



# Employing Foreign Workers in the UK



*Business Support on Your Doorstep*

**Enterprise Europe Network London**

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## 1. Introduction

In a globalising world, more and more people are deciding to move country for a longer or shorter period of time in their life and the world seems to be getting smaller as people's mobility increases. Employers will increasingly find more foreign applicants for positions in their organisations.

Employing foreign workers often implies different legislation than for national employees. This factsheet on employing foreign workers will provide businesses with information for employing, or seeking to employ, citizens of countries other than the UK. Information on both EU and UK legislation governing this topic is provided, as well as contact details of relevant institutions.

The factsheet should only be used as guidance and it is recommended that professional legal advice is obtained before any formal action concerning the employment of foreign workers is taken.

## 2. EEA Nationals – free movement of persons

The free movement of persons is one of the fundamental freedoms guaranteed to every EU citizen since the foundation of the European Economic Community in 1957. It is laid down in Article 39 of the EC Treaty. All EU nationals have the right to work, live and study in any of the Member States of the European Union with the same rights as the local population, without being discriminated against on the grounds of nationality. This freedom also applies to European Economic Area (EEA) citizens: Iceland, Liechtenstein and Norway (as well as EU countries). However, transition periods currently exist for the citizens of the Member States who have joined the EU since 2004. Please see chapter 3 below for further details.

In order to facilitate the free movement of workers, EU citizens also benefit from coordinated social security systems and from a system of mutual recognition of qualifications.<sup>1</sup> Persons with EEA nationality, who would like to move to another country within the EEA, will benefit from the social security rights of the host country if they were covered by social security in their own country. This right is valid for (self)-employed persons, civil servants, students, pensioners, third country nationals (if legal residents) and their families. It has also applied to Switzerland since 2002. A complete guide to social security rights in the EU can be found at

[http://ec.europa.eu/employment\\_social/publications/2005/ke6404022\\_en.pdf](http://ec.europa.eu/employment_social/publications/2005/ke6404022_en.pdf)

To facilitate the further mobility of Europeans, the Europass initiative has been designed to facilitate the recognition of CVs for study and work purposes. It consists of five documents: a CV template, a language passport, a diploma supplement, a certificate supplement and Europass Mobility. More information on Europass can be found at

[http://europass.cedefop.europa.eu/europass/preview.action?locale\\_id=1](http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1).

Finally, the EURES network has been set up to match job-seekers and employers across borders. EURES is a database that connects the different national employment service databases onto one website. More information on EURES can be found at <http://europa.eu.int/eures>.

## 3. The Ten New EU Member States of 2004

On 1 May 2004, 10 new countries joined the EU. Following concerns from the 'old' 15 Member States, the EU negotiated flexible transitional arrangements with the eight Central and Eastern European countries regarding the rights of workers. These measures were taken in order to allow the existing Member States to limit movements of workers from the new Member States for a period of up to seven years after enlargement. Austria, Germany, Belgium, France, the Netherlands, Finland, Portugal and Spain imposed a transition period of at least two years in closing their borders to immigration from Eastern Europe in order to safeguard employment levels at home.

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<sup>1</sup> [http://ec.europa.eu/employment\\_social/free\\_movement/index\\_en.htm](http://ec.europa.eu/employment_social/free_movement/index_en.htm)

The UK, Sweden and Ireland opened up their labour markets from 1 May 2004 without transitional arrangements. However, for the UK's part, it requires the citizens of the eight countries: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, Slovenia and Poland, to take part in the **Accession State Worker Registration Scheme**.

This means that workers from these countries must register with the Home Office as soon as they find employment in the UK, if they are planning to work in the country for more than one month. The employee will need a letter from the employer confirming the person's employment. After 12 months of continuous legal employment in the UK, citizens of these above countries can apply for the EEA residence permit that gives them full free movement rights. An application form can be downloaded from the website at:

[www.ukba.homeoffice.gov.uk/eucitizens/applyingundereuropeanlaw/](http://www.ukba.homeoffice.gov.uk/eucitizens/applyingundereuropeanlaw/)

Workers from Malta and Cyprus have full free movement rights, and do not require the worker's registration certificate. Instead, they can apply for a residence permit straight away, like other EEA citizens.

