

DIOCESE OF LONDON

INFORMATION FOR PARISHES ON THE PREVENTION OF ILLEGAL WORKING

Introduction

The rules regarding the employment of UK citizens, citizens of other EEA¹ countries and all other countries, to either lay or ordained jobs in the UK have changed. As an employer, your Parish will now have to check people's identity in order to determine whether someone is legally able to work in the UK when offering employment to **ANYBODY** (whether lay or ordained).

You may have to consider carefully whether people such as organists, vergers and youth workers are employees or contractors. As a broad rule of thumb if the PCC is responsible for PAYE then it is likely that the person is an employee.

Using the information received from the UK Border Agency (UKBA), this guide has been compiled to provide you with a basic summary of the above change in rules and how they are linked to your recruitment processes.

The flow chart on the first page highlights the different stages of the recruitment procedure and the basic steps you should take. However, if you do recruit anybody we strongly suggest that you also read the associated information in these guidelines.

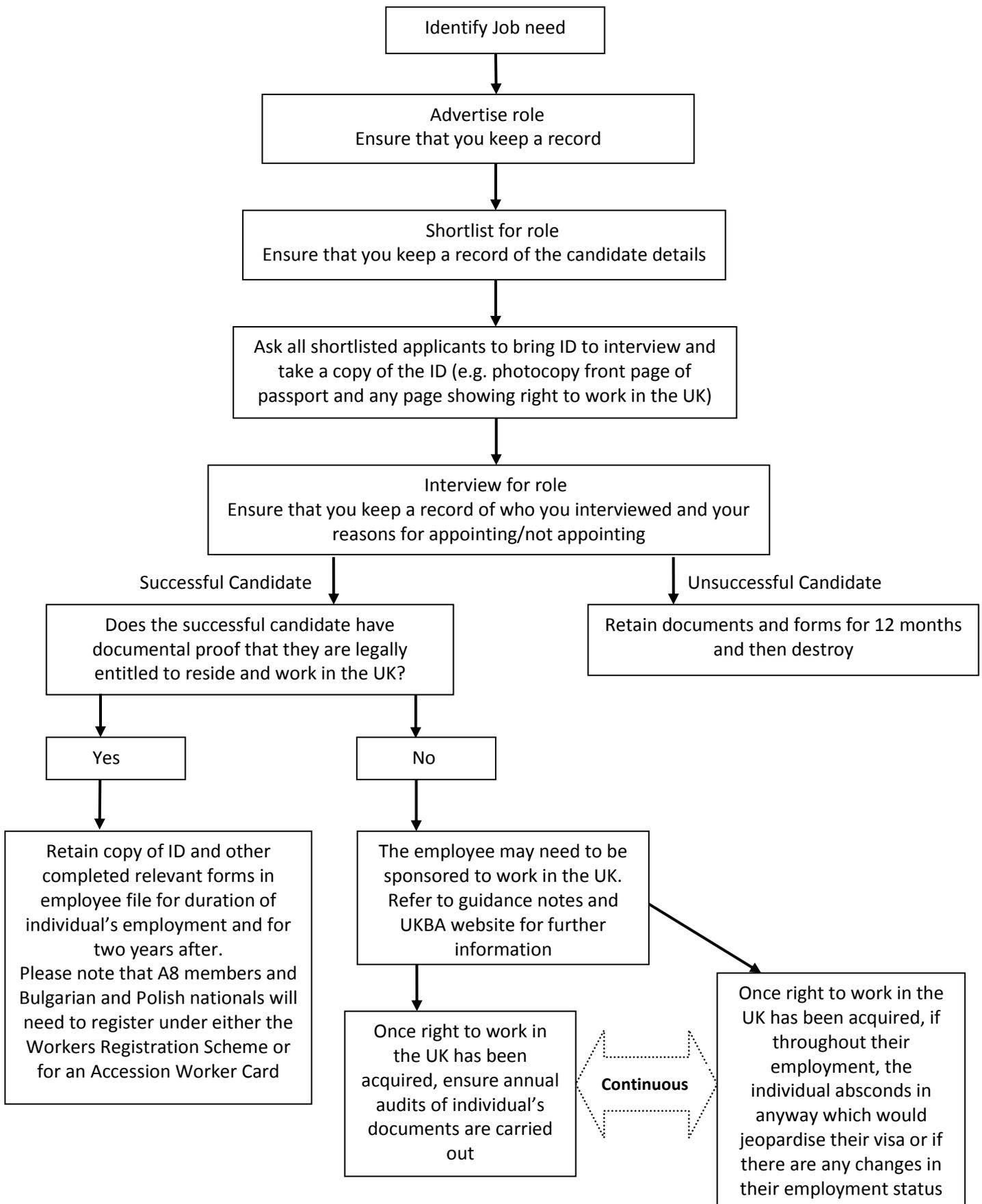
For more guidance, particularly if you are wishing to employ someone from outside of the UK and EEA, please go to the UKBA website- <http://www.ukba.homeoffice.gov.uk/>

