

Migration Advisory Committee Call for Evidence– Review of Tier 2

Focusing on particular skills shortages

I. What impact, if any, will reducing the level of Tier 2 migration have on the economy? What are the reasons for your answer?

Tier 2 is for skilled workers. Cutting Tier 2 effectively limits the skilled workforce available to business. It has a direct and immediate impact of limiting the growth/survival of existing and future businesses. It stifles the economy. Many clients are new technology start-up companies and they frequently require skill sets that but a few people in the world will have. By definition these jobs will not be on the shortage occupation list. They might not even be well paid. But without them, the start-up flounders. Likewise, an existing company frequently needs those same skill sets/experience to compete with the start-ups. There is a risk of some industries re-locating, especially the most portable, including IT. We base this on the reactions of members' clients to the prospect of the Tier 2 cap on restricted certificates of sponsorship being introduced, being nearly reached, and being reached.

Businesses need greater certainty to plan efficiently for maximum growth and/or development. They need to know that they can recruit the people they need. To reduce the numbers who can be recruited through Tier 2 as numbers of vacancies rise will have a particular effect on UK-based small and medium sized enterprises which may be less able to relocate to outside the UK than international organizations and those based overseas but with a UK branch or subsidiary. Efforts to develop skills within the resident labour market depend upon the presence of those who have skills to transfer.

Members have seen clients conduct many unsuccessful recruitment campaigns. Persons under immigration control work as lawyers in the UK as most UK lawyers are only qualified to practice UK law. We need lawyers qualified to practice in other jurisdictions. If we limit their number, we limit our ability to conduct international business. A limit on their number is not going to result in the vacancies being filled from the residence labour market, it is just going to result in that business going elsewhere.

According to a recent report¹ by the European Commission, there is currently an upturn in growth of Science, Technology Engineering and Maths occupations across the EU. The upturn has resulted in recruitment difficulties for employers in most EU countries. Interestingly, employers are finding that many available Science, Technology Engineering and Maths graduates are not sufficiently job-ready because they lack 'soft skills'. As stated in the EU report, 'STEM skills are critical to innovation and in creating a competitive edge in knowledge-intensive economies'.

¹ EU Skills Panorama Analytical Highlight: Focus on Science, Engineering and Math ('STEM') Skills, EU Commission, April 2015.

2. How well does the Resident Labour Market Test provide evidence that no domestic labour is available? How could the test be improved?

ILPA members are working with their clients to put in detailed submissions on specific points. The test would be improved by allowing alternatives to jobcentre plus universal job match so that the most effective advertising for the particular role could be selected.

Many smaller clients are disappointed to learn that the advertising they have conducted on their own website does not count toward the resident labour market test. More businesses should be able to recruit from their own websites. It is a good way for employers to find a good match because the employer knows that the applicant is particularly interested in the company and did not find the vacancy in a general search. Other employers would rely on head hunters' expertise more if they did not have to take the resident labour market test into account.

In our experience, it is rare for a client to receive any responses from a Universal Job match advertisement

In the legal sector, firms rely on their own websites' vacancy postings to recruit at junior levels and on head-hunters to recruit at senior levels.

The best evidence is the rarity with which the resident labour market test results in a good match with a settled worker.

3. Does the points based mechanism operating in respect of the limit on Tier 2 COSs prioritise migrants of greatest benefit to the UK

No.

ILPA members had restricted certificate of sponsorship requests rejected when the cap was hit in June. When ILPA examined refusals members had seen in June in detail, many of those affected were professionals, including experienced workers, not just new entrants, on lower salaries because:

- They work in a field which is less well-paid;
- They work in small and medium sized enterprises and start-ups, where salaries are lower;
- They work in the North of England and in Scotland, where salaries were lower (while we have few examples from Wales and Northern Ireland in June, the same considerations apply).

Among the rejections: engineers, teachers, lawyers, IT workers, architects, those in technology companies, nurses and healthcare professionals and those in the creative industries, where pay is lower and in Tier 2 as the result of closure of other routes.

Another group affected were graduates and entry level staff including in the financial and insurance sectors, marketing and trainees in "magic circle" law firms. June/July is a time of year when applications are being made for graduate hires. Graduates from the resident labour market lose places if multi-nationals have to move their graduate schemes off-shore.

The points-based mechanism is only required because of the limit on Tier 2 Certificates of Sponsorship. We favour removing the limits given the evidence that Tier 2 workers are not undercutting workers from the resident labour market settled workers.²

An ILPA member had certificates of sponsorship rejected due to applicants not having a high enough salary. The salaries were in the £30K to £35K salary range and they were for engineering roles for a car manufacturer. The roles were highly skilled.

The restricted certificate process should not only count salary as the only differentiating factor as this will mean only higher salary roles receive certificates. If there is to be a limit on certificates of sponsorship, other criteria should be applied to assess the skill level and the importance of the role. Education, experience and particular achievements within an applicant's industry should be taken into account. Many employers start new recruits out on relatively low salaries but then raise people's salaries quickly based on performance and the relationship that develops over time between the worker and the employer.

4. What criteria could be used to select jobs and occupations that are genuine skills shortages and people that are highly specialist experts and what use should be made of selection criteria such as salaries points for attributes, economic need, number and length of vacancies and skill level

The Shortage Occupation List already caters for the majority of skills shortages in the UK, however it could be adapted to better meet the needs of start-ups in particular, who frequently need to recruit Science, Technology Engineering and Maths graduates. The opportunities in this sector outweigh the number of workers with this skill set. The shortage occupation list should be adapted to make it more straightforward for employers to sponsor Science, Technology Engineering and Maths graduates. There are several initiatives currently being pioneered to encourage students to study Science, Technology Engineering and Maths subjects, so Home Office policy should adapt in line with this approach. Neglecting to do so could result in non-EEA students returning home after finding they may not be able to be sponsored. If the UK wants to be a main player on the international stage for technology and engineering, then it needs to ensure that immigration policy makes it possible for employers to recruit in these shortage occupations.

In our experience working with clients in the financial services industries, it has become apparent that these employers often need to hire or transfer individuals with specialist IT or technology experience. These employers often require someone with a very specific skill set who has a comprehensive understanding of particular types of software, platforms or practices that are only used within the finance or banking sectors. It can often be difficult to find settled workers with the required skill set, qualifications or experience to fill these roles, meaning that employers frequently need to look to migrant workers to fill these vacancies.

Through our work with clients in the manufacturing or automotive industry, we are also aware of a shortage in engineers with the requisite skills, qualifications and experience in the settled workforce.

² Migration Advisory Committee on salary thresholds, July 2015.

We see no virtue in requiring businesses to compete against each other for the right to employ essential workers, but it can be done. The question of that for which points are awarded is an important one and we suggest that there should be scope for an assessment of the skill/experience that the individual brings to an organization rather than salary level. After a person has a few years experience, very few employers take much notice of all but the most impressive formal qualifications: work experience and achievements are likely to carry more weight.

Members identify nurses, certain public sector workers, health workers, engineers, certain teachers in secondary schools as occupations where there are difficulties in recruiting but jobs are not included on the shortage occupation list.

It is particularly difficult to recruit for nurses in the UK. The Minister acknowledged in his 16 July 2015 letter to ILPA that there are 8,200 overseas nurses, visitors and midwives working in the National Health Service. He said that increased reliance on overseas recruitment should not form part of the Department of Health's strategy, currently being examined by a task force. This is all very well as a long-term strategy, but in the meantime the National Health Service must function and it cannot do so for the time being without workers recruited overseas as is demonstrated by the figure of 8,200.

See also submissions of individual ILPA members and their clients.

5. What would be the impact of restricting Tier 2 (General) to genuine skills shortages and highly specialist experts

There is a risk of some industries re locating, especially the most portable, including IT.

The Office for Budget Responsibility's Fiscal Sustainability Report of July 2013 stated that the UK economy needs seven million migrants over the next 50 years. Only 9% of Tier 2 (General) visas in 2014 were for shortage occupation roles.³ (). Restricting employment of migrants to shortage occupations and highly specialist experts risks increasing debt and hampering growth.

Language skills are sometimes a reason that it is easier to recruit from India than from an EEA country.

We do not have information on the difference in cost between recruiting from an EEA country and recruiting from a non-EEA country.

6. How could a restricted Tier 2 route maintain flexibility to include high value roles?

It is unclear what is meant by "high value". If what is meant is skills in the greatest demand then a route restricted to a very few places could include such roles, but it would not include enough of them. Each employer needs to be able to recruit the staff their business or organization needs.

As set out above, there should be an assessment of the skill/experience that the individual brings to an organisation rather than just salary level and formal qualifications. This would allow businesses to make the case for the staff they need rather than having to satisfy algorithms insufficiently sensitive to their needs.

³ Migration Advisory Committee report on salary thresholds, July 2015.

Under the old “work permits” system, Home Office staff exercised judgment, taking into account the needs of business. The Home Office then moved to the largely objective “points based” system. There was some room for subjectivity in areas such as assessing whether documents were genuine, but much less. The genuineness tests that have followed build on this element of subjectivity, but what has resulted in a system in which there is room to exercise judgement against an application, but not in their favour, assessing that despite a low salary and a lack of formal qualifications they have considerable specialist expertise. There should be scope for judgement to be exercised in favour of applicants and of businesses.

We do not consider that Tier 2 should be restricted. The Tier 2 assessment methodology could recognise certain roles as particularly valuable and/or recognise the needs of the sponsoring business. This could be done by awarding points on the relevant applications or by publishing a list of high value roles that benefit from some of the same streamlining of the application process as currently applies to shortage occupations. The focus should not be solely on the characteristics of the worker.

To maintain flexibility for employers, there should be room for skills, experience and/or salary level to be taken into account in assessing eligibility under Tier 2. Different industries and employers recognise skill and talent in different ways. The Tier 2 methodology should reflect this reality, rather than rely on salary as a proxy.

7. What evidence is there of significant regional differences in skills shortages?

While we are aware that the Migration Advisory Committee has considered the question of regional variation in depth,⁴ it remains our experience that those in Scotland, Northern Ireland, Wales and the North of England find it most difficult to meet the salary thresholds and thus to fill shortages whether in individual vacancies or occupations on the shortage occupation list. This particularly affects sectors that are lower paid; see our response to question three above.

Uneven patterns of skills may be seen as a reflection of employer demand for skills: people with higher level qualifications tend to migrate to areas with high-level jobs and associated high wages such as London. Many industries, however, choose to operate outside London. A large car manufacturer client focuses strongly on Standard Occupational Classification Code 2126 – Design and development engineers and Standard Occupational Classification Code 2127 – Production and process engineers. Workers are mainly based in and around Coventry and the result is a regional difference in skills shortages.

8. What evidence is there of the need to recruit highly specialised experts?

This evidence can be obtained by an examination of applications which satisfy the resident labour market test and evidence that has led occupations to be placed on the shortage occupation list.

We are concerned with cases where one is fishing in a small pool (of one or more) to recruit a person with the skills/aptitudes possessed by the successful candidate and where only a small pool of persons can be trained to acquire those skills at all or persons who can be trained will need a considerable period of training to acquire them.

There is a need to recruit these highly specialised experts both on specific projects and in permanent roles. A number of companies would be able to manage short-term staff and

⁴ See e.g. Limit on Tier 2 (General) for 2012/13 and associated policies, Migration Advisory Committee 2012.

providing training to new recruits in the UK through the Intra-Company transfer route if problems such as the barrier presented by the 12 month “cooling off” period, whereby those who come to the UK on an intra-company transfer are then barred from returning for 12 months, were addressed.

Examples of highly specialised experts vary from industry to industry, profession to profession. There are for example highly specialist experts in law, in academia outside science, engineering and mathematics, and in the arts. Sheep shearers are highly specialised experts.

In the financial, advertising, Information Technology, communications, construction, architecture, media and legal sectors possession of a particular technical skill set result in satisfying only some of the criteria for many roles. Many roles require a range of industry experience, technical skills across a number of disciplines, and soft skills. A specialised expert is someone who meets the requirements for the role and soft skills play a key part in this. For example, in the Arts and Entertainment sector, a network of global contacts is a key to the growth and expansion of the UK entity’s client base.

