

Employers' Toolkit

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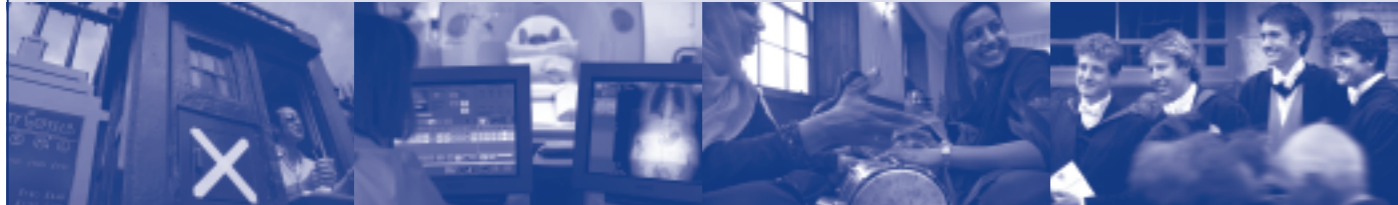
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Introduction

What is Fresh Talent?

The Fresh Talent Initiative aims to attract skilled, hard-working and motivated individuals to come and live, work and study in Scotland. This includes not only those coming here to fill vacancies, but also graduates from Scottish universities and colleges, entrepreneurs interested in setting up businesses in Scotland and Scots interested in coming back to Scotland to share their experiences gained from living, working and studying overseas.

The Fresh Talent Initiative is a long-term policy commitment partly, but not exclusively, aimed at addressing Scotland's demographic challenges and growing and developing our economy and society.



Why Fresh Talent?

There is a strong need to stimulate in-migration to help address the projected demographic changes for Scotland. This needs to be addressed for the Scottish economy to continue to thrive, to ensure no further strain will be put on public services, and that there will be no shortage of key workers to work within Scotland's thriving economy.

The aims of the initiative are several:

- ▶ to address the projected increasing age demographic in Scotland;
- ▶ to bolster the dynamism and cosmopolitanism of Scottish life and the economy;
- ▶ to promote Scotland as an ideal place to live, study, work and do business.

How can your business benefit from Fresh Talent?

For Scottish businesses, the Fresh Talent Initiative is not just about attracting individuals to Scotland but ensuring that businesses have the correctly skilled workers to enable them to grow and compete in the global marketplace. By employing overseas nationals, businesses benefit from the creation of a diverse, culturally-rich environment to assist with their global business aspirations.



Introduction

How can we, the Relocation Advisory Service, help businesses benefit from the Fresh Talent Initiative?

As part of the initiative, our Relocation Advisory Service (RAS) was launched in October 2004 to offer a seamless service that simplifies the process for people to relocate to work and live in Scotland.

RAS can support business with:

- ▶ Immigration advice on a range of issues surrounding employing European Economic Area (EEA) and Non EEA nationals;
- ▶ advice on all aspects of relocating highly motivated workers to Scotland;
- ▶ regular updates on immigration issues;
- ▶ awareness raising of other national and local initiatives;
- ▶ networking opportunities.

More information can be found on www.scotlandistheplace.com or by contacting Jacqueline McKellan by e-mail on jacqueline.mckellan@scotland.gsi.gov.uk or by telephone on 0141 242 5972.



How to use this Toolkit

This Toolkit is intended to be used by employers who want to know about employing overseas nationals who need permission to work in the UK. Businesses employing overseas nationals who do not have permission to work will be committing a criminal offence.

A number of factsheets are provided which include summary information on some of the different categories under which overseas nationals may work in the UK. They are intended to be an introduction to employing overseas workers and are not a substitute for the detailed guidance provided by the UK Border Agency (UKBA). This detailed guidance is available from the website:

<http://www.ind.homeoffice.gov.uk/employers/>

Details about how to obtain guidance and how to contact the relevant parts of the Home Office and other useful organisations are provided towards the end of the Toolkit, along with a glossary of terms and some common questions and answers.

This Toolkit has been produced in collaboration with the Home Office.

N.B. The UK is moving over to a Points Based System for immigration. This shall be phased-in, comprising Five Tiers, during 2008 and 2009. Information on how the "Sponsorship and compliance" element of this is likely to affect employers is available on the UKBA website:

<http://www.bia.homeoffice.gov.uk/managingborders/managingmigration/apointsbasedsystem/>

On 29 February 2008 the Home Office implemented the first stage of Tier 1, for Highly Skilled Migrants: the General sub-category. This will gradually replace the Highly Skilled Migrant Programme (HSMP). Applicants who would have been looking to extend their stay in the UK on the HSMP will now move over to the new Tier if making an in country application from 29 February 2008. Out of country applications will apply to India from April 2008 with "rest of world" out of country applications coming into effect in summer 2008.

The other sub-categories in Tier 1 are Entrepreneur; Investor; and Post-Study Work. They are scheduled to go live in summer 2008. When implemented, Post-Study Work will subsume schemes including the Fresh Talent:Working in Scotland Scheme (FT:WISS) and International Graduates Scheme. Even when these schemes come to an end employers are likely to consider recruiting applicants who still have valid leave on these schemes.

Work permits – Business and Commercial

Fact Sheet

Qualifying criteria

There are different types of work permits, each designed to meet an employer's particular need:

- ▶ Business and Commercial
- ▶ Sports and Entertainments
- ▶ Training and Work Experience
- ▶ Student Internship
- ▶ General Agreement on Trade in Services
- ▶ Sectors Based Scheme

For full details of permits, criteria and cost please refer to

<http://www.bia.homeoffice.gov.uk/workingintheuk/workpermits/>

The majority of applications fall under the Business and Commercial category. Either the job must require the following qualifications:

- ▶ a UK equivalent degree level qualification; or
- ▶ a Higher National Diploma (HND) level qualification which is relevant to the post on offer; or
- ▶ a HND level qualification, which is not relevant to the post on offer plus one year of relevant full-time work experience at National/Scottish Vocational Qualification (N/SVQ) level 3 or above;

Or the job must require the following:

- ▶ Proven 3 years' full-time experience of using specialist skills acquired through doing the type of job for which the permit is sought. This should be at N/SVQ level 3 or above.

