ILPA information sheet

Points Based System – Home Affairs Committee Report

3rd August 2009

The Home Affairs Committee began an inquiry into the Points Based System in June 2008. The Committee released its report of this inquiry on 1 August 2009. This information sheet provides information about the Committee's report. The Points Based System relates to economic migration to the UK from outside of the European Economic Area (EEA). Further information about the Points Based System is provided by earlier "Points Based System" information sheets.

The Home Affairs Committee and the Report

The Home Affairs Committee is one of several parliamentary committees (called select committees), which scrutinise the work and policy of Government. These Committees are made up of parliamentarians – some are made up exclusively of Members of Parliament (MPs), others exclusively of members of the House of Lords (peers) and some have a mix of MPs and peers. The Home Affairs Committee is made up exclusively of MPs. Further information about the Committees is available at: http://www.parliament.uk/business/committees.cfm

The report is called *Managing Migration: The Points Based System*. The report is divided into two volumes. The first volume sets out details of the inquiry and the Committee's findings and recommendations. Some of the specific issues considered by the Committee are considered under separate headings below. The second volume contains the oral and written evidence received by the Committee. The report is available at: http://www.publications.parliament.uk/pa/cm/cmhaff.htm

Shortage occupation list and the resident labour market test

The Government maintains a shortage occupation list. This is a list of skilled jobs for which it is difficult to find people to fill vacancies. It receives advice on what types of job should be included on that list from the Migration Advisory Committee (MAC). Information about the MAC is available at: http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/mac/

An employer can sponsor a migrant, under tier 2 of the Points Based System, to come to the UK to work if the migrant can meet specified English language and maintenance requirements. If the job is on the shortage occupation list, the migrant does not need to meet further requirements relating to salary or qualifications. If the job is not on the shortage occupation list, these other requirements will apply; and the employer must first advertise the job in the UK, including in JobCentre Plus (this requirement is known as 'the resident labour market test').

The Home Affairs Committee recommends that the shortage occupation list should be restricted to

jobs where shortages are either short-term or cyclical (i.e. not permanent, but occurring from time to time), and that the list should be reviewed more frequently. The Committee does not think that migration could or should be limited to jobs on the list, but recommends some form of independent inspection for monitoring whether employers do satisfy the resident labour market test. However, the Committee also considers that the current test is not suitable for all types of job.

Consideration of experience and skills

The Points Based System takes account of various factors – e.g. a potential migrant's age, salary and degree qualification. It does not take account of experience, skills or non-degree qualifications. The Committee generally accepts widespread criticism of the Points Based System that this approach is "*arbitrary and unfair*". It says that by "*by measuring skill primarily on criteria such as past earnings or academic qualifications* [the Points Based System] *gives undue priority to easily-quantifiable attributes and ignores ability and experience.*"

Maintenance requirements

The Points Based System requires migrants to meet maintenance requirements. Migrants must show they have held funds of at least £800 in an account for a continuous period of three months. This minimum required sum is increased under tier 1 of the Points Based System (for highly skilled migrants). If the migrant wishes to come to the UK with his or her dependants (e.g. partner and/or children) this minimum required sum is increased for each dependant.

The Committee generally rejects criticisms of the maintenance requirements, but recognises that salary requirements must be adjusted to avoid discrimination against migrants from developing countries where earnings are generally significantly lower. However, this would not affect the minimum required sum under the Points Based System. The Committee does accept that, in the case of students, the minimum required sum has been set too high.

English language

The Points Based System requires migrants to have knowledge of the English language. Although the Committee accepts that some specialised professions may not require knowledge of English, the Committee considers that "*English is necessary for living in and integrating into British society.*"

Low skilled migration

The Government does not currently use tier 3 of the Points Based System, which would allow for migration of 'low skilled' migrants from outside the EEA. The Committee says very little about low-skilled migration and does not propose that tier 3 be introduced.

Sponsorship

The Points Based System is largely dependent upon sponsorship – see the December 2007 "Points Based System – Sponsorship" information sheet. The Committee considers that the powers given to the UK Border Agency to enter and search sponsor's premises are too wide. The Committee also recommends there should be flexibility so that a minor administrative oversight by a sponsor is not heavily penalised, and information provided to sponsors by the UK Border Agency must be clearer.

Administrative Review

If an application to come to the UK under the Points Based System is refused, there is no appeal to the Asylum and Immigration Tribunal. Instead, the potential migrant may ask the UK Border Agency to review its refusal (this is called administrative review). The Committee generally supports this position. However, the Committee recommends that applicants should be able to submit evidence for the review that was not included in the original application (currently this is excluded) without having to pay a further fee in order to make an entirely new application.