Individuals’ expertise is required for specific projects but very often the individuals are required on a permanent basis for the organic growth of the organisation.

The EU Skills Panorama (2014) STEM skills Analytical Highlight, prepared by ICF and Cedefop for the European Commission confirms that “Demand for STEM skills is anticipated to increase in the short and medium term. Whilst the numbers of STEM students and graduates are both increasing, as cited above, some employers report that they are not ‘job ready’ and do not possess the ‘right’ skills, especially soft skills.”⁵

9. What would be the impact on business and the economy of restricting recruitment to genuine skills shortages and highly specialised experts for:

- **Migrants switching from Tier 4**

This would reduce the size of the pool from which to select talent and graduate roles (legal / finance / banking / multinational companies) would be filled by less able candidates. If Tier 4 students were required to apply out-of-country this would be onerous for the student and an extra cost and effort for business to undertake.

The UK would be a less attractive destination for international students who wish to maximise the value of their overseas studies. Reducing numbers will be damaging to many education institutions, which rely on the fees paid by international students to keep their institutions going, and would have serious effects on the wider economies of the towns and local areas in which they are based. Students coming to the UK to follow courses, at whatever level, and who will benefit from their courses, contribute greatly to the UK economy, rather than harming it.

It is also important to value the ties and relationships fostered by international students. Many students, including those of the highest calibre, wish to gain work experience in the UK precisely to enhance their career prospects on returning overseas rather than having any intention to remain in the UK. Individual student advocates return to their home countries with positive messages about what the UK can offer. It has been UK policy to encourage students to

⁵ Page 1 heading.

study in the UK leaving them with a favourable impression of the country, to ensure that when they do return to their country of residence/choice, if it is not the UK, they will have a willingness to engage in business, trade and other links with the UK. They may also contribute financially through donations and bequests to their UK alma mater during their working life and on death, and they will carry the reputation of their UK qualifications with them to other international institutions when they go there for further studies or for work purposes. There are therefore direct and indirect, as well as short-term and longer-term, positive economic consequences from students coming to study in the UK.

Employers are unlikely to feel confident that the student who has to return to apply from overseas would definitely return, or when. If they have to take the risk, because only the overseas applicant can do the job, then they may need to put projects on hold or hold off recruiting other workers until time lines are known. Meanwhile students incur additional costs associated with travel and a period overseas. These extend beyond flights to having to give up a lease etc.

Arguments for retaining the post-study work route were well made in the Migration Advisory Committee's December 2009 report which recommended retaining the route.⁶

As to the impact on business, the graduate entrepreneur scheme has failed to retain those whom the UK did not want to lose following closure of the Post-Study work route, including but not limited to Science, Technology, Engineering and Maths graduates and they have instead had to be retained through Tier 2.

See also below under "All other in-country applications.

All other in-country applications

Businesses have no incentive to recruit a worker from overseas, with the attendant costs and bureaucracy, when a member of the resident labour market can do the job as well. A resident labour market test and sensitive and accurate shortage occupation lists, properly applied, can be used to ensure that workers are only brought in when no member of the resident labour market can do the job. If a suitable worker cannot be found from within the resident labour market and it is relatively easy to train someone else up, it is likely to be quicker and less expensive to do this than to recruit from overseas. In this sense we suggest that the majority of those who are recruited from overseas to fill a vacancy not on a shortage occupation list fit our definition of a highly specialized expert as "A person where one is fishing in a small pool (of one or more) to recruit a person with the skills/aptitudes possessed by the expert and where only a small pool of persons can be trained to acquire those skills at all or person who can be trained will need a considerable period of training to acquire them."

10. How could the methodology to set the Shortage Occupation List be expanded to develop a revised Tier 2 (General) which restricts the route to genuine skills shortages and highly specialist experts only

The question of definition of a "highly specialist expert" has been touched on above.

Already the shortage occupation lists are used in a way which is not about a general shortage, but a shortage of one. Take, for example, presence of ballet dancers on the list. This is less to

⁶ Analysis of the Points-Based System, Tier 1, December 2009, at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/pbsanalysis-09/>

do with there being no dancers or a shortage of dancers in the UK than with the desire that it be possible to use the route to bring in a particular prima ballerina.

The Tier 1 Exceptional Talent route has the potential to work for some of these professions in place of the shortage occupation list. We suggest that consideration be given to how it could be opened up so that it can function in a similar way to the OIA and B visas in the United States of America.

Consideration could also be given to how the Tier 5 Creative route could be made to work for, for example, dancers.

If the business justifies why they need to recruit a third country national for an NQF Level 6 role this should be sufficient. It is expensive to hire third country nationals so there will normally be a business reason to do so. The person may have specialist experience of in using certain types of technology, language experience or simply be a better fit for the company and display more of the required skills at interview.

We are not in favour of restricting Tier 2 to shortage occupations and highly specialist experts. Resident workers are sufficiently protected where businesses justify their need for non-EEA nationals to fill NQF Level 6 roles. Businesses only sponsor migrant workers where they need to. They have no incentive to hire a migrant worker over a resident worker. The expense and ever-increasing administrative efforts of sponsoring a migrant worker mean that already businesses do not sponsor migrant workers without a genuine business reason to do so; this has been the case since the introduction of the sponsorship system and, indeed, was the case under the work permit system.

The Migration Advisory Committee's Review of Tier 2: Analysis of Salary Thresholds indicates that there is no evidence that any restriction of Tier 2 to shortage roles and highly specialist experts is necessary: the Migration Advisory Committee's did not find evidence of Tier 2 migrants undercutting resident workers.

Every role filled under Tier 2 is, by virtue of the necessity of having to fill it under Tier 2, a shortage and specialist role. The skills the worker brings might be having more experience of using certain types of technology or language expertise, for example. If the business justifies why they need to recruit a non – EEA national for an NQF Level 6 role this should be sufficient. It is expensive to hire non-EEA nationals so they would normally have a valid business reason.

11. What occupations would you expect to see on an expanded shortage occupation list? How does the occupation or job title you are suggesting satisfy each of our criteria in relation to “skilled”, “shortage” and “sensible”? Alternatively, what other criteria does the occupation or job title satisfy that meets the requirement of being in a genuine skills shortage or for highly specialised experts?

ILPA members highlight shortages of nurses, health workers, certain public sector workers, and engineers. See submissions of individual members.

The resident labour market test is more sensitive than a shortage occupation list to the reality of an individual vacancy and we suggest that the focus should be on making the best use of the test. Recruitment should be based on the particular skills and requirements of that specific role, rather than on the basis that there is a “shortage” of skills. Organisations recruit on the basis of an individual's specific skills and experience and the resident labour market test fits with this approach and ensures that companies are recruiting the best person for the role.

Some of our members work with clients in the Broadcasting/TV sector and many migrants they recruit are to undertake a Journalism role. However, we would not suggest that there is a shortage of journalism roles, but in fact these individuals are recruited (through the RLMT) because of their specific skills and experience in reporting on Arabic news stories.

Some members work with several clients in the engineering sector. They rely heavily on the shortage occupation role of design and development engineers (2126 Shortage Occupational Classification code). We advise that 2126 needs to be kept on the shortage occupation list as there still appear to be a shortage of resident workers who can fill these roles. Design and development engineers need to be retained on the shortage occupation list as clients suggest that the other alternative to employing skilled workers in the UK is to establish design centres outside of the UK.

12. What would be the impact on an expanded shortage occupation list on business and the economy?

The size of the list is of less importance than its encompassing the occupations where employers cannot rapidly recruit from within the resident labour market. Many of the shortage occupations are in areas where years of training and on the job experience are required and even more complex skill sets may be sought for an individual vacancy. We base this on perusal of the shortage occupation list. This contains professions from engineers, to digital IT specialists. Members of all of these professions undergo several years of training to qualify in their particular industry. Businesses need to know how they are to get the skilled workers they need now and we have commented above on the effect of their not being able to do so.

Companies need to be able to act quickly to fulfil business plans. Strategies may take several years to develop, but then become active quickly. If the Home Office were to rely more on a shortage occupation list, it would have to ensure that the process for a business to add an occupation to the list would not take longer than one or two weeks. Any longer process would adversely affect UK businesses.

The bidding process and lead times for projects can vary widely. Bidding processes sometimes involve only one or two businesses and lead times can be as short as a few days.

The length of time from planning a project to its implementation varies from a few days to several years, depending on the project.

The UK population is ageing and is projected to continue ageing over the next few decades.⁷ Consequently, businesses across the UK will need to recruit for roles requiring particular expertise as workers retire many of the workers exiting the roles are likely to have been performing those roles for a long period of time.

High Fliers Research Limited reports that the UK's top employers have received 6% more graduate job applications so far in the current recruitment round, compared with 2013-2014. Their research indicates a 13.7% increase in recruitment of graduates in the IT & telecommunications between 2013 and 2014.⁸ . The available research indicates that there is not a reduction in graduate applications for IT roles. Reductions in graduate recruitment

⁷ 'Population Ageing in the United Kingdom, its Constituent Countries and the European Union', Office of National Statistics, 2 March 2012.

⁸ The Graduate Market in 2015', High Fliers Research Limited, 2015.

between 2013 and 2014 have occurred in the investment banking, media, oil and energy and retailing sectors.⁹ ('The Graduate Market in 2015', High Fliers Research Limited, 2015).

13. How far in advance do you consider you would be able to anticipate a skills shortage?

See submissions of individual ILPA members.

14. Alternatively, is it sensible to leave the present Tier 2 (General) route intact and achieve any reduction in economic migration by raising pay thresholds only?

No.

See our response to question three above. Concentrating on pay thresholds only is blind to the needs of a business or its value to the economy, whether generally or in a particular part of the UK and disadvantages those outside the South East and in the charitable and voluntary sectors. Many big businesses that pay very high salaries are international organisations with offices in other countries which have an opportunity to use the intra-company transfer route which is not open to smaller businesses based solely in the UK.

A rise in pay thresholds would affect smaller businesses that are not hiring professionals but are rather hiring graduates who cannot avail themselves of an exemption. For example a member's client has recently identified an exceptional graduate they would like to hire for their small but growing business. They will not have time to perform the Tier 4 to Tier 2 switch before her Tier 4 leave runs out and her salary will make it difficult to obtain a Restricted Certificate of Sponsorship. The client will lose out on a very talented graduate.

One member has identified advertising as an industry that would be affected by a rise in pay thresholds. Roles requiring specialist skills can attract salaries of c. £40,000 in many creative sector roles.

Sunsetting

15. The Migration Advisory Committee has been asked how to limit the length of time occupations can be classed as having shortages:

a. How long should any maximum duration be?

Whilst we would reasonably expect that any roles included in the shortage occupation list should be subject to regular review, we would not support any proposal to limit the period of time a role can remain on the list. Many roles which remain scarce or limited in the UK do so due to the significant lead time required to obtain relevant professional qualifications and related training (e.g. a qualified doctor study for six plus years at university, followed by several years of placements).

They similarly reflect other considerations around availability for related qualifications through the schooling and undergraduate institutes with which some businesses work very closely to

⁹ *Ibid.*

support training routes but which the business cannot control directly. We observe that where roles are in shortage in the UK they are frequently similarly in shortage in other parts of the world and therefore despite training efforts within the UK, market forces can often attract those individuals the UK has trained to other parts of the world for their own personal development.

Shortages exist in the UK as a result of the lower level salaries in the UK than in overseas markets. For example, a client outlined their desire to stay in the UK as a Specialist Consultant Paediatrician, but the salary on offer was significantly lower than placements in the US (California) and Australia (Melbourne) that brought with them a 'beach side' lifestyle to which the UK market has to compete.

b. What, if any, exceptions should there be to this and why? Please provide evidence to support your answer

Please see above. We do not want any limitation to the length of time roles can remain on the shortage occupations list.

