

IMPORTANT NOTICE

for United Kingdom

for contractors on construction site of BERTSCH Energy GmbH & Co KG

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Introduction

Ladies and Gentlemen,

Please read the following information carefully and return the completed and signed declaration at the end of this Important Notice to us. We ask you to kindly bear in mind that the information contained in this Important Notice has been prepared for informative purposes only, with the objective to provide you with an overview of some of the basic legal and practical implications of sending employees to the UK. As such, this Important Notice and the information contained herein may not under any circumstances whatsoever be relied upon as legal advice and do not claim to be exhaustive, complete or specific to your particular circumstances. Full compliance with and liability for any breaches of any and all relevant legal obligations in the jurisdiction is the sole responsibility of each company sending employees to the UK and by signing the declaration at the end of this Important Notice, you agree to indemnify us from and against any and all claims of whatsoever nature that may be made against us in connection with your sending of employees to the UK.

The purely informative nature of this document can only set out a selection of requirements in general terms that you should be aware of. Please ensure that you seek independent legal and professional advice for your particular circumstances to make sure that you are fully informed of the laws and regulations applicable to you and that you are compliant with the same at all times.

1. Personnel and Employment Law

As a business that engages employees and workers in the UK, you will have various legal obligations. You will be responsible for complying with these obligations in full and are expected to do so. We recommend that you obtain appropriate legal advice in order to ensure that you are familiar with your obligations in this regard.

In particular, we expect the following will be relevant (but please note that this list is not exhaustive):

1. section 1 of the Employment Rights Act 1996 requires certain information to be given to employees (and workers after April 2020) in writing if their employment or engagement is to continue for a period of one month or more;
2. workers and employees are entitled to certain minimum rights in the UK – such as minimum periods of notice that must be given to terminate their employment, statutory sick pay, national minimum wage and minimum holiday entitlements;
3. UK businesses are required to perform specific right to work checks for all employees in the UK and further documents are required if they employ any individuals who are not British or Irish nationals;
4. the EU General Data Protection Regulation (GDPR) will govern how you must process personal data relating to employees and workers; and
5. you will also have obligations under UK specific legislation and regulations – such as under the Bribery Act 2010, Equality Act 2020 and Public Interest Disclosure Act 1998

1.1 Social security

An application for a certificate to confirm that contributions for the seconded employee are payable in the home member state is made by the employer to the relevant authority in its home member state.

Assuming the application is successful, the authority in the home member state must issue the seconded employee with the portable document “A1”. The A1 document must always be carried by seconded person.

2. Immigration laws

2.1 British citizens and EEA nationals

British and Irish nationals employed to work in the UK do not require any permission to do so. The position for EEA nationals ultimately depends on when they began residing in the UK. Those EEA nationals who began a period of residence in the UK by 11.00 p.m. on 31 December 2020 are able to continue living and working in the UK from 1 July 2021 onwards, provided that they submitted an application to the EU Settlement Scheme by 30 June 2021 (<https://www.gov.uk/settled-status-eu-citizens-families>). In some specific cases, EEA nationals can still apply after the deadline of 30 June 2021, provided that they can demonstrate 'reasonable grounds' why they did not make their application by the deadline.

EEA nationals who live outside of the UK but who work in the UK from time to time may be eligible for a Frontier Worker Permit if they began working in the UK by 31 December 2020. The individual must usually have worked in the UK at least once every 12 months since they started working in the UK (<https://www.gov.uk/frontier-worker-permit>). Anyone relying on the provisions of the Frontier Worker Permit route must already have a permit in place to be eligible to enter the UK for work from 1 July 2021 onwards. There is no deadline to apply for this and there has been some recent guidance published for those workers who have been affected by Covid, and were therefore unable to enter the UK in the last 12 months.

Since 1 January 2021, EEA national entering the UK to work for the first time are required to obtain the appropriate permission/visa to work prior to commencing employment in the UK. They will be subject to the same rules which apply to all other nationalities.

2.2 Other nationalities

As a general guide, if you are going to employ workers in the UK who are neither British nor Irish citizens, you must ensure that they have the appropriate permission to work in the UK.

The UK currently operates a Points-Based System of which the following two may be of relevance to your undertaking:

1. Worker route - Skilled workers sponsored by employers holding a Sponsor License issued by the Home Office to go to the UK either in order to fill a job for which no suitable employee is available from the local labour market (Skilled Worker route), or for people already working for a company overseas who are required to join their employer's UK office on a temporary basis (Intra Company Transfer).
2. Tier 5 has a number of subcategories but only one of these subcategories is likely to be of relevance in our context: Tier 5 (Temporary Workers), for workers sponsored by licensed UK employers to come to the UK on a temporary basis.

