

# IS YOUR BUSINESS COMPLIANT UNDER THE NEW POINTS BASED SYSTEM?

IF NOT, YOU CAN FACE

UNLIMITED FINES OR 2 YEARS IMPRISONMENT

"The Points-Based System is one of the biggest shake-ups to the immigration system in a generation ensuring only those with the skills we need will be able to work or study here and no more.

"Our message to businesses is loud and clear - if you want to employ foreign workers from outside the EEA, you need to apply now for a sponsor licence. Business benefits from migrant labour but must join us in helping crack down on illegal working and ensure a system which is both firm and fair." Lin Homer, Chief Executive of the UKBA

## OUR COMPANY

Aston Brooke is a fast moving, innovative and niche firm dedicated to the ethical practice of Immigration Law. The firm specializes in Immigration Compliance and Corporate Immigration Law and Practice. Specializing in one area enables the firm to stay ahead in the ever changing world of Immigration Law, providing a mixture of best practice and commercial advice to clients.

## IMMIGRATION COMPLIANCE

Aston Brooke's Immigration Compliance service was established to help companies keep up to date with changes in Immigration Law under the New Points Based System and to prevent them from inadvertently breaking the law, under Section 8 of the Asylum and Immigration Act 1996.

Failure to carry out the correct checks can have several dramatic and negative affects on the business and the employees. These negative affects are many and can include the following:

- ✓ the company and authorizing officers can be convicted of committing a criminal offence for employing someone knowingly or unknowingly, illegally
- ✓ the fine for employing someone illegally, which is at the discretion of a judge, is unlimited
- ✓ under Tier 2 and the Sponsorship Management Scheme Authorizing Officers could get a custodial sentence of up to 2 years if it can be proved they knowingly employed someone illegally
- ✓ the cost in public relations can be multiplied by the size and position of the company, locally, nationally, or globally
- ✓ existing legally employed personnel often feel tainted by association
- ✓ the stakeholders such as suppliers, sponsors, clients, shareholders and the local community may take a different view of the company based on the level of the infringement and any subsequent media coverage

Companies may take the view that they are unlikely to get caught, but with the major investment being made by the UK Border Agency in developing illegal working tasks teams, the likelihood of getting caught is much higher than it has ever been.

## WHAT CAN YOU DO ABOUT THIS?

Aston Brooke has undertaken research involving a cross-section of the care sector in relation to the forthcoming Points Based System (PBS) and employers obligations under the new 5 Tier Immigration system introduced by the Government in its effort to streamline avenues to enter the UK for purposes of work, business or study.

Astonishingly, only a very small number of care providers were aware of their responsibilities under the PBS. Many were not even aware that they would need to apply for a licence before the 1<sup>st</sup> October 2008 in order to recruit new workers or for their existing overseas staff.

This is a worrying statistic and one that needs to be rectified as soon as possible. One can place the blame for this at the feet of the UKBA but they would argue that they have been contacting care providers and updating them of their obligations under the PBS since late 2007. Furthermore, the UK Border Agency (UKBA) called “business to action” by launching a new TV advert designed to help prepare employers for the introduction of the PBS going live in November.

## SPONSORSHIP MANAGEMENT SCHEME

A main part of the Governments initiative is the Sponsorship Management Scheme. Most businesses using Tier 2 have been able to register as sponsors since February this year, with all remaining sponsors being able to apply since late July. From November, those who register successfully will be able to sponsor new foreign workers to work in the UK or support those already in the UK who want to stay.

## UKBA ASSESSMENT UNDER THE PBS LICENCE APPLICATION

Before care providers apply, they should check whether they are eligible to apply for a licence and if they have the right HR systems in place to comply with their sponsorship duties. The UKBA assesses your previous compliance with immigration law while employing migrants when an application for a licence is made

The UKBA assess five individual areas of your HR systems, which are:

Area 1: Monitoring immigration status and preventing illegal employment

Area 2: Maintaining migrant contact details

Area 3: Recordkeeping

Area 4: Migrant tracking and monitoring

Area 5: Recruitment practices and professional accreditations

The UKBA will rate care providers HR systems and compliance from 1 to 3 as follows:

1. You meet all of the criteria or are fully compliant.
2. You only meet some of the criteria or are partially compliant.
3. You do not meet any of the criteria or are non-compliant.

