

We've been [updating](#) clients and contacts over the Summer on the Migration Advisory Committee's mandate from the Government to review Tier 2 of the UK's Points Based System "with a view to significantly reducing net migration to the UK". On 8 September we hosted a meeting with the MAC and senior representatives of numerous international companies with strong UK presences across a wide variety of industry sectors. This gave them the opportunity to voice concerns and raise questions to the MAC about the proposed changes to Tier 2 and also to give it specific examples of how the changes would affect their businesses. On 25 September we submitted our response to the MAC's call for evidence. It took into account opinions canvassed from clients and contacts, including those who attended our meeting with the MAC. Here is an executive summary of our response.

The main measures to restrict both Tier 2 General and Tier 2 ICT visas put forward by the Government for consideration are:

- **Prioritising those Tier 2 migrants of greatest benefit to the UK by reference to their salary level**

The general view is that salary level is far too blunt an instrument by which to determine the issue of "greatest benefit to the UK". It fails to take into account the range of salaries paid across different sectors and different regions within the UK. It would also favour those businesses which are most able to pay high salaries, not those which are in most need of the specialist skills which a particular migrant might provide. It is of particular concern for clients with international graduate programmes or where the roles require extensive specialist training but are nonetheless not particularly well paid (for example, architecture and engineering).

- **Limiting Tier 2 to "genuine skills shortages", "highly specialist experts" and "high-value roles"**

None of these phrases are defined in the MAC's call for evidence – any use of these terms would require the issuance of clear guidance to employers. It may be argued that the cost, complexity and administrative burdens of the existing Tier 2 procedures are already a significant deterrent to seeking a Tier 2 visa unnecessarily and nowhere in the call for evidence is it suggested that there is a material problem with these visas being applied for gratuitously. The inevitable conclusion must be that employers applying for these visas already consider there to be a genuine skills shortage, that the migrant in question is highly specialist and that the role is of high value to their business. It follows that any significant limitation on the breadth of those phrases would be denying UK industry the ability to hire migrants whom it currently genuinely (and seemingly reasonably) believes that it needs.

- **Tightening the Tier 2 ICT provisions**

There should be no change to the eligibility criteria under Tier 2 ICT. This route is vital to global companies to ensure the transfer of knowledge between entities, and to fill short-term skills gaps with experienced overseas employees. Multinational companies here (whether or not they are also headquartered in the UK) need to be secure in the knowledge that they can transfer their existing staff to the UK, if needed, bringing valuable company knowledge and expertise.

The Tier 2 ICT route does not lead to permanent residency in the UK and Tier 2 ICT migrants often hold vital proprietary knowledge of the company they work for. It is therefore very hard to argue that this population is in any way displacing settled workers.

- **Limiting the length of time for which occupations can be classed as suffering shortages**

The consistent opinion of our clients was that an occupation should remain on the Shortage Occupation List until there are no longer any shortages in that occupation. It is fully accepted that roles included on the List should be subject to regular review, but imposing a fixed period appears to be a lazy alternative to carrying out a proper assessment as to whether a skills shortage still exists. Limiting a role's time on the List to a fixed period would be subordinating the genuine needs of UK businesses to administrative convenience or political expediency and, we contend, a regrettable disconnect between the law and the best interests of the UK economy.

- **Limiting the rights to work in the UK of the dependants of Tier 2 migrants**

Our clients overwhelmingly indicated that restricting or preventing dependants from working in the UK would deter the main Tier 2 applicant from coming to this country at all. Our estimate is that over 50% of our clients' employees arriving under Tier 2 bring their dependants with them to the UK. That deterrent effect would therefore be material and could well both exacerbate existing skills shortages and limit employment opportunities for UK nationals.

Overall, the most depressing aspect of these proposals is their obvious inadequacy to achieve their stated objective, or at least not without material damage to UK Limited and UK Plc. It has to be noted that there were just over 50,000 Tier 2 visas granted in 2014 (excluding dependants) but, of that figure, only around 15,000 were granted under the Tier 2 General category. Tier 2 General is the only work visa leading to permanent settlement in the UK and therefore the only category of real relevance to net migration (the vast majority of Tier 2 ICT visas allow for a maximum stay of only five

years and most ICT assignees stay for shorter periods). To put this in context, even if one includes dependants who accompany the main applicant to the UK, Tier 2 General accounted for only around 10% of net migration to the UK in 2014. If these measures reduce Tier 2 General migrants by 10%, therefore, that will have taken just 1% off net migration to the UK. And even if temporary assignments under Tier 2 ICT **are** arguably relevant to net migration, the proposals will have a similarly negligible effect. By contrast, according to the Office of National Statistics, the number of non-UK EU nationals employed in April to June 2015 had grown by almost 200,000 over the same period in 2014. The response of our clients is clear – while no one favours the employment of migrants in preference to suitably-qualified local staff, any measure which reduces UK businesses' access to the best talent, home-grown or foreign, will represent a real threat to our economic prospects. These measures are not the way forward.

If you have any questions relating to the review of Tier 2, please contact the lawyers listed below.

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