



Home Office

UK Border Agency

WORK PERMITS

SECTORS BASED SCHEME
(BULGARIAN AND ROMANIAN NATIONALS ONLY)

Guidance for Employers

From 1 April 2008

This guidance note provides information and advice on how to make an application under the criteria that apply only to Bulgarian and Romanian Nationals under the Sectors Based Scheme (SBS) arrangements. They are updated regularly, therefore, please read them before filing in the application form. This supersedes all previously issued guidance. For the purpose of these guidance notes, the terms 'we', 'us' and 'our' refer to the UK Border Agency.

Please note: The arrangements in this Guidance Note will be superseded by the Points Based System (PBS) during the course of 2008/2009. Please check our website www.ukba.homeoffice.gov.uk for updates and further information.

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Section 1 – The Criteria

Overview

1. The Sectors Based Scheme (SBS) arrangements allow UK based employers to recruit Bulgarian and Romanian Nationals only, to fill certain, specified posts within the Food Manufacturing sector. You may apply for a letter of approval under SBS for the employment of a Bulgarian and Romanian national that is already in the United Kingdom. However, before you do, you should check that the individual is not already exempt from work authorisation requirements.
2. Under these arrangements, SBS letters of approval are issued for those posts listed at paragraph 15. (The posts listed are at a level which would not meet the skills requirements for consideration under the Business and Commercial work permit arrangements, but which have been identified as difficult to fill within the UK). Please note that the issuance of a letter of approval under the SBS does not in itself constitute authorisation of the employment. To obtain this, the worker should then submit the letter of approval with an application for an accession worker card on form BR3 and submit both to the UK Border Agency. Form BR3 and the guidance notes for Bulgaria and Romania can be found on our website at www.ukba.homeoffice.gov.uk. The worker can do this before travelling to the United Kingdom or upon arrival. The worker may not commence the employment before they have obtained an accession worker card. If the worker does commence employment without obtaining an accession worker card, they, and you, may be committing a criminal offence.

Summary of criteria

3. Decisions on SBS applications are made against the following general criteria, whether:

a) there is a UK-based employer; you can make an application if you are a UK based employer and you need to employ a person to work in the UK. You should make an application to employ a named person to do a specific job for you, normally on a full-time basis. The employee cannot use the letter of approval to take a different job or to work for a different employer.

b) the individual is to be an employee of the UK employer;

I. if you wish to employ a person, you will need to do so on a Class 1 National Insurance basis.

II. whilst in the UK we expect the person to be your employee. There should be a contract of

employment between you and the employee. The contract of employment may be requested by the UK Border Agency.

III. if the person is being transferred from an overseas parent or subsidiary branch of your company or is being seconded to you from an overseas company, it may be appropriate for the overseas contract of employment to continue but it should nevertheless be clear that there is an employer/employee relationship between the UK-based company and the person.

c) there is a genuine vacancy for an employee in this country; the post must not have been created for the purpose of recruiting a particular person. We must also be satisfied that enough work exists for the person to undertake for the amount of hours and period that you have requested.

d) the employer is responsible for the post;

I. we will only issue a letter of approval where it is clear that you have a responsibility for determining the duties and functions of the post. You may apply for a letter of approval for a person who will be employed to provide services to a client under a contract, which may mean that the person will need to work at the client's premises. The UK Border Agency will not issue a letter of approval where the employer is only supplying personnel.

II. you will need to demonstrate that you are responsible for the delivery of a particular job, project or piece of work with which the vacancy is associated. If your application involves providing a service to a client under a contract, please send us a copy of the contract between everyone involved.

- e) the gross pay and conditions of employment are equal or exceed those normally given to a resident worker doing similar work;**
- f) the employment complies with UK legislation and any requirements for registration or licensing necessary for the employment;**
- g) the skills, qualifications and experience needed to do the job meet specific requirements;**
- h) the person is suitably qualified or experienced to do the job on offer and whether there is a need for them to do the job on offer;**
- i) suitable arrangements have been made to provide accommodation to the SBS participant;**
- j) the potential employee is between the ages of 18 and 30;**
- k) the post on offer is within a sector covered by**

the SBS arrangements;

- l) the post on offer matches one of the posts covered by the SBS arrangements;
- m) the potential employee is going to be working full-time;
- n) there are no suitably qualified or experienced 'resident workers' (see paragraph 5 for a definition) available; and
- o) where the individual will be working at a client's address, whether the organisation submitting the application is providing a service and not just personnel. We may need to see a contract.

4. In addition to the general criteria there are specific SBS criteria that should be met;

- a) For all applications, the person for whom the application is made must be between the ages of 18 and 30 at the point at which you apply for a letter of approval.
- b) SBS letters of approval do not entitle an SBS participant dependants to work in the UK. Dependants must qualify to work in their own right
- c) Employers of SBS participants will be expected to provide appropriate levels of support. In particular, employers must ensure that all relevant health and safety guidelines are communicated to SBS participants in a language which they can clearly understand, before they commence work.
- d) The post on offer must be full-time (at least 30 hours per week).

