



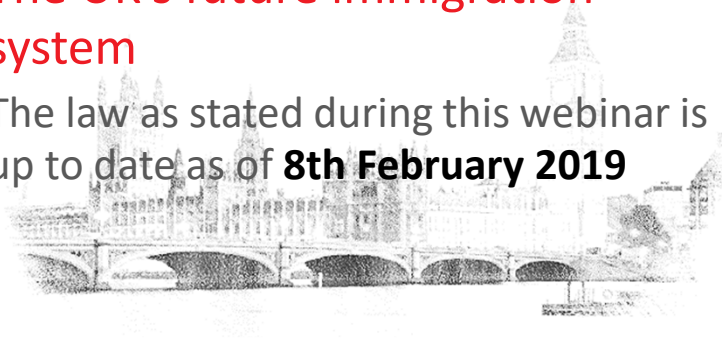
The UK's future immigration system

22nd February 2019

Before viewing this webinar, please visit www.lexiswebinars.co.uk/test-your-system to ensure that your network and PC are configured correctly.
Tip: Press F11 on your keyboard to enlarge the webinar player.

The UK's future immigration system

The law as stated during this webinar is up to date as of **8th February 2019**



Satinder Gill

Barrister
Five Paper

Ian Wright

Barrister
Five Paper



LexisNexis® Confidential

3

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.

LexisNexis® Confidential

4

The UK's future immigration system

Introduction

LexisNexis® Confidential

5

Introduction

Webinar in 4 parts on the UK's future immigration system:

- Overview of current system for work and business to UK
- Recommendations in Sep 2018 MAC report
- Dec 2018 White Paper
- Further proposed changes

LexisNexis® Confidential

6

The Current System

An Overview

LexisNexis® Confidential

7

The Points Based System

- Main routes for work, business and study in UK under Points Based System (PBS). The PBS is set out in 4 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 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.

LexisNexis® Confidential

8

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. However, Home Office had proposed reform of 3 routes.

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 was substantially reformed in Apr 2017.

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 (degree level) and salary thresholds (£30K).
- Limited range of occupations suitable for sponsorship – see 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 and proposals in White Paper 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 overseas employees 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.
- No RLMT test required for ICT.

Tier 5 Temporary Workers

- 7 routes under Tier 5:
 - Creative and sporting worker.
 - Charity worker.
 - Religious worker.
 - Government authorised exchange.
 - International agreement.
 - Seasonal worker.
 - 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

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 UK.
 - Recommendations to Government on future of (1) EEA migration to UK and (2) UK's immigration system

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.

Key Recommendations

- We focus on 6 key recommendations in MAC's report:
 - No preferential treatment for EU citizens for migration to UK for work.
 - Easier access to UK labour market for higher skilled workers than lower skilled workers.
 - Abolishing current cap on sponsored visas under Tier 2 (General).
 - Reduce minimum skill threshold for sponsorship under Tier 2 and reviewing SOL.
 - Maintain minimum salary thresholds for sponsorship under Tier 2.
 - Abolish RLMT or reduce the salary threshold for exemption from RLMT.
- We also look at other recommendations in the report.

1 No preferential treatment for EU workers

- MAC recommended that EU workers are treated in 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 Home Office and operation of 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 administrative burden.
- Steps should be taken to minimize 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 EEA.
- 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 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.
- 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 relevant codes of practice.
- There is a still higher threshold for settlement applications.
- MAC recognises 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 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 higher earner exemption to salaries of less than £50,000 gross pa. This would be a significant change and could also lead to effective end of RLMT under Tier 2 (General).

Immigration Skills Charge

- ISC is levied at £1,000 pa for medium or larger sponsors and £364 pa for small or charitable sponsors. ISC is payable for each sponsored migrant.
- MAC recommends ISC is applied to sponsorship of EEA 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 55,000 entrants pa from limited number of countries to enter UK for work.
 - YMS provides for a one off visa for 2 years without need for sponsorship.
 - Extending YMS is relatively easy and cheap and could help employers to recruit lower skilled migrant workers.

The White Paper

Key proposals

LexisNexis® Confidential

27

White Paper Cm 9722

- White Paper published 19 Dec 2018.
- Based on assumption that withdrawal agreement and an implementation period runs until 31 Dec 2020.
- Does not set out Government's proposals in the event of a no-deal Brexit.
- Consultation over the next 12 months, including in particular on the salary threshold for Tier 2 General.

LexisNexis® Confidential

28

White Paper Key Proposals

- Key proposals in the White Paper:
 - Freedom of movement will end on 31 Dec 2020 and the same immigration rules will apply to all migrants from 2021
 - Reciprocal arrangements for short-term visits and intra-company transfers between UK and EU companies
 - Skilled migrants will be considered under Tier 2 General which will be reformed with lower skills threshold, abolition of RLMT, and removal of annual cap, but salary threshold under review
 - Only certain routes will lead to settlement under Tier 2
 - Lighter touch sponsorship system, 2-3 weeks to recruit a skilled migrant under Tier 2
 - Temporary worker route for 12 month entry for lower skilled jobs with 12 month cooling off period and review by 2025

LexisNexis® Confidential

29

Reform of Tier 2

- Government has accepted the key recommendations from MAC report and focused in White Paper on further reform of Tier 2.
 - Skills threshold to lowered to RQF level 3
 - RLMT to be abolished
 - Annual cap to be removed, so monthly allocation process to go as well
 - Impact on Government policy of reducing net migration
 - Salary threshold under review - only key MAC recommendation not taken up re Tier 2 General