2.3 Entering the UK as a visitor

The visitor route also has a few options to enable workers to go to the UK for a short period for business-related purposes. Upon entry, a visitor will be granted 6 months leave to enter, on every occasion. Visitors should not be making multiple successive visits, as a border agent could infer that the visitor is essentially living in the UK as a visitor and could refuse them entry. Under the permitted activities subcategory, an employee of a foreign manufacturer or supplier can (with their employer's permission) go to the UK to install, dismantle, repair, service or advise on equipment, computer software or hardware, where the manufacturer or supplier has a contract of purchase or supply or lease with a UK company or organisation. This specific provision is very limited, for example the worker coming to the UK must be an employee of the manufacturer or supplier, the

visitor under this provision cannot be a freelancer or an employee of a subcontractor for example. You will also need to ensure that the specific work they are coming to do fits within the examples provided. This specific provision is found under PA 7 of Appendix V of the Immigration Rules. Please note that visa nationals will need to obtain visas in advance of travelling. Non- visa nationals (such as EEA nationals) do not require to obtain visit visas. The full list of visa nationals can be found here: [Immigration Rules Appendix Visitor: Visa national list - Immigration Rules - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/immigration-rules-appendix-visitor-visa-national-list)

On arrival at the UK border, workers will be required to provide evidence of the intended business activities. For instance, this can be:

1. a letter from their employer confirming: **(i)** the reason for their visit; **(ii)** the nature of the work (and how that is a permitted activity); **(iii)** that they will be paid expenses for travel, subsistence and accommodation; **(iv)** the likely duration of the work; and **(v)** that they will at all times remain employed by their non-UK employer (including details of job title, start date of employment and salary).
2. a copy of the contract or agreement for services between the UK company (the client/end consumer) and the non-UK company or a letter from the UK company confirming the nature of the contract or agreement.

It is your responsibility to ensure compliance with UK Immigration Law, including any changes effected as a result of or post Brexit. You should in particular ensure that your group/company holds any necessary sponsor licences if you will be required to sponsor any migrants to work in the UK.

2.4 Construction Industry scheme (“CIS”) taxation

Where CIS taxation applies to you, you are required to ensure that you have full registration as necessary with HMRC (Her/His Majesty’s Revenue and Customs) and that you supply the relevant “contractor” with all information required to validate your status for CIS purposes. If you do not comply with this requirement, you acknowledge that the relevant contractor may have to account for your payments net of tax and account for CIS taxation to HMRC. In such a case, it will be your responsibility to reclaim any overpaid CIS taxation from HMRC directly.

You need to comply with all obligations to pay tax and if there is any unpaid tax or tax arrears which we have a statutory duty to collect, then you authorise us to make an equivalent deduction from any amount that would otherwise be paid to you.

3. Construction related laws and regulations

3.1 Health and Safety

You will have to comply at all times with mandatory law in relation to health and safety together with any Codes of Practice approved by the HSE in the UK and other best practice guidance as issued from time to time. You will need to comply with all applicable regulations (including the Construction (Design and Management) Regulations 2015) and your duties under them together with any site-specific policies which have been brought to your attention. It will be your responsibility to ensure that all such obligations are brought to the attention of your personnel, subcontractors or suppliers on induction and as otherwise necessary to ensure that risk is correctly managed. Any failure to comply with these requirements may result in your being required to stop work and your removal from the project. Please note that any failure to comply with mandatory health and safety law may result in criminal proceedings being brought against you.

3.2 Insurances

You must ensure that you have in place at all times mandatory insurances as required by law including employer’s liability, automobile and other cover.

3.3 Nuisance and trespass

In addition to any site-specific requirements you will ensure that you do not cause nuisance or trespass to any adjoining occupiers. You will take all measures to ensure that any unavoidable consequences of carrying out your obligations are minimised to the greatest extent possible.

4. Safety instructions and registration

As a supplier of BERTSCHenergy you are responsible for your own as well as our safety on site. In order to integrate your work and services smoothly to the other activities on the site, you are required to inform yourself about applicable regulations and rules on our construction sites. This includes the online safety instructions, which are to be completed at least 2 weeks before your employees' arrival on site. These instructions have to be completed by every one of your employees as well as any sub-suppliers you work with that will enter our site. Upon successful completion, you will be issued a certificate. The certificate is to be printed and presented at our construction site, upon which each of your employees will be issued a personal badge. This badge will allow your employees to enter and exit our site for a pre-determined time period.