5. For the purposes of these guidance notes, a 'resident worker' is a person who is a European Economic Area (EEA) national (member countries are: Austria, Belgium, *Czech Republic, Cyprus, Denmark, *Estonia, Finland, France, Germany, Greece, *Hungary, Iceland, Republic of Ireland, Italy, *Latvia, Liechtenstein, *Lithuania, Luxembourg, Malta, the Netherlands, Norway, *Poland, Portugal, *Slovakia, *Slovenia, Spain, Sweden, UK) or has settled status in the UK within the meaning of the Immigration Act 1971, as amended by the Immigration and Asylum 1999, and the Nationality, Immigration and Asylum Act 2002.

*Nationals of these countries other than Malta and Cyprus, who joined the EU on 1 May 2004 and who wish to take employment in the UK do not require a letter of approval but are required to register under the Worker Registration Scheme. They should apply for registration within one month of starting work for an employer in the UK.

6. For the purpose of these guidance notes Bulgarian and Romanian nationals are classified as resident workers where they are not subject to accession state worker authorisation. Details of the accession state worker authorisation scheme can be found in the guidance for Bulgarian and Romanian nationals available on our website at www.ukba.homeoffice.gov.uk.

The Employer

Establishing your company

7. If you have not applied for a work permit in the past five years you should send as much recent information as possible to establish that you are a UK-based employer, and that you are capable of offering a genuine vacancy. In all cases, other than for exempted employers¹, you must send:

(a) evidence of registration with HM Revenue & Customs to pay PAYE and National Insurance. New employers need to send a copy of their NESI 8. Established employers need to provide either their P35 or a copy of their HM Revenue and Customs internet account book,

(b) a copy of your current Certificate of Employers Liability Insurance (this requirement does not apply to employers based in Northern Ireland).

(c) Care homes or similar establishments must also send:

I. a current hierarchy or organisation chart and staff list showing the position of the job on offer, all job titles, and which posts are filled by work permit holders,

II. a copy of the Commission for Social Care Inspection certificate or a copy of the Local Health Authority registration, if the CSCI certificate is not available, and

III. confirmation of the number of beds.

(d) Hotel and catering establishments must also send:

I. a current hierarchy or organisation chart showing the position on offer, all job titles, and which posts are filled by work permit holders,

II. evidence of registration by your Local Authority to serve food and,

¹ Government Departments, Government Agencies, official public bodies, such as the BBC or ITC, Local Authorities, Grant Maintained Schools, Nationalised Industries, Health Authorities, NHS Trusts, State funded universities, colleges and research centres, but not private ones (unless nationally recognised), and, long established, well-known companies and organisations, such as British Petroleum or Oxfam.

III. copies of menus, wine lists.

(e) Educational establishments that are not on the Department for Innovation, Universities and Skills Register of Providers must also send a current prospectus and student register.

(f) Employers in IT companies must also send:

I. a current hierarchy or organisation chart showing the position on offer, all job titles, and which posts are filled by work permit holders, and

II. a copy of the current relevant service contract(s) that shows the scope of the service, signed by all parties.

8. We may also need to see other documents including, where appropriate, those required by regulatory authorities or by UK legislation. You should send as many of these as possible. These include:

- VAT returns,
- most recent company accounts, audited if possible,
- a copy of the landlord's signed lease of premises, or rental or purchase agreement,
- company incorporation, fire, or food hygiene certificates or other registration or licensing documents,
- utility bills,
- business plans,
- balance sheets,
- contracts detailing your business,
- for IT and hotel and catering establishments, floor plans.
- Evidence that you have been actively operating or trading for at least 3 years.

This is not an exhaustive list and we may need to ask for further information that will support your application.

9. The UK Border Agency reserves the right to contact other authorities in order to verify the evidence received or to obtain any other information we consider necessary in order to consider your application. Where unsatisfactory evidence is provided the application may be refused. Where insufficient evidence is provided the application may be limited or refused. We also reserve the right to limit the period of the work permit to 18 months for all employers who have been actively operating or trading for less than 3 years.

10. Any photographs/documents received with the original application and returned to you may need to be re-submitted in the event of a further application.

Conditions of employment

11. The gross pay and other conditions of employment should be at least equal to those normally given to a 'resident worker' doing similar work.

12. All employees of UK based companies, regardless of whether they are paid overseas or in the UK, must be paid the National Minimum Wage (NMW).

a) When considering if NMW is met, all the accommodation allowance can be added to salary providing it is totally disposable, non-deductible and guaranteed to the overseas national (i.e. they are free to do with it as they wish).

b) Where the accommodation allowance is deductible or is not disposable or not guaranteed to the overseas national (e.g. a hotel is provided for them or a house is provided with rent paid) then only a maximum sum determined by the Department for Business, Enterprise and Regulatory Reform (DBERR) can be added to the salary when considering if NMW is met. For further information on NMW you can telephone the DBERR on 0845 6000 678 or visit the DBERR website:
<http://www.dti.gov.uk/employment/pay/national-minimum-wage/index.html>.

13. Provided NMW is met, all allowances will be considered in assessing the overall salary package against the going rate. Allowances must be guaranteed to the individual and where appropriate, similar to those normally paid to resident workers doing similar work.

