Resident Labour Market Test –
Code of practice for performers in film & television under the skilled migrant tier (Tier 2) and the temporary worker tier (Tier 5)

INTRODUCTION

1. This Code of Practice has been drawn up with representatives of the film and television industry and has been issued by the United Kingdom Border Agency (UKBA) to supplement the “Guidance for sponsor applications Tiers 2, 4 and 5 of the points-based system” (‘sponsor guidance’) – available on the UKBA website.

2. This is a Code of Practice for sponsors of migrants from outside the EEA who will be working as performers such as actors, dancers and stunt performers, in film and TV under Tier 2 or Tier 5 of the UK immigration system.

3. The introduction of the new Points Based System (PBS) for managing migration creates a number of changes and opportunities for all involved in the creative sectors in the UK.

4. At the heart of the new system is the concept of sponsorship, whereby those who benefit most directly from the contribution migrants make to the UK will be expected to play a bigger part in ensuring the system is not abused. In return, sponsors will have a bigger say over which migrants they wish to sponsor to come to the UK.

5. Prospective sponsors must apply to UKBA supplying specified documents to show that they are eligible to become a sponsor. UKBA will carry out appropriate checks on the prospective sponsor before issuing a sponsor licence. Further information about the licensing process is available in the sponsor guidance.

6. **Tier 2**, the new skilled migrant tier of the PBS, will replace the existing Work Permit system and will enable UKBA-licensed employers to recruit individuals from outside the EEA to fill a vacancy that cannot be filled by a British or EEA worker – the job must either be on the shortage occupation Tier 2 and 5 code of practice for performers in film and television – version 07/2009: valid from 20/07/2009
list or pass the Resident Labour Market Test. Migrants coming to the UK under Tier 2 will be able to stay for up to three years initially, depending on the length of their contract.

7. The Creative & Sporting sub-category of **Tier 5**: Temporary Workers is for those coming to the UK for shorter periods of time (the maximum length of leave in this category is 12 months) as well as for those with lower skills levels and potential earnings who would not qualify under Tier 2.

8. Representatives from across the creative sector have been working closely with UKBA to ensure that the new system contains enough flexibility to allow UK-based sponsors to bring in the migrants they require, while seeking to ensure that this does not undermine efforts to protect the resident labour market.

9. This Code of Practice contains a number of categories. Migrants falling into one of the categories are deemed to be making an additional contribution to the UK film and television industry and not displacing the resident labour force, so are exempt from further resident labour market testing.

10. Under the PBS, sponsors are empowered to select the migrant they wish to sponsor and issue a Certificate of Sponsorship (CoS) without referring each case to UKBA. It is therefore very important that sponsors retain documentary evidence, as set out in this Code, so that they can demonstrate the steps they took to ensure compliance with the Code before issuing the CoS to the migrant, and so that UKBA staff can examine it during their pre-arranged (or unannounced) compliance visits.

11. If the sponsor is thinking of issuing a CoS to a migrant under Tier 2 or Tier 5 to come to the UK as a performer in film or television, they should consult this Code of Practice to see whether any of the categories apply.

12. The sponsor will need to meet the advertising requirements in this Code of Practice to ensure that they are complying with their duties as a sponsor unless:
   - one of the categories in this Code applies or;
   - the occupation concerned is on the [shortage occupation list](#).

13. If one of the categories does apply, and the sponsor follows the guidance given, keeping documentary evidence where specified, they will not be required to undertake any further labour market testing. When they issue a CoS to a migrant under one of the categories contained in this Code of Practice, they will be required to state which category applies.

14. All licensed sponsors will be required to fulfil certain duties; compliance with sector-specific Codes of Practice is one of these duties. Where UKBA discovers that a sponsor has acted in breach of the relevant Code of Practice, UKBA will be able to take action against the sponsor using a range of measures applied according to the nature of the breach. Further
information on the range of action UKBA may take is contained in the sponsor guidance.
### CATEGORIES

Sponsors may issue a CoS to a migrant, who will be deemed to be making an additional contribution to the UK labour market when:

#### 1. The work is for continuity

Sponsors issuing certificates to performers under this category must be able to supply proof that the overseas national has worked on, or will be working on the same production overseas for at least one month.

Where a Sponsor wishes to issue a CoS for reasons of continuity involving a performer that has worked on the same piece of work overseas for less than one month, the Sponsor must notify Equity at least 5 working days prior to the issuing of the certificate with details of the filming schedules. This is in order to verify that the migrant is being genuinely engaged for reasons of continuity.

