

# Analysis of the Points Based System

Tier 2 and dependants

Migration Advisory Committee

August 2009



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## Chairman's foreword



In February the Home Secretary asked the Migration Advisory Committee (MAC) three questions:

1. What further changes to Tier 1 of the Points Based System (PBS) should there be in 2010/11, given the changing economic circumstances?
2. Is there an economic case for restricting Tier 2 to shortage occupations only?
3. What is your assessment of the economic contribution made by the dependants of PBS migrants and their role in the labour market?

This report addresses the second two questions. As agreed with the Government, we shall report on the first question in October 2009.

Building on our previous evidence-based and transparent approach to policy advice, we consulted widely – full details are set out in this report. The MAC is most grateful for the amount of high quality evidence provided by stakeholders, the more so given the tight timetable.

We are conscious that the global economic downturn has resulted in turmoil in the British labour market, and the above three questions were asked in that context. But the MAC believes that, ideally, the PBS should act as an automatic stabiliser and should not be constantly adjusted in response to the economic cycle.

Therefore our recommendations are designed to further strengthen the PBS as an automatic stabiliser. They are not a knee-jerk reaction to the recession.

The MAC is concerned that the debate or narrative around immigration – in much political discourse or in much of the media, for example – is cast in negative terms. We believe that selective immigration that favours more skilled workers, as the PBS does, is vital to ensure that the UK continues to be thought of as a good place to do business, invest or study. Therefore in our analysis of Tier 2, our major recommendation is that both the Resident Labour Market Test (RLMT) route and the intra-company transfer route be retained. Tier 2 should not be restricted to shortage occupations only.

But any positive narrative surrounding immigration will be undermined unless it can be demonstrated that immigrants are not displacing or undercutting UK workers. Nor should immigrants provide a disincentive to up-skill the UK workforce. We have made a number of recommendations which, if adopted, will help ensure that such displacement, undercutting or disincentive to up-skill do not occur. These recommendations include: recalibration of the points for earnings and qualifications; alterations to the RLMT route (for example, duration of advertising) and intra-company transfer route (for example, length of required prior experience with employer); and strengthened efforts on monitoring and compliance, to help ensure that the vast bulk of companies and organisations that play by the rules are not undermined by those that do not.

The MAC was not asked to make recommendations concerning PBS dependants. There are insufficient data on this issue to make evidence-based policy. But we wish to state that virtually all stakeholders emphasised that the absence of restrictions to labour market access by dependants is of key importance to inward investment, and therefore to UK employment.

We are again indebted to our secretariat for their dedicated and professional hard work, initiative and excellent organisation.

A handwritten signature in black ink, reading "David Metcalf". The signature is written in a cursive, slightly slanted style.

**Professor David Metcalf CBE**



# The Migration Advisory Committee and secretariat

## Chair

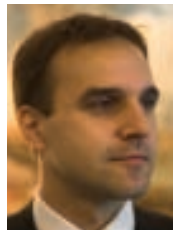


Professor David Metcalf CBE

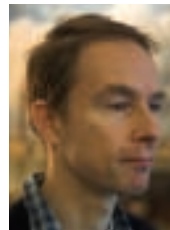
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## Summary

### Task

In February 2009 the Government asked that we provide advice on three questions. These were:

- What further changes to Tier 1 of the Points Based System (PBS) should there be in 2010/11, given the changing economic circumstances?
- Is there an economic case for restricting Tier 2 to shortage occupations only?
- What is your assessment of the economic contribution made by the dependants of PBS migrants and their role in the labour market?

We will report on the first of these questions in October 2009. This report considers the second and third questions.

We consider that the three questions are motivated by the Government's desire to respond to the current recession. The PBS was created during a period of sustained economic growth and was intended to be flexible in response to the changing economic and labour market circumstances. The economic situation has therefore been at the forefront of our minds in considering these questions.

### Context

Some direct comparisons can be drawn between the PBS and the previous work permit system that it replaced. Both provide for a Resident Labour Market Test (RLMT) route, an intra-company transfer route and a shortage occupation route. Both also have routes that provide for highly skilled immigrants to come to the UK without the formal offer of a job (the Highly

Skilled Migrant Programme under the old system, and Tier 1 of the PBS).

However, there are some differences between the two systems. The old system allowed for more discretion in how the rules were applied, including with regard to applications that were made and also in how shortage occupations were identified for inclusion on the shortage occupation list. The PBS is more rigid in that applicants either meet the necessary points total or they do not. But it is also more flexible in that points in one area can be traded off against those in another, and point totals and the criteria that they are awarded against can be amended easily and transparently.

The aims of the PBS are to ensure that the UK attracts the skilled labour force it needs and that those who can contribute most to the UK are selected for entry. The system should deliver:

- better identification and attraction of immigrants who have the most to contribute to the UK;
- a more efficient, transparent and objective application process; and
- improved compliance and reduced scope for abuse.

Throughout this report we consider whether the existing system is in fact serving to achieve these aims and what more can be done to assist this.

The PBS comprises five tiers, one of which is not presently operational. In this report we mostly focus on Tier 2, although the question relating to dependants includes PBS immigrants who have come to the UK through all four of the operational tiers.

There are five routes of entry under Tier 2 of the PBS:

- **Shortage occupation:** for skilled people coming to the UK for a specific vacancy that cannot be filled by a British or European Economic Area (EEA) worker.
- **Resident Labour Market Test:** for jobs that cannot be filled through the other Tier 2 routes. The employer (sponsor) needs to show that there is no suitably qualified worker from the UK or EEA available to fill the vacancy.
- **Intra-company transfer:** for established employees of multinational companies who are being transferred to a skilled job in a UK-based branch of the organisation.
- **Sportspeople:** for elite sportspeople and coaches whose employment will make a significant contribution to the development of their sport at the highest level.
- **Ministers of religion:** for those people coming to fill a vacancy as a minister of religion, missionary or member of a religious order.