It is artificial to impose a maximum duration if the shortage still exists at the end of that period. We assume that it is intended to concentrate the minds of employers (or perhaps of workers) in the resident labour market and force them to train members of the resident labour market. But what happens if, at the end of the maximum period, it is still not possible to fill all vacancies from the resident labour market? Is it really proposed to pull the rug on businesses or whole industries, particularly those who have got part way to training resident labour market workers? Including workers who may be unable to progress further without mentoring from skilled workers from third countries? What if members of the resident labour market continue not to want to the job in question, perhaps because it is less attractive than one requiring similar skills and aptitudes? If shortage occupation lists are used, they should reflect the state of the labour market and not be arbitrary and thereby indefensible. Carrots, not sticks should encourage businesses to hire from the resident labour market. These could take the form of support for professional training or certain degrees, placement and exchange programmes at university level when careers are being considered and promotion of particular careers.

Intra-company transfers

16. The Tier 2 (Intra-Company Transfer) category is the most used route under Tier 2. The Government has asked that the Migration Advisory Committee consider the scope for action to tighten the intra-company transfer provisions:

If the overarching aim of UK Visas and Immigration is to reduce Tier 2 migration with a particular focus on tightening the most used route under Tier 2, the Intra Company Transfer provisions, the Migration Advisory Committee is asked to consider the effect of the changes which were made to the Immigration Rules in 2011,¹⁰ which limited Tier 2 Intra-Company Transfer Long Term Staff transferees to a maximum of five years in the UK (nine years if the salary is £155,300), and provided no route to settlement.

¹⁰ HC 395, paragraphs 245GC(b) and 245GE(b).

We can therefore expect a large reduction in the number of Tier 2 intra-company transferees who are residing in the UK from 2016/2017, where all those who entered the UK between 6th April 2011 – 5th March 2012 will be required to leave the UK and will be subject to the ‘cooling off period’. This “natural wastage” will then continue year on year post 2016 as transferees reach their five-year grant of leave limit.

a. What criteria should be used to determine eligibility for the intra-company transfer route?

The eligibility qualifying period was increased from six months under the old Work Permit system to 12 months under Points-based System,¹¹ with the exception of Tier 2 Skills Transfer visas. Although viewed as a high threshold by many Tier 2 sponsors, it is also considered to be reasonable as 12 months would appear to reflect the proprietary experience required for most Intra-Company Transferees. We therefore ask the Migration Advisory Committee to consider whether an increase in the 12 month requirement will adversely affect business continuity and the global mobility requirements of Tier 2 sponsors?

Currently Intra-Company Transfers may be transferred if the role is a shortage occupation role and / or it is classified as an NQF Level 6 role. This is reasonable, however, if this threshold is increased, would this limit the ability of Tier 2 sponsors to compete for work in the global workplace and / or limit their ability to operate effectively?

We ask the Migration Advisory Committee to consider whether it is the case that Tier 2 Sponsors utilise the Tier 2 Intra-Company Transfer route because there are insufficient resident workers either trained or in training to fill the shortages and whether there are areas in which particular specialism is not even taught in the UK?

Case example

A client is a leading fine art auction and private sales business in London and they often transfer experts in art, Chinese ceramics, etc. The employees are experts in their particular field e.g. Ming dynasty ceramics. There are two high profile fine art auction and private sales businesses in the UK. Their employees are the best in their field. They often have to transfer their staff to the UK. If there was a longer period of employment required for Intra-Company Transferees this would cause a problem as employees may not have worked for the business for longer than 12 months and sometimes even 12 months can be quite onerous. They could not recruit locally but if they use Tier 2 General this involves the resident labour market test as the salaries, although high, are below the high earner threshold. Delays which would impact on the business as they have set sale dates. Advertising, for example through job centre plus, is a pointless exercise when there are only a handful of experts globally who could fill the roles.

b. Subject to legal requirements, how can the Government tighten the Tier 2 (Intra-Company Transfer) provisions? Should this route be limited to genuine skills shortages and highly specialised experts only?

No definition of ‘highly specialised experts’ is given. See the discussion above in response to question 9, where our definition of a highly specialized expert as “A person where one is fishing

¹¹ HC 395, paragraph 74C of Appendix A.

in a small pool (of one or more) to recruit a person with the skills/aptitudes possessed by the expert and where only a small pool of persons can be trained to acquire those skills at all or where person who can be trained will need a considerable period of training to acquire them.” If resident workers could be recruited from the resident labour market for the specified purpose that Tier 2 Intra-Company Transferees are transferred to the UK, then in the majority of cases this would be a preferable solution for the employer who incurs expatriate costs.

The Intra-Company Transfer route should not be limited to skills shortages and highly specialised experts only. This would be impracticable for the purposes in which the Intra-Company Transfer route exists, as set out below.

Multi-national organisations will very often transfer Tier 2 Intra-Company Transferees to the UK so that they can share and impart knowledge through on the job productive work or training. They are often required to be exposed to a variety of technical proficiencies to be applied globally, as part of their own natural career progression and/or to prepare them for senior roles, usually outside of the UK. Very often they will not be considered as highly specialised experts at that time. If the UK is not able to offer this service, might organisations look at alternative countries to the UK from which to operate?

The Intra-Company Transfer route is designed to assist organizations to transfer Tier 2 Intra-Company Transferees without meeting the Resident Labour Market Test or English language tests. They are exempt from the annual cap. It can be argued that companies value their employees’ proprietary knowledge and experience, for example, on-job training, in-depth knowledge of the company and its operation, understanding of the company culture, and connections and mutual trust on a personal level. The skill set the Intra-Company Transfer transferees may have include ‘soft skills’ which may not be viewed as ‘shortage’ or ‘highly specialised’ in the general market, but are of value to an organisation. Applying the arbitrary ‘shortage’ and ‘highly specialised expert’ criteria would be to disregard the individual needs of the companies and defeat the purpose of the Intra-Company Transfer route.

Concerns expressed by some clients suggest that if the Intra-Company Transfer route is limited to skills shortages and highly specialised experts only, they may still not be able to fill the more ‘junior’ roles with resident workers as these requires a level of knowledge in relation to products and solutions particular to their organizational operations both inside and outside of the UK. Skills and knowledge which are highly specific to their organization cannot be imparted easily to a resident worker without specialist experience as many of these can only be gained through on-job training on their own projects. The impact will be detrimental as the Tier 2 sponsor may be unable to afford the time and money for additional training, which could result in failure to meet project deadlines and increasing costs to their UK clients, particularly when the Tier 2 transfer is for a relatively short period of time.

Intra-Company Transfers can be for administrative / management / other business reasons and in some cases will only last for a short time, but are used when the case falls outside the business visitor route under Appendix V of the rules.

c. What will be the impact on businesses and the economy of tightening the intra-company transfer provisions?

It is difficult to answer this question without knowing exactly how it is proposed to tighten the Intra-Company Transfer provisions. However, we ask the Migration Advisory Committee to consider whether tightening the provisions will be disruptive to business continuity, increase costs to UK sponsors and damage the model of monopolistic competition?

A Tier 2 sponsor's ability to transfer Tier 2 Intra-Company Transferees to the UK, especially in relation to highly specialised work, which is required as part of a much larger project may have the effect of limiting their ability to compete for work in the global workplace and / or limit their ability to operate effectively?

Tier 2 sponsors being able to transfer skilled workers from overseas linked entities to their UK organisation, particularly for short term, highly specialised work, adds value to Tier 2 sponsoring companies in terms of productivity as they are able to start work straight away.

Case example

A Middle East bank has stated that:

“Following up on the point about ICT and the necessary requirement for our Shareholders such as the Chairman to have a degree of flexibility as a major shareholder in the Bank and his significant contribution/funding to the Bank; without this there wouldn't be a UK entity and employment for staff at the UK plc which could be a worthy note for the MAC.”

The client is referring to the senior members of staff based overseas with the parent company to be able to travel to the UK bank for work is crucial as they are the owners of the UK bank.

We question the desirability of immediate major changes to the rules regarding Tier 2 Intra-Company Transfers, which is the most used route among Tier 2 sponsors, must be considered against a background of evidence of economic recovery¹². There is a risk that these would have far reaching consequences for Tier 2 sponsors and their global operations, at this critical point?

We ask the Migration Advisory Committee to consider the impact on UK graduates and workers as well as productivity, growth and tax receipts received in the UK in the event that organizations base themselves in other countries as opposed to in the UK, because they perceive rules as restrictive and harmful to their businesses. It is the case that companies threaten this when their lawyers explain to them the applicable immigration rules.

d. What will be the impact of a cap on the number of migrants a sponsor can employ based on the percentage of each organisation's UK workforce?

We doubt that a sophisticated cap system can be implemented to deal with various situations that may arise, such as those that are outlined below:

Assuming that the 'number of migrants' is based on the number of Certificates of Sponsorship issued / allocated for each financial year, how would this address the case when a worker needs to apply for several extensions within a year? An example would be short projects, where the length cannot always be accurately anticipated in advance. In these cases there is one worker but several certificates of sponsorship.

¹² ***

Start-up companies and branch offices of overseas companies may suffer the most here because of their 'micro' size. Such companies may need a disproportionate number of Intra-Company transferees to help them establish themselves. It could be onerous for such small entities to be required to maintain a ratio between Intra-Company Transferees and resident workers and in many cases may not be practicable.

Would this system have a 'return' mechanism so if one person leaves and a certificate of sponsorship is cancelled, one allocation will be returned to the sponsor for a replacement?

How would this system deal with the change of a company's size which theoretically would affect the cap for them? Especially if the size of an organisation fluctuates throughout the year.

The effects of the Tier 2 General cap being reached for the first time in June 2015 are still being worked through. The cap was reached again in July and was only not reached in August because places not allocated in June and July were carried over.

We ask the Migration Advisory Committee to consider cases where Intra-Company Transfers are utilised by Tier 2 sponsors so that their global work practices can be introduced and established within a UK entity.

Case example

A London firm of solicitors acts for a leading US electronic trading and market-making firm that has a small office in the London. They transfer one or two key members of staff usually for short periods each year and the rest of the London team are recruited locally. This is a US firm with a US centre and so requires senior management and key traders to spend some time in the UK with the UK staff so they operate in the way they require them to and understand the firm's ethos and clients.

This works both ways in that resident workers are also transferred overseas for the same purpose. If the Intra-Company Transfer route is limited and organisations are unable to transfer staff for this purpose, operating a business division in the UK may become less attractive to global organisations which may look at alternative countries.

Tier 2 sponsors need to plan ahead. This introduces another variable with, as described above, a particular effect on start-up companies who could otherwise bring new overseas investment to the UK economy.

e. What impact does the Tier 2 (Intra-Company Transfer) route have on the domestic labour market?

Specific statistics are needed to answer this question and ILPA is not in possession of these. The Migration Advisory Committee should examine official statistics in an effort to estimate this.

Tier 2 sponsors have raised the point that the Intra-Company Transfer route has benefitted Tier 2 sponsors by providing the required resources, in an efficient and time effective manner, thus allowing UK organisations to meet their needs. Any difficulties suffered by organisations, due to more restrictive provisions for Intra-Company Transfers, may lead to an increased risk of job losses for resident workers as well as Tier 2 workers.

Some positions, regardless of the size of the company, are only open to internal candidates, and are therefore often filled by Intra-Company Transfers. If there is no worker in the resident labour market suitable for the job, the company may simply choose to carry out the work offshore or relocate the team to another country.

f. Should allowances continue to be included in the salary threshold for the Tier 2 (Intra-Company Transfer) route? If allowances were excluded from the salary threshold, what would be the impact?

Yes.

Allowances should continue to be included in the salary threshold for Intra-Company Transfers. However the UK Visas and Immigration could publish more detailed guidance on this provision to cover all the very different elements under 'allowances'.

If allowances are excluded from salary threshold, it may cause problems for many Tier 2 sponsors because many Intra-Company Transferees maintain their employment relationship with the overseas company, which means where their salary is comprised of overseas salary and UK allowances (for example *per diem*).

The impact will be greater from those Tier 2 workers from non-OECD and less developed countries where the average income level is low compared to the UK.

If 'allowances' are to be excluded, UK Visas and Immigration must provide a clear definition of what can constitute an 'allowance'. In practice, in some countries the components of 'salary' may include a number of items named as 'allowances' (for example, daily travel, housing etc.)

g. What is the impact on existing UK companies and UK resident workers of the current intra-company transfer provisions in relation to companies outsourcing contracts with third parties?

