

Migration Advisory Committee Call for Evidence – Response of the Immigration Law Practitioners' Association

ILPA is a professional association with around 1,000 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups, including the Employer's Task Force and Corporate Stakeholder Group. In addition, ILPA representatives meet regularly with those working on different aspects of the Points-Based System.

Q1 - Skilled occupations (see section 2 of the Committee's report)**1a) Do you agree with our proposed indicators of whether an occupation is skilled to NVQ level 3 or above?****Tick Boxes *No***

Although the proposed classification of occupations under the Standard Occupation Classification (SOC) will provide greater clarity to employers as to which occupations are considered to be skilled and are therefore eligible for sponsorship under Tier two, the overall process is arbitrary and will lead to anomalous results.

The “top down” approach may inevitably lead to some occupations being classified as unskilled and excluded which are skilled in nature (e.g. chefs) and the inclusion of unskilled occupations (e.g. bar staff).

Furthermore, the impact of EU accession has resulted in situations where highly qualified skilled individuals are working in unskilled occupations that could result in certain occupations fulfilling the criteria (e.g. occupations would meet the 75% threshold for classification as skilled, if there was an increase in individuals with qualifications above NVQ Level 3 becoming part of the pool of labour).

1b) If not, which alternative or additional indicators should we be considering?

Qualitative evidence is necessary rather than reliance on indicators. “Bottom up” evidence from employers, trade bodies, skills councils, sectoral and stakeholder engagement, employer visits and research should be considered to include/exclude occupations to prevent the above anomalous results.

There should be a mechanism for sub-categories to be established within an individual SOC classification where evidence is accepted that a particular occupation is skilled.

1c) What evidence might we use for this?

See response to 1b above. Evidence from Employers, trade bodies, skills councils, sectoral and stakeholder engagement, employer visits and research and qualitative sources.

Q2 - Shortage occupations (see section 3 of the Committee's report)

2a) Do you agree with our proposed indicators of whether skilled occupations are experiencing a shortage of labour?

Tick Boxes *None of the above*

2b) If not, are there alternative indicators we should be considering?

A mechanism needs to be established so that the views of the key players and stakeholders within each industry can quickly feedback any changes they are experiencing in the labour market.

A useful reference point is Sir Reg Empey's Ministerial Statement on the British-Irish Council Demography Sectoral meeting made in the Northern Ireland Assembly on 15 April 2008. He makes the point that there is no single pattern with labour shortages and that such shortages operate across the whole labour market.

Such a mechanism could report on a quarterly or bi-annual basis as operates within New Zealand, see e.g. www.immigration.govt.nz/migrant/general/generalinformation/review.htm

2c) What evidence might we use for this?

- Occupation fill rates
- Industry surveys
- Job Centre Plus vacancy data.
- Region-specific evidence e.g. consultative mechanisms established by the Northern Ireland Executive, Scottish Executive, Welsh Assembly Government.

Q3 - Sensibly filling vacancies (see section 4 of the Committee's report)

3a) Do you agree with our proposed indicators of whether it would be sensible to fill a shortage of skilled labour by non-EEA migrants?

Tick Boxes - *None of the above*

3b) If not, which alternative indicators should we be considering?

The MAC has accepted that “sensible” is open to interpretation and is dependent on the prevailing Government immigration policy at the time. Therefore, it is imperative that the MAC is seen to be working in an independent manner.

At present, it is argued that individuals from EU accession states can fill a large proportion of the current vacancies. However, the Government has not yet been able to demonstrate empirical evidence to substantiate this claim given the lack of data at its disposal. There is currently no data on the number of EU accession nationals leaving the UK permanently, as there is currently no requirement to “de-register” from the Workers Registration Scheme (WRS).

Furthermore, the abolition of the Training and Work Experience Scheme (TWES) will undoubtedly impact on the hotel and hospitality sector. One particular well known hotel chain regularly advertises on Employer Direct and EURES, as well as instructing numerous recruitment consultants who specialise in hotel staff. In the majority of instances, the hotel chain in question receives applications from individuals who lack the knowledge/skill set and are deemed unsuitable for the vacancies (this also includes trainee positions). Despite efforts to source suitably qualified people from the UK and EU the hotel sector receives a very limited number of candidates from EU countries. Where EU nationals have been recruited, the period of employment is short and EU nationals often return to their home country once having earned some money. The hotel sector has indicated this practice is far from satisfactory and “not a stable component of the employment” workforce. There has been a huge increase in the number of hotels built in the UK resulting in more outlets fighting for the same staff.

In addition to the above, hotel and hospitality shift hours do not appeal to many, which has resulted in the hotel sector observing a trend of numerous hospitality staff leaving the sector, thus making shortages even more acute.

The above example clearly indicates that the MAC should therefore allow stakeholders to present evidence contradicting the prevailing thinking, such as the negative effects of not allowing non-EEA migrants to fill vacancies.

3c) What evidence might we use for this?