On 8 April 2009, the Government announced that, despite decreasing numbers of Eastern European nationals seeking to register for work in the UK, **the prior restrictions operating as part of the WRS would remain**. This means that, as explained above, Eastern European nationals under the scheme will not have full access to benefits until they have been working and paying tax for at least 12 consecutive months.

## The Worker Registration Scheme

The Worker Registration Scheme is designed as a streamlined registration system, which does not impose additional or unnecessary burdens on potential employers of a national from the countries (except for nationals from Malta and Cyprus) that joined the EU in 2004. Applications for registration are the responsibility of the individual, but employers should however ensure that the individual is provided with a letter on company paper confirming the date on which the individual began working. The individual will need this when applying for registration.

An employer is responsible under the regulations for ensuring that they are authorised to employ a worker from a new Member State. The employer is automatically authorised to employ the worker for one month. If the worker has applied for a registration certificate during that one-month period, the employer will be authorised to prolong the employment until the application has been approved or rejected. The employer will continue to be authorised to employ if the registration certificate is issued. Employers may pay for the application on the worker's behalf.

Further information on the scheme is available in the 'Comprehensive Guidance for Employers on Changes to the Law on Preventing Illegal Working', downloadable from:

[www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking)

This publication, as well as further guidance for employers, is available from the employers' helpline on 0845 010 6677 or at: [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk).

The required registration WRS form can be obtained by telephoning 0117 344 1471 or by contacting:

UK Border Agency  
Customer Contact Centre  
Managed Migration Directorate  
Home Office  
PO Box 3468  
Sheffield S3 8WA  
T: 0114 207 4074  
E: [WPcustomers@ind.homeoffice.gsi.gov.uk](mailto:WPcustomers@ind.homeoffice.gsi.gov.uk).

The registration form can be downloaded at:

[www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/workers/](http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/workers/)

## 4. Bulgarian and Romanian Nationals

Since 1 January 2007 nationals from Bulgaria and Romania have the right of free movement in all member states of the EEA. They have a right of residence in any Member State for 3 months and can legally stay as long as they are students, self-employed or economically active and self-sufficient. However, they will not have the right to reside as a worker. **Work permit arrangements continue for Romanian and Bulgarian nationals under Tier 2 of the points-based system, as explained in Section 5.**

The Workers Registration Scheme in the UK has not been extended to workers from these two countries; instead restrictions have been put in place. The total number of low-skilled workers from the two countries who will be allowed to work in the UK per year will not exceed 20,000 and they can only be employed in the food processing and agricultural sectors. The restrictions will be in place until 2011. An unconfirmed number will, however, be free to travel to work in the UK if they are self-employed. Other migrants to be admitted will be those who meet the Highly Skilled Workers criteria and students (part-time employment).

### Authorisation to Work

Bulgarians and Romanians seeking to work in the UK need to obtain an authorisation to work before starting employment, unless they are exempt from doing so. There are two stages to applying for authorisation. Normally, the employer would need to apply for a work permit and once the employer has received a letter of approval, the employee should apply for an accession worker card. However, for certain categories of employment Bulgarian and Romanian nationals do not need a work permit. In these cases, the worker can apply for an accession worker card straight away.

#### Categories of employment requiring an accession worker card only (no work permit)

- Airport-based operational ground staff of an overseas airline
- 'Au pair' placements
- Domestic workers in a private household
- Ministers of religion, missionaries or members of a religious order
- Overseas government employment
- Postgraduate doctors, dentists and trainee general practitioners
- Private servants in a diplomatic household
- Representatives of an overseas newspaper, news agency or broadcasting organisation
- Sole representatives
- Teachers or language assistants
- Overseas qualified nurses coming for a period of supervised practice
- Voluntary workers

#### Exemptions from the requirement of authorisation to work

Bulgarians and Romanians are exempt from obtaining authorisation (work permit and/or accession worker card) if:

- they have been working legally in the UK for 12 months or more prior to 31 December 2006
- they are a spouse of a UK national
- they are a family member of an EEA national (except Bulgarians and Romanians) legally residing in the UK or
- they are providing services in the UK on behalf of an employer from another EEA country

