

Self-Audit Checklist – Care providers

Introduction

A compliance visit from the Home Office is possible at any time. If you have a visit, the key areas the compliance officer will be assessing are whether:

- you have the necessary systems and procedures in place to meet your obligations as a sponsor;
- you are complying with your obligations to prevent illegal working;
- workers are complying with the conditions of their leave;
- sponsored workers are recruited to fill genuine vacancies which meet the requirements of a skilled worker.

If the compliance officer finds there have been breaches of the above, there is a risk your sponsor licence could be suspended, downgraded or even revoked.

The idea of this checklist is to help you review your own systems, processes and records and to identify any gaps so you can assess risks and make changes going forwards. The checklist is only a guide, and it is possible a compliance officer could ask different questions or request different documentation. It is, therefore, important that you familiarise yourself with your duties as a sponsor and we encourage you to reach out to the team at RWK Goodman for further advice or clarification.

Information / Documentation likely to be relevant

As part of carrying out this self-audit, you are likely to need to speak to the Authorising Officer and Level 1 user(s). You may also need to speak to individuals who are responsible for recruitment.

You will need to review employee files and check various HR systems / records. We would also advise you to speak to sponsored migrants.

Sponsor details

Licence number	
Licence held since	

What does the licence cover? (i.e. head office, all sites, particular locations, specific branches)	
Number of employees	
Number of sponsored migrants	
Roles sponsored and SOC codes	
Which location / branch / entity has sponsored migrants? Does that fit with what the licence is said to cover?	

Organisation checks / record keeping

Copy of sponsor licence application and supporting documents held?	
CQC registration for all sponsoring entities?	

Genuine Vacancies

Are you able to show you have genuine vacancies / a need for the roles you sponsor? For example,	
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can you point to contracts with the local authority or with service users?	
Do you advertise vacancies? Can you evidence this with a copy of a job advert?	

Recruitment Process

Are you comfortable you can demonstrate only suitable individuals are selected for roles?	
Do you have evidence of each sponsored worker's:	
- application?	
- Notes from interview	
- Appropriate interview questions (i.e. about ability to do job)	
Are offers made conditional on:	
- DBS	
- Right to work	
- Satisfactory references	

Right to work checks

The rules on right to work checks have changed over time. The requirement is to check using the rules in place at the time. For employees who have been with you for a while, the rules may have been different to the current ones and previous guidance will need to be reviewed. Advice should be sought if in doubt.

To avoid a civil penalty if a worker is found to be working illegally, you need to be able to show the correct right to work check was done.

As a sponsor, you also have a duty to prevent illegal working.

Sponsors are required to go further than non-sponsors and are expected to carry out checks on self-employed staff as well as workers.

Do you carry out right to work checks prior to workers starting employment?	
Do you do the checks internally? (Other than for British and Irish nationals using an IDSP, the checks should not be outsourced)	
Do you carry out right to work checks on self-employed individuals?	
Do you have appropriate evidence of the right to work check being carried out?	
Are you comfortable the right to work checks have been done in accordance with the Home Office guidance? Right to work checks: an employer's guide - GOV.UK	
For those on a student visa, in addition to the digital check:	

- Do you have evidence of their term dates?	
- Have the restricted hours been reflected in their contracts?	
- Are they on permanent contracts or fixed term (they shouldn't be in a permanent role while studying).	
- Do you have a system which ensures they do not work more than their capped hours?	
For those doing supplementary work, in addition to the digital check: - Do you have evidence from their sponsor that they are working for them and what hours they work?	
- Do you have a system which ensures they do not work more than their capped hours?	

Expiry dates and repeat checks:

In relation to visa expiry dates, you need to be able to demonstrate that you have a system for recording these dates and would know when visas are due to expire.

If you don't do the follow up check, you will lose the statutory excuse against a civil penalty.

Do you record visa expiry dates?	
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Are these dates checked regularly and / or are alerts set to ensure dates are not missed?	
Do you carry out right to work checks prior to expiry?	
Can you evidence these follow up right to work checks on all files relating to individuals with time limited leave? (check guidance to ensure follow up check is compliant)	

Pay

All sponsored migrants must be paid the minimum salary set for sponsorship. This varies by role and changes depending on when someone is assigned a certificate. All workers (not just those who are sponsored) must be paid at least National Minimum Wage.

<p>Are all sponsored workers paid the minimum salary set for their role</p> <p>(NOTE – minimum salaries are based on a 37.5-hour week so if they are working more, they need to have prorated up based on the minimum hourly rate. If working less than 37.5 hours, pay cannot be pro-rated down from the minimum annual threshold)</p>	
<p>Are all staff paid at least National Minimum Wage?</p> <p>(Consider risk areas such as travel time and sleep shifts)</p>	

Roles / CoS

It is essential that sponsored workers are carrying out the role they are sponsored to do. If their duties have changed so that they are in reality carrying out a role which fits more closely with a different SOC code, they will be working illegally. You should check the worker is carrying out the role outlined on their CoS by speaking to migrants to check how they would describe their role.

Does the SOC code on the CoS match the job description in the contract?	
Do the worker's duties fit with the SOC code on their CoS? (be careful with care workers taking on additional duties and becoming senior care workers or vice versa)	
Do the worker's hours, pay and location match those detailed on the CoS?	

Worker Contact details

You are obliged to keep current and previous contact details for all sponsored workers.

Do you hold current contact details for all sponsored migrants?	
Do you regularly ask migrants to check details and update you if anything changes?	
Do you contracts of employment contain a clause requiring sponsored migrants to inform you of any changes to contact details?	
Do you record historic contact details?	

Record keeping

For each sponsored migrant you are required to keep all of the document listed in appendix D (<https://www.gov.uk/government/publications/keep-records-for-sponsorship-appendix-d>).

Documents must be retained until the sooner of:

- One year from the date you stop sponsoring a migrant. However, please note that right to work check documents must be kept for at least two years after you stop sponsoring the individual; or
- The point at which a compliance officer has examined and approved the documents (if this is less than one year after you stop sponsoring them).

For each sponsored worker you should check for the following:

Are all documents from Appendix D on record for all sponsored migrants?	
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Reporting

As a sponsor, you are required to report certain events. A link to the guidance setting out the reporting obligations is below:

[Workers and Temporary Workers: guidance for sponsors part 3: sponsor duties and compliance - GOV.UK](#)

Has the Authorising Officer and Level 1 user read the above guidance?	
Have all reportable events been reported via the SMS?	
Has all reporting been done within the required timeframes?	
Would you be aware straight away if an employee did not attend work?	

Other Sponsor duties

As a sponsor you also have a duty to comply with the law generally. Some common problem areas are flagged below but if there are other areas you know are not compliant with legal obligations, these should be addressed.

Does the pay for all employees (not just sponsored migrants) meet the requirements of NMW?	
Are your working hours compliant with the Working Time Regulations?	