Resident Labour Market Test –
Code of practice for performers in theatre or opera 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 Equity, SOLT (Society of London Theatre), TMA (Theatrical Management Association), NCA (National Campaign for the Arts) and ITC (Independent Theatre Council), 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 Code of Practice is for sponsors of migrants who will be working as actors, singers or dancers in theatre or opera under Tier 2 or Tier 5. For dancers in ballet and other dance forms, see the Codes of Practice applying to ballet and other dance forms. In this Code of Practice, the term “performer” means actors, singers and dancers in theatre and opera.

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 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 theatre and opera in the UK 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 theatre or opera, 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 undergo 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 fulfill 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 performer is required for continuity

This means that the performer will have worked for a period of one month or more during the past year, on the same production outside the EEA prior to it coming to the UK. The “same production” means one which is largely the same in terms of direction and design as the production outside the EEA.

Evidence

Proof that the performer is currently working, or has worked, on the same production outside the EEA and has done so, or did so, for at least one month during the past year, e.g. contract of employment, press cuttings, cast list.
2. The performer has international status

This means that the performer is internationally famous in their field. (This is different to being well-known only in one country.)

Evidence

Proof that the performer has international status, e.g. press cuttings, awards, publicity material, television/radio interviews, programmes.
### 3. The performer is engaged by a unit company

A unit company is a theatre or opera company which exists in a country outside the EEA and has put on at least one production in that country.

**Evidence**

Proof that the company has put on at least one production in its home country, e.g. press cuttings, awards, publicity material, television/radio interviews, programmes.

Proof that the individual is engaged by the unit company for the production in the UK, e.g. contract of employment.
4. **The performer has a certain attribute unlikely to be available in the EEA**

It would not be reasonable to expect the sponsor to engage an EEA national because the role requires an attribute which would be unlikely to be available in the EEA labour force, e.g. a certain physical appearance, physical talent, or linguistic or vocal skill.

**Evidence**

Proof that:

(a) the role requires a certain attribute; and

(b) the individual has that attribute.
5. **The performer is the subject of an exchange under one of the UK theatre industry’s exchange programmes**

The performer satisfies the requirements of either of the exchange programmes with the United States and Australia operated by the theatre industry. Sponsors wishing to use this category must contact Equity in the first instance: Stephen Spence at sspence@equity.org.uk or on 020 76700233. It is advisable to do this as early as possible in the process in order to avoid delay.

*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

Where advertising is required (see above), the role must be advertised to suitably qualified EEA-resident performers in accordance with standard industry practice through at least one of the following: The Stage, PCR, Spotlight, agents and Equity's Job Information Service. In order to comply with equal opportunities legislation, sponsors should avoid using the latter as the sole forum for advertising.

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.

A period of at least four weeks should elapse between the date the advertisement appears and the date the CoS is issued to a migrant performer for the role concerned.

The advertisement should appear within the six months before the date the CoS is issued.

Evidence

The sponsor must be able to provide evidence that a thorough and genuine search for a performer from the EEA was undertaken prior to casting the migrant performer, to include:

• the name or description of the specific role; and
• proof that the role was advertised in accordance with standard industry practice through at least one of the channels set out above;

and, if applicable,

• letters from agents confirming that they were approached;
• a list of any EEA performers who were contacted, interviewed, auditioned and/or offered the role; and
• a statement of the reasons why any EEA performer who was auditioned was not suitable.
Salary

Payment of migrant performers should be commensurate with industry standards.

Agreed minimum salaries are set out in Equity’s collective agreements, most of which are negotiated with ITC, SOLT and TMA. The current rates of pay can be found at:  www.equity.org.uk; www.itc-arts.org; www.solt.co.uk; and www.tmauk.org.
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 theatre or opera, 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.

Sponsors should ensure that the passing of any personal data relating to the migrant performer 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 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, or another third party, believes that:

(a) a migrant performer does not fall within one of the categories above and the role has not been advertised as set out above;

(b) the role has not been advertised as set out above;

(c) evidence requested has not been provided; or

(d) the sponsor has not complied with this Code of Practice in any other way,

Equity, or the third party concerned, will first raise the issue directly with the sponsor.

In cases where no resolution is reached, Equity may refer this to UKBA for a decision on whether the sponsor has failed to comply with this 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.

Queries regarding this Code of Practice may be addressed to:

- UKBA: SponsorshipPBSenquiries@ukba.gsi.gov.uk
- Equity: lmcmullan@equity.org.uk
- ITC: j.elliman@itc-arts.org (NB members only)
- SOLT: louise@solttma.co.uk (NB members only)
- TMA: louise@solttma.co.uk (NB members only)