

New UK Immigration Rules: A Briefing for Colleges

A paper from the Association of Colleges

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Executive summary

The United Kingdom Border Agency (UKBA)¹ – formerly known as the Borders and Immigration Agency (BIA) - is responsible for managing inward migration into the United Kingdom and is an agency of the Home Office. UKBA have been consulting on a new points based migration policy for the UK over the last two years, the new rules of which are being applied from Spring 2009.

The UK Government believes this to be “the biggest shake-up of our immigration system for 45 years”.²

The five new routes for migration into the UK replace the myriad of routes which have existed since the early 1960s. The new routes are referred to as “tiers”, each with different rules and regulations. Would-be immigrants must choose under which category they wish to apply to enter the UK and make an application under that tier. All applicants will have biometric records taken to secure their identity at the point of application.

Tier 1 – highly-skilled migrants is for graduates and those with more than £200k disposable income

Tier 2 – Skilled migrants – those qualified at National Qualifications Framework Level 3 with a job offer, entertainers, religious workers, etc.

Tier 3 – Unskilled migrants – N.B. this tier is not currently accepting applications

Tier 4 – Students

Tier 5- Voluntary workers, visiting academics, etc.

Additionally, the new system will impose a requirement on those employers and organisations wishing to recruit from abroad to register as sponsors, to pay for registration and to pay a fee for each migrant application made. These rates are different for each tier.

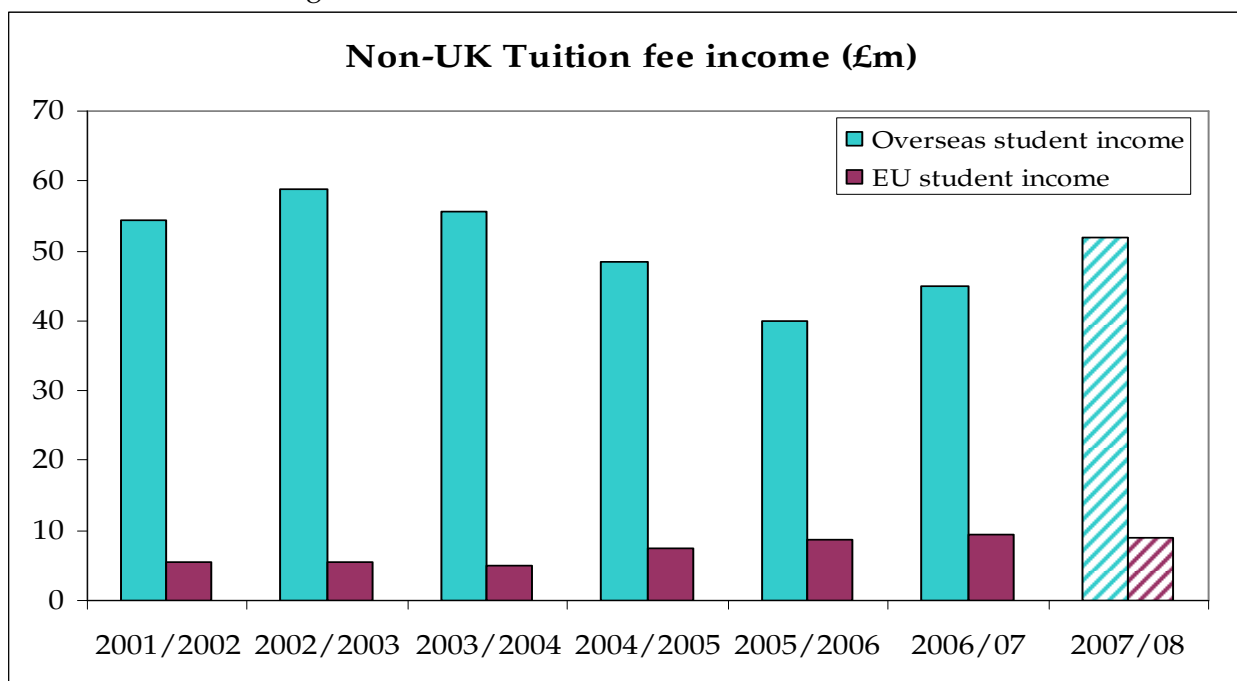
In summer 2008, UKBA published their Tier 4 Statement of Intent for student immigration into the UK under their new system, detailing more specifically with student issues and the detailed rules on sponsorship and visa requirements. This Statement is a live document in that it is being amended and updated regularly. Detailed rules applying to immigration are subject to change and Ministerial decisions.