14. In addition:

(a). The employment must meet the Working Time Regulations (WTR). For further information on WTR you can telephone the Advisory, Conciliation and Arbitration Service (ACAS) on 08457 474747 or visit the DBERR website at:
<http://www.dti.gov.uk/employment/employment-legislation/working-time-regs/index.html>.

(b) Any deductions made from gross pay for the provision of accommodation must comply with all relevant legal requirements, including National Minimum Wage/Agricultural Wages Board legislation. You are not obliged to deduct the cost of the SBS participants accommodation directly from the gross salary provided.

Note. Some posts in the Mushroom industry fall under the legislation of the Agricultural Wages Board (AWB). In such cases the employment must meet all legislation laid down by this body. The employment must also comply with any necessary

requirements for registration or licensing. If you are unsure which type of mushroom processing post the SBS permit holder will be employed in, please include the gross salary for both posts in your application (e.g. the hourly rate for a Packer and the hourly rate for a Picker). For information on the AWB:

Employers in England and Wales should telephone 0845 0000 134.

Employers in Scotland should telephone 0131 244 6397

Employers in Northern Ireland should telephone 02890 520 813

(c) You, the UK-based employer, will be expected to operate PAYE and class 1 National Insurance Contributions.

(d) Payments made via an overseas service company or a third party whose main involvement with the worker is to hire the worker's services to others will not normally be appropriate because we expect a direct contract of employment between the person and their employer, a company based in this country. In cases where the worker is to be employed under the terms and conditions of their overseas branch, it is your responsibility as the employee's UK based employer to ensure that you have checked with HM Revenue & Customs that arrangements for the deduction of the worker's Income Tax and National Insurance are satisfactory.

(e) The employment must also comply with any necessary requirements for registration or licensing.

(f) You will be expected to provide SBS letter of approval holders with accommodation that meets all relevant legal requirements. If you cannot provide accommodation, you must ensure that practical help is available to enable SBS participants to obtain accommodation of an acceptable standard (e.g. paid time off to find accommodation and/or salary allowance).

(g) You must ensure that all SBS participants are covered by the terms and conditions of any relevant 'collective agreement(s)', which may be in place. If your work force is subject to a collective agreement please include a copy of the agreement with your application. However, the UK Border Agency reserves the right to request originals if they deem it necessary.

(h) You will be responsible for forwarding the letter of approval, if the application is approved, and returning all documentation provided by an individual in support of an application, such as letters and passports, to that individual once we

notify you of our decision. **You must not retain the person's passport.**

(i) You must comply with all relevant health and safety requirements found in the Health and Safety at Work Act 1974 (HSWA) and its secondary legislation. To obtain further information on Health and Safety at Work Act 1974 (HSWA) and relevant legal requirements, employers can contact the Health and Safety Executive (HSE) information line by telephoning: 0845 345 0055 or by email at hseinformationservices@natbrit.com.

(j) If you intend to pay SBS participants using a piece rate system you must guarantee that, should the gross salary per hour earned at piece rate fall short of the National Minimum Wage, you will pay the overseas national at least the National Minimum Wage per hour for the hours they have worked. Additionally you must pay SBS participants the same rate per output, as you would pay to resident workers. To verify this please include a copy of the proposed contract between the employer and the SBS permit holder and a copy of a contract between the employer and an existing resident worker carrying out the same or similar work for that company. However, the UK Border Agency reserves the right to request originals if they deem it necessary.

Posts covered by Sectors Based Scheme

15. The SBS arrangements cover the Food Manufacturing sector.

All applications submitted under the SBS arrangements must specify under which of these sector schemes the application is being made.

Note. SBS permits cannot be issued in the food manufacturing sector for posts where the permit holder will be required undertake retail activities such as serving customers.

16. The post on offer must be one of those posts listed below:

Food Manufacturing

Fish

- Fish filleters (prepares, cleans, cuts fish for processing);
- Fish packers (packing, wrapping, labelling, sealing, by hand or machine, fish for distribution and sale); and
- Fish process operatives (operating, minding and cleaning machines that prepare fish for distribution and sale).

Note: The processing of shellfish is covered in the above job descriptions. Fish manufacturing applications can only be made where the employment will take place in a fully licensed, control, or factory environment. This includes holding the correct licence(s) from the Food Standards Agency (FSA).

Meat

- Animal gut remover;
- Meat bone breaker;
- Meat bone extractor;
- Meat cold store operator;
- Meat cutter;
- Meat packer;
- Meat process operatives;
- Meat slaughterer;
- Lairageman (pre-slaughter animal welfare attendant); and
- Trimmer (trims fat from and shapes meat, after it has been boned and cut).

Meat manufacturing applications can only be made where the employment will take place in a fully licensed, controlled, or factory environment. This includes holding the appropriate licensing.

General

- Mushroom processor (Tends growing crops, picks, grades and packs mushrooms for distribution and sale)

Note: If you anticipate that the SBS participants post will incorporate two or more of the posts listed above, please include all the relevant job titles in your application. Additionally all relevant job titles should be included in your Jobcentre Plus advertisement.