You will need to show why you cannot fill the post with a 'resident worker'. In most cases this will include details of your recruitment methods and credible reasons why you did not employ a suitably qualified or experienced 'resident worker' or one who, with extra training, could do the job. The recruitment methods you use, including advertising, should be appropriate to the job and represent a genuine attempt to employ a suitably qualified or experienced person.

Work permits – Business and Commercial (cont'd) *Fact Sheet*

<p>Permitted work</p>	<p>You should make a work permit application for a named person to do a specific job for the employer, normally on a full-time basis. The person cannot transfer a work permit to a different job or to work for a different employer without prior permission from the UK Border Agency (UKBA).</p> <p>There must be a genuine vacancy. The post must not have been created for the purpose of recruiting a particular person.</p> <p>Employers must also demonstrate that the individual has the skills, qualifications and/or experience required for the post on offer and that these meet the work permit criteria.</p> <p>A work permit is only issued where it is apparent that the employer has clear responsibility for determining the duties and functions of the post.</p>
<p>Who applies and where?</p>	<p>You can make a work permit application if you are an employer based in the UK and you need to employ a person to work here. If the person you want to employ is out of the UK you should apply when you have found the person that you want to employ but no more than six months before you want to bring them into the country.</p> <p>The application for the work permit must be followed by permission for the individual to stay and work in the UK. If the work permit holder is out of the UK they must apply for entry clearance or a visa from their country of residence. Where the person is already in the UK, an application for further leave to remain is necessary.</p> <p>If you want to apply for an extension to a work permit, or the person is otherwise already in the UK, you should apply before the person's permission to stay in this country runs out. Please apply at least one month but no more than three months before this date.</p>



Work permits – Business and Commercial (cont'd) *Fact Sheet*

<p>Duration of work permits</p>	<p>Up to a maximum of five years for Business and Commercial category.</p>
<p>Extending the work permit</p>	<p>If you want to extend a work permit you should fill in the WPIX form and state why and for how much longer you need to employ the person.</p> <p>The person can continue working with you whilst the work permit extension application is being considered, provided it was received before the existing work permit permission and the individual's leave to remain in this country had not expired.</p>
<p>Applying for settlement</p>	<p>Employee can apply for settlement after five years.</p>
<p>Family and dependants</p>	<p>Employee may bring dependent children under the age of 18 and spouse or long-term partner.</p>



European workers (1)

Fact Sheet

Qualifying criteria	<p>You do not require a work permit to employ a citizen of: Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden and Switzerland.</p> <p>To find out the steps you should take to employ citizens of the newer European Economic Area states please refer to European Workers (2) and European Workers (3).</p>
Permitted work	There are no restrictions on the types of jobs these EEA citizens can undertake. They may also be self-employed.
Who applies and where?	There is no application; they simply have a right to work in the UK. They may, if they choose, apply for a residence certificate for identity purposes, but there is no requirement that they do so.
Duration of leave	There is no visa as such, nor is there a limit on the amount of time the person can spend in the UK.
Extending the leave	There is no need for extensions as there is no visa as such.
Applying for settlement	EEA citizens have a right to live in the UK as long as they are working (there are also many other circumstances in which EEA citizens are allowed to remain in the UK).
Family and dependants	<p>EEA citizens may bring with them children and other dependent close relatives and/or their spouse or long-term partner.</p> <p>Family members who are not EEA nationals are entitled to obtain an EEA family permit document if they are coming to live in the UK long term, or permanently, or if they otherwise need a visa to enter the UK.</p>
Cost of application	There is no cost.



European workers (2) Worker Registration Scheme

Fact Sheet

Qualifying criteria	<p>Applies to citizens of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, who work for more than one month for an employer in the UK.</p> <p>For full details of the Worker Registration Scheme (WRS), please refer to http://www.bia.homeoffice.gov.uk/workingintheuk/wrs/</p>
Permitted work	There are no restrictions on the types of jobs citizens of these EEA member states can undertake, they must however register for each separate employer they have. After 12 months of continuous employment, the employee will no longer be subject to the WRS.
Who applies and where?	<p>Applicant applies to the UK Border Agency Worker Registration Team using the form WRS, which is available to download from the UK Border Agency website http://www.bia.homeoffice.gov.uk/workingintheuk/wrs/workers/</p> <p>An employer will be committing a criminal offence by employing someone subject to immigration control aged over 16 who does not have leave to be in the UK and undertake the work in question. The employer may obtain a statutory defence against conviction for this offence at the point of recruitment by seeing, copying and retaining a copy of specified document(s) belonging to the applicant that demonstrates an entitlement to undertake the work.</p>
Duration of leave	There is no visa as such, nor a limit on the amount of time the person can spend in the UK. However, the individual must, unless exempt, register their employment with the UK Border Agency (UKBA), within one month of starting work, if they intend to stay with that employer for longer than one month. Once they have been working legally in the UK for 12 months, they will no longer be required to register their employment with the UKBA. There are also those who are exempt from registering. See http://www.bia.homeoffice.gov.uk/workingintheuk/wrs/whomustregister/
Extending the leave	There is no need for extensions as there is no visa as such, however individuals must register every change of employment for the first 12 months if they work for an employer for more than one month.
Applying for settlement	<p>The new EEA citizens have a right to live in the UK as long as they are working or they have sufficient funds to support themselves without help from public funds.</p> <p>After they have been working legally in the UK for 12 months without a break they have full rights of free movement and can apply for an EEA residence permit.</p>



European workers (2) Worker Registration Scheme (cont'd) *Fact Sheet*

Family and dependants

New EEA citizens may bring with them children and other dependent close relatives and/or their spouse or long-term partner.

Family members who are not EEA nationals must get an EEA family permit if they are coming to live in the UK long term or permanently or if they are visa nationals. They must get the permit before they travel to the UK or they will be refused entry.