¹ Prior to April 2008, UKBA was the Borders and Immigration Agency (BIA); prior to , it was referred to as the UK Immigration and Nationality Department (IND)

² Liam Byrne MP, Minister of State for Borders and Immigration and Minister of State with Responsibility for Revenue Protection at the Border 2008. In October 2008 Liam Byrne was replaced by Phil Woolas MP.

Background

1. Colleges are the largest providers of post-16 general and vocational education and training in the UK, offering skills training and general education to all over a vast range of academic and vocational qualifications. Levels of study range from the basic skills needed to remedy disadvantage, through to professional qualifications and higher education degrees.
2. AoC (the Association of Colleges) is the representative body for Colleges of Further Education in England, Wales (though *fforwm*) and Northern Ireland (through our association with ANIC). AoC represents its members on the Joint Education Taskforce, a group established by the Home Office to assist development of the new migration rules, and to ensure that the education sector understands the changes.
3. Colleges of Further Education in England earn over £42m a year from overseas students with over three hundred Colleges enrolling at least one international student a year. We are keen to work with Colleges to ensure that this income source is maximised.



Changes to UK Immigration rules

4. The Home Office, through one of its agencies, the United Kingdom Border Agency (UKBA) consulted in 2006 on modifying the current system of migration to reduce the existing seventy-three routes into the UK down to a more manageable number and to boost the UK economy by attracting and retaining the “brightest and best”.
5. The Government decided to adopt and adapt the Australian system of points based migration as a model, with pre-determined points being allocated for various competences and skills, and five separate tiers of application for visas. The rules applying to each visa tier are different; would-be migrants will have to choose the tier under which they wish to enter the UK.

6. These changes will **not** affect the 7.5m people who enter the UK annually as tourist, business and student visitors. Six month visas will continue to be issued to those not seeking to work in the UK, entering for a limited time period and intending to leave at the end of their stay. This includes those coming to the UK to study English as student visitors.
7. There are five tiers of immigration under the new system, as follows:
 - Tier 1 – Highly skilled migrants – *non-sponsored migration*
 - Tier 2 – Skilled workers (with existing job offer) – *sponsored migration for those with a job offer*
 - Tier 3 – Unskilled workers – *sponsored migration, but this tier is suspended*
 - Tier 4 – Students – *sponsored migration*
 - Tier 5 – Temporary workers (non-economic migration) – *sponsored migration*
8. Colleges wishing to employ non-EU resident individuals must make sure that those people have the right to work in the UK before offering them a job. Colleges can employ overseas nationals with Tier 1 visas without being registered as a sponsor, but must register as a sponsor to offer any non-EU resident national a job under Tier 2 or 5 or to recruit overseas students under Tier 4 or 5.
9. Colleges and their overseas agents are advised to ensure that non-EU resident nationals applying for student places have the requisite points to apply (basic grasp of English and enough money to pay for their course) for a visa before offering them a place to reduce the administration required for failed applications.
10. The Identity and Passport Service (IPS), an executive agency of the Home Office, will be issuing ID cards to non-EEA nationals applying to reside in the UK from November 2008, and this agency will liaise with the UKBA to ensure the smooth issuance of ID cards. Overseas students will be required to show these cards when entering and leaving the country and to prove their identity to the College where they are studying. Please see http://www.aoc.co.uk/en/Policy_and_Advisory_Work/aoc_international/immigration_and_visa_issues.cfm for more information.