The SBS Quota for Food Manufacturing

17. The Sector Based Scheme is issued on a quota basis. Customers should always refer to our website www.ukba.homeoffice.gov.uk for up-to-date information, as the quota may change from year to year, and may be exhausted in the course of the year.

18. Before submitting an SBS application, customers should establish that the quota for the sector they wish to apply for is still available. **Applications submitted after the suspension of a quota will not be processed and will be returned to the sender.**

Recruitment

Recruitment Search

19. Under the SBS arrangements all posts for which a letter of approval is sought **must** be advertised through Jobcentre Plus/Jobcentre or Job and Employment office and EURES (European Employment Service). When you contact Jobcentre Plus/Jobcentre or Job and Employment office you should specify that you require the vacancy to be advertised in other parts of Europe, through EURES. The adviser will then arrange this for you.

20. For your advertisement to meet the UK Border Agency advertising criteria for SBS it must comply with the following:

(a) Advertisements should include:

- details of the post (including job description);
- the location of the job;
- the qualifications and experience needed;
- an indication of the gross salary or gross salary range;
- the hours to be worked;
- accommodation arrangements;
- the closing date for applications; and
- the name and address of the employer.

Note: Advertisements must offer resident workers the opportunity to access the same accommodation provisions, as you would offer to an SBS participant. The vacancy must set out the arrangements for providing accommodation with the post, or those for helping applicants with securing accommodation, for all applicants.

(b) Should you choose to include a requirement in your advertisement that the post holder should hold particular skills or experience, the UK Border Agency reserves the right to seek clarification as to whether the person for whom the application is made holds the required skills or experience. Failure to provide evidence of the required skills or experience will lead to the refusal of your application.

(c) The vacancy must be made available through Jobcentre Plus/Jobcentre or Job and Employment office, and EURES. You should allow four weeks for the whole recruitment process to be completed from the date the post was advertised before you send your SBS application.

(d) To make sure that the results of the advertising reflect the current availability of the skills you need, you should have placed the advertisement within the six months prior to the application being submitted.

(e) A copy of the Jobcentre Plus/Jobcentre or Job and Employment office vacancy confirmation letter, confirming details of the advertisement, must be submitted with your application.

(f) You must also provide a print out of your EURES vacancy from the EURES website. To do this you should visit the EURES website: <http://europa.eu.int/eures> at least two days after the vacancy has been input, but before you have asked the public employment service to suspend or close the vacancy. From the website's English language homepage, click on 'Find a Job' then 'Search for a job'. You should then enter the vacancy reference number (e.g. ABC1234), given to you by the public employment service, in the "key words" field on the search engine. This will take you to your vacancy. A printed copy of your EURES vacancy must be submitted with your application. If you apply using our e-mail application form, you can send advertisements scanned in as attachments.

21. It is essential, when placing your vacancy, that the job description you provide is as thorough and detailed as possible. This should include all the tasks to be undertaken by the post holder. If you are advertising for vacancies at multiple sites this should be specified in the advert. Failure to provide accurate job descriptions will lead to delays in processing your application and could ultimately lead to its refusal.

22. If you have a post on offer in England, Scotland and Wales, please contact Jobcentre Plus on telephone: 0845 601 2001 for assistance in advertising your post.

23. If you have a post on offer in Northern Ireland, please contact the Department for Employment and Learning on telephone: 0800 353530, Website: <http://www.jobcentreonline.com/> for assistance in advertising your post.

24. If you are an employer in Northern Ireland and the person you wish to employ will be exclusively employed in Northern Ireland, we will accept adverts placed on the FAS system in lieu of local Jobcentre or Job and Employment office advertising. However, advertisements placed on the FAS system must meet the same requirements and conditions as those specified for Jobcentre Plus advertising. Employers **MUST** still advertise their post through EURES. FAS advertising will **NOT** be accepted for posts outside Northern Ireland.

25. An employer may use an agency to assist in recruiting a person, providing the SBS letter of approval is to be issued to the employer and not the agency.

Where other recruitment methods have been

utilised, in addition to advertising through Jobcentre Plus, details of the means used should be included with the application.

Details of the responses to all methods of recruitment

26. You must give this information on the application form. It should include:

(a) The total number of people who applied;

(b) The number short-listed for interview; and

(c) For each 'resident worker' who applied, reasons why they have not been employed.

Work for which we do not issue SBS permits

27. We do not issue letters of approval under the SBS arrangements for:

- any posts other than those listed at paragraph 15; or
- self-employment.

28. We will not issue an SBS letter of approval if the service that the employer is providing to a client is the supply of personnel only. Consequently, we do not issue SBS letters of approval to recruitment or employment agencies and similar types of business where they are employing a person solely to provide the person's services to one or more clients under a contract. This restriction also applies where the employment would be supplementary to the job for which the SBS letter of approval has been issued.

29. We do not issue letters of approval under the SBS arrangements if the post concerned is of a level of skill and responsibility which meets the requirements of the Business and Commercial work permit arrangements. Applications for posts of this nature should be made under the Business and Commercial arrangements on form WP1. See the Business and Commercial notes for further details. (Please see paragraph 31 for details of where application forms and guidance notes may be obtained.)