European workers (3) Bulgarians and Romanians *Fact Sheet*

Qualifying criteria

Since 1 January 2007, as European Economic Area (EEA) nationals, Bulgarians and Romanians have been able to move and reside freely in any EU Member State. Unless exempt, Bulgarian and Romanian nationals wanting to work in the UK will still need to obtain authorisation to work **before** starting any employment. This authorisation will *normally* take the form of an Accession Worker Card.

Permitted work

For some types of employment people can apply for an Accession Worker Card without a letter of approval under the work permit arrangements (Stage 1).

A full list of these categories is available at <http://www.bia.homeoffice.gov.uk/workingintheuk/bulgariaromania/liveworkuk/>

For most workers there are two stages to the process;

Stage 1 The UK employer first applies for approval of the employment under the work permit arrangements.

Stage 2 The individual must then apply for an Accession Worker Card.

Who applies?

Stage 1 To obtain an Accession Worker Card they must have an offer of employment in the UK. To obtain an Accession Worker Card you, as the employer, must make an application to the UK Border Agency (UKBA) for a letter of approval. The employer will give the applicant the letter.

Stage 2 This letter must be sent to the UKBA with the appropriate application form. The application form required will depend on the applicant's status.

Exemption from work authorisation

Should the applicant be exempt from requiring an Accession Worker Card they are advised to apply for a registration certificate confirming that there is no restriction on taking your employment.

Duration of leave

There is no entry clearance visa requirement, nor a limit on the amount of time the person can spend in the UK. However, they must apply for a new Accession Worker Card should they change employer. If they start work before they obtain an Accession Worker Card they will be working illegally and you, as the employer, will also be committing a criminal offence.



European workers (3) Bulgarians and Romanians (cont'd) *Fact Sheet*

Extending the leave	There is no need for extensions as there is no visa a such, but individuals must renew their Accession Worker Card at every change of employment.
Applying for settlement	Romanians and Bulgarians have a right to live in the UK for the first three months of residence on an unrestricted basis. They can remain legally resident in that state providing they are exercising a treaty right as a student, self employed person or self sufficient individual. They will not have an automatic right to reside as a worker (unless exempt from work authorisation requirements).
Family and dependants	Family members are not exempt from the Accession Worker Card should they wish to take employment in the UK. However, the criteria for the issue of such a document to a dependent spouse will not be subject to a skills test or test contesting the availability of resident labour. The correct form should be submitted.
Fees	There will be no charge for the consideration of applications under this category.
Sectors Based Scheme	The Sectors Based Scheme allows employers to bring in Bulgarian and Romanian nationals to work in the food manufacturing sector. For detailed guidance on this please refer to: http://www.bia.homeoffice.gov.uk/workingintheuk/sbs/
Seasonal Agricultural Workers Scheme	The Seasonal Agricultural Workers Scheme allows farmers and growers in the UK to recruit low-skilled workers from Bulgaria and Romania to undertake short-term agricultural work. For detailed guidance on this please refer to: http://www.bia.homeoffice.gov.uk/workingintheuk/saws/



Highly Skilled Migrants (Tier 1) General sub-category

Background	The Home Office is gradually moving over to a new Points Based System for all immigration. On 29 February 2008 the General sub-category of Tier 1 was introduced for those wishing to extend their leave in the UK as Highly Skilled Migrants. The "General" sub-category, which subsumes the Highly Skilled Migrant Programme follows on these pages.
Qualifying criteria	<ul style="list-style-type: none"> Applicants must score 75 points or more in the following categories: Qualifications; Previous Earnings; Age; and UK experience In addition applicants must be able to prove their competence in the English language Applicants must also demonstrate that they can maintain themselves and their dependants as they do not have access to state benefits.
Permitted work	No restrictions on type or duration of work.
Who applies and where?	Applicant applies at British High Commission, Embassy or Consulate or, if already in the UK (e.g. as a student) to the UK Border Agency.
Duration of leave	Applicants are normally granted 3 years of leave initially.
Extending the leave	Towards the end of the 3 years, applicants can apply for further approval to remain under this Tier. If they meet the requirements, they will normally be granted further leave of up to 2 years. After 5 years they can apply for settlement. A Highly Skilled Migrant in the "General" sub-category of Tier 1 may apply for settlement in the Highly Skilled Tier or Skilled Tier (when implemented) after 5 years.
Application process	There will be a single application process, whether in or outside the UK. There will also be a single application fee for principal applicants.
Family and dependants	Successful applicants will be able to bring dependants (children under 18 years, spouses, civil partners, same sex partners, and unmarried partners) into the UK if they can prove that they can maintain them. Dependants can take up employment but will not be able to switch into any Points Based System Tier other than as a dependant of a successful applicant.



Highly Skilled Migrants (Tier 1) Post-Study Work sub-category *Fact Sheet*

Background	<p>The Home Office is gradually moving over to a new Points Based System for immigration. Post-Study Work is a sub-category of Tier 1 and, when implemented in the summer of 2008, will subsume schemes such as Fresh Talent:Working in Scotland Scheme and International Graduates Scheme. International workers, however, may still have valid leave under the latter two schemes.</p>
Qualifying criteria	<p>Applicants must score 75 points or more. There are specific criteria which the applicant must meet:</p> <ul style="list-style-type: none"> • Qualifications: Higher National Diploma (from a Scottish institution); bachelor's degree, post-graduate degree, post-graduate certificate or diploma. 20 points awarded for one of these. • Obtained the qualification at a recognised UK institution. 20 points awarded for this. • Obtained the qualification in the UK with Student Leave (Tier 4 when introduced) or as a dependant of someone with valid leave in an immigration category permitting the bringing in of dependants. 20 points awarded for this. • Made the application within 12 months of obtaining the qualification. 15 points awarded for this. <p>Applicants who meet the pass-mark for the specific criteria will be deemed to meet the English language requirement which is a condition of entry into the Highly Skilled Migrant Tier.</p>
Permitted work	No restrictions on type or duration of work.
Who applies and where?	Applicant applies at British High Commission, Embassy or Consulate or, if already in the UK (e.g. as a student) to the UK Border Agency.
Duration of leave	Applicants are normally granted 2 years' leave, which is the maximum period of leave allowed under this Tier.



