

A brief overview of the new skilled worker route, Key Personnel and duties

The Skilled Worker visa is the main work route under the Points Based Immigration System for workers coming to the UK. It was introduced on 1 December 2020 and replaced the Tier 2 (General) route. New requirements were introduced, for example, the role must have a skill level of at least RQF3 (roughly A-Level equivalent), as a Sponsor you must be willing to pay the worker above a certain amount (although this was reduced) and the worker must meet the English language and financial requirements.

Mandatory official information to help:

There are three key sources of information relating to the new route.

- [Immigration Rules Appendix Skilled Worker](#) — this is the key legal document that contains the specific legal requirements.
- [Guidance for applicants](#) — this contains practical information.
- [Sponsor guidance](#) — this is the rule book that employers need to follow in order to determine if they can sponsor a worker. It may contain 13 user manuals but it is what it is....

EU citizens need visas:

With the end of EU free movement, the Skilled Worker route (like the rest of the Points Based Immigration System) is for EU citizens as well as non-EU citizens.

EU citizens who have arrived in the UK before 31 December 2020 can apply for the EUSS - a visa-free immigration status under the EU Settlement Scheme. Getting settled or pre-settled status under this scheme is free, a sponsor isn't needed and there are no restrictions on employment — no minimum salary levels etc.

Sponsoring a Skilled Worker

Sponsor licence:

Before a person can apply for a Skilled Worker visa, they need a Certificate of Sponsorship (CoS). Only employers that have applied for a sponsor licence and appear on the [register of sponsor licence holders](#) can assign a CoS. This is how the requirement to have a sponsor is enforced in practice.

We won't go into detail on how to get a licence here as I am presuming that you are all familiar with the requirement and the legal teams will have secured the necessary. But I would recommend that for any of you who are authorised officers or level 1 or 2 users, you do familiarise yourself with the associated duties and on how to be a compliant Sponsor complying with a number of duties and responsibilities set out in the Sponsor Guidance. Failure to do so can lead to a suspension or revocation of the sponsor licence which in turn means that the employment of the sponsored worker(s) must cease.

The Sponsor Guidance is frequently amended and updated, and sponsors should ensure that those responsible for the maintenance of the licence regularly review the latest guidance in order to ensure that the organisation is up to date with its compliance and that any necessary changes regarding the sponsorship of workers are made.

For example:

- monitoring the attendance/absences of sponsored workers;
- reporting any changes to the sponsored worker's employment;
- carrying out right to work checks;
- retaining documents as set out in Appendix D of the Sponsor Guidance;
- complying with the law; and
- cooperating with the Home Office.

Certificate of sponsorship:

If the worker will be applying for their visa from overseas and as long as they are satisfied that the work is genuine, the Home Office will grant a "defined CoS" which you as the sponsor can then assign to the individual.

If the worker will be applying from inside the UK, the sponsor can generally assign the CoS directly, without having to get pre approval. These are known as "undefined CoS".

Once the CoS has been assigned, a unique reference number is generated. This number must be given to the worker who must then input it onto their visa application form.

The application process varies depending on whether or not the applicant is:

- applying from overseas;
- extending their current permission to stay under the sponsored work route from inside the UK;
- switching from another visa route into the work route from inside the UK.

Supporting documents

The Home Office produces guidance as to the documents that applicants will need to submit with their visa application which include:

- evidence that the applicant meets the financial requirement if their sponsors has not certified this on the CoS;
- a TB test result if applying from certain countries;
- a criminal record certificate if the role requires one;

- for certain roles, evidence of a UK PhD certificate or, if the qualification isn't from the UK, a unique reference number.

And for those of you assisting with (not advising) visa applications, you do need to familiarise yourself with these requirements to aid the process.

Questions and repeated areas of concern

Sponsor licence key personnel & SMS duties:

Sponsor licence holders are required to nominate key personnel in specific roles to be responsible for using sponsor management system and for overall immigration compliance:

- **An Authorising Officer** – responsible for ensuring that compliance duties placed on the organisation under the sponsor licence are met.
- **A Key Contact** – the main point of contact between the organisation and UK Visas and Immigration (UKVI).
- **Level 1 User(s)** – responsible for carrying out the day-to-day SMS activities, from assigning certificates of sponsorship and reporting migrant worker activities, to updating the SMS and renewing the sponsor licence. At least one Level 1 user must be appointed, including at least one employee and you can appoint several.
- **Level 2 User(s)** – are not mandatory, but can be appointed to perform day-to-day SMS functions with fewer permissions than Level 1 users.

The role of the Authorising Officer

The Authorising Officer has ultimate responsibility for the activities of any staff, or third party representative(s), authorised to use the sponsor management system.

They will often be the first and primary point of contact for your organisation with UKVI. They will receive emails concerning changes to sponsors' duties, the need to renew Certificates of Sponsorship or the licence itself.

They are also required to authorise most of the changes or updates to your licence e.g. notifying UKVI of a new branch.

Who can be nominated as an Authorising Officer?

The Authorising Officer should be the most senior person within the organisation responsible for the recruitment of PBS workers. Unlike other key personnel roles, employers cannot assign the AO role to a legal representative. It is also not permitted for an external party engaged for a specific project (e.g. contractor) to act as Authorising Officer.

Key personnel have to be permanently based in the UK for the duration of the period that they fill the role.

What are the AO's duties?

It is essential that the Authorising Officer regularly reviews activity relating to the SMS and that key personnel are performing their duties and keep up to date of any changes in the Immigration rules and policy governing licence compliance.

These include:

- **Record-keeping duties** – to retain any documents submitted as part of the application for a sponsor licence, including documents relating to each migrant worker, together with their up-to-date contact details.
- **Reporting duties** – to report certain activities relating to migrant workers within a specified timeframe e.g. non attendance, compliance or disappearance, as well as any significant changes in the structure of the organisation.
- **Monitoring duties** – to monitor the immigration status of sponsored migrant workers in order to prevent illegal working. In particular, certificates of sponsorship must only be assigned to those migrants who are appropriately qualified, registered and/or experienced to do the specific job available and those who are legally able to apply for the position.

Level 1 and 2 Users:

Essentially a Level 1 user carries out the day-to-day sponsorship activities. Both Level 1 and 2 users can administer the SMS and are usually HR personnel. The main difference between a Level 1 and 2 user is the level of accessibility granted. A Level 2 user has far less permissions compared to a Level 1 user.

Who are they?

- Paid staff member or office holder within the organisation
- An employee of a third-party organisation engaged by the organisation to deliver all or part of your HR function.
- A UK-based representative

BUT they cannot be:

- A contractor
or
- A consultant who is contracted for a specific project
or
- An undischarged bankrupt
or
- A temporary staff member supplied to you by an employment agency (Only applicable to a Level 1 User)

The Authorising Officer is usually a Level 1 user to begin with as you can only assign this to one person when you first apply for a sponsor licence. However, additional Level 1 users can be appointed via the SMS thereafter.

Level 2 users:

Also have access to the SMS, but on a much more restricted basis.

They can only assign CoS and report migrant activity.

They cannot:

- Access your general licence information
- Report any changes to the organisation

Eligibility requirements for all key personnel:

- Based in the UK
- Free from criminal convictions
- In most cases a paid member of staff or an office holder
- Unable to assign to a family member or themselves

A UK-based legal representative can fill any key personnel role except the role of Authorising Officer.

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