



## Resident Labour Market Test – Code of practice for workers in film & television under the skilled migrant tier (Tier 2) and the temporary worker tier (Tier 5)

### INTRODUCTION

1. This Code of Practice has been drawn up with representatives of the film and television industry, and has been issued by the United Kingdom Border Agency (UKBA) to supplement the “*Guidance for sponsor applications Tiers 2, 4 and 5 of the points-based system*” ([sponsor guidance](#)) – available on the UKBA website.
2. This is a Code of Practice for sponsors of migrants from outside the EEA who will be working as non-performers in film and TV under Tier 2 or Tier 5 of the UK immigration system. The Code of Practice seeks to fairly balance the commercial interests of film and TV producers with the need to safeguard resident labour in the UK.
3. The introduction of the new Points Based System (PBS) for managing migration creates a number of changes and opportunities for all involved in the creative sectors in the UK.
4. At the heart of the new system is the concept of sponsorship, whereby those who benefit most directly from the contribution migrants make to the UK will be expected to play a bigger part in ensuring the system is not abused. In return, sponsors will have a bigger say over which migrants they wish to sponsor to come to the UK.
5. Prospective sponsors must apply to UKBA supplying specified documents to show that they are eligible to become a sponsor. UKBA will carry out appropriate checks on the prospective sponsor before issuing a sponsor licence. Further information about the licensing process is available in the [sponsor guidance](#).
6. **Tier 2**, the new skilled migrant tier of the PBS, will replace the existing Work Permit system and will enable UKBA-licensed employers to recruit individuals from outside the EEA to fill a vacancy that cannot be filled by a

British or EEA worker – the job must either be on the shortage occupation list or pass the Resident Labour Market Test. Migrants coming to the UK under Tier 2 will be able to stay for up to three years initially, depending on the length of their contract.

7. The Creative & Sporting sub-category of **Tier 5: Temporary Workers** is for those coming to the UK for shorter periods of time (the maximum length of leave in this category is 12 months) as well as for those with lower skills levels and potential earnings who would not qualify under Tier 2.
8. Representatives from across the creative sector have been working closely with UKBA to ensure that the new system contains enough flexibility to allow UK-based sponsors to bring in the migrants they require, while seeking to ensure that this does not undermine efforts to protect the resident labour market.
9. This Code of Practice contains a number of categories. Migrants falling into one of the categories are deemed to be making an additional contribution to the UK film and TV industry and not displacing the resident labour force, so are exempt from further resident labour market testing.
10. Under the PBS, sponsors are empowered to select the migrant they wish to sponsor and issue a Certificate of Sponsorship (CoS) without referring each case to UKBA. It is therefore very important that sponsors retain documentary evidence, as set out in this Code, so that they can demonstrate the steps they took to ensure compliance with the Code before issuing the CoS to the migrant, and so that UKBA staff can examine it during their pre-arranged (or unannounced) compliance visits.
11. If the sponsor is thinking of issuing a CoS to a migrant under Tier 2 or Tier 5 to come to the UK as a worker (non-performer) in film and TV, they should consult this Code of Practice to see whether any of the categories apply.
12. The sponsor will need to meet the advertising requirements in this Code of Practice to ensure that they are complying with their duties as a sponsor unless:
  - one of the categories in this Code applies or;
  - the occupation concerned is on the [shortage occupation list](#)
13. If one of the categories does apply, and the sponsor follows the guidance given, keeping documentary evidence where specified, they will not be required to undertake any further labour market testing. When they issue a CoS to a migrant under one of the categories contained in this Code of Practice, they will be required to state which category applies.
14. All licensed sponsors will be required to fulfil certain duties; compliance with sector-specific Codes of Practice is one of these duties. Where UKBA discovers that a sponsor has acted in breach of the relevant Code of Practice, UKBA will be able to take action against the sponsor using a range of measures applied according to the nature of the breach. Further

information on the range of action UKBA may take is contained in the [sponsor guidance](#).

## CATEGORIES

A sponsor may only issue a CoS to workers engaged for specified films or TV programmes, except for workers coming to work in a Visual Effects Company, when it could be across a number of productions.

