

A person in a light-colored shirt and dark trousers stands with their back to the camera, looking out a large window at an airport. An airplane is visible in the sky, and a control tower is in the distance. The scene is in black and white.

# Sponsorship Compliance – What You Need to Know

9 December 2021

# Sponsorship – Key Principles

---

- Licensed sponsors have the ability to sponsor non-British (excluding Irish) workers under the Skilled Worker and Intra-Company routes
- Sponsorship is a trust based system – licence holders are authorised to assign their own ‘work permits’ known as Certificates of Sponsorship (‘CoS’)
- Once a CoS is assigned to an individual, they can apply for a visa (at this point, the Home Office ‘trusts’ the sponsor’s certification that the skill level and salary requirements are met)
- Errors can go unchecked until the sponsor is subject to a Home Office compliance visit (audit).

# Sponsorship – Key Principles

---

- Audits can take place at any time, with or without notice.
  
- It is therefore vital that licence holders:
  - assign all Certificates of Sponsorship legitimately and correctly; and
  - understand and fulfil their ongoing sponsor compliance duties
  
- Breach of compliance duties can lead to the licence being revoked and the dismissal of all sponsored employees (including those not involved in or related to the breach).

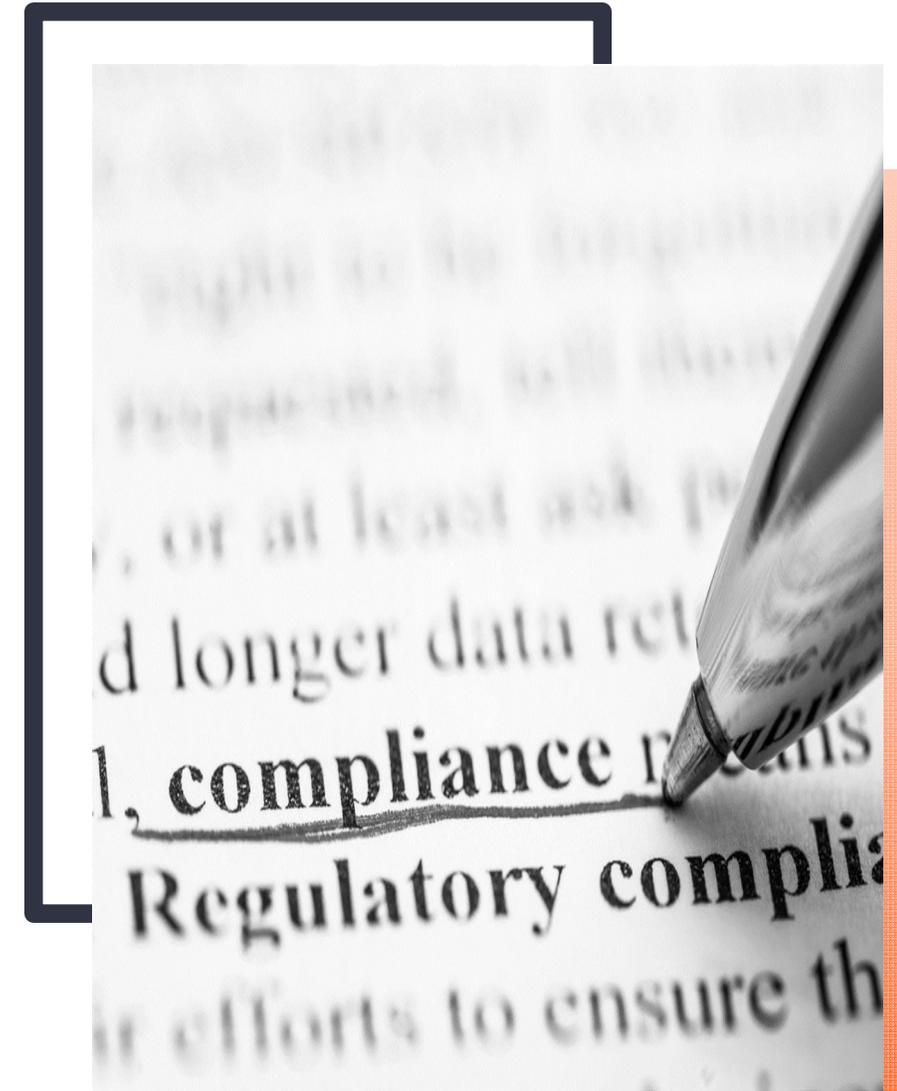
# Skilled Worker and ICT criteria

Visa type	Minimum salary	Minimum skill level	Initial duration and extension	English language requirement	Indefinite leave to remain
Skilled Worker	£25,600 or going-rate for the role whichever is higher	RQF 3 + (A level)	Up to 5 years initially, extendable indefinitely	Yes	Yes – eligible to apply after 5 years
Intra Company Worker	£41,500 or going-rate for the role whichever is higher	RQF 6 + (degree level)	Up to 5 years initially, but limited to 5 years in any 6 year period or, if the salary is £73,900 or more, 9 years in any 10 year period	No	No – but it is possible to switch from ICT to Skilled Worker

# Sponsorship Compliance

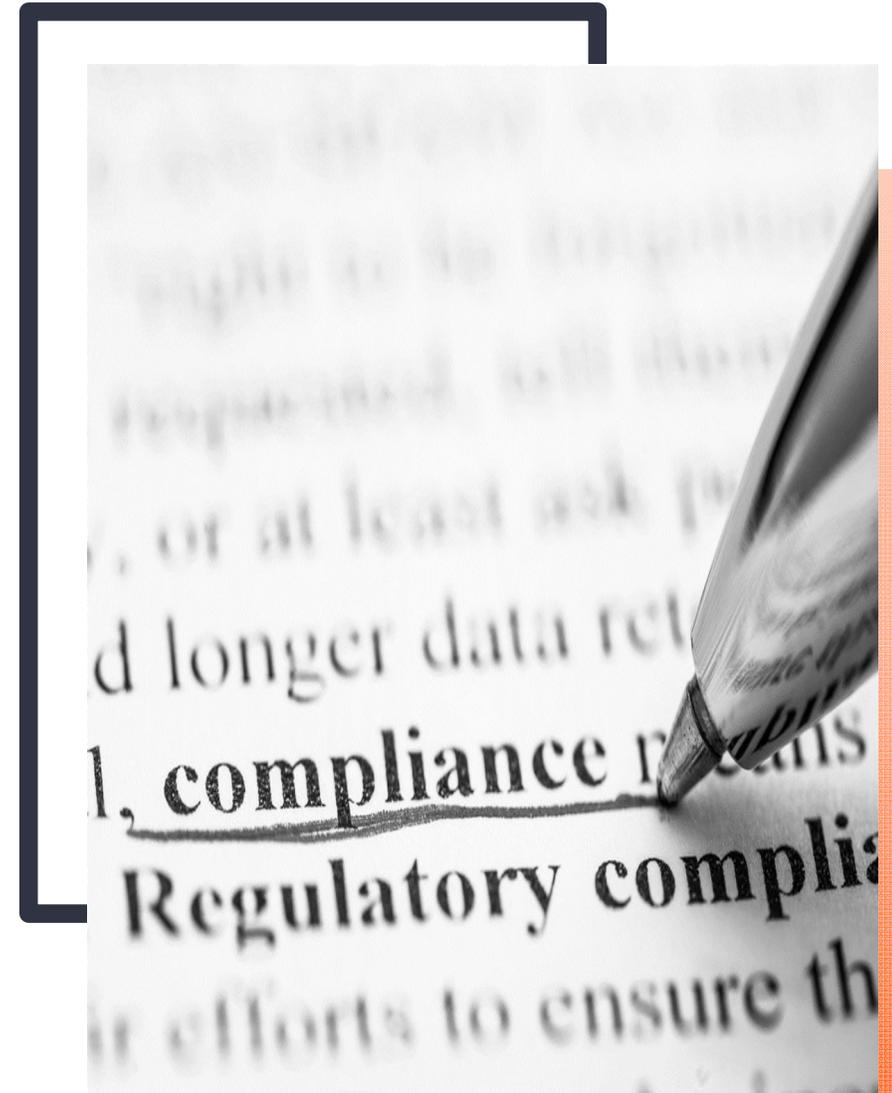
## 4 key areas:

- Prevention of illegal working and monitoring immigration status
- Record keeping duties
- Reporting duties
- General duties



# Prevention of Illegal Working

- Ensure that all personnel files (and those of employees in any group entities linked to the licence) include proof of the right to work.
- Record and flag visa expiry dates for any employee with a visa.
- Right to work documentation can be held electronically as long as it is easily accessible.
- Many right to work check can now be completed using the online system: <https://www.gov.uk/check-job-applicant-right-to-work>





