

Mobility: immigration alert

January 2020

United Kingdom

Migration Advisory Committee report on the UK's new immigration system

Executive summary

The Migration Advisory Committee (MAC) has released its report making recommendations for how the UK's immigration system should be altered from 2021 to accommodate EU citizens once freedom of movement has ended.

There were 2 specific questions MAC were asked to address:

- ▶ Where the minimum salary for Tier 2 should sit; and
- ▶ How an Australian style points-based system could operate in the UK.

We can now expect a formal set of proposals from the government perhaps within the next few weeks.

Why is this report important?

With the UK about to leave the EU, and the transitional arrangements that maintain Freedom of Movement lasting only until 31 December 2020, the UK Government has a short period of time to outline a new post Brexit immigration system.

The Government's commission to the MAC focused attention on a crucial element of the current regime for economic migration which is the salary threshold. This threshold sets the bar for skilled workers coming to the UK from outside the EU (and, post-Brexit, from the EU as well) and therefore effectively acts as the primary measure of economic control for inbound migration.

The commission also raised the more academic question of what exactly a so-called "Points-based System" could and should look like. The Australian system, as an often-cited exemplar of a workable points-based control, identifies characteristics to evaluate applicants and effectively sets a hierarchy for prioritising applications.

The second part of the commission therefore forms part of the crucial conversations now taking place in the context of Brexit - what will the immigration system look like from January 2021?

The following summary therefore outlines the key findings of the MAC in the context of these two issues and looks to how the findings of the MAC might drive the next stages of the conversation on a post-Brexit immigration system.

Key findings and recommendations

Tier 2 and those coming to the UK with a job offer

The system should retain the existing Tier 2 (General) framework which acts as an employer-sponsored route with a salary threshold.

- ▶ Minimum salary threshold
 - For 'Experienced Workers' (broadly speaking, most applicants aged 26 or over) should fall from £30,000 per annum to £25,600, this being the 25th percentile for all jobs skilled to RQF level 3 or above. Thresholds associated

with specific occupations (i.e. those specified within individual SOC codes) should remain, and applicants would still need to meet the higher of the general threshold (£25,600) and the occupation threshold (varies widely between occupations);

- For 'New Entrants' (most applicants aged 26 or under), should be fixed at 70% of the 'Experienced Worker' general threshold (i.e. £17,900) and occupational thresholds. The threshold should apply to individuals for up to five years, rather than the current three, although time spent on the recently announced two year Post-Study Work visa should contribute to the five year total.
- ▶ Pro-rata of salary thresholds
 - The general salary threshold (£25,600 for Experienced Workers or £17,900 for New Entrants) should only be pro-rated for individuals switching to part-time work after becoming a parent
 - In other scenarios, it should not be permitted to pro-rate salary thresholds for part-time working patterns.
- ▶ What can count towards the salary threshold
 - Only salary should be considered when calculating an applicant's remuneration package for the purposes of meeting the salary thresholds.
 - Allowances*, equity, and employer pensions should all be excluded, as the MAC argues that counting these forms of remuneration can lead to imbalance in the market.
- ▶ Shortage Occupation List (SOL)
 - On the basis that the benefits of a role being on the SOL will be diminished under the new system (as the annual cap and RLMT requirements are being removed), the MAC has suggested that the Shortage Occupation List not be reviewed at this time.
- ▶ Regional variation
 - With regard to regional salary variation, the MAC does not propose adjusting the minimum salary thresholds by region but has reiterated its previous proposal for a separate pilot visa for 'remote areas' of the UK, possibly with lower salary thresholds. The Government has previously suggested that they intend to pursue this idea.

*It is currently unclear whether the recommended prohibition on including allowances in meeting the salary thresholds will extend to the Tier 2 (Intra-Company Transfer) scheme, where it is common practice to pay assignees allowances to cover accommodation and increased cost of living.

Those who wish to come to the UK for work without a job offer

- ▶ The MAC commented that the bar for entry for those without a job offer is set too high under current Tier 1 (Exceptional Talent) route (see below).
- ▶ Although the MAC has not recommended the UK adopt an Australian style points-based system per se, they have:
- ▶ Recommended a highly skilled Points-Based System whereby individuals who meet a minimum points threshold can submit an 'Expression of Interest' (EOI) which are then entered into a 'pool'
- ▶ Points would be gained through characteristics such as language skills, qualifications, age, having studied in the UK and experience and skills in priority areas such as STEM and Creative.

Each month, the EOIs with the highest points would be drawn from the pool, with applicants then invited to submit a full visa application. The number of EOIs drawn each month would be determined with reference to an annual cap on numbers.

A Global Talent Visa

Government also very recently announced the introduction of a "Global Talent Visa" to replace the Tier 1 Exceptional Talent route from 20 February 2020, removing the cap on numbers (currently 2,000 a year) and expanding on the scheme it replaces by adding an additional body which can endorse applicants - UK Research and Innovation.

Next steps

It is important to note that at this stage, the MACs recommendations are just that - recommendations. While the Government has historically tended to agree with the MAC's proposals, it has not always implemented every suggestion, and often introduces policy that it believes will achieve the same goals but by different means. We now await the Government's response to the MAC's recommendations. This typically arrives within a matter of weeks and should give a good indication of whether (and how) we will see these proposals implemented. Detailed Government policy announcements and an immigration white paper are likely to be published no later than this Spring.

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