

IMMIGRATION ENFORCEMENT: ARE YOU READY FOR A HOME OFFICE AUDIT?

ag ADDLESHAW
GODDARD

MORE IMAGINATION **MORE IMPACT**



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WHAT ARE WE GOING TO COVER?



01

SPONSORSHIP UK

- Sponsorship is it the new normal?
- Overview of duties
- Recent changes

02

COMPLIANCE VISITS UK

- Purpose
- How to prepare
- Practical issues

03

CASE STUDY

04

IMMIGRATION ENFORCMENT OUTSIDE UK

05

ACTION POINTS

PLEASE LOG IN TO **SLIDO**



A futuristic, curved hallway with a grid ceiling and a glass railing on the right side. The hallway is brightly lit, with light reflecting off the curved surfaces. The ceiling features a grid pattern of recessed lighting. The right side of the hallway is lined with a glass railing, and the floor is also curved, matching the overall architectural style.

SPONSORSHIP UK

SPONSORSHIP IN UK THE NEW NORMAL?

SPONSOR LICENCE NUMBERS RISING

Q1 2014 - Q4 2020

Increase of c. 5,000 new licence holders in 7 years

Q1 2021 - Q4 2022

24,000 New licence holders

C. 1,500

Sponsor licence applications per quarter pre-2021

C. 5,200

Per quarter in 2021 and 2022
Q4 2022 hit 7,118 applications

SPONSOR LICENCE DUTIES: REPORTING “PRIVILEGE NOT A RIGHT TO BE A SPONSOR”

- **REPORTABLE WITHIN 10 WORKING DAYS**

- Change in job title / duties
- Work location changes
- Unauthorised absences
- Failure to start work within 28 days
- Absent without pay for 4 weeks
- Reduction in salary
- End of sponsorship of migrant

- **REPORTABLE WITHIN 20 WORKING DAYS**

- Change of registered office address / name of business
- Entering an insolvency process
- New ownership / sale of business NB other actions may be required

- **AS SOON AS POSSIBLE**

- Change in Authorising Officer / Key Contact



SPONSOR LICENCE DUTIES: RECORD-KEEPING

- Appendix D contains the list of documents required to be kept for sponsored migrants
 - Employment contract / particulars
 - Right to work evidence
 - Salary payment and National Insurance number
 - Evidence as to how migrant identified NB if advertising was required
 - Contact details (current and historic)
- Must be kept throughout employment and 12 months thereafter (except for right to work which is 2 years)



RECENT CHANGES TO SPONSOR DUTIES

End of sponsorship no longer mandatory if migrant is delayed starting work by 28 days

No report required if starting within 28 days

Hybrid working is permitted - only reportable if hybrid working is not the norm initially but then the migrant's working pattern changes to this

No longer required to report a change if the migrant works at a different site as a "one off"

Increases to salaries no longer need reporting

Report required to changes in "normal" working patterns



A modern, brightly lit office hallway with a curved ceiling and a glass-walled office on the right. The ceiling features a grid of recessed lighting fixtures. The hallway is clean and minimalist, with a light-colored floor and walls. The glass-walled office on the right has a dark frame and multiple panes. The overall atmosphere is professional and contemporary.

HOME OFFICE COMPLIANCE VISITS

WHY, WHEN & WHAT CAN HAPPEN?

WHY?

Home Office to check that sponsors are complying with:

- Their sponsor & record-keeping duties
- UK Immigration and wider laws

WHEN?

At any time whilst the sponsor holds a licence



WHAT CAN HAPPEN?