Highly Skilled Migrants (Tier 1) Post-Study Work sub-category (cont'd) *Fact Sheet*

Extending the leave	<p>Applicants cannot extend the leave under this category. However, they can switch into other sub-categories within Tier 1 (General, Entrepreneur, Investor). They may also be able to switch into Work Permits (the new Tier 2 when implemented) and Student (the new Tier 4 when implemented). Time spent in the Post-Study Work sub-category does not count towards settlement.</p>
Application process	<p>There will be a single application process, whether in or outside the UK. There will also be a single application fee for principal applicants.</p>
Family and dependants	<p>Successful applicants will be able to bring dependants (children under 18 years, spouses, civil partners, same sex partners, and unmarried partners) into the UK if they can prove that they can maintain them. Dependants can take up employment but will not be able to switch into any Points Based System Tier other than as a dependant of a successful applicant.</p>



Fresh Talent: Working In Scotland Scheme

Fact Sheet

<p>Please note</p>	<p>This scheme will be subsumed by the new Highly Skilled Migrants Tier 1 Post-Study Work sub-category which will be introduced by the Home Office in summer 2008. However, there are likely to be individuals who are seeking employment after implementation, approaching you, as an employer, who still have valid leave on this scheme. The following information, therefore, continues to be relevant.</p>
<p>Qualifying criteria</p>	<p>In order to qualify applicant must have:</p> <ul style="list-style-type: none"> ▶ Been awarded a Higher National Diploma (HND), undergraduate degree, postgraduate degree or a PhD at a Scottish publicly funded Institution of further or higher education or a bona fide private education institution; ▶ From 1 May 2007 those with postgraduate certificates or diplomas are also eligible; ▶ Successfully completed the relevant course within the last 12 months; ▶ Lived in Scotland for a suitable period while studying for their qualification. <p>In addition the applicant must be intending to seek and take work in Scotland.</p> <p>Full details of this scheme are available from http://www.ind.homeoffice.gov.uk/workingintheuk/freshtalent/</p>
<p>Who applies and where?</p>	<p>No restrictions on type or duration of work.</p>
<p>Permitted work</p>	<ul style="list-style-type: none"> ▶ Applicant applies for a Fresh Talent: Working in Scotland Scheme visa or entry clearance at a British High Commission or Embassy. ▶ An application for leave to remain as a Fresh Talent: Working in Scotland Scheme can only be made in the UK (in-country) if the applicant has valid leave to enter/remain in the UK as a student or International Graduates Scheme participant.
<p>Duration of leave</p>	<p>Applicants will normally be granted 2 years, which is the maximum period of leave allowed under this scheme.</p>
<p>Extending the leave</p>	<p>Normally this will not be applicable. However if an applicant was initially granted less than 2 years' leave under this scheme they can apply for an extension.</p>



Fresh Talent: Working In Scotland Scheme (cont'd)

Fact Sheet

<p>Applying for settlement</p>	<p>FT:WISS itself does not lead to settlement. However, as long as participants have extant leave they will be eligible to switch into employment and self-employment categories (work permit employment, Highly Skilled Migrants Tier 1), providing they meet the requirements of the category. These categories may then lead to settlement.</p>
<p>Family and dependants</p>	<p>Applicant may apply to bring dependent children under the age of 18 and a spouse or long-term partner to the UK.</p>
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International Graduates Scheme *Fact Sheet*

<p>Please note</p>	<p>This scheme will be subsumed by the new Highly Skilled Migrants Tier 1 Post-Study Work sub-category which will be introduced by the Home Office in summer 2008. However, there are likely to be individuals who are seeking employment after implementation, approaching you, as an employer, who still have valid leave on this scheme. The following information, therefore, continues to be relevant.</p>
<p>Qualifying criteria</p>	<p>The International Graduates Scheme (IGS) replaced the Science and Engineering Graduate Scheme on 1 May 2007.</p> <p>Non-EEA nationals who wish to apply must:</p> <ul style="list-style-type: none"> ▶ Have successfully completed a degree course, Masters course, PhD or postgraduate certificate or diploma at a UK institution of Higher or Further Education. ▶ Intend to work during the period of leave granted under the scheme. ▶ Be able to maintain and accommodate themselves and any dependants without recourse to public funds. ▶ Intend to leave the UK at the end of their stay (unless granted leave as a work permit holder, highly skilled migrant, business person or innovator). <p>Full details of the scheme are available from http://www.bia.homeoffice.gov.uk/workingintheuk/igs/ under "Schemes and Programmes".</p>
<p>Permitted work</p>	<p>There are no restrictions on the type of paid work a IGS participant can do.</p>
<p>Who applies and where?</p>	<p>Eligible applicants may either switch in-country from student status (if they have extant leave as a student) or return to the UK from abroad no later than one year after they completed their course.</p> <p>The IGS application form is available from http://www.bia.homeoffice.gov.uk/workingintheuk/igs/applying/</p> <p>Entry clearance is mandatory for those returning to the UK under IGS.</p>
<p>Duration of leave</p>	<p>12 months – although IGS participants can apply to have a further year's stay on the Highly Skilled Migrants Tier 1 Post-Study Work sub-category when implemented.</p>



International Graduates Scheme (cont'd) *Fact Sheet*

<p>Applying for settlement</p>	<p>IGS itself does not lead to settlement. However, as long as participants have extant leave they will be eligible to switch into employment and self-employment categories (work permit employment, Highly Skilled Migrants Tier 1), providing they meet the requirements of the category. These categories may then lead to settlement.</p>
<p>Family and dependants</p>	<p>Dependants may be permitted to accompany the applicant if there is evidence of sufficient funds available for their accommodation and maintenance.</p>
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Highly Skilled Migrant Programme