Tier 1: Highly Skilled migrant visa

11. Migrants entering the UK under this scheme do not require a sponsor; their visas are issued for them to work with any employer that they choose. The rules appertaining to the highly skilled migrant visa were issued in Spring 2008, in the Tier 1 Statement of Intent. The scheme will embrace general applications, entrepreneurs, investors and post-study working.
12. Post-study applicants will be restricted to a two-year working visa, after which they will have to reapply under a general application; there is no extension to the post-study route. Other routes will be granted three years' leave. Children and spouses/partners of applicants are also allowed entry.
13. Highly skilled migrants have the right to work anywhere in the UK without prior offer of employment. This scheme does not require certificates of sponsorship, but relies heavily on a points based system (PBS), with a pass mark of 75 points (see Appendix E). Appeals will only be allowed on Race Discrimination or Human Rights grounds, but one review will be allowed for every application.

Tiers 2, 3, 4 and 5: the sponsorship system

14. Anyone (apart from the highly skilled) wanting to come into the UK from outside the EU will have to show that they have enough points to qualify for a visa and will also require a sponsor.
15. Sponsors will be Colleges or other businesses that want to employ or recruit workers or students from overseas. In order to become a sponsor, organisations will have to have a UKBA licence. Organisations wishing to bring employees or students in from outside the EU will **not** be able to do so unless they are licensed as a Sponsor; once licensed by the UKBA, sponsors will apply for Certificates of Sponsorship (CoS) for workers under Tier 2 and Tier 5, or Confirmations of Acceptance for Studies (CAS) for students under Tier 4, for each named individual that they intend to bring into the UK.
16. Sponsors will have to comply with certain duties, including allowing the UKBA to enter their offices, notifying the UKBA if the student or worker is absent without leave and maintaining a proper and complete record of all migrants at the organisation. Most colleges are already well-g geared to deal with these rules. Students will be regarded as being “absent” if they miss ten consecutive contact points.
17. Sponsors will initially be rated as category A, but will be downgraded to category B if there are unresolved issues surrounding the organisation. Sponsors also face the possibility of having their licence removed for unresolved issues surrounding immigration. Sponsoring body must liaise with the UKBA and have additional reporting requirements placed upon them.
18. Sponsoring bodies are expected to detail the number of certificates that they think they will issue in advance. Each sponsorship licence will last for four years and the fee is payable depending on which Tier a sponsor is registering under. Sponsors will be able to register under multiple Tiers for the same fee as the highest single Tier fee.
19. Sponsoring bodies will have to nominate a level 1 person (one per sponsor) to take responsibility for their system of recording information and level 2 people (unlimited per sponsor) to enter the details of applicants and initiate the issuance of the CAS. All must be based in the United Kingdom – the specific rules pertaining to each are as per the list in Appendix B.

Tier 2: Skilled workers with job offers

20. Sponsorship will last four years, but the UKBA reserve the right to remove any organisation from the list; a fee of **£300** is payable to register as a **Tier 2** sponsor for organisations which are regarded as small. NB. A charge of **£0** will be levied if a sponsor is already registered under another tier. All Colleges are regarded as “small” for the purposes of this register, irrespective of their turnover, as they are exempt charities. Sponsorship registration lasts four years.
21. A sponsoring body wanting to recruit a named overseas resident has to make an application for a Certificate of Sponsorship (CoS) for that named individual. This CoS authorises the individual to apply for entry clearance to work with that named sponsor only. The CoS can only be issued by UKBA to a registered licensed sponsorship body and a **charge of £170** is levied for each certificate under Tier 2. The issuance of a CoS does **not** mean that an applicant’s visa will be successful; the CoS fee is not reimbursable.

22. Sponsoring bodies can only issue CoS to those named individuals applying under Tier 2 would include those with both a job offer and a minimum of a National Qualification Framework (NQF) level 3 equivalent qualification:
- where the job is on the shortage occupations list, published by the Migration Advisory Committee; or
 - where the sponsoring employer has carried out the appropriate Resident Labour Market Test; or
 - where the job carries a salary of at least £40,000; or
 - where the migrant is a sports person, endorsed by the governing body of their sport, hoping to base themselves in the UK and sponsored by a licensed sports club; or
 - where the migrant is a religious worker, sponsored by a licensed religious institution (NB non-preaching religious workers can apply under tier 5); or
 - the person is already working for the company for more than six months and is transferring into the UK

The list can be found here:

www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/workpermits/businessandcommercial/occupationsshortagelist.pdf

Tier 3: Low skilled workers with job offers

23. Prior approval from the UKBA is required to register as a sponsor for low skilled workers. It is not currently envisaged that this Tier will be used.