We ask the Migration Advisory Committee to investigate whether there is any evidence that the practice of UK companies outsourcing contracts to third parties, for example Tier 2 sponsors employ Intra-Company Transferees on this basis, have caused harm to the UK economy and the domestic labour market?

h. What would be the impact of putting tighter intra-company transfer restrictions on companies which outsource contracts with third parties?

The rules now include a provision relating to Tier 2 workers working on a third party client contract.¹³ Applications will not be successful where a worker is working at a third party site and providing a routine and on-going services to somebody who is not the sponsor. Tighter restrictions have already been made¹⁴ to Tier 2 sponsors providing outsourcing services, to

¹³ HC 395, paragraphs 74G of Appendix A.

¹⁴ HC 395, paragraphs 74G of Appendix A.

ensure only genuine contractual / project services are allowed and ‘body shopping’¹⁵ is prohibited.

It is increasingly common for organisations (including UK companies) to outsource some of their functions (e.g. IT, human resources and payroll, and logistics) to contractors because it is considered to be more cost-effective, compared to maintaining a large in-house team and meeting costs of training and responding to new developments. The company’s UK customers can be assured that the company has the support of specialist professionals. If the contractors are facing difficulties in providing the service due to additional restrictions being placed on them regarding Intra-Company Transfers, the UK customers may have to pay higher fees for the service or see it carried out to a less expert level.

i. What is the impact on existing UK companies and UK resident workers of the use of the current intra-company transfer provisions in relation to the IT sector?

Tier 2 sponsors in the IT sector are employing locally as well. If their business is prospering, there will be more jobs offered to resident workers. This can include some roles requiring very specific technical skills, and more generally administrative and supporting roles.

j. What would be the impact of putting tighter intra-company transfer restrictions on the IT sector specifically?

We ask the Migration Advisory Committee to consider whether, if the Intra-Company Transfer route is made more difficult for Tier 2 sponsors in the IT sector, more of their jobs will go to the resident labour market or whether it is more likely that the companies will carry out more work from offshore or relocate the affected business divisions to another country?

In the IT industry, service providers may well be from certain regions of the world, and the work is partly done from those regions (which is one of the reasons the cost of the service can be kept down). The work / project may require the same team to work on an offshore / onsite routine. Resident workers may be reluctant to relocate to another country outside the EU especially if the living standards are significantly different.

Case example

A client is an Indian IT company with global presence and they are engaged by their client to carry out a large project across several EU countries. The company has an office in the UK as its EU head office and set up the main lab in the UK for this project. They transfer a number of employees to the UK under Tier 2 Intra-company transfer on a regular basis to work in their UK office and the main lab. Some of these Tier 2 Intra-company transfer employees may also need to provide some service on client sites in other EU countries, in which case they are temporarily assigned to that particular EU country as Van der Elst/ posted workers. Van der Elst derives from the European Court of Justice case of Van der Elst, which established that, provided certain criteria are met, non-EEA nationals working for an EU employer in the EU should be allowed to provide services in another Member State without the need to obtain a work permit¹⁶. If the Intra-company transfer route becomes too restrictive in the UK, the

¹⁵ Body shopping is the practice of consultancy firms recruiting information technology workers in order to contract their services out on a short-term basis.

¹⁶ Online resource: <https://www.gov.uk/government/publications/non-eea-and-swiss-nationals-working-in-the-eu-eun04/non-eea-and-swiss-nationals-working-in-the-eu-van-der-elst-and-swiss-posted-workers-eun04> (accessed 25 September 2015)

situation may reverse, i.e. the company sets up the office in another EU country and obtains work permits for their employees for that country, then, if needed, assigns those employees to the UK to provide the service under Van der Elst. This means although the number of Tier 2 Intra-company transfer migrants is reduced, the jobs in the UK market are still held by non-EEA nationals just under a different route. The shift of business centre to another EU country risks a loss to the UK economy.

If the Tier 2 sponsors in the IT sector transfer most of their business to the UK and recruit a large onsite team, the cost may be significantly increased. Any such additional costs would eventually be met by any UK companies who are the ultimate users of such services.

k. Is there a case for requiring intra-company transfer migrants to pay the immigration healthcare surcharge? What are your reasons for or against this? What would be the impact of making these migrants pay this surcharge?

No.

The Tier 2 Intra-Company transferee's UK assignment is largely arranged by the employer throughout, which usually includes travel, accommodation (or equivalent), dependants, and medical needs. In many cases there may already be sufficient private health insurance in place.

Many Tier 2 Intra-Company transferees are only in the UK for a short period of time, or spend periods of their time overseas even if they are issued with a longer term visa. This is determined by the nature of their assignment in the UK. The chances of those Intra-Company Transfer migrants using the NHS service are therefore reduced.

l. Would restrictions to the intra-company transfer route have specific regional impacts?

- Yes. Scotland: for work in the oil fields. South East because more multi-nationals there and they are the companies using intra-company transfers. There are very specific regional clusters of companies that use the Intra-company transfer route. In Cambridgeshire and Wales, for IT. In Cambridgeshire for pharmaceutical companies and medical research.

Skills levy

17. The Government has asked that the Migration Advisory Committee consider to which businesses a skills levy should apply and the impact this may have, balancing the need to maximise the incentive for employers to recruit and train UK workers with the ability of businesses to access the skilled migrants they need. The proceeds of the levy would fund apprenticeships in the UK.

a. What would be the impact of different levels of levy on your occupation or sector? Would a skills levy affect the way you recruit?

Not answered. See the responses of ILPA members and their clients.

b. Should a skills levy apply to all businesses recruiting from outside the EEA? If not, to which businesses should a skills levy apply and why? Why should other businesses be exempt from the levy?

Stated aim of the levy

The Prime Minister in his speech on immigration on 21 May 2015¹⁷ stated:

For too long we've had a shortage of workers in certain roles. Engineers, nurses, teachers, chefs – we haven't had enough Brits trained in these areas and companies have had to fill the gaps with people from overseas. With Sajid Javid as the new business secretary we're going to get far better at training our own people.

This involves creating 3 million more apprenticeships – and we will consult on getting the businesses that use foreign labour to help fund them through a new visa levy.

The Chancellor in the Budget set out the following¹⁸:

1.5 ...introducing a levy on large employers to fund 3 million new, high quality apprenticeships this Parliament supporting sustainable investment in universities by turning maintenance grants into loans, saving £2.5 billion by 2020-21

(...)

This goal will require funding from employers. In recognition of this, the government will introduce a levy on large UK employers to fund the new apprenticeships. This approach will reverse the long-term trend of employer underinvestment in training, which has seen the number of employees who attend a training course away from the workplace fall from 141,000 in 1995 to 18,000 in 2014.

(...)

There will be formal engagement with business on the implementation of the levy, which will also consider the interaction with existing sector levy boards, and further details will be set out at the Spending Review.

Likely effect of the levy on the UK skills gap

The shortage occupation list contains professions from engineers, to digital IT specialists and nurses. Members of all of these professions undergo several years of training to qualify in their particular industry.

Teachers and nurses are not recruited through apprenticeship schemes and it is difficult to see how diverting new funds to such schemes will alleviate recruitment pressures in those sectors. Introducing a skills levy for organisations such as NHS trusts and schools put extra pressure on already stretched budgets. The Skills Development Levies in South Africa exempt public

¹⁷ <https://www.gov.uk/government/speeches/pm-speech-on-immigration> (accessed 25 August 2014)

¹⁸ <https://www.gov.uk/government/publications/summer-budget-2015/summer-budget-2015> (accessed 25 August 2014)

services and charities, for example¹⁹: and it is suggested that a UK skills levy should also exempt sponsors who provide services in the public sector or meet other specified criteria.

In sectors which can properly utilise an apprenticeship scheme, training may take several years. If restrictions to Tier 2 are put in place too soon, employers will be unable to recruit the employees they require in the short-term. Introducing the skills levy will put pressure on sponsors who find it especially difficult to recruit, potentially disproportionately penalising those who seek to recruit for roles on the shortage occupations, preventing expansion of those businesses which are already operating in difficult circumstances.²⁰

Apprenticeship generally lead to NVQ Level 4 and above, or a foundation degree at the highest level²¹; this is well below the starting skill level for Tier 2 sponsorship, indicating that an expanded apprenticeship scheme will fail to address the needs of employers looking for skilled workers. Similarly, the wage levels paid to apprentices are well below those required for Tier 2, with wages as low as £2.73 per hour for the youngest and least experienced apprentices. It was reported in a Daily Telegraph²² article *Apprentice levies will not solve skills crisis warns CBI* that only 2% of apprenticeships in 2013-14 were at an advanced level, suggesting that apprenticeship schemes will have limited impact on the demand for workers currently falling within the scope of Tier 2.

While a skills levy can generate funds which can then be spent on training of workers, a sole focus on apprenticeship schemes is unlikely to address the UK skills gap or produce a workforce that can successfully challenge for the most highly skilled or highly paid roles.

Levy payments would fund apprenticeships scheme of no benefit to many Tier 2 employers. In the construction industry, a levy scheme already exists (not related to foreign workers), administered by the Construction Industry Training Board.²³ The levy is used for the payment of grants to assist employers in training their workforce in the way they need, rather than the funds being diverted to a cross-sector central scheme that does not focus on a specific industry or skill shortage.

Effect of the levy on different Tier 2 sponsors

See the Skills Levy report of December 2003 by the World Bank²⁴: On page 6 it identifies that evidence suggests a skills levy is inequitable - benefitting larger companies over small and medium-sized enterprises. The proportion of sponsored staff within a smaller organisation could

¹⁹ See <http://www.labour.gov.za/DOL/legislation/acts/basic-guides/basic-guide-to-skills-development-levies>, (accessed 25 August 2014)

²⁰ A number of the roles on the shortage occupation list are highly skilled, such as engineers and IT developers and programmers. A member firm has assisted multiple sponsors relying on SOC code 2136 *Programmers and software development professionals*, these businesses have been small start-ups looking to grow in a rapidly expanding market. A Skills Levy would not have been affordable for those small, young businesses, but they require skilled workers now in a highly technical area. An apprenticeship scheme would be of limited value, and could have no immediate impact.

²¹ <https://www.gov.uk/apprenticeships-guide> (accessed 25 August 2014)

²² See (accessed 25 August 2015) <http://www.telegraph.co.uk/finance/jobs/11735221/Apprentice-levy-will-not-solve-skills-crisis-warns-CBI.html>

²³ <http://www.citb.co.uk/levy-grant/about-levy/> (accessed 25 August 2015)

²⁴ Available at (accessed 25 August 2015) <http://documents.worldbank.org/curated/en/2003/12/8913510/training-levies-evidence-evaluations>

lead to these paying a high price per head of staff. Therefore consideration should be given to a lower rate or exemption for small and medium-sized enterprises.

Start-ups and/or small and medium-sized enterprises in developing sectors could be inhibited by a skills levy, stunting economic recovery and ultimately acting contrary to the stated aim of the levy. A skills levy that is too expensive for a small employer could prevent the business from succeeding in a competitive market and/or otherwise slow expansion. The Skills Development Levies administered in South Africa²⁵ exempts companies based on their current tax obligations and their total annual wages expenditure.

Where possible, levies should vary across sector and industry, to reflect different skill composition and training needs. The range of training services and courses should reflect the range of employers' needs, properly to address the current skills shortage.

In 1964 the UK introduced a levy grant scheme,²⁶ however it was effectively disbanded in the 1980s.²⁷ Extensive consultation with employers across the broad range of industries will be essential to the success of any new scheme. This highlighted in the Chancellor's budget.²⁸ See the World Bank report²⁹

Potential alternative use for funds generated by the levy

If the stated aim of the levy is to assist the UK in training its own nationals, then alternatives to investment in the apprenticeship scheme should be considered. A solution may be to encourage universities to offer industry schemes, such as offering more degrees with work placements. Survey data compiled in 2009 found that only 30% of courses on offer in the UK contained a work placement compared to 84% in France³⁰.

c. Should a skills levy be a one-off payment at the point of recruitment of a Tier 2 migrant or should it be on an annual basis for the duration of the migrant's stay under their initial Tier 2 visa?