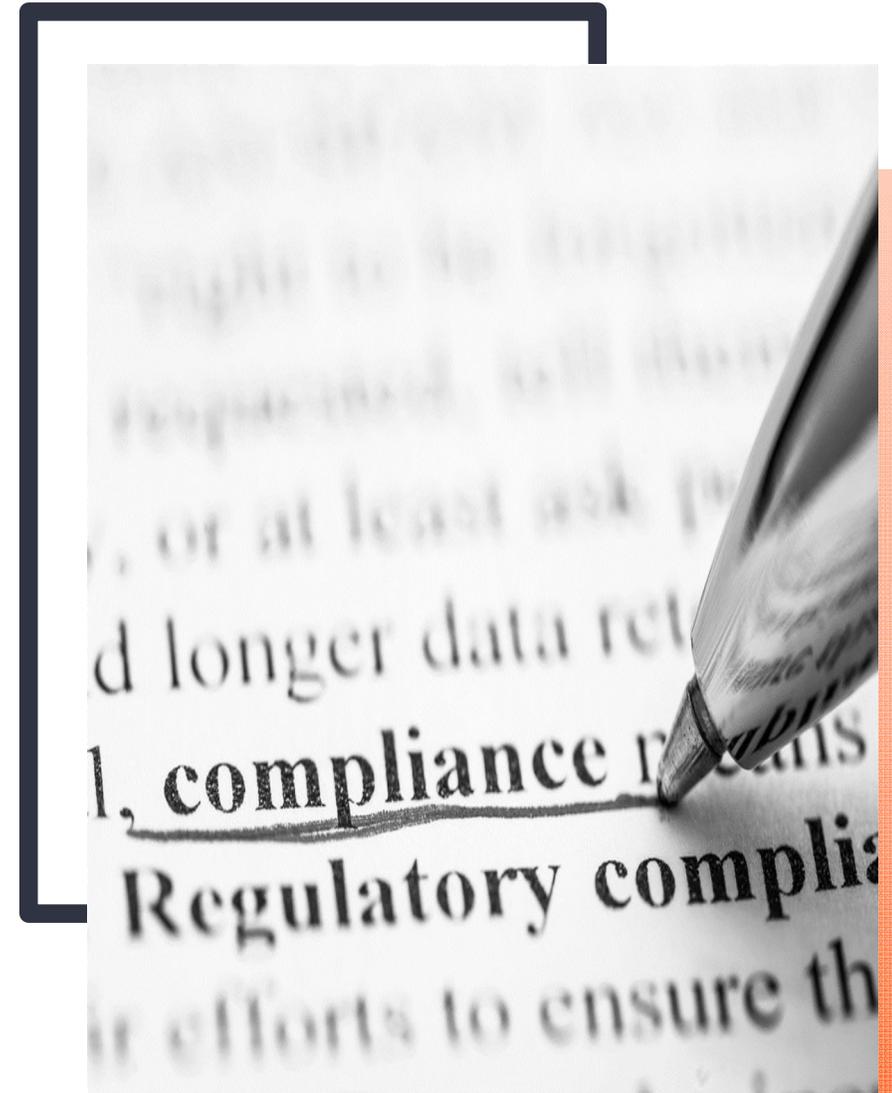
# Key Audit Preparation Points

(Prevention of Illegal Working)

- Carry out regular audits of *all* employee files.
- Maintain a record of all employees (including those of linked entities) including name, nationality, work location, dates of employment, job title, current visa type (if applicable), visa expiry date.
- Be able to demonstrate a full understanding of manual right-to-work checks and the new online system.
- Maintain a robust system for tracking visa expiry dates.

# Record Keeping Duties

- The Home Office's Appendix D lists the relevant documents to be kept on each sponsored employee's file - less obvious requirements include:
  - historic as well as current contact details
  - record of the date the employee entered the UK if not clear from their visa
  - payslips (or electronic access to)
  - history of absences (or electronic access to)
  - evidence of recruitment to demonstrate genuineness - if you did not advertise the role, you should be able to explain why you did not advertise it, e.g. individual previously working for you on a different type of visa and how you identified the individual was suitable for the role.



