

The points-based system How the immigration overhaul affects NHS recruitment

The Home Office has launched a series of changes to the immigration system governing the way individuals from outside the European Economic Area (EEA) and Switzerland can work, train or study in the UK. Many of the changes are now in place, affecting all organisations that recruit migrant workers. They include tough measures to prevent illegal working and a requirement for employing organisations to hold a sponsorship licence.

This *Briefing* provides an outline of the changes and what NHS organisations must do to meet the requirements of the new system.

The five tiers of the points-based system:

- Tier 1: highly skilled individuals to contribute to growth and productivity
- Tier 2: skilled workers with a job offer to fill gaps in the UK labour force
- Tier 3: low skilled workers needed to fill specific temporary labour shortages – this tier is suspended indefinitely
- Tier 4: students – starting spring 2009
- Tier 5: youth mobility and temporary workers – people allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives such as exchange schemes or agreements.

Background

The introduction of the points-based system in February 2008 represented the biggest shake up of the immigration system for 45 years. It reduced 80 different routes to employment and education in the UK to just five tiers, which are being rolled out up to Spring 2009.

Alongside this, the Home Office implemented changes to the Immigration, Asylum and Nationality Act (2006) on 29 February 2008, which included tough new penalties for employers who take on illegal migrant workers and a continuing responsibility for employers to check the ongoing entitlement of migrants to work in the UK.

An employer-led sponsorship

licence system has replaced the work permit system, requiring employers who recruit and employ migrants from outside the EEA and Switzerland to hold a sponsorship licence and issue certificates of sponsorship to migrants they wish to employ. A new shortage occupation list has also been issued to accompany the launch of Tier 2 on 27 November 2008.

International recruitment has made a valuable contribution to workplace expansion in the NHS over recent years. While changes in the labour market mean the NHS is now less reliant on overseas recruits, it is still an option for employers trying to fill vacancies in certain geographical areas or professions/specialties with recognised shortages.

Illegal working

As part of the ongoing changes to the immigration system, the Immigration, Asylum and Nationality Act (2006) has been amended. The new provisions came into effect on 29 February 2008 and specify changes which employers must incorporate into their employment processes to ensure compliance. The changes included:

- a new system of civil penalties for employers who take on illegal migrant workers as a result of negligent recruitment and employment practices
- a tough new criminal offence for employers who knowingly employ illegal migrant workers
- a continuing responsibility for employers of migrant workers to check their ongoing entitlement to work in the UK.

NHS organisations will need to ensure that they are fully compliant with the legislation and apply the NHS Employers Employment Check Standards with regard to all the individuals they recruit.

The sponsorship licence system

To recruit foreign nationals from outside the UK/EEA or to extend the employment of an individual with a work permit when their visa expires, NHS organisations

need to have been issued with a sponsorship licence. Employers only need to apply for a licence for the Tier 2 (general) category.

The sponsorship licence forms an integral part of the points-based system. The licence and accompanying sponsor management system sees the removal of Work Permits (UK) which issues work permits for migrant workers.

Under the points-based system the UK Border Agency will decide who is admitted to, or allowed to stay in, the UK. The migrant will need to provide evidence of a sponsor in the UK who possesses a sponsorship licence issued by the UK Border Agency. In the case of the NHS, the sponsor will be the NHS trust.

The new system is intended to be more streamlined, with the NHS organisation issuing the certificate of sponsorship directly to the migrant. The certificate of sponsorship will not be an actual document but a unique reference number which the migrant can use to apply for leave to remain in, or entry to, the UK.

Sponsorship duties

Sponsorship has two main purposes:

- it provides evidence that the migrant has a genuine job in the UK

- it acts as a pledge from the sponsor that it will accept the responsibilities of sponsorship in respect of the migrant.

In applying for a licence and subsequently issuing certificates of sponsorship to migrants, the organisation accepts that it will comply with a number of requirements, including record-keeping and reporting migrant activity.

A licence, when granted, will last for four years, unless it is withdrawn by the UK Border Agency. The organisation will need to renew the licence prior to the expiry date in order to continue to act as a sponsor.

