



Compliance Guidance

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Introduction

This guide is for care providers who wish to, or are, sponsoring overseas workers in the UK.

Over the following pages, we have summarised and provided guidance on the obligations and duties that you will need to satisfy in order to comply with your sponsorship duties and responsibilities to UK Visas and Immigration (**UKVI**). This guide also offers suggestions for best practice when complying with Right to Work requirements, and offers step-by-step guidance on UKVI compliance and preparing for UKVI compliance audits.

The information set out in this guidance is correct at the time of publishing. However, as this area of law is subject to regular change, we recommend that you refer to the latest updates on the West Midlands International Recruitment Portal or take further specialist legal advice. If you would like any further information on becoming a sponsor or on your sponsorship duties, please contact the following:



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Your duties as a sponsor

The hard work involved in sponsoring overseas staff doesn't all end after you've been granted your sponsorship licence. After it's been issued, UKVI will continue to monitor your sponsorship licence, use of certificates of sponsorship (**CoS**) and your employment of overseas staff to check that you are complying with your sponsorship duties.

The aims of the sponsorship system

The Government's overarching principle for the sponsorship of overseas workers is that it's a privilege granted, rather than an inherent right. The system is designed to ensure that those benefiting directly from migration contribute to maintaining the integrity of the immigration process.

To achieve this, all sponsors are expected to fulfil certain duties. These duties include:

- reporting duties;
- record-keeping duties;
- complying with immigration laws;
- complying with wider UK law; and
- not engaging in behaviour or actions that are not conducive to the public good.

We'll take a look at some of these in a bit more detail below in this document.

The Government's objectives in establishing and monitoring these duties include the following:

- preventing abuse of immigration laws and sponsorship arrangements;
- identifying any patterns of behaviour that may cause concern;
- addressing possible weaknesses in sponsors' processes which can cause those patterns;
- monitoring compliance with immigration rules and legislation, all parts of the Government's Worker and Temporary Worker sponsor guidance, and wider UK law (such as employment law); and
- ensuring sponsors do not behave in a way that is detrimental to the wider public good.

When do your duties as a sponsor begin and end?

Your duties as a sponsor begin from the day that you are granted your sponsorship licence to the day it is either surrendered by you or revoked by UKVI.

However, you should be aware that your actions both before and after you were granted a sponsorship licence can be taken into account by UKVI when deciding to allow you to continue or to reapply to sponsor overseas staff.

Your responsibility for each worker you sponsor begins on the date you assign a CoS to them. This responsibility finishes as soon as any of the following occurs:

- you withdraw the worker's CoS;
- UKVI cancel the worker's CoS;
- the worker's permission expires (unless you have assigned them a new CoS);
- the worker leaves the UK and their permission lapses; or
- you tell UKVI that you have stopped sponsoring the worker for any reason.

You have extensive duties to your sponsored workers. On an ongoing basis, you should:

- Only allow workers to undertake roles permitted by the conditions of their stay.
- Only assign CoS to workers if you believe they will meet the immigration requirements for the role.
- Check that your overseas workers have the necessary skills, qualifications or professional accreditations to do their jobs, and keep copies of documents showing this.
- Tell UKVI if your sponsored workers are not complying with the conditions of their visa.
- By monitoring your employees effectively. Essentially, that means having an HR system in place that lets you:
 - monitor your employees' immigration status
 - keep copies of relevant documents for each employee, including passport and right to work information
 - track and record employees' attendance
 - keep employee contact details up to date
 - report to UKVI if there is a problem, for example if your employee stops coming to work

Sponsorship Management

Whilst complying with the above duties might seem daunting, it should be fairly straightforward provided that you have robust systems in place to manage and monitor your sponsored staff.

The primary way in which your sponsorship duties will be monitored will be via the Sponsorship Management System (**SMS**). The SMS is an online tool that allows you to administer your day-to-day sponsorship duties and activities, such as assigning CoS and reporting changes to a migrant's circumstances.