# Key Audit Preparation

(Record Keeping Duties)

- Know what Appendix D is:  
<https://www.gov.uk/government/publications/keep-records-for-sponsorship-appendix-d>
- Ensure that you have a system to keep up-to-date and historic contact details for each sponsored employee including their UK residential address, personal email and mobile telephone number.
- Keep a general 'Sponsor Management' file including:
  - your sponsor licence application and copy supporting documentation for the application
  - relevant Home Office guidance: [Appendix D; Sponsor a Worker - General Information; Sponsor duties and compliance](#); and [Home Office Employer's Guide to Right to Work Checks](#)

# Reporting Duties (1)

---

- You must report the following information to the Home Office's Sponsor Management System (SMS) – usually within 10 working days:
  - If the sponsored employee does not arrive on the intended Work Start Date stated on their CoS
  - If the sponsored employee is absent from work for more than 10 working days without permission
  - If the employer stops sponsoring an employee for any reason (e.g. employee moves into an immigration category that does not require sponsorship)
  - If the sponsored employee's contract of employment terminates for any reason
  - If there are any significant changes in the sponsored employee's circumstances (e.g. material change in job title/work duties, reduction in salary or change in work location)

# Reporting Duties (2)

---

- If the sponsored employee has a period of unpaid leave (e.g. sabbatical not sickness/maternity) in excess of 4 weeks in any calendar year, you must report this and stop sponsoring the employee
- If you have any information which suggests that a sponsored employee is breaching the conditions of their leave
- If a sponsored employee's employment is affected by TUPE or, following a business restructure, their sponsorship is eligible for transfer to another sponsor licence
- If there are any significant changes in the sponsor's circumstances (e.g. change in ownership, location or name, change in authorising officer), these must be reported within 20 working days.
- You must also give the police any information that suggests that a sponsored employee may be engaging in any criminal activity.

# Key Audit Preparation Points

(Reporting Duties)

- Ensure your sponsored employees are working and paid in line with the details on their CoS and that appropriate SMS reports are made to reflect any changes (better late than never!)
- Have an effective system to:
  - monitor sponsored employees' changes of circumstance, absences and whereabouts
  - ensure that your Level 1 user(s) are made aware of any relevant changes

# Key Audit Preparation Points

(Reporting Duties)

- Be able to demonstrate to the Home Office that sponsored employees and their line managers are aware of the events that trigger a requirement to notify the Home Office.
- The Authorising Officer and Level 1 user(s) should practice logging into the SMS and check that they know how to view a CoS, run a report of sponsored employees and make SMS reports, as necessary