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¹ The European Economic Area (EEA) comprises the following countries: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Ireland, Slovakia, Slovenia, Spain, Sweden and the UK. It also includes Switzerland for most employment law purposes.

This flow chart should be used in conjunction with your normal recruitment procedure and should only be used to identify the process for the prevention of illegal working within the Diocese.



This guide is set out in two sections; the first deals with UK and EEA citizens (the majority), the second deals with bringing in people from the rest of the world.

1. UK and EEA Citizens²

As an employer you are now required to check that every individual who is appointed to a clerical or lay job within your Parish is eligible to work in the United Kingdom either permanently or for a more limited period. This means in practice that you must check and keep copies of the identification documents that provide the proof of such work related rights. The UKBA requires that as well as taking copies, you must also produce forms which state that the ID has been checked and the date. These forms must be filled in and signed off at every interview and retained, whether the applicants are successful or not. Therefore, we suggest that as you get used to the system, you use the form for all short-listed candidates.

Completed application forms and copies of documents for those candidates who are not successful should be kept securely for 12 months before shredding. For those candidates who are successful, it is necessary to keep the documents for the duration of their employment and for two years thereafter.

In order for you to verify the candidate's identity, the UKBA has produced a list of the documents which show an on-going right to work (list A) or a right to work for up to 12 months or those with limited leave (list B). This list can be found on Pages 21-39 at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/currentguidanceandcodes/comprehensiveguidancefeb08.pdf?view=Binary>

In practice the vast majority of people you employ will come under Lists A1 and A2.

The new rules for checking UK Citizens and EEA citizens came into force in February 2008. Therefore to ensure compliance you will need to go back over all appointments made since that date, complete the forms and place copies of the relevant documents in personal files. This needs to be completed in full as soon as possible.

In addition, to encourage consistency, we suggest that you check the documentation of all of your other employees (i.e. including those prior to February 2008) to ensure that they are eligible to work in the UK. A blanket approach will mean that the possibility of unlawful discrimination is eliminated.

If any irregularities are found then we suggest that you contact your employment lawyer or the HR Manager at the London Diocesan Fund immediately. You may need to terminate employment.

2. Citizens of countries outside of the UK or the EEA

The new legislation has been drafted to make immigration for those seeking employment simpler. Under the old rules there were around 80 different routes to come to the UK to work or to study. All of these routes have been replaced by a new system where migrants will need to pass a points-based assessment before they are given permission to enter or remain in the United Kingdom. The system consists of five tiers which are as follows:

- Tier 1- highly skilled workers, for example scientists and entrepreneurs;
- Tier 2- skilled workers with a job offer, for example teachers and ministers of religion;
- Tier 3- low skilled workers filling specific temporary labour shortages, for example construction workers for a particular project (this tier is currently suspended);
- Tier 4- students;
- Tier 5- youth mobility and temporary workers, for example musicians coming to play in a concert.

² Also applies to Third Country Nationals who are settled. (Third country Nationals are individuals who have the nationality of a state outside of the current EU Membership).

The number of points the migrant needs and the way the points are awarded will depend on the tier they are applying under. Points may be awarded to reflect the migrant's ability, experience, age and when appropriate the level of need within the sector the migrant will be working.

Skilled workers, temporary workers or students applying to come into the UK under the Points Based System will need to be sponsored by their organisation. In order for the organisation (i.e. you as a Parish) to do this, you must have a sponsorship licence.

2a. Sponsorship licence

The London Diocesan Fund (LDF) has a sponsorship licence for its direct staff and clergy on the Church Commissioners' payroll system. It has however, concluded that it cannot be the 'Sponsoring Body' for church workers within Parishes. This means that as a PCC, GCC or charitable trust you will have to take this responsibility on for yourself.