**Sponsors may issue a CoS to a migrant, who will be deemed to be making an additional contribution to the UK labour market when:**

### **1. The worker is a Senior Creative Grade**

The Sponsor must demonstrate the worker possesses the skills and experience of a Senior Creative Grade for the following roles

- Producer
- Director
- Director of Photography (Cinematographer)
- Production Designer
- Costumer Designer
- Hair/Make Up Supervisor
- Editor
- Composer
- Visual Effects Supervisor
- Sound Designer
- Script Writer

#### Evidence

- Documentary proof that the worker has the skills and experience in that role e.g. film and TV credits, qualifications, CV, press cuttings, awards, accolades, publicity material, television/radio interviews.

## **2. The worker is required for production continuity**

Sponsors issuing CoSs under this category must be able demonstrate that the worker is providing significant creative input and must supply proof that the overseas national has worked on or will be working in a post involving creative input on the same piece of work overseas for at least one month.

The sponsor must also demonstrate that the worker has a direct working relationship with a Senior Creative Grade as listed in Category 1. For example, a first assistant editor might work directly with an Editor on the same piece of work overseas.

CoSs issued under this category would normally involve no more than one additional worker in addition to a Senior Creative Grade; however, in exceptional circumstances other additional workers may be admitted under this category, where there is a case based on production continuity.

### Evidence

- Evidence that the role involves creative input and the worker possesses the skills and qualifications for the role, e.g. copies of qualifications, CV, credits, press cuttings, awards, accolades; and
- Evidence that the worker is currently, or has worked on, or will be working on the same production outside the UK for at least a month and evidence of current working relationship with a key Creative grade in Category 1 i.e. contracts, letters of engagement, casting lists, CV, references in support, credits, press cuttings; and
- In the circumstances where more than one additional worker is sponsored, the case must be set out in supporting documentation from the Sponsor.

### **3. Other key creative workers**

Under this category the sponsor must demonstrate that the worker is providing key creative input and has a significant previous working relationship with a Senior Creative Grade as listed in Category 1. A “significant” previous working relationship entails an established pattern of joint working on a number of previous productions rather than isolated or random examples.

CoSs issued under this category will normally involve no more than one worker in addition to a Senior Creative Grade; however, in exceptional circumstances other additional workers may be admitted in this category where there is a creative case.

UKBA will notify BECTU promptly for camera, editing and grip grades, and 1<sup>st</sup> Assistant Directors and BECTU may request sight of the evidence in support for such grades.

UKBA will notify the Production Guild promptly of the issuing of a CoS for the following grades: Executive Producer (when providing the functions of a Line Producer or Financial Controller/Production Accountant), Line Producer, Co-Producer, 1<sup>st</sup> Assistant Director, Unit Production Manager, Production Supervisor, Financial Controller, Production Accountant and the Production Guild may request sight of the evidence in support for such roles.

#### Evidence

- Evidence the worker is in a creative or technical role and possesses the skills and qualifications for the role, e.g. copies of qualifications, CV, credits, press cuttings, awards, accolades etc; and
- Evidence of previous working relationship with a key Creative Grade in category 1 e.g. CV, references in support, credits, press cuttings; and
- In the circumstances where more than one additional worker is sponsored per Department head, the case must be set out in a supporting documentation from the Sponsor.

#### **4. The role is highly specialist, where advertising is demonstrably not appropriate**

For certain highly specialist roles, it would not be reasonable to expect an employer to undertake a resident labour market search. One example would be a role which requires particular attributes considered unlikely to be available from the resident labour force, for example where the role involves the application of highly specialist skills or new technology or proprietary technology or special effect, or unique knowledge.

##### Evidence

Documentary proof that it would not be reasonable to expect the sponsor to undertake a resident labour market search e.g. in relation to above example, proof that:

- the role requires certain highly specialised skills e.g. job description; and
- the worker possesses those skills e.g. qualifications, CV, credits.

For all roles under this category, UKBA will notify BECTU promptly of the issuing of a CoS and BECTU may request sight of the evidence in support for such grades.

