an unlimited fine (under section 21 of the Immigration, Asylum and Nationality Act 2006);
- **disbarred as a company director or officer as a result of prosecution** – employers convicted of knowingly employing an illegal migrant worker could be disqualified from forming or managing a company (under section 2 of the Company Directors Disqualification Act 1986);
- **prosecuted for facilitation or trafficking** – employers could be imprisoned for up to 14 years and/or receive an unlimited fine (under section 25 of the Immigration Act 1971, as amended by section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004).

435. Employers found to be knowingly employing illegal migrant workers face tough penalties

including an unlimited fine and/or a maximum of two years imprisonment. (This is under the Immigration, Asylum and Nationality Act 2006). We have a system of civil penalties for employers who employ illegal migrant workers because their recruitment and employment practices are negligent, or not careful enough. Employers can protect themselves from facing these fines by carrying out specific document checks when recruiting a new member of staff. Employers should also make further checks on documents at specified intervals when an employee has a time limit on his/her limited leave to enter or remain in the United Kingdom.

436. If a sponsor has breached its sponsorship duties or committed offences under civil penalties legislation and is also regulated by the Gangmasters Licensing Authority (GLA), the OISC or another government body, we will inform that body so that it can consider appropriate action.

Downgrading to a B-rating

437. Where we believe a sponsor has not been complying with its duties, has been dishonest in dealing with us or poses a threat to immigration control, we may withdraw its licence or downgrade it to a B-rating. We will give the sponsor an opportunity to explain its case to us before taking any action.

Circumstances in which we will downgrade an A-rated sponsor to a B-rating

438. We will downgrade a sponsor if:

- we issue it with a civil penalty for an “offence” listed in Appendix C, unless we withdrew the penalty or it was cancelled on appeal. However, if the organisation was issued with a maximum civil penalty, we will refuse its application or withdraw its licence; and/or
- the sponsor has certified that a migrant will not claim state benefits, and that migrant then does claim benefits, with the sponsor’s knowledge.

Circumstances in which we may downgrade an A-rated Sponsor to a B-rating

439. We will do this if the sponsor, or another relevant person, has been convicted of serious offences to do with how it runs its business and this makes us doubt its suitability as a sponsor (such as a conviction under the National Minimum Wage Act or for benefit fraud). We do not take into account convictions that are spent under the provisions of the Rehabilitation of Offenders Act 1974. (Convictions may become ‘spent’ after specified periods of time from the date of conviction if there are no further convictions during that time. Spent convictions are disregarded for certain purposes.)

440. In the circumstances above, we will take into account, among other things, how serious the offence was, the penalty the court imposed and, if the offence was committed by an individual member of staff, any action the sponsor took against that person.

441. We may also downgrade an A-rated sponsor if;

- they assign a certificate of sponsorship indicating that the vacancy was in a shortage occupation, when it was not; and/or
- any of their Level 1 or level 2 users disclose their sponsorship management system password to another person;

Suspending a licence

442. If we have reason to believe that a sponsor is seriously breaching its duties and poses a major threat to immigration control (for example, assigning certificates of sponsorship or issuing visa letters to migrants who do not qualify to come to the United Kingdom), we may suspend its licence while we follow our procedures. This will include removing the sponsor's entry from the public version of the register of sponsors on our website. A Tier 2 or Tier 5 sponsor will not be able to assign any certificates of sponsorship while it is suspended. All sponsors must continue to comply with all of their sponsor duties throughout the period of suspension.

443. If a sponsor is suspended it is suspended in all the tiers, categories and sub-categories in which it is registered.

444. If we decide to suspend a sponsor, we remove the sponsor's entry from the public version of the register of sponsors during the suspension period.

445. If we find that a sponsor has assigned a certificate of sponsorship whilst the sponsor was suspended, we will take further action against the sponsor.

446. Migrants who are being sponsored at the time of the suspension will not be affected, unless, when we finish considering the case, we decide to withdraw the sponsor's licence.

447. We will lift the suspension and reinstate the sponsor's entry on the public version of the register of sponsors on our website if we decide not to withdraw the sponsor's licence.