- **Evidence from industry bodies on the negative economic effects of not allowing non-EEA migrants to work (e.g. Ethnic restaurant industry – see press coverage such as <http://www.guardian.co.uk/uk/2008/apr/21/immigration.fooddrinks>)**
- **E-border data when available and with the appropriate consents.**

Q4 - Specific occupations or job titles

4a) According to our current criteria, do you wish to nominate specific occupations or job titles as suffering from a shortage of skilled labour that might sensibly be filled by non-EEA migrants? Please specify occupations or job titles according to the SOC2000 classification (Note: For a list and description of occupations at the 1 to 4 digit level, see *Standard Occupational Classification 2000: Volume 21 Structure and descriptions of unit groups*, Office for National Statistics (2000), ISBN 0 11 621388 4 http://www.statistics.gov.uk/methods_quality/ns_sec/downloads/SOC2000_Vol1_V5.pdf.)

For a complete list of job titles see *Standard Occupational Classification 2000: Volume 2 The coding index*, Office for National Statistics (2000), ISBN 011621389 2 http://www.statistics.gov.uk/methods_quality/ns_sec/downloads/SOC2000_Vol2_V6.pdf)

The following does not purport to be an exhaustive list, but we been alerted to the need for consideration to be given to the following as examples:

- Hotel and Hospitality Industry: Front Office/Night Audit Supervisor;
- Hotel and Hospitality Industry: Food and Beverage Supervisor
- Hotel and Hospitality Industry: Housekeeper
- Hotel and Hospitality Industry: Managers
- Engineering professionals
- Construction Managers
- Computer Industry: Tester Computer Software

Sub Categories:

- Performance Test Analyst/Lead
 - Retail Tester-Test Lead
 - SAP Tester/Lead
 - Test Engineer/Lead
- Actuary
- Piping Engineer (Plant Design & Piping Layout)
- Piping Designer
- Piping Stress Engineer
- Process Engineer
- Process System Design Engineer
- Control & Instrumentation Engineer
- Control Systems Lead Engineer
- Instrumentation Engineer
- Electrical Field Engineer
- Plant Design and Piping Engineer

4b) How does the occupation or job title you are suggesting satisfy *each* of our criteria in relation to “skilled”, “shortage” and “sensible”?

It is not possible to give a full response to this question in the timescales allowed, given the significant number of UK Border Agency consultations to which ILPA is asked to respond. We make the following observations:

Both recruitment and retention present employers with difficulties in fields such as those listed above. The EU resident labour market cannot, in the experience of employers represented by members, be relied upon to provide sufficient number of applicants for these jobs with the requisite language skills.

Another difficulty with recruitment from the EU resident labour market is that of retention. The experience reported to us by employers is that a significant proportion of, in particular, Accession State Nationals work in the UK for a limited period, to gain experience, improve skills and accrue savings. Equipped with these, they often return. Therefore in many cases

employers see non-EEA individuals as more likely to be retained by the company because they are making a longer term commitment to the UK.

Q5 - Government policies and other influencing factors

5a) Which specific Government policies or other factors do you think influence the availability of skilled labour in occupations where non-EEA migrants might otherwise sensibly fill shortages in the labour market?

Please see ILPA briefings and submissions on www.ilpa.org.uk for detailed commentaries on many aspects of the UK's managed migration policy. Among relevant policies and other factors we highlight:

- Government and other EU member States' policies toward allowing accession state nationals to work (contrast the provisions for Bulgarians and Romanians with those for the A8 for example)
- Overall immigration policy in relation to short term/long term migration (e.g. Students, youth mobility in the proposed Tier 5 of the Points- Based system, Tier 1 of the Points-Based system, sponsorship, removal of the Training and Work Experience (TWES) scheme)
- Education and training policies
- Prevailing economic conditions in the UK and other EEA states

These are canvassed in more detail in the ILPA submissions and briefings. For example the maintenance requirement currently operating in Tier 1 General will exclude many migrants and on a discriminatory basis, as highlighted in ILPA's submission in respect of the Tier 1 Equality Impact Statement.

5b) How large and what type of effect is this likely to be?

Again, we refer you to our detailed submissions and briefing papers. The following headline observations may be of use.

If other EEA States open up their labour markets then there is likely to be a smaller pool of EU labour.

Overall economic factors will have a push/pull effect. (this is receiving attention in the media, see for example articles on Polish nationals returning to Poland <http://www.timesonline.co.uk/tol/news/uk/article3378851.ece>)

Overall immigration policy-e.g. proposals to restrict Tier 5 of the Points-Based system to four countries but having the one year work restriction removed.

The maintenance requirement for Tier 1 and 2 will reduce the number of migrants able to relocate.

5c) On what timescale is it expected to be experienced?

The policies described above have ongoing effects. Please see detailed ILPA briefings and submissions highlighting the effect of specific policies.

5d) Which sectors and occupations do you consider are affected, and to what extent?

Sectors and occupations that have up to now relied on non-EEA labour to fill vacancies.

Hotel and hospitality sector: as referenced at 3b above, and despite considerable efforts to source suitable candidates from the EEA, it is becoming increasingly difficult to attract skilled workers from the EA to fill posts within this sector in the UK. There are a number of reasons for this not least because of shift work and the genuine lack of interest of working in this particular industry.

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