

**SMITH
STONE
WALTERS**

Immigration Practice

SPONSORSHIP DUTIES

GUIDANCE FOR EMPLOYERS



PART 1 THE EMPLOYER'S DUTIES

The record-keeping, reporting, and compliance duties you must adhere to as a licensed sponsor.

PART 2 THE AUDIT

The checks performed during an audit of your HR systems and our recommendations for best practice compliance procedures.

LET'S GET IT RIGHT

Non-compliance is not an option. This guide informs you of your duties as an employer of migrant staff, and prepares you for an audit visit by Home Office Compliance Officers from UK Visas and Immigration (UKVI).

All UK sponsors will be subject to a visit from UKVI Compliance Officers at some point during their time as a sponsor licence holder. This visit can be unannounced or prearranged, and will assess an employer's ability to comply with UK immigration legislation.

THE EMPLOYER'S DUTIES

"If you are a business you must carry out the correct checks on your staff or you could end up with a heavy fine."

Home Office immigration enforcement team

RECORD-KEEPING

As an employer of skilled migrant staff, you must retain the following records and documents on file and be prepared to provide them to Home Office officials upon request:

- A photocopy or electronic copy of all employees' immigration status documents, such as passports and/or biometric residence permit (BRP), which prove they are entitled to work in the UK. The documents you are required to retain on file will differ depending on whether a manual or online right to work check has been completed. These are referred to as 'Right to Work' checks*.
- A history of contact details, including address, telephone number(s) and personal email address. These must be kept up-to-date so an internal policy should be in place to ensure employees notify you of any changes to their personal contact details.
- Comprehensive employment records for each sponsored migrant worker (as outlined in Appendix D of the Sponsor Guidance). These should include a record of any period of absence undertaken by the migrant worker, and copies of their

payslips showing NI number, tax code, any allowances paid, and any deductions made. A copy of the signed employment contract and detailed job description must also be retained.

- Details of any recruitment process undertaken to fill this vacancy, including screenshots of advertisements and the details of any shortlisted applicants. If you are sponsoring a worker on a route that does not require a formal resident labour market test you must still retain evidence of any recruitment activity you have undertaken.
- Copies of any qualifications held which confirm that the migrant has the skills and experience to do the job, for example, copies of their degree certificate and/or references from a previous employer. Where necessary, a copy of the migrant's Disclosure and Barring Service (DBS) check must also be maintained.

THE EMPLOYER'S DUTIES ADVICE ON RECORD-KEEPING

For ease of reference, Smith Stone Walters recommends that employers maintain a separate record of their existing migrant populations which includes visa expiry dates and contact details.

*Certain concessions relating to the COVID-19 pandemic apply.

REPORTING

As a licensed sponsor, there are certain circumstances under which you must report to the Home Office concerning your sponsored migrant.

You must report to the Home Office within 10 working days of becoming aware of any of the following:

- They do not turn up for their first day of work. You should include their reason for non-attendance in your report.
- They are absent from work for more than 10 working days without explanation (this report must be made within 10 working days of the tenth day of their absence).
- Their employment ends earlier than intended.
- You cease to sponsor a migrant for any other reason, for example you become aware they have moved on to an immigration route that does not need a sponsor.
- Any significant changes occur in the migrant's circumstances, such as a promotion or change in job title or core duties, a reduction in salary, a change of work location, or their employment is affected by a change in company ownership.
- You have any information which suggests that the migrant is breaching the conditions of their leave to be in the UK.

As a registered sponsor, you must also inform the Home Office if:

- Changes are made to your licence details: for example if you want to change your key contact, authorising officer, or your business address.
- Your company is involved in a merger, takeover, de-merger or change of ownership. For example, if you sell all or part of your business, or the controlling number of shares in your business.
- Any information exists which suggests a migrant under your sponsorship may be engaged in terrorism or other criminal activity.
- You are a small or medium-sized business and you assign a Certificate of Sponsorship to a family member of anyone within the sponsor organisation.

THE EMPLOYER'S DUTIES ADVICE ON REPORTING

Smith Stone Walters recommends nominating a designated member of your HR team responsible for reporting changes to the Home Office within the given time frame.