Sponsors may issue CoSs for performers to enter the UK to undertake post-production work only and provided that such post-production work solely relates to their own role in the film or TV production. For such CoSs, neither the one month requirement nor prior notice to Equity procedure applies.

### Evidence

- Documentary proof that the performer has worked on, or will be working on, the same production outside the UK for at least a month e.g. contracts, press cuttings, cast lists, etc.
2. **The performer has international status**

Sponsors issuing CoSs to performers under this category must be able to supply proof that performers are known internationally, or they have demonstrable international box-office appeal.

**Evidence**

- Documentary proof that the performer has international status e.g. press cuttings, awards, accolades, publicity material, television/radio interviews, film and TV credits; or,

- documentary proof that the performer has demonstrable international box-office appeal through international box office figures for films they have starred in or led as a principal performer.
3. **Highly specialist or unusual roles**

For certain highly specialist or unusual roles, it may not be possible or reasonable to recruit from the EEA because the role requires specific or specialist attributes, including but not limited to: physical appearance; physical talent and linguistic or vocal skills.

In such circumstances, where appropriate, Sponsors should first attempt to conduct searches in the EEA as set out in category 3 to a reasonable degree. However, it is recognised that the extent of such searches within the EEA shall be proportionate to the rarity and specialty of the attributes of the role.

**Evidence**

Evidence under this category should include the following:

- the role requires certain highly specialist attributes; and
- the performer possesses those attributes; and
- evidence of the casting process and casting considerations; and
- evidence of reasonable and appropriate searches in the EEA (if applicable); and
- a list of any EEA candidates who were unavailable at the required time.
4. **Featured guest in an entertainment programme, or subject of a factual programme**

Under this category the sponsor must demonstrate that a performer is to be a featured guest on an entertainment programme or subject of a factual programme.

For example, actors, comedians or other performers booked to appear on a chat show or a professional variety show, or scheduled to be subject of an arts programme or documentary.

**Evidence**

- Formal letter from the broadcaster or producer or copy of the relevant section of the commissioning agreement confirming the reason the migrant is required (e.g. to feature in an entertainment programme); and

- the name of the programme concerned; and

- details of any recording or filming schedules.
5. Performers who are tied to the finance of the production

The sponsor under this category must demonstrate that a performer is necessary to a production because the finance is contingent on the particular performer being cast in the film or TV production.

Evidence

- A formal letter of confirmation from the production’s principal financier.
6. Performers who do not meet the key criteria but who are commercially important

Under this category the Sponsor must demonstrate that the performer is commercially important to the production. This may be demonstrated by a formal letter in support from a principal financier, or distributor.

Sponsors who wish to issue CoSs on these grounds must also adhere to the following procedure before issuing sponsorship certificates:

   The Sponsor must give prior notice to Equity providing supporting evidence detailing: description of the role and film, and the reasons why advertising was not appropriate and a letter in support.

   Sponsors should give prior notice to Equity as early as possible, but where practicable, at least 8 working days prior to issuing a certificate under this category. This is in order to verify that the migrant is genuinely of commercial importance.

Evidence

The sponsor must provide Equity with the following:

- the details of the performer(s) required, role, description of the production; and

- the reasons why the role has not been advertised; and,

- a formal letter in support of the migrant from a financier or distributor; and

- if the performer is an up-and-coming performer, or cast to appeal to a particular overseas audience, then evidence of their CV, reviews, previous work, awards/accolades, and/or evidence of audience appeal would be required.
7. International Co-productions

Sponsors issuing CoSs to performers taking part in international co-productions structured under one of the UK’s bilateral co-production treaties, or under the European Convention on Cinematographic Co-Production, need to provide the following evidence:

**Evidence**

- Provisional approval from the UK Film Council certification department that the film is being structured as an official co-production; or
- Interim certification from the UK Film Council Certification Department.

*Where none of the above categories applies and the role/position is not on the shortage occupation list, the role/position should be advertised in accordance with the next section of this Code of Practice.*
Advertising

Roles cast after a genuine labour market search within the EEA

Under this category the sponsor may issue a CoS to an overseas migrant, if having undertaken searches within the EEA, a suitable candidate was not found to fulfil the role. Therefore, the sponsor must be able to demonstrate there has been a reasonable and suitable resident labour market search for the role, prior to casting the migrant performer.

The role must be subject to a resident labour search in accordance with standard industry practice, which will normally involve engagement of casting agents within the EEA and contacting performers’ agents. Although not mandatory, a resident labour search (depending on the role) could also include advertising on the Equity’s job information service or Spotlight magazine.

Where advertising is required and it is for the purposes of issuing a Tier 2 CoS, the sponsor must advertise the job in Jobcentre Plus in addition to one of the methods listed above. This is a mandatory requirement; any sector specific media may be used as well, but not instead of, this advertising.

