



The Law Society

Migration Advisory Committee

**Call for evidence on the level of the 2012/13 annual limit on Tier 2
and associated policies**

Submission by the Law Society

December 2011

SUPPORTING
solicitors

Introduction

The Law Society is the representative body for more than 140,000 solicitors qualified in England and Wales practising both at home and across the globe. The Society promotes the interests of the profession by providing advice, training, products and services to its members. It works to develop new legal markets and international networks through representation to governments, regulators and the wider business community.

The Society believes that that the immigration system should operate fairly, transparently and predictably. The Society has worked closely with government departments and agencies to identify and mitigate unintended consequences of the points-based system (PBS), and will continue to promote improvements to the system which ensure that UK law firms are not placed at a competitive disadvantage.

Summary

The legal services sector, with annual international earnings of £15 billion, contributes nearly 4% of UK GDP, much of which is generated by large City firms operating in a global marketplace. London has 20 per cent of the global legal market and is home to four of the world's top six law firms.

To contribute to economic growth within the UK, these firms should not be hindered from accessing and retaining the skilled staff which they require. Recruiting workers from outside the EEA is expensive and time-consuming. Firms do not incur relocation and associated costs lightly. They do so because they advise on complex matters spanning multiple jurisdictions, and they put together specialist teams from different practice areas and offices across their international networks for specific projects - combining the appropriate talent, experience and expertise needed to provide the best advice for their clients. Recruitment of the best talent from the global marketplace underpins the success of leading international law firms and their contribution to the UK economy.

UK law firms are keen to take advantage of opportunities in key emerging markets. Non-EEA recruits with the right language and cultural skills and relevant professional experience are a vital component of a firm's ability to remain competitive. For example, a firm which has merged with an Australian counterpart has told us that it intends to integrate the Asian section of its expanded business through a significant number of ICTs and long-term moves to its City offices. The staff which it will be bringing into London will be bringing intellectual capital to the UK and contributing tax revenues and spending their disposable income here. They are unlikely to be a drain on the public purse.

Alongside growth, the second major domestic economic challenge is rising unemployment, especially unemployment among graduates and other young people. The Tier 2 (General) category is specifically intended for migrants who 'have an offer of a skilled job that cannot be filled by a settled worker.'¹ It is therefore a prerequisite for a migrant's admission to the UK under this immigration category that they are not removing an employment opportunity for a resident worker.

The Government's commitment to reducing net migration to the tens of thousands is explicitly based on public concerns about immigration. Our submission is that such public concern is about illegal immigration, abuse of the immigration system and the associated calls upon public services, and the impact of EEA migration on resident workers' access to low and semi-skilled jobs. These concerns are not addressed by restrictions on the business migration routes for professionals coming into the UK from outside the EEA.

¹ [Tier 2 of the Points Based System - Policy Guidance](#) at page 1 paragraph 2

Nor will such restrictions go far in meeting the Government's target for reducing net migration to the tens of thousands, which it seems highly unlikely to achieve by the end of the current Parliament unless it rethinks the basis for its calculations in terms of the inclusion of students, who are more than five times the number of skilled worker migrants.

Our responses to the individual questions raised in the Call for Evidence are set out below.

Q. 1 What has been the impact of the annual limit on Tier 2 (General) of 20,700 in 2011/12 on the UK economy and labour market? What would be the impacts of setting a limit below the 2011/12 level in 2012/13?

Economic impacts

(a) Economic Growth and Gross Domestic Product per capita

The fact that the 2011/12 cap has been significantly undersubscribed suggests that the impact in the first few months of its operation has been limited. The Migration Observatory has commented on the policy changes which account in part for the reduction. It is also a reflection of a global recession that there are significantly fewer jobs available to fill and that businesses necessarily have been cautious in their recruitment strategies.

Evidence of this may be found in the Office for National Statistics Labour Market Statistics report covering June to August 2011. The UK's unemployment rate for that period was 8.1% of the economically active population: the last time that the unemployment rate was higher was in May to July 1996.²

The take-up rates may give policy makers comfort, but given the poor economic starting point our view is that it would be unwise to base future allocations on present consumption.

Like other sectors, law firms are facing significant challenges across all areas of their business as a result of the global economic recession. They will require the flexibility to be able to recruit quickly and flexibly when conditions improve and the volume of business increases. If the demand for Certificates of Sponsorship were to increase significantly as the economy recovers, the Government should review the cap in response to the needs of business.

