

How is Home Office policy and discretion changing as the provisions of the Immigration Acts come into effect?

What practically and technically can you do when faced by a UKVI audit?

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PART 1 - Changes to Immigration law and policy

- A brief history of UK immigration policy
- Introduction of the Points Based System (PBS) in 2008
- Over the last 10 years
- 10 years on – Where are we now?
- The future

PART 2 – UKVI audits

- Sponsor licence compliance
- The 5 main areas of scrutiny
- Practical tips



Changes to Immigration law and policy



Migration Advisory Committee (MAC)

- The Migration Advisory Committee (MAC) was established in 2007 as an independent public body responsible for providing evidence based advice to the government on migration issues such as economic impact, limits, and occupation shortages.
- The MAC provides feedback to the government and continues to advise and provide recommendations on a range of issues, including changes to the Immigration Rules.
- Most recently the MAC has been commissioned to report on the impact of the UK's departure from the EU on the UK economy.



10 years on – Where are we now?

A “Hostile Environment”

- The Government remains focussed on maintaining a “hostile environment” for illegal migrants.
- Increase in immigration related criminal offences, particularly around illegal working.
- Landlords/agents liable to be charged with a criminal offence if letting to illegal migrants
- The latest provision which came into force in January 2018 (introduced by the Immigration Act 2016) is that banks are now required to conduct quarterly immigration checks on new and existing account holders.



10 years on – Where are we now?

Incentivising employers to recruit from the UK labour force

- Immigration Skills Charge (£1000/£364 per year)
- NHS Surcharge (£200 per person, per year) - potentially increasing to £400 per person, per year
- Increased minimum salary thresholds
- Genuine vacancy 'tests'
- Increasingly stringent Tier 2 & 5 sponsor compliance duties and penalties for breaches

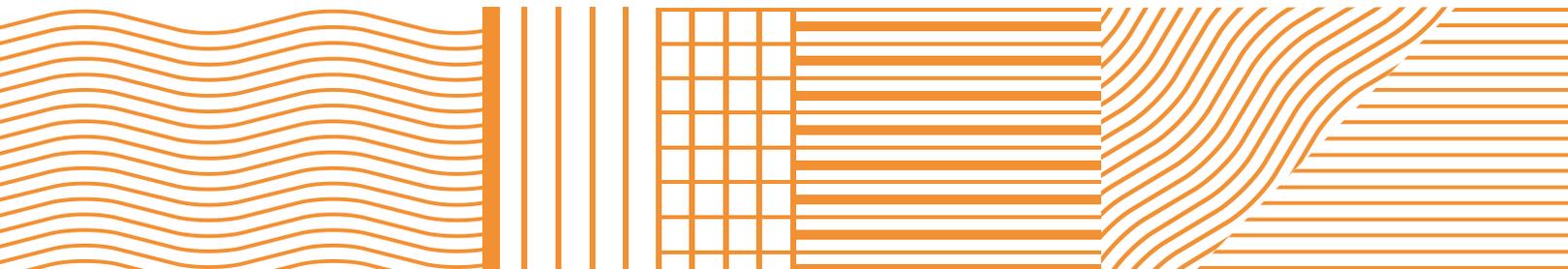


The Future Brexit – The end of the PBS?

- At present the PBS is only applicable to non-EU migrants.
- Will the PBS be extended to encompass EU countries after the UK's departure or will a new system be implemented?
- Will this be an opportune time for Tier 3 of the PBS implemented?



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faced by a UKVI audit?

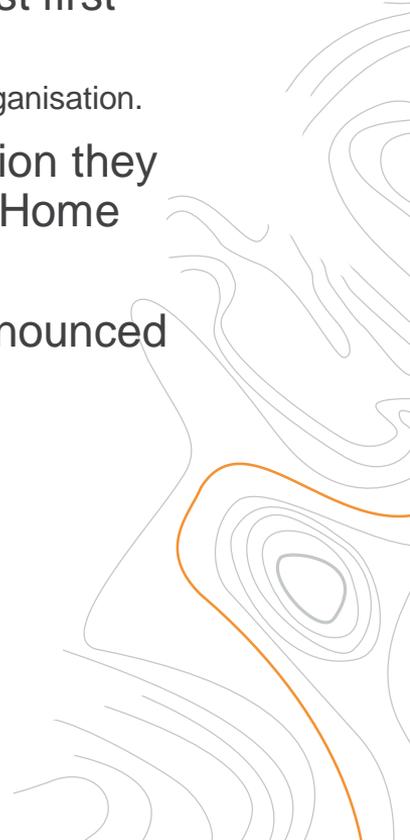


What not to do?