Activities that you should use the SMS for include:

- managing your key personnel and licence details;
- creating, assigning and viewing your CoS;
- applying for and assigning defined CoS;
- reporting activities relating to your sponsored workers; and
- renewing your allocations and applying for additional CoS.

You should allocate certain responsibilities to a member (or members) of staff who will have access to the SMS once a sponsorship licence has been granted. These staff are known as 'Key Personnel' and there are four roles:

- authorising officer – a senior and competent person responsible for the actions of staff and representatives who use the SMS
- key contact – your main point of contact with UKVI
- level 1 user – the person responsible for all day-to-day management of your licence using the SMS
- level 2 user (this is optional) – an SMS user with more restricted access than a level 1 user. For example they cannot withdraw a certificate of sponsorship.

The Authorising Officer should be the most senior person responsible for the recruitment of the workers, and that person will be listed as being responsible for the actions of the staff and representatives who operate the Sponsor Management System on your behalf. The Authorising Officer should regularly check your CoS and SMS to ensure that everything is in order.

All of the above roles can be held by the same person. The number of people who should be appointed to the roles will depend on the size of your organisation and the number of overseas workers that you sponsor.

Reporting changes to UKVI

Your Key Personnel should use the SMS to report certain information to UKVI on your behalf. This information includes changes in circumstances affecting both your business and your sponsored workers.

Changes affecting your business

You must report any significant changes in your own circumstances within 20 working days. Changes that you must report include:

- your business stops trading or becomes insolvent;
- you substantially change the nature of your business;
- you are involved in a merger or take-over;
- you make changes that affect your relationship with any overseas businesses that have sent workers to you; or
- you make any changes to a contract covering secondment workers or service suppliers.

You must also tell UKVI if you're changing your details, like your address or allocated roles.

Changes affecting sponsored staff

You have responsibilities to tell UKVI if there are changes that effect your sponsored workers. You should report these changes with 10 working days. The changes you should report include:

- a delay in the start date for the sponsored worker of over 28 days;
- a sponsored worker fails to report for work;
- a sponsored worker is absent for more than 10 consecutive days without permission;
- a sponsored worker no longer works for you;
- you have made significant changes to the terms of employment for a sponsored worker (including their job title, core duties, salary or working hours);
- the sponsored worker's location of work has changed;
- the sponsored worker's employment is affected by a TUPE transfer; or
- you have stopped sponsoring the worker.

You are also expected to notify UKVI as soon as reasonably practicable in circumstances where you become aware that a sponsored worker:

- Has breached their conditions of stay, such as where a sponsored worker has made a claim or is in receipt of most state benefits, or if they have undertaken additional employment that does not meet the rules for supplementary employment.
- Is engaged in terrorism or criminal activity. You should also report this information to the police. When submitting your report, you should also include the last recorded residential address and contact telephone number for the sponsored worker and any personal email address you hold for them.



Record Keeping

Your sponsorship duties extend to keeping certain records and documents for your overseas workers.

Format of documents

You can keep these documents either as paper copies or in an electronic format. The important thing is that they are readily available for inspection should a compliance officer ask to see them. You should ensure that your Key Contacts are aware where these documents can be accessed.

How long you must keep the documents

You should keep all documents relating to your sponsored workers throughout the period that you sponsor them. You will also then need to continue to hold those documents until the earlier of:

- one year from the date on which your sponsorship of the worker ended; or
- the date on which a compliance officer has examined and approved them, if this is less than one year after you ended your sponsorship of the worker.

Which documents?

For each sponsored worker, you should hold the following documents:

1. A current passport:

You should obtain this as evidence of the sponsored worker's right to work in the UK. We discuss Right to Work checks further in the next section. The copies you retain should show the personal identity details, biometric details and any relevant visa or leave to enter stamps.

2. Evidence of the worker's date of entry to the UK:

This will usually be confirmed in the entry stamp in the sponsored worker's passport. If they do not have one, you should seek other evidence of their date of entry into the UK (if required to ascertain their right to work), such as travel tickets or a boarding pass.

3. Evidence of the sponsored worker's national insurance number (unless the overseas worker is exempt from requiring one).