Some key features of the current system are as follows:

- An employer must obtain a licence to act as a sponsor and be included on the UK Border Agency's (UKBA) register of sponsors (cost: between £300 and £1,000, depending on the size of the business).
- A registered sponsor is able to obtain a certificate of sponsorship (cost: £170) in relation to a non-EEA applicant and the job for which he or she is being recruited.
- There is a rating system for sponsors, based on past performance.
- RLMT jobs have to be advertised for up to two weeks in Jobcentre Plus, while shortage occupation jobs do not.

- Intra-company transferees need to have been with the company for more than six months and be paid at the going rate.
- Non-EEA graduates, who have graduated from a recognised UK higher education institution, can work in the UK under Tier 1 without the need for a sponsoring employer. They can switch into Tier 2, provided they meet the relevant requirements.
- All Tier 2 immigrants are able to undertake supplementary work without the need for the RLMT or additional sponsorship. However, they are not entitled to access to public funds.
- Successful Tier 2 PBS applicants are given three years' leave to enter followed by a two-year extension if they still meet the requirements. Once they have lived in the UK continuously for five years, they can apply for permanent residency.
- Sponsors of Tier 2 immigrants must pay them the going rate for the job and can claim some allowances as constituting part of that salary.
- The Tier 2 applicant must obtain a visa to come and work in the UK (cost: between £265 and £665).
- The UKBA carries out post-licensing checks on sponsors, who are required to keep a range of detailed information showing their compliance with the PBS.

Another route to the UK is the business visitor route. This is outside the PBS and enables applicants to come to the UK for business purposes but not to work. A number of stakeholders claimed that this route was being used as a means of entry by applicants who should otherwise be using either Tier 1 or Tier 2 of the PBS, and that these parties were working in the UK in breach of the conditions attached to their business visitor visa.

Regarding dependants accompanying PBS immigrants to the UK, relevant relationships are limited to the spouse or partner and dependant children of the principal PBS immigrant. Families must be able to show that they can support themselves, although under certain conditions the sponsoring employer can act as a guarantor of maintenance for the family.

Dependants are allowed to take on any work in the UK, provided that the principal PBS immigrant has been granted more than 12 months' leave to stay in the UK and they do not train as a doctor. They are not allowed access to public funds.

Some potential options for modifying Tier 2 are as follows:

- All routes other than the shortage occupation route could be closed. Therefore, skilled immigrants could only come to work in the UK to fill an occupation included on the Government's shortage occupation list. Alternatively, only one of the RLMT or intra-company transfer routes could be closed.
- The number of points awarded to immigrants for meeting the specified requirements under this route could be altered. The number of points could be increased or decreased for either some or all of the pay and qualification requirements. Alternatively, the points could remain as they are, but the requirements could be amended.
- The entitlements to leave, public funds, permanent residency and citizenship that follow from immigration under Tier 2 could be amended.
- The pay accepted by the UKBA as meeting the going rates for occupations or the methodology used to calculate these could change. There could also be changes in how allowances may count towards pay for points purposes.

- Fees charged to both employers and immigrants could be either increased or decreased.
- Changes could be made to the requirements under the current RLMT, such as to the period for which jobs are advertised or the nature of the test itself.
- The UKBA could change its processes for ensuring compliance with Tier 2.

The UK and world economies are currently in a deep recession, with contracting output in the UK in 2009. Positive but modest UK output growth is forecast for 2010.

Unemployment and redundancies have risen, and the employment rate has fallen. Recovery in the job market will lag behind the end of the economic recession.

Net non-EEA migration to the UK was probably lower in 2008 than 2007, but still strongly positive. Nonetheless, in 2007 the UK sent slightly more people abroad to work than came to the UK.

Flows of immigrants through Tier 2 appear to have been smaller than under the old system. However, the economy is in recession, and flows have been increasing month on month, so this situation may not persist in the long run.

Intra-company transfers are the largest route for applicants under Tier 2, followed by the RLMT and shortage occupation routes. Flows of dependants are relatively small compared to PBS main applicants.

## Evidence and methodology

To support our work we analysed data on the UK economy, labour market and migration, and conducted a review of the relevant academic and policy literature in relation to the UK and other countries.

Additionally, we issued a call for evidence that generated over 250 responses. We also held a wide range of meetings and events with interested parties, as well as making specific visits to Scotland, Wales and Northern Ireland to ensure that we received a UK-wide response to the questions we were asked.

Three key methodological questions need to be considered in order to provide advice on Tier 2. First, is it right for Tier 2 to favour skilled immigration from outside the EEA? Second, are qualifications and earnings appropriate proxies for skill? And, finally, what are the implications of the recession for the optimal design of the policy?

On the first question, the overall approach of Tier 2 in terms of awarding additional points for the skill of the person and prospective job is reasonable. This is because skilled immigrants are better able to complement UK labour, they have a greater net fiscal impact than unskilled immigrants, and they are more likely to generate long-term growth effects and spillover benefits.

On the second question, we consider that, to the extent that qualifications confer knowledge, competence or proficiency, they will be a good indicator of skill. Similarly, because an employer will not pay an employee more than they are worth, earnings are also a good indicator of skill. Therefore, we believe that qualifications and earnings are appropriate indicators of skill for use in the PBS.

Other factors, including on-the-job training and experience and innate ability, are potentially relevant indicators of skill but these will, to some extent, correlate with other more easily quantifiable skill measures. Careful consideration would need to be given to whether these measures could be used in practical terms for PBS purposes.

Regarding the recession, a well-designed points system for immigration should operate so that flows can automatically adjust in response to changing economic circumstances. Therefore,

many of our recommended changes are intended to align the PBS more closely with its objectives – they are not primarily driven by the current economic conditions.

### **Tier 2 data context**

The composition of Tier 2 does not mirror that of the UK labour market. The most significant user of Tier 2, by a large margin, is the information technology sector, which makes extensive use of the intra-company transfer route to bring in workers, predominantly from India. Other distinct users can also be identified, such as the health and education sectors.

