

Over the years  
europe has  
prospered by letting  
people move and  
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In order to demonstrate the extent to which the UK Government manages migration I am going to be critically evaluating employer sponsorship.

Soaring net immigration figures from outside the UK are an increasing public concern, with numbers having trebled from 1990 to 2006; a scale that is unprecedented in UK history.

Due to this rapidly increasing number, and with forecasts predicting further rapid growth, immigration has become one of the biggest public policy issues in the UK today. The Government has been forced to address the economic, social and cultural impacts of immigration and as a result has introduced new policies in order to manage migration more effectively. In March 2006 the Government released a command paper A Points Based System: Making Migration work for Britain, which followed the Australians example and introduced the points based system, (PBS), which took effect on 29th February 2008. The system consolidates 80 different routes of entry into a 5 tier based system, marking the biggest shake up to the immigration system in 45 years. Its aim being that only non-EU immigrants with the right skills or contribution will be able to work or study in the UK by obtaining enough points to satisfy their particular criteria under the different tiers. All tiers, except Tier 1 and of course EEA nationals need a sponsor to be able to work in the UK.

The Government has argued that immigration is needed as it: "(i)increases economic growth, (ii)generates great fiscal benefits for the UK, and (iii) immigrants are needed to fill labour skill shortages and do the jobs that British workers refuse to do. " 1 As employers benefit greatly from the economic impacts of immigration, the Home Office's new policies have put <https://assignbuster.com/over-the-years-europe-has-prospered-by-letting-people-move-and-trade-freely/>

them on the front line of immigration control by transferring greater responsibility and accountability to them to make sure that they play their part in managing migration. Sponsorship underpins the new points based system as any employer or organisation wanting to bring a non-EU migrant worker to the UK must apply for a sponsor licence from the UK Border Agency (UKBA), replacing the work permit. If the sponsor is found to be suitable they will be registered with the UKBA and will have access to the online sponsorship management system, which enables them to issue a certificate of sponsorship to each individual migrant worker, who can then apply for entry clearance.

Sponsors must also be able to prove that the job position passed the Resident Labour Market Test, proving that no EEA national could fill the position. In order to comply with the new system sponsors are now subjected to " exhaustive reporting, document retention, and recordkeeping requirements and enhanced responsibility to monitor all migrant workers granted entry to the UK, all this is granted under the threat of civil and criminal liabilities if found in breach in any of these new requirements. '

Details of all sponsored migrants workers will need to be recorded, including copies of their passport, or UK visa status authorising them to work in the UK, as well as up to date contact details in both their country of origin and in the UK. Sponsors also have to report any unsatisfactory conduct to the UKBA, such as the migrant not arriving for their first day of work, or failure to attend work for more than ten working days.

All of this information will need to be reported within ten working days, and will have to be available at the request of the UKBA. These new  
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responsibilities mean that it is vital for employers to ensure that they have a sufficient Human Resource department in place so that they remain compliant with immigration procedures. The UKBA will rate the sponsors as either an A or B grade sponsor, according to how efficient their record keeping and administrative duties are. The majority of sponsors will be A rated, however sponsors can be downgraded to a B rating if the UKBA is concerned that the sponsor is not effectively complying with UK immigration regulations.

This is monitored by planned or unplanned visits to the sponsor's premises by a UKBA official who make sure the employers are enforcing their duties properly. If a sponsor is found breaching any of the rules under the PBS then the UKBA can not only downgrade the sponsor to a B grade, but also have their licence revoked, and can even issue civil or criminal penalties. Sponsors also have to be completely diligent in ensuring each migrant it employs is working in the UK legally and not breaching any immigration laws. The UKBA can impose civil penalties in order to prevent employers abusing this requirement the Government has also set out new measures to prevent illegal working by adopting a new system of civil penalties.

Under the ss15-25 of the Immigration, Asylum ; Nationality Act 2006 (which replaced s8 Asylum and Immigration Act 1996) and under the Civil Penalties for Employers Code of Practice February 2008, issued under section 19 of the 2006 Act, employers who negligently hire illegal workers of 16 or over, can face a fine up to i?? 0, 000 per illegal worker, and if they knowingly hire illegal workers they could incur an unlimited fine and even be sent to prison.

The UKBA's code of practice sets out the conditions for when these penalties  
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may be reduced, which are determined by the nature of the checks the employer has conducted, if they reported suspected illegal workers to the UKBA and the number of previous offences committed. A UKBA official will then determine the actual amount on a case by case basis. This can open the door to corruption, as officials can fine employers any amount which they see fit, and this would be most detrimental for small businesses.