Tier 4: Overseas students

24. Sponsorship will last four years, but the UKBA reserve the right to remove any organisation from the list; a fee of £400 (four hundred pounds) is payable to register as a **Tier 4** sponsor for small or charitable organisations. All Colleges are regarded as “small” for the purposes of this register, irrespective of their turnover, as they are exempt charities (paragraph j, Schedule 2 of the Charities Act 1993). We understand that this point has now been clarified with UKBA officials.
25. Sponsorship registration lasts four years and can be applied for on-line from:
<https://www.points.homeoffice.gov.uk/gui-sponsor-jsf/RegistrationApplication/SponsorAppStart.faces>
26. All education establishments wishing to offer places to study in the UK for courses of more than six months duration after Spring 2009 will have to be registered as a sponsoring body. Sponsorship registration will only be offered to those education institutions accredited by OFSTED or an UKBA approved accrediting body.
27. Automatic accreditation is granted for Colleges of Further Education and others inspected by OFSTED, for “very low-risk” overseas HEIs with branches operating in the UK and for Independent Schools registered with Independent Schools Inspectorate or with pupils under the age of 16.
28. Education bodies not covered by automatic accreditation will have to be accredited by an approved body before they can be a sponsor. This includes all private schools of English; it is interesting to note that UKBA officials expect some schools of English to close down in the next year, which offers an opportunity for Colleges to expand their provision. Please note that

those schools offering short (i.e. under six months' duration) English courses will not be required to register as sponsors.

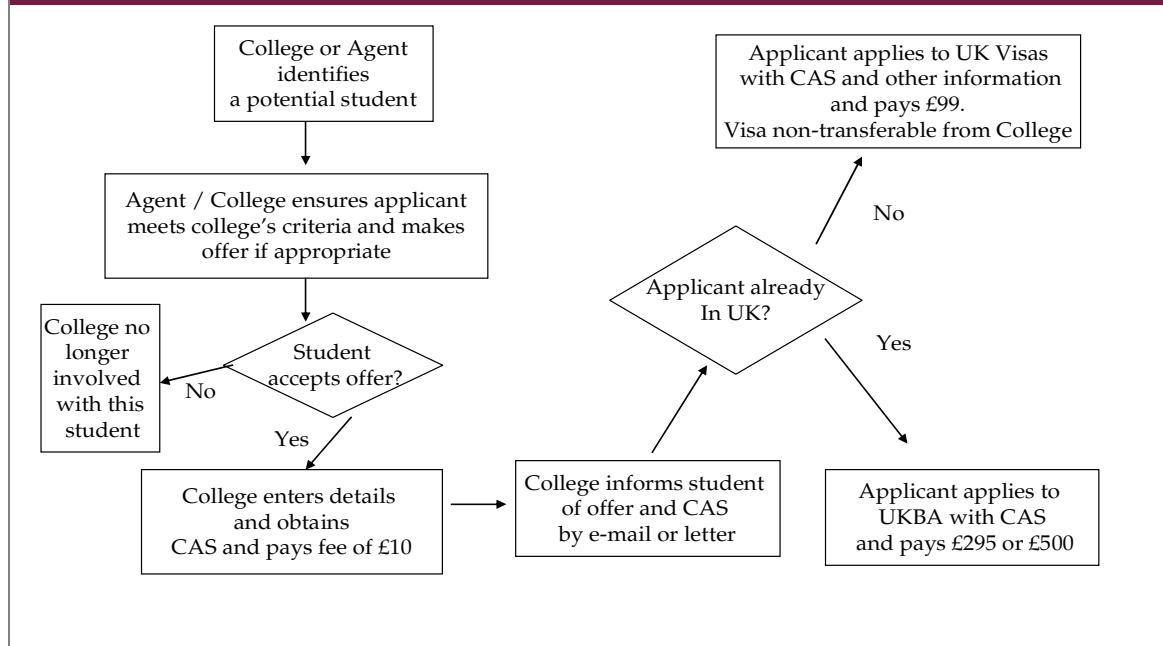
29. Once registered as a sponsor, Colleges can make offers to potential overseas students by entering the UKBA website and entering details of their potential student and their studies onto the Sponsor Management System and generate a virtual CAS (Confirmation of Acceptance for Studies). Colleges are not limited in the number of CAS that they can issue.
30. A fee of **£10 (ten pounds)** will be payable for each and every CAS issued; the CAS number should be passed on to the potential student who uses it for their visa application. The potential student can log-in and calculate their points and apply for a visa using the CAS and pay the appropriate fee. UKBA will consider the visa application on immigration control tests only – they will no longer assess the applicants' suitability to undertake the course of study.
31. There are three types of Student visa as per the table below:

