

**REPORT TO:** Policy and Resources Committee - 8 June 2009

**REPORT ON:** Employing Overseas Workers under the new Points-based System

**REPORT BY:** Head of Personnel

**REPORT NO:** 304-2009

## **1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to seek the Committee's approval to apply for a licence and assign certificates of sponsorship to employ migrant workers from non-European Economic Area (EEA), where appropriate and subject to the Council's recruitment and selection process, under the points-based system, and to agree to meet a number of sponsorship duties.

## **2 RECOMMENDATIONS**

It is recommended that the Committee:-

- 2.1 approves the application for a licence to sponsor Tier 2 workers which would cover skilled workers (general).
- 2.2 approves the assignation of certificates of sponsorship in line with UK Border Agency guidance.
- 2.3 approves the payment of the appropriate fees associated with the application for a licence and each subsequent certificate.
- 2.4 approves the allocation of four key roles and the associated responsibilities; Authorising Officer, Level 1 User, Level 2 User and Key Contact.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 The cost of implementing the sponsorship of migrants will be funded by existing department budgets.

## **4 MAIN TEXT**

- 4.1 Sponsorship is based on two principles: those organisations that benefit most directly from migration, (those who sponsor migrants) should ensure they adhere to the system and those who apply to come to the UK to work should ensure that they are eligible to do so.

- 4.2 Dundee City Council has thirteen existing foreign national employees who are eligible for employment under the 'old' work permit system. During 2008, the law has changed and introduced a new points-based system for anyone wanting to live and work in the UK. This means that in order for the Council to retain existing employees whose current work permits expire or to recruit new employees from overseas, the Council will have to obtain a licence to be a sponsor for the appropriate tier under the points-based system.
- 4.3 Sponsorship covers the employment of migrant workers from countries out-with the European Economic Area (EEA) and Switzerland. EEA and Swiss Nationals have the right to live and work in the United Kingdom (have the right of residence). In 2004, the worker registration scheme was introduced when new countries joined the EEA and this scheme covers Eastern European workers from the "A8" countries (Poland, Lithuania, Hungary, Slovakia, Slovenia, Estonia and the Czech Republic). The scheme has just been extended for a further two years until end of April 2011 and requires employees from these countries to continue to be registered with the Home Office until they have completed 12 months registered work. Employees are responsible for making an application and the employer must ensure that the employee has applied during the first month of employment and keeps a copy of the completed application form as proof. The worker registration scheme is distinct from sponsorship in that it pertains to employees from the "A8" countries, whereas sponsorship relates to non-EEA employees.
- 4.4 There are five tiers under the points-based system. The tier that would apply to the Council is tier 2, for "skilled workers with a job offer to fill gaps in the UK labour force". The tier consists of a number of categories/sub-categories and points are awarded according to each. Migrants will need to obtain sufficient points to obtain entry clearance or leave to remain in the UK, within a particular category/sub-category. The category which would apply to the Council is tier 2 (general) which offers a route of employment for medium to highly skilled workers who have received a job offer (this would cover posts such as teachers, social workers, bi-lingual assistants and environmental health officers, for example).
- 4.5 In order to employ migrants, the Council will require a licence. Applications for a licence can only be made on-line, using the online form. This has to be approved in advance of employing or extending the employment of one or more migrants and can take up to six weeks to process. The Education Department has an employee (teacher) whose current work permit expires on 22 June 2009 and therefore, to enable her to continue to be employed, the Council requires to become a sponsor now. Once granted the licence lasts for 4 years. Once licensed under tier 2, the Council will be able to log on to the Sponsorship Management System, an on-line tool which can be used, for example, to assign certificates of sponsorship. As part of the application to become a sponsor, the Council must allocate certain responsibilities to members of staff and there are four key roles, Authorising Officer, Key Contact, Level 1 User and Level 2 Users.
- 4.6 The Council must appoint an Authorising Officer and he/she will be responsible for all the activities of all users of the sponsorship management system. This is a responsible role and it is normally the head of the organisation, or a senior officer. If the Council does not adhere to its duties, the authorising officer could be the subject of a civil penalty (on-the spot-fine) or prosecution. It is recommended that this is the Head of Personnel.

