



POINTS BASED SYSTEM

Guidance for government departments
about government authorised exchange
schemes under Tier 5 (Temporary
Workers)

October 2009



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INTRODUCTION

On 29 February 2008, a new immigration system was launched to ensure that only those with the right skills or the right contribution will be able to come to the United Kingdom to work and study. The points-based system consists of five tiers:

Tier 1	Highly skilled workers, for example scientists and entrepreneurs	Launched 29 February 2008
Tier 2	Skilled workers with a job offer, for example teachers and nurses	Launched 27 November 2008
Tier 3	Low skilled workers filling specific temporary labour shortages, for example construction workers for a particular project	Currently suspended
Tier 4	Students	Launched 31 March 2009
Tier 5	Youth mobility and temporary workers for example musicians coming to play in a concert	Launched 27 November 2008

In May 2008, after securing clearance from the Border and Migration Sub-Committee of the Ministerial Committee on Domestic Affairs (DA(BM)) we published a Statement of Intent on Tier 5, entitled “*Temporary workers and youth mobility under the points-based system*”, available on our website at:

www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdocs

This tier includes the Government Authorised Exchange category which allows people to come to the United Kingdom through approved schemes that aim to share knowledge, experience and best practice and experience the social and cultural life of the United Kingdom.

This is a temporary route and participants in any scheme are expected to return home to apply the knowledge and skills they have developed during their time in the United Kingdom.

Under the previous system, the Training and Work Experience Scheme (TWES) arrangements enabled companies to take people from outside the European Economic Area to undertake work-based training for a professional or specialist qualification, or a period of work experience.

In moving away from many similar “experience”-type routes to a new, reformed framework, a conscious decision was taken to base the new approach on the British Council-type model rather than the individual employer-led model of TWES.

This document gives further information to governing departments about the Government Authorised Exchange category and how requests for approval of new schemes should be handled.

WHAT IS THE GOVERNMENT AUTHORISED EXCHANGE CATEGORY?

Government Authorised Exchange

The Government Authorised Exchange category is for people coming to the United Kingdom through approved schemes that aim to share knowledge, experience and best practice and experience the social and cultural life of the United Kingdom. This category must not be used to fill job vacancies or to bring unskilled labour to the United Kingdom.

The sponsor must be an overarching body who manages the exchange scheme. This overarching body must have the support of a United Kingdom government department or one of its executive agencies.

Individual employers and organisations will not be allowed to sponsor migrants in this category, even if they are licensed as sponsors under other tiers or other categories of Tier 5. The only exceptions to this are if the migrant is coming to the United Kingdom to work for a government department or as a sponsored researcher where the higher education institution they are coming to work at will be the sponsor.

Any work undertaken must be skilled which means it must be equivalent to N/SVQ level 3 or above. This is unless the migrant is taking part in the scheme set up as part of the European Union's lifelong learning programme, where they can do vocational education and training at a lower skill level.

Schemes under Government Authorised Exchange

With the development of the Points Based System, there has been no intention to directly replace each route that existed within the previous system. However, the five tier framework broadly provides routes of entry to allow the continuation of activities beneficial to the United Kingdom.

Under Government Authorised Exchange, it is envisaged that migrants will be coming to the United Kingdom to work, albeit to gain experience, train and to share knowledge.

As such, the Government agreed that additional safeguards needed to be built into the framework of the Government Authorised Exchange category, to ensure that this route is not abused by those who may wish to circumnavigate the Tier 2 route and to prevent a plethora of individual employer-led schemes.

Therefore the policy framework for Government Authorised Exchange requires a government department to demonstrate support of a particular scheme, and an overarching sponsor must be identified to run a particular scheme as individual employers will not be able to become sponsors in their own right under Government Authorised Exchange.

ROLE OF GOVERNMENT DEPARTMENTS

Departmental support of a scheme

Any proposed exchange scheme and the overarching body must be supported by a United Kingdom government department or one of its executive agencies.