Employers are likely to find it easier to budget to make a smaller payment each year rather than a large lump sum.

²⁵ *Op.cit.*

²⁶ <http://www.legislation.gov.uk/ukpga/1964/16/enacted> (accessed 25 August 2014)

²⁷ *In November 1981 the Secretary of State for Employment announced changes concerning the boards. Responsibility for training would henceforth shift from the boards to the industry concerned. As a result sixteen boards were wound up:*

<http://discovery.nationalarchives.gov.uk/details/r/C10166> (accessed 25 August 2014) also

<https://www.aoc.co.uk/sites/default/files/aoc%20paper%20on%20levies%2026%20june%202015.pdf> (accessed 25 August 2014)

²⁸ *Op.cit.*

²⁹ *Op.cit.*, page 8. See also

<http://webarchive.nationalarchives.gov.uk/20140108090250/http://www.ukces.org.uk/publications/er47-understanding-training-levies>

<http://webarchive.nationalarchives.gov.uk/20140108090250/http://www.ukces.org.uk/assets/ukces/docs/publications/evidence-report-47-understanding-levies.pdf> pages 8, 52 and 53

³⁰ <https://www.open.ac.uk/cheri/documents/student-experience-report.pdf> (ACCESSED 25 August 2015). See also the Daily Telegraph *Apprentice levies will not solve skills crisis warns CBI, op.cit* July 2015.

If the employee leaves employment early, this can be factored into annual payments rather than then having to claim a refund which, as we have seen from the immigration health surcharge, can take some time to be repaid.³¹

Annual payments require an effective and efficient system of administration and monitoring. Care would need to be taken to ensure that disproportionately high level of funds generated by the levy were not absorbed by the maintenance of the levy scheme itself.

d. Would a skills levy have specific regional impacts?

We suggest that the levy should be adjusted in the case of regional sponsors.

Given the pay gap between London and other areas of the UK,³² a standard levy would absorb a far larger proportion of the employment budget of a regional sponsor compared to its London counterpart. This could have the effect of stunting industry and growth in the different regions, further limiting ability to expand into new markets or emerging sectors, or to respond quickly to the needs of clients.

Negative impacts on growth in different regions is contrary to the stated aim of the Government, which continues to advocate the need for growth outside London, such as through the 'Northern Powerhouse'³³

Tier 2 Dependants

18. Dependants of Tier 2 migrants, such as partners, spouses and adult minors, presently have the unrestricted right to work in the UK. The Migration Advisory Committee is asked to consider the impact of removing this automatic right:

General

ILPA contributed to the consultation that resulted in the Migration Advisory Committee's August 2009 report *Analysis of the Points-Based System Tier 2 and dependants*.³⁴

As it did in 2009, ILPA has encouraged and supported members to support their clients to respond to the consultation with data from their individual firms, and confines itself herein to making overarching points based on experience of representing both workers and employers since the inception of the Points-Based System and before. We also warmly recommend to the Migration Advisory Committee the work of the Permits Foundation which is the leading organization in this field and has done global work on the issue which ranges from high level

³¹ The Immigration Health Surcharge is repaid once the time for making an administrative review application has elapsed or, if an application is made, once the administrative review has finally been determined.

³² <http://www.cityam.com/206242/where-can-you-earn-most-uk-pay-london-much-higher-any-other-part-uk> also <http://www.londonlovesbusiness.com/business-news/economic/london-pay-gap-falls-for-first-time-since-crash/9873.article> (accessed 25 August 2014)

³³ Speech of the Chancellor of the Exchequer, 15 May 2015, <https://www.gov.uk/government/speeches/chancellor-on-building-a-northern-powerhouse>

³⁴ Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257266/mac-august-09.pdf (accessed 18 August 2015).

consideration of economic effects to collection of data from significant numbers of spouses, workers, and employers.

We concentrate on spouses and partners as, in our experience, by far the largest group of dependants exercising their right to work are spouses and partners, rather than adult children and there are only a few generalizations that we can make about adult children.

18a. How would removing the automatic right of dependants to work affect main applicants' decision of whether to come to work in the UK?

The Migration Advisory Committee's 2014 work on investors identified the importance of "social" factors in the choice of the UK as destination:

*Partners told us that, whilst the UK does offer a relatively attractive business environment for investors and entrepreneurs, this was not the only or main driver behind investors' desire to come to the UK. Social, legal and cultural factors were equally, if not more, important.*³⁵

As detailed by UK Trade and Investment, one of the main reasons to relocate to the UK is its flexible labour market and the ease in which to set up and run a business in Europe.³⁶

The EU 'Blue Card'³⁷ gives dependants the right to work. While the UK has opted-out on the proposal, it is an important element of considering the international environment. The Commission's paper accompanying the proposal for the "Blue Card" directive stated

*"Favourable conditions for family reunification and for access to work for spouses should be a fundamental element of this Directive which aims to attract highly qualified third-country workers"*³⁸

In the United States of America, the Committee on the Judiciary recommended that L visa dependents be allowed to work because:

*"...working spouses are now becoming the rule rather than the exception in the U.S. and many ... corporations are finding it increasingly difficult to persuade their employees to relocate to the United States. Spouses hesitate to forgo their own career ambitions or a second income to accommodate an overseas assignment. This factor places an impediment in the way of these employers' use of the L visa program and their competitiveness in the international economy."*³⁹

Magdalena Braun's article in the Seattle Law Review "The golden cage: how immigration law turns foreign into involuntary housewives"⁴⁰ looks in detail at the effects of denying spouses of HI-B visa holders in the United States permission to work and is relevant to this and

³⁵ Tier I Investor Route: investment thresholds and economic benefits, February 2014, at 4.21.

³⁶ <http://www.ukinvest.gov.uk/Key-advantages/en-GB-list.html?nav>

³⁷ Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment 17426/08 MIGR 130 SOC 800, Brussels 18 March 2009, adopted by the Council 7 May 2009, see doc 9057/09, MIGR 50

SOC 276, Inter-institutional Files: 2007/0228 (C_S)

³⁸ 17426/08 MIGR 130 SOC 800, Brussels 18 March 2009

³⁹ H.R. REP. No. 107-188, at 2-3 (2001), reprinted in 2002 U.S.C.A.N. 1789, 1790.

⁴⁰ 31 Seattle U. L. Rev. 937 (2008), available at

<http://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1842&context=sulr> (accessed 18 August 2015).

subsequent questions. She identified the following advantages to the policy change which has now taken place:

First, it will eliminate the dependency and vulnerability currently experienced by H-4 visa holders; second, it will ensure that there are no unjustified or arbitrary differences in treatment of similarly situated classes of nonimmigrants. ... authorizing spouses of foreign professionals to work will help ensure that the United States remains an attractive workplace for the most competitive H-1B candidates worldwide. Moreover, it will enable the United States to take advantage of the unique training and education of H-4 holders without bearing any of the cost of such training and education. Finally, changing the current law will bolster the Social Security Administration's attempts to ameliorate its funding deficit problem without increasing current taxes or the current level of legal immigration.”⁴¹

See also the data cited in the Migration Advisory Committee's 2009 report⁴² In ILPA members' experience, and perhaps unsurprisingly, conditions for dependants, including, but not limited to, their right to work are more likely to be a factor in decision-making for those principal applicants who have a choice of country in which to make their home because their skills are very much in demand.

Dependants' right to work is also a factor where the dependant's income makes a significant contribution to the family finances, either because the dependant is a very high earner or because those finances are under strain. The dependent child of a person entering under Tier 2 must be under 18 at the date of application and the right of that child to work once they have reached the age of 18 is not a factor we identify as likely to affect the main applicant's decision to come to the UK. Many dependants of Tier 2 workers who remain in the UK on reaching adulthood will do so to attend university in the UK as overseas students and their work is then incidental to their studies. Were they to enter as overseas students on their own account, they would be permitted to work 20 hours per week during term time and in vacations. Barring them as Tier 2 dependants from opportunities to participate in work placements and internships would be a reason for them to come under their own steam as students, rather than a factor influencing their parents' decision to come to the UK.

b. How many of your Tier 2 employees bring dependants? If so, do they work whilst in the UK? Are they qualified to degree level? What occupations do they work in? If possible, please specify occupations or job titles according to the SOC 2010 classification.

ILPA members will be supplying evidence in response to this question in their individual responses on behalf of their firms/clients.

We emphasise that the importance of dependants being able to work is not a factor that correlates neatly with the skills level of the dependant. In couples where both partners are pursuing international careers, it may be important for one partner not to put their career on hold. In all cases, the potential earnings of the dependant may be part of a couple's calculations as to whether a posting to the UK pays enough. The happiness of a partner is a factor in the decisions of many couples and families. The impact of enforced idleness may be particularly felt where the principal works long hours and travels a lot for their job.

⁴¹ *Ibid.*, page 950-951.

⁴² *Op.cit.* paragraphs 7.84-7.86.

For those comfortably off and unable to find work at their skills level in the UK, for example because their qualifications and/or experience are not recognised or are not given adequate recognition, voluntary work, family finances permitting, with opportunities to work at their skills level, may offer a more attractive option than paid employment in any event.

**c. How would removing the automatic right of dependants to work impact on:
i. the economy;**

The Migration Advisory Committee's 2009 report details the gaps in the available data and the problems of choosing appropriate indicators of the economic effects of dependants' work.⁴³

We do not have the specialist expertise and do not attempt to replicate such a detailed analysis, but we identify the following factors as relevant:

- The UK's ability to attract skilled principal applicants who have a choice of destination whose work will contribute to economic growth (see response to 18.a. above);
- The contribution the unhappiness of the spouse/partner makes to assignment failure with the consequential costs for the employer;
- The contribution the happiness of the spouse/partner makes to the ability of skilled principals to work productively and effectively;
- The contribution the work of the spouse/partner can make;
- The effect of five years' absence from the labour market on spouses and partners who subsequently settle in the UK and enter the labour market at that stage.⁴⁴

There have been a number of international surveys in which the ability for a partner to be able to take employment has been shown to be a driving factor in whether individuals accept international assignments and this also reflects the experience of ILPA members in their discussions with their clients.

See the comments of the US Committee on the Judiciary cited in response to 18.a above.

The Office for Economic Cooperation and Development *International Migration Outlook 2014* identifies⁴⁵ that skills of dependants are often under-utilized:

Against this backdrop, the integration of immigrants and their offspring has become a prime policy objective for OECD countries, and a vast array of different integration policies have been adopted over the past fifteen years. Among the various challenges for integration, perhaps the most important one is releasing the full skills potential of immigrants and their offspring. Skills of immigrants that are not used represent a wasted resource at a time when economies are increasingly less able to afford such waste, and may also impact negatively on social cohesion.

It states:

⁴³ *Op.cit.* at 7.3 and 7.55. See also 7.34.

⁴⁴ Migration Advisory Committee's 2009. See also, e.g. Tech workers' spouses ready, eager to work under new immigration rules, The Seattle Times, 7 April 2015 available at <http://www.seattletimes.com/seattle-news/eastside/high-tech-workers-spouses-welcome-new-immigration-rules/> (Accessed 18 August 2015). See also Forbes *The dark costs of denying highly skilled immigrant spouses the right to work*, 23 May 2013 <http://www.forbes.com/sites/ruchikatulshyan/2014/05/23/the-dark-costs-of-denying-highly-skilled-immigrant-spouses-the-right-to-work/>

⁴⁵ Pages 37 to 39)

...investing in the skills that bring immigrants into the labour market can pay off handsomely. OECD work on the fiscal impact of migration (Liebig and Mo, 2013) has shown that lifting immigrants' employment rates to native born levels would deliver fiscal benefits of one-half of a percentage point of GDP or more annually.

