



POINTS BASED SYSTEM

Guidance for overarching bodies about establishing a government authorised exchange scheme under Tier 5 (Temporary Workers)

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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

The Government Authorised Exchange category is within the Tier 5 (Temporary Worker) category.

What is the Government Authorised Exchange category

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.

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.

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

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?

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.

The licence

The overarching body must have a licence to sponsor migrants under the points-based system. To get a licence, you must apply online and send your payment and documents to support your application to us. To apply for a licence under Tier 5 (Government Authorised Exchange) the organisation must, among other things, provide a copy of a letter sent from the UKBA to the supporting government department which is approving the exchange scheme.

Certificates of sponsorship

The overarching body will assign certificates of sponsorship to migrants who meet the requirements of the scheme. To assign a certificate of sponsorship the overarching body must vouch that the migrant:

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

Sponsorship duties

Sponsors are expected to take responsibility for making sure that migrants comply with their immigration conditions, by keeping records on each migrant, and reporting any changes to us, such as if they do not turn up for work. If you do not comply with your duties, you can have your licence downgraded to a B rating or withdrawn.

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 (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.

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, departments/agencies will consider whether:

- the scheme satisfies all the requirements;
- the scheme will help the department/agency 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.

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.

HOW TO APPLY

Format of information

You should submit the information in the format shown in Annex A.

Where to send the information

The proposal should be sent by email 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

Confidentiality

All information provided will be treated in confidence. However, the information you send us may be passed to colleagues within the Home Office, the Government, related agencies and third party organisations.

WHAT HAPPENS NEXT?

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 (see Annex A) to the UK Border Agency.
2. We may also undertake a pre-licence visit for your organisation where necessary.
3. We will then refer the application to the relevant government department or executive agency.
4. The government department (or executive agency) will consider the application and decide whether or not to support the scheme.
5. If the government department (or executive agency) is not willing to support the scheme they will write to you.
6. If they are willing to support the scheme they will write to us to confirm this. They will also write to you to confirm this.
7. We will then consider the letter of support and reply to the government department (or executive agency). If the scheme is approved the government department will forward a copy of the approval letter to you.
8. You must then make an online application for a sponsor licence and send in any required documents including a copy of the letter from us.
9. If the licence is approved we will publish details of the scheme on our website.

The Agency reserves the right to contact other authorities or third party organisations in order to verify the information provided to obtain any other information we consider necessary in order to consider the scheme.

Change of circumstances

Organisations should inform us of any changes that may impact on the acceptability of the scheme or the organisation.

Periodic review and compliance

We will undertake periodic reviews of schemes that have been accepted.

You must co-operate with our monitoring of the approved scheme and its participants.

If the organisation is found to be failing to comply with any of its duties within the Points Based System we will meet with you to discuss any issues and agree an action plan to address them.

We reserve the right to remove schemes and organisations from the approved list following discussion with the supporting government department/agency where it is deemed that they no longer meet the requirements.

The sponsor is not the employer, the employer of any migrants placed through a government authorised exchange scheme will still need to meet its employer obligations in relation to prevent illegal working.

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/>

Sponsor management

Potential sponsors (who have not yet submitted an application for a sponsor licence) can ask for further assistance from the Sponsor Management Unit by emailing: sponsor.management@ukba.gsi.gov.uk.

Sponsorship and employers' helpline

For general sponsorship enquiries email: sponsorshipPBSEnquiries@ukba.gsi.gov.uk.

For queries regarding visits to your organisation email: sponsor.visits@ukba.gsi.gov.uk.

ANNEX A

Information to provide

Any person or organisation wishing to make a formal proposal to establish a Government Authorised Exchange must provide the following information:

Name of scheme

Provide the name of the scheme

Name of organisation/overarching body

Provide the name of your organisation to act as the overarching body

Details of organisation

Include

- background information as to the nature of the organisation;
- details of registration/accreditation with any statutory bodies or Government departments or agencies;
- documents to establish your organisation as bona fide, for example annual reports.

Contact details

Provide details for the UK Border Agency and relevant supporting government department/agency to contact your organisation. Include:

- name of contact in the organisation;
- address;
- telephone number;
- email.

Contact details for publication

Details of the scheme and the organisation will be published on the UK Border Agency website. Please provide contact details that can be published. Include:

- organisation name;
- address;
- telephone number;
- fax number;
- email;
- website address.

Overview of the scheme

Details of the scheme, including:

- summary of the aims and objectives of the scheme (this will be published on the UK Border Agency website);
- area of United Kingdom covered – England, Wales, Scotland, Northern Ireland.

Length of the exchange

State the intended length of the exchange; and if exchanges will be for varying periods, indicate the minimum and maximum terms likely to be offered to individual participants.

Level

Confirm the level of work that the participants will undertake.

Full details of the scheme

Give full details of the scheme.

Participating countries

Give details of the likely countries from which participants will come from. If the scheme is available globally, please state this.

Eligible participants

Describe the type of person who will be eligible to participate in the exchange and state any prerequisites that the person must meet.

Expected annual numbers

Indicate the number of inbound foreign and outbound United Kingdom participants likely to be accepted under the exchange each year. If a quota will apply, give details including how often it is to be reviewed.

Reciprocity

Details of any reciprocal exchange, with UK nationals participating overseas.

Selection of participants

Describe how participants, both coming to the United Kingdom and going overseas, will be selected.

Security

Details of measures to protect it from being abused.

Undertakings

You will need to provide confirmation of the following:

- that your organisation will not employ any migrants under the scheme but will only act as overarching body;
- that migrants will not fill any job vacancies in the United Kingdom or that you are bringing in unskilled labour;
- that the migrants will not establish themselves in business;
- that the employment will conform with all relevant United Kingdom and European legislation;
- that you will be able to undertake the sponsorship duties detailed in sponsorship guidance.

Discussions with government departments

Details of any discussions with any government departments or executive agencies and include details of how the scheme might help the government/agency deliver one or more of its public service agreement obligations.

Any other information

Include any other relevant additional information about the exchange scheme.