



THE NEW POINTS BASED SYSTEM - WHAT YOU NEED TO KNOW ABOUT TIER 4

If your school wishes to take new international students from outside the European Economic Area and Switzerland after January 2009:-

1.	You will need to be accredited.
2.	You will need a licence to be a Sponsor.
3.	The application for a licence will cost up to £400. This is a one-off fee.
4.	In support of your application you will need to provide proof of an inspection/audit and identify the key personnel.
5.	Issuing a Certificate of Sponsorship to a student will cost £10.
6.	During the period of the Certificate you will owe legal obligations to the UK Border Agency regarding the student's conduct and whereabouts.
7.	You will need a well organised system to support your key personnel and comply with the strict legal obligations.
8.	All international students currently in the UK will be granted leave to complete their current courses.
9.	The new Tier 4 is effective from January 2009.
10.	For further information go to www.bia.homeoffice.gov.uk or the Sponsorship Helpline 0845 010 6677.

What is the new Points Based System?

The Points Based system (PBS) is at the heart of the Government's plans to overhaul the UK's immigration system and will condense over 80 routes of visa entry in to a tiered system made up of 5 tiers. In July this year the Home Office published the latest tranche: Tier 4 for students.

The tiers are applicable to all migrants wishing to enter the UK from countries outside the European Economic Area (EEA) and Switzerland. There are also restrictions on a few countries who recently join the EEA, such as the Czech Republic, Slovakia and Bulgaria.

Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
Migrants with desirable professional skills	Skilled workers with an offer of employment	Temporary, unskilled workers	Students	Youth mobility schemes, temporary workers

The new PBS is already being rolled out, Tier 1 having been launched on 29 February 2008. The remaining tiers are being phased in through 2008/09 and indications are that Tier 4 will be up and running in January 2009. In the meantime, all students currently studying in the UK will be allowed to complete their current course.

What is Tier 4?

All schools, colleges and universities wishing to recruit students from outside the EEA and Switzerland will need to comply with the new system. The main difference to the old system is that under this new regime educational institutions will have now a greater

responsibility to assist the Government in identifying phoney educational establishments and migrants who abuse the system. There will be 2 visa categories in Tier 4:-

1. Tier 4 (child student): this will enable children between the ages of 4-16 to continue to come to the UK to be educated at an independent school
2. Tier 4 (general student): for all those wishing to come to the UK for their post 16 education

It is important to note that Tier 4 has not been designed as a route to settled status in the UK nor does it provide an opportunity to apply for Indefinite Leave to remain in the UK or permanent residency. A Tier 4 visa is a temporary visa designed with a specific purpose in mind and replaces the UK student visa service.

The 5 basic steps under Tier 4

1. Under Tier 4 (Students) all educational institutions intending to take students from outside the EEA need to be a licensed Sponsor. To be able to apply for this status the institution must have some form of quality assurance in place, i.e. be accredited.
2. Once accreditation is in place (an ISC or SBSA school will already be accredited), an institution can apply to become registered on the Sponsorship Register. Successful applicants will be issued with a licence.
3. Key Personnel must be named on the application to the register and systems need to be in place to ensure compliance with the Tier 4 requirements.
4. Once a school is a registered Sponsor, students fulfilling the institution's academic requirements can be issued with a Certificate of Sponsorship.
5. Responsibility then passes to the prospective student to show they have a good track record of studying (evidencing a willingness to learn) and are able to obtain the 40 points required to be granted entry rights to the UK

Step One - Accreditation

All migrants save for those entering the UK under Tier 1 will require a Sponsor. For our purposes, the sponsor will be the educational institution based in the UK that has accepted a student on to a course.

To be able to apply for a licence an educational institution will be required to have obtained accreditation from an external independent body (BSA and SBSA member schools are already accredited, as demonstrated by ISI and Ofsted inspections). The rationale behind this is the protection of students from bogus colleges and those fictitious institutions set up to offer places to 'students' purely to facilitate an entry in to the UK, therefore abusing the student route.

What does this mean for education providers?

- Publicly funded institutions are already required to submit to the system of inspections conducted by Ofsted (incorporating the former Adult Learning Inspectorate) the Quality Assurance Agency and their devolved equivalents. As these activities already provide appropriate assurance that the institution is a genuine provider of education they will not be required to undergo any additional accreditation.
- Independent schools must by law already be registered with the DCSF following a successful inspection by either the Independent Schools Inspectorate or Ofsted and will not require any additional accreditation.

Step Two - the Sponsorship Register

Once accreditation is in place an application can be made to the UK Border Agency to obtain a licence to become a registered Sponsor. This register will replace the current Register of Education Providers. The process is an online application and needs to be followed with the appropriate paperwork (for schools this is the last inspection report) and a £400 application fee to the UK Border Agency within 10 working days.