- Nothing - continue as you are!
- Downgrading to a B-licence / suspension of licence
- Civil & criminal penalties
- Revocation of licence

HOW TO PREPARE & WHAT TO EXPECT

PREPARATION

Carry out an internal audit on a representative sample of sponsored migrants' files / workers' RTW checks

Check HR systems contain all applicable details and are set up to assist the business with their compliance obligations

Ensure that visa expiry dates are easily trackable and that notifications are sent to more than one person when the expiry date is around 3 months away

Ensure that you know where key RTW documents can be found

Ensure that front-of-house staff know who the Authorizing Officer is

Ensure that key personnel are up-to-date with sponsor compliance duties - consider implementing annual training

WHAT TO EXPECT

- Officers to turn up announced/unannounced
- They will likely ask to see the Authorizing Officer and those in charge of recruitment, but they may want to see migrant workers too
- Expect to be questioned on processes and policies, documents and sponsor duties

PRACTICAL ISSUES



1

If the Authorising Officer is not available, politely ask if they can return another day (be prepared for “no”!)

2

Ensure that two people from the business sit in the meeting and one takes notes

3

Be aware of veiled questions - e.g. “what would you do if...?” as they may not be specific in the question that it relates to migrant workers

4

Offer to demonstrate HR systems

5

Ask if you can take a copy of the officer’s notes

6

Format = Interview of key personnel (and perhaps migrants), review of files and review of systems, provide documents at a later date if needed, report returned by officer



A futuristic, curved architectural hallway with a grid ceiling and a glass railing. The scene is brightly lit, creating a clean and modern atmosphere. The perspective is from a low angle, looking down the length of the hallway. The ceiling features a grid of recessed lighting panels. The walls are smooth and curved, with a glass railing on the right side. The overall color palette is light and neutral, with shades of white and light blue.

CASE STUDY

XYZ LIMITED - BASED IN THE UK

SCENARIO

- Construction industry
- Locations in Manchester, Leeds & London - Manchester office retains hard copy RTW documents, and these are not shared between offices
- Home Office wants to make an announced visit to the London office
- Authorising Office is the Level 1 user but they are on leave that day
- Home Office requests to know how the business complies with its sponsor duties
- What should XYZ do?



POINTS TO CONSIDER

01

Is it beneficial that this is an announced visit?

02

Home Office will want to do a review of the documents.

Is it an issue that hardcopies are only kept in the Manchester office?

03

Who will they want to speak with?

AO/L1, migrant workers

05

What are the potential outcomes and what would these mean for XYZ Limited?

06

De-brief the employer as to their findings



PLAN FOR RESPONDING TO A COMPLIANCE VISIT?

1 Assemble a key team

2 Set the ground rules on both sides

3 Implement a containment strategy

4 Communicate clearly with staff

5 Ensure proper conduct

6 Maintain a detailed record of the inspection

7 Seek to protect privileged information, equipment and computer records



EXAMPLE QUESTIONS THAT XYZ LIMITED COULD BE ASKED



- How many sponsored migrants do you have?
- Do you have contact details for your workers? Where are these kept?
- How does the business track its workers' activity on a day-to-day basis?
- Does the business track visa expiry dates?
- Who is responsible for carrying out RTW checks? What is the process?

What would you do if...

A worker is absent from work for 15 days (of their usual working pattern)?

A sponsored worker receives a promotion?

The Authorising Officer leaves the business?



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XYZ LIMITED – BASED IN THE UK



Home Office has gone away to review its notes and findings from the visit and decides that XYZ is not fulfilling its compliance obligations



Home Office arrests 3 individuals on the basis that they could be illegal workers



What are the points to consider?

- What do you do if you receive a civil penalty referral notice?
- What should you do with the request for further information?



What are the potential outcomes of the visit?

POTENTIAL OUTCOMES OF VISIT

01

No issue found and the business is allowed to proceed as normal

02

You are asked to send an e-mail after the visit which should confirm documents that the Home Office was unable to see on the day

03

If there are minor issues, downgrade to a B-rating with a time-limited action plan

04

Suspension of licence

05

Revocation of licence - this will mean that all sponsored workers will lose their sponsorship and their leave may be curtailed unless they can find alternative employment

06

If illegal working is found:

- Civil penalty - up to £20,000 per illegal worker
- Criminal sanctions - unlimited fines and up to 5 years in prison



A modern, brightly lit office hallway with a curved ceiling and a glass-walled office on the right. The ceiling features a grid of recessed lighting fixtures. The floor is a light-colored, polished surface. The glass-walled office on the right has a dark frame and multiple panes. The overall atmosphere is clean, professional, and futuristic.