Section 2 – Making an application

How and when do I apply?

30. Where an application has been made to employ a person, we will issue a letter of approval, which should be forwarded on to the worker so that they can apply for an accession worker card. You should apply no more than 6 months before you want to employ them. Please use form SB1.

Please note: We reserve the right to check documentation that you supply with your application and if necessary verify the details provided. Submission of false or forged documents, or other misleading information may result in refusal of applications.

Where can I get a SBS application form?

31. There are two ways to complete the SB1 application form. These are through:

1. a website version you can download and complete on screen from our website www.ukba.homeoffice.gov.uk
2. a printed copy you can obtain from the distribution centre on 0117 344 1471 (between 9.00am and 5.00pm, Monday to Friday).

What if I want to use a Representative?

32. If you make an application through a representative/agent who is not part of your business or organisation, they must sign the representative declaration.

33. If you choose to use a representative, you must sign the completed application and verify that all the information is correct.

34. Representatives acting on behalf of an employer who are offering advice and services provided in connection with an Immigration Employment Document application will need to be registered with the Office of the Immigration Services Commissioner (OISC), unless they are exempt from the requirement to do so. This is a requirement of Section 84 of the Immigration and Asylum Act 1999. The SBS letter of approval application form will require representatives to tick the appropriate box indicating whether they are registered or the basis on which they are exempt from the regulation requirement (see paragraph 41 for OISC contact information).

35. The UK Border Agency reserves the right to contact the employer directly to verify details of an application.

36. If you are not required to register because you are regulated by a designated legal professional body (as defined by the Immigration and Asylum Act 1999, for example the Law Society); or if you work under the supervision of a registered person; you will need to provide us with supporting evidence. For example the name of the legal professional body and your membership number.

37. Members of a designated legal professional body that are not regulated by them for Immigration purposes (for example some registered foreign lawyers or non-practicing barristers) should ensure that they abide by the OISC codes of practice and seek regulation with the OISC if they wish to continue to provide immigration advice or services.

38. Anyone unsure of their status should contact the OISC.

39. Employers dealing with their own staff or prospective staff do not need to register with the OISC.

40. If a representative makes an application on behalf of an employer, and that representative is not permitted to provide advice and immigration services (by section 84 of the Immigration and Asylum Act 1999), the UK Border Agency will inform both the representative and employer of the new requirements of the Act, and send further letters to the employer stated on the application.

41. Queries about OISC requirements should be addressed to:

OISC
5th Floor
Counting House
53, Tooley Street
London SE1 2QN
Tel: 020 7211 1500
Fax: 020 7211 1553
E-mail: info@oisc.gov.uk
Website: www.oisc.gov.uk

Who signs the declaration?

42. There are two declarations at the end of the SB1/SB1X application form. You must fill in and sign the **employer declaration** in all cases.

43. If either you or your representatives fail to include the signature the application will be returned to you and will not be regarded as a valid application, this may affect the timing of your application.

44. If your organisation has no UK employee with authority to sign, the Employer declaration may be signed by a UK registered solicitor, (but not by any other agent) with a letter of authorisation from the employer.

How do I get advice on making applications?

45. Further details on employing migrant workers can be found at www.businesslink.gov.uk. The site includes information on how to check staff, an outline of the legal requirements, case studies covering a range of sectors, a series of frequently asked questions and advice about Romanian and Bulgarian migrants.

46. For general enquiries, advice about completing an application form or clarification of these guidance notes please contact our Customer Contact Centre at:

UK Border Agency
Customer Contact Centre
PO Box 3468
Sheffield
S3 8WA

Telephone: 0114 207 4074
Fax: 0114 207 4000
E-mail: wpcustomers@ind.homeoffice.gsi.gov.uk

47. Applications are allocated according to team resource. Please do not contact teams for progress checks, as this will hold up the consideration time. If you wish to check the progress of your application please visit our website at www.ukba.homeoffice.gov.uk. This website is regularly updated with useful information about the processing times of applications.

48. The team that considers the application will still write out to employers or their representatives direct. If you wish to discuss these letters, please contact the team stated on the correspondence.

Note 1 Please note that the contact details below do not necessarily indicate the team dealing with the applications; they are for contact purposes only.

Note 2 You should not send electronic applications to any of the e-mail addresses below. If you wish to submit an electronic application please send it to: office.forms@ind.homeoffice.gsi.gov.uk.

49. For employers beginning with the letters;

A - B

Phone: 0114 207 6002
Fax: 0114 207 6003
E-mail:
bt2.workpermits@ind.homeoffice.gsi.gov.uk

C - E

Phone: 0114 207 6004
Fax: 0114 207 6005
E-mail:
bt3.workpermits@ind.homeoffice.gsi.gov.uk

F - I

Phone: 0114 207 6006
Fax: 0114 207 6007
E-mail:
bt4.workpermits@ind.homeoffice.gsi.gov.uk

J - M

Phone: 0114 207 6008
Fax: 0114 207 6009
E-mail:
bt5.workpermits@ind.homeoffice.gsi.gov.uk

N - R

Phone: 0114 274 3307
Fax: 0114 274 3200
E-mail:
bt9.workpermits@ind.homeoffice.gsi.gov.uk

S - T

Phone: 0114 274 3308
Fax: 0114 274 3201
E-mail:
bt11.workpermits@ind.homeoffice.gsi.gov.uk

U - Z

Phone: 0114 207 6880
Fax: 0114 207 6448
E-mail:
bt13.workpermits@ind.homeoffice.gsi.gov.uk

Where do I send the SBS application form?