Fact Sheet

<p>Please note</p>	<p>This scheme will be subsumed by the new Highly Skilled Migrants Tier 1 General sub-category which was introduced by the Home Office on 29 February 2008. This will gradually replace the Highly Skilled Migrant Programme (HSMP). Applicants who would have been looking to extend their stay in the UK on the HSMP will now move over to the new Tier if making an in country application from 29 February 2008. Out of country applications will apply to India from April 2008 with “rest of world” out of country applications coming into effect in summer 2008. However, there are likely to be individuals who are seeking employment after implementation, approaching you, as an employer, who still have valid leave on the HSMP. The following information, therefore, continues to be relevant.</p>
<p>Qualifying criteria</p>	<p>The HSMP is a points-based immigration scheme.</p> <ul style="list-style-type: none"> ▶ Applicants must provide evidence that they score 75 points or more across the scoring categories ▶ Points are awarded for educational qualifications, previous earnings and previous UK experience and age ▶ Master of Business Administration – 75 points awarded if this qualification is achieved at one of 50 worldwide institutions (10 of which are in the UK) ▶ In addition applicants must satisfy a separate mandatory English requirement ▶ They then need to apply for leave to enter or remain in the UK <p>Full details of the scheme are available from http://www.ind.homeoffice.gov.uk/workingintheuk/hsmp/</p>
<p>Permitted work</p>	<p>No restrictions on type or duration of work.</p>
<p>Who applies and where?</p>	<p>From 29 February 2008 only out of country applications made at relevant British Embassy/Consulate/High Commission can be accepted. From April 2008 applicants from India making application will do so under the new Highly Skilled Migrants Tier. “Rest of world” out of country applications shall move over to the new Tier from summer 2008.</p>
<p>Duration of leave</p>	<p>Applicants are normally granted 24 months of leave initially.</p>
<p>Extending the leave</p>	<p>Towards the end of the 24 months, applicants can apply for further approval under the HSMP, and to extend their stay in the UK on this basis. If they meet the requirements, they will normally be granted leave of up to three years.</p>
<p>Applying for settlement</p>	<p>A Highly Skilled Migrant may apply for settlement after five years.</p>
<p>Family and dependants</p>	<p>Highly Skilled Migrants may apply to bring dependant children under age of 18 and spouse or long-term partner to the UK.</p>



Working Holidaymaker

Fact Sheet

<p>Qualifying criteria</p>	<p>National or citizen of a country on the list of the Scheme's participating countries in Appendix 3 of the Immigration Rules (http://www.bia.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendix3/), or a British Overseas Citizen; a British Overseas Territories Citizen; or a British National (Overseas).</p> <ul style="list-style-type: none"> ▶ Aged 17 to 30; ▶ Unmarried or married to person applying and qualifying for same type of visa at same time; ▶ Able to support self once in the UK, and pay for return or onward journey; ▶ Intention to take only employment incidental to a holiday, and not to engage in business or provide services as a professional sportsperson, and not to work for more than 12 months during his stay; ▶ Does not have dependent children aged 5 years or over or who will reach 5 years of age before the working holiday is completed; ▶ Has not spent time in the United Kingdom on a previous working holidaymaker entry clearance; and ▶ Intends to leave the UK at end of working holiday. <p>Full details of the scheme are available from http://www.ind.homeoffice.gov.uk/workingintheuk/workingholidaymakers/</p>
<p>Permitted work</p>	<p>Those issued with entry clearance under the scheme on or after 8 February 2005, will normally be issued with a vignette, endorsement or stamp which includes the words: ‘... work restricted to 12 months, no business, no professional sport’. This means that they may only work for 12 months in total during their stay in this category and may not engage in business or provide services as a professional sportsperson.</p> <p>The 12 months of work may be spread over the two year period of stay, or taken in one block. There is no distinction made as to the hours worked each week. It is the days/weeks/months during which the working holidaymaker is employed that is relevant</p>
<p>Who applies and where?</p>	<p>Applicant applies at entry clearance post in country of residence.</p>
<p>Duration of leave</p>	<p>Up to 2 years.</p> <p>N.B. Only one (2 year) stay in the category is permitted in a lifetime.</p>



Working Holidaymaker (cont'd)

Fact Sheet

Extending the leave	<p>Entry clearance is issued with a validity of two years, in line with the full two year maximum potential stay in the category, and there is no provision for leave in the category to be extended.</p>
Applying for settlement	<p>A working holidaymaker cannot be granted settlement.</p> <p>A working holidaymaker may not switch into work permit employment unless he or she has spent more than 12 months in the UK as a working holidaymaker, has been granted a work permit for employment in an occupation listed on the National Shortage Occupations List, and meets all the other requirements for an extension of stay as a work permit holder. A working holidaymaker may also be granted leave to remain under the Highly Skilled Migrants Tier 1 if all the requirements are met.</p> <p>The Working Holidaymaker category does not lead to settlement as it is a temporary entry category, but leave to remain as a work permit holder may lead to settlement.</p>
Family and dependants	<p>Employee may bring dependent children under the age of 5 in certain circumstances.</p>



Students

Fact Sheet

Qualifying criteria	<ul style="list-style-type: none"> ▶ Students enrolled on a course for more than 6 months. N.B. individuals on a Student Visitor Visa (up to 6 months) are not permitted to work. ▶ Students who are EEA citizens have permission to work and do not need to apply for a student visa. ▶ Student visa applicants must show intention and ability to study the course they have applied for. ▶ Able to support self once in the UK. ▶ Intention to return to country of origin at conclusion of studies (unless a degree-level student). ▶ Students granted a visa lasting less than six months are not usually granted permission to work.
Permitted work	<p>Students are usually granted permission to work part-time during term-time (up to 20 hours per week) and full-time during vacations whilst they have valid leave. The only exception to this is where a student may have been placed with an employer to meet the definition of their sandwich course or internship. Their passport or travel document will state whether work is not permitted.</p>
Who applies and where?	<ul style="list-style-type: none"> ▶ Applicant applies for student visa or entry clearance at British High Commission, embassy or consulate. ▶ An application for further leave to remain as a student can only be made in-country (in the UK) to the UK Border Agency if the applicant entered in this category. ▶ Applicants may not switch into student from other categories once in the UK unless they are studying on a degree level course. ▶ Permission to work is almost always granted by the passport stamp.
Duration of leave	<ul style="list-style-type: none"> ▶ Up to three years. ▶ May be extended for further study, depending on the type and duration of the course. ▶ There is no maximum beyond which it may not be extended. ▶ Students will often need to extend their leave to enter/remain and this is usually a routine application, providing they have been attending the course and passed any examinations.