4. Contact details for the sponsored worker:

These should include the sponsored worker's residential address in the UK, mobile phone number and email address.

5. The contract and job description that the sponsored worker under which they are employed by you. The details on these documents should match those on the sponsored worker's CoS.

6. A copy of the sponsored worker's Disclosure and Barring Service check, if applicable.

7. Supporting recruitment documents, including the sponsored worker's qualifications, their CV, references from previous employers and professional accreditations.
8. Evidence that the sponsored worker meets the English language requirements.
9. The sponsored worker's CoS, and confirmation of the relevant SOC code for their role.
10. A record of the sponsored worker's absences.
11. Copies of the sponsored worker's payslips:
These should include their name, NI number, tax code, any deductions made, and the amount and the frequency of payments made.
12. Evidence of any allowances made to the sponsored worker:
This can include expenses, petrol and car allowances, service occupancies etc.
13. Evidence of any changes to the sponsored worker's job role:
This can include letters confirming promotions, changes in salary, core duties or workplace.
14. Copies of any notifications made on the SMS in respect of a change of circumstances for the sponsored worker.

As well as the above, you must also keep the documents you provided as part of your application to become a licensed sponsor. You must keep this information for as long as you hold a sponsor licence.



Right to Work checks

Right to work checks are used to ascertain whether someone is an illegal worker. An illegal worker includes someone who does not have permission to be in the UK, including overstayers, as well as those who do have permission to be in the UK but their permission does not allow them to work in the UK.

Demonstrating that you are complying with your Right to Work obligations is a very important part of any UKVI compliance audit. Not doing so also places you at the risk of serious penalties and sanctions.

Right to Work checks should be carried out before the employee has commenced work for you. If you delay in carrying out Right to Work checks, there is a risk that you could be illegally employing a worker and, even if you are not, UKVI could deem that your taking a risk in delaying your Right to Work checks could pose a risk to sponsorship compliance.

How do you undertake a Right to Work check?

To comply with your Right to Work obligations, you should carry out one of the following checks for each employee before they start work for you:

- a manual right to work check (this can be carried out for all employees)
- an electronic right to work check via the services of a digital identity document validation technology (IDVT) provider (for British and Irish citizens only)
- a Home Office online right to work check (for non-British and non-Irish citizens)

There are three steps to undertaking a Right to Work check. These are as follows:

Step 1: Obtain

You should obtain the employee's original Right to Work documents as prescribed in the Home Office's guidance. These fall into one of three categories, depending on the nature of the employee's Right to Work:

1. List A (continuous Right to Work). You won't need to recheck their Right to Work after the initial check.
2. List B Group 1 (time limited Right to Work): You'll need to conduct a further Right to Work check before their current permission expires.
3. List B Group 2 (time limited Right to Work for 6 months): You'll need to conduct a further Right to Work check before the expiry of the Employment Checking Service positive verification notice.

You can find a comprehensive list of the types of documents that fall into the above lists here: <https://www.gov.uk/government/publications/right-to-work-checklist/employers-right-to-work-checklist-accessible-version>

Alternatively, you can check the employee's right to work online using the share code provided by them.

Step 2: Check

This step needs to be carried out in the presence of the employee, either in person or via live video link. You should check that the employee has the right to work by performing a manual document check or an online right to work check.