(b) The Government's budget (Net Fiscal Impact)

Net fiscal impact of immigration is typically calculated by determining the difference between migrants' input of contributions to public finances (eg taxes) and the public benefits or services they receive in a given year.³

Tier 2 (General) migrants and their dependants are not permitted to claim public funds in the UK.⁴ Under the Immigration Rules, 'public funds' include the following benefits:

- Housing and Homelessness Assistance
- Attendance Allowance
- Carers' Allowance
- Disability Living Allowance

² [Office for National Statistics Labour Market Statistics: October 2011](#)

³ [Migration Observatory BRIEFING: The Fiscal Impact of Immigration in the UK](#) at page 2

⁴ Immigration Rules, Rule 245HC(e)(i)

- Severe Disablement Allowance
- Income Support
- Social Fund Payment
- Council Tax Benefit
- Child Benefit, Child Tax Credit
- State Pension Credit
- Working Tax Credit
- Income-Based Job Seekers Allowance
- Health in Pregnancy Grant
- Income-Related Employment and Support Allowance
- Housing Benefit.⁵

It is therefore likely that the contributions of Tier 2 (General) migrants and their dependents far outweigh any benefits they might receive. Accordingly, the current cap, which so far has been undersubscribed, is likely to have had no significant impact on the positive net fiscal contribution of this category of migrants.

However, should the Government set the limit lower than the 2011/12 level in the coming year, any oversubscription would imply a negative fiscal impact through the lost economic contribution of those migrants who were unable to enter the UK. If the limit is further reduced, it could impact on the anecdotal evidence that UK is increasingly viewed overseas as 'closed for business'.

Any assessment will depend on a variety of factors including future changes to the Immigration Rules (such as making Tier 2 an entirely temporary route and/or introducing a cap an earnings cap), tax rates, and government spending.⁶

Labour market impacts

Labour market impacts include those on wages, employment of already-resident workers and the industrial and occupational structure of the labour market. We address each of these points in order:

(a) Wages

According to the Migration Observatory, increases in the overall number of migrants have been credited as a reason for both increases and decreases in average wages during different time periods. These changes, however, have been relatively small and only represented wage movement by 0.2 – 0.3 percent in either direction.⁷ Presumably, this also applies if the overall number of migrants decreases.

(b) Employment of already-resident workers

The Tier 2 (General) sub-category is intended for migrants who 'have an offer of a skilled job that cannot be filled by a settled worker.'⁸ To qualify, a migrant must have been assigned a CoS having met the requirements of one of the following:

- shortage occupation;
- a job offer above a specified salary level;

⁵ <http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/rightsandresponsibilities/publicfunds/>; see also [Public Funds guidance](#) at page 6

⁶ [Migration Observatory BRIEFING: The Fiscal Impact of Immigration in the UK](#) at page 2

⁷ BRIEFING: The Labour Market Effects of Immigration by the Migration Observatory at page 4

⁸ [Tier 2 of the Points Based System - Policy Guidance](#) at page 1 paragraph 2

- completion of the resident labour market test by the sponsor;
- post study work; or
- an extension of the same job for the same sponsor.⁹

It is a prerequisite for a migrant's admission to the UK under this immigration category to demonstrate that they will not be affecting the resident worker market. Accordingly, the annual limit should not have had an effect on resident employment, and it follows that any further reduction of the limit should not have an effect either.

Impacts on the industrial and occupational structure of the labour market

Even at the limit of 20 700, the number of Tier 2 (General) migrants is small, so intuitively it seems unlikely to have had an effect on the industrial and occupational structure of the labour market. As the Tier 2 (General) category is intended for migrants who 'have an offer of a skilled job that cannot be filled by a settled worker,' any reduction would not, in theory at least, lead to more jobs being available for resident workers.

Q.2 Why has uptake of Tier 2 (General) visas consistently been below the implied monthly limit during 2011. Do you expect the level of uptake of such visas to change and why?

The current limit has been in place for a little over half a year. It is therefore too soon to be confident about assessing the long-term demand for certificates.

The lack of economic growth and general poor economic outlook is likely to have contributed significantly to the low level of uptake of Tier 2 (General) CoS. Employers are cutting back on recruitment, while potential migrants are less inclined to leave their current roles because of the general economic climate.

More specifically, migrants might not risk resigning if they are concerned that their visa application might be unsuccessful, leaving them without a job. For their part, some employers, particularly smaller businesses, might have been deterred initially from engaging in the new and untested process for applying for restricted CoS. Conceivably they might have deferred recruitment while assessing the difficulty/probability of success. The monthly limit means that employers cannot be certain about a start-date, and although the cap has been undersubscribed in its first few months there can be no certainty that it will be in the future.

These factors will be compounded if the limit is reduced further.

The Migration Observatory's further analysis is that more rigorous English language tests, an increase in the minimum skills thresholds for migrants and a reduction in the number of eligible occupations have cumulatively impacted on the Tier 2 uptake figures.¹⁰

In the absence of any further rules changes for this category, would we expect there to be an increase in the number of CoS requests in the future as the UK and global economies recover.