**THE IRISH PERSPECTIVE:
MANAGING A WORKPLACE
RELATIONS COMMISSION
AUDIT**

HOW DOES AN AUDIT ARISE IN IRELAND?

- WRC employment and immigration law
- Inspections:
 - Routine
 - Individual complaint
 - Non-compliance with specific legislation
 - WRC campaign focusing on specific sector
 - Employment permits
- Employer will generally be provided with advance notice
- Format of the inspection very similar to the UK

EMPLOYEE RECORDS



Maintenance of correct employee records will be a key aspect of the audit process



Records associated with Irish based employees are to be maintained in Ireland



Employer required by law to retain records for a period of 3 years



Inspector will often clarify in advance a sample of employees

EMPLOYEE RECORDS



1

Identify Employer registration number (i.e. issued by the Revenue Commissioners)

2

Employee personal information including full name, address, PPSN, job title, start date etc

3

Payroll details



EMPLOYEE RECORDS

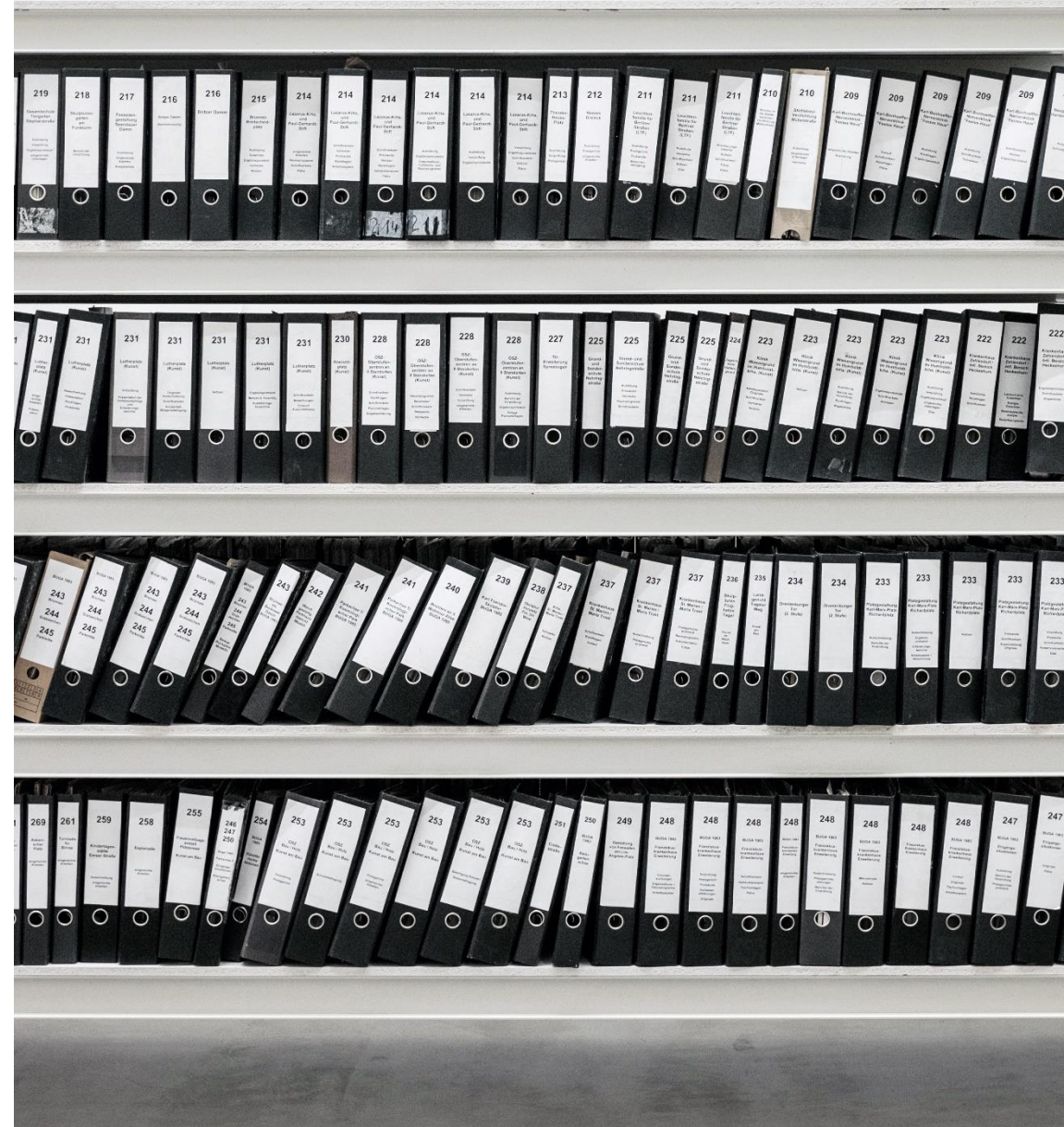
Holiday and public holiday records

Right to work documents

Up to date employee figures

Confirmation of the correct address
/ addresses for the company

Register of employees under 18 years of age



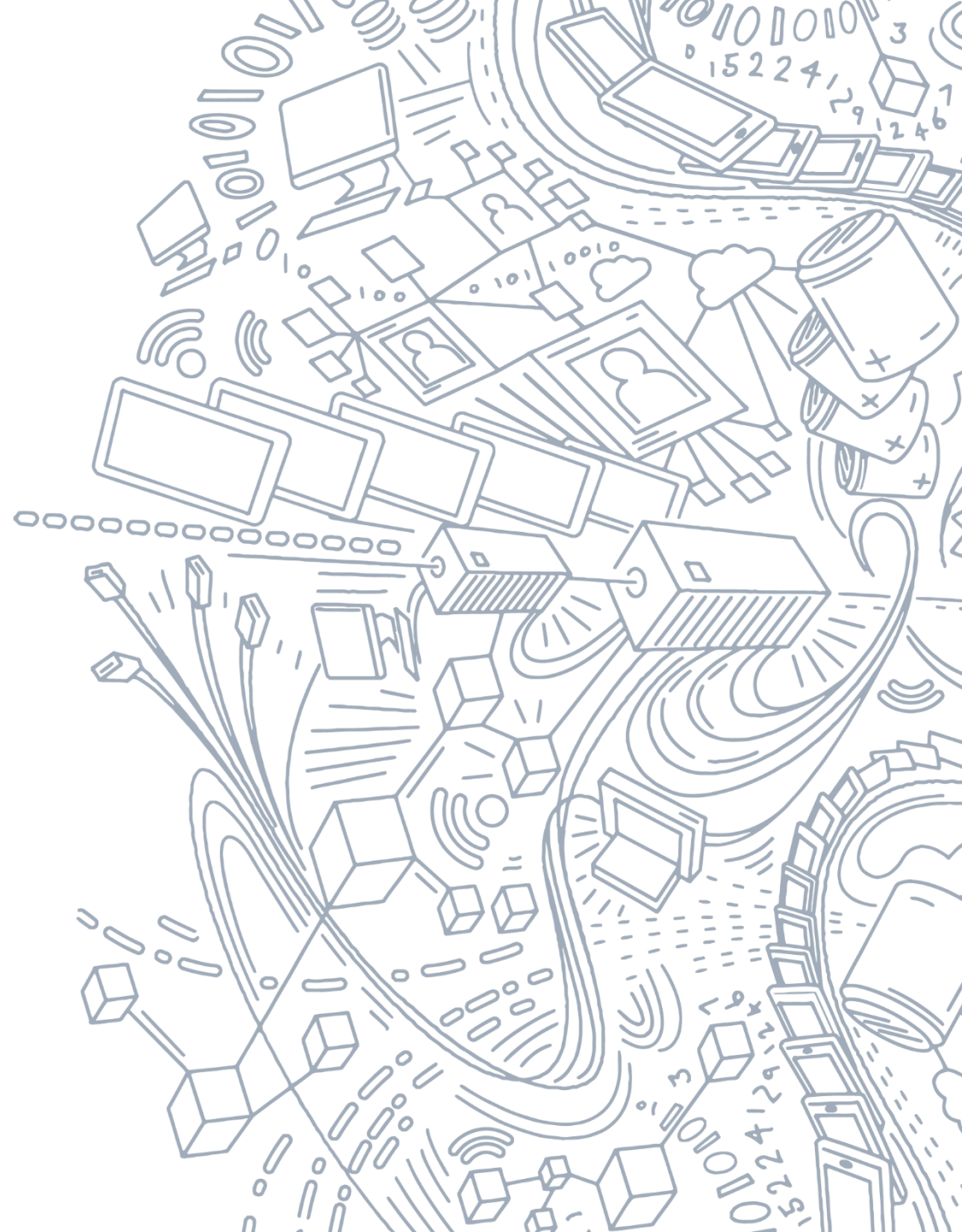
EMPLOYEE RECORDS

Details of any board and / or lodgings provided to employees

Recent pay slips

Records of hours worked

Contract of employment