Depending on the strength of the application, a successful applicant will be provided with an A or B-rated licence. If all the UK Border Agency's requirements are met, an A-rated licence will be issued. A B-rated licence will only be issued if some of the requirements are not met. This is a temporary ranking and a sponsor will have to comply with a timed action plan to gain (or re-gain) an A-rating. If the application is completely unsuccessful there is no right to appeal but the application can be remade afresh.

The sponsorship register for schools, colleges and universities opened for applications at the beginning of August 2008.

For further information, please go to the UK Border Agency website: www.ukba.homeoffice.gov.uk or telephone the helpline for sponsors on 0845 0106677

Step Three - Key Personnel & Management of the Sponsorship System

There are 4 key personnel roles in the system and how these are to be allocated within the educational institution must be identified at the application stage:-

1. Authorising Officer
2. Level 1 User
3. Level 2 User
4. Key Contact

The Authorising Officer must be a permanent and paid member of staff in the UK and in a senior position as he/she will have overall responsibility for activities of all users of the online sponsorship management system. In contrast to Level 1 and 2 Users (below), Authorising Officers will not have access to the forthcoming PBS IT system which will enable sponsors to allocate certificates, carry out administrative functions and comply with their immigration obligations.

The Level 1 User will conduct the establishment's day-to-day activities using the online sponsorship management system, such as assigning Certificates of Sponsorship, notifying of changes, reporting migrant activity and non-compliance, withdrawing certificates, managing study addresses and amending user details. After the initial application, more Level 1 Users can be added depending on the needs of the school but he/she must be resident in the UK.

The Level 2 User must be based in the UK and as many Level 2 Users can be appointed as the institution considers it needs. These Users have restricted access to the range of permissions on the IT system but are able to assign certificates and report migrant activity.

The Key Contact is the person who acts as the main contact point between the UK Border Agency and institution and therefore must be based in the UK.

These roles can be fulfilled by the same person or shared by up to four individuals. Additionally a 5th personnel role for education institutions to consider is identified by the new PBS system, namely the institution's Legal Representative. A legal representative can be named as the Level 1 and/or 2 User and/or the Key Contact and/or allocated

responsibility for monitoring the institutions ongoing legal obligations under the new PBS Tier 4.

Step Four - Certificate of Sponsorship

When an institution is accredited and has become a registered Sponsor then a prospective student will require from them a Certificate of Sponsorship to support their Tier 4 Application. This is a virtual document and consists of a unique reference number. In providing these Certificates the educational institution is taking on the day-to-day responsibility for their international student which brings with it key responsibilities in the following areas:

- **Record keeping**: each Sponsor must keep copies of each migrant's passport or UK immigration status document together with up to date contact details at all times to ensure they are in a position to cooperate with the UK Border Agency.
- **Reporting duties**: Sponsors must report to the UK Border Agency if the sponsored migrant does not turn up for study, if he is absent for more than 10 expected contact days without reasonable permission, if the course of study ends, if the Sponsor stops sponsoring the student, if there are any significant changes to the student or Sponsor's circumstances or if the Sponsor suspects the student is breaching his/her conditions of leave.
- **Compliance with the law**: Sponsors must be clear at all times that a student is lawfully able to study in the UK.

A failure to comply with these duties may interfere with the Sponsor's ability to issue certificates, possibly even result in a ban and may also result in civil penalties against the institution and/or criminal prosecution of key personnel. It is therefore imperative that a comprehensive system is in place to comply with the PBS and key personnel have a clear understanding of their responsibilities.

Step Five - the Student's Application

Following the issuing of a Certificate of Sponsorship it then falls to the prospective student to show they have achieved some qualifications (to show a willingness to learn) and are able to accrue sufficient points to be granted entry rights to the UK. As each certificate costs £10 to issue it may be worth checking that a prospective student can attain the required 40 points.

30 of the student's 40 points will be automatically achieved when they are issued with the Certificate of Sponsorship. The additional 10 points are awarded if a student can prove sufficient funds are available for their maintenance and school fees. Border Agency Officers will check all these are in place when reviewing the evidence provided in support of a student's application.

A successful candidate will be granted a period of leave to complete their course. The periods of study under each visa are yet to be finalised.

For further information, please contact:-

Helen Rideout, Solicitor, Browne Jacobson
Tel: 0115 976 6291
Email: hrideout@brownejacobson.com

Mark Blois, Partner, Browne Jacobson LLP
Tel: 0115 976 6087
Email: mblois@brownejacobson.com

brownejacobson