- 4.7 The Key Contact is the person who will act as the main point of contact between the Council and the UK Border Agency and it is recommended that this is the Head of Personnel.
- 4.8 The Level 1 user will be required to undertake any activities in relation to the Sponsorship Management System, including requesting level 2 users for example and it is recommended that this is the Central Personnel Team Leader.
- 4.9 The Level 2 users have restricted access to the Sponsorship Management System but can assign certificates of sponsorship to successful candidates. It is envisaged that these users will be identified within each department as necessary.
- 4.10 The Council will then be awarded an A-rating or B-rating. An A-rated sponsor is one who has all the necessary systems in place to meet its duties and a B-rating is issued if systems are not in place. It is anticipated that the Council will be A-rated. Once the Council has obtained a licence, it must comply with certain duties.
- 4.11 These duties (attached as Appendix 1) detail the record keeping and reporting duties and compliance guidance. If the Council fails to comply with its duties and employs migrants illegally, there are serious consequences which may include having its licence withdrawn, being issued with a civil penalty or prosecution.
- 4.12 In order to comply with legislation, the Council must satisfy the resident labour market test. The test now requires employers to advertise the vacancy in Jobcentre Plus offices for up to 2 weeks. In addition the Council advertises on the internet, either on its internet site ([dundee.gov.uk/jobs](http://dundee.gov.uk/jobs)) or in due course through the national portal ([myjobscotland.gov.uk](http://myjobscotland.gov.uk)). If the Council decides that the best candidate for that vacancy is a migrant worker, then it must show that that this is the case and retain all recruitment paperwork, including short-listing form and interview notes for all interviewees, in order to demonstrate clear reasoning and justification. These records must be kept for two years after the migrant leaves employment.
- 4.13 For each migrant worker the Council requires to assign a certificate of sponsorship, which is a virtual document. The Level 2 user will check that the migrant meets the points-based criteria on the Sponsorship Management System. Points are awarded according to the salary, level of qualification and the employer. If the points add up, then the 'virtual' certificate is assigned and this provides the migrant worker with a reference number to apply for permission to live and work in the UK, for a limited period. Departments must then check all documentation issued from the UK Border Agency prior to making a job offer and every 12 months after the initial check, to retain an excuse against a penalty.
- 4.14 The cost of a licence is £1,000 and lasts for 4 years. The cost of each certificate of sponsorship is £170.
- 4.15 Guidance for managers is contained within the Council's Recruitment and Selection manual.

## **5 POLICY IMPLICATIONS**

- 5.1 This report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti Poverty, Equality Impact Assessment and Risk Management. There are no major issues identified.

## 6 **CONSULTATIONS**

- 6.1 The Chief Executive, Depute Chief Executive (Finance) and Depute Chief Executive (Support Services) have been consulted in the preparation of this report, as have the trade unions.

## 7 **BACKGROUND PAPERS**

- 7.1 None

I M M Martin  
Head of Personnel

1 June 2009

## SPONSORSHIP DUTIES

The system of sponsorship requires those who most directly benefit from migration, those who are sponsoring migrants, to play their part in ensuring that the system is not abused. All licensed sponsors are required to fulfil certain duties. Some of these duties are generic (they apply to all sponsors). Others are specific to sponsors who are licensed under certain tiers of categories. Sponsors are required to adhere to these duties to ensure immigration controls remain effective.

This document reflects the current policy, but may be subject to change at any time.

### GENERIC DUTIES

These are as follows.

#### Record keeping duties

- a) All sponsors must keep the following records or documents, and make them available to the UK Border Agency on request:
  - a photocopy or electronic copy of each sponsored migrant's passport or United Kingdom immigration status document (and in time, his/her ID card), showing evidence of his/her entitlement to work or study including their period of leave to remain in the United Kingdom. Sponsors who are employers should be aware of their responsibilities to help prevent illegal working in the UK. Further details of these responsibilities are provided on the website at <http://ukba.homeoffice.gov.uk/employers/preventingillegalworking>
  - each sponsored migrant's contact details (United Kingdom residential address, telephone number, and mobile telephone number). These details must be updated as necessary.
- b) All sponsors must provide such documents relating to sponsored migrants as considered relevant. For example, the UK Border Agency may ask for details of the sponsor's recruitment practices so that they can ensure that the resident labour market test is being applied correctly, where appropriate.
- c) From 2008 the UK Border Agency is gradually introducing ID cards for foreign nationals. This will be a new type of immigration status document which will contain details of the holder's immigration status, together with their fingerprints and a facial image. Where the migrant has an ID card, the sponsor will be required to keep a copy of it. More information on identity cards is available on the website at <http://ukba.homeoffice.gov.uk/managingborders/idcardsforforeignnationals>