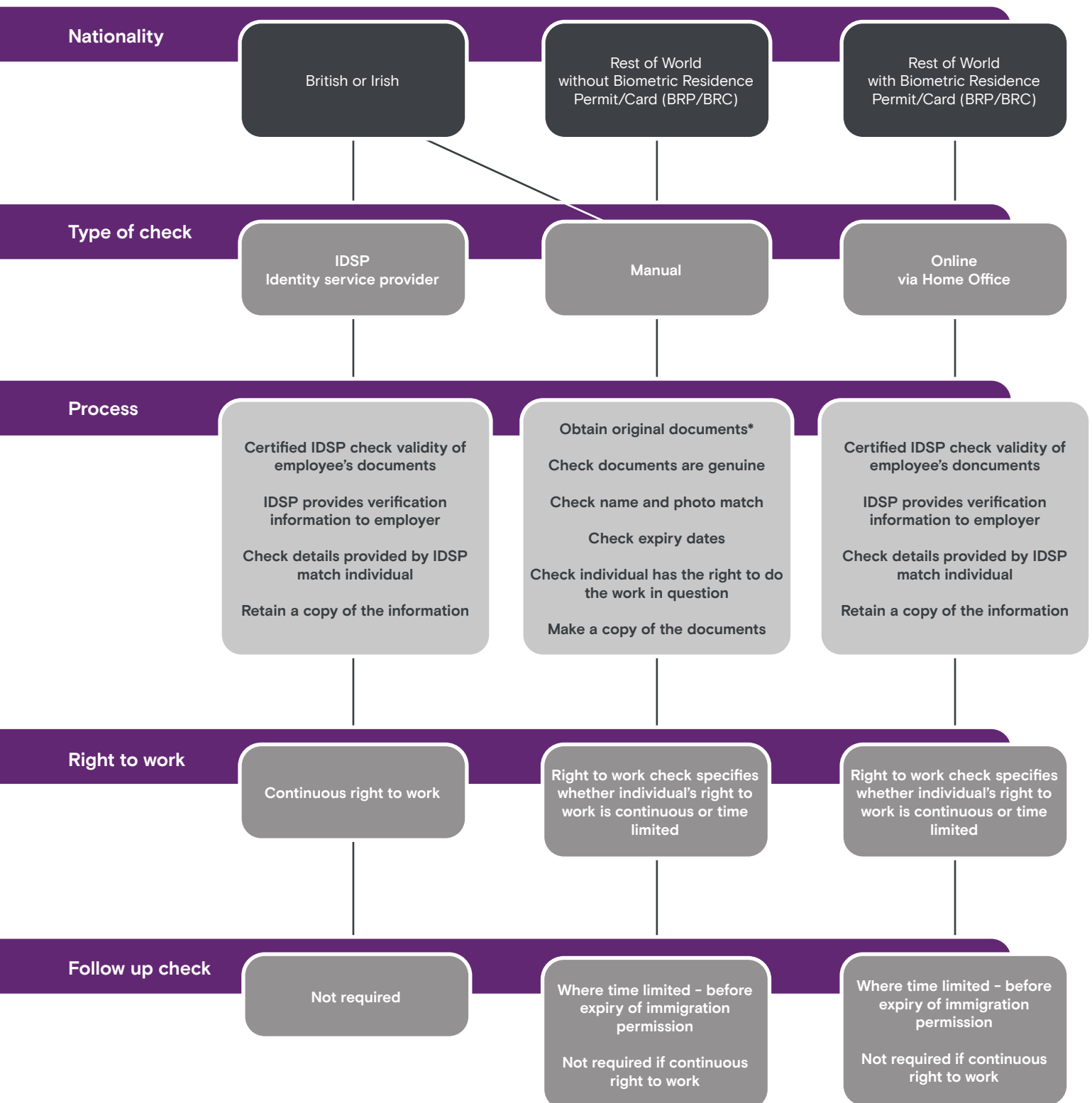
Step 3: Copy

You will need to take copies of the documents that have been manually checked, record the date of the check and date for follow-up checks, and retain copies of those documents. For online checks, the "profile" page, which includes the individual's photograph and date on which the check was conducted, must be retained.

To help you comply with your Right to Work obligations, we have included a helpful chart setting out the Right to Work process on the following page.



Right to Work Flowchart



*List A document - continuous right to work

List B, Group 1 document - time limited right to work until expiry of the immigration permission

List B, Group 2 document - time limited right to work for six months

Preparing for a UKVI compliance visit

UKVI may undertake a sponsor compliance visit in order to assess a provider once it has submitted a sponsor licence application. They may also visit once a sponsor licence has been granted in order to ensure that the provider is maintaining its sponsorship duties. Any change in circumstances may also trigger a compliance audit by UKVI, including:

- A change of the company address
- Takeovers, mergers, TUPE transfers
- Establishing a UK or overseas branch

A UKVI compliance audit can be an announced visit, or it can be arranged without warning to you. If you are visited by UKVI compliance officers, you must allow them to enter and access any premises or sites under your control. Refusal to provide access is likely to result in your sponsor licence being refused or revoked.

