

Migration to the future

Samar Shams considers what the UK's immigration policies may look like when free movement of EU nationals ends



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'Employers reliant on low-skilled workers face difficulties. Neither the MAC nor the information that has thus far dribbled out from government indicates there will be much provision for low-skilled worker visa routes.'

In September 2018, the Migration Advisory Committee (MAC) published its long-awaited report advising the government on a new immigration framework. At the time of writing, the Prime Minister and Home Secretary have mentioned, in speeches and communications with the press, immigration policies they might adopt. The government has not yet published a promised white paper on immigration.

The proposals would alter or replace the current immigration routes for non-EU migrants and apply equally to EU migrants arriving in the UK on or after 1 January 2021. EU migrants will not receive preferential treatment unless the UK wants to offer such treatment as a negotiating tool. EU migrants arriving before 1 January 2021 are required to register under the UK settlement scheme if they plan to remain in the UK.

Expansion of sponsorship to EU nationals

The potential changes mean that more businesses would need a sponsor licence than previously, including those that are likely to hire new arrivals from the EU in coming years. The MAC suggests a new system that caters to high- and medium-skilled workers, with the current Tier 2 General category for sponsoring skilled workers as the basis of a new work authorisation scheme. In its May 2018 response to the Home Affairs Committee inquiry into the Home Office's capacity to deliver Brexit, the Home Office stated it would do away with the 'out-dated terminology of tiers and points-scoring'. It now seems likely that the government will adapt the current sponsorship system, rather than replace it entirely. Businesses

that already have sponsor licences should not lose the time and money they invested in obtaining and retaining their licences.

Small and medium-sized businesses to benefit from streamlining

Proposed simplifications would make it easier for small and medium-sized businesses to access talent from overseas, as sponsorship will be more workable for them. The MAC acknowledges that:

It is much harder for small and medium-sized businesses to use the current system than it is for a large organisation.

The government accepts that it must streamline sponsorship processes, since bringing EU nationals and their family members under the current sponsorship regime would catalyse a breakdown of its fragile systems.

It is therefore likely that the government will implement the MAC's recommendation to abolish the cap on the number of new hires from outside the EU who are paid less than £159,600. A few thousand of the 20,700 places are available each month over the course of a year. Many businesses' recruitment efforts were frustrated in recent months when the cap was consistently being met. The Home Office has had to exclude certain professions from the cap whenever it has prevented employers from hiring the talent they needed.

One effect of the cap is to multiply the types of work authorisation that a sponsor can assign, complicating matters for businesses considerably. The cap also necessitates an additional step in the sponsorship process, where a sponsor requests permission from the Home Office to authorise

the prospective migrant to work. This additional step involves a rigid timeline.

The suggested change that would have sponsors of skilled workers cheering in the streets is

Gratuitous complexities abound, such as the requirement to post most vacancies on the government's 'Find a Job' website, where very few highly skilled workers of any nationality would search for a job. Rolling

tiptoes through all those requirements correctly, it can still fall down on record-keeping requirements, where the Home Office will take action against a sponsor for details such as failing to take a screenshot of an advertisement.

The government might employ a hybrid policy, including salary thresholds and some form of the RLMT. The MAC suggests expanding sponsorship to medium-skilled roles but the government has not mentioned medium-skilled jobs. Rather, it has made statements about salary and might use salary as a proxy for skill level. A Conservative Party statement shared by the press on 2 October 2018 states:

Due to the RLMT, gratuitous complexities abound, such as the requirement to post most vacancies on the government's 'Find a Job' website, where very few highly skilled workers of any nationality would search for a job.

the abolition of the Resident Labour Market Test (RLMT). Sponsors must comply with RLMT processes to demonstrate that there are no suitable settled workers in the UK before hiring a non-EEA national to fill certain high-skilled roles. The MAC states that:

... the bureaucratic costs of the RLMT outweigh any economic benefit.

recruitment practices justifiably prevalent in the real world are given short shrift under the RLMT. Sponsors are easily tangled in a web of considerations about the duration of advertisements' validity and of their sponsorship. They also need to take care to comply with the schedule for requesting permission to take a place falling under the cap and restrictions on travel and start dates. If a sponsor

Applicants will need to meet a minimum salary threshold to ensure they are not competing for jobs that would otherwise be recruited in the UK.