## Reporting duties

- d) All sponsors must report the following information or events to the UK Border Agency, within any time limit specified. Information about migrants' non-attendance, non-compliance or disappearance will be used to take enforcement action against them:
- if a sponsored migrant does not turn up for his/her first day of work. The report must be provided within 10 working days and must include any reason given by the migrant for his/her non-attendance (for example a missed flight);
  - if a sponsored migrant is absent for work for more than 10 working days, without the sponsor's reasonably granted permission. In this case, the report must be provided within 10 working days of the 10th day of absence;
  - if a sponsored migrant's contract of employment or registration is terminated (including where the migrant resigns or is dismissed). Such a report must be given within 10 working days of the event in question, and should include the name and address of any new employer or institution that the migrant has joined, if the sponsor knows it;
  - if the sponsor stops sponsoring the migrant for any other reason (for example, if the migrant moves into an immigration route that does not require a sponsor, or the migrant's period of leave to remain in the United Kingdom comes to an end) the report must be provided within 10 working days;
  - if there are any significant changes in the migrant's circumstances, for example, a change of job or salary (but not job title or annual pay rise), or the location the migrant is employed at changes, the report must be provided within 10 working days;
  - any information which suggests that a migrant is breaching the conditions of his or her leave, the report must be provided within 10 working days;
  - if there are any significant changes in the sponsor's circumstances, for example, if the sponsor ceases trading or becomes insolvent, substantially changes the nature of its business, is involved in a merger or is taken over, the report must be provided within 28 calendar days;
  - details of any third party or intermediary, whether in the United Kingdom or abroad, that has assisted it in the recruitment of migrant employees.
- e) The sponsor must also give the police any information it may have that suggests that the migrant may be engaging in terrorism or other criminal activity.

## Complying with the law

- f) To ensure that they are complying with immigration laws, sponsors must also fulfil the following duties:
- to ensure that a migrant who is coming to work is legally entitled to do the job in question and has the appropriate registration and/or professional accreditation where this is legally required. For example, if the migrant is coming to work as a doctor, the sponsor must ensure that he/she has the correct registration to entitle him/her to practice as such in the United Kingdom. The sponsor must keep a copy of any appropriate registration document or certificate, and supply it to the UK Border Agency on request;
  - not to employ a migrant if the conditions on the migrant's leave (or the migrant's lack of leave) mean that he or she is not allowed to undertake the work in question, and to stop employing any migrant who ceases, for any reason, to be entitled to undertake the work;'

- only to assign certificates of sponsorship (or confirmation of acceptance of studies) to migrants who, to the best of the sponsor's knowledge and belief, will meet the requirements of the tier or category under which the certificate/confirmation is assigned, and are likely to comply with the conditions of their leave. The requirements and conditions of leave are set out in the immigration rules.

### **Co-operating with the UK Border Agency**

- g) In order to allow the UK Border Agency to manage the sponsorship system properly, all sponsors must also comply with the following duties.
- allow UK Border Agency staff access to any of its premises on demand. Visits may be either prearranged or unannounced;
  - adhere to any action plan set by the UK Border Agency, and action plan for B-rated sponsors may lay down additional duties;
  - seek to minimise the risk of immigration abuse by complying with any good practice guidance that the UK Border Agency or any sector body may produce for sponsors in particular tiers or sectors, with UK Border Agency agreement.

The above duties apply to all sponsors. Those set out below apply only to Sponsors under tier 2.

### **DUTIES SPECIFIC TO SPONSORS UNDER TIER 2**

#### **Tier 2- skilled workers**

Sponsors who are licensed to sponsor migrants under Tier 2 (General) should only assign a certificate of sponsorship to a migrant if the sponsor is satisfied that the migrant intends to, and is able to, do the specific skilled job in question, which must be of at least SVQ skill level 3. The sponsor must indicate when assigning a certificate of sponsorship that:

- a) the sponsor has carried out the resident labour market test; and the migrant will be paid at or above rate at which the job has been advertised; or
- b) the job concerned appears on the list of shortage occupations on the Scotland-only list, at the date that the sponsor assigns a certificate of sponsorship in respect of that job;

Sponsors must also indicate that:

- a) the migrant will be paid at or above the rate (including any specific permitted allowances) appropriate for that job in the United Kingdom;
- b) the job is a genuine vacancy;
- c) the job is at SVQ level 3 or above.

## **WHEN DO A SPONSOR'S DUTIES START AND FINISH?**

Responsibility for the undertakings will commence from the date of issue of a sponsor licence and where they relate to a migrant will cease:

- a) when the sponsor notifies the UK Border Agency that the migrant has ceased to be in their employment; or
- b) when the migrant leaves the United Kingdom and their entry clearance to remain lapses; or
- c) when the migrant is granted further leave to remain with a different sponsor or in another immigration category; or
- d) if the UK Border Agency withdraw the sponsor's licence.