There are two categories of sponsor. Organisations will be either rated A or B. Category A employers will be added to the UK Border Agency's published register of sponsors. With a B rating, an organisation will still be able to issue certificates of sponsorship but will be issued with a time-oriented action plan from the UK Border Agency highlighting where the organisation needs to improve to fulfil all the sponsorship duties.

Employers will not be able to group together to act as the sponsor. If organisations have a bureau or shared service which provides recruitment services, each separate organisation will need to be registered as a sponsor with a separate licence.

How to apply for a licence

Employers need to apply for a licence by completing the online application form on the UK Border Agency website (see page 7).

To fill in the form the following information is required:

- organisation details and names of the authorising officer, key contact, level 1 user and level 2 users (see below)
- the number of certificates of sponsorship the organisation estimates it will need, based on previous work permit application numbers
- the names and trading dates of the organisation if it has traded under another name in the last four years
- the organisation's size and sector
- payment – either cheque or credit/debit card details.

Each organisation will need to demonstrate that:

- it has effective HR systems in place
- it has not been issued with a Civil Penalty for Immigration Offences
- the authorising officer, key contact and level 1 user have no criminal convictions in their name. The list of

convictions that may affect the application are listed on the UK Border Agency website.

A licence provides access to the online sponsor management system which enables nominated personnel to issue certificates of sponsorship to individual migrants.

When an NHS organisation has issued a certificate of sponsorship it becomes part of the required documentary evidence for the entry clearance or leave to remain application process. Migrants will not be able to apply for leave to remain or entry clearance without a certificate of sponsorship. However, it is not a guarantee of the clearance being granted. If the application is successful individuals will be granted leave to enter or remain in the UK for the duration of the post up to an initial period of three years.

Nominating the key personnel

Each employing organisation must nominate the following personnel, who will be responsible for different aspects of the licence system. The four roles can be undertaken by different people or the same person.

Authorising officer (AO):

The sponsor (ie, the NHS trust) will be held responsible for its actions through the AO and therefore it is advisable that this person is a senior member

(director level) of the trust. They must be a permanent employee and cannot be a contractor or consultant. The role itself does not guarantee access to the sponsor management system and therefore if the AO chooses to have access they will also need to register as a level 1 or 2 user.

Level 1 user: This role allows the individual to undertake the day-to-day operational activity through the sponsor management system. This includes adding or removing other users to the sponsor management system, assigning certificates of sponsorship to migrants, requesting any increases in the number of certificates required, and notifying the UK Border Agency of changes in the organisation relevant to the licence.

Level 2 user: Depending on its size and needs, an organisation can have any number of level 2 users. They have a more restricted range of permissions than a level 1 user but they will be able to issue certificates of sponsorship to migrants and report migrant activity to the UK Border Agency.

Level 1 and 2 users may be part of a bureau acting on behalf of the sponsor.

Key contact: This person is the main point of contact between the employing organisation and the UK Border Agency during the

Costs

A licence for Tier 2 (general) costs:

- £300 if you are a small sponsor (50 employees or less)
- £1,000 for all other sponsors (over 50 employees).

Each individual certificate of sponsorship costs £170.

licence application process. This person will not be given access to the sponsor management system, so if the key contact needs to also be a user they will need to be named as a level 1 or level 2 user.

What happens if a licence application is refused?

Organisations do not have a right of appeal against refusal of a licence but they can reapply at any time unless the organisation has been issued with the maximum civil penalty (£10,000 fine) for employing illegal workers. In these cases the organisation cannot reapply until six months after the penalty was issued.

Reasons for the refusal will have been outlined in the formal decision documentation from the UK Border Agency and it is advisable for an organisation to rectify these issues prior to

submitting a further application. The UK Border Agency has regional account managers who can provide support.

The points-based system: tiers in detail

This section explains the tiers of the points-based system and their impact on recruitment practices.

In addition to meeting the duties of holding a sponsorship licence for Tier 2, employing organisations are responsible for ensuring that all recruitment and selection activity is recorded and stored to meet the requirements of the civil penalties section of the Immigration, Asylum and Nationality Act (2006) and the NHS Employers Employment Check Standards.

