

SCOTTISH EPISCOPAL CHURCH

Guidance Note Regarding Appointment of Overseas Clergy and Religious Workers

The Points Based System for Immigration

1. Introduction

A new Points Based System (PBS) for immigration is being introduced in 2008 and 2009 and will directly affect the Scottish Episcopal Church at provincial, diocesan and congregational level.

It will apply to overseas clergy who may up take posts (even on a short term basis) in the Scottish Episcopal Church and to other overseas workers who might be employed by dioceses or congregations, where such clergy are non-European Economic Area Nationals.

Under the new points based system, organisations who wish to receive such clergy or workers will need to be licensed by the UK Border Agency as sponsors. Sponsored organisations will then need to issue Certificates of Sponsorship to those whom they wish to bring into the UK.

2. What is the Points Based System?

These new arrangements mark a change to the UK's Immigration System. They replace the current system of work permits for non-EEA nationals and will allow migrants to work in the UK in jobs where they are needed. The new system is being introduced in 2008 and 2009. The system operates under five tiers: the two tiers that are relevant to Churches are Tier 2 (skilled workers, which include ministers of religion) and Tier 5 (youth mobility and temporary workers which include short term religious workers).

Employers or those inviting temporary workers are required to register as sponsors with the UK Border Agency. Once licensed, they are able to issue Certificates of Sponsorship (certificates are "virtual" and simply comprise a number generated by the UK Border Agency Sponsorship Management System) to those to whom they have offered jobs/places. The role of sponsorship is to provide evidence that a migrant has a genuine job in the UK and has a pledge from the sponsor to take responsibility for the migrant, to help ensure that the system is not abused. The sponsor is responsible to the UK Border Agency for those whom they sponsor, including keeping records and reporting on certain circumstances. Fees are payable to register as a sponsor and for each Certificate of Sponsorship issued.

A migrant applies from their own country to come to work in the UK providing information that shows that they have the required number of points for the tier in question. For "ministers of religion" and "religious workers", points are awarded for a Certificate of Sponsorship, for meeting the English Language requirement, and for meeting initial support cost levels or showing that support will be provided by the sponsor.

It is essential that all immigration procedures are properly observed. New penalties exist for anyone caught employing illegal migrants. The most severe penalties, including unlimited fines and prison sentences, are for employers that knowingly break the rules. However, even those who unknowingly employ illegal migrants through less than diligent recruitment and employment practices, can face penalties of up to £10,000 for each illegal worker. A separate Scottish Episcopal Church Guidance Note has been prepared setting out the checks which must be carried out before an individual is employed.

3. Application of the System to the Scottish Episcopal Church

It is open to dioceses or congregations to seek their own registration as a sponsor with the UK Border Agency. However, in the light of the small numbers of overseas non-EEA migrants taking positions in the Scottish Episcopal Church, it has been decided that it would be more cost effective for sponsorship registration to be obtained by the General Synod for the Province as a whole. At the time of issue of this Note, steps are being taken to apply for a sponsorship licence. However, since the position of sponsor carries a number of specific responsibilities, if congregations or dioceses wish Certificates of Sponsorship to be issued to prospective migrants, certain reporting and other procedures will require to be observed (see section 8 below). In addition, whilst the General Synod will bear the cost of the annual sponsorship fee payable to the UK Border Agency, the cost of the issue of a Certificate of Sponsorship to a prospective candidate will need to be borne by the congregation or diocese in question. At the current time, the fee for a Certificate of Sponsorship for a minister of religion being brought in under Tier 2 is £170 and for a short term religious worker under Tier 5 is £10.

4. Tier 2: Skilled Workers Including “Ministers of Religion”

Tier 2 applies not only to any clergy who are non-EEA Nationals but also to musicians such as organists and lay clerks, to some members of religious orders and to other skilled “religious” workers. Sponsorship under this Tier can lead to settlement in the UK.

The offer of an appointment can only be made, and a Certificate of Sponsorship issued, if the Resident Labour Market Test has been met. This requires the job to have been advertised for a reasonable period to the “resident labour market”. Normally, this condition can be met by the placing of a job advertisement in the local job centre for a period of two weeks but it is hoped that the UK Border Agency will give further guidance on what is appropriate for religious institutions. It is not a requirement to offer the job to an EEA national if a non-EEA national is better qualified to do the job.

A Certificate of Sponsorship can be issued for up to three years. If a migrant wishes to stay for longer, he/she can apply to extend their permission to stay but will require a new Certificate of Sponsorship. Once a migrant has been working in the UK for five years, he/she can apply for settlement (permanent leave to remain). There are transitional arrangements for those who are currently working in the UK under work permit arrangements; full details are available on the UK Border Agency website (www.ukba.homeoffice.gov.uk).