50. If you have completed either the downloaded or the printed form please post it to:

UK Border Agency
P.O. Box 3973
Sheffield
S1 9BH

If you wish to use a courier the delivery address is:

UK Border Agency
7th Floor
Fountain Precinct
Balm Green
Sheffield
S1 2JA

Whether you choose to use a courier or rely on the normal postal service, there will be a delay in processing your application if your application is sent to any address other than given.

Please note: We reserve the right to request originals if we deem it necessary.

We will only accept application forms sent by the correct method.

51. We are not responsible for any items sent to us whilst in transit to or from our offices.

Where will the UK Border Agency send the letter of approval and any other letters?

52. We will send the letter of approval and all letters to the employer named on the application form unless you are using a solicitor or other representative. In most cases we will send the letter of approval and all letters to them unless they are not permitted to provide immigration advice or service under section 84 of the Immigration and Asylum Act 1999.

Section 3 – Changes of employment and supplementary employment

53. Once the worker has been issued with an accession worker card, this will continue to be valid as long as he or she continues working for you. However, if the employment ceases at any point during the initial 12 months, the accession worker card will cease to be valid. If you then decide to re-employ the worker, you will need to apply again for a new letter of approval.

Changes of employment

54. If you want to employ a person currently in the UK, who already has a SBS letter of approval in respect of a job with another employer or if you want the person to change jobs within your organisation you should apply to us for approval (SBS with a letter of approval will be subject to no restrictions on taking employment in the UK after twelve months of continuous employment in the UK).

55. You may only apply to us for an SBS change of employment for a person who holds an SBS letter of approval and who is currently in the UK.

56. You should note that under the SBS arrangements, changes of employment can only be approved where the proposed employment is within the same industrial sector as that for which the SBS letter of approval was originally issued, and the post is one of those listed at paragraph 15.

57. You must provide evidence of a recruitment search (see paragraph 19) and your application must be received either before the person leaves their current employment or within 28 days of the persons last day of work with their previous employer. You must wait for our approval before the person can start working in their new role.

58. If a change of employment is approved the issuance of a letter of approval under the SBS does not in itself constitute authorisation of the employment. To obtain this, the worker should then submit the letter of approval with an application for an accession worker card on form BR3 and submit both to the UK Border Agency. Form BR3 and the guidance notes for Bulgaria and Romania can be found on our website at www.ukba.homeoffice.gov.uk.

59. For change of employment applications please use form SB1.

Supplementary Employment

60. An SBS participant who wishes to take work additional to that for which the SBS letter of approval was issued, may do so without further permission from us provided the supplementary employment:

- is outside their normal working hours;
- is no more than 20 hours per week;
- is within the same industrial sector as the employment for which the SBS letter of approval was originally issued;
- is for a job within that sector, which is one of those listed at paragraph 15 of these guidance notes.
- Is not employed by a recruitment agency, employment agency or similar business to personnel to a client (see paragraph 28).

61. A national from Bulgaria or Romania who has an SBS letter of approval but instead decides to enter into self employment, set-up a business or join another business as a director or partner is entitled to do so without applying to the UK Border Agency. However, these business activities must be registered with HM Revenue and Customs and be able to show they are paying appropriate national insurance contributions.

Section 4 – Verifying applications and Abuse

Verifying Applications

62. We aim to consider your application swiftly. However, we must also ensure that applications meet the SBS letter of approval criteria, and that the statements and information that employers and representatives provide are a true reflection of what actually happens whilst the SBS letter of approval holder is in the job concerned.

63. The UK Border Agency reserves the right to verify details. If full contact details are not provided by you or your representative, we may refuse the application.

64. We will ask for a variety of material to support your case during the consideration of your application. In some cases, particularly if your company has not made an application before, or not for some time, we may also visit your company before we make a final judgement on whether to approve your application(s).

65. In some cases, if we have approved your SBS application, we may also carry out a 'compliance check' to ensure the ongoing validity of the letter of approval. The purpose of the compliance check is to make sure that the information given on the letter of approval application is a true reflection of the employment being offered. We will check that:

- The information given about the employer is accurate and complete.
- The information given about the job and conditions of employment are accurate and complete.
- The employer is able to offer the employment described on the application form.

66. You agree to co-operate with these checks when you sign either the employer or representative declaration page of the letter of approval application form.

When do we carry out a compliance check?

67. Checks may happen either at the time you apply for a letter of approval (pre-issue), or once the letter of approval holder has taken up employment (post-issue).

68. Companies that are subject to a check may have been chosen at random, therefore being the subject of a compliance check does not mean that there is any doubt regarding the application submitted.

69. We may make these checks at any time during the application process or during the validity of a letter of approval.

What happens during a check?