## **5. International Co-productions**

Sponsors issuing certificates of sponsorship to workers taking part in international co-productions structured under one of the UK's bilateral co-production treaties, or under the European Convention on Cinematographic Co-Production, need to provide the following evidence:

### Evidence

- Provisional approval from the UK Film Council certification department that the film is being structured as an official co-production; or
- Interim certification from the UK Film Council Certification Department.

**Where none of the above categories applies and the role/position is not on the [shortage occupation list](#), the role/position should be advertised in accordance with the next section of this Code of Practice.**

## **6. Grades subject to a resident labour market search**

Where the worker does not meet the above criteria, the sponsor must be able to demonstrate that a resident labour market search has been carried out and no suitably qualified EEA worker has been found.

Where advertising is required and it is for the purposes of issuing a Tier 2 CoS, the sponsor must advertise the job in Jobcentre Plus in addition to one of the methods listed above. This is a mandatory requirement; any sector specific media may be used as well, but not instead of, this advertising.

For roles where formal advertising is not the usual industry practice for recruiting for a particular role:

For these roles, the sponsor must carry out suitable and reasonable searches of the resident labour market, such as contacting agents, organisations, diary services or semi-formal worker networks. Where such informal recruitment methods are used, the sponsor must demonstrate a reasonable period within which it has searched the resident labour market, this should be for a least a period of two weeks.

Where formal advertising is usual for a role:

For these roles, the sponsor must advertise the role to suitably qualified resident workers in an appropriate journal, newspaper, website or online directory. The choice of advertising medium should be appropriate for the particular role.

The following advertising media may be appropriate: searching relevant online directories such as the Knowledge Online, Production Base, or through industry organisations such as the Production Guild. Other forms of advertising may be appropriate depending on the type of role.

For longer terms contracts advertisements in Guardian Media, Broadcast, Screen International, Marketing Week would be appropriate.

A period of two weeks should elapse between the date the advertisement appears and the date the CoS is issued. The advertisement should be placed within the six months before the date the CoS is issued.

### Evidence

The sponsor must be able to provide evidence that thorough and suitable search for a worker from the EEA was undertaken prior to engaging the worker. This should include the following documentary evidence:

- proof that a resident labour search was undertaken, or the role was advertised in accordance with standard industry practice; and

- the details of all the agents, organisations and key intermediaries contacted; and
- a statement of the reasons why EEA nationals were not engaged, or not suitable, or unavailable, summarising actions taken and outcomes.

Under this category, in the case of camera, editing and grip grades, and 1<sup>st</sup> Assistant Directors, UKBA shall promptly notify BECTU of the issuing of certificates of sponsorship and BECTU may request sight of the evidence of the steps to search for resident labour for these roles.

Under this category, in the case of Executive Producer (when providing the functions of a Line Producer or Financial Controller/Production Accountant) Line Producer, Co-Producer, 1<sup>st</sup> Assistant Director, Unit Production Manager, Production Supervisor, Financial Controller, Production Accountant grades, UKBA will promptly notify the Production Guild of the issuing of a certificate of sponsorship and the Production Guild may request sight of the evidence in support for such roles.

## **Personal Assistants to Directors and Producers of international status**

Sponsors may issue a CoS to a single, non-technical, non-creative personal assistant who supports a Director or Producer under category 1, who have demonstrable international status i.e. are known worldwide for international box office success.

The Sponsor must notify BECTU promptly of the issuing of a certificate under this category for a PA to a Director and must notify the Production Guild promptly of the issuing of a certificate for a PA to a Producer. They may request sight of the evidence in support for such roles.

Sponsors issuing certificates to migrants under this category must be able to supply proof that:

- the migrant has a significant previous working relationship with the Director/Producer (a “significant” previous working relationship entails an established pattern of joint working on a number of previous productions rather than isolated or random examples); and
- the migrant works only as a personal assistant to the Director/Producer and does not undertake creative or technical duties; and
- the Director or Producer is of international status i.e. known worldwide , or they have demonstrable box-office appeal worldwide.