Tier 1 (general) and (post-study work): highly skilled workers

This part of the points-based system allows highly skilled migrants to apply for permission to work or train in the UK without a job offer. Each applicant will need to gain points for different criteria to be accepted into Tier 1 (general) or Tier 1 (post-study work). This tier of the new system is not employer-led and so employers are not required to sponsor the individual.

Applicants to advertised posts with either an HSMP visa or Tier 1 (general) visa should be treated in the same way as UK/EEA

nationals providing they have no restrictions applied on their visa that prohibit them from undertaking that particular post. Currently, new applicants to Tier 1 (general) are not able to access postgraduate medical training but they can be recruited to training posts under Tier 2. Individuals with a current HSMP visa do not have to change their status to Tier 1 until they wish to extend their stay.

Tier 1 (post-study work) allows international graduates who have studied in the UK the opportunity to access employment without a sponsor, if they meet the required number of points. The category provides a bridge to highly skilled or skilled work for a maximum period of two years, at which time the individual will need to move into either Tier 1 (general) or Tier 2 (general). The exception to this category is international graduates from a UK medical school who will continue to apply for their right to work in a UK foundation programme through the postgraduate doctors and dentists visa category.

Tier 2 (general): skilled workers

The Tier 2 (general) skilled worker category is employer-led and allows NHS organisations to recruit individuals from outside the UK and EEA to fill vacancies that cannot be filled by a British or EEA worker. This tier replaces

the work permit application process.

A certificate of sponsorship can be issued for a maximum of three years. A two-year extension can be applied for at the end of this period to allow the individual migrant to consider a settlement application.

Resident labour market test

If a vacancy does not appear on the Home Office shortage occupation list, employers will need to demonstrate that they were unable to recruit a resident worker before recruiting an individual from overseas. They will be required to provide details of the recruitment method used and give credible reasons why they did not appoint a suitably qualified resident worker.

Code of Practice

The UK Border Agency has published a code of practice to which employers will need to adhere when recruiting skilled migrants under Tier 2 of the points-based system. It contains details of the checks to be carried out by NHS organisations in order to demonstrate that the job for which they intend to sponsor an individual meets the conditions of the sponsored skilled worker Tier 2. Sponsors must check that:

- the job is skilled at S/NVQ level 3 or above

- the job is paid at the appropriate rate or above
- a resident labour market test has been carried out.

Supplementary work

Under Tier 2, migrants are allowed to undertake supplementary work. Employers are not required to sponsor the migrant who already holds a certificate of sponsorship issued by another NHS organisation, but they must ensure they adhere to the supplementary work guidelines, apply the NHS Employers Employment Check Standards and be compliant with the preventing illegal working legislation. The supplementary work guidelines include:

- the work must be in the same profession and level as the main employment
- the individual must not be employed by a recruitment/employment agency or similar business that supplies personnel to clients
- the work is not to be in excess of 20 hours per week
- the work must be outside their normal working hours.

Switching into Tier 2 while in the UK

Individuals will only be able to switch into Tier 2 if they meet the initial entry requirements for this category. The only permitted routes of switching to Tier 2 are from Tiers 1 and 4 (once implemented).

Transitional arrangements from work permits

Individuals who are work permit holders and have existing leave to enter or remain granted under the current work permit arrangements will be able to extend their leave under Tier 2. To continue in the post, they will also need a certificate of sponsorship from their employer which must confirm that the job is at or above S/ NVQ level 3, and is paid at or above the appropriate rate for the job.

If an existing work permit holder wishes to change employment after the launch of Tier 2, the employing organisation will need to issue a certificate of sponsorship and meet the full eligibility criteria for the tier.

Tier 3: low skilled workers

Tier 3, the low skilled worker category, is suspended indefinitely by the UK Border Agency.

Tier 4: students

The new student route is expected to come into effect in Spring 2009. UK education providers will act as the sponsor for students from outside the UK/EEA and will have to apply for a licence from the UK Border Agency. There will be two types of visas available under Tier 4:

Which tier, which profession?

