



Immigration Update: The MAC Report on EEA migration in the UK 6th November 2018

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Immigration Update: The MAC Report on EEA migration in the UK

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up to date as of **31st October 2018**

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Who are we?

Five Paper

- Barristers at Five Paper offer clients an in-depth knowledge in several specialist practice areas.
- Satinder Gill and Ian Wright head the Business Immigration and Regulatory Team which advises international and UK businesses in commercial immigration matters in the education, professional sports and technology sectors, and investors and entrepreneurs moving to the UK.
- Both Satinder Gill and Ian Wright are recognised in the Legal 500 for their business immigration and regulatory work.

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The MAC report on EEA migration to the UK

Introduction

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Introduction

Webinar in 3 parts on the report of the Migration Advisory Committee (MAC) on EEA migration to the UK of 18 Sep 2018:

- Overview of the Points Based System.
- Key recommendations in the MAC report.
- Conclusions and next steps.

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MAC report

In July 2017, the Home Secretary commissioned MAC to report on EEA migration to the UK.

- Evidenced based report on impact of EEA migration to the UK.
- Recommendations to Government on the future of EEA migration to the UK.
- In time for run up to Brexit by Mar 2019 and for the period after the implementation period which as currently proposed by Government ends on 31 December 2020.

The Points Based System

An Overview

The Points Based System

The Points Based System (PBS) accounts for the majority of routes for work and student visas to the UK. The PBS is set out in 3 tiers:

- Tier 1 – for high value migrants
- Tier 2 – for skilled workers
- Tier 4 – for students (not covered in this webinar)
- Tier 5 – for temporary workers

PBS was introduced in 2008 and administered by Home Office. Applicable to migrants who are from outside of EEA or who cannot rely upon EU law rights or other routes for entry to UK with a right to work or study.

Tier 1

4 current routes in Tier 1:

- Exceptional Talent
- Graduate Entrepreneur
- Entrepreneur
- Investor

No employer sponsor required. MAC did not make any recommendations relating to Tier 1.

Tier 2

4 current routes in Tier 2

- General
- Sportsperson
- Minister of Religion
- Intra-Company Transfer (ICT)

Employers require a Home Office sponsor licence to sponsor a migrant under Tier 2 or most of routes under Tier 5.

Tier 2 (General)

- Tier 2 General subject to annual cap of 20,700 for new hires.
- Subject to a resident labour market test (RLMT).
- Higher earners exempt from cap and RLMT.
- Minimum skills and salary thresholds.
- Limited range of occupations suitable for sponsorship as set out in Home Office Codes of Practice. Jobs on shortage occupation list (SOL) exempt from RLMT.
- Immigration Skills Charge levied on employers who wish to sponsor skilled migrants.
- Settlement possible after 5 years subject to a higher threshold salary.

Majority of recommendations in MAC report relate to Tier 2 General.

Tier 2 (Intra-Company Transfer)

2 sub-categories under Tier 2 ICT:

- Long-term staff.
- Graduate trainees.

ICT for multi-national companies who wish to post existing employees overseas to UK branch.

No cap for ICT, but skills and different salary thresholds apply.

Not a route leading to settlement save in very limited circumstances.

Tier 5 Temporary Workers

6 routes under Tier 5:

- Creative and sporting worker.
- Charity worker.
- Religious worker.
- Government authorised exchange.
- International agreement.
- Youth mobility scheme.

A sponsor licence is required for each of the above categories, except for the Youth Mobility Scheme (YMS) which is instead based upon nationality / citizenship and is subject to an annual cap for certain nationals.

Tier 5 for entry for temporary purposes to the UK, up to 2 years depending on the route.

The MAC report

Key recommendations

Forward

The intention is to provide an evidence base for the design of a new migration system after the end of the implementation period in 2021 ... we are publishing our final report, focusing on our assessment of the impact of EEA migration and our recommendations for the UK's post-Brexit work immigration system.

From the forward

- MAC does not express a view on whether immigration should be part of the UK's negotiations with the EU on the terms of the UK's exit.
- MAC does recognise that potential access to the UK labour market would be of benefit to EU nationals and of value in the negotiations.
- MAC's recommendations are made on the basis that the UK will be able to decide the main features of its immigration policy.

Key Recommendations

We focus on 6 of the key recommendations in the MAC report:

- No preferential treatment for EU citizens for migration to the UK for work.
- Easier access to the UK labour market for higher skilled workers than lower skilled workers.
- Abolishing the current cap on sponsored visas under Tier 2 (General).
- Reduce the minimum skill threshold for sponsorship under Tier 2 and reviewing the SOL.
- Maintain the minimum salary thresholds for sponsorship under Tier 2.
- Abolish the RLMT or reduce the salary threshold for exemption from the RLMT.