Type of student visa	Age constraint	Time constraint	Course constraint
Student visitor	None	Six months	None
Child student	Must be aged between 4 years old and 18 years old	Duration of full-time studies until child is aged 18	Must lead to some recognised qualification
General student	None	Lesser of four years or duration of studies	Primary study aim must lead to Level 3 qualification OR A2 English Language qualification

32. CAS can only be issued under any of the above student categories. A "child student" is currently defined as one aged 16 or under, but we understand that this definition will be revised to include those aged 18 or under before the rules come into play. Child Students can apply to study in the UK for any courses at any level, but must embark on a course leading to a recognised qualification or follow the National Curriculum.
33. CAS are unique to the College and the student. Once a student has applied for their visa using a CAS, the visa is restricted to that College and can not be changed. Students changing their preferred place of study after their visa has been allocated would have to reapply and pay a second time as a new applicant. NB. Students will be able to change their course at a College after their visa has been issued without having to reapply, but can not change their place of study.
34. The issuance of a CAS does not imply the success of a visa. CAS only counts for thirty points of the forty required. The last ten points required for a visa are determined by the proof of available funds. Please see Appendix D for full details.
35. UKBA reserve the right to refuse an entry visa to any applicant on grounds of fraud or suspected fraud, criminal records or other reasons that imply a visa would not be in the UK's interests.
36. Colleges may wish to consider altering their application process to take account of the fact that they will pay £10 for each offer made, without any offers actually being taken up. These changes will necessitate a change of approach; AoC recommends that a deposit or application fee is charged up-front when an offer is made.

37. In July 2008, the UKBA announced some refinements to the Study through Work visa changes, further to lobbying from AoC. For students to obtain Tier 4 visas under this scheme, all of the following must be complied with:
- the course must be delivered in the UK by a registered College or University;
 - work placements undertaken by students must be assessed;
 - the course should lead to a QCA or NARIC recognised qualification at NQF level 3 or above;
 - teaching must be in the form of direct instruction from a qualified lecturer;
 - the work experience element allowed for courses may not exceed 50% of the total course length.
38. College sponsor responsibilities include:
- making sure potential students can undertake a course of study and meet immigration criteria;
 - identifying students and filing a photocopy of each overseas student's passport and visa for possible inspection;
 - providing relevant documentation to UKBA officers on request;
 - allowing UKBA officers access to any of their premises on demand;
 - adhering to any action plan agreed with the Account Manager;
 - notifying the UKBA Account Manager if you cease trading or merge; of changes of personnel authorised to issue certificates of sponsorship (both internal and external); if the overseas student does not turn up for course or takes any unauthorised absence from their studies or discontinues their studies or changes educational institution.
39. Potential problems for Colleges include:
- students making multiple applications, only one of which they will be allowed to pursue. Students may apply many times to different Institutions and generate multiple CAS and will pay the £10. When the student applies for a visa to enter the UK, they will only be able to have one CAS set against their name, and this will freeze out all the other CAS also in their name. This might mean that a College would not be informed that their offer had effectively been rejected. UKBA say that sponsors might be informed of their unused CAS, but certainly will be informed of their allocated CAS.
 - students failing to inform college of a change of mind or circumstances, i.e. that they chose another place of study;
 - students failing to enrol at start of term;
 - students making fraudulent applications;
 - students attending wrong college.
40. Any of these might result in loss of income, increase in expenses and possible damage to UKBA category status. Colleges might care to consider the following to minimise the increased risks associated with overseas student recruitment.
- Consider vetting and taking ID of potential students when they are recruited;
 - Ensure staff are adequately trained and aware of the rule changes;
 - Ensure system of monitoring students is adequate for purpose;
 - Introduce robust system of vetting third parties involved in recruitment;
 - Consider taking a non-refundable deposit from students before applying to UKBA for a CAS for them.