Bulgarian and Romanian nationals that qualify as Highly Skilled may also be exempt from authorisation. Those meeting the criteria will be issued with a registration certificate which confirms their unrestricted access to the labour market. For information on how to meet the criteria please see: [www.ukba.homeoffice.gov.uk/workingintheuk/eea/bulgariaromania/applying/](http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/bulgariaromania/applying/)

There are five categories of work permits for Bulgarian and Romanian nationals, which are necessary for UK-based employers wanting to employ workers from Bulgaria and Romania subject to work permit authorisation. Work permits are issued for a specific individual to work in a specific job. The categories are:

- Business and Commercial
- Training & Work Experience Scheme (TWES)
- Sports and Entertainments
- Student Internships
- Sectors Based Scheme (SBS)

All the necessary information on these five categories can be accessed at:

[www.ukba.homeoffice.gov.uk/workingintheuk/tier2/workpermits/](http://www.ukba.homeoffice.gov.uk/workingintheuk/tier2/workpermits/)

In addition, two informative documents entitled 'Guidance for Nationals of Bulgaria and Romania on Obtaining Permission to Work in the UK' and 'Employing a Bulgarian or Romanian National in the UK' are available for download from the website. The two schemes above that are open to Bulgarian and Romanian workers only are not affected by the changes to the system of immigration explained in the section below.

## 5. Other Nationalities

**In November 2008, with further changes implemented in March & April 2009, a new points-based immigration system was introduced, replacing the previous work permits system.** Until 30 November 2008, foreign workers from outside the EEA could work in the UK under existing work permit arrangements. Under the new system, migrants will need to pass a points-based assessment before they are given permission to enter or remain in the UK. The new system is built on a five-tier framework comprising the following categories:

- 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
- Tier 3: **Low-skilled workers** needed to fill temporary labour shortages
- Tier 4: **Students**
- Tier 5: **Temporary workers**: people allowed to work in the United Kingdom for a limited period of time to satisfy primarily non-economic objectives.

Tiers 1, 2 and 5 are currently open while Tier 3 is suspended, and Tier 4 is being phased in. An overview of the system and the changes taking place can be found at:

[www.bia.homeoffice.gov.uk/employers/points/whatisthepointsbasedsystem/](http://www.bia.homeoffice.gov.uk/employers/points/whatisthepointsbasedsystem/)

### The Points-Based System: Tier 1

Tier 1 was introduced in June 2008, thereby replacing previous work permits for highly skilled individuals (including the Highly Skilled Migrant Programme). **On 31 March 2009, the requirements for the General and Post-study work categories were raised.** There are four categories of Tier 1 under which highly skilled individuals can apply. These are:

**Highly-skilled workers category (General)** enables people from outside the EEA to look for work in the UK without having a job offer. The scheme is a point-based system where you gain points based on your qualifications, previous earnings, United Kingdom experience, age, English language skills, and available funds. The previous programme, known as the Highly Skilled Migrant Programme (HSMP) is now closed. Transitional arrangements for those already in this programme are in place. Information on the new scheme as well as on how to proceed if you already have a HSMP approval is found at: [www.ukba.homeoffice.gov.uk/workingintheuk/tier1/general/](http://www.ukba.homeoffice.gov.uk/workingintheuk/tier1/general/)

The Tier 1 (General) changes will apply to migrants who are applying to enter the United Kingdom in this category for the first time, or who are applying to switch into the Tier 1 (General) category from another category. Anyone applying for an extension of their permission to stay under Tier 1 (General) will not be affected by the changes. Further information on the changes in this category can be found at: [www.bia.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier1generalguidance310309.pdf](http://www.bia.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier1generalguidance310309.pdf)

**Entrepreneurs category** is open to people setting up a business or being actively involved in the running of a business in the UK. More information can be found at: [www.ukba.homeoffice.gov.uk/workingintheuk/tier1/entrepreneur/](http://www.ukba.homeoffice.gov.uk/workingintheuk/tier1/entrepreneur/)

**Investors category** allows persons from outside the EEA to make substantial investments in the UK. Further information can be seen at: [www.ukba.homeoffice.gov.uk/workingintheuk/tier1/investor/](http://www.ukba.homeoffice.gov.uk/workingintheuk/tier1/investor/)