When deciding which exchange schemes to support, government departments (or their executive agencies) should consider whether:

- the scheme satisfies all the requirements;
- the scheme will help the department to deliver one or more of its public service agreement obligations as set out in the specific delivery agreement for the relevant public service agreement or its wider departmental objectives;
- the overarching body is capable of meeting its sponsor duties;
- the scheme does 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;
- 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;
- the employment conforms with all relevant United Kingdom and European legislation, such as the National Minimum Wage Act and the EC working hours directives;
- the scheme includes measures that protect it from being abused.

Where matters are devolved each Devolved Administration will be required to separately support the scheme.

Where matters are not devolved the letter of support should confirm that the scheme covers all of the United Kingdom.

Liability to enforcement costs

Initially, when supporting a scheme the government department/agency was required to confirm that if significant numbers of migrants under the exchange scheme break the immigration rules, the department/agency would make an appropriate and proportionate contribution to UK Border Agency's enforcement costs. However, this requirement has now been removed.

SPONSORS

Who can be the sponsor?

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

Instead, there will need to be an overarching body to administer the scheme. This overarching body will be the sponsor.

The only exceptions to this are where an educational institution is recruiting a sponsored researcher or a government department wishes to operate a scheme.

Sponsored researchers

A scheme for sponsored researchers has been approved by the former Department for Innovation, Universities and Skills (DIUS), so higher education institutions will be able to recruit sponsored researchers under Government Authorised Exchange. Higher education institutions do not need to get individual support from the former DIUS to operate a scheme for sponsored researchers.

To gain a sponsor licence, higher education institutions must either be audited by the Quality Assurance Agency (QAA) or hold valid accreditation with one of our approved accreditation bodies. We will accept the audit or accreditation in lieu of the overarching sponsor requirements for Government Authorised Exchange.

What if there is no clear sponsor?

We are aware that a number of sectors wish to set schemes up under Government Authorised Exchange and do not have a clearly identifiable sponsor. There are a number of options as to organisations that may be able to take on the role of overarching sponsor for a scheme. These may include:

- **Sector specific trade or representative bodies** that may wish to run a scheme for its members;
- **Private recruitment companies** that may be used to administer a scheme.

Suitability of potential sponsors

The organisation must be able to meet their duties both for overseeing the placements and their sponsor duties. They must have systems in place to ensure that the placements are not abused. This includes systems to keep in contact with both the employer and the migrant.

SPONSORSHIP MANAGEMENT SYSTEM

Sponsor roles

The sponsor must allocate certain responsibilities to members of its staff. There are four roles:

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

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 it will be possible to appoint more than one level 1 user and/or level 2 user if necessary. All of these people must be permanently based in the United Kingdom.

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

Level 1 user

The level 1 user will be required to undertake the sponsor's day-to-day activities by using the sponsorship management system. They will be able to:

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

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:

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

Level 2 user

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:

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

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.

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

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

Government Authorised Exchange Level 2 users

Under Government Authorised Exchange the overarching sponsor can delegate level 2 user access to individual firms who will be employing the migrants participating in a particular scheme.

The overarching sponsor will remain and must be fully aware that it will be liable for any breaches, and that it will face downgrading or removal from the register, even where a breach has occurred as a direct result of a level 2 user's actions or inactions.

The overarching sponsor will not be able to limit the number of Certificates of Sponsorship their level 2 users can assign, so the sponsor will need an agreement/contract of some sort with the level 2 user to ensure compliance.

The UK Border Agency's relationship will be with the overarching sponsor of the scheme and not with the level 2 users, so the overarching sponsor must be able to provide information we require and to demonstrate that it is meeting its sponsor obligations.

Benefits/options of allowing individual employers to become Level 2 users

While an overarching sponsor support are still required, the end employer would be able to assign a Certificate of Sponsorship to the migrant, and also able to report any unauthorised absences, etc directly to UK Border Agency through the Sponsorship Management System, rather than through the overarching body.