Issuing Confirmation of Acceptance for Studies to students - Process



Tier 5: Non-economic migration

41. Registered Colleges can recruit unpaid voluntary workers under Tier 5, but the rules appertaining to other organisations wishing to recruit under this Tier are quite restrictive. Those organisations wishing to employ paid temporary exchange workers must do so through an overarching agreement supported by a Government department. The UKBA states that if this scheme results in significant numbers of migrants breaking the law, the scheme responsible will be shut down.
42. There is a fee of **£10 (ten pounds)** for each certificate of sponsorship (CoS) sent to the UKBA.
43. Other applicants who might fall under this scheme include:
 - temporary workers in the creative industries (including film, theatre, dance and music);
 - sports people temporarily working in the UK but not intending to establish themselves in the UK;
 - private servants in diplomatic households;
 - overseas government employees in diplomatic missions;
 - migrants under the youth mobility scheme – nationals from those reciprocating countries with low immigration risk – currently only Australia, new Zealand and Canada
 - visiting academics.
44. Please get in touch with Robert Russell robert_russell@aoc.co.uk if there are any issues raised in this paper that you would care to discuss. Other people in the AoC who might be able to assist any problems with international areas include the following:
 - Diane Mullen is our International Partnership advisor, helping Colleges develop international activity. She can be contacted at diane_mullenaoc@yahoo.com
 - Marguerite Hogg works with Diane. She can be contacted at marguerite_hogg@aoc.co.uk
 - Julian Gravatt is the Director of Funding and Development and can be contacted at julian_gravatt@aoc.co.uk

APPENDIX A

UKBA escalating action to rectify

- **Educational visit to premises;** to support employers' compliance with the law.
- **Required action plan;** listing the steps that a B-rated Sponsor college needs to take in order fully to comply with its obligations and obtain an A-rating.
- **Written warning for educating an illegal student;** followed by close attention from Border and Immigration Agency enforcement and compliance teams.
- **Down-graded on the PBS Sponsorship register.** A 'B' rating will be publicised, including to prospective students, and will entail a detailed action plan of measures which an employer will have to satisfy to regain an 'A' rating. It may also mean higher fees.
- **Removed from the PBS Sponsorship register;** meaning that an employer is unable to bring any student worker to the UK.
- **Served with a civil penalty;** the sliding scale allows for heavier penalties for repeat offenders.
- **Prosecuted for the procuring/use of fraudulent identity documents;** employers could be imprisoned for up to two years and/or receive an unlimited fine.
- **Prosecuted for knowingly employing an illegal student worker;** employers could be imprisoned for up to two years and/or receive an unlimited fine.
- **Disbarred as a company director/officer as a result of prosecution;** employers convicted of knowingly employing an illegal student worker could be disqualified from forming or managing a company.
- **Prosecuted for facilitation or trafficking;** employers could be imprisoned for up to 14 years and/or receive an unlimited fine.

APPENDIX B

The role of the level 1 user

The level 1 user must conduct your day-to-day activities by using the sponsorship management system. The level 1 user will be able to:

- add other users to the sponsorship management system or remove them;
- assign certificates of sponsorship to migrants;
- request an increase in the limit of the number of certificates of sponsorship that you can issue;
- notify us of minor changes to your details;
- fill in the change of circumstances form or use the sponsorship management system;
- report migrant activity to us, for example, inform us if a migrant goes missing or does not attend his/her job or course;
- withdraw certificates of sponsorship;
- surrender a licence;
- manage work or study addresses;
- export management information; and
- amend user details.

Assigning more level 1 users

When you apply online, you can only appoint one level 1 user within your organisation. If the authorising officer does not want this role within the sponsorship management system then another person within your organisation must be appointed to act as the level 1 user. When you get your a licence and when the sponsorship management system becomes operational, you can fill in the change of circumstances form to ask for more level 1 users.