What should you expect from a UKVI compliance audit?

A UKVI compliance audit is likely to involve a thorough inspection of your premises, interviews with your Key Contacts and a selection of your sponsored workers, and a review of your paperwork and HR systems.

Some of the things which may be checked include the following:

- Your sponsored workers are filling an appropriate job vacancy at the required skill level;
- You are keeping the necessary records to fulfil your duties as a sponsor;
- You are paying the migrant at least the minimum relevant salary rate;
- The right types of CoS has been issued, and that the original number of CoS you requested is still justified;
- The information you provided in your sponsor licence application remains accurate;
- Your sponsored workers are complying with the conditions of their leave to remain in the UK; and
- You are not a threat to immigration control.

UKVI compliance officers estimate that it takes two to three hours to carry out a compliance audit, depending on the nature and size of your organisation.

How can you prepare for a UKVI compliance audit?

We've listed below some practical tips that you may want to consider to prepare yourself for a potential UKVI compliance audit:

- Do you have floor plans for your premises readily available?

UKVI compliance officers will wish to undertake an inspection of your premises and will likely ask you provide a floor plan to assist them with this.

- Have you checked that the copies for Right to Work paperwork have been taken correctly?

The copies of your Right to Work paperwork should include all of the information that UKVI require. It is recommended that you date and signed on each relevant page of the copies to confirm when the checks were undertaken and who undertook them.

- Where is the Right to Work paperwork stored? Is it secure?

Your Right to Work records should be readily available for inspection, whether they are stored in hard copy or electronically. However, it is stored, you should be able to demonstrate that you have taken appropriate steps to protect the data held by storing it securely.

- Have you complied with your obligations to recheck those with time-limited Right to Work?

If you are given advance notice of a UKVI compliance audit, you should conduct an urgent review of your Right to Work documents to ensure they are in order. It goes without saying that you should ensure that the expiry dates for permission to be in the UK have not passed. You should also be able to demonstrate that you have diarised reminders to re-check a sponsored worker's Right to Work six months before it is due to expire.

- As well as the Right to Work paperwork, are the other relevant documents for your sponsored workers readily available for inspection?

How are your HR records held and will you be able to allow the UKVI compliance officers access to these? They will likely wish to see copies of the contracts, payslips, rotas and other HR documents relating to overseas staff to ensure that both you and they are complying with their duties.

- Can you contact overseas staff at short notice?

UKVI compliance officers will wish to interview your sponsored workers to ensure that their employment is compliant with UK employment and immigration laws, and that their job reflects the information given in the COS. You should ensure that the contact details that you hold for your sponsored workers are up-to-date and that you know where they can be contacted to be interviewed at short notice.

You should also ensure that your Key Contacts are present during the compliance audit. It will be their responsibility to explain to the compliance officers how you are complying with your duties as a sponsor and to answer any questions that they may have. You can help to prepare them accordingly by considering common questions that compliance officers may ask as listed below:

- Who are the Key Contacts? Do they have secure email addresses?
- Are the key principles behind the provider's sponsorship duties and responsibilities understood?
- How long has the provider been registered with the CQC and operating?
- Are the provider's premises owned or leased?
- How is the provider's business funded?
- How many staff does the provider employ at each of its premises?
- How many of these staff are overseas nationals?
- Does the provider have a staff list for inspection?
- How many certificates of sponsorship have you applied for? How many have been issued? How many of these are undefined?
- How are overseas staff recruited?
- Does the provider use a third party recruitment agency? If so, what due diligence is undertaken to ensure that they are complying with their obligations under UK Modern Slavery legislation?
- Does the provider have a policy governing how it recruits staff?
- What steps have you undertaken to recruit in the UK?
- Who undertakes interviews?
- What training is provided to them for this?
- Who is responsible for undertaking Right to Work checks?
- Is training provided for those responsible for undertaking Right to Work checks?
- How does the provider undertake its due diligence into ensuring recruits have the necessary qualifications and/or requisite previous experience in care?
- How do you obtain references for new staff?
- How many hours per week are sponsored workers contracted to work?