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

448. Unless withdrawal of a licence is mandatory, we will take all the facts of the case into account when deciding what action to take against a sponsor under one or more of the above circumstances. No two cases will be alike, so we cannot list all the circumstances in which we will withdraw a licence, downgrade it or take no action. We will consider:

- i. the seriousness of the sponsor's actions and the harm done. We will treat seriously anything that the sponsor has done or failed to do that has resulted in migrants going missing;
- ii. whether the sponsor's actions are part of a consistent or sustained record of non-compliance or poor compliance or are a single event;
- iii. any action the sponsor has taken to minimise the consequences of what it has done or failed to do. For example, it may help if it tells us quickly that migrants it is sponsoring have stopped coming to work. If an individual member of its staff is responsible for the problem, we will take into account any action it has taken against that person. For example, it should tell us if it has dismissed the person, moved him/her to another area of work, or retrained him/her, as appropriate. However, we will treat the situation more seriously if we are sure the sponsor was involved in the actions of its staff or deliberately ignored what they were doing;
- iv. any civil penalties the sponsor is issued with for an "offence" listed in Appendix C unless we withdrew the penalty or it was cancelled on appeal.

449. Following any action a visiting officer may take that leads to recommendations to withdraw a sponsor's licence or downgrade a sponsor, we will write to the sponsor to tell it what action we propose to take and why.

450. The sponsor will have 28 calendar days to respond in writing to our letter. We may extend this period at the sponsor's request if we are satisfied that there are exceptional circumstances.

The sponsor may make any written statements it thinks are necessary to respond, including sending evidence. However, we do not hold oral hearings.

451. The Sponsor Licence Unit will consider response from a sponsor and may ask the relevant visiting officer for information. We will notify the sponsor of our decision within 14 calendar days of receiving its response.

452. If the sponsor's response is complex or we require further advice before making a final decision, the reviewing officer has the right to ask for more advice before making the final decision.

453. If we do not receive a response from the sponsor within the time allowed, the Sponsor Licensing Unit will take the appropriate action recommended by the visiting officer and notify the sponsor of its decision in writing.

454. Any decision to downgrade the sponsor or to withdraw its licence takes effect from the date of the letter we send the sponsor to tell it about our decision. We send these letters by recorded delivery.

CAN OUR ORGANISATION'S LICENCE BE WITHDRAWN AFTER IT HAS BEEN GRANTED?

455. There are certain circumstances which could lead to a sponsor's licence being withdrawn. If a sponsor's licence is withdrawn it will be withdrawn from all the tiers, categories and sub-categories in which it is registered.

Circumstances in which we will withdraw a sponsor's licence

456. A sponsor will lose its licence if:

- i. it stops trading or operating for any reason including insolvency;
- ii. it stops being accredited or registered with any body that it needs to be accredited or registered with in order to obtain a licence. For example, we will withdraw an education provider's licence if it loses its accreditation with the appropriate accrediting body;
- iii. it, or another relevant person, is issued with a civil penalty for employing one or more illegal workers (under Section 15 of the Immigration, Asylum and Nationality Act 2006), and the fine imposed for at least one of those workers is set at the **maximum** amount (currently £10,000), unless we withdraw or reduce the penalty or it is cancelled or reduced on appeal;
- iv. it has been B-rated and has not complied with an action plan for a period of 12 months or more;
- v. it is a B-rated sponsor and has assigned a certificate of sponsorship indicating that the vacancy was in a shortage occupation, when it was not.

Circumstances in which we will normally withdraw a sponsor's licence

457. A sponsor will normally lose its licence if:

- i. it, or another relevant person, is convicted of one of the following offences (unless the conviction is spent under the Rehabilitation of Offenders Act 1974):
 - a. any offence under the Immigration Act 1971; the Immigration Act 1988; the Asylum and Immigration Appeals Act 1993; the Immigration and Asylum Act 1999; the Nationality, Immigration and Asylum Act 2002; the Immigration, Asylum and Nationality Act 2006; or the UK Borders Act 2007;
 - b. trafficking for sexual exploitation; or

- c. any other offence which, in our opinion, indicates that he/she poses a risk to immigration control, for example, offences involving dishonesty or deception, including any of the offences listed in Appendix B. Any other unspent convictions could also lead to an application being refused; or
- ii. it or another relevant person is dishonest in any dealings with us. This includes, among other things:
 - a. making false statements, or failing to disclose any essential information, when applying for a sponsor licence; or
 - b. making false statements, or failing to disclose any essential information, when assigning a certificate of sponsorship or issuing a visa letter (for example falsely claiming to have complied with the resident labour market test); or
- iii. it employs a migrant in a job that would not satisfy the appropriate skill level, i.e. in Tier 2 a skill level equivalent to S/NVQ level 3 or above; or
- iv. it fails to pay a migrant in the Tier 2 (skilled workers) category at least the salary (and/or allowances or benefits) specified on the certificate of sponsorship; or
- v. it, or another relevant person becomes legally prohibited from acting as a company director; or
- vi. it, or another relevant person becomes an un-discharged bankrupt; or
- vii. it or another relevant person has been issued with a civil penalty for an “offence” listed in Appendix C, and has failed to pay it within the time allowed (unless we withdrew the penalty or it was cancelled on appeal); or
- viii. it fails to comply with an action plan we set.