REMEDIES



Criminal Offences

- Breach of immigration law - fine of up to €250,000 / 10 years imprisonment
- Progressive approach - fine only after persistent non-compliance



Similar to Health & Safety Inspections

- Compliance Notice - emphasis on ensuring compliance
- Fixed Penalty Notices

THE GLOBAL PERSPECTIVE

| | United Arab Emirates | Germany |
|-----------------------------------|--|---|
| Relevant Body | Ministry for Human Resources | Local Security Authority & Immigration Customs |
| Advance Notice? | Yes (1 – 2 days) | Yes (2 – 3 months) |
| Reasons | Accident, engagement with authorities, sector focus and salary tracking | Complaint, sector focus and emphasis on legal foreign entities |
| Employment and Immigration Audit? | Employment and Immigration audit | Local Security Authority (Workplace Rights and Safety) and Customs (Immigration) |
| Points of interest | <ul style="list-style-type: none">• Document focused• Arabic speaker crucial• Lawyer not necessary | <ul style="list-style-type: none">• Document focused• Lawyer not necessary |

THE GLOBAL PERSPECTIVE - CONTINUED

| | United Arab Emirates | Germany |
|--------------------|---|--|
| Remedies/Penalties | Fine, imprisonment, deportation and temporary suspension of Sponsor Licence | Fine, imprisonment and issues around securing Government Contracts. More of a compliance based approach. |

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A futuristic, curved hallway with a grid ceiling and a glass railing on the right side. The hallway is brightly lit, and the walls and ceiling are made of a light-colored, curved material. The floor is also curved and has a grid pattern. The railing on the right is made of glass and metal. The overall atmosphere is clean, modern, and high-tech.

ACTION POINTS

1

Review policies and processes

2

Review a representative sample of personnel files

3

Review contact details

4

Review your SMS to check all details for the business are up-to-date

5

Check that the certificates of sponsorship and reports for each migrant match HR records

6

Check that all RTW checks are current and on file, and check for dates completed vs start dates

7

Ensure that staff responsible (including the key personnel) for RTW checks are fully trained and updated

8

Ensure line managers etc. are aware of reporting duties and know who to contact should an SMS report need to be made

9

Consider undertaking a mock audit

A futuristic, curved hallway with a grid ceiling and a glass railing. The hallway is brightly lit, with a white floor and walls. The ceiling is a grid of white panels. On the right side, there is a glass railing with a dark frame. The hallway curves to the right, leading to a bright, open area.

QUESTIONS?

MORE IMAGINATION MORE IMPACT

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