...it is also an important factor in social cohesion'.⁴⁶

The organization's 2013 report came to the same conclusions.⁴⁷

The 2008 Permits Foundation survey cited in the Migration Advisory Committee's 2009 report identified that dependants in its sample were very often highly educated, proficient in foreign languages and have a desire to work.⁴⁸ The Migration Advisory Committee concluded in 2009 that the survey provided useful indicative data.⁴⁹

The United States of America's Department of Homeland Security on 25 February 2015 summarized the benefits of its rule change allowing dependants of the H-1B workers to work as follows

WORK EMPLOYMENT AUTHORIZATION FOR CERTAIN H-4 DEPENDENT SPOUSES AS

DHS anticipates that this regulatory change will reduce personal and economic burdens faced by H-1B nonimmigrants and eligible H-4 dependent spouses during the transition from nonimmigrant to LPR status. The final rule will also support the goals of attracting and retaining highly skilled foreign workers and minimizing the disruption to U.S. businesses resulting from H-1B nonimmigrants who choose not to pursue LPR status in the United States. By providing the possibility of employment authorization to certain H-4 dependent spouses, the rule will ameliorate certain disincentives for talented H-1B nonimmigrants to permanently remain in the United States and continue contributing to the U.S. economy as LPRs. This is an important goal considering the contributions such individuals make to entrepreneurship and research and development, which are highly correlated with overall economic growth and job creation. The rule also will bring U.S. immigration policies concerning this class of highly skilled workers more in line with those of other countries that are also competing to attract and retain similar highly skilled workers.⁵⁰

After five years, certain Tier 2 workers and their dependants have an opportunity to settle in the UK.⁵¹ A person who has been out of the labour market for five years or unable to work at the level for which they are qualified, may find it more difficult to find work or to find work at the appropriate skills level and may require support that they would not otherwise have needed to integrate and find work and to support themselves in the meantime. The most recent study by the Eaves project provides useful up to date data. Eaves is a charity working on all forms of violence against women and girls. Its June 2015 report *Settling In*⁵² was the result of a 20-month research project funded by the European Integration Fund to look into the experiences of women coming to settle in the UK on spousal visas. The project was supported by an expert steering group.

⁴⁶ *Ibid.* Page 106.

⁴⁷ See Chapter 3. Available at <http://www.oecd.org/els/mig/IMO-2013-chap3-fiscal-impact-of-immigration.pdf> (Accessed 18 August 2015).

⁴⁸ http://permitsfoundation.com/docs/permits_survey_summary.pdf

⁴⁹ Migration Advisory Committee 2009, *op.cit.* at 7.16

⁵⁰ Available at <https://www.federalregister.gov/articles/2015/02/25/2015-04042/employment-authorization-for-certain-h-4-dependent-spouses> (accessed 18 August 2015).

⁵¹ HC 395, paragraph 319E.

⁵² See <http://i2.cmsfiles.com/eaves/2015/06/Settling-In-research-report-9795c1.pdf> (Accessed 18 August 2015)

Some 58.23% of the women surveyed had graduate or post graduate qualifications. All wanted to work.

Women who come to the UK on spousal visas are usually coming on a route to settlement. It would therefore seem sensible to design policy and practice in such a way as to facilitate this process. This is acknowledged in Government policy papers such as Department of Communities and Local Government 2012 yet as ever the implementation gap remains pronounced. (Asylum Aid, 2014).⁵³

See also social impacts below.

Failed assignments are expensive for companies:

'The number one reason for assignment failure is the family's inability to acclimatise and adjust to the new location,' says Andrew Walker, the director of global mobility at Worley Parsons, which oversees more than 3,000 employees who move abroad⁵⁴

Where dependants find work, the UK economy benefits through increases in tax revenue.

Significant numbers of Tier 2 workers and their dependants have private health insurance and their children in private education. Some of those who pay for these directly rather than from a subsidy from employers rely on a spouse/partner's income to do so.

18.c.ii. public finances?

Dependants of Tier 2 workers are barred from recourse to public funds, therefore whether they work or not they cannot become a burden on public finances. They pay a "health surcharge" for access to the National Health Service although in many cases private health insurance will be part of the family's relocation package. Isolation and lack of integration may in some cases result in greater demands on the National Health Service, because of conditions such as depression or because health worries loom larger for a person who has little to occupy them.⁵⁵ Unequal power relationships between spouses, enforced financial dependency and restricted social networks may also increase the likelihood that spouses and partners become and remain subject to domestic abuse which then requires State intervention.

The Migration Observatory 2015 *Election briefing: impacts of migration on local public services* ⁵⁶ states:

"... migrants contribute to the provision of public services in two main ways: by paying taxes that contribute to funding these services; and as workers involved in their provision.

Studies on the 'net fiscal impact' of migration have generally found that, overall, the foreign born make national and local tax contributions that are roughly comparable to the cost of the services and benefits they receive.

⁵³ Ibid., page 14

⁵⁴ <http://www.bbc.co.uk/news/business-16086241>

⁵⁵ See Permits Foundation survey data cited in the Migration Advisory Committee 2009 report at 7.84.

⁵⁶ Available at <http://migrationobservatory.ox.ac.uk/briefings/election-2015-briefing-impacts-migration-local-public-services> (Accessed 18 August 2015).

Some public services rely heavily on migrant workers. Foreign born people are overrepresented in [social care](#) and in the [NHS medical workforce](#), for example. However, [it is not possible to quantify](#) the impacts of this workforce on the availability and cost of these services, because of the very large number of assumptions that would be required."

d. Would removing the automatic right of dependants to work have social impacts?

Yes. The Migration Advisory Committee captured these succinctly in its 2009 report under the rubric "the dignity of the spouse":

*We are also aware of the argument that allowing the spouse to work is a desirable end in itself, in terms of preserving the dignity of the spouse. Working spouses have wider social benefits than the purely economic ones we have focused on.*⁵⁷

See the extracts from the Office for Economic Cooperation and Development 2014 report *International Migration Outlook* cited at 18.c.i. above. All the data available suggests that more accompanying spouses and partners are women than men. In its 2009 report the Migration Advisory Committee identified that 92% of Tier 2 Dependants were women.⁵⁸ UK Visas and Immigration's 13 August 2015 response to Paul McCarthy of Charles Russell Speechly's on gender breakdown shows that in all categories and for all years, with the one exception in 2013 (75 women; 70 men), more men than women were principal applicants. This does not determine how many of those were accompanied by dependants,⁵⁹ nor how many had a partner of the same sex, but given that very numerical differences the data strongly suggests that an accompanying partner is more likely to be female than male.

The Migration Advisory Committee identified in its 2009 report into Tier 2 migrants and dependants, that at least 29% of dependants were degree educated (Bachelors or Masters) but often lower skilled than the principal.⁶⁰ If the government were to consider restricting permitted work to shortage occupation or skilled levels, as most dependants are women and lower skilled (often in personal service occupations (Migration advisory Committee AC report 2009) this would therefore remain discriminatory.

It is reasonable to conclude that proposals to restrict the access of spouses and partners to the labour market would affect more women more than men⁶¹. This raises the prospect that to deny or restrict spouses and partners access to the labour market would entail discrimination against women and violate the Government's public sector equality duties.

The attitudes taken to dependants working have repercussions across government, including in areas quite other than migration because they involve grappling with questions of division of labour within the family and of the potential of different family members to make economic contributions. Where a government policy affects women's access to the labour market in particular, this has implications for all government policy addressing women's access to the labour market. The Conservative Party manifesto stated:

⁵⁷ *Op. cit* at 7.91

⁵⁸ *Op. cit.* paragraph 7.26

⁵⁹ In its 2009 report the Migration Advisory Committee identified a ratio of 0.44 dependants per work permit holder, see 7.20 and of 0.31 spouses per work permit holder in Tier 2.

⁶⁰ *Op. cit.*, paragraph 7.30. See paragraph 7.32 for the Permits Foundation data.

⁶¹ http://permitsfoundation.com/docs/permits_survey_summary.pdf

...we will make our economy more inclusive, by removing barriers that stop women and disabled people from participating in our workforce... We want to see full, genuine gender equality.

Restricting the rights of women spouses of Tier 2 workers to work cannot be reconciled with these aspirations. It is also likely to have an effect on whether the UK is perceived as a progressive country striving for gender equality.

The Eaves *Settling In*⁶² report cited in response to 18.c.ii above found that some 58.23% of the women surveyed had graduate or post graduate qualifications. All wanted to work.

*The vast majority of the women who were interviewed in the research recognise that to lead a comfortable and independent life in the UK, to have a fulfilling social life and to integrate they need to be in employment.*⁶³

The Life in the UK test⁶⁴ and English language requirements for dependants applying for indefinite leave to remain⁶⁵ are designed to promote integration. The desirability of integration and that of earning money to support oneself are recognised at the level of primary legislation in the Immigration Act 2014:

117B Article 8: public interest considerations applicable in all cases.

...

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English— .

(a) are less of a burden on taxpayers, and .

(b) are better able to integrate into society. .

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons— .

(a) are not a burden on taxpayers, and .

The Lord Wallace of Tankerness, in the debates on that clause in the House of Lords during the passage of the Act, stated for the coalition government:

...being financially independent also helps ensure that a migrant is able to integrate and play a full part in our society.

It is important, for example in facilitating community involvement, that migrants should be able to use local shops, local services and public transport in an ordinary, everyday way that is not inhibited by a lack of funds. The same applies to adult education resources, such as English

⁶² See <http://i2.cmsfiles.com/eaves/2015/06/Settling-In-research-report-9795c1.pdf> (Accessed 18 August 2015)

⁶³ *Ibid.*, Page 40.

⁶⁴ HC 395, paragraph 319E(d)(ii)(g) and Appendix KOLL.

⁶⁵ HC 395, paragraph 319E(d)(ii)(g).

language classes, for which a fee may be charged. This is consistent with available evidence on effective integration, which shows that the level of migrant household income is an important factor.

The OECD report, *Settling In: OECD Indicators of Immigrant Integration 2012* has shown a clear connection between effective integration and the level of migrant household income. The report states that household income and wealth have been shown to be important for a broad range of socioeconomic outcomes, in areas as diverse as health, education and civic participation. The report also found that having insufficient income may hamper migrants' ability to function as autonomous citizens, which may have consequences for social cohesion. The report underlines the importance of migrants having access to sufficient funds to enable them to participate in the life of their local community.⁶⁶

Our experience, from across all areas of our work, from asylum to family and economic migration, is that it is very often by children going to school and adults going to work that people get involved with those around them and with things going on in their area. This in turn increases the likelihood that they will learn English.

There is considerable evidence from spouses and partners' themselves of what it means not to be able to work

'Ms Sandoval is currently not working as her husband is posted to Dar es Salaam, Tanzania, where she is not allowed to work. "It's definitely a lot harder to settle in for a spouse who isn't working. It takes about a year to get comfortable and figure it out."

"And it takes longer to meet people and find a community in which you want to participate and do stuff."⁶⁷

Case of L

"I am a British citizen and had always lived and worked in the UK. After I married my Australian husband we moved to the USA with his job, where I was unfortunately only granted a spouse visa under the terms of which terms I was not allowed to work. Moving to a new country, knowing no one except my husband who was away working for much of the time proved very challenging. I joined the local gym and volunteer office but had many hours on my own and did not meet anyone else in my position so found it difficult to find friends. I relied heavily on husband and made an effort to meet people through him but this wasn't easy. I remember a function one evening when the person I was speaking to turned away having found out that I was not a company member and therefore decided I had nothing to offer. Maybe this is unfair but this is how I felt. Too many hours alone was lonely and depressing. My husband ending up spending a lot of time working away, I tried travelling with him but hours in hotel rooms even in the best places in the world is not fun. We ended up staying only half the time we had anticipated as I was unhappy.

We cut our losses and moved to Australia, my husband's home but again completely new to me. I was granted a full residency visa allowing me to work. The change was instant and dramatic. I immediately joined a temping agency and after a few months was accepted into a full time position in the city. I found new friends easily and felt excited and at home in our new place of residence. My husband was still travelling a lot with work but enjoyed meeting new friends through me so I helped him settle back in too. I felt very at home from the get go .

⁶⁶ HL Deb 5 Mar 2014 : Column 1391.

