Overview of the new system

The UK has undergone significant changes to its immigration system. The UK Border Agency has introduced a new immigration system called the points-based system (PBS) for managing applications from people who wish to come to the UK to work, train or study. On 27 November 2008 the PBS replaced work permits, and in early 2009 it will replace student visas.

The UK Border Agency (UKBA) is a shadow agency of the Home Office, which was formed in April 2008 to improve the UK’s security through stronger border protection whilst welcoming legitimate travellers and trade. The UKBA brings together the work previously carried out by the Border and Immigration Agency, Revenue and Customs and UK Visa Services.

Under the new system anyone wanting to come to or remain in the UK will need to show that they meet immigration requirements and that they have enough points to qualify. Points are earned in different ways, such as qualifications and earnings, and in the majority of cases migrants will need a sponsoring employer or educational establishment.

Sponsorship in the PBS is based on two fundamental principles: firstly, that those who benefit most directly from migration (that is, employers and educational establishments) should play their part in ensuring that the system is not abused; and secondly, UKBA needs to be sure that those applying to come to the UK to work or study are eligible to do so and that a reputable employer or educational establishment genuinely wishes to take them on.

This means that the University of Birmingham has had to become licensed by UKBA in order that we can sponsor migrant workers and students. As a licensed sponsor, the University can issue ‘certificates of sponsorship’ to employees and ‘confirmation of acceptance of studies’ to students.

The University of Birmingham has become a licensed sponsor for tier 2 (skilled workers) and tier 4 (students) and will soon be applying to be a licensed sponsor for tier 5 (sponsored researchers).

How the PBS works

Anyone wanting to come to or remain in the UK needs to show that he/she meets the requirements of the immigration rules – and in particular that he/she has enough points to qualify. Points can be earned in different ways, e.g. for qualification and earnings. In the majority of cases the migrant will require a sponsor.

The requirement to have sponsor does not apply to nationals of the European Economic Area or to migrants in tier 1 (highly skilled /post-study workers) of the points-based system.

Sponsors are businesses or academic institutions in the UK that wish to employ the migrant or accepted him/her onto a course. In order to become a sponsor, the business or academic institution needs to become licensed by the UKBA. Once licensed, the sponsor indicates the migrants they wish to admit by issuing them with a certificate of sponsorship (for students this is called a confirmation of acceptance of studies). UKBA sets a limit to the number of certificates each sponsor may issue.

Everyone wanting to come to the UK under the new system will need prior ‘entry clearance’. All migrants (except those in tier 1) will need to be sponsored before they will qualify for ‘entry clearance’.
The five tiers of the points-based system

The PBS replaces some 80 migration routes and categories with five ‘tiers’.

<table>
<thead>
<tr>
<th>Tier</th>
<th>Applications open for sponsors</th>
<th>Applications opened for migrants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1: highly skilled workers</td>
<td>No sponsor needed</td>
<td>29 February 2008</td>
</tr>
<tr>
<td>Tier 1: investors, entrepreneurs and post-study workers</td>
<td>No sponsor needed</td>
<td>30 June 2008</td>
</tr>
<tr>
<td>Tier 2: skilled workers with a job offer to fill gaps in United Kingdom labour force</td>
<td>28 February 2008</td>
<td>27 November 2008</td>
</tr>
<tr>
<td>Tier 3: limited numbers of low-skilled workers needed to fill temporary labour shortages</td>
<td>This tier is currently suspended</td>
<td></td>
</tr>
<tr>
<td>Tier 4: students</td>
<td>28 July 2008</td>
<td>Spring 2009</td>
</tr>
<tr>
<td>Tier 5: temporary workers and youth mobility scheme: people allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives, including Sponsored Researchers</td>
<td>28 July 2008</td>
<td>27 November 2008</td>
</tr>
</tbody>
</table>

Obtaining and maintaining a licence of sponsorship

In order to obtain a licence, a prospective sponsor must apply to the UKBA, supplying specific documentation to show that it is eligible to become a sponsor. UKBA then carries out appropriate checks to ensure that the sponsoring organisation, and the people managing or controlling it, pose no threat to immigration control and are able and willing to carry out the sponsor duties.

As a condition of keeping licence, sponsors will need to comply with certain duties, including a duty to inform UKBA if migrants do not start their job or course as arranged, if they are absent without permission for a significant period. The sponsor must also keep proper records of the migrants they have sponsored, including contact details and supply them to UKBA on request.