Students (cont'd)

Fact Sheet

Extending the leave	<p>It is possible to extend the leave for short periods for examination retakes or thesis completion.</p> <p>The maximum permitted period of stay for a student on successive short courses below degree level is 2 years. A short course is defined as “a course of less than one year’s duration or longer courses broken off before completion”.</p>
Applying for settlement	<p>Students cannot apply for settlement directly, but a student who has successfully completed a suitable course in the UK can apply for leave to remain in one of the immigration work categories such as work permits or one of the sub-categories in the Highly Skilled Migrants Tier 1.</p>
Family and dependants	<p>Students may apply to bring dependant children under age of 18 and spouse.</p>

UK ancestry visa

Fact Sheet

Qualifying criteria	<ul style="list-style-type: none"> ▶ Commonwealth citizen (see Glossary and meanings section for list of Commonwealth countries). ▶ Holds a valid United Kingdom entry clearance for entry in this capacity or has previously been granted an extension of stay in this capacity. ▶ Is aged 17 or over. ▶ Is able to provide proof that one of his grandparents was born in the United Kingdom and Islands. ▶ Able to work and intends to take or seek employment in the United Kingdom. ▶ Able to support self and any dependants once in the UK. <p>Full details are available from http://www.ind.homeoffice.gov.uk/ukresidency/eligibility/unitedkingdomancestry/</p>
Permitted work	<p>No restrictions on type or duration of work.</p>
Who applies and where?	<p>Applicant applies for visa or entry clearance at a British High Commission or Embassy.</p> <p>An application for leave to remain on the grounds of UK ancestry may only be made in country if the applicant entered in this category.</p> <p>Applicants may not switch into UK Ancestry from other categories once in the UK.</p>
Duration of leave	<p>Five years.</p>
Extending the leave	<p>If the applicant entered in the UK Ancestry category but did not qualify for settlement at the end of that period, an application for a further four years may be made.</p>
Applying for settlement	<p>Applicant can apply for settlement after five years.</p>
Family and dependants	<p>Applicant may bring dependant children under the age of 18 and his or her spouse or long-term partner.</p>



Comparative table

The following table sets out the main types of visa an employer is likely to encounter and provides some of the basic information about them. More information is available in the factsheets and on the UK Border Agency website: <http://www.bia.homeoffice.gov.uk/workingintheuk/>

Type of leave	Restrictions on working?	Maximum duration of leave	Apply for settlement?
Work permit	Yes ¹	5 years for each application	Yes
EEA national	No	No limit	Not applicable
EEA national (Workers Registration Scheme)	No	No restriction as such, but must register with Home Office for the first 12 months of employment	Not applicable
Bulgarian/Romanian nationals (Accession worker card)	Yes ²	No visa as such but must register with Home Office	Not applicable
Seasonal Agricultural Worker Scheme (SAWS)	Yes	6 months	No
Highly Skilled Migrants (new Tier 1) General sub-category	No	5 years	Yes
Highly Skilled Migrants (new Tier 1) Post-Study Work sub-category	No	2 years	No ³
Fresh Talent: Working in Scotland Scheme (FT:WISS)	No	2 years	No ³
International Graduates Scheme	No	1 year	No ³
Working Holidaymaker	Yes ⁴	2 years	No ³
UK ancestry visa	No	5 years	Yes

1 Employment is restricted to the precise job for which the work permit was granted.

2 An employer may need to obtain a work permit for the individual and if this is approved, the job applicant can obtain a worker authorisation document. In certain circumstances, the employee will be able to apply for the worker authorisation document for a specific job without a work permit.

3 Migrants in these categories cannot apply directly for settlement but may wish to apply to switch into one of the following employment categories – work permit employment; Highly Skilled Migrants (Tier 1) sub-categories: General, Entrepreneur and Investor.

4 Although leave is for up to two years, applicants can only work for a maximum of 12 months. May not engage in business or provide services as a professional sportsperson.

Questions and answers

How do I find and recruit overseas workers?

You can recruit overseas workers by advertising in the UK, Europe and further afield or you can use an agency that specialises in recruiting abroad. If the skills that you require are held by a person who does not have permission to work in the UK, you may be able to apply for an Immigration Employment Document.

What is an Immigration Employment Document?

- ▶ Work Permits and Work Permit Approval Letters
- ▶ Highly Skilled Migrant Programme and Highly Skilled Migrants Tier 1 Approval letters
- ▶ Seasonal Agricultural Workers Scheme Work Cards
- ▶ Home Office Approved Training or Work Experience Scheme Permits and Approval Letters

An Immigration Employment Document (IED) shows that a person from a country outside the European Economic Area (EEA) meets the criteria of one of the employment schemes operated by the Home Office. The holder of an IED must also demonstrate that they meet the requirements of the Immigration Rules before they can live and work in the UK. For work permits the employer applies on behalf of the individual. SAWS applicants apply to their operator for a work card. Highly Skilled Migrants make their own applications. The work permit is **not** an immigration document. The worker will need to apply separately for entry clearance or leave to remain if they are already here in another capacity (such as student). Not all individuals will be able to vary their status if they are already in the UK, depending on the type of leave they have. The UK Border Agency website contains further information on who may be allowed to vary their status in the UK.

Do I need an Immigration Employment Document to employ overseas workers?

