

Employing Overseas Workers

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Reasons for employing overseas workers

- To perform jobs requiring specialist skills
- To fill vacancies for which there are not enough UK applicants (“shortage occupations”)
- On secondment or transfer from an overseas division for developmental assignments
- To fill temporary vacancy requiring pre-existing skill set

Overseas workers in the UK

Several types

- Those free to enter, stay and work with minimal restriction on their length of stay or ability to enter or change employment
- Mainly old EEA countries, Swiss nationals and nationals of other countries granted indefinite leave to stay



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Overseas workers in the UK

- Those with greater, but still limited restrictions on their ability to enter and work in the UK
- Includes newer “Accession 8” EEA countries, commonwealth nationals with UK ancestry and dependants of British citizens and EEA nationals

Overseas workers in the UK

- Those admitted with temporary permission as students or participants in short-term employment including exchange schemes, or for training or work experience
- Those admitted to work in certain sectors on a “permit-free” basis but still requiring specific and time-limited permission



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Overseas workers in the UK

- Those requiring full employment-based permission to work in the UK, usually through a sponsored employment with a specific employer, but sometimes on a stand alone basis via Tier 1 of the new PBS

Entry to the UK

- Whether or not a work permit or relevant permission is required, overseas nationals must comply with the entry requirements of the various immigration Acts and Regulations
- In practice, this usually means applying for an Entry Clearance Visa at a British Diplomatic Post abroad before travel



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Entry to the UK

- The “old” European Economic Area “EEA”
- Countries are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and the UK



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Entry to the UK

- Ten new countries joined the EU on 1st May 2004
- Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia
- Home Office Worker Registration Scheme to monitor participation in the labour force for eight of the ten – not Cyprus or Malta

Entry to the UK

- Bulgaria and Romania became members of EU on 1st Jan 2007
- Bulgarians and Romanians still need work permits or their equivalent to take employment in the UK
- Often referred to as “A2” nationals



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Work Permits

- Were the principal mechanism for employers to bring staff to the UK
- From 27th November 2008, new Tier 2 of the Points Based System (“PBS”) was introduced
- Work permit application received before that date will continue to be considered, as will immigration permission based upon work permit approval

The New System

- Underpinning the new immigration system is a five tier framework.
- The tiers are:
- Tier 1: Highly skilled individuals to contribute to growth and productivity;
- Tier 2: Skilled workers with a job offer to fill gaps in United Kingdom labour force;



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The New System

- Tier 3: Limited numbers of low skilled workers needed to fill temporary labour shortages;
- Tier 4: Students;
- Tier 5: Youth mobility and temporary workers: people allowed to work in the United Kingdom for a limited period of time to satisfy primarily non-economic objectives



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The New System

- The five tiers have different conditions, entitlements and entry-clearance checks. This will make the system easier to understand and use and allows the UK to adapt its policy on points and sponsorship to the very different needs of those entering the UK to work or study



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Sponsorship

- Under Tier 2 of the PBS, only employers registered with and licensed by the Home Office are permitted to issue a Certificate of Sponsorship to a named individual
- That individual must then apply for permission to enter the UK based on a skill set, experience and profile broadly equivalent to the old work permit criteria



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Sponsorship

- The employer must have undertaken a strict verification exercise in order to issue a COS
- Applications for employer licensing have reached barely a quarter of the Government's estimates as at the opening of Tier 2
- High level of employer anxiety about the new "Reporting Duties" in relation to sponsored employees which form part of the new arrangements



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Highly Skilled Migrant Programme

- HSMP introduced in 2002
- Provides Stand-alone immigration permission for employment or self employment for skilled, graduate professionals able to contribute to the UK economy
- Tier 1 phased in to replace HSMP by the end of June 2008
- Principle of stand-alone permission for highly skilled migrants is preserved



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Employer's Responsibilities

- Section 8 Asylum and Immigration Act 1996 – employer is guilty of criminal offence if it employed someone who did not have permission to work in the UK when they entered employment prior to 28/02/08
- Defence re inspection of documents and retention of copies evidencing that the person could work in the UK and there was no reason to believe false



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Employer's Responsibilities

- Section 15 Immigration, Asylum and Nationality Act 2006
- Employers liable to a civil penalty if they employ someone after 28/02/08 who requires but lacks permission to work in a particular role
- Statutory Excuse exists re checking documents and keeping copies, but must repeat at least every 12 months

Employer's Responsibilities

- Section 21 of the 2006 Act says it is a criminal offence to knowingly employ someone after 28/02/08 who requires but lacks permission to be in that role
- Max prison sentence of 2 years and an unlimited fine
- Aimed at those who deliberately flout the law in order to exploit vulnerable employees

Employer's Responsibilities

- Guidance issued re inspection and copying of documents
- Includes tips on how to check authenticity and what to photocopy and retain
- Must be checked before start of employment
- Will establish that the employee has a permanent right to work in the UK or that the permission is time-limited

Employer's Responsibilities

- Employers need to be satisfied that the documents genuinely relate to the person and have not been tampered with
- Not expected to be experts in forged documents
- Need to re-inspect at least every 12 months if permission is time limited



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Employee's Responsibilities

- Employees who are national of countries that joined the EU on 1st May 2004 must register under the Accession Worker Registration Scheme within 30 days unless exempt or from Cyprus or Malta
- Employer will need to give evidence of employment such as a contract or letter and keep a copy of the application until a certificate of registration is received



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Employer's Responsibilities

- Employers who refuse to consider foreign candidates may face a race discrimination claim

The Contract

- Contracts vary to suit circumstances
- Checklist
 - Expected duration
 - Termination provisions
 - Details of pay (currency?)
 - Other financial benefits
 - Taxation matters



The Contract

- Applicable law during assignment
- Dual contract for those dividing their working time



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Payment

- In general, wages and conditions for overseas workers should be the same as for UK employees in the same job
- Must be in accordance with UK legislation
- If overseas worker is paid significantly more, consider a policy to deal with the situation negotiated with UK workers



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Tax

- Complex area
- Depends on personal circumstances
- Whether UK has reciprocal arrangement with the workers country of origin
- Consider before drawing up contract by seeking expert tax advice



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Recruitment

- Verification of information is essential
 - See original docs
 - Follow up references
 - Thoroughly check anything suspicious
- Care must be taken to avoid discrimination
 - Code of Practice issued
- Internet Usage has advantages



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Relocation

- Accurately reflected in contract
- Should include
 - Travel costs for employee and family
 - Temporary accommodation at start of assignment
 - Cost of shipping possessions
 - Return trips to home country
- Practical help e.g. driving licence, credit cards



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Induction

- Should follow same induction programme as any other employee
- Additional orientation sessions to be considered
- Is there an informal network of expatriate staff
- Co-worker or “buddy”



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Multi Cultural Organisations

- Managers should be trained to communicate effectively with people from other cultures
- Be sensitive to different communication styles and attitudes to work
- Team working attitudes vary from one culture to another
- Build effective teams by having a clear framework that does not ignore cultural differences but encourages communication to achieve common goals



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Thank you

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