We also look at other recommendations in the report.

1. No preferential treatment for EU workers

Given the assumptions about the UK's negotiating position, MAC recommends that EU workers are treated in the same way as workers from outside of the EU are currently treated.

Consequences:

- Immigration policy on net migration.
- Employers likely to require a sponsor licence to sponsor new EU workers after 2020.
- Resources of the Home Office and operation of the PBS.

2. Higher skilled workers

- Impact more beneficial than lower skilled workers in terms of public finances, innovation and productivity.
- Restrictions currently imposed on lower skilled migration may discourage higher skilled migration because of the administrative burden.
- Steps should be taken to minimize the burden for higher skilled migration.
- Applications may/should therefore be streamlined under Tiers 1 and 2.

3. Abolition of cap on Tier 2 (General)

- Current annual cap of 20,700 new hires each FY for jobs paying less than the higher earner rate (£159,600 gross pa) for skilled workers outside the EU.
- Actual numbers of Tier 2 (General) visas are far in excess as some Tier 2 migrants are not subject to the cap, including higher earners and those switching in-country.
- Abolition is recommended because it does not encourage higher skilled workers.
- Abolition may require Government to reconsider its current policy to reduce net migration to less than 100,000 pa.

4. Skill threshold

- Current skill threshold is set by reference to RQF level of a job, and has been at RQF level 6 (degree level jobs) since 2012.
- This policy based upon there being sufficient lower skilled migration from EEA countries.
- To avoid shortages in the labour market, MAC recommends Tier 2 should be opened up to jobs at RQF level 3 or above.
- Additional 142 (lower skilled) occupations would be available for sponsorship under Tier 2.
- Important question raised – should SOL also cover jobs below RQF level 6?
- MAC to report on the SOL in Spring 2019.

5. Salary threshold

- Current salary threshold is £30,000 gross pa, save for new entrants when it is £20,800.
- In either case, this is subject to the minimum salary stated in the relevant codes of practice.
- There is a still higher threshold for settlement applications.
- MAC recongises existing thresholds will be difficult to meet for medium skilled jobs so threshold will place upward pressure on earnings (said to be a good thing).

6. Resident Labour Market Test

- RLMT requires employers to advertise a job to the settled workforce for 4 weeks before they can sponsor a migrant.
- Applies to Tier 2 (General) and similar provisions under other routes
- Often criticized, MAC recommends abolition.
- If not abolished, then MAC recommends lowering the higher earner exemption to salaries of less than £50,000 gross pa. This would be a significant change and could also lead to end of RLMT under Tier 2 (General).

Immigration Skills Charge

- The ISC is levied at £1,000 pa for medium or larger sponsors and £364 pa for small or charitable sponsors. The ISC is payable for sponsored migrant.
- MAC recommends ISC is applied to sponsorship of EU migrants and under post-Brexit work permit scheme.
- MAC does not recommend any increase to the ISC as it is likely to apply to a significantly increased number of workers.

Sector based schemes

MAC does not recommend introducing a sector based scheme for lower skilled workers

- Except potentially for SAWS (agricultural workers).
- ONS reported 99% of seasonal agricultural workers are from EU.
- In return for SAWS, MAC recommends sector should pay by means of a higher minimum agricultural wage.
- Pilot scheme was introduced in September 2018 for 2,500 non-EU migrant seasonal horticultural workers.

Tier 5 YMS backstop

The Youth Mobility Scheme currently permits up to 60,000 entrants pa from limited number of countries to enter the UK for work.

- YMS provides for a one off visa for 2 years without the need for sponsorship.
- Extending YMS is relatively easy and cheap and could help employers to recruit lower skilled migrant workers.

Conclusions

- Government's response to recommendations in MAC report will depend upon its exit negotiations with EU.
- Currently, statements of ministers supportive of recommendations in MAC report.
- No preferential access to UK labour market for EU nationals fits UK Government's negotiating position on freedom of movement.
- If PBS is extended to EU and annual Tier 2 (General) cap is abolished, this must be reconciled with current policy to reduce net migration to less than 100,000 pa.
- Changes focus on Tier 2 and consequent advice to simplify system of sponsorship and reduce bureaucracy.
- No recommendations currently on Tier 1 of PBS, including Entrepreneur and Exceptional Talent routes, despite suggested reforms to Entrepreneur route as long ago as October 2015. Opportunity missed.

Next steps

- Government likely to formulate policy once UK's exit agreement has been negotiated with EU.
- Reform through changes to the Immigration Rules.
- Government due to publish details of a route to replace / reform Tier 1 Graduate Entrepreneur in Spring 2019.
- We will continue to post on latest developments.

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