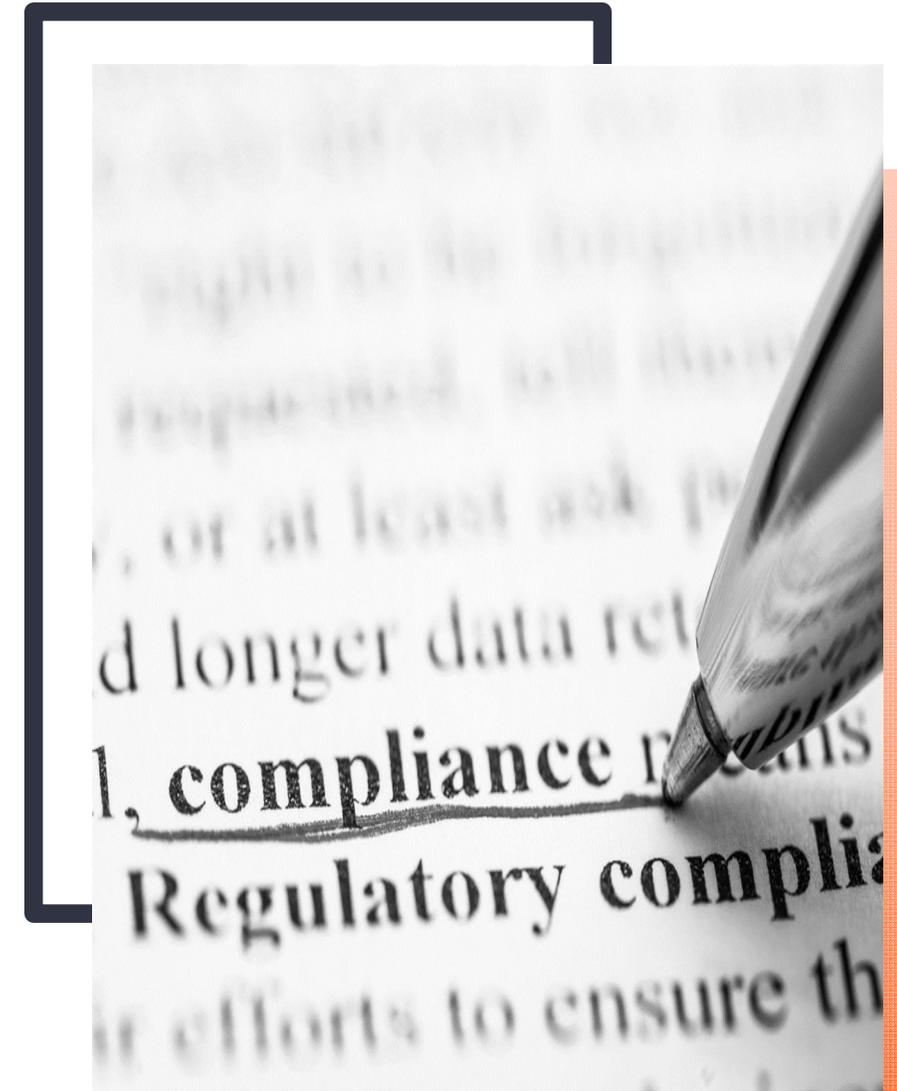
# General Duties

- You should ensure that:
  - sponsor licence key personnel are permanently based in the UK and any changes to key personnel are reported via the SMS
  - you have an Authorising Officer in place for the duration of the licence who meets the requirements in the sponsor guidance
  - your Authorising Officer checks the Certificate of Sponsorship assigned to sponsored employees on a monthly basis
  - you have at least one Level 1 user who is an employee to ensure you have full access to the SMS at all times
  - Level 1 or 2 users have secure email and do not share passwords
- You also have a duty to comply with wider UK law (other than immigration law) e.g. NMW, paid holiday entitlement, planning laws etc.