Please bear in mind: Without a valid certificate, your employees will not be allowed to enter the construction site! Any additional costs or claims as well as push-backs in schedules (together with costs and expenses related thereto) will be borne by you.

You can access the safety instructions with the following link:

<https://www.bertsch.at/de/384-bertschenergy-kompetenz-in-energie#widget-390>

Login Password:

JxxxxxxS	- example	_ eng
(project id)	- (project name)	_ (language de or eng)

For online registration and access to the safety instructions including the safety test, the following personal information is necessary:

- First name and last name
- Date of birth
- Job title / function
- Passport photo
- Company name of employer (acc. to company register)
- A1 document number

BAUSTELLENSICHERHEIT

Als Partnerunternehmen oder Besucher unserer Baustelle, sind Sie mitverantwortlich für Ihre und unsere Sicherheit und unseren gemeinsamen Erfolg. Damit Ihre Dienstleistung reibungslos in unsere Prozesse integriert werden, sind bestimmte Regeln einzuhalten.

ZUGANG SICHERHEITSTEST

Bitte geben Sie das Passwort für die Sicherheitsschulung ein:

START

Image 1: Login page for password input

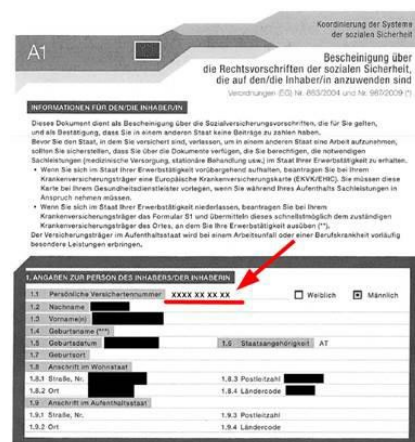


Image 2: A1 document example with A1 number marked

5. Summary

- List of names of posted workers (2 weeks before site activities)
- A1 documents of posted workers (2 weeks before site activities)
- Inform us about directly or indirectly commissioned subcontractors and self-employed persons before the start of the activities, stating the type of activity and duration (from...to...) (2 weeks before site activities)
- Inform your direct and indirect subcontractors about the obligation regarding A1 document and send us all reports/certificates. (2 weeks before site activities)
- Fill out the following form and send it signed back to us. (at least 1 week after order confirmation)

Deliver the following documents and information, at the latest by the aforementioned times to Bertsch Energy GmbH & Co KG via E-Mail (meldewesen@bertsch.at)

6. Appendix

6.1 Declaration

DECLARATION

The undersigned

acting as: _____

for the company: _____

Street + No.: _____

Postcode + City: _____

Email: _____

hereby undertakes to comply with all obligations regarding the points mentioned in the document "Important Notice" and to indemnify Bertsch Energy GmbH & Co KG with regard to any Loss it may suffer as a result of our failure to comply with any statute, legislation, directive or regulation of any kind whatsoever (including but not limited to those referenced in the "Important Notice") applicable to us in the United Kingdom. Loss means any form of loss, liability, damage, expense, claim of third parties, etc., which Bertsch Energy GmbH & Co KG could suffer as a result of an infringement.

We hereby confirm that we do not and will not illegally employ any personnel. We also confirm that we will pay and remunerate our staff on time and in accordance with UK minimum wage requirements.

We undertake to impose the obligations contained in this document, including the Important Notice, on our subcontractors.

Failure on our part to fully comply with obligations of the country and/or to provide Bertsch Energy GmbH & Co KG with the information/documents necessary for the various reports/obligations gives Bertsch Energy GmbH & Co KG the right to terminate the contract with immediate effect. In the event of an immediate termination of the contract, Bertsch Energy GmbH & Co KG reserves the right to claim damages for any Loss that Bertsch Energy GmbH & Co KG could suffer as a result of non-compliance with the obligations described herein and/or other statutory obligations by us or our subcontractors.

Should Bertsch Energy GmbH & Co KG determine that we have not complied with our obligations, Bertsch reserves the right to take contractual and/or legal action for any Loss. We acknowledge and agree that Bertsch Energy GmbH & Co KG will have the right to suspend payment of our invoices until any failure to comply with our obligations has been remedied or it has been determined by the relevant authority or an unappealable judgement of a court of competent jurisdiction that no failure to comply has occurred. Any amounts so withheld will not yield any interest.

Created in _____, on _____

(Signature and/or stamp)