Options for amending Tier 2, based on policy in other countries, include certification that a vacancy cannot be filled by a resident worker and a change in the vacancy advertising duration for the RLMT route. Under the intra-company transfer route, options include increasing the time a person needs to be employed by a company before they can transfer to the UK, and setting a limit on the maximum duration of stay in the UK.

### **Tier 2 recommendations**

We do not think there is an economic case for restricting Tier 2 to the shortage occupation route only. All of the existing routes should be retained. The RLMT route plays a key role in supporting key public services. The intra-company transfer route is important in terms of ensuring that the UK remains globally competitive and continues to attract high levels of inward investment.

However, we do believe that the design and enforcement of the RLMT and intra-company transfer routes need to change. We make a total of 16 recommendations, which are listed in full in Chapter 8 of this report.

Some of our recommendations apply to both routes. Professional and academic qualifications should be given due weight under Tier 2. The earnings thresholds under Tier 2 also need to rise in order to ensure that the tier achieves its aim of targeting skilled workers.

In relation to the RLMT, additional arrangements are needed to allow international recruitment into specific occupations providing key public services. We also recommend that the required duration of vacancy advertising is increased.

In order to ensure widespread compliance, we think there is scope and a need for the Government to consider introducing some form of RLMT certification regime. This would be in addition to, or in place of, the current arrangements (whereby employers attest that they have complied with the requirements of the route).

Because the intra-company transfer route exists to facilitate temporary immigration to the UK, we recommend that time spent in the UK under this route does not lead to a right to permanent residency.

To ensure that the route allows only people with company-specific expertise to come to the UK, we believe that the qualifying period with the company overseas should be doubled from the current six months to 12 months. However, we recommend separate arrangements to provide access to the UK for graduate intra-company transferees on training programmes for a maximum of one year.

We did not see firm evidence of outright abuse of the intra-company transfer route. This is partly because many of the accusations of ‘abuse’ relate to employers acting within the rules as they are currently defined. However, strong enforcement activity will allow better information to be collected and allow any abuse that is occurring to be better detected. We recommend that the Government considers both the level of resource it devotes to enforcement and the transparency of these activities.

We recommend a change in the way allowances are treated in the PBS points calculation, to ensure that they are not used to undercut, and therefore displace, UK employees. Consideration

should also be given to the scope for sharing information between the UKBA and HM Revenue and Customs to reduce the risk of abuse of tax-free allowances by PBS immigrants and their employers.

## The economic contribution of dependants of PBS immigrants

Data on dependants are very limited because dependant immigration status is not recorded in national datasets. Although management information is available from the PBS, this contains little detailed information on dependants.

Some tentative findings do emerge from the available data, though:

- It appears that spouses and partners tend to be younger than the principal immigrant.
- Just over half of them are in employment, although this varies according to the occupation of the principal immigrant.
- Even though a significant proportion are highly qualified, the majority of dependants who are employed are in unskilled occupations.

Ideally, we would also examine the impact of dependants on resident workers. Due to the lack of direct evidence, we have looked at whether a very crude analogy can be drawn between dependants of PBS immigrants and immigrant nationals from the ‘A8’ member states that joined the EU on 1 May 2004.<sup>1</sup> Like PBS dependants, A8 immigrants tend to work in low-skilled occupations but many are themselves relatively skilled. A8 immigration has not historically had significant adverse impacts on the wages and employment of UK workers, although the empirical evidence pre-dates the recession.

The development of a comprehensive framework for considering the economic impact of dependants requires a clear view of the appropriate metric to use: it could be,

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<sup>1</sup> The A8 countries are Poland, Lithuania, Estonia, Latvia, Slovenia, Slovakia, Hungary and the Czech Republic.



for instance, the impact on Gross Domestic Product (GDP), GDP per head or the public finances. The correct metric, or metrics, to use will be dependent on the precise nature of the question under consideration, and the underlying objectives.

A fully comprehensive framework would also need to explicitly address the issue of whether and how the direct costs and benefits to immigrants themselves should be factored in; and whether to include, or exclude, indirect costs and benefits such as remittances to the home country and the impact on the source country. In addition, there may be long-term costs and benefits from having more scope for specialisation, a more diverse society, a greater range of skills and experience, a higher population density and more congested living spaces.

In the UK, some studies have considered the net fiscal impact of immigration. Broadly speaking, these studies compare the contribution that an immigrant makes to the public finances (through tax receipts) to what they take out (through the use of public services). Such studies can play a role in assessing the costs and benefits of immigration, but their usefulness is limited by a combination of conceptual uncertainties and practical difficulties, and some of these difficulties would be especially stark in any attempt to estimate the net fiscal impact of PBS dependants.

Stakeholders argued that there is a global marketplace for talent, and that employers have to compete in this market. For the UK to succeed against its closest competitors, it was argued that it makes economic sense to make best use of legal and policy structures to increase its attractiveness to the global talent pool. Although it is not possible to provide statistical proof that the UK's relatively liberal policy on dependants helps to promote investment in the UK and helps the UK to attract the best and brightest workers, the frequency with which this argument was put to us is notable. Survey evidence also

suggests that allowing dependants to work in the UK may increase the attractiveness of the UK as a destination for principal immigrants. Some countries award additional points to immigrants with skilled dependants.

On the basis of the limited information we have, there is no reason to conclude that greater restrictions on working rights for dependants would lead to improved outcomes – either for UK workers or for the UK economy. However, we emphasise that these are extremely tentative conclusions: there is very limited data on dependants of PBS immigrants, their labour market outcomes and their impacts on the labour market outcomes of other resident workers. Further research and, crucially, better data are needed for policy in this area to be fully evidence-based.

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# Chapter 1: Introduction

## 1.1 The Migration Advisory Committee

1.1 The Migration Advisory Committee (MAC) is a non-departmental public body set up to provide transparent, independent and evidence-based advice to the Government on where labour market shortages exist that can sensibly be filled by migration. Part of our role is to regularly produce recommended shortage occupation lists for Tier 2 of the Points Based System (PBS). The MAC also advises the Government on other matters relating to migration from time to time.