⁶⁷ <http://www.ft.com/cms/s/0/7a2a9a18-84b4-11e1-b4f5-00144feab49a.html#axzz3i1Wytm6W>

I know I am thought of as an outgoing, friendly and social person so I did not expect to struggle when we went to the USA. When I look back on my time in the States I can see how my self-esteem suffered when I was unable to work. I felt worthless and useless. I put on weight and I felt like staying in bed and eating crisps all day - doing anything felt like just too much effort. I look back and am surprised at the detrimental effect I believe not being able to work had on me and am forever grateful for being treated differently here in Australia."

Case of K

I spent a lot of the seventies and eighties overseas as my husband worked as an operational and country manager for a UK airline and was posted in various countries. During much of that time I was not able to work, generally as there were no opportunities for British women in those places at that time (e.g. the Middle East or communist Czechoslovakia). It was like forced unemployment, with all of the negatives that that entailed. The experience of not being able to work was quite a shock to the system. In my career I had been head hunted and promoted to head up and run a new department in an insurance brokers which was part of a leading group in London. This was a challenging and exciting role. Not being able to work overseas took a lot of getting used to and completely nipped in the bud any career prospects. In the beginning the experience was not only frustrating but de-motivating: sometimes a feeling of no self-worth. Not able to use my brain in a positive way, no sense of achievement and no interaction with other work colleagues. Not easy.

When I returned to the UK it was exceptionally difficult to get employment as I had been overseas for a number of years. I had to start at the bottom of the ladder.

Another aspect was not being in a position to earn money and contribute to the family income or contribute to any pension scheme for later years. Another knock on effect was my state pension in the UK was reduced as I was unable to contribute to National Insurance in my own right. My point being that this lack of having no opportunity to work has many knock on effects not always obvious at the time.

Finally, I believe this lack of opportunity was a waste of my skills, knowledge and experience and looking back it was a wasted opportunity for the host country in a situation where we both could have contributed and gained so much.

Case of J

I am a British citizen and trained and worked as a solicitor in England before I moved to the US in early 2013. My husband was offered the opportunity to relocate to New York for a few years, and I jumped at the chance to live in the Big Apple.

My visa did allow me to work, but I had to apply for work authorisation in the US, which took approximately four months to process. I had always thought that being off work would be lovely, but I was shocked at how much I missed it. I was in a new city, alone for 12 hours a day while my husband was at work. I was fortunate that my husband and I were quickly embraced in a friendship group that we met quite randomly going skiing for the day. However, generally I found it was very hard to meet people, and those friends I did have were at work during the day so not available to meet. My husband had an instant friendship group at work, so he was fine.

I hated being introduced to people. They would ask "and what do you do?", and I would respond that I used to be a lawyer but was not working at the moment. I felt instantly labelled as a "banker's wife", and discarded. On some occasions people literally stopped talking to me and walked away after I said I did not work. This was very upsetting, as I have always been a very sociable person with a lot of friends.

My self-esteem plummeted. I also hated relying on my husband for money, as I had always earned my own.

I found myself missing home a lot, and spending a lot of time on social media and Skype connecting with my family and friends in the UK.

When my work visa came though, I started looking for work, and although it took me several months to find the right thing, just knowing that I could work lifted my spirits enormously. I have now been at my current firm for almost two years and am so much happier. I think I would have left the US by now if I had not gone back to work.

My friend here is Polish. She used to be a manager at a leading department store, and moved to the US in August 2013. The visa that she was on did not allow her to work. As a result, she felt forced to apply for a green card just so that she could work. This took two years to come through. I know from my frank discussions with her that she got very depressed and often did not get dressed and watched TV all day. She would just wait around for her husband to come back from work. It was like the 1950's. They also felt the pinch financially, as being down to one salary and living in New York was hard. This led to marital arguments.

I think not being able to work in the UK as a partner of a migrant would be awful.

Case Example:

A client was offered a job in a specialist role in the UK with a major bank. The role was for local hire and therefore under Tier 2 General. The client was accompanied by a spouse and teenage child. The client was due to work long hours, the children being at boarding school and therefore, the spouse spending potential long portions of time within the own time remit. The spouse was a highly qualified dentist and had spent a long time in building up their professional portfolio and career. Whilst the job offer was very attractive, the spouse was very keen on the ability to continue in their own profession within the UK, highlighted the fact that dependants also have a keen interest in their own careers (not just as a dependant) and this forms a vital consideration under whether the family would indeed take up the UK role.

See further the *Seattle Times* article cited in response to question 18.c.i.

Magdalena Braun's research, cited in response to 18.c.i, records

"... many men abuse the power given to them by the law: some women get only weekly allowances for food; others are forbidden from calling their families or taking English classes; and still others become victims of domestic violence. Depending on their husbands for absolutely everything, including the right to remain in the United States, many women are forced to stay in marriages they desperately need to escape."

The inability to work increases financial and emotional dependency and vulnerability. If a spouse is unable to support themselves it leaves them open to domestic abuse and to remaining in an unhappy marriage with no ability to lead an independent life.

There is no domestic violence provision in UK immigration law to protect temporary migrants. A route to settlement is provided only for those who entered on a spouse visa.⁶⁸ Contrast this with the position in the United States of America under the Violence Against Women Act of 2005, which allows a spouse of a principal H visa holder to apply for a work permit upon showing proof that she "has been battered or has been the subject of extreme cruelty perpetrated by the spouse".

The government has emphasised its desire to see migrants integrate into UK society, for example in arguing for its 'earned citizenship' proposals as designed to promote integration.

e. Would removing the automatic right of dependants to work have specific regional impacts?

Yes.

Outside London workers are often based further away from the centre of towns which can be more isolating and this effect would be magnified if the dependent is unable to integrate fully through being able to work and therefore follow their chosen career whilst in the UK.

Case Example:

A client who was hired to work in Aberdeen as part of the oil and gas industry. Up to six months of their role was spent off-shore meaning that the dependent partner was left living alone onshore. With the ability to work, the client has provided the feedback that the dependant has had the chance to meet local colleagues, engage in life in what would otherwise be a fairly remote community. The ability to work has opened up local villages residents to the benefits of additional skills in the work place that the dependant has brought. The major factor for the dependant has been the ability to engage in meaningful employment and integration into a local community and develop English language skills that have been very important in the lead up to settlement in the UK.

Living costs are very high in London and the South-East and, other than at higher levels of earnings; a couple is likely to need both partners to be working for the principal to accept a job there.

The Migration Advisory Committee's own work identifies that some labour market shortages are regional.⁶⁹ Other studies reach similar conclusions.⁷⁰ More detailed work would be needed to determine whether spouses and partners of Tier 2 workers are able to fill vacancies in those areas that would otherwise remain unfilled.

Overall Tier 2 design

19. To what extent do the existing Tier 2 mechanisms and framework work optimally to enable business to bring in the skilled workers that they require?

⁶⁸ HC 395, paragraph 289a.

⁶⁹ See e.g. *Skilled, Shortage, Sensible*, February 2013

⁷⁰ See e.g. the UK Commission for Employment and Skills *The Labour Market Story, The State of UK Skills*, Briefing Paper July 2014.

Tier 2 cooling off periods improved with recent changes to allow for repeat short term assignments of three months or fewer but still a problem if assignment goes over three months. This makes repeat transfers for short periods over three months problematic. Clients will sponsor for 12 months if they are concerned the assignment will last more than three months. This enables the worker to return in those 12 months to complete another project if required. This means that clients may choose to keep the certificates of sponsorship open longer than they may need to.

The Tier 2 General restricted Certificates of Sponsorship quota is problematic as it is about salary rather than role. The points assessment is too basic. For example many nurses did not obtain a Restricted Certificates of Sponsorship in June, July and August quotas as their salaries were too low but there is a need for nurses in the UK. One client, a recruitment agent stated:

- *Massive increase in international/non-European recruitment given shortages, NICE guidelines and CQC criteria.*
- *Conducting an overseas nurse recruitment project per month in the Philippines (and soon to India) since September 2014, approx. 100 nurse hires per month and projects already booked through to May 2016.*
- *We currently have 420 nurses hired and in process awaiting deployment to UK but all hospitals refused restricted COS allocation in June and July so unable to deploy much needed nurses.*

The Shortage Occupation List does not reflect shortages in public sector e.g. nurses

Case of DT

DT concerned an international expert dog trainer from the US who was providing training for high net worth individuals and their dogs in London. The trainer is internationally recognised and holds several posts as president of various canine associations. It was organised by a London socialite. If this was a one off occurrence not organised for a commercial concern then the expert could come as a visitor. The plan is to hold the training annually and as delegates are charged a course fee which is split between the organiser and the trainer this is a commercial concern. This means that the London-based organiser will need to set up a company and sponsor the expert DT for each visit. The course will be held over 3-4 days each year. It will not be possible to sponsor DT as an Intra-company transferee and therefore a resident labour market test under Tier 2 General is required. It is possible that the remuneration for the training may not meet UKVI salary requirements as this is an annual one off course and remuneration is the course fees split between the organiser and trainer. Delegates are attending the course because DT is providing the training and therefore a resident worker could not fill this role. It is not a vacancy that would be filled by a resident worker.

There are many graduate applications for Restricted Certificates of Sponsorship in the summer. We understand from some of the big four accountancy firms that they have a high volume of graduate applications in June and July. This results in the number of applicants exceeding the number of certificates available. This means that roles such as nurses find it difficult to obtain a restricted certificate of sponsorship as salaries for those roles are quite low compared to the private sector. This problem could be resolved if the graduate roles could be covered by Tier 5 or Tier I Post Study Work if reintroduced.

Sponsors are often clueless about how to manage their licence. They need more support from Home Office. It is difficult for the unrepresented to know what questions to ask the business

help desk. The level of wrong answers from the helpdesk is high. In particular with mergers, acquisitions and other changes to the sponsor's corporate structure the help desk has provided conflicting information both over the phone and by email. Problems arise when those providing the service are working on out of date or inaccurate information or when they give the wrong advice.

Case example

One client was told by the business helpdesk by email that an event should be reported as a sponsor change of circumstances but when they spoke to the helpdesk they were informed they should make a new licence application. If a new licence application is required failure by the company to do this could invalidate the sponsorship of existing sponsored workers resulting in their dismissal and possible unfair dismissal claims against the employer. The ramifications are very serious for the sponsored migrant and for the employer.

Case of A

A dependant of a post-study worker whose relationship broke down had a British child and a derivative right of residence under EU law. Her application was refused but her appeal against refusal allowed. The Home Office sought to appeal this further but its application for permission to appeal was refused. The Home Office wrote to her employer saying, wrongly, that she was not allowed to work. She was dismissed from her job.

Case of S

A worker was suspended because an application was still not showing on the database against which the Home Office makes its checks despite the payment having been taken more than three years previously. The employer was told that she did not have permission to work.

Case of C

An application for further leave from an unaccompanied child who had been given discretionary leave to 17 ½ years of age following refusal of asylum got an acknowledgment of an application to extend leave saying that his entitlements continued. But the application for further leave remained pending after nearly three years. The employers simply could not comprehend that the applications could remain pending for so long. They checked with the Employer's checking service and were told that the young person did not have permission to work.

Case of I

The Parliamentary and Health Service Ombuds upheld a complaint by an EEA national who was unable to prove his right to work whilst UK Visas and Immigration dealt with his application for a permanent residence card after exercising EU treaty rights in the UK as a worker for five years. After submitting his application in May 2012, the individual was sacked from his job in July 2012 when the Employer Checking Service told his employer that it could not confirm his right to work. It did so on the basis that neither a letter confirming a decision to grant the residence card nor a certificate of acknowledging the application had been issued even though the issue of certificates of acknowledgment had been discontinued by UK Visas and Immigration. He was unable to work until early 2013 when he finally received his residence card⁷¹

Sponsors acting in good faith often make mistakes not realised until years later and this causes employment law problems. For example, if sponsor has not conducted the Resident Labour

⁷¹<http://www.ombudsman.org.uk/make-a-complaint/case-summaries/volume-1/parliamentary/man-compensatedfor-loss-of-his-job>

Market test correctly but this is not picked up until an audit two years later, if they have to go through a dismissal process the employee will have unfair dismissal rights.