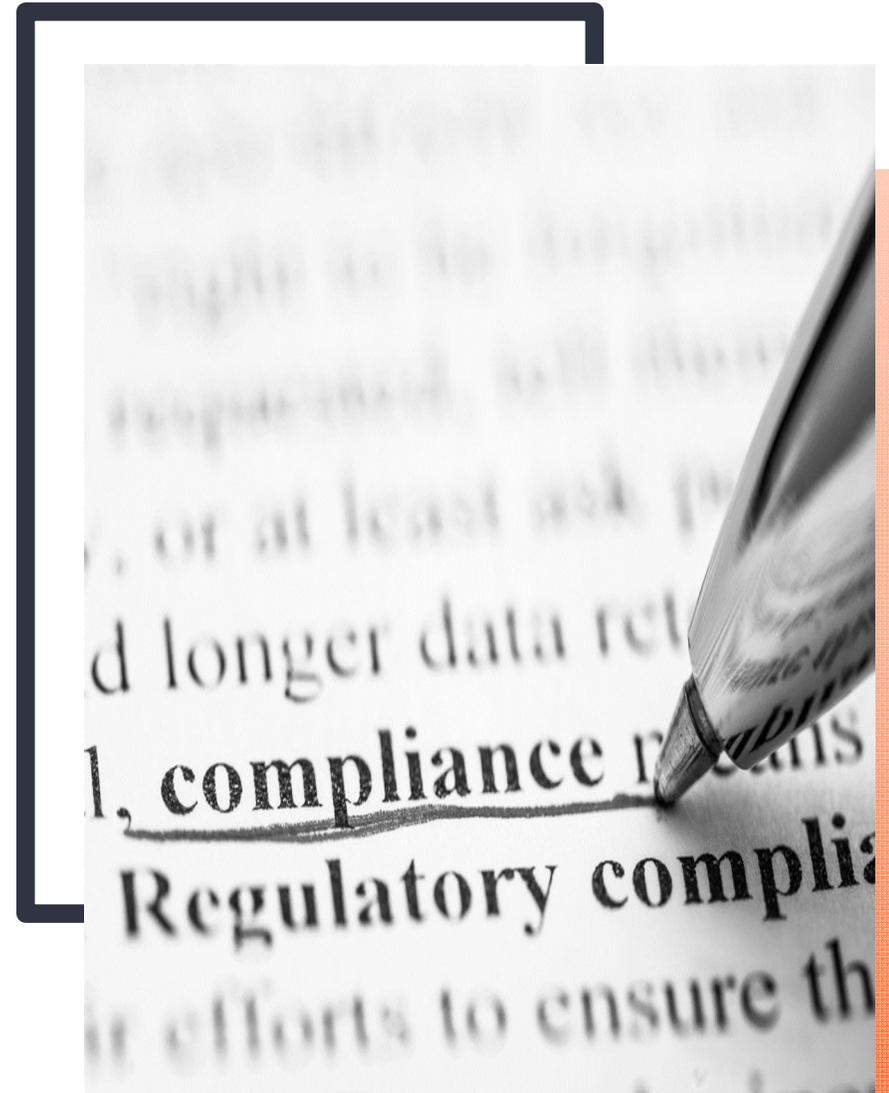
# General Duties

- You must comply with the Home Office's immigration laws and all parts of the Worker Sponsor guidance. To do this, you must:
  - only employ workers who are appropriately qualified, registered or experienced to do the job or will be by the time they begin the job and keep a copy of any registration document, certificate or reference that confirms they meet the requirements of the specific job.
  - not employ workers where they do not have the experience, qualifications or immigration permission to do the job in question, and stop employing any workers who, for any reason, are no longer entitled to do the job.
  - not assign a Certificate of Sponsorship where there is no genuine vacancy or role which meets the Sponsored Worker criteria.
  - only allow workers to undertake roles permitted by the conditions of their stay
  - only assign a Certificate of Sponsorship to a worker who you believe will meet the immigration requirements of the route on which you propose to sponsor them, and are likely to comply with the conditions of their permission.



# General Duties

- disclose (by adding a sponsor note) if you assign or are aware of the assigning of a Certificate of Sponsorship to a family member of anyone within the sponsor organisation
- only assign a Certificate of Sponsorship to a worker if you are satisfied they intend to, and are able to, fill the role
- not assign an undefined Skilled Worker Certificate of Sponsorship to a worker who requires a defined one
- You have the following duties of co-operation:
  - to allow Home Office staff access to any premises, any site under its control, on demand
  - to adhere to any action plan set by the Home Office.
  - to seek to minimise the risk of immigration abuse by complying with any good practice guidance that the Home Office or any sector body may produce for sponsors



# Common Pitfalls (1)

---

## Relating to the sponsor organisation:

- Organisation address has changed and not been notified to the Home Office
- Key Personnel no longer working for the business but are still listed on the licence
- Sponsor entities and sites where sponsored employees are working are not listed on the licence
- Failure to report change of organisation ownership (change in immediate parent requires a new licence)
- Sponsor is supplying sponsored workers to fill roles with third parties or does not have full responsibility for all of the duties, functions and outcomes or outputs of the job

# Common Pitfalls (2)

---

## Relating to sponsored employees:

- Paying sponsored workers below general / going rate threshold or salary stated on CoS
- Working longer hours than stated on the CoS which may mean salary threshold not met
- Failure to report changes of circumstance e.g. delayed start date, reduction in salary, change in work location/employer, end of employment/sponsorship
- A sponsored worker role changes to a different SOC code without a change of employment application

# Common Pitfalls (3)

---

## Relating to sponsored employees:

- Role stated on the employment contract does not match that stated on the CoS which raises doubts as to genuine vacancy
- Appendix D documents are missing, not kept in order or accessible e.g. contact details available but not kept up to date, JD kept but doesn't include criteria of role, right to work check documents missing
- Resident Labour Market Test was not satisfied where applicable under previous Tier 2 General route (or appropriate evidence not retained)

# Common Pitfalls (4)

---

## Other issues:

- Organisation not registered with relevant regulatory body
- Sponsor has been issued with 2 or more civil penalties for employing illegal workers or are currently employing someone without permission to stay or in breach of their conditions
- A CoS is assigned to a close relative/partner of the level 1 user
- Sponsor has required employee to contribute to the Immigration Skills Charge or has a claw back agreement in place to recoup the ISC.



# Dealing with Home Office audits

- Visits can be on notice or unannounced - be ready!
- Do your reception staff know who the Level 1 and Authorising Officer are and how to contact them quickly if the Home Office turns up unannounced?
- Make sure you have sufficient numbers of Level 1 users who understand sponsor compliance and can confidently speak to a Visiting Officer
- Do you have easy access to all your sponsored employees' files and Appendix D documents?
- If advance notice is given, give yourself as much time as possible to prepare and get support