## 1.2 What we have been asked to consider and why

1.2 In February 2009, the Government asked the MAC the following three questions in relation to the PBS:

- What further changes should there be to Tier 1 of the PBS in 2010/11, given the changing economic circumstances?
- Is there an economic case for restricting Tier 2 to shortage occupations only?
- What is your assessment of the economic contribution made by the dependants of PBS migrants and their role in the labour market?

1.3 We were asked to provide advice on the first of these questions by the end of October 2009 and the second and third by the end of July 2009. This report looks at the questions relating to Tier 2 and the

dependants of PBS immigrants. It provides information and advice based on our consideration of the available evidence.

1.4 We consider that the three questions are motivated by the Government's desire to respond to the current recession. The PBS was created during a period of sustained economic growth and was intended to be adaptable to the changing economic and labour market circumstances. The economic situation has therefore been at the forefront of our minds as we have progressed this work. However, we have also given careful consideration to what a well-designed system for economic migration may look like, regardless of the prevailing economic circumstances. Many of our recommended changes are intended to align the PBS more closely with its objectives – they are not primarily driven by the current economic circumstances.

1.5 Of particular importance to our consideration are labour market factors, including the issue of whether domestic workers are displaced or complemented by PBS immigrants or their dependants. However, other potentially quite immediate impacts of immigration – on issues such as output, productivity and the net fiscal position – are within scope for this report. So are longer-term factors such as labour market flexibility and inward investment. We are also mindful of the need for internal consistency within the PBS, both across and within tiers.

### 1.3 Other Migration Advisory Committee work

- 1.6 Consideration of these questions has not supplanted the MAC's continuing role in producing the recommended shortage occupation list for the UK, and the separate list for Scotland. We published our first recommended lists in September 2008, and recommended updates to the list were published in April 2009 (Migration Advisory Committee, 2008a and 2009b). The next updated review of the recommended lists will be published in October 2009.
- 1.7 In December 2008 we published a report on the impact of lifting restrictions on nationals from Bulgaria and Romania, and in April 2009 we published a report on the likely impact on the UK labour market of relaxing the transitional measures in respect of access to the labour market for nationals of the A8 states that joined the EU in 2004 (Migration Advisory Committee, 2008b and 2009a).

### 1.4 Our approach

- 1.8 In April 2009, we published a conceptual paper setting out how we intended to approach the three questions the Government asked us in February 2009 (Migration Advisory Committee, 2009c). To progress this work, we have carried out a detailed programme of evidence-gathering and analysis. The key strands of this have been:
- analysis of data on the UK economy, labour market and migration;
  - a review of the relevant academic and policy literature in relation to the UK and other countries;

- a call for evidence, contained within the conceptual paper; and
- a comprehensive programme of face-to-face engagement with key individuals, employers, and public and private sector bodies.

- 1.9 In terms of our thinking about recommendations on Tier 2, we considered what the aims of the tier are, and what they should be. We also examined whether and how the rules of the system could be appropriately monitored and enforced in order to achieve the objectives. In addition, on the basis that perfect monitoring is unlikely to be feasible, we considered how the system could be designed to provide incentives for employers, employees and other relevant parties to act in accordance with the intended objectives.
- 1.10 We have had a relatively short period of time in which to consider these issues and produce this report. We understand the Government's need for timely advice in the context of the rapidly evolving UK labour market. Nonetheless, we highlight in the report where we feel it would be beneficial to have a slightly longer, more detailed look at particular issues. We also highlight areas where there is a paucity of information.
- 1.11 In addition, although we only received a copy very close to the finalisation of this report, we were able to consider the recommendations of the Home Affairs Committee following its inquiry into the PBS (Home Affairs Committee, 2009).

## 1.5 Structure of the report

- 1.12 Chapters 2, 3 and 4 provide the background to our considerations. Chapter 2 sets out how the present rules governing applications under Tier 2 are applied and also the rules relating to the dependants of PBS immigrants. It looks at the system that preceded the PBS as well as the Government's stated policy objectives, in order to set those rules in context. Chapter 3 provides relevant data on immigration, the economy and the UK labour market, as well as data on the employment of immigrants. Chapter 4 sets out how we gathered the stakeholder evidence for this report, how we have analysed that evidence, some of the broad themes that have emerged from the evidence, and our conceptual approach – including in relation to the recession.
- 1.13 Chapters 5 and 6 relate to Tier 2. The former examines policy in other countries and looks at data on Tier 2. The latter provides our analysis of the identified issues relating to the question the Government asked us about Tier 2, and explains how we have drawn on the available evidence. It also sets out our advice to the Government on this question.
- 1.14 Chapter 7 considers the economic contribution of the dependants of PBS immigrants. We have not been asked to make recommendations in this area, but we do provide a commentary on our findings.
- 1.15 Chapter 8 summarises our conclusions and recommendations, and makes proposals for future actions.

## 1.6 Thank you

- 1.16 We recognise that stakeholders have had only limited time to consider the issues and provide evidence to us. We are particularly grateful for the contributions we received and appreciative of the quality of the consideration they contain.

## Chapter 2: Policy context

### 2.1 Introduction

2.1 In this chapter we look at the old system for controlling access of skilled workers to the UK labour market and at the new Points Based System (PBS) that has replaced it. We focus in particular on Tier 2 of the new system and the ways in which PBS immigrants can bring dependants with them. We also look at enforcement of Tier 2.

### 2.2 The previous system for economic immigration

2.2 Prior to the introduction of the PBS, skilled labour immigration into the UK from outside the European Economic Area (EEA) was managed by permits granted to specified UK-based employers that sponsored named individuals to fill defined jobs at particular locations. Permits were administered by Work Permits (UK), part of the UK Border Agency (UKBA). An additional route for highly skilled labour was the Highly Skilled Migrant Programme.