LexisNexis® Confidential

30

Post-study leave

- Welcome proposals for post-study leave:
 - 6 months for students at bachelor's or masters' level
 - 12 months for PhD level
 - Ability to switch into skilled work 3 months before end of course and to apply for LTE 2 years after graduation

Certain routes will lead to settlement

- Currently, migrants with immigration permission under Tier 2 General have a path to settlement after 5 years' continuous residence. There is a limit on immigration permission under Tier 2 General of 6 years.
- Tier 2 ICT does not lead to settlement save in very limited circumstances.
 - Does this proposal mean that only certain jobs under Tier 2 General will lead to settlement?
 - Significant change if so and will have impact on ability to recruit to those jobs.

Streamlined sponsorship

- Commitment to reduce administrative and financial costs of sponsorship by making the system more efficient:
 - Reduce time taken to sponsor a skilled migrant from 2-3 months to 2-3 weeks
 - Entitlement to switch into Tier 2 General from certain low-risk countries
 - Greater use of digital records by sponsors and migrants
 - Recommendations from industry and key stakeholders – digital grant of immigration permission?

Temporary worker route

- This proposal suggests Government add a sub-category to Tier 5 for lower skilled workers.
 - Proposal for grant of 12 months leave, with cooling off period of 12 months
 - Means no path to settlement under route
 - Will it require sponsorship?
 - Government has recently introduced a new sub-category to Tier 5, seasonal workers limited to employment by 2 approved employers in horticultural sector.

Further proposed changes

Key announcements & developments

LexisNexis® Confidential

35

Forthcoming changes to Tier 1

- MAC report and White Paper focus on Tiers 2 and 5
- In Jun 2018, Home Secretary announced a new start up visa route which is in reality a reform of Tier 1 Graduate Entrepreneur, due to launch in Spring 2019.
- On 6 Dec 2018, immigration minister announced a reform of Tier 1 Entrepreneur, which is to be replaced by a new Innovator route.
- Also on 6/7 December 2018, it was widely reported that Tier 1 Investor was to be immediately suspended due to AML concerns, but this appears to have been a premature announcement and Home Office confirmed on 11 Dec 2018 that route was still open, but will be reformed to address AML issue.

LexisNexis® Confidential

36

GET IN TOUCH

SATINDER GILL

Five Paper
Barrister
E:satindergill@fivepaper.com
T: +44 (0) 20 7815 3200

IAN WRIGHT

Five Paper
Barrister
E:ianwright@fivepaper.com
T: +44 (0) 20 7815 3200

Upcoming Brexit webinars

- The European Union (Withdrawal Agreement) Act 2018 (2019) – **11th February 2019**
- Brexit – Spring 2019 Update – **13th May 2019**
- The Brexit Transition Period (2019) – **14th June 2019**
- The rights of EU citizens after the transition period (2019) – **8th July 2019**
- Brexit – Summer 2019 Update – **24th July 2019**
- Brexit – Autumn 2019 Update – **14th October 2019**
- Police and Judicial cooperation in criminal and civil matters (2019) – **11th November 2019**
- The latest on data protection post Brexit (2019) – **2nd December 2019**
- Brexit – Winter 2019 Update – **18th December 2019**



On Demand Brexit webinars

- UK immigration after Brexit: an intermediate solution – Available until 30th April 2020
- Brexit and the legislative process – Available until 21st September 2020
- Brexit: Risk analysis and contingency planning – Available until 28th September 2020
- Movement of EU National in the UK: pre and post Brexit – Available until 2nd October 2020
- The European Union (Withdrawal) Act 2018: understanding the key functions, concepts and interpretation – Available until 12th October 2020
- Immigration Update – The MAC Report on EEA migration in the UK – Available until 6th November 2020
- Brexit and the consequences for business immigration (2019) – Available until 5th February 2021
- Brexit and dispute resolution (2019) – Available until 6th February 2021

LexisNexis® Confidential

39

Thank you and reminders

- This webinar is designed to help solicitors meet requirements A2 (Maintain competence and legal knowledge) and A4 (Draw on detailed knowledge/understanding) of the SRA's Statement of solicitor competence. You may also use the quiz, which can be accessed via the "Take a quiz" link on the webinar details page, to reinforce your understanding of the webinar content. You should answer 7 out of 10 questions correctly and will have two attempts at the quiz.
- Please submit feedback via the survey screen.
- This webinar will be archived immediately, and will be available to view on-demand for 24 months.
- A transcript of the webinar can be made available on request within 48 hours.
- You can use the training and evaluation record form which is included in the supporting materials for this webinar to log this training activity and how it relates to the continuing competences that the SRA requires from all solicitors.

If you have any queries, please contact us:

webinars@lexisnexis.co.uk

+44 (0) 330 161 2401



@LexisUKWebinars

lexisnexis-webinars

LexisNexis® Confidential

40

**Thank you for attending.
We hope you've enjoyed this session.**



Bespoke in-house training solutions

- Tailored for your business
- Extensive portfolio of expert presenters
- All areas of legal practice covered
- Location of your choice

Find out more - <http://www.lexiswebinars.co.uk/in-house-training>