⁹ [Tier 2 of the Points Based System - Policy Guidance](#) at page 15 paragraph 68

¹⁰ See COMMENTARY: A Loose Fitting Cap: Why is the Limit on Skilled Non-EU workers Undersubscribed?

Q.3 What responses to the limit on Tier 2 migration have been considered and put in place by employers, including measures to recruit from and train the UK workforce?

We are unaware of any specific measures which have been put into place by our members as employers to recruit from and train the UK workforce.

Q.4 If intra-company transfers were strictly limited to the GATS definition of senior managers and specialists, what impact would that have on employers? Is £40,000 per year a reasonable minimum pay threshold for such jobs, or should this threshold be higher? Should it vary amongst different regions of the UK and why?

An open and flexible ICT route is essential for international law firms. ICTs are normally used for bringing over trainees to gain experience at a firm's London headquarters, or to bring in specialists for a specific project. ICTs are rarely used to bring senior managers to the UK. If intra-company transfers were to be limited to the GATS definition, it would impact adversely upon the ability of law firms to meet their business needs by bringing in staff for short periods of time. A £40,000 threshold would impact on the training of junior staff and the ability of firms to share knowledge and expertise across the organisation.

In terms of Government policy objectives, there seems to be no benefit from reducing intra-company transfers as this category of migrant cannot claim permanent residency. ICT migrants are required to pay UK taxes whilst here and so they contribute to our economy as consumers and taxpayers.

Adjusting the £40,000 minimum pay threshold for different regions of the UK would recognise UK regional variations.

We do not envisage that the demand among law firms for intra-company transfers will diminish in the foreseeable future. In the current economic climate, the demand for ICTs might even increase, as firms seek to make the best use of existing staff.

Q.5 Does the current inclusion of non-salary remuneration (allowances) in the £40,000 pay threshold for the intra-company transfer route undermine the validity of that threshold as a test of skill? Does it actually or potentially create an unfair advantage to migrants and their employers as discussed in Box 3.2 in Section 3 and, if not, why not?

Non-salary allowances recognise the practical realities of bringing a worker into a new country at their employer's behest. They play a vital part in the compensation packages offered to ICT migrants.

We agree that the UKBA Guidance about allowances is complex and confusing. There needs to be greater clarity about whether and how allowances should be calculated towards the £40,000 pay threshold.

Q.6 Can the methodology used to identify the skill levels of occupations, discussed in Section 3 of this call for evidence, and in our report "Analysis of the Points Based System: List of occupations skilled to NQF level 4 and above for Tier 2" (Migration Advisory Committee, February 2011), be improved, and if so how?

We are not in a position to comment on the methodology.

Q.7 Are any of the occupations listed in Table A.2 skilled to NQF Level 6 or above? Are any of the occupations listed in Table A.1 not skilled to NQF6+? In either case please supply evidence to support your view.

We are not in a position to comment on this question.

Q.8 What would be the economic impact of raising the minimum skill level of the intra-company transfer, RLMT and shortage occupation route from NQF4+ to NQF6+?

As legal professionals are included in the list of occupations skilled to NQF6+, such a change is unlikely to have an adverse impact on our members.

The assessment of the value of an employee to any employer is not an exact science. Whilst the National Qualification Framework is a guide to the potential abilities of an individual it takes no account of the unique experience that any one candidate may have and its potential value to an employer.

Q.9 What would be the impact on employers and the economy of lowering the threshold for exemption from the RLMT from the current level of £150,000 per year to somewhere in the range of £70,000 to £100,000 per year?

We strongly endorse lowering the threshold for exemption from the Resident Labour Market Test (RLMT) from £150,000. We would support the threshold being set at £70,000.

Lowering the threshold would make the recruitment process easier for employers and employees. As the RLMT requirements would attach to fewer applicants, employers would benefit from corresponding savings in time and money. By freeing up employers' ability to take advantage of the global work pool businesses will be more easily able to hire the most appropriate candidate for a position.

Businesses wish to recruit from outside of the resident labour market not only because of a lack of qualified domestic labour, but to tap into and invest in global markets. The commercial and professional connections to a migrant worker's country of origin can prove to be valuable¹¹ and this change could help to counter a perception that the UK is not 'open for business'.¹²

Q.10 What would be the impact on the UK labour market, including on employment opportunities of UK workers, of making the above change?

We are not in a position to comment on the wider impact on the UK labour market, but from our member firms' perspective, a reduction in the threshold would create a more flexible environment for pursuing the growth of their businesses. The international legal sector makes an important contribution to the UK economy. Attracting highly-skilled migrants helps international law firms to retain London's position at the centre of a highly competitive global market, and these well-paid employees will be contributing to UK tax revenue as well as spending their disposable income here.

¹¹ [Migration reform: caps don't fit](#) by the London Chamber of Commerce and Industry at page 2-3.

¹² See [UK immigration laws 'anti-business'](#) from China Daily.