There would need to be clear agreements between the overarching sponsor and each Level 2 user, outlining the Level 2 user's duties, the number of Certificates of Sponsorship each Level 2 user will be able to assign, and the consequences of not complying.

To retain more control, it could be written into any agreement that the sponsor must authorise the issue of each Certificate of Sponsorship before the Level 2 user can assign it. It would be up to individual sponsors to assure themselves that employers given Level 2 user access do not jeopardise the running of the scheme.

SCHEME REQUIREMENTS

Requirements for government authorised exchanges

The following gives information on the specific requirements of a proposed government authorised exchange.

Level of the employment

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.

Establishment in business

The migrant must not intend to establish a business in the United Kingdom.

Resident labour

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. They must do work that is additional to the employer's normal staffing requirements.

Length of the stay

The maximum time that leave can be granted is 24 months. Extensions beyond 24 months are not allowed.

Support from Government Departments

The scheme and the overarching body must be supported by a United Kingdom government department or one of its executive agencies.

Security

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

For example, making sure that the sponsor has sufficient links with employers where migrants are placed, that there is a named contact within the employer organisation

responsible for reporting to sponsor, and that there are contracts/agreements with employers on expectations.

Compliance with legislation

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.

Dependants

Their dependants (spouses, civil partners, unmarried partners, same-sex partners and children under 18) will be allowed to work if they are accompanying or joining them in the United Kingdom.

PROCESS

1. If an organisation wishes to set up a government authorised exchange and act as the overarching body they should send the required information to us, the UK Border Agency.
2. We will gather any relevant information currently held about the organisation or the scheme. Where necessary, we will also undertake a pre-licence visit and prepare a report. Once these actions are completed, we will refer the application and the collated information to the relevant government department.
3. You, the relevant government Department/Agency will consider the application and decide whether or not to support the scheme. If you require further information this should be requested directly from the organisation.
4. If you are not willing to support the scheme you should write to the organisation to explain the reasons for this.
5. If you are willing to support the scheme your Accounting Officer or appropriate person with delegated authority should write to the UK Border Agency Chief Executive. You should also write to the organisation to confirm that you are prepared to support the scheme.
6. We will then consider the letter of support and reply. If the scheme is approved you should forward a copy of the approval letter to the organisation.
7. The organisation must then make an online application for a sponsor licence and send in any required documents including a copy of the letter from us.
8. If the licence is approved we will publish details of the scheme on our website.

The above is also show in the diagram in Annex A.

Letter of support

To show that your department/agency supports the scheme, your accounting officer must write a letter to the Chief Executive of the UK Border Agency.

This letter should include the details of the overarching body and the scheme and should confirm:

- which parts of the United Kingdom are covered by the letter of support (where matters are devolved each Devolved Administration will be required to separately support the scheme);
- the exchange scheme satisfies all the requirements;
- the exchange scheme will help the relevant department/agency to deliver one or more of its public service agreement obligations or wider departmental objectives;

- the department/agency is satisfied that the overarching body is capable of meeting its sponsor duties; and,
- if applicable, the department/agency agrees to the overarching sponsor to delegate level 2 user access to individual firms who will be employing the migrants participating in a particular scheme.

Where to send the letter

The letter of support should be sent to: Lin.homer@homeoffice.gsi.gov.uk

Or by post to:

Lin Homer
Chief Executive
2 Marsham Street
London
SW1P 4DF

A copy of the letter should also be sent to: PBSOperationalPolicy@ukba.gsi.gov.uk.

Or by post to:

Points Based System Operational Policy Unit
UK Border Agency
PO Box 3468
Sheffield
S3 8WA

FURTHER INFORMATION

Queries about setting up a government authorised exchange

If you have any questions about setting up a government authorised exchange, email: PBSOperationalPolicy@ukba.gsi.gov.uk.

Sponsor responsibilities

Further information about the responsibilities of sponsors is available on our website at:

<http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/sponsorshipduties/>

Sponsorship guidance

Full guidance for sponsors is available on our website at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/>

ANNEX A

Process flow of requests for new government authorised exchanges.