COMPLIANCE

If you are a licensed sponsor, you must comply with the immigration laws and meet the following obligations:

- You must only sponsor a migrant who is appropriately qualified, registered or experienced for the role. For example, if a migrant is sponsored to work as a doctor, you must make sure that migrant has the correct registration to allow him or her to legally practice in the UK.
- You must not sponsor a migrant who does not have the experience or permission to do the job in question, and cease to sponsor any migrant who for any reason is no longer able to fulfil their role.
- You must not assign a Certificate of Sponsorship where there is no genuine vacancy or where the job description does not accurately reflect the position.
- You must only assign a Certificate of Sponsorship to a migrant who you believe meets the requirements of the relevant immigration route, and is likely to comply with the conditions of leave or worker authorisation.
- You must comply with all aspects of UK employment law, for example the National Minimum Wage and paid holiday entitlement.
- You must hold the appropriate planning permission or local planning authority consent to operate your type/class of business at your trading address, where this is a local authority requirement.
- If you are a food business, you must be registered with or approved by the appropriate food authority.

Do not breach your sponsorship duties. Home Office Compliance Officers will visit your company to check that you are fulfilling your obligations.

THE EMPLOYER'S DUTIES ADVICE ON COMPLIANCE

Smith Stone Walters recommends the use of annual mock audits and training to assess the state of your compliance with UK immigration legislation.



YOUR CHECKLIST

As a licensed sponsor you are under a strict duty to report certain migrant activities throughout their employment and for some time after. This checklist sets out your responsibilities before, during and after their employment has ended.

01



PRE-EMPLOYMENT DUTIES

When hiring a new migrant worker, you must ensure you complete the following checks as part of the onboarding process.

Check:

You must conduct either a manual or an online Right to Work check, following these three steps:

- Obtain the employee's original documents or use the online checking service
- Check the documents or results of the online check are genuine
- Make a copy of the documents or online response and retain this securely for the duration of employment and for two years afterwards.

Make a note:

You will need to conduct a follow-up Right to Work Check before your sponsored employee's existing permission expires. Make a note of the expiry date on your employee's visa so you know when to conduct the follow-up check.

02



DURING EMPLOYMENT

During your sponsored worker's employment, you are required to maintain accurate records and report certain information to the Home Office.

Record:

You must maintain accurate records on your sponsored workers, including:

- Up to date contact details
- Right to Work documents
- Comprehensive employment records
- Evidence of any recruitment activity undertaken for the role.

Report:

Use the Sponsorship Management System (SMS) to report any significant changes to your sponsored workers' circumstances, such as:

- A change in salary, job title or core duties
- A new working location
- Unexplained absences of more than 10 working days.

03



POST-EMPLOYMENT DUTIES

When you stop sponsoring a migrant worker, there are certain steps you must take and some documents that must be retained after employment has ended.

Report:

You must report to the Home Office within 10 working days if:

- The sponsored worker's contract of employment ends earlier than shown on the CoS (e.g. – If the worker resigns or is dismissed)
- You stop sponsoring the worker for any other reason.

Retain:

Documents relating to your sponsored workers must be kept throughout the period you sponsor them, and until whichever is the earlier of:

- One year has passed from the date on which you stopped sponsoring the worker, or:
- The date on which a compliance officer has examined and approved them.

THE AUDIT



‘Significant trust is placed in sponsors and they must ensure they comply with immigration law.’

Home Office statement

WHAT YOU NEED TO KNOW

All UK employers who have secured a sponsor licence can expect at some stage to receive a visit from Home Office Compliance Officers. The purpose of the visit will be two-fold:

HR SYSTEMS

To check you have the processes and human resource practices in place to enable you to meet your sponsorship duties.

COMPLIANCE

To check you are compliant with an employer's legal responsibilities towards the prevention of illegal working and with the relevant immigration legislation.

HR SYSTEMS

THE FIVE AREAS ASSESSED DURING AN AUDIT

During a compliance visit, Compliance Officers will assess five individual areas of your HR systems to rate the way you monitor your migrants' immigration status and prevent illegal employment.

AREA 01

Monitoring immigration status & preventing illegal employment

AREA 02

Maintaining migrants' contact details

AREA 03

Record-keeping

AREA 04

Migrant tracking & monitoring

AREA 05

General sponsor duties

AREA 01



MONITORING IMMIGRATION STATUS & PREVENTING ILLEGAL EMPLOYMENT

To comply with your sponsorship duties, a system should be in place which monitors the immigration status of each migrant you sponsor, and retains comprehensive employment records including, right to work information, signed copies of employment contracts, and payroll data.* As a result, you should be able to demonstrate that your systems minimise the risk of employing a migrant who does not have the right to work in the UK.