## THE SOLUTION: THE COMPLIANCE CASE MANAGEMENT SYSTEM

Aston Brooke has been working in conjunction with Complier and has developed a bespoke case management system to cater for all the requirements under the PBS as set out above.

The system contains two limbs. The first is the case management system storing all the data for the care sector including HR systems, record keeping and compliance. The second limb comprises of the on-line system which caters for other obligations set by the UKBA for employers and employees. The on-line system will be accessible by employers and employees who will be provided with a unique username and password to update records and provide other vital information for the purposes of on-going compliance under the PBS.

## DO I NEED A LICENCE FOR MY EXISTING OVERSEAS STAFF?

The answer is YES. The UKBA has made it perfectly clear that the licence application has to be made if you wish to recruit new staff from outside the EEA and for your existing staff.

Employers in the healthcare sector should be aware the onus has been pushed firmly on them to comply with ALL the regulations of the PBS. Failure of compliance will result in a downgrading of your rating in conjunction with unlimited fines and up to 2 years imprisonment.

## WHAT IS INVOLVED?

In order to make the transition to the introduction of Tier 2 and the Sponsorship Management Scheme more user friendly, Aston Brooke is assisting Care Providers by offering a complete one-stop package comprising of the high-tech on-line case management system.

## ON SITE PRE-AUDIT COMPLIANCE CHECKS

Aston Brooke is also undertaking full compliance checks prior to an application for a licence being made. The pre-audit would ensure that employers are appraised of the requirements for an "A" rating. The audit will encompass the following:

- ◆ checking passports of all employees (EU and overseas staff)
- ◆ checking the leave to remain and visas endorsed prior to and after arriving in the UK (overseas staff only)
- ◆ any unauthorised changes of employment relating to existing work permit holders
- ◆ permission to work status for all overseas staff
- ◆ checking all qualifications and experience of overseas staff
- ◆ track any changes in circumstances of overseas staff
- ◆ registration with relevant bodies of all overseas staff
- ◆ validate any details relating to expiration of visas/leave to remain
- ◆ compiling the portfolio for the care provider to become authorised as a sponsor
- ◆ reporting all changes to the UK Border Agency as Level 1 users
- ◆ indication of the certificates to be applied from the UKBA
- ◆ all other work to ensure compliance is achieved

The above list is non-exhaustive. Aston Brooke will also be available for any compliance visits arranged by the UKBA on site should it become necessary. Employers will be surprised that even they advocate that they have a robust HR system that breaches will be identified. Employers are NOT solicitors specializing in Immigration Compliance and therefore there is a limit to their investigations. Aston Brooke will ensure that we leave no stone unturned. The audit will be for ALL staff irrespective of nationality or immigration status.

## FIRST OF ITS KIND IN THE INDUSTRY

The on-line case management system is the first of its kind which is specifically designed for the Healthcare market and it has been pointed out during discussions with the UKBA that there is no such system in the market today. Aston Brooke will work very closely with the UKBA in relation to compliance under the PBS to assist care providers.

The UKBA and Aston Brooke are committed to supporting industry through the introduction of the rules to ensure legitimate businesses do not fall foul of the new regime.



## NEXT STEPS

If you are affected by the changes to be brought under the New Points Based System in November 2008 or an employer concerned about your legal obligations in relation to your **licence application** and **compliance** or any other immigration enquiry contact:

# Aston Brooke Solicitors

2 Gayton Road

Harrow

Middlesex

HA1 2XU

**T: 0208 901 7901**

**F: 0208 901 4115**

**Email: [info@astonbrooke.co.uk](mailto:info@astonbrooke.co.uk)**

**[www.astonbrooke.co.uk](http://www.astonbrooke.co.uk)**

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SECURE A WORK PERMIT OR AN EMPLOYER WISHING  
TO RECRUIT STAFF?

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