#### Entry and application under the work permit system for skilled labour

2.3 An application for a work permit was made by the prospective employer. There were four basic types of application:

- work permits (for when the foreign worker resided outside the UK);
- first permissions (for when the foreign worker was already in the UK);

- extension (for when an employer wished to extend the tenure of a work permit holder); and
- changes of employment (for when a work permit holder changed employer or experienced alterations that affected either the terms and conditions of employment, or his or her job).

2.4 When applying for a work permit, sponsoring employers were required to demonstrate that they were compliant with established criteria governing international recruitment. These criteria included features designed to balance the needs of employers with those of the resident workforce. Employers had to attest that their international recruitment requests were to fill genuine vacancies for additional roles being created in the UK, the intention being to ensure that work permits were not used to displace resident workers. Secondly, employers had to confirm that these roles could not be filled from within the domestic labour market. And finally, employers had to provide documentary evidence that international recruits would be paid the going rate for the job in the UK.

#### Routes within the work permit system

2.5 The principal arrangement under which applications for work permits could be made was the business and commercial channel. Employers applying for work permits through this channel were relieved of the need to conduct a recruitment search, known as a Resident Labour

Market Test (RLMT), in the UK in specific circumstances. These were intra-company transfers, shortage occupations, board-level posts and inward investment.

- 2.6 The **intra-company transfer route** was designed for employers wishing to transfer established employees to a skilled position in the UK branch of their organisation. Established employees were defined as having at least six months' experience in the overseas company. In addition to meeting the more general work permit criteria, employers recruiting through this route had to confirm that their sponsored employees had company-specific knowledge and experience that was required for the post on offer that could not be provided by a resident worker.

*“UKBA caseworkers were required to ensure that a resident worker could not have fulfilled this role with minimal training. Some areas of essential company knowledge that were considered to satisfy the criteria included:*

- *having a full understanding of unique company software;*
- *working on a project on which the overseas national has played an essential and unique role;*
- *use of corporate management techniques developed overseas; and*
- *having a full product knowledge of the company.”*

Unite response to call for evidence

- 2.7 The **shortage occupation route** provided for employers to have rapid access to skills acknowledged as being in short supply through their inclusion on an approved list of occupations. Work Permits (UK) took evidence of shortage from a range of employers and other bodies, including

sector skills councils, trade unions, recruitment and training organisations, and government departments. A number of sector advisory panels were established to provide critical analysis of the evidence presented across some key sectors. Work Permits (UK) would then make a submission to the Home Office Minister for Immigration, seeking approval for a list of shortage occupations.

- 2.8 The routes for **board-level posts** and **inward investment** were, as implied by their names, the ways in which senior-level executives could be recruited and through which independent investors could come and invest in the UK.
- 2.9 Employers were otherwise required to demonstrate that they had carried out an **RLMT**. Sponsoring employers needed to convince Work Permits (UK) that they had a genuine vacancy by providing documentary evidence, including details of the vacancy, the recruitment methods used to advertise the post and any responses to those advertisements. They also needed to explain why resident workers who applied for the position were inappropriate, and to show that the overseas national being sponsored had the necessary skills and capabilities to do the job. The advertisement had to be in English, and in a publication that was readily available throughout the EEA. It needed to state the skills, qualifications and experience needed. Resident workers could not be turned down because of a lack of skills that were not stated in the advertisement. The advertisement had to be placed no more than six months before the work permit application was submitted. Employers had to allow four weeks for the whole recruitment process to be completed (from the date the post was advertised) before sending their work permit application.



After September 2000, extensions to work permits issued under this channel were not required to be advertised locally.

- 2.10 A separate sports and entertainment channel existed for employers wishing to recruit migrants to work in these sectors.

### **The Highly Skilled Migrant Programme**

- 2.11 The **Highly Skilled Migrant Programme** (HSMP) was introduced on 28 January 2002 to encourage highly skilled people to come to the UK to work. An applicant to the HSMP who met the criteria would be granted a year's leave if they could show that they intended to make the UK their main home, then a three-year extension if they could show that they had taken all reasonable steps to become economically active in the UK. After four years they would be granted permanent residency if they could show that they actually were economically active. Under the HSMP, points would be awarded for the following attributes:

- qualifications;
- previous earnings;
- age (bonus points were awarded to those under 28 and there were separate salary criteria for this group);
- prior UK experience (bonus points were given to those who had previously worked or studied in the UK); and
- successful completion of an MBA programme from a specified list.

- 2.12 In 2006 the Government changed the rules for the HSMP. It extended the required period of residence from four to five years and tightened the requirements that had to be met in order to qualify for an extension of leave, and applied those

changes retrospectively. These changes were challenged in the courts and ruled to be unlawful in a judicial review.<sup>2</sup> In making our recommendations, we have paid heed to whether any of the existing Tier 2 arrangements could be said to have created a legitimate expectation on the part of immigrants already present in the UK, and we have also considered the extent to which our recommendations will impact on the lives of those immigrants.

- 2.13 The HSMP was replaced by Tier 1 of the PBS on 29 February 2008. We will return to consideration of the HSMP in our report on Tier 1 of the PBS in October 2009, where it will be of more direct relevance. We now consider the main features of the replacement for the work permit system.

### **2.3 The new Points Based System for economic immigration**

- 2.14 In 2005 the Government launched a consultation on a more selective points based system for immigration (Home Office, 2005a). The consultation was part of the implementation of the five-year strategy on immigration and asylum (Home Office, 2005b).

#### **Aims of the new system**

- 2.15 The stated main aims of the proposed points based system were to:
- improve public confidence in the system;
  - fill skills gaps;
  - attract highly productive and highly skilled workers and students;
  - attract investment and increase productivity and flexibility in the labour market; and
  - ensure that people left at the end of their stay.