**Post-study workers category** enables international graduates in the UK to look for work without having a sponsor for the length of their period of study. The aim of this system is to retain international graduates that have studied in the UK. From 31 March 2009, applicants will not be awarded points for Postgraduate Diplomas or Postgraduate Certificates other than Postgraduate Certificates in Education. More information can be accessed at: [www.bia.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier1poststudyworkguidance1.pdf](http://www.bia.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier1poststudyworkguidance1.pdf)

## **The Points Based System: Tiers 2, 4 and 5**

Tiers 2 and 5 (skilled workers with a job offer and temporary workers) opened in November 2008 and Tier 4 (students) in March 2009. If you are an employer or educational institution you can continue to recruit foreign workers and students under the old work permit arrangements until the new systems are opened. However, employers of migrants under these tiers must have a sponsors' license thereafter. This license can be applied for now at: [www.ukba.homeoffice.gov.uk/employers/points/](http://www.ukba.homeoffice.gov.uk/employers/points/)

### **Tier 2**

The skilled worker category, which replaced the work permit arrangements in November 2008, is designed for people coming to the United Kingdom with a skilled job offer to fill a gap in the workforce that cannot be filled by a settled worker. This also includes intra-company transfers, ministers of religion and sportspeople. Applications can be made if the worker is applying to enter the UK under the sponsored skilled worker category, or if the individual is in the UK with permission to stay in a category that allows for a switch over into Tier 2.

If permission to stay as a skilled worker is granted, the individual can live and work in the UK for a maximum time of three years plus one month. At the end of the three years, an application for extension to stay on as a skilled worker is necessary. Work permits for Bulgarian and Romanian nationals are also issued under Tier 2, as explained on p.5. More information can be seen at: [www.ukba.homeoffice.gov.uk/workingintheuk/tier2/general/](http://www.ukba.homeoffice.gov.uk/workingintheuk/tier2/general/)

### **Tier 4**

Since March 2009, students applying to come to the UK are assessed under the new points system. Changes to the current system for students include only allowing adult students from overseas to study in the UK where they have a proven track record in studying; and that all students must be enrolled on a course at Level 3 or above on the National Qualification Framework (NQF) if they are seeking to learn English. More information on the changes can be found at: [www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdocs/statementofintent/pbstier4implementationplan.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdocs/statementofintent/pbstier4implementationplan.pdf?view=Binary)

### **Tier 5**

This category concerns persons coming to work temporarily in the UK, which includes creative and sporting workers, government-authorised exchange workers and charity workers. It is granted for a maximum twelve-month or twenty-four month stay in the UK, depending on the type of work. As of November 2008, this category also includes the youth mobility scheme. It replaced, amongst others, previous schemes for au pairs, gap year, visiting religious workers and overseas government employees. More information can be found at: [www.ukba.homeoffice.gov.uk/workingintheuk/tier5/](http://www.ukba.homeoffice.gov.uk/workingintheuk/tier5/)

## 6. Breaches of Immigration Law

The Asylum and Immigration Act 1996 governs the rights of foreign nationals to live and work in the UK. Section 8 of this Act concerns illegal migrants. As an employer you could be guilty of a criminal offence under Section 8 of the Act if you employ someone of 16 years or over who does not have permission to live or to work in the UK. An employer can be fined up to £10,000 for each person he is found to have employed illegally.

However, checking and recording certain specified documents belonging to potential employees can provide an employer with a statutory defence from conviction. If an employer has carried out these checks and established that a potential employee is not permitted to work or is not the rightful holder of the document presented, then the employer is obliged to refuse employment to that person. Employers should make the document checks and recording before an employee starts work. The Asylum and Immigration Act 1996 can be found at:

[www.opsi.gov.uk/acts/acts1996/ukpga\\_19960049\\_en\\_1](http://www.opsi.gov.uk/acts/acts1996/ukpga_19960049_en_1).

Up-to-date information on the correct documents to request, how to check them and keep a record of them can be obtained from the Home Office Employers' Helpline 0845 010 6677. The Helpline should also be your first point of contact if you have concerns about false or forged documents or if you wish to report the employment of illegal workers. On their website, the Home Office provides information on illegal work and how to prevent it. This can be accessed at:

[www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/](http://www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/)

For general immigration enquiries, employers can also contact the Immigration Enquiries Bureau (IEB) on 0870 606 7766.



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