458. We cannot define precisely in which exceptional circumstances we may **not** withdraw a sponsor’s licence when one of the above circumstances applies. However, we regard this seriously and would look for evidence that the sponsor was either not responsible for what happened or, if it was, took prompt and effective action to remedy the situation when it came to light. For example:

- i. one of the sponsor’s employees was wholly responsible for the dishonesty and that person was dismissed when it came to light; or
- ii. a migrant was paid the wrong salary because of a problem with the sponsor’s payroll system but this was corrected as soon as possible.

459. If one of the above circumstances applies and we do not withdraw the licence, we are likely to downgrade the sponsor to a B-rating.

Circumstances in which we may withdraw a sponsor’s licence

460. We may withdraw a sponsor’s licence if:

- i. it fails to comply with any of its duties;
- ii. as a result of information available to our visiting officers, we are not satisfied that the sponsor is using the processes or procedures necessary to fully comply with its duties;
- iii. it or another relevant person is convicted of an offence that we consider to be serious. We do not take into account convictions that are spent under the Rehabilitation of Offenders Act 1974;

- iv. we find that migrants that it has sponsored have not complied with the conditions of their permission to stay in the United Kingdom and the sponsor has not been following good practice guidance set out by us or a sector body;
- v. it or any organisation that it, or another relevant person, has been involved with in a similar role has its authorisation removed by the Office of the Immigration Services Commissioner (OISC) under the Immigration and Asylum Act 1999. (This applies to individuals or organisations that provide immigration advice or services.)
- vi. it is a B-rated sponsor and any of their level 1 or level 2 users disclose their sponsorship management system password to another person.

461. If we decide not to withdraw the sponsor's licence in one or more of the above circumstances, we may downgrade it to a B-rating.

WHAT HAPPENS TO OUR SPONSORED MIGRANTS IF OUR ORGANISATION'S LICENCE IS SUSPENDED?

462. If a migrant applies for leave and his/her certificate of sponsorship was assigned during a period that his/her sponsor was suspended, we will refuse the application for leave on the basis that the certificate of sponsorship is invalid.

463. When a sponsor's licence has been suspended we will not consider any applications for entry clearance or leave to remain made by any migrants to whom the sponsor has assigned a certificate of sponsorship, until we have made a decision on the sponsor's status.

464. If a migrant has already been given entry clearance on the basis of a certificate of sponsorship assigned by that sponsor but he/she has not yet travelled to the United Kingdom, they will be allowed to enter and start working for the sponsor. However, we advise all migrants to check the status of their sponsor's licence before they travel and we recommend that migrants do not travel to the United Kingdom if their sponsor's licence has been suspended.

465. During the time that a sponsor's response is being prepared or considered, migrants who have been assigned a certificate of sponsorship by the sponsor and are already in the United Kingdom are not told about the suspension.

WHAT HAPPENS TO OUR SPONSORED MIGRANTS IF OUR ORGANISATION'S LICENCE IS WITHDRAWN?

466. When we withdraw a sponsor's licence, we will:

- i. Immediately end (curtail) the permission to stay in the United Kingdom of any migrants whom we believe were actively involved (complicit) in any dishonesty by the former sponsor (for example, if the migrant agreed that the sponsor would arrange a non-existent job for him/her so he/she could come to the United Kingdom); and
- ii. reduce the length of the permission to stay in the United Kingdom of any other migrants (those who were not actively involved) to 60 calendar days, to give them a chance to find a new sponsor. (If the migrant has less than six months of his/her leave remaining, we will not curtail their leave.)

467. In the first case above, the migrant will have to leave the United Kingdom or face enforced removal. In the second case above, he/she will also have to leave or face enforced removal if, at the end of the 60 calendar days, he/she has not found a new sponsor.

468. We will take action against any migrant who remains in the United Kingdom after his/her permission to stay here has expired. This may result in migrants being detained and forcibly removed from the country. Any applications he/she makes to come to the United Kingdom within

the next 10 years may also be refused.

469. When a sponsor has its licence withdrawn, any certificate of sponsorship it has assigned automatically becomes invalid. This means that any application for entry clearance or leave to remain made on the basis of such a certificate of sponsorship will automatically be refused.