The reason for this is that although it is accepted that the LDF undertakes the payroll function for certain parishes, we do this as an agent working on the parishes' behalf. This **does not** mean that the LDF automatically becomes the 'Sponsoring Body' for these workers. That responsibility must legally lie with each parish because the PCC is signatory to the working agreement/contract etc. You ensure that the migrant is fulfilling their role and has not absconded. PCCs and GCCs can register with the UKBA as sponsoring bodies and take on this responsibility. This you can do because you are charitable corporate bodies established by statute.³

Please note however that since the 1st January 2009 the Charity Commissioners have changed the rules so that parishes with an annual turnover of over £100k have to now register as charities. It is the government's intention that other PCCs with lower annual turnovers will in due course be required to register with the Charity Commission. The exact timetable for this is unclear.

To become a sponsor you must have a named individual who would take responsibility for managing the interface between the Parish and the UKBA. Once your sponsorship licence application is made, you will be given a rating of 'A' or 'B' and it will be the responsibility of the named individual and the Parish to ensure that the correct procedures have been followed and all the paperwork is in order.

If you would like further information about becoming a sponsor please visit the UKBA website at www.ukba.homeoffice.gov.uk

The criminal penalties for employing people who do not have leave to enter or who have an invalid leave to enter are considerable. The UKBA have stressed that record keeping is essential in this process. Record-keeping failures may lead to the downgrading or withdrawing of a sponsor's licence, which would not only affect the individual concerned but everyone else who is sponsored by your Parish. That is one of the reasons for this guidance.

2b. Criteria for the employment of people from overseas

Anyone applying for a work visa to take up a responsibility within your Parish will have to go through prior entry clearance. This will include the named individual applying through the UKBA website for a Certificate of Sponsorship (which in practice is a unique number), plus evidence of maintenance (housing/salary/stipend)⁴ and competence in English.

³ Parochial Church Councils (Powers) Measure 1956 and equivalent legislation for Guild Churches

⁴ If awarded an 'A' rated sponsor you may be able to provide the migrant with a letter confirming that you will maintain the migrant until their first month's wages/stipend are paid, if necessary. If this is not the case then migrants and dependents will need proof of a certain amount of money in a UK bank account.

Each tier does have specific requirements but in general, in order to get to this point you will need to be able to demonstrate the following:

1. a fair appointments process;
2. compliance with the Resident Labour Market Test;
3. proof of a high standard of English; and
4. evidence of maintenance (e.g. salary/stipend, housing etc)

1. *A fair appointments process*

In practice this means that you keep a clear written record on file of how the interviewing process was carried out. This record should include amongst other things:

- a) A profile of the parish;
- b) The list of all applicants names;
- c) Their actual applications (in the medium they were received) and all correspondence (whether by e-mail/telephone records etc) relating to the same;
- d) A record of the short-listing process [this is the written record of any meetings held to discuss the merits/demerits of individual candidates regarding **their ability to fulfil the requirements of the post** – need to record who was present and in what capacity (e.g. Patron)].
- e) A summary record of the interviews including a record of the discussion at which the first ranked candidate is decided.

2. *Compliance with the Resident Labour Market Test*

The UKBA will only accept an application from you to employ someone from overseas if you can demonstrate that: either no suitable local (or EEA) candidate applied or no local (or EEA) candidate could be appointed from a previous round of interviews. You therefore need to keep:

- a) written records of the dates when adverts were placed and in what journal (or on the Website).;
- b) written records of previous rounds of interviews including for each EEA national who applied the reasons why they were not employed, or a signed note to say that no-one applied.

Please note that in some cases, as part of the Resident Labour Market Test, it may be necessary to advertise in the Job Centre.

3. *High Standard of English*

Under certain tiers, proof will be needed to show that the candidate has a high standard of English.

However, the UKBA has agreed that there are a number of countries around the world from which proof of this standard is **NOT** required because English is the main language⁵.

One way of demonstrating a high standard of English is by asking the migrant to provide a certificate obtained from an organisation that undertakes tests in the country concerned. The test is based on the Council of Europe level B2. For full details of which testing agencies are accepted please go to:

<http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/approvedenglishtest2.pdf>

The UKBA website advises applicants to use the services of International English Language Testing System: <http://www.ielts.org/>.