### Evidence

- Documentary proof that the worker has the skills and experience in that role e.g. a reference in support from the Director or Producer, film and TV credits, qualifications, and CV
- Documentary proof that the Director or Producer has international status e.g. press cuttings, awards, accolades, publicity material, television/radio interviews, film and TV credits; or, documentary proof that they have demonstrable worldwide box-office appeal through box office figures for films they have led.

## Salary

Payment of migrant workers in all cases must not be below UK market rates. Minimum rates can be found on the PACT and BECTU websites at [www.pact.co.uk](http://www.pact.co.uk) and [www.bectu.org.uk](http://www.bectu.org.uk)

No worker may be paid less than the national minimum wage.

## Compliance and notification

Sponsors must only issue CoSs to migrants who meet the requirements of this Code and the other rules relating to the Tier. Sponsors must play their part in ensuring the system is not abused. Sponsors therefore must collate and maintain documentary evidence demonstrating that the migrant meets the requirements for the particular category under which the certificate of sponsorship is issued. Records may be retained in original or electronic form.

When a sponsor issues a CoS for a migrant working as a non-performer in TV or Film, BECTU and the Production Guild will be notified electronically by UKBA. This notification will provide BECTU and the Production Guild with details of the CoS.

Once this notification has been made, BECTU and the Production Guild can request that the sponsor demonstrate that the worker falls into one of the categories above by providing the evidence specified above for the category concerned. On such request, sponsors shall promptly send BECTU copies of such supporting evidence demonstrating that the certificate was issued in compliance with this Code, within 8 working days of such a request.

Sponsors should ensure that the passing of the migrant's personal data to BECTU and the Production Guild complies with the Data Protection Act 1998.

This evidence is required solely for the purpose of enabling BECTU and the Production Guild to ascertain whether this Code of Practice has been complied with and requests will be proportionate depending on the worker and the category concerned.

UKBA may also ask to see this evidence relating to one or more migrants who have been granted CoSs, as part of its regular checks that sponsors are complying with their duties. UKBA will take into account the views of BECTU, the Production Guild and the Sponsor, assessing all of the available evidence during the course of its checks on sponsors, and will take the final decision as to whether the Sponsor has complied with this Code.

## Disputes

In the event that BECTU or the Production Guild, believes that:

- a) the migrant does not fall within the categories above, or
- b) the information has not been provided as required under categories 2 and 5,

this issue must firstly be raised directly with the sponsor.

Any objections by BECTU or the Production Guild must be made within 8 days of receipt by them of the supporting documentation.

The sponsor should then have the opportunity to provide further information in order to demonstrate that the criteria have been met.

In cases where there is no resolution, BECTU, Production Guild or the Sponsor may report the matter to UKBA for a final decision on whether the Sponsor has complied with the Code of Practice.

In making a final decision, UKBA will carry out its own investigations, examining all relevant evidence and taking into account the views of BECTU, the Production Guild and the Sponsor. UKBA will take the final decision based on its assessment of whether the Sponsor has complied with this Code, taking action as appropriate.

## Review period

The Code shall be subject to periodic review by the industry bodies responsible for drafting the code, and will be subject to a period of close monitoring for the first 6 months.

Queries regarding this Code of Practice may be addressed to:

- UKBA: [SponsorshipPBSenquiries@ukba.gsi.gov.uk](mailto:SponsorshipPBSenquiries@ukba.gsi.gov.uk)
- BECTU: [aegan@bectu.org.uk](mailto:aegan@bectu.org.uk) and [mspence@bectu.org.uk](mailto:mspence@bectu.org.uk)
- PACT: [andrew@pact.co.uk](mailto:andrew@pact.co.uk)
- Production Guild: [david@productionguild.com](mailto:david@productionguild.com)
- UK Film Council: [Amelie.Truffert@ukfilmcouncil.org.uk](mailto:Amelie.Truffert@ukfilmcouncil.org.uk) and [Samantha.perahia@ukfilmcouncil.org.uk](mailto:Samantha.perahia@ukfilmcouncil.org.uk)