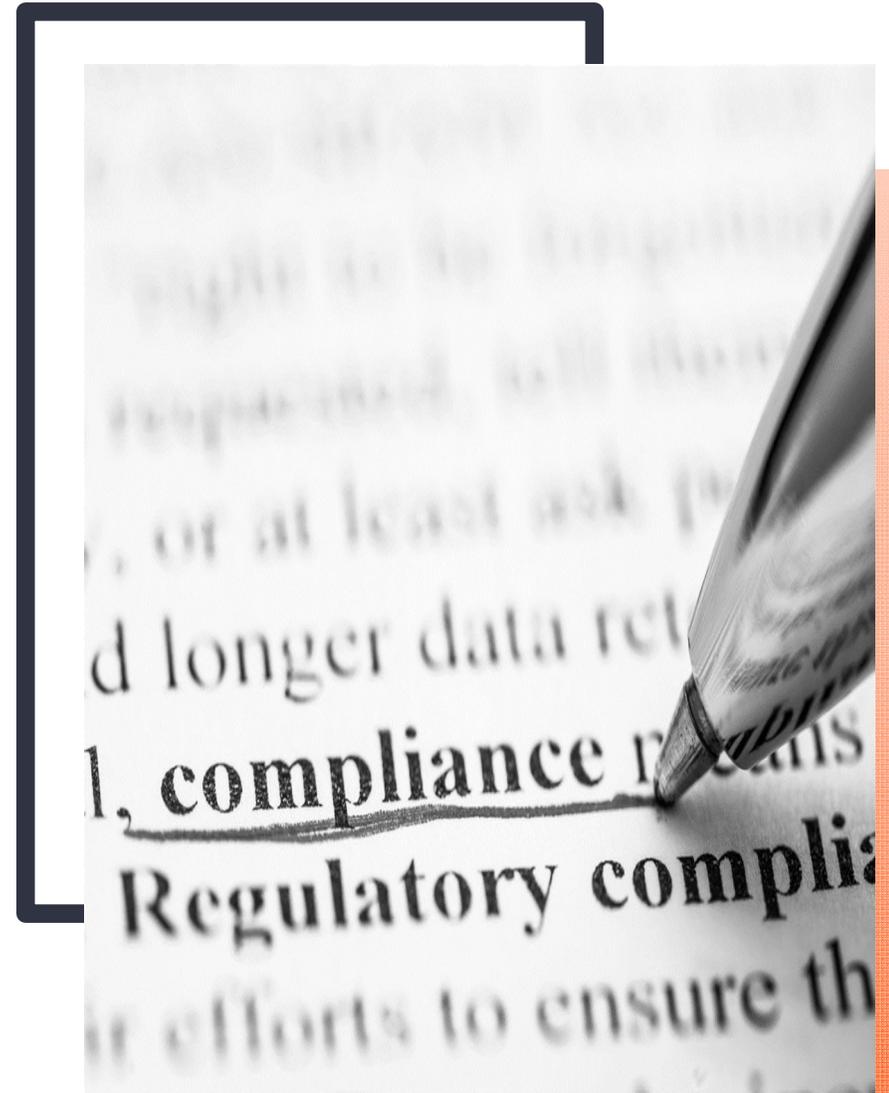
A man in a dark suit and tie is holding a tablet computer. Overlaid on the tablet is a digital network diagram featuring a central globe, various icons of people, and lines connecting them, symbolizing global connectivity and data. The background is a grayscale image of the man's torso and hands.

# Dealing with Home Office audits

- Authorising Officer and at least one Level 1 user should attend
- Brief sponsored employees for interview
- Be prepared to provide records on the day or within 48 hours of the audit
- Read the interview notes to ensure they are correct before signing and ask for a copy
- Seek legal advice before sending any documents to the Home Office