The number of level 1 users

You decide on the number of level 1 users based on the structure of your business and your needs. As the authorising officer is responsible for the actions of the users, it is advisable to keep the number of level 1 users to the minimum necessary for effective business operation.

Who the level 1 user should be

The level 1 user must be based in the United Kingdom. If the organisation has overseas branches the authorising officer can only appoint a level 1 user who is based in a United Kingdom branch. If your organisation has contracted its entire HR function out to a third party, the authorising officer can appoint a level 1 user who works within that third party organisation.

The role of a level 2 user

A level 2 user can:

- assign certificates of sponsorship to migrants; and
- report migrant activity to us, for example, inform us if a migrant goes missing, or does not attend their job or course.

The authorising officer will be held responsible for the actions of all users in the organisation, so they should keep the number of users at a manageable level.

Who a level 2 user should be

Level 2 users must be based in the United Kingdom. If your organisation has overseas branches, the authorising officer can only appoint level 2 users who are based in a United Kingdom branch of your organisation. If your organisation has contracted its entire HR function out to a third party, the level 1 user can appoint a level 2 user who works within a third party organisation.

A legal representative may act as a level 2 user.

How many level 2 users you can appoint

You can appoint as many level 2 users as you want.

APPENDIX C

UKBA accepts that all FE Colleges incorporated under the 1992 Further and Higher Education Act are classified as “small businesses” irrespective of their turnover, for the purposes of sponsorship registration and so will only need to pay the small business rate.

The following are provided for non-College applications and for Colleges operating subsidiary companies.

Companies House definitions of small and medium sized businesses

Organisations are deemed to be **small** if they meet any two of the following three conditions:

- Turnover of less than **£5.6** million
- Net Balance Sheet of less than **£2.8** million
- No more than **50 employees**

UKBA will charge small businesses **£400** for a sponsorship licence.

Organisations are deemed to be **medium**-sized if they meet any two of the following three conditions:

- Turnover of less than **£22.8** million
- Net Balance Sheet of less than **£11.4** million
- No more than **250 employees**

UKBA will charge large businesses **£1,000** for a sponsorship licence.

APPENDIX D

Points allocated for Tier 4 applicants: 40 points required

Criteria – all student applicants	Points
Confirmation of Acceptance to study issued by UK College, University or School	30
Maintenance and funds test	10

The points based system is as per above for general and child student applicants, although the funds test is different for them.

General students must prove that they can support themselves and any dependents must show that they have the full course fees and £800 for each month of the duration of the course for themselves and an additional £535 for each dependent per month. Students on courses of more than twelve months must show that they have sufficient funds to cover the first year’s fees and £9,600.

Child students will need to show sufficient funds to cover their fees and

If they are in residential place of study, accommodation costs;

Of if they are in a non-residential place of study with a foster family, an undertaking from a UK resident to provide them with maintenance and accommodation for the year and must have income of at least £500 a month;

Or if they are in a non-residential place of study and are accompanied by their parent, sufficient funds to cover £1,335 per month for the first child and £535 for each additional child.

APPENDIX E

Visa and Sponsorship costs

PBS SPONSORSHIP	£
T4 Sponsor Licence	400
T5 Sponsor Licence	400
T2&4 Sponsor Licence – College/charity/small business	400
T2&4 Sponsor Licence - Medium/large Business	1,000
T2&5 Sponsor Licence – College/other charity / small business	400
T2&5 Sponsor Licence - Medium/large business	1,000
T4&5 Sponsor Licence	400
T2, 4 & 5 Sponsor Licence - Charity /College/small business	400
T2, 4 & 5 Licence - Medium/large business	1,000
T2 Certificate of Sponsorship (CoS)	170
T4 Confirmation of Acceptance to Study (CAS)	10
T5 Certificate of Sponsorship (CoS)	10

PBS visas – applications from outside the UK	£
T1 transfers from old scheme	200
T1 new applicants	600
T2	200
T4	99
T5	99

PBS visas – applications from inside the UK	£
T1 transfers from old scheme	350
T1 new applicants	750
T2	400
T4	295
T4 - rapid turnaround	500
T5	100