Sponsor Licence - Compliance

- A organisation that wishes to employ a non-EU migrant in the UK must first apply for a sponsor licence.
 - Includes migrant workers who are currently employed by an overseas entity of the same organisation.
- From the moment an organisation submits a sponsor licence application they are required to comply with extensive requirements as set out by the Home Office.
- The Home Office can conduct pre-licence and/or announced or unannounced compliance visits.
- The main areas of scrutiny are –
 - Recruitment
 - Illegal Working
 - Reporting
 - Migrant tracking
 - Record keeping



- There are various requirements that sponsors must adhere to when recruiting non-EU migrant workers.
 - E.g. Advertising, Resident Labour Market Test (RLMT)
- Retention of documents
- As well as explaining the processes in place for recruitment and the retention of documents, the sponsor may be asked questions such as –
 - Why do non-EU migrants need to be recruited?
 - How are candidates assessed?
 - Have you advertised and how?
 - Do you have a written recruitment policy?



Illegal Working

- Relates to all employees (not just sponsored workers)
- Particular area of focus for the Home Office
- Right to work checks
- Example compliance questions –
 - How do you confirm that a new member of staff has the right to work in the UK?
 - Who does these checks and when?
- Sponsors may find it useful to have an on-boarding checklist, HR handbook, or written policy document dealing with right to work checks.



Reporting

- Sponsor Management System (SMS)
- Within 10 working days. E.g. –
 - Where the migrant fails to attend their first day of work
 - Where the migrant is absent from work for more than 10 consecutive working days without reasonably granted permission
 - Where the migrant's contract of employment ends
 - Where the migrant moves into another immigration category and no longer requires sponsorship or the migrant's permission comes to an end
 - Where the migrant takes a period of unpaid leave (sabbatical) which is not due to maternity, paternity, shared parental, adoption or a period of long term sick leave, for four weeks or more in any calendar year
 - Where there is a significant change of circumstances in the migrant's role
- If there are any significant changes in the Sponsor's circumstances this must be reported on the SMS within 20 working days.



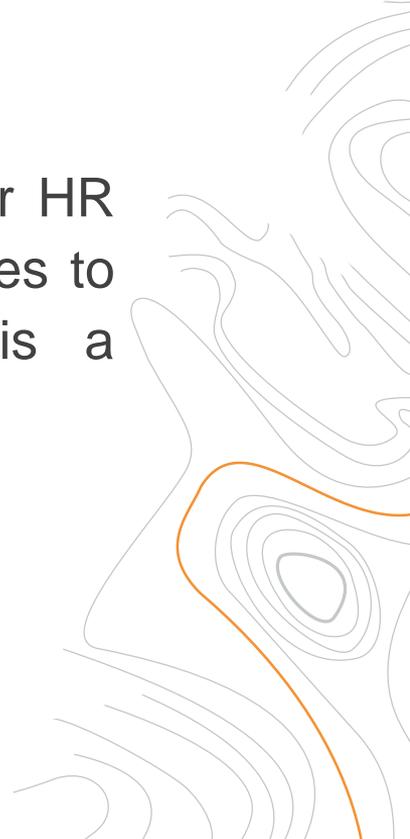
Reporting (2)

- Examples of compliance visit questions –
 - How do you ensure that you sponsored migrants report absences?
 - If a sponsored migrant did not turn up for work on the first day, what would you do?
 - What processes do you have to ensure that termination of employment is notified at the end of a migrant's employment?
- Sponsors may find it useful to have an off-boarding checklist, HR handbook, and wording within employment contracts to the extent that the employee must notify the employer of any changes in circumstance.



Migrant tracking

- Sponsors must keep each sponsored migrant's contact details up to date, and keep a record of historic contact details.
- Sponsors may decide to conduct a regular audit of their HR files and remind employees to notify them of any changes to their contact details. Sponsors may also make this a contractual requirement.
- Examples of compliance visit questions –
 - Where are migrants' contact details recorded?
 - What is your absence policy?



Record keeping

- Extensive record keeping requirements. Requirements vary depending on the migrant worker's category of leave.
- Need to be stored in a secure location.
- May need to be produced to the Home Office at short notice should they make an unannounced compliance visit.
- Examples of documents that may need to be retained –
 - Copy of contract of employment
 - Copies of payslips
 - Copy of University degree
 - Copy of job description
 - Copies of documents relating to illegal working and RLMT
- Examples of compliance visit questions –
 - What documents would you keep on file for sponsored migrants?
 - Show us a HR file.



Practical tips

- Read and understand Annexes 5 and 6 of the Tiers 2 and 5: Guidance for Sponsors, which sets out the circumstances where a sponsor licence will be or may be revoked
 - <https://www.gov.uk/government/publications/sponsor-a-tier-2-or-5-worker-guidance-for-employers>
- Familiarise yourself with the PBS Sponsor Compliance Visit Guidance
 - <https://www.gov.uk/government/publications/points-based-system-sponsor-management>
- Make a detailed note of the compliance visit as soon as it takes place (or as soon as practically possible afterwards)
- Be aware of any obligations/duties set out by the compliance officer, which are not necessarily detailed in the Tier 2 sponsor guidance/PBS sponsor compliance visits guidance
- Be respectful and courteous with the Compliance Officer at all times
- If a sponsor has not yet had a compliance visit, we would recommend that they invest in compliance training to ensure they are fully prepared when the time comes.



Questions?