470. Where the migrant has already been granted entry clearance when we withdraw his or her sponsor's licence, the entry clearance will be cancelled under paragraph 30A (ii) of the immigration rules, if he or she has not yet travelled to the United Kingdom. If the migrant has travelled to the United Kingdom, he or she will be refused entry to the country under paragraph 321(ii) of the immigration rules.

SURRENDERING A LICENCE

471. A licence holder that no longer wishes to sponsor migrants, and has no sponsored migrants currently working for it, may surrender its licence. If a sponsor wishes to surrender its licence, it should do so using the sponsor change of circumstances form which can be found on our website at <http://www.bia.homeoffice.gov.uk/sitecontent/applicationforms/pbs/sponsorcircumstancesform>. We will then remove the organisation from the register of licensed sponsors, and it may apply for a new licence at any time.

472. The sponsor may choose to surrender its licence in all the tiers, categories and sub-categories it is licensed at the same time or it may choose to surrender part of its licence in certain tiers, categories or sub-categories. The sponsor must clearly indicate which part it is surrendering when submitting the change of circumstances.

473. When the sponsor makes this request, it must provide evidence that it no longer has responsibility for any migrants whom it may have previously sponsored in that tier, category or sub-category. If it does have any such migrants, we will withdraw the sponsor's licence and remove the migrants' permission to stay in the United Kingdom and may remove the migrants from the country.

IF OUR ORGANISATION'S LICENSE IS WITHDRAWN OR SURRENDERED, CAN WE APPLY AGAIN?

474. The sponsor can apply to rejoin the register if it previously surrendered a licence or if its licence was withdrawn because of an error or failure to do something that the sponsor can show it has corrected, for example, failing to maintain the sponsorship management system as directed in the sponsor duties.

475. If we have refused a previous application because a civil penalty has been issued to the sponsor in the last 6 months, for the maximum amount (currently £10,000), the prospective sponsor should not reapply until six months after the relevant civil penalty was issued. If it applies again before this date, we will refuse the application.

476. When a sponsor reapplies after it has surrendered its previous licence, or after we have withdrawn its previous licence, we will treat it as a fresh application. The sponsor will have to pay the appropriate fee and produce all relevant documents appropriate to the tier, category, or sub-category it is applying for.

RENEWING A LICENCE

477. A licence lasts for **four years**, unless we withdraw it or the sponsor surrenders it before then. The four years will run from the date on which the licence was issued.

478. If a sponsor has been issued with a licence and subsequently applies for an additional tier, category or sub-category, the expiry date of the original licence will apply to all additional

tiers.

479. If a sponsor's licence expires at the end of this period and is not renewed, the organisation will not be able to continue to act as a sponsor or assign any certificates of sponsorship and any existing migrants' leave will be curtailed.

480. A sponsor should therefore apply to renew its licence before it expires. We will remind it of the need to renew before the licence expires, but it is the sponsor's responsibility to renew. We will not accept late applications for renewal, and the sponsor will need to re-apply for a licence.

481. A sponsor that has sponsored migrants working for it will need to renew its licence for as long as it wishes to continue employing them. This applies even if it does not propose to sponsor any new migrants.

482. A sponsor must renew its licence every four years to satisfy us that it is still operating and still wishes to be a sponsor. We will deal with applications for renewal in the same way as we deal with applications for a new licence at the time of the application for renewal. The sponsor will not usually need to provide the documents it sent with its initial application for a licence. However, it will normally need to provide its previous year's accounts (where relevant) to show that it is still operating lawfully in the United Kingdom. We may ask for other documents if the circumstances require it.

483. Provided the sponsor applies to renew its licence before it has expired, it will be able to continue acting as a sponsor (for example by assigning certificates of sponsorship and keeping current migrants) until we have made a decision on its renewal application.

WHAT HAPPENS IF OUR ORGANISATION'S CIRCUMSTANCES CHANGE?

484. As part of its duties, a sponsor must notify us of any changes to its details, for example if they want to change their key contact or authorising officer, or if they change address.

485. The sponsor or its representative must access the sponsorship management system and complete the necessary details. We reserve the right to ask for any further details or clarifications necessary.

486. The sponsorship management system should be used to tell us about any changes to the organisation's details, including:

- changes to the organisation's address;
- change of key contact or level 1 user;
- organisation restructure details;
- an update on criminal convictions;
- changes to accreditation or registration status;
- any change to the number of certificates of sponsorship required for Tier 2 and/or Tier 5 sponsors;

487. The change of circumstances form should be used to report the following changes:

- change of authorising officer

- replace the level 1 user when there is no other SMS user who can do this using the sponsorship management system. (For example when the previous level 1 user was the only SMS user and that person has left their organisation.)
- replace the key contact when there is no other SMS user who can do this using the sponsorship management system. (For example when the previous key contact was the only SMS user and that person has left their organisation.)
- appoint or remove a representative
- withdraw an application for a sponsor licence
- surrender a sponsor licence.