To take up a job under Tier 2, a migrant must apply to enter the UK from the country in which he/she is normally resident. This means that a person to whom an organisation has made a job offer following a job interview here must return home in order to apply to come back to the UK to take up the job.

Tier 2 “Ministers of Religion” migrants will be allowed to work outside their normal working hours in the same sector and at the same level without requiring a second Certificate of Sponsorship (so a musician could work elsewhere as a musician). However, if a migrant works in another sector (for example, as an accountant) then their second employer must also be a registered sponsor and the migrant must be issued with another Certificate of Sponsorship and meet the points based criteria (including the resident Labour Market Test) for that other employment. If a migrant is already working legally in the UK, he/she need not return to their own country to apply to enter the UK to work in the second employment; he/she can apply within the UK.

Entry under Tier 2, which includes permission to undertake preaching and pastoral work, includes an English Language requirement.

5. Tier 5: Youth Mobility and Temporary Workers including Religious Workers

Tier 5 applies where short term youth workers or other religious workers are to be recruited. Sponsorship under this Tier does not lead to settlement.

Originally, the proposed immigration rules prohibited workers entering under Tier 5 from preaching or undertaking pastoral work but did not include an English Language requirement. Concerns were expressed to the UK Border Agency about this including concerns about how those coming to the UK for a short visit would be able to enter if they wished to undertake any preaching or pastoral work. The UK Border Agency has now agreed to change the rules for religious workers under Tier 5 so as to remove the ban on preaching and pastoral work. However, the UK Border Agency believes that it is right that religious workers who are undertaking roles involving preaching and pastoral work should meet an English Language requirement and it is therefore intended to introduce such a requirement to Tier 5 in due course (but the UK Border Agency has undertaken not to do so until this has been discussed fully with Faith Communities). Accordingly, those entering under Tier 5 will be permitted to undertake preaching and pastoral work and will not initially have an English Language requirement.

Leave under Tier 5 will be granted for up to two years. This is not a route to settlement and migrants are not allowed to switch from this route to any other route. Once the English Language requirement is introduced for Tier 5 there will be two categories within Tier 5. The first will allow preaching and pastoral work and will have an English Language requirement. The other will not allow preaching and pastoral work and will not have an English Language requirement. In either case, leave will be granted for up to two years. Neither category will be a route to settlement and migrants will not be allowed to switch from this route to another route.

Since the Certificate of Sponsorship cannot be extended beyond the maximum period of two years, any worker who wishes to stay in the UK after the two year period will require to return home and make a fresh application for a new two year period.

Tier 5 religious workers will be allowed to work for up to 20 hours a week outside their normal working hours in the same sector and at the same level without requiring a second Certificate of Sponsorship. If a migrant works in another sector then their second employer

must also be a registered sponsor and the migrant must be issued with another Certificate of Sponsorship and meet the points based criteria for that other employment.

6. Visitor Visas

With effect from November 2008 religious workers who are based outside the EEA can visit the UK for up to six months under the “business visitor” category, provided they do not take up an office, post or appointment and any work is consistent with a temporary absence from their employment abroad. This is not a route to settlement and migrants are not allowed to switch from this route to another route.

7. Further Advice

As individual circumstances are so varied, it is recommended that in the first instance you seek advice direct from the UK Border Agency.

8. Undertakings by the “Local Employer” (Diocese or Congregation)

Before any Certificate of Sponsorship in relation to a candidate can be issued by the General Synod, the General Synod Office will seek an undertaking from the relevant congregation or diocese so as to ensure that obligations given by the General Synod to the UK Border Agency are appropriately mirrored by those parts of the Church which are in a closer relationship to the migrant and which are therefore in a better position to monitor compliance with immigration rules. A style of such undertaking is available from the General Synod Office. A registered sponsor has legal obligations under the legislation. Failure on the part of the sponsor to comply with the legislation may result in criminal prosecution and/or withdrawal of the Sponsorship Licence. If the Sponsorship Licence were to be withdrawn from the General Synod, this would affect the position of all migrants who had been brought to the UK by the Scottish Episcopal Church and could result in their deportation. It is envisaged that the “local employer” would be the diocese, in relation to clergy and also in relation to any lay religious worker employed by the diocese. Where the lay religious worker is employed by the congregation, the “local employer” would be the congregation.

This Guidance Note is based on a Guidance Note produced in September 2007 by the Archbishops’ Council of the Church of England and the material is used with their kind permission.

General Synod Office (Ref JFS)
November 2008