70. The UK Border Agency Compliance Team carry out checks. If we plan to visit, we usually, though not always, contact the employer to arrange a mutually convenient time. The Compliance Team will then gather material to support the information provided on the application form. We may also wish to speak to letter of approval holders, colleagues and managers involved in the letter of approval employment.

71. If we have not yet issued a letter of approval, then we will focus on verifying that the employer is capable of offering the employment specified on the application form. For example, we would check that the employer has suitable premises, has a genuine vacancy, that they have been unable to fill with a resident worker, and holds appropriate licences, etc to offer the employment as specified on the letter of approval application.

72. If we have already issued a letter of approval, we may make a check by telephone or letter and will ask for material to support the information provided on your application. This is to verify that the information provided on the application form was a full and accurate description of the conditions of employment being undertaken, and that the skills, experience, gross pay and duties of the overseas national are as described on the application form.

73. The Compliance Officers visiting your premises will have official UK Border Agency identification. If you have any doubts that their presence is bona fide, please speak to your usual UK Border Agency contact and ask to be put through to the Compliance Team or ring the telephone number shown in paragraph 81 of this guidance.

What happens after a check?

74. Where we have carried out a check before a decision has been made on your application, the Compliance Team will report their findings to the team dealing with your application within the UK Border Agency. They will then make the decision on your application using all of the information you provided.

75. The team responsible for making the decision on your application will let you know the outcome. This process will normally be complete within 4 weeks of the date of your application reaching us.

76. Where the UK Border Agency has already issued a letter of approval, the Compliance Team will write to you to let you know the outcome of the visit.

Discrepancies or issues discovered during checks

77. We anticipate that, on many occasions, checks will not reveal any problems. In these cases, we will notify you that we are satisfied that everything is in order.

78. Where there are discrepancies discovered before we have made a decision on your application, the team will let you know whether they require further information before making their decision on your application(s).

79. If we find discrepancies on applications where the letter of approval has already been issued and the overseas worker has taken up post, we will work with you to take steps to bring the employment back in line with the letter of approval arrangements if possible.

80. However, there may be occasions where we find evidence to show that an employer or representative has knowingly deceived us, or where we cannot verify the statements made in the application. In these cases, the Compliance Team have the right to revoke the letter(s) of approval. Where appropriate, we may instigate prosecution of employers (or representatives) under the relevant immigration, or other, legislation.

81. The Compliance Team can be contacted at:

UK Border Agency
Compliance Team
PO Box 3468
Sheffield
S3 8WA

Tel: 0114 207 6819
Fax: 0114 207 6828
E-mail:
CVT.workpermits@ind.homeoffice.gsi.gov.uk

82. Where an employer or representative has been shown to attempt deception on occasions in the past, the UK Border Agency reserves the right to refuse to approve applications where that employer or representative is involved.

Allegations of abuse of the letter of approval arrangements

83. An employer who uses deception to obtain an SBS letter of approval may be committing a criminal offence. The UK Border Agency's Intelligence Unit in Sheffield deal with information in respect of

abuse of the work permit arrangements, carry out investigations and, if appropriate, inform the relevant authorities of its findings.

84. All letter of approval applications are confidential between the employer and the UK Border Agency and information submitted by the employer in support of an application cannot, therefore, be divulged to a third party except to other Government Departments and Agencies and Local Authorities to enable them to carry out their functions.

85. Each allegation of abuse of the work permit arrangements is treated in the strictest confidence. The Intelligence Unit will not be able to advise you of the progress or results of any investigation relating to this information. This is for the following reasons:

- The Data Protection Act (1998) - the provisions of this Act means we cannot disclose information we hold on an individual to a third party unless requested to do so by, or with the written consent of, the party concerned.
- The UK Border Agency's Code of Practice - all investigations are pursued in compliance with the Data Protection Act (1998), the Human Rights Act (1998) and the Regulation of Investigatory Powers Act (2000). This prevents us giving feedback to people who provide information which lead to investigations, and if we were to breach this, it could compromise the success of any prosecution of an identified offender.
- Potential damage to ongoing investigations - the potential damage that disclosure might have on any investigation conducted by the us or other government agencies

86. If you have information about abuse of the work permit arrangements, you can contact the Intelligence Unit at:

UK Border Agency
Intelligence Unit
PO Box 3468
Sheffield
S3 8WA

Tel: 0114 279 3480
Fax: 0114 279 3482
E-mail: workabuse@homeoffice.gsi.gov.uk

Section 5 – Immigration

Immigration Clearance

87. From 1st January 2007, as European Economic Area (EEA) nationals, Bulgarian and Romanian Nationals will be able to move and reside freely in any Member State. They will not require leave to enter or remain to reside legally in the UK.

88. Bulgarian and Romanian Nationals wanting to work in the UK will still need to obtain authorisation to work before starting any employment. Should the UK Border Agency approve your SBS application, a letter of approval will be issued. This approval letter, on its own, does not constitute full authorisation to work in the UK for a Bulgarian or Romanian national. To obtain full authorisation the Bulgarian and Romanian national must, upon receipt of the letter of approval, apply for an accession worker card. To apply, the Bulgarian and Romanian national should complete the form BR3 and submit the approval letter issued by the UK Border Agency with their application form. Form BR3 and the 'Guidance for Nationals of Bulgaria and Romania' to apply for an accession worker card can be found on our website at: www.ukba.homeoffice.gov.uk. Only on receipt of the accession worker card can the person commence work with an employer.