Therefore, employers are able to establish a defence under section 15 of the Civil Penalties for Employers Code of Practice February 2008, by checking and copying the migrant's specified documents, and keeping a record of them. The penalty system is intended to be a proportionate approach to non-compliance while also serving as a deterrent to employers who will be unwilling to risk their profits and reputation by using insufficient employment practices. Evaluation The administrative burden and severe penalties for non-compliance of sponsors can mean that even the most comprehensive Human Resource departments are struggling with the mounting duties it needs to comply with. With no proper guidance or test cases to guide them, sponsors can easily fall into the pitfalls if they do not follow procedures correctly. The UKBA guidance notes are up to 80 pages long, and many employers who are trying to make a profit would find this a lengthy and costly process, adding to the administrative nightmare that they face under the PBS. The guidance also does not provide for every eventuality and this can lead to employers rejecting anyone whose immigration status is unclear in order to stay on the right side of the law.

Figures have been estimated that the cost to employers for keeping in line with the new system would be as much as 27 million. Subsequently, it is not <https://assignbuster.com/over-the-years-europe-has-prospered-by-letting-people-move-and-trade-freely/>

surprising that 88% of employers have not applied for a sponsorship licence and over half of human resource departments surveyed by Pricewaterhousecoopers were still concerned about their internal procedures, with 60% thinking they had insufficient information to provide the UKBA with. The UKBA expected 20, 000 applications for sponsorship licenses, and so far the number has been as little as 3, 300. These figures highlight that all these implications imposed on employers are confusing, time consuming and have too severe penalties for businesses wanting to make a profit. Consequently, instead of managing migration fairly, the Government's new rules are in reality discouraging employers from hiring outside the EEA.

By increasing the burden onto employers the Government has inadvertently increased the risk of discrimination on grounds of race, colour and nationality. Many employers are inadvertently or deliberately discriminating against sections of the workforce as a risk-avoidance strategy which is contrary to the Race Relations Act 1976. This is highlighted in the recent EAT case of *Osborne Clarke Services v Purohit*<sup>3</sup>, where the Employment Tribunal's decision was upheld, that a failure to consider applications from non-EEA nationals on the basis of them obtaining a work permit (would be sponsorship today) amounted to indirect discrimination on the grounds of nationality under section 11(1) (b) of the Race Relations Act. In their defence Osborne Clarke argued that section 49 of the UKBA guidance requires employers to satisfy the resident labour market test and prove why the job could not be undertaken by an EEA national, even if extra training was provided for.

On this assumption Osborne Clarke raised the defence that any application made for a non-EEA national to apply for a work permit would, under these requirements, likely have been rejected, which would unnecessarily raise the expectations of the applicant, incur additional costs and waste valuable time. The EAT ruled that the defendants should not base their policies on an assumption which should be left up to the UKBA to determine. This case accentuates the problems employers are facing as it is unclear where their responsibility ends and the UKBA's begins. Even though guidance has been set out, it is an exhaustive process and has proved inadequate. Subsequently, it can be argued if the Government is leaving too much of managed migration to employers.

Employers will always do what is right by their business and with the numbers of sponsorship applications not meeting their predictions the Government's new PBS already seems to be having an adverse effect of managed migration, as employers are scared of falling into the pitfalls of relentless liability. Sponsorship not only raises issues of discrimination but also encourages debate on its practicality, and efficiency. With the threat of employers losing their sponsorship licence it is critical that certificates of sponsorship are managed effectively. The whole sponsorship management system is managed online, as part of the Home Office's aim to have a simple streamlined system. However, there is no manual backup in case of an IT fault, and if this does happen the responsibility falls on the IT providers who are subjected to hefty fines. This can be seen as another way in which the Government is shifting responsibility and accountability on to someone else, as opposed to developing a contingency option.

If a problem occurs it can have damaging effects for some employers making last minute decisions, which makes timing crucial. The UKBA has recognised that the online system is far from its necessary standard and has ensured a more advanced system for late 2009. Conclusion Sponsorship under the PBS simply shifts responsibility from the Government on to employers, who in addition to complying with employment laws are also under the threat of civil and criminal penalties if immigration laws are breached. Moreover, it begs the question, how much of migration is the Government actually managing? As a result of increased accountability, sponsorship applications have not met their expected targets with many employers opting to employ within the EU in order to avoid the administrative burden that comes with employing a non-EEA national, resulting in both indirect and direct discrimination.

The Home Office's duty is to promote good relations between different racial groups, so a lot can be said for how the Government is choosing to manage migration by giving employers more responsibility, as employers will reduce costs where they can to maximise their profits. In addition the sponsorship management system itself is flawed; it should have been properly revised and implemented for when tier 2 came into effect, and reflects the Governments rushed and inadequate way to manage migration. Jenny Stevens, a solicitor at Laura Devine Solicitors, has argued that " the sponsorship management system, it seems, is a reflection of the PBS project as a whole - an ill thought-out race to meet unworkable deadlines. " The aim of the PBS was to simplify and manage migration more effectively, however, so far there have been significant problems regarding sponsorship which is



the backbone of the system. How successful and efficient the system will be in the long-run remains to be seen until all tiers are properly implemented, more precedent is available and whether or not employers can rise to the challenges of the PBS.

It can be argued that the Government has imposed these new requirements as a way to ease public concern to appear like they are 'doing something' about immigration. In conclusion, thus far sponsorship under the Government's new points based system, seems to be more bureaucracy than it is good managed migration policy.