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<sup>2</sup> HSMP Forum Ltd, R (on the application of) v Secretary of State for the Home Department [2008] EWHC 664 (Admin) (8 April 2008), available at [www.bailii.org/ew/cases/EWHC/Admin/2008/664.html](http://www.bailii.org/ew/cases/EWHC/Admin/2008/664.html).

2.16 The Government said that its proposals were intended to ensure that *“Britain attracts the skilled labour force it needs to perform key jobs in areas such as engineering, the financial sector, as well as education and the health service ... its aim is to ensure that those who can contribute most to the UK are selected for entry and that the country takes in only as many people as our economy needs at any one time.”*<sup>3</sup>

2.17 In 2006, the Government published detailed proposals (Home Office, 2006) stating that *“the key outcomes of the new system will be:*

- *better identifying and attracting of migrants who have most to contribute to the UK;*
- *a more efficient, transparent and objective application process; and*
- *improved compliance and reduced scope for abuse.”*

2.18 The Government also recognised that the work permit system was not always easily understood by those who sought to use it or by the public. Revisions to the system meant that there were over 80 different routes by which a non-EEA national could come to the UK to work or study. Responses to an earlier consultation had shown a strong perception that the system was too complex and bureaucratic.

2.19 Additionally, a revised system needed to help the Government achieve its targets as set out under its Public Service Agreements (PSAs). The most recent PSAs were published in the 2007 pre-budget report (HM Treasury, 2007). The PBS feeds into PSA 3: to ensure controlled, fair migration that protects the public and contributes to

economic growth. In addition, the PBS has an impact on a number of other PSAs, the most directly relevant ones including:

- PSA 1: to raise the productivity of the UK economy.
- PSA 2: to improve the skills of the population, on the way to ensuring a world-class skills base by 2020.
- PSA 6: to deliver the conditions for business success in the UK.
- PSA 8: to maximise employment opportunities for all.

### The architecture of the new system

2.20 The PBS consists of five tiers:

- **Tier 1:** highly skilled individuals to contribute to growth and productivity.
- **Tier 2:** skilled workers with a job offer to fill gaps in the UK labour force.
- **Tier 3:** limited numbers of low-skilled workers needed to fill specific temporary labour shortages.
- **Tier 4:** students.
- **Tier 5:** youth mobility and temporary workers – people who are allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives.

2.21 Tiers 1, 2, 4 and 5 are all in operation. Tier 3 is suspended for the present. To qualify for each tier, individuals must earn a given number of points in relation to requirements such as education and qualifications, current or prospective earnings, and maintenance.

<sup>3</sup> Home Office press release, 19 July 2005, available at [http://press.homeoffice.gov.uk/press-releases/Making\\_Migration\\_Work\\_For\\_Britain?version=1](http://press.homeoffice.gov.uk/press-releases/Making_Migration_Work_For_Britain?version=1).

2.22 Requirements, and their associated points, vary by tier and the entry route through which the immigrant is applying. The system is designed to be flexible, and the requirements and points can be changed by the Government at any time. We look in more detail below at how Tier 2 is intended to operate.

## 2.4 Tier 2 policy

2.23 Tier 2 went live on 27 November 2008 and is for skilled immigrants only. A successful applicant must be coming to fill a job at

National Qualification Framework level 3 (or equivalent) or above **and** be paid at least the ‘appropriate rate’ that would be paid to a skilled resident worker doing similar work. They must also meet specified requirements under Tier 2.

### Points

2.24 Points are awarded for different requirements and the overall pass mark is currently set at 70. Table 2.1 summarises the requirements and the corresponding points allocated.

**Table 2.1: PBS Tier 2 (certain routes): routes, points and requirements**

Section	Routes		Requirements: qualifications (or equivalents)		Requirements: prospective earnings (£)	
<b>A</b> (50 points needed)	Offer of job in shortage occupation	50	No qualifications	0	17,000–19,999	5
	Offer of job that passes RLMT	30	GCE A-level	5	20,000–21,999	10
	Intra-company transfer	30	Bachelor’s or master’s	10	22,000–23,999	15
			PhD	15	24,000 +	20
<b>B</b>	Maintenance requirement (mandatory)					10
<b>C</b>	Competence in English (mandatory)					10

Note: Those switching from a post-study route are exempt from the RLMT test as they are considered part of the resident labour market. Prospective earnings are before tax, and can be adjusted periodically to reflect inflation and/or labour market requirements. Allowances will be taken into consideration in calculation of salary.

Source: UK Border Agency (2008)

- 2.25 A mandatory 20 points must be obtained in parts B and C. Both the maintenance and the competence in English requirements are mandatory for all routes within Tier 2, although a delayed or reduced English requirement is applied in particular cases, as discussed later on in this section.
- 2.26 The maintenance requirement is intended to demonstrate an applicant's ability to support himself or herself during the first few months of residency in the UK. Applicants can prove their maintenance either by showing they have personal savings of £800 (which they have had for three months), or by having written confirmation that the sponsor will maintain and accommodate them until the end of the first month of their work in the UK. The recent report by the Home Affairs Committee (Home Affairs Committee, 2009) said *"With respect to the maintenance requirement, we agree with the Government that there is no circumventing the fact that there is a set cost of living in the UK, regardless of whether meeting that cost is more or less onerous on migrants from different parts of the world."*
- 2.27 At least 50 points must be obtained in part A of the table. Qualifications and prospective earnings provide additional points that applicants must score if applying under routes other than the shortage occupation route. We now look in more detail at the routes of entry under Tier 2.

## Routes

2.28 Tier 2 has five routes:

- **Resident Labour Market Test (RLMT):** for jobs that cannot be filled through the other Tier 2 routes. The employer (sponsor) needs to show that there is no suitably qualified worker from the UK or EEA available to fill the vacancy.
  - **Intra-company transfer:** for established employees of multinational companies who are being transferred to a skilled job in a UK-based branch of the organisation.
  - **Sportspeople:** for elite sportspeople and coaches whose employment will make a significant contribution to the development of their sport at the highest level.
  - **Ministers of religion:** for those people coming to fill a vacancy as a minister of religion, missionary or member of a religious order.
- 2.29 We will use the above terminology and that in Table 2.1 (routes, requirements and points) consistently throughout this report. Although some of the terminology is our own, it is largely consistent with that used in government policy documents concerning the PBS. However, there are some minor differences. For instance, government policy documents describe shortage occupations and the RLMT as part of the Tier 2 'General route'. For the purposes of expositional clarity, we refer to these as two separate routes. Tier 2 also includes switching from the post-study category of Tier 1.