Section 6 – Frequently Asked Questions

What if the person does not take up the post or the employment ends prematurely?

89. It is important that the UK Border Agency is notified at once if the person does not take up the post or if the employment of an SBS letter of approval holder ceases prematurely, whether the employee leaves voluntarily or is made redundant. The UK Border Agency should also be informed if your company ceases to trade while you still have SBS letter of approval holders in your employ.

90. You should inform us by completing the “Notification of Premature End of Employment” form. The completed form is to be sent to the team who dealt with your original application. See paragraph 31 for details on how to obtain the form. If possible, you should also return the work permit.

In what circumstances can I request a reprint of a letter of approval?

Requesting reprints of letters of approval issued less than six months ago.

91. Reprinting letters of approval that are under six months old will apply in the following circumstances:

To correct errors and omissions

92. You, the employer, or your representative may request reprints of letters of approval from us to correct errors such as spelling mistakes or incorrect details such as mistyped passport numbers or dates of birth. Requests should be made in writing within one month of receipt of your letter of approval. Reprints will be free of charge once your written request is received, accompanied by the original letter of approval. If the original letter of approval is not returned or is returned over one month from when you received your letter of approval then your request will be refused and a fresh application will be required.

- Please note, however, that if you request a reprint to change a detail on the letter of approval that was central to the consideration of the original application your request will be refused where that request was made based upon your error or omission. By ‘central’ we mean, for example, if the length of permit requested was wrong, or the job title, or the address at which the person works, or the gross salary offered differs from that stated in the original application. You will be required to

submit a fresh application.

Requesting reprints of letters of approval issued over six months ago.

93. Reprints of letters of approval issued over 6 months ago will be free of charge, provided that the original letter of approval is returned and all other conditions, as outlined below, are met. If it is not returned then a fresh application will be required.

What if I do not agree with the decision on my application?

94. The decision letter we send to you will explain the result of our consideration of your application. If we cannot approve your application the letter will explain why, and if appropriate give details of how to request reconsideration of the decision.

95. If our letter informs you that the information did not meet our criteria, and you wish to re-apply with further information, please complete a SB1 form . You should include further evidence to support your application including, but not restricted to, the issues raised in our letter.

96. If you think that the decision based on the information sent in with your original application was an error, and you wish us to reconsider your previous application, please write a letter to the following address:

UK Border Agency
PO Box 3468
Sheffield
S3 8WA

97. You should write within 28 days of the date of original decision letter and explain why you believe that the decision was wrong, with reference to the guidance notes, and make it clear that you are requesting a review of the decision on your previous application. There will be no fee for this consideration, providing you are not asking us to consider new information.

98. The Reviews Team will consider the grounds of refusal provided in respect of your initial letter of approval application and also undertake a full review of all other elements of the decision.

99. Before making a decision we may contact the employer/representative for further information to clarify/support the evidence provided with the initial letter of approval application.

100. Where we identify further grounds for refusal the decision to maintain refusal of an application will stand even when the original ground for refusal has been overturned.

101. The Reviews Team will only accept two reviews per original application refused. If your initial review is unsuccessful, you will only be able to seek one further review of the original application. Any further requests for a review received for the same original application will be returned to you. If you wish to proceed with the application, please complete a fresh application form.

102. The Reviews Team can be contacted on:
Telephone: 0114 274 3188
Fax: 0114 274 3103
E-mail:
reviews.workpermits@ind.homeoffice.gsi.gov.uk

Guidance for Employers

Guidance Notes available:

- General Information - product code GI(G)
- Service Standards - product code SS(G)
- Payment Guidance - product code PAY(G)
- Business and Commercial - product code BC(G)
- Training and Work Experience Scheme - product code TWES(G)
- Sports and Entertainments - product code SE(G)
- Sectors Based Scheme (non Bulgarian and Romanian Nationals) Extensions and changes of employment - product code SBS(G) - Only available on our website
- Sectors Based Scheme (Bulgarian and Romanian Nationals only) - product code SBSBR(G)
- Student Internships - product code SI(G)
- General Agreement on Trade in Services for UK Contractors - product code GUK(G)
- General Agreement on Trade in Services for Overseas Employers - product code GOE(G)

If you wish to request copies of the guidance notes please contact our distribution centre on Tel: 0117 344 1471 or visit our website at: www.ukba.homeoffice.gov.uk

Welsh, Braille, large print, and other alternative formats are available on request. For further information on alternative formats, and how to obtain these, please contact the Customer Contact Centre on 0114 207 4074

Who can I contact for further Information?

For general information contact our customer contact centre on:

Telephone: 0114 207 4074
Fax: 0114 207 4000
E-mail: wpcustomers@ind.homeoffice.gsi.gov.uk

or visit our website: www.ukba.homeoffice.gov.uk

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