488. The change of circumstances form can be found on our website at <http://ukba.homeoffice.gov.uk>.

WHAT HAPPENS IF OUR ORGANISATION IS INVOLVED IN A MERGER OR TAKEOVER?

489. If a sponsor organisation (or part of an organisation) transfers to another organisation, along with its sponsored employees or students, the new organisation must have a sponsor licence when it takes over, or it must apply for one within 28 days of the takeover happening and the old organisation must inform us of the change via the sponsorship management system. This applies, for example, when the assets of an organisation are bought and its employees transfer to the new organisation under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Further information on TUPE is on the website of the Department for Business, Enterprise and Regulatory Reform at <http://www.berr.gov.uk/employment/trade-union-rights/tupe/page16289.html>

490. If an organisation that is a registered sponsor is taken over by a company that is not a registered sponsor, the following must happen:

- the existing sponsor must tell us about the takeover within 28 calendar days of it happening; and
- the new organisation must apply for a sponsor licence within 28 calendar days of the takeover happening. (If it does not, we are likely to reduce to 60 calendar days, the permission to stay in the United Kingdom for all the sponsored migrants who have transferred to the new organisation, to allow them time to find a new sponsor. This is because they will no longer be working for, or studying with a licensed sponsor.)

491. If an organisation that is not a registered sponsor is taken over by a company that is a registered sponsor, the existing sponsor must tell us about the takeover within 28 calendar days of it happening.

492. If one registered sponsor organisation is taken over by another registered sponsor organisation, the following must happen;

- the sponsor organisation which has been taken over must tell us about the change and tell us who has taken responsibility for their respective migrants, within 28 calendar days of it happening; and
- the sponsor organisation which has taken over the other sponsor organisation must tell us about the change within 28 calendar days of it happening, and inform us of all the migrants that they have taken over responsibility for.

493. It is the sponsor's duty to report a takeover or merger and failure to do so will result in appropriate action being taken by us.

494. Any organisation involved in a takeover may wish to check all records kept for any existing migrants to ensure they are able to fulfil their sponsorship duties.

AMENDMENTS TO THE SPONSORSHIP POLICY

495. This guidance is available to download at any time from our website at <http://ukba.homeoffice.gov.uk/employers/>. We may amend it at any time. Sponsors and other interested parties should check the website regularly for the most up-to-date version. We will tell sponsors about any changes to their duties by emailing the authorising officer.

496. Where possible, we will consult sponsors through our established stakeholder taskforces before making any major changes. However, we may occasionally need to amend the guidance at short notice to deal with situations that have arisen, which means that we may not be able to consult in those cases.

COMPLAINTS

497. A sponsor that is dissatisfied with any aspect of our service can make use of our complaints procedure. More information about this is on our website at <http://ukba.homeoffice.gov.uk/contact/makingacomplaint/>.

Postgraduate Doctors and Dentist and specialist training

A resident labour market test does not apply if the migrant has already started speciality training as a doctor or dentist in the United Kingdom and the migrant is applying to continue that training or return to that training after an out-of-programme experience gained out of the United Kingdom. The sponsor must confirm on the certificate of sponsorship that an exception to the resident labour market test applies.

If the postgraduate doctor or dentist undertaking specialist training wishes to undertake their out-of-programme experience in the United Kingdom, then the organisation providing the out-of-programme experience will need to become the new sponsor. The current sponsor (usually the NHS Trust) must notify the UK Border Agency that they no longer have sponsorship responsibilities for the doctor or dentist. The new sponsor should assign a new certificate of sponsorship and satisfy the resident labour market test.

When the out-of-programme experience in the United Kingdom has been completed, the doctor or dentist may need to return to his/her specialist training. The sponsor will need to assign a new certificate of sponsorship but will not need to undertake a resident labour market test, as the doctor or dentist is returning to their specialist training programme on which they already have a place. The sponsor should confirm on the certificate of sponsorship that an exception to the resident labour market test applies. The organisation which sponsored the postgraduate doctor or dentist whilst the migrant did their out-of-programme experience will need to notify the UK Border Agency that they are no longer sponsoring the doctor or dentist.

When the postgraduate doctor or dentist is accepted for speciality training he/she is given a National Identity Number (NIN). The sponsor must produce this on request. This ensures that the doctor or dentist was undertaking speciality training before the out-of-programme experience.