## Sponsorship

2.30 Applicants for Tier 2 must have both a sponsor and a valid certificate of sponsorship before applying. The sponsor is a UK-based organisation that wishes to employ the applicant in the UK. To sponsor applicants, an employer must become licensed and accept certain responsibilities to help with immigration control. Before the applicant can apply for leave to enter, the sponsor must assign a certificate of sponsorship, without which an immigrant worker's application would be refused.

2.31 Sponsors can be A-rated or B-rated according to the UKBA's view of their quality as a sponsor, including any track record in employing or, in the case of an education institution, of teaching immigrants. The rating appears on the published register of sponsors, and ratings are usually the same for all the tiers that the sponsor is registered for. However, in exceptional cases, if a sponsor is performing poorly in its duties in only one tier, the UKBA may apply the B rating only to that tier. This may apply, for example, if a college has adequate procedures in place for managing its migrant workers, but not for overseas students.

2.32 A sponsor is A-rated if there is no evidence of abuse, and all the necessary systems to meet its duties are believed by the UKBA to be in place. B-rated sponsors are those where evidence is exhibited of not having the correct systems in place or where there has been previous evidence of abuse of the system. B ratings are given if the sponsor has been issued with a penalty for one of the offences listed in Appendix C of the UKBA's full policy guidance in the five years leading up to the date of application, unless:

- the UKBA withdrew that penalty or it was cancelled on appeal;

- the sponsor has been issued with a maximum civil penalty within the previous six months, in which case the UKBA will refuse the application instead; or
- the sponsor is applying to renew a licence and is already B-rated.

2.33 The UKBA may also award a B rating if the sponsor has a conviction for serious offences connected with how the business is run (such as a conviction under the National Minimum Wage Act or for benefit fraud), and this makes the UKBA doubt its suitability as a sponsor. The UKBA will not take into account spent convictions under the Rehabilitation of Offenders Act 1974.

2.34 The UKBA will consider, among other things, how serious the offence was, the penalty the court imposed and, if the offence was committed by an individual member of staff, any action the sponsor took against that person.

## Shortage occupations

2.35 Successful applicants entering by the shortage occupation route gain 50 points which, along with the 20 points from the mandatory requirements, allow applicants to obtain the pass mark of 70 points. In Migration Advisory Committee (2008a and 2009b) we made recommendations to the Government as to which skilled occupations or job titles should be included on the lists of shortage occupations for the whole of the UK (including Scotland) and Scotland only.

## Resident Labour Market Test

2.36 For the RLMT, employers are required to advertise the relevant vacancy through Jobcentre Plus and as agreed in a sector code of practice (for example in a trade magazine) for at least two weeks, at a level of earnings deemed reasonable by the UKBA for that job. For jobs paying in

excess of £40,000 this period is reduced to a single week. When issuing a certificate of sponsorship, the sponsor must confirm either that the test has been conducted, or that it does not apply. Thirty points are obtained for applying via this route, with the other 20 points in part A of Table 2.1 needing to be obtained through a combination of prospective earnings in the job and qualifications.

### Intra-company transfers

- 2.37 This route is for employees of multinational companies with at least six months' company experience being transferred to a skilled job in a UK-based branch of the organisation. As with the RLMT route, 30 points are obtained for applying via this route, which need to be supplemented by points for earnings and qualifications. Under this route, the English requirement becomes mandatory after three years. Applicants are required to meet a level of English equivalent to the Council of Europe level A1.
- 2.38 Unlike under the work permit system, there is no direct requirement for employers to confirm that their sponsored employees have company-specific knowledge and experience required for the post on offer that could not be provided by a resident worker. However, the requirement for six months' previous employment with the company is held by the UKBA to be a proxy for this.
- 2.39 There is also a requirement that the salary for the job be at the going rate for that occupation (see paragraph 2.58), which is intended to circumvent attempts to use this route to undercut UK jobs. Additionally, the UKBA's guidance to sponsors states that *"The migrant should not be directly replacing a settled worker."* However, we did receive evidence to contrast

this approach with that taken under the previous system.

*"The previous criteria under the Work Permit Scheme for a transfer involving confirmation that their sponsored employees had 'company-specific knowledge and experience that was specifically required for the post on offer which could not be provided by a resident worker' has been removed under Tier 2 of the Points Based System. Consequently, apart from the requirement of six months' service, now considerably relaxed from 31 March 2009, all other criteria, requirements and safeguards have been removed for an intra-company transfer."*

Unite response to call for evidence

### Sportspeople and ministers of religion

- 2.40 In the case of sportspeople, a certificate of sponsorship, along with satisfaction of the maintenance and competence in English requirements, yields the required 70 points. Applications for a licence to issue a certificate of sponsorship under the sportspeople sub-category must be accompanied by approval from the relevant governing body for the sport.
- 2.41 Similarly, ministers of religion obtaining a certificate of sponsorship, along with satisfaction of the maintenance and competence in English requirements, will gain the required 70 points. Religious institutions wishing to recruit immigrant ministers of religion must also apply for a licence, and provide evidence that they are a bona fide religious institution and that they are a registered, excepted or exempt UK charity, as well as additional background information. Under this route, the sponsoring institution must vouch for the applicant being qualified to do the job in question, intending to base themselves



in the UK, complying with the conditions of their permission to stay and intending to leave the UK when their stay expires. The sponsoring institution must also provide an undertaking to support or accommodate the applicant and confirm that the RLMT has been passed. Applicants are required to meet a level of English equivalent to the Council of Europe level B2, which is higher than A1. The Home Affairs Committee (2009) said: *“We agree with the Government that it is reasonable to expect ministers of religion to possess a higher than basic level of English language in order to communicate with their worshippers, and consider that their fluency in English ought to be on a similar level to that required from academics and other similarly skilled migrants.”*