In the old “work permits” scenario the Home Office had to be satisfied before the recruitment proceeded and before the worker was brought to the UK that all was in order. Now employers live without certainty but under threat of being caught out years down the line. This leads to defensive practice that is cumbersome and costly, not least in legal fees.

Salary levels do not take into account lower rates paid in different regions

Lack of prior research by Home Office auditing officers mean that all too often they ill-understand the type of client they are auditing.

Case of AF

This case concerned an artisan food business which required a business development manager with a background in artisan food. Following the audit during which the auditing officer did not discuss the client’s business, client base, direction of growth etc, UKVI suggested that any person with business development skills could undertake the role and the role was not skilled enough. UKVI did not look at the particular business sector and what the particular role required. It was only after ONS matched the role to the Standard Occupational Classification codes to show that the match was as NQF6 level role and the law firm sent detailed representations about the business that UKVI accepted that the role was skilled enough. If the client had been represented at the audit these matters would have been addressed. The client did not realise they needed to give as much information as possible about the business and role at the audit and the auditing officer did not ask them for this information but the lack of information about the role and business resulted in the initial licence application being rejected.

If the Home Office used its information better it could better spot the employers where “bodyshopping” is an issue at the visa application stage and use its “genuine vacancy criterion” to proper effect, making sure it went after employers where there is a problem and did not go after those where there is not.

Another problem is lack of knowledge around compliance by some auditing officers. An IT client had sponsored migrants at client sites but although the industry is one in which there is concern about “body-shopping” the auditing officer did not ask when conducting the audit where the sponsored migrants were and if they were at client sites. On audits clients have been asked for right to work documents for staff not subject to the repeat right to work check. This has happened on numerous audits and UK Visas and Immigration has said that the client was failing in their sponsor duties. The problem was that the auditing officers did not know what the repeat right to work check requirements were and when repeat right to work checks were due. The auditing officer was applying the repeat checks to all regardless of their employment start date and regardless of their immigration status.

Changing the Immigration Rules without research as to whether changes are appropriate and will do what the UK Visas and Immigration want or meet the demands of other departments e.g. Department of Health and nurses.

Final salaries for Tier 2 workers applying for indefinite leave to remain are problematic particularly in the public sector. Different salary levels are recognised in the Standard Occupational Classification Codes yet all are expected to reach the same salary level at point of applying for indefinite leave to remain which is unrealistic. Nurses will not make the salary level of £35,000 which is to be applied from 6 April 2016. Any nurses sponsored in Tier 2 who apply for indefinite leave to remain on or after this date must be on a minimum salary of £35,000. These rules will force many nurses to return to their home countries, leaving hospitals with nothing to show for the sums spent on recruiting them. The Royal College of Nursing has

calculated that up to 3365 nurses currently working in the UK will potentially be affected and estimates that it will have cost the NHS £20.19million to recruit them - money which will have been wasted if they are forced to leave the UK.⁷²

20. What changes would you make to the design of the route that would address the issues identified and are not reflected in the changes discussed elsewhere in this call for evidence?

There is a need to review the Shortage Occupation List. Nurses could not get through the quota as their salaries are not high enough but there are shortages. More roles in the public sector should be on Shortage Occupation List. A report by the UK Commission for Employment and Skills found that it is anticipated that over two million new workers will need to be trained and recruited into the health and social care sector between 2012 and 2022 as the sector grows and some members of staff retire. This is equivalent to over half of the existing workforce and presents key challenges for training and staff retention. Four occupations (including: care workers; nurses; nursing auxiliaries; and doctors) account for over 43 per cent of the workforce.⁷³

Public service and not for profit roles should be ring-fenced so they do not lose out in Restricted Certificate of Sponsorship.

Ring fence public sector roles and roles in not for profits in relation to the salary minimum for ILR.

There should be alternatives to job centre plus for advertising.

Create a Tier 5 sponsor licence, for example lasting 11 months for skilled workers coming for under 12 months. This would be good for short term assignments and would not count towards the net migration figures.

Tier 2 only works for short assignments of less than three months, otherwise the “cooling off” period applies. Alternatives are needed for short but more than three month contracts.

Permit graduates to switch into Tier 5 and from it to Tier 2, or bring back Tier 1 Post Study Work.

More support should be provided by the Home Office, for example a drop in service for sponsors. There is a need for more support from the Home Office rather than infrequent audits.

A firm took on a client recently which had had its licence suspended. The firms were able to obtain reinstatement and the client kept their category A rating. The client did not have a representative advising them on their sponsor compliance duties and they sought advice from the Sponsor Licensing Unit following departure of the Level 1 User and Authorising Officer as they had no access to their licence. There had been a complete change in the human resources team. They were not given advice on what they had to do but were simply sent a link to the Sponsor Change of Circumstances form. The Home Office conducted an audit and suspended the licence with the intention to remove the licence putting in jeopardy the employment and right to reside in the UK of four employees who were sponsored. When the firm of solicitors

⁷² <https://www.rcn.org.uk/newsevents/news/article/uk/rcn-report-shows-immigration-rules-will-cause-chaos-and-cost-the-nhs-millions>

⁷³ UK Commission for Employment and Skills “Sector insights: skills and performance challenges in the health and social care sector” 28 May 2015

took over they checked the compliance issues and discovered that the alleged breaches were not breaches that would result in loss of the licence and some breaches were not actually real.

The auditing officer made several mistakes. The auditing officer told the client they had to report an employee who did not start their employment with them following refusal of a visa. In fact it is actually not possible to do this as the Certificate of Sponsorship is cancelled by the refusal so it is no longer live on the Sponsor Management System to make a report and a report is not required.

Just as wrong information from the Employers' Checking Service is a problem, so is wrong information from those supporting sponsors. Premium sponsors are an example. It is possible for them to pick up the telephone every day to a named person but they still get told things that are wrong. It is necessary to improve the system for those who do not have legal representatives. They do not know what to ask the business helpdesk. They are directed by helpdesk to guidance, but it is not written for non specialists so may not help them. Frequent visits etc can provide comfort. There is a need for more step by step guidance – being “walked through” by business helpdesk. Compare HM Revenue and customs and help you can get filling in your tax return.

Resident Labour Market Test information should be supplied as part of Restricted Certificate of Sponsorship application process but this must be managed in a way that does not slow down the application process. This information is already being requested in some instances to check the “genuineness” of the Resident Labour Market Test. Problems arise if there is an issue with the Resident Labour Market Test and this is not picked up in some cases until two years later on audit. The employee may then face dismissal; the employer an unfair dismissal claim. Checking it at application stage will help avoid these problems arising later on.

Consider a points assessment for restricted certificates of sponsorship based on qualifications or work experience rather than just salary as this would help the voluntary sector and public sector score more points.

Change Tier 2 short term Intra-Company Transfers to less than 12 months so they are not in net migration figures. The category is a temporary category that does not lead to settlement should not be in net migration figures.

Review the period that a person must be with a company before they can come on an intra-company transfer and require a period shorter than 12 months.

Be more prescriptive on body shopping. Home Office resident labour market test guidance should be more comprehensive.

Provide better guidance for sponsors on issuing Certificates of Sponsorship such as how long they can be post dated for, how long visas can be post-dated for so sponsors know how far in advance they can issue a Certificate of Sponsorship and apply for the visa.

Salary thresholds

21. How do the existing salary thresholds for Tier 2 compare to, and impact on, the overall wage distribution for each occupation

Public and voluntary sector workers often paid low salaries and struggle to meet the salary threshold for ILR. They also miss out on a restricted certificate of sponsorship if the quota is

oversubscribed as points are based on salary alone and their salaries will in most cases be lower than private sector roles.

22. What types of jobs and occupations are done by highly specialised and/or highly skilled experts, and is pay a good proxy for this high level of specialisation or skill?

See answers above. Pay is not always a good proxy as public and voluntary sector pay is often lower than in the private sector and employees of small and medium-sized enterprises are often on lower pay compared to their peers at multinationals. One small/medium-sized IT company identified that it cannot pay the same salaries as the bigger IT companies. The role is still the same highly skilled role. Raising salaries is anti-competition and will cause large organisations to have a monopoly.

23. What would be the impact of increasing the thresholds to a level that better aligns with the salaries of highly specialised and/or highly skilled experts?

Increases in salary levels could cause problems for the public and voluntary sector and also for small and medium-sized enterprises. Small support enterprises may find that they have to pay their Tier 2 employees more than their resident workers which could raise employment law problems. Also graduate entry level roles would be affected by an increase in salaries as they may make the new entrant rate but struggle to make the experienced rate which is payable after three years. Small and medium-sized enterprises may then struggle to retain staff if they cannot pay the higher salary level.

24. What would be the impact of increasing the thresholds to a level that restricts the route to occupations which are experiencing skills shortages skilled to NQF level 6 or higher?

Skills shortages change with the market and restricting roles to a list would be problematic as it takes time for UK Visas and Immigration to decide following consultation which roles should be included. By the time this process has been undertaken it is often too late and there is a recruitment crisis, as in the case for nurses.

There are also several roles that might be deemed to be below NQF6 but as there is a recognised shortage they are included on the shortage occupation list. As there is a shortage of skilled staff in the NHS some services are contracted out. The private sector suffers problems due to shortages such as they can no longer sponsor senior carers. Traditionally UK companies have had to source carer roles from Europe but even in Europe there is a shortage and other EEA countries are sourcing their carers from outside the EEA. Clients in the private care sector report that firms elsewhere in Europe (in particular Poland and Slovakia) are recruiting staff from outside the EEA, e.g. from Ukraine. The UK is not in a position to do this as it is not possible to sponsor carers and the UK is not signed up to any European immigration programme that enables work permits for workers outside the EEA.

25. What would be the impact of increasing the Tier 2 minimum thresholds from the 10th to the 25th percentile for each occupation for new entrant workers?

This does not take into account graduate level roles which are generally at the lower end of the pay scale. It will make it more difficult for small and medium-sized enterprises to take on graduates as they will not be able to pay the higher salaries that their larger competitors can. It means that larger businesses will recruit the best graduates if small and medium-sized enterprises cannot afford to recruit graduates.

26. What would be the impact of increasing the Tier 2 minimum thresholds from the 25th to the 50th or 75th percentiles for each occupation for experienced workers?

This could be a problem for graduate level roles when extending as they will need to meet a much higher salary and that may not be possible. They will not be able to transition if the salary is too high for experienced staff. Small and medium-sized enterprises will be disproportionately affected as they will not be able to compete with the larger companies and they will not be able to afford to sponsor which means that the best employees are recruited by larger businesses and will give those business an advantage of Small and medium-sized enterprises. Small and medium-sized enterprises may have to move their business to another country where they can recruit the staff they need. Fears were expressed at the TechUK meeting on 10 August 2015 by small and medium-sized enterprises that if salary levels are increased they will not be able to recruit the people they need to compete.

27. As an employer, what would be the impact of increasing the Tier 2 minimum thresholds on: a) hiring migrant workers from outside the EU; b) hiring migrant workers from within the EU; c) hiring natives.

If salary levels are increased it does not necessarily follow that this will reduce employer demand for migrant workers. Employers may relocate their business or parts of their business elsewhere to enable them to recruit the staff they need which would result in a loss of jobs in the UK for resident workers. Increasing salary levels will not create a pool of suitably skilled resident workers if there is a skills shortage. It will also make it difficult for small and medium-sized to compete and hire the best as they will not be able to offer the higher salaries and may not have the same opportunities to move overseas. This would result in the UK losing the edge over competitors.

28. Are there additional national pay scales or sources of salary data that should be used to set the thresholds?

See response of individual ILPA members

29. What other appropriate measures would you like to see for determining the minimum salary thresholds?

See response of individual ILPA members. This varies from sector to sector.

30. Should the minimum salary threshold take account of variations in regional pay? If so, how?

Yes. Some regions such Northern Ireland salary levels are lower.⁷⁴ Salaries should be in line with average pay in that region using Annual Survey Hours Earnings.

⁷⁴ Northern Ireland Annual Survey of Hours and Earnings 2014. http://www.detini.gov.uk/ni_ashe_2014_bulletin-2.pdf (accessed 25 August 2015).