

NAVIGATING THE IMMIGRATION SYSTEM IN THE CARE SECTOR

The end of free movement has been difficult for the care sector. It is now much harder, sometimes impossible, to employ overseas workers. The Immigration Rules are complex and obtaining legal advice is recommended before embarking on employing sponsored workers, but this short guide should set you in the right direction.

1. CHECK IF YOUR CANDIDATE ALREADY HAS A RIGHT TO WORK IN THE UK



UK and Irish nationals have the right to work in the UK.



EEA/Swiss nationals who were in the UK before 1 January 2021 should be able to demonstrate a right to work under the EU Settlement Scheme.



Others may have some right to work under family, student, Indefinite Leave to Remain or other immigration permissions e.g. Youth Mobility Scheme.



Some will have Skilled Worker or Tier 2 permission to work for somebody else. They will need a new permission to work for you.

2. IF THEY DO NOT HAVE A RIGHT TO WORK, YOU MAY NEED TO SPONSOR THEM

2a. What is sponsorship?

It is a licencing agreement with the Home Office. The Home Office will award work visas to sponsored workers and in return you will have serious compliance responsibilities.

2b. When could you sponsor?

If the candidate passes the points based system threshold for a visa.

GENERAL REQUIREMENTS



Employer needs an overseas worker

Characteristic	Points	Characteristic	Points
Employed by approved sponsor	20	Salary £20,480 (minimum) -£23,039	0
Skilled job	20	Salary £23,040 - £25,599	10
English language	10	Salary £25,600 or above	20
All 50 must be scored			
		Job is a shortage occupation	20
		PhD in relevant subject	10
		PhD in STEM subject	20
		Applicant is a new entrant	20

Must score at least 20 points

CONSIDERATIONS FOR THE CARE SECTOR

- ▶ You would need to hold a sponsor licence and assign a Certificate of Sponsorship
- ▶ Care workers and home carers are not considered to be skilled for these purposes
- ▶ Senior care workers are sufficiently skilled and would need to be paid at least £20,480 in most cases
- ▶ Nurses and nursing assistants are sufficiently skilled and would need to be paid in line with the relevant NHS banding rates

2c. If sponsorship seems possible you will need a sponsor licence.

The Home Office will assess whether you are a legitimate organisation and have (or could have) sufficient controls to monitor and manage compliance for your sponsored workers. The process is very involved and – as with all of this – you will need to consult guidance. It will probably take between two and four months to compile an application, file and receive a decision.



2d. Once you have a licence the employee will need a Certificate of Sponsorship and to apply for their [Skilled Worker](#) status



If they are overseas



If they are in the UK

- ▶ Assume a four or five week process, including document collection, filing and a decision.
 - ▶ Priority services can speed up the process.
 - ▶ Obtaining criminal record certificates and meeting the English language requirement can result in a lengthier process.
- | | |
|--|---|
| <ul style="list-style-type: none">▶ You will need to request a Defined Certificate of Sponsorship (DCoS). This normally takes one or two days but can take longer.▶ Non-EEA/Swiss nationals will need to apply online and book an appointment to give biometrics. EEA/Swiss nationals may be able to apply via an app, without the need for an appointment. | <ul style="list-style-type: none">▶ You will need to assign an Undefined Certificate of Sponsorship (UCoS). You should be granted a number of UCoS with your licence and can request more if you run out.▶ Non-EEA/Swiss nationals will need to apply online and book an appointment to give biometrics. EEA/Swiss nationals may be able to apply via an app, without the need for an appointment. |
|--|---|

Permissions are normally granted for three or five years and Indefinite Leave to Remain is available after five years subject to eligibility

3. Once permission is issued they will be able to work, but your compliance obligations remain



Be sure to make a compliant right to work check, in accordance with Home Office [guidance](#).



The Home Office will expect to be told of any significant changes in circumstances for a sponsored worker, for instance a change in work location or if they leave earlier than expected.



You will need to track the expiry of their right to work and, where they intend to stay, an extension application will be needed.

4. Outside of all of this you may employ or attempt to employ a EEA/Swiss national who has lived in the UK for some time and does not have the right to work. If they arrived before January 2021 they may still be able to apply for permission under the [post-Brexit EU Settlement Scheme](#). They will need to have a good reason for missing the 30 June 2021 deadline and should apply as soon as possible. Applications should be treated with seriousness and urgency.

We hope that this guide helpfully sets you in the right direction. Please be sure to study all Home Office rules and guidance. We have provided several links in the document but there are many more, including the Immigration Rules themselves.



Siobhan Owers
Partner
T +44 20 7090 9132
E sowers@fragomen.com



Ian Robinson
Partner
T +44 20 7090 9113
E irobinson@fragomen.com



Gemma Hyslop
Senior Manager
T +44 20 7090 9316
E ghslop@fragomen.com



Laurence Keir-Thomas
Manager
T +44 (0)7711 368 396
E lkeir-thomas@fragomen.com