Not necessarily; you do not need an Immigration Employment Document for:

- ▶ EEA nationals (including from the countries that joined the EEA from 1 May 2004: Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia)
- ▶ Unless exempt, Bulgarian/Romanian nationals will require a 'letter of approval for employment' from the UK Border Agency
- ▶ Many other categories of immigrant worker (see below)
- ▶ Spouses of migrants with leave in certain categories including dependants of WP holders, Highly Skilled Migrants, students, Working Holidaymakers. For further guidance please refer to the UK Border Agency website. Alternatively you can contact the Relocation Advisory Service (RAS) for further clarification
- ▶ Those with Indefinite Leave to Enter or Remain in the UK (this includes recognised refugees)
- ▶ Those with Exceptional Leave to Remain, Discretionary Leave to Remain, or Humanitarian Protection.

Questions and answers

What categories of migrant don't need Immigration Employment Documents?

There are many migrants who have permission to work in the UK already or who can come to the UK without a formal work permit. For example:

- ▶ Those granted leave as students (other than those on the Student Visitor Visa) can automatically work part-time during term time and full-time during vacations.
- ▶ Those on the Fresh Talent: Working in Scotland Scheme (please see pages 16-17) who shall normally have 2 years' leave to remain.
- ▶ Young Commonwealth nationals who enter the UK with entry clearance issued for the purpose of working holidays can work, for 12 months, for any employer while they are here.
- ▶ Commonwealth citizens with a UK-born grandparent can apply to come to the UK to work under the UK ancestry category.

If I do need an Immigration Employment Document, how hard is it to get one?

The application process is straightforward. The UK Border Agency provides useful and comprehensive guidance on their website and operate an advice line for employers (see 'contact details and addresses' later in this Toolkit). Summary guidance is provided in the factsheets contained in this Toolkit.

What if I apply for an Immigration Employment Document and get refused?

Where the information supplied does not meet the criteria, and you wish to re-apply with further information, please complete a WPI or WPIX form and include the appropriate payment. You should include further evidence to support your application including, but not restricted to, the issues raised in the refusal letter.

If you think that the decision based on the information sent in with your original application was an error and you wish the UK Border Agency to reconsider your previous application, please write to the business team that dealt with your application.

A letter should be sent within 28 days of the decision and it should explain why you believe that the decision was wrong, referring to the guidance notes as appropriate. You must make it clear that you are requesting a review of the decision on your previous application and, providing you are not asking the UK Border Agency to consider new information, there will be no fee for the consideration.

Questions and answers (cont'd)

Who pays for a work or business application?

The employer normally pays for work permit applications but the worker will need to apply for entry clearance or to change their immigration status if already in the UK. Details of charges are provided on the UK Border Agency website. Some employers pay for the entry clearance application as well as the work permit application.

How do I apply for a work permit?

The application form and detailed guidance notes are freely available on the UK Border Agency website: <http://www.bia.homeoffice.gov.uk/workingintheuk/workpermits/>. Full details about the application process are also provided there. Remember that getting the work permit is the first step, after which the worker will need to apply for entry clearance or leave to remain if already in the UK.

Do I need a lawyer to make an application?

The UK Border Agency provides all the information an employer needs to make an application, and it is not necessary to employ a lawyer. Experienced immigration lawyers should be aware of any recent changes to the different schemes and can guide you through the process and can negotiate with the UK Border Agency on your behalf. You may find it helpful to view the website of the Office of the Immigration Commissioner <http://www.oisc.gov.uk/>

Am I breaking the law if I employ an illegal immigrant?

It is a criminal offence to employ a person, aged 16 or over, who is subject to immigration control and who is not entitled to work in the UK or to undertake the employment in question. However you can easily obtain a statutory defence from prosecution by asking all potential employees to present certain original document(s) showing that he or she has valid permission to work. You should undertake a quick visual check to confirm that the person is the rightful holder of the document(s) e.g. does the person's appearance match the photograph/date of birth on the document? Then you should take a copy of the document(s), making sure you keep a copy. Further guidance is provided on the Preventing Illegal Working section found at <http://www.bia.homeoffice.gov.uk/employers/preventingillegalworking/>. If it turns out that you actually knew the person was illegal, you will have broken the law, but by following specified steps, you will be sure that your recruitment practices comply with the requirements for establishing the statutory defence, and you will not be convicted for employing a person illegally.



Questions and answers (cont'd)

If I employ a migrant worker, will I be able to keep them on after their leave expires? I don't want to train them up only to have to start again a year or two later.

Leave in all the work and business categories is granted for up to a maximum initial period of 5 years. In some categories, such as the Highly Skilled Migrants Tier 1 General sub-category, leave will initially be granted for 3 years, but can be extended up to 5 years from the date that entry clearance or leave to remain was granted (after which the individual can apply for settlement).

N.B. It is a criminal offence to employ a person, aged 16 or over, who is subject to immigration control and who is not entitled to work in the UK or to undertake the employment in question. During 2004, the law was tightened by changing the list of documents that employers are advised to check to avoid employing an illegal worker. This was done by eliminating documents which have proved vulnerable to forgery and requiring specific combinations of document to be seen. From February 2008, under a new system of Civil penalties, employers who negligently hire illegal workers could face a maximum fine of £10,000 for each illegal worker found at a business. If employers are found to have knowingly hired illegal workers they could incur an unlimited fine and be sent to prison.

What about workers whose applications have been refused by the UK Border Agency or are having difficulties with the immigration authorities?

If a person's application to remain in the UK has been refused by the UK Border Agency, he or she may no longer be allowed to work in the UK and he or she could potentially be committing a criminal offence if they remain in employment when not entitled to do so. However, if the person is appealing against a refusal, the original terms and conditions of their stay in the UK will be extended while the appeal lasts, as long as they applied to extend their stay before their previous leave expired and appealed within 10 working days of the decision to refuse further leave. For example, this means that a student refused an extension of their leave may still work part-time during term time and full-time during vacations, or someone refused an extension of a work permit may continue working in their original job until the appeal is decided.

Please note that overseas nationals may enter the UK to work in categories not mentioned in this Toolkit. Their passport will contain an endorsement showing the category in which they were granted leave and any restrictions on the employment they can take. For more information on endorsements and restrictions on employment please refer to the Preventing Illegal Working guidance on the UK Border Agency website.