Do it right!

To prevent staff from overstaying their immigration leave, employers need to recheck the right to work of those individuals who hold time-limited visa permission in the UK. This check should occur before their previous permission comes to an end.

Best practice

A large employer refers to the official *Right to work checks: an employer's guide* document when recruiting new employees. It also uses an online HR system that records the immigration status and the visa expiry dates for its migrant population. The electronic system alerts the HR staff when the leave to remain of one of its migrants is due to expire.

A small company ensures each new recruit's right to work is validated prior to their first day of employment and retained on the personnel file. The visa expiry dates associated to its migrant employees are diarised with reminders shared between relevant stakeholders within the business.

THE AUDIT WHAT TO EXPECT

Compliance Officers usually take 2–3 hours to carry out the necessary checks. During the audit, the Compliance Officer may wish to speak to your migrant staff.

*A comprehensive list of all information a sponsor must retain and monitor is available in Appendix D of the Sponsor Guidance.

AREA 02



MAINTAINING MIGRANTS' CONTACT DETAILS

Employers must maintain up-to-date contact details for each sponsored migrant. To ensure you update these details you should conduct regular audits and issue clear instructions to ensure that sponsored migrants are aware that they must notify you of any changes and how they should do this.

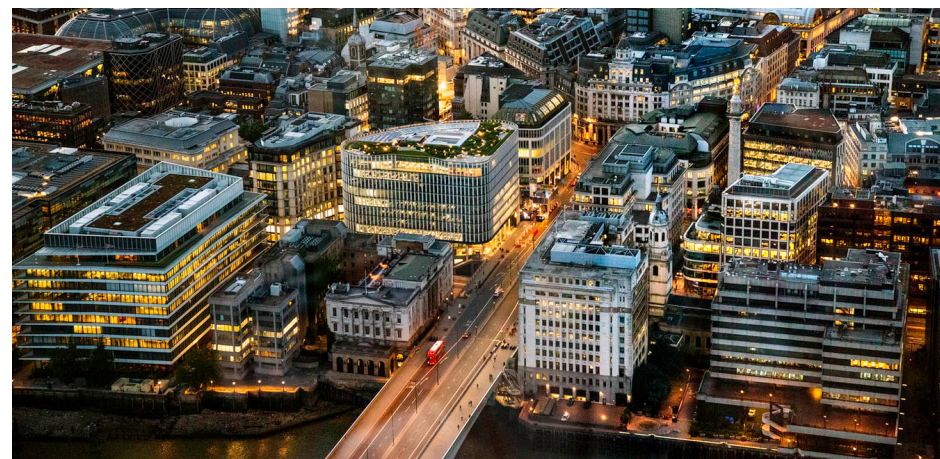
Do it right!

You will only be deemed 'compliant' if you have procedures in place to keep a full history of each sponsored migrant's UK contact details, ensure these are kept up to date, and are able to make these contact details available to UKVI quickly and upon request.

Best practice

An employer keeps a full history of its employees' contact details on an electronic database which is set to automatically remind staff on a regular basis to verify the details held. The requirement to maintain up-to-date records is also made a condition of their employment.

A smaller employer decides to retain a manual record of its employees' contact details and diarise the re-affirmation of this information on a regular basis.



AREA 03



RECORD-KEEPING

To comply with their sponsorship duties, employers should retain the documents listed in Appendix D of the sponsor guidance, including those relating to the recruitment and employment of migrant workers. Details to verify those stated on the Certificate of Sponsorship – such as the contract of employment, payroll records and documents relating to the recruitment of the migrant worker – should be accompanied by records of their subsequent work attendance. You should also maintain a checklist of required documents on each sponsored migrant's personal file.

Do it right!

You should keep comprehensive records for each employee according to good practice and store them so they can be quickly provided to the Home Office upon request.

Best practice

A compliant employer keeps a comprehensive personnel file for each employee according to good HR practice. These files contain documents relating to migrant recruitment, payroll information including details of any changes in salary, and a record of absences. In the event of a Home Office visit, these records will be readily available to Compliance Officers.



AREA 04



MIGRANT TRACKING & MONITORING

To comply with their sponsorship duties, registered sponsors must monitor the employment of their migrant staff and report certain information to the Home Office via their online Sponsorship Management System.

Employers have a duty to report information, such as a migrant's failure to attend on the first day of work; unexplained absences of ten working days or more; significant changes in a sponsored migrant's employment; and the termination of their sponsorship.