⁵ Majority English language speaking countries are: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; United States of America.

4. Evidence of maintenance (stipend and housing)

You will need to have a copy of the offer letter including evidence of salary/stipend/housing and other terms and conditions. Note that posts being offered to those coming from overseas are **time-limited** and the offer letter must state the exact terms of this.

You will not be able to sponsor an individual if you are providing neither a stipend or salary nor maintenance or any other support. Pure volunteers cannot be sponsored because they are not "employees".

In considering what terms to offer, parishes will need to be aware of minimum wage considerations and comparability with other jobs.

Further details of the above requirements can be found on the UKBA website.

2c. Once someone is here

On their arrival, you will need to ensure that the relevant documents used to enter the United Kingdom are copied. These should be brought to the Parish (or assigned person) immediately, preferably by the individual themselves, where a note will be taken and entered onto your Database of any restrictions placed, for example time limits. Archbishop's Permissions to Officiate for overseas priests or religious workers will generally be time limited (3 years) when first granted, with the possibility of subsequent extension. Visas issued under the Points Based System will be initially for 3 years, with the possibility of an extension for a further 2 years only. After this time, under current legislation, the migrant may be able to apply for indefinite leave to remain in the UK, subject to requirements. However, the UKBA are expected to introduce changes in this legislation from 2011.

2d. On-going checks and supervision

The UKBA has stressed that you have a legal obligation to check that someone who you are sponsoring is carrying out the job for which they have been employed and that they do indeed continue to have the right to work in the UK. In practice this will mean close liaison between the Priest and or immediate manager and the Parish as well as with the named individual who is the link between the Parish and the UKBA. You need to ensure that you monitor the following:

1. Absconding or failure to comply with the terms of their visa

As part of their duties, the named individual in the parish will be responsible for alerting the UKBA immediately if someone absconds or breaks the terms of their visa. Therefore, it is imperative, for example, that if someone fails to turn up for work, the named individual is advised immediately. They should then inform the UKBA as appropriate.

2. Continuing right to work in the UK

You are also required to complete annual audits for anyone who has been granted leave to enter or remain in the UK for a limited period of time. If an individual provides documents from List B, it is not only necessary to carry out the initial specified document checks before the employment of the individual begins, but you also need to complete follow-up checks of the same kind at least once every 12 months.

If you fail in your duty, or if during an annual UKBA inspection visit it proves that procedures were not carried out correctly, the penalties are severe. At the very least it will jeopardise the right of any others (employed by you on the same basis) to remain in this country because you will lose your position as a Sponsoring Body. The UKBA have said however that if you lost your sponsor status then if the people affected can find another position with another Sponsoring Body within 60 days then they

could be permitted to stay in the UK. Therefore we cannot stress enough that it will require parishes to be alert and communicate with the named individual immediately if something appears to be going wrong.

2e. Workers who came under the old system but have not yet earned the right to stay permanently in the UK

There may be transitional arrangements in place for workers who are already here for less than five years under one of the categories under the old system which enable them to apply in-country for further leave to remain without having to satisfy every aspect of the new requirements. Those wishing to extend their leave beyond five years will need to apply under the full points based system criteria.

2f. If the candidate's application is refused

If the UKBA refuses a candidate's application, the candidate may have the right to an appeal or an administrative review or they may be able to re-apply. This will be dependent on the type of application made and is not guaranteed. If this situation arises, we suggest that the candidate contacts the UKBA individually for advice.

3. Employment of Religious Workers under Tier 5

Religious workers come under Tier 5 of the new system. In our case this is the Tier under which for example a parish might employ a youth worker or sponsor a volunteer. Under the current rules 'preaching' and 'pastoral work' are permitted for all Tier 5 workers. However the Government has said that in the near future it plans to introduce a requirement that Tier 5 must have a certain standard of English if they are to undertake preaching and pastoral work. The standard of English test for this category has not been decided yet. We await further clarification from the UKBA.

4. Costs

Parishes will have to bear the costs of their workers' applications.

5. Useful contacts/ further information

The UK Border Agency Website gives further guidance to employers. The website address is: www.ukba.homeoffice.gov.uk

To contact Paula Bailey (HR Manager at the London Diocesan Fund) please email: Paula.Bailey@london.anglican.org or telephone on 020 7932 1222.