Glossary and meanings

Able to support themselves	Persons making an application for leave are usually required to show they can adequately accommodate and maintain themselves in the UK. This is not normally a problem for someone applying to come and work in the UK, but some applicants may need to show they have enough money to support themselves and their dependants while they are looking for work after arrival in the UK, if they do not already have a job.
Asylum seeker/refugee	An asylum seeker has applied for asylum, a refugee has been granted asylum.
British High Commission/ Embassy/Consulate	These are the different types of diplomatic mission abroad. A British High Commission is what most people would understand to be an embassy, but it is in a Commonwealth country.
Commonwealth Countries	Antigua and Barbuda, Australia, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Canada, Cyprus, Dominica, Fiji, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Hebrides (see Vanuatu), New Zealand, Nigeria, Pakistan, Papua New Guinea, St Christopher & Nevis, St Lucia, St Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Southern Rhodesia (see Zimbabwe), Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad & Tobago, Tuvalu, Uganda, Vanuatu, Western Samoa, Zambia and Zimbabwe.



Glossary and meanings (cont'd)

EEA (European Economic Area) The EEA consists of all European Union member states plus one or two other countries not in the EU. As of 1 January 2007 the EEA member states are: Austria, Belgium, **Bulgaria**, Cyprus, the **Czech Republic**, Denmark, **Estonia**, Finland, France, Germany, Greece, **Hungary**, Iceland, Ireland, Italy, **Latvia**, **Lithuania**, Liechtenstein, Luxembourg, the Netherlands, Norway, **Poland**, Portugal, **Romania**, **Slovakia**, **Slovenia**, Spain, Sweden, United Kingdom.

There are special provisions that apply to citizens of those EEA member states given in bold type.

Swiss nationals have had the same rights as EEA nationals within the United Kingdom since 1 June 2002. They can work without a work permit.

Entry Clearance People from certain countries, known as visa nationals, need entry clearance to enter the UK for any reason; those from other countries need one only for some reasons. A list of visa nationals can be found in Appendix 1 to the Immigration Rules on the UK Border Agency website.

Since 2 October 2000, entry clearance confers leave to enter. Further details on entry clearance and how to apply, including locations of British Missions overseas, can be found on the UK Visas website.

Home Office The Home Office, a large government department with offices throughout the UK dealing with specific issues, determines UK immigration policy.

Immigration Employment Document (IED) Immigration Employment Documents is the term used to describe the documents that show that an individual meets the requirements of a particular scheme. An IED alone does not give an individual permission to work in the UK. IEDs include Work Permits and Work Permit Approval letters, Highly Skilled Migrant approval letters, Seasonal Agricultural Workers Scheme Work cards and Home Office Approved Training or Work Experience Scheme Permits and Approval letters.

Keep a copy This concerns criminal liability for employers under section 8 of the Asylum and Immigration Act 1996. A copy can be a photocopy or an electronically scanned copy, but the latter must be done on a particular type of programme.

Glossary and meanings (cont'd)

Leave to enter or remain This is permission to enter the UK or to remain here and can be granted for a limited period ('limited leave') or permanently ('indefinite leave'). Leave to enter is usually stamped onto an immigrant's passport or travel document, a UK residence permit is usually inserted into the passport when leave to remain is approved. Both are accompanied by conditions of leave, such as permission to work. Leave to enter may be in the form of Entry Clearance.

Long-term partner A long-term partner is someone with whom the applicant has lived in a relationship akin to marriage for at least 2 years.

Refugee A refugee is an asylum seeker who has been granted refugee status.

Settlement Indefinite Leave to Remain (ILR) or Indefinite Leave to Enter (ILE) is settlement in the UK. There are no conditions attached to it and someone with ILR or ILE can always work. After a certain period, those with settlement can apply for British citizenship.

UK Border Agency The UK Border Agency (part of the Home Office) is responsible for securing the United Kingdom's borders and controlling migration in the United Kingdom. It manages border control for the United Kingdom, enforcing immigration and customs regulations. It also considers applications for permission to enter or stay in the United Kingdom, citizenship and asylum.

UKvisas This is a joint Directorate of the Home Office and Foreign & Commonwealth Office, which manages the UK's entry clearance (visa) system abroad. It has a website at <http://www.ukvisas.gov.uk/en/>

Work permit A specific type of document applied for by employers that allows an individual to undertake specific employment at a specific location. The term is sometimes used to describe other permits that allow individuals to work in the UK, for Highly Skilled Migrant Programme Approval letters, Seasonal Agricultural Workers Scheme Work Cards and Training and Work experience Scheme Permits. The correct term for this group of permits is Immigration Employment Documents (IED).

Work Permits (UK) From 1 April 2007 Work Permits (UK) began operating as the Border and Immigration Agency (now the UK Border Agency).



Glossary and meanings (cont'd)

Working holiday

This is the type of holiday that many young British people go on to Australia for example. The UK Working Holidaymaker Scheme provides an opportunity for young nationals of countries participating in the Scheme to experience the life and culture of the UK while enjoying a holiday of which work is an incidental part.

Contact details

UK Border Agency Employer Helpline

Tel: 0845 010 6677

www.bia.homeoffice.gov.uk

Foreign and Commonwealth Office

Tel: 0845 850 2829

www.fco.gov.uk

Immigration Advisory Service

Tel. 0141 248 2956

www.iasuk.org

Immigration Enquiry Bureau

Tel: 0870 606 7766

<http://www.bia.homeoffice.gov.uk/contact/contactspage/?item=128320>

Relocation Advisory Service

Relocation Advisory Service

The Scottish Government

3rd Floor, Meridian Court

5 Cadogan Street

Glasgow

G2 6AT

Tel. (UK): 0845 602 0297

Tel. (Overseas): +44 141 248 2808

www.scotlandistheplace.com

Email: info@scotlandistheplace.com

UKvisas

Tel: 0845 010 5555

www.ukvisas.gov.uk