Sponsors should seek to commence the resident labour market search for at least four weeks before issuing the certificate, but where this is not possible it must always be conducted within a reasonable and suitable period of time. The resident labour searches should take place no more than six months before issuing of the certificate.

Evidence

Evidence that a thorough and suitable search for a performer from within the EEA has been undertaken would include the following:

- the name or description of the specific role; and
- evidence that the labour market search was carried out in accordance with standard industry practice; and
- evidence that casting agents were employed to seek resident labour; or evidence that performers’ agents were approached; or evidence of appropriate advertising of the role;

and, if applicable

- the details of any EEA performers who were contacted, interviewed and/or auditioned, as well as the details of any performers offered the part; and
- a statement of the reasons why any EEA performers contacted, interviewed and/or auditioned were not suitable.
Stunt performers

If a stunt performer is sponsored under the above categories, the sponsor must also demonstrate that the worker possesses the equivalent skills and competence to UK industry standards.

Evidence

Additional evidence required in support of the CoS:

- evidence of qualifications and skills; and
- evidence of competence.

This may be demonstrated by either 1) a reference in support from a UK-based expert with demonstrable knowledge of the UK stunt industry; or 2) evidence of competence at a level equivalent to UK industry standards.
Salary / fee

Payment of migrant performers should be at least at the level of the appropriate UK market rates.

Minimum rates are negotiated by Equity with Pact, BBC and ITV. These can be obtained from Equity at www.equity.org.uk or from 020 767 00246.

No worker may be paid less than the national minimum wage.
Workers in film and television

Workers in film and television who are engaged in non-performing roles are covered by a separate Code of Practice.

Sponsors may issue certificates of sponsorship to non-performing personal assistants who support performers of international status under category 2.

Non-EEA performers may also enter the UK as business visitors to carry out publicity and other associated activities and will not therefore require a sponsor.
Compliance and notification

Sponsors must only issue CoSs to migrants who meet the requirements of this Code and the other rules relating to the Tier. Sponsors must play their part in ensuring the system is not abused. Sponsors therefore must collate and maintain documentary evidence demonstrating that the migrant meets the requirements for the particular category under which the CoS is issued. Records may be retained in original or electronic form.

When a sponsor issues a CoS for a migrant working as a performer in TV or Film, Equity will be notified electronically by UKBA. This notification will provide Equity with details of the CoS.

Once this notification has been made, Equity can request that the sponsor demonstrate that the performer falls into one of the categories above by providing the evidence specified above for the category concerned. On such request, Sponsors shall promptly send Equity copies of such supporting evidence demonstrating that the certificate was issued in compliance with this Code, within 8 working days of such a request.

Sponsors should ensure that the passing of any personal data to Equity complies with the Data Protection Act 1998.

This evidence is required solely for the purpose of enabling Equity to ascertain whether this Code of Practice has been complied with and requests will be proportionate depending on the performer and the category concerned. For example, where a performer is of international status, their name may be sufficient. Further evidence may need to be provided in other cases.

UKBA may also ask to see the evidence relating to one or more migrants who have been granted CoSs, as part of its regular checks that sponsors are complying with their duties. UKBA will take into account the views of Equity and the Sponsor, assessing all of the available evidence during the course of its checks on sponsors, and will take the final decision as to whether the Sponsor has complied with this Code.
Disputes

In the event that Equity believes that:

a) the migrant performer does not fall within the categories above, or

b) the information has not been provided,

this issue must firstly be raised directly with the sponsor.

Any objections by Equity must be made within 8 days of receipt by Equity of the supporting documentation.

The sponsor should then have the opportunity to provide further information in order to demonstrate that the criteria have been met.

In cases where there is no resolution, Equity or the Sponsor may report the matter to UKBA for a final decision on whether the Sponsor has complied with the Code of Practice.

In making a final decision, UKBA will carry out its own investigations, examining all relevant evidence and taking into account the views of Equity and the Sponsor. UKBA will take the final decision based on its assessment of whether the Sponsor has complied with this Code, taking action as appropriate.

Review period

The Code shall be subject to periodic review by the industry and will be subject to a period of close monitoring for the first 6 months.

Queries regarding this Code of Practice may be addressed to:

- **UKBA:** SponsorshipPBSenquiries@ukba.gsi.gov.uk
- **Equity:** lmcmullan@equity.org.uk
- **PACT:** andrew@pact.co.uk
- **UK Film Council:** Amelie.Truffert@ukfilmcouncil.org.uk and Samantha.perahia@ukfilmcouncil.org.uk