As a quick guide for employing organisations, the table below identifies which tier of the points-based system can be used for professions in the NHS. All applications are subject to individual migrants attaining the relevant number of points for the tier.

Role	Tier
Medical roles:	
Consultant	Tier 1 (general) ; Tier 2 (general)
Specialty doctor/staff grade/associate specialist	Tier 1 (general); Tier 2 (general)
Core or specialist training (accredited postgraduate medical training posts)	Previous HSMP visa holders can be extended into Tier 1 (general), new applicants Tier 2 (general)
Non-accredited training posts (equivalent level to CT/ST)	Tier 1 (general); Tier 2 (general)
Foundation Programme: a) UK medical school graduates b) International medical graduates	a) Postgraduate doctors/dentists visa b) Tier 2 (general)
Doctors on Medical Training Initiative (MTI)	Tier 5
Clinical attachments	Outside of points-based system – visitor visa category
Temporary workers, including locums, filling gaps in the skilled labour market	Tier 2 (general): skilled worker
Other NHS professional roles:	
Newly qualified healthcare professionals from a UK university (e.g. newly qualified midwife, nurse, AHP)	Tier 1 (post-study work)
All other clinical/non-clinical roles	Tier 1 (general); Tier 2 (general); Tier 5 (Youth Mobility Scheme)

- Tier 4 (general student) – for all those wishing to come to the UK for their post-16 education
- Tier 4 (child student) – for children between the ages of four and 16.

Only students with general student visas will be allowed to work whilst in the UK; part time during term time and full time during vacations.

Tier 5: temporary workers

The temporary worker strand of Tier 5 will allow NHS organisations to employ individuals from outside the UK and EEA for up to 24 months as part of a government-authorised exchange programme. This tier replaces the current Medical Training Initiative. The coordinator of the programme will issue the certificate of sponsorship for Tier 5.

The temporary worker category does not include short-term skilled worker posts such as locums. These fall within Tier 2 of the new system.

Tier 5: youth mobility

This tier replaces the working holidaymaker visa. Individual countries apply to join the Youth Mobility Scheme (YMS) and, if successful, the national government of the country will be automatically licensed by the UK Border Agency as

sponsors to issue certificates of sponsorship to their nationals.

A YMS entry clearance will allow the holder to:

- enter the UK for a period of up to 24 months
- undertake lawful work of any type (except for working as a doctor in training) for as much of their stay as they wish.

Participants will be expected to leave the UK at or before the expiry of their 24 month stay and no switching into

any other points-based system category will be permitted from within the UK.

Dependants

Dependants are allowed entry to the UK under Tiers 1, 2, 4 and 5. However, dependants are not allowed to work when accompanying a student (Tier 4) or a temporary worker (Tier 5) who has been given less than 12 months leave in the UK. Leave to enter/remain is granted for the same length of time as the main applicant and they will be allowed to work during their time in the UK.

They will not be able to switch into any points-based system category.

Settlement

Tiers 1 and 2 will potentially lead to settlement if the requirements are met at the time of that application. A continuous period of five years in the UK is required before individuals can apply for settlement/ indefinite leave to remain. All the requirements of the immigration rules must be met before they are eligible to apply.

Further information

- NHS Employers: the points-based system including useful FAQs www.nhsemployers.org/pointsbasedsystem
- NHS Employers: international recruitment www.nhsemployers.org/international
- NHS Employers Employment Check Standards www.nhsemployers.org/employmentchecks
- UK Border Agency www.ukba.homeoffice.gov.uk
- To find your regional account manager contact account.management@ind.homeoffice.gsi.gov.uk
- UK Border Agency employer checking service www.ukba.homeoffice.gov.uk/employers/employersupport/ecs/

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NHS Employers represents trusts in England on workforce issues and helps employers to ensure the NHS is a place where people want to work. The NHS workforce is at the heart of quality patient care and we believe that employers must drive the workforce agenda. We work with employers to reflect their views and act on their behalf in four priority areas:

- pay and negotiations
- recruitment and planning the workforce
- healthy and productive workplaces
- employment policy and practice.

NHS Employers is part of the NHS Confederation.

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