

GLA Brief

Issue 17 – January 2012: Employing and Supplying Romanian and Bulgarian Workers

This Brief explains the restrictions on employing and supplying Romanian and Bulgarian workers and how this applies to the GLA licensing scheme.

Introduction

There are restrictions on employing Romanians and Bulgarians which are administered by the UK Border Agency (UKBA). If you supply, or are considering supplying, Romanian and Bulgarian nationals for work in the GLA sectors, the GLA expects licence holders to comply with these restrictions.

Can Romanian and Bulgarian nationals work in the UK?

Romanian and Bulgarian workers will normally require a work permit in order to work in the UK unless:

- the workers are working in a genuinely self-employed capacity,
- the workers have become exempt from work authorisation requirements as a consequence of having been employed legally and continuously in the UK for a period of 12 months; or
- the workers are supplied under the Posting of Workers Directive.

If a work permit is required, the employer will need to apply for one. Work permits are normally only issued for skilled jobs and may require the employer to demonstrate that they have been unable to fill the vacancy with a suitably qualified resident worker. However, Romanian and Bulgarian workers may undertake lower skilled employment if they are:

- Employed through the UKBA's **Seasonal Agricultural Workers Scheme (SAWS)**. More information on SAWS is available on the UKBA website: www.ukba.homeoffice.gov.uk/workingintheuk/eea/saws/
- Employed through the **Sector Based Scheme (SBS)**. Certain low skilled vacancies in the food processing sector can be filled under the SBS. Before Romanian and Bulgarian workers can be employed, the UK based employer must apply for an SBS permit. Once that has been issued, the worker must then apply for an accession card. More information on the SBS is available on the UKBA website: www.ukba.homeoffice.gov.uk/workingintheuk/eea/sbs/SBSworkers

What are the GLA's requirements?

Any person or business supplying Romanian and Bulgarian nationals to work in the GLA regulated sectors must be licensed by us. The GLA Licensing Standards set out what an applicant and licence holder must comply with. The Standards are available on our website (www.gla.gov.uk) or you can request a copy from our helpline +44 (0) 845 602 5020.

Applicants and licence holders will breach Licensing Standard 7.2 if they supply Romanian and Bulgarian nationals outside of the list of restrictions above. Standard 7.2 requires workers to have a right to work in the UK.

Where Romanian and Bulgarian nationals are supplied on a self-employed basis, we will check whether the workers are genuinely self-employed. Workers can apply for a UKBA registration certificate which will confirm their right to work in the UK as a self-employed person for a particular type of work – the GLA may accept this certificate as evidence that the worker is genuinely self-employed. However, such a certificate is only evidence that the worker was considered to be self-employed at the point at which it was issued. If the actual activities being undertaken have changed since the application and it is suggested that the worker is in fact contracted in an employed capacity, the GLA may conclude that UKBA authorisation of the employment is required.

Any Romanian and Bulgarian workers supplied under the Posting of Workers Directive should have an E101 Certificate, obtained before the worker is posted. Further information on the GLA's approach to posted workers can be found in GLA Brief 16.

Further Information

Please contact us if you would like any further help or advice:

Web: www.gla.gov.uk

Email: enquiries@gla.gsi.gov.uk

Telephone: +44 (0) 845 602 5020

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