- What is their hourly rate of pay or annual gross salary?
- Is overtime available? If so, what are the rates of pay?
- Are staff paid weekly or monthly?
- What leave entitlement do overseas workers have?
- How do you monitor staff absences?
- Where are the HR files for staff kept?
- Where do you keep your policies and procedures?

Compliance Audit outcomes

After a UKVI compliance audit, a visit report will be completed by the compliance officer, and they'll make a recommendation to the case worker dealing with your file. A decision will then be made on your ongoing rating and you will receive formal notification of this.

When you are issued with a sponsorship licence, you will be given an A rating. Following a compliance audit, your rating will either remain as A or be downgraded to B. You will be downgraded to a B rating if UKVI have concerns about your ability to comply with your duties as a sponsor.

If you have been downgraded to a B-rating, you will be issued with an action plan by UKVI. You will need to follow this and pay an accompanying fee in order to upgrade your rating back up to A. You must do so within a 3-month period to avoid your sponsorship licence being revoked. During this period, you will not be permitted to assign CoS to new employees.

You should also note that failure to pay the fee will result in your licence being revoked.

If you breach your sponsorship duties or are deemed to pose a risk to immigration control at any time, UKVI may take action against you. This could include suspending or revoking your sponsorship licence.

Suspension

This is the first step that UKVI will likely take if they have concerns about your compliance with your sponsorship duties. If your sponsorship licence is suspended, you will be sent a letter by UKVI notifying you:

- That your licence is suspended;
- The areas of concern that they have identified;
- The remedial action that you are required to undertake, including a list of documents that you will need to send to UKVI; and
- The date by which you must take this action (usually within 20 working days from the date of the letter).

We understand that it is concerning to have your sponsorship licence suspended, and we recommend that you seek urgent legal advice at an early stage to assist you to comply with the letter.

The suspension of the sponsorship licence will usually last eight weeks from the date of the notice of suspension letter to allow time for your response and UKVI's final decision. Whilst your licence is suspended:

- you will not be permitted to apply for any further CoS; and
- your business will be removed from the public register of sponsors for the suspension period.

However, your current sponsored migrants will be unaffected.

Revocation

UKVI will usually only revoke a sponsorship licence without suspending it beforehand if it has grounds to believe the sponsor constitutes a serious threat to immigration control.

There are mandatory grounds where UKVI WILL revoke your sponsorship licence. These generally involve serious or wilful non-compliance or your part, or a serious breach of your sponsorship obligations. The full list is set out in Annex C1 and C2 of the Government's sponsorship guidance. You can find links to these lists here: https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-part-3-sponsor-duties-and-compliance/workers-and-temporary-workers-guidance-for-sponsors-part-3-sponsor-duties-and-compliance-accessible#Annex_C1:_circumstances

https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-part-3-sponsor-duties-and-compliance/workers-and-temporary-workers-guidance-for-sponsors-part-3-sponsor-duties-and-compliance-accessible#Annex_4:_circumstances

There are also non-mandatory grounds when UKVI MAY revoke your sponsorship licence. Generally, your sponsorship licence will not be revoked if only one of those circumstances arises, but UKVI reserves the right to do so, depending on the seriousness of the issue, or if more than one of those circumstances are present. The non-mandatory grounds are listed here:

https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-part-3-sponsor-duties-and-compliance/workers-and-temporary-workers-guidance-for-sponsors-part-3-sponsor-duties-and-compliance-accessible#Annex_5:_circumstances

If your sponsorship licence is revoked, there will usually be a cooling off period of 12 months applied before you're able to apply for a new one.



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