UKBA will monitor licensed sponsors behaviour and compliance with their duties, in particular by:

a) by setting a limit to the number of certificates a sponsor can issues and reviewing its performance after it has issued a certain number

b) making visits, pre-arranged or not, to check compliance

c) issuing civil penalties where there is evidence that the sponsor has been breaching the illegal working regulations

All sponsors will be rated A or B, according to UKBA’s assessment of the risk they pose. A sponsor that is B-rated must comply with a time-limited action plan of steps to take in order to gain or re-gain an A-rating. The rating of sponsors will be in the public domain.

The University expects to obtain and maintain an A-rating sponsor status. Failure to comply with the sponsor’s duties set out by UKBA could result in the loss of our sponsorship licence. This would result in a ban on future recruitment of international academics and students and the curtailment of leave for skilled workers and students under our sponsorship at such a time.
Sponsors found to be in breach of their sponsorship duties may be subject to the following range of penalties:

a) Educational visit to their premises - to support compliance with the law
b) Required action plan - for B-rated sponsor to obtain an A-rating
c) Written warning for employing an illegal worker – followed by close monitoring by UKBA
d) Down-grading on PBS sponsorship register – from A-rated to B-rated
e) Licence cancelled or removed from the PBS sponsorship register
f) Served with on-the-spot fine – civil penalty
g) Prosecution for use of false or inaccurate identity document
h) Prosecution for knowingly employing an illegal immigrant worker
i) Disbarred as company director/officer as a result of prosecution
j) Prosecution for facilitation or trafficking

**Sponsor’s duties**

1. **Appointment of key personnel** - The sponsor will need to allocate responsibilities to key members of staff.

2. **Record-keeping duties** - All sponsors must keep the following records and make then available to UKBA officials upon request:
   i. Recruitment paperwork - to demonstrate compliance with the Resident Labour Market Test; authority to recruit, job description, list of media used, copy advertisements, longlist/shortlist material, application form, offer letter (skilled employees only)
   ii. Documentation - Photocopy (or electronic copy) of each sponsored migrant’s passport or UK immigration status document (and in time his/ her ID card) copy of qualifications or other supporting accreditation, registration or membership
   iii. Contact details – each sponsored migrant’s contact details (home address, telephone number - home/ mobile, work address/ location, telephone number)

3. **Reporting duties** – all sponsors must report the following information or events to the UKBA within the specified time limits:
   i. If a sponsored migrant does not start their job when expected – report to the UKBA within 10 working days, with reasons for non-attendance. If a sponsored student fails to enrol, report to the UKBA no later than 10 days after the end of their prescribed enrolment period.
   ii. If a sponsored student defers their studies after arrival in the UK. In such cases the student’s permission to be in the UK will cease to be valid as they will no longer be actively studying. The sponsor will need to notify UKBA of the deferral and advise the student to leave the UK.
   iii. If a sponsored migrant is absent from work for more than 10 working days without the sponsor’s reasonably granted permission, report to the UKBA within 10 working days of the tenth day of absence.
   iv. If a sponsored student misses 10 expected ‘contacts points’ or interactions (e.g. tutorials, submission of coursework etc), report to the UKBA within 10 days.
   v. If a sponsored migrant’s contract of employment is terminated (including resignation/ dismissal) – report within 10 working days of the event and include the name and address details of any new employer (if known).
   vi. If a sponsored student stops attending either because the university has withdrawn them from the course or because the student has said they are leaving, within 10 working days of this being confirmed.
   vii. If a sponsor stops sponsoring the migrant for any other reason - report within 10 working days of the event and include the name and address details of any new employer (if known)
   viii. If there are any significant changes in the migrant’s circumstances – e.g. change in salary or job, report within 10 working days of the event and include new details
xii. Any information that suggests engagement in terrorism or criminal activity by the migrant must be given to the police

4. **Complying with the law** – To ensure that sponsors are compliant with immigration law, the following duties must also be fulfilled:

   i. Ensure that a migrant is legally entitled to do the job, i.e. has the appropriate registration/ qualification
   
   ii. Not to employ the migrant if they do not have leave or conditions on leave mean that he/ she is not allowed to undertake the work in question
   
   iii. Only to issue certificates to migrants who meet the requirements and are likely to comply with the conditions of leave, to the best of the sponsor’s knowledge. For students, a Confirmation of Acceptance of Studies (CAS) may only be issued under tier 4 if the sponsor is satisfied that the migrant both intends and is able to follow the course of study concerned.

5. **Co-operating with the UKBA** – In order to allow the UKBA to manage the system properly, all sponsors must also comply with the following duties:

   i. Allow access any of its premises to UKBA staff
   
   ii. Adhere to any action plans set by the UKBA
   
   iii. Comply with good practice guidance provided by the UKBA

For further details of the PBS please refer to the UKBA website: [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)