Do it right!

You must have procedures in place to monitor your sponsored migrants sufficiently and ensure that any of the circumstances listed in the reporting section of this document are promptly reported to the Home Office within the specified time period.

Best practice

A large employer engages an automated time and attendance management system to track its employees in real time and uses this information to evaluate and monitor vacations, sick days and holidays for its staff. All proposed changes to a migrant worker's employment are routed through a designated member of the HR team responsible for informing the Home Office within the given time frame.

A smaller company requires its management team to notify HR when one of their staff is absent from work. The HR team monitors attendance on a regular basis and contacts any employees whose absences are unauthorised. The HR team also has a designated member who is responsible for informing the Home Office of any key changes to a migrant worker's circumstances.

THE AUDIT
WHAT TO EXPECT

Compliance Officers will assess your organisation's ability to comply with its record-keeping and reporting duties, for example by reviewing your HR systems which monitor visa expiry dates and workplace absences.

AREA 05



GENERAL SPONSOR DUTIES

During the audit, licensed sponsors will also see their HR systems rated to determine their ability to comply with the general sponsor duties described in the published sponsor guidance. These include reporting changes to any declared key personnel (i.e. 'Level 1 Users', 'Key Contact' and 'Authorising Officer') to the Home Office; issuing all Certificates of Sponsorship in accordance with the published sponsor guidance; and reporting any changes in the organisation's circumstances (i.e. change of name, ownership or trading location).

Your Authorising Officer has ultimate responsibility for the activities of any staff authorised to use the sponsor management system. They should therefore regularly review sponsor activity conducted on the licence and check that all associated compliance duties are being met.

Do it right!

Make sure you have procedures in place to regularly review your company's profile on the online Sponsorship Management System and maintain a procedure to inform the Home Office of any change.

Best practice

A company's Authorising Officer is aware of the information held in relation to its sponsor licence by tasking a member of the HR team (a 'Level 1 User') with notifying the authorities of any changes in a timely fashion. A system is also in place which enables the Authorising Officer to check the validity of the Certificates of Sponsorship assigned to migrants on a monthly basis.



COMPLIANCE



As part of its audit, UKVI will also assess whether you have any record of non-compliance while previously employing migrant workers.

Compliance Officers may decide that you are non-compliant if you supply false information on any application, such as a start-up company sending false documents to establish itself as a genuine employer; an employer providing salary details for its staff that a compliance check finds to be incorrect; or a sponsored worker's employment circumstances do not reflect those declared on the Certificate of Sponsorship and the employer is unable to offer a reasonable explanation for the differences.

Do it right!

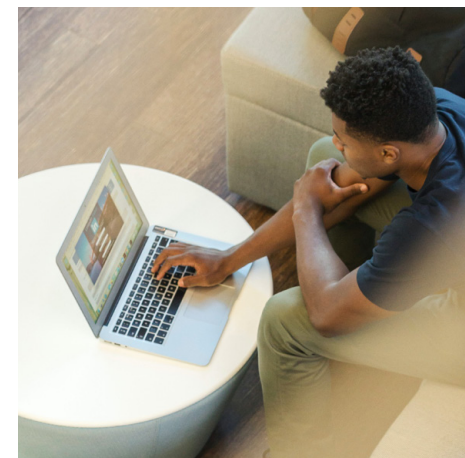
To be deemed fully compliant, you need to be on top of your sponsor duties and, if challenged, be able to demonstrate the internal systems necessary to maintaining compliance.

Best practice

A compliant employer monitors changes in UKVI sponsor licence guidance and accordingly reviews its internal systems to ensure that it continues to fulfil its obligations as an employer of migrant staff.

THE AUDIT
WHAT TO EXPECT

Should an employer be deemed non-compliant, dishonest or as posing a threat to immigration control, the Compliance Officer may seek to revoke or suspend their licence.



OUR SERVICES

Smith Stone Walters Audit and Compliance Management Service

Talk to Smith Stone Walters about supporting your organisation in complying with its duties as an employer of an expatriate workforce. Our bespoke Immigration Audit Service will be tailored to meet your business needs and budget, whilst helping you to avoid incurring penalties.

Our dedicated team of UK immigration specialists will ensure that you maintain ongoing compliance under the points-based system. Should we identify any issues in regard to non-compliance, our staff will work with you to improve your processes.

Whether you require a peace-of-mind soft audit or a fully outsourced compliance and document retention solution, we have the answers.

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