The statement does not explain how a minimum salary threshold would achieve that goal. The government currently uses the RLMT to ensure

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that jobs could not be filled from the settled UK workforce.

Businesses that depend on highly skilled jobs attracting a low wage would be disadvantaged if salary level is used as a proxy for skill level. Affected sectors would be academia, science and technology, engineering and healthcare.

The MAC argues that if the RLMT is to be maintained, it should apply to far fewer jobs, ie only those with salaries lower than £50,000. The government may take this advice and retain some form of the RLMT for lower-paid jobs.

Family is forever, so are fees

While the MAC recognises the burden of the sponsorship system, it makes no concessions to businesses over the punishingly high fees and costs. For example, the MAC defends the Immigration Skills Charge and argues that it should apply to EEA nationals. Therefore, the financial disadvantage to small and medium-sized enterprises is likely to continue.

Sponsorship might also expand to include dependants. A Conservative Party press release preceding the party's 2018 conference stated that highly skilled workers' family members could only come if sponsored by the individual's future employer. No further details were provided.

All is fair in trade and immigration policy

Where the UK manages to negotiate close trading relationships, those countries' nationals might benefit from streamlined processes for working in the UK. The current intra-company transfer visa route allows multinational companies to transfer staff to the UK without having to deal with the complications posed by the RLMT or the cap on new hires. The MAC suggests no changes to the intra-company transfer route whereby a multinational company can transfer employees to its UK branch.

The government's white paper of July 2018, which covers proposals for a future relationship with the EU but does not focus on immigration, proposes reciprocal mobility arrangements with the EU and other close trading partners, to allow businesses to provide services and move talent. That white paper proposes

that the reciprocal schemes be based on the current intra-company transfer route. Similar statements were made around the time of the Conservative Party conference.

As the main advantages of the intra-company transfer scheme are not having to deal with the RLMT

The current intra-company transfer visa route allows multinational companies to transfer staff to the UK without having to deal with the complications posed by the RLMT or the cap on new hires.

or the cap, and the MAC suggests abolishing both, it is not clear what advantages the reciprocal arrangements would offer. The proposal might indicate that the RLMT will be retained for jobs below a certain salary threshold; the advantage of the reciprocal arrangements could then be exemption from the RLMT, regardless of salary level.

Low-skilled need not apply

Employers reliant on low-skilled workers face difficulties. Neither the MAC nor the information that has thus far dribbled out from government indicates there will be much provision for low-skilled worker visa routes.

The MAC acknowledges a sharp fall in migration flows from the EU and the most recent data from the Office for National Statistics indicates the largest fall in the number of EU nationals working in the UK since records began in 1997. Mysteriously, the MAC nevertheless argues that the current stock of low-skilled workers from the EU will remain in the UK, and that the stock will be replenished by family members joining them. The MAC also advises against basing a low-skilled work route around sectors.

The only exception is a pilot programme allowing sponsorship

of certain non-EU seasonal workers in the edible horticulture industry. The pilot allows for only 2,500 workers to come each year, for six months at a time. In an interview during the Conservative Party conference, Theresa May highlighted the temporary nature of the work

under the pilot scheme and ruled out similar exemptions for lots of different sectors that rely on low-skilled migrant workers.

Manufacturers, health and social work organisations, accommodation and food service businesses and construction companies will all be affected. The agricultural sector too is likely to continue to suffer labour shortages, as the numbers of migrants covered by the pilot programme are low.

When the government announced the pilot early in September 2018, there was speculation that Tier 3 of the Points Based System, which is the tier for low-skilled workers, would finally open. Tier 3 has never been made operational because sufficient low-skilled labour could be sourced from the EU. It is now unlikely that Tier 3 will ever become active. The pilot scheme will be run under Tier 5, the tier for temporary workers.

A leap into the unknown

We finally have some information about the shape of the future immigration system. The new policies will affect migration flows and the UK economy. The government is clear in welcoming highly skilled migrants into the UK's future. How much they will want to come, and what kind of environment they will find when they arrive, is unknown territory. ■

Reference point

To download the MAC report, visit www.legalease.co.uk/mac-report.