# Consequences of non-compliance (1)

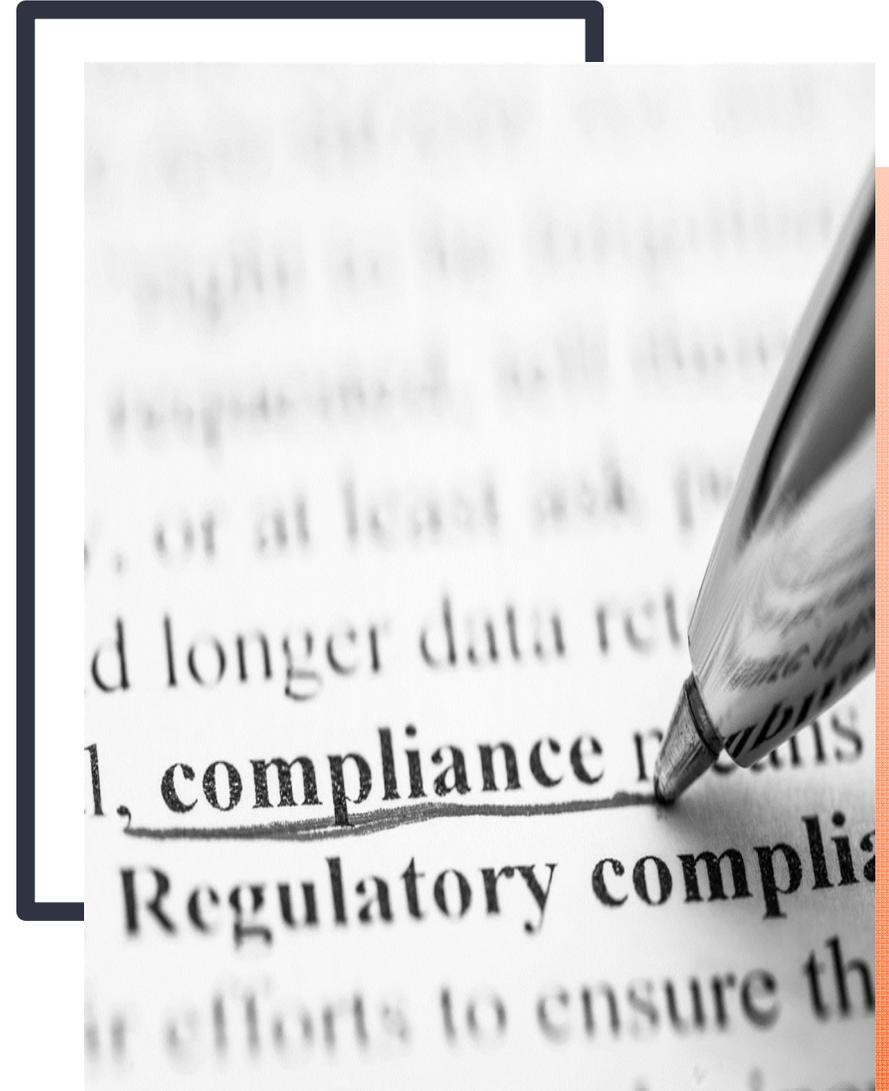
- Licence can be revoked, suspended or downgraded to a B-rating for non-compliance
  - Major or several minor issues can lead to suspension following which you have 28 days to make representations to avoid revocation
  - During suspension no new workers can be sponsored
  - Several minor issues could leave to suspension or a down grade your licence to B-rating
    - Pay for Action Plan within 10 working days
    - Review after 3 months
    - Issued with more than 2 action plan within the same 4 year term – licence will be revoked
  - Reduce/remove CoS allocation - cannot sponsor new workers



# Consequences of non-compliance (2)

If licence is revoked:

- Sponsored workers' leave curtailed to 60 days to leave the UK or switch to other visa
- Sponsored workers should not work from date when the licence is revoked (unless approval obtained from Home Office)
- 12 month bar from re-applying for a new licence – including for Key Personnel who move to other organisations
- Any future sponsor licence application will be subject to scrutiny
- Reputational damage



# Consequences of non-compliance (3)

Further issues if issued with civil penalty for illegal working:

- Fine of up to £20k per illegal worker (including those legally in the UK but working in breach of conditions)
- Possible criminal sanctions for those who knowingly/recklessly continued to employ the individual(s) without permission
- Employers risk prosecution for other offences e.g. “facilitation” and “failure to disclose”, as well as possible prosecution under the Proceeds of Crime Act
- Reputational damage / Effect on share prices
- Revocation of sponsor licence after 2 fines



# Summary

---

- Make sure you are aware of your sponsor duties/responsibilities and put them into practice!
- Ensure processes are in place to monitor sponsored workers and changes of circumstances
- Notify the Home Office of any changes!
- Carry out regular internal audits of your records and Key Personnel
- Seek legal advice if in doubt or you need support with a mock audit.

# Questions?

# Contacts

---



**Annabel Mace**

Partner  
Immigration

T: +44 207 655 1487  
E: [annabel.mace@squirepb.com](mailto:annabel.mace@squirepb.com)



**May Cheng**

Senior Associate  
Immigration

T: +44 207 655 1693  
E: [may.cheung@squirepb.com](mailto:may.cheung@squirepb.com)