### Post-study

- 2.42 Tier 1 of the PBS allows non-EEA graduates who have graduated from a recognised UK higher education institution to work in the UK without the need for a sponsoring employer. These graduates can switch into another tier of the PBS, provided they meet the relevant requirements. Those switching into Tier 2 need to have a sponsoring employer and can score 30 points for sponsorship based on previous experience with that company, without the requirement for that company to carry out the RLMT.
- 2.43 In order to claim the 30 points, applicants have to provide specific evidence of working for the sponsor for the previous six months under the Tier 1 (post-study work) category or one of its predecessor categories. They need to make up the rest of the 70 points through qualifications, earnings, and the language and maintenance requirements.

### Supplementary work and benefits

- 2.44 All Tier 2 immigrants are able to undertake **supplementary work** without the need for the RLMT or additional sponsorship. Any such work must be in the same profession, and at the same professional level, as their main employment. The immigrant must not be employed by an agency and must not exceed 20 hours per week – falling outside normal working hours only – in their additional employment.
- 2.45 PBS immigrants are not generally immediately entitled to access to **public funds** such as income-related benefits, including income-based Jobseeker’s Allowance, housing benefit and council tax benefit. Where immigrants have paid National Insurance contributions they will qualify for contributory benefits, including contribution-based Jobseeker’s Allowance and Incapacity Benefit (now replaced by contributory Employment Support Allowance). Contributory benefits are not classed as public funds.

### Dependants

- 2.46 PBS immigrants are entitled to bring **dependants** (specifically children, spouses, civil partners, same-sex partners and unmarried partners) into the UK, providing they can support their dependant(s) without claiming benefits. Dependants are discussed in more detail in Section 2.7 below, and in Chapter 7.

### Leave entitlement, residency and citizenship

- 2.47 The **leave entitlement** awarded to successful Tier 2 PBS immigrants is initially three years’ leave to enter followed by a two-year extension if the immigrant still meets the requirements.
- 2.48 Tier 2 is a route to **permanent residency** and **citizenship**. Once an immigrant has lived in the UK continuously for five years,

- he or she is eligible to apply for permanent residency, recognised through a grant of indefinite leave to remain, which secures the right to stay in the UK without being subject to immigration controls. The same entitlements to apply for leave and then residency are available to the dependants of PBS immigrants.
- 2.49 Since April 2007, all applicants for permanent residency are required to provide evidence that they have either passed the Life in the UK test or have an English for Speakers of Other Languages qualification (which includes citizenship materials).
- 2.50 In 2008 the Government published a consultation document setting out its proposals on new routes to citizenship (Home Office, 2008b). Three key routes to citizenship were set out:
- Highly skilled and skilled workers under the PBS, and their dependants (economic migrants).
  - Family members of British citizens and permanent residents.
  - Those in need of protection (refugees and those granted humanitarian protection).
- 2.51 Three stages in the journey to citizenship were also set out:
- temporary residency;
  - probationary citizenship;
  - British citizenship/permanent residency.
- 2.52 In June 2009, the Government published *Building Britain's Future* (HM Government, 2009a), a wide-ranging strategy document that included proposals to change the system whereby permanent residency and citizenship have followed automatically from spending a certain amount of time in the UK. Immigrants would have to earn the right to stay in the UK under new routes to citizenship, which includes extending the PBS to probationary citizenship. On 3 August 2009 the Government launched a consultation on its citizenship proposals, with a view to implementing these by July 2011. We return to the issue of residency and citizenship in Chapter 6, when we discuss the intra-company transfer route.
- 2.53 On 21 July 2009 the Borders, Citizenship and Immigration Act 2009 received Royal Assent. The Act created a new unified force at the border, which allows frontline customs and immigration officers to work together as the UK Border Agency, and provides a statutory framework for the Government's proposals for earned citizenship.
- General Agreement on Trade in Services (GATS)**
- 2.54 The UK is a party to the General Agreement on Trade in Services (GATS) overseen by the World Trade Organization (WTO). This Agreement was created to extend to the service sector the system for merchandise trade set out in the General Agreement on Tariffs and Trade. The GATS came into force in January 1995.
- 2.55 Under the GATS, the UK is committed to allowing the temporary presence (for up to three years) of intra-company transferees where:
- they are managers or specialists;
  - they are transferred to the UK by a company established in the territory of another WTO member; and
  - they are transferred here in the context of the provision of a service through a commercial presence in the UK.



2.56 The UK is committed to doing this where the worker has been employed by the sending business for at least one year. It is also committed to doing this without applying an economic needs test, such as the RLMT.

2.57 The UK's existing provisions under the intra-company transfer route give effect to its GATS commitments. The GATS would only become significant if the UK sought to restrict the intra-company transfer route in such a way that it no longer complied with the UK's GATS obligations. For instance, the argument was put to us that the intra-company transfer route should require over three years' previous employment with the company. But such a requirement would conflict with the UK's GATS obligations, and we have taken account of this fact in our recommendations.

## 2.5 Tier 2 operation and enforcement

### Going rates

2.58 The UKBA publishes codes of practice specifying, by occupation, the minimum rate (the going rate) that the employer must pay the Tier 2 immigrant. The rationale is that undercutting and displacement of the resident UK workforce can be prevented by requiring the employer to pay a salary equivalent to that which they would pay the domestic worker, were that worker available.

2.59 These rates are derived in one of two ways:

- Where available, rates are taken from industry-specific information, such as the NHS Agenda for Change in the case of health service occupations; from surveys conducted by recognised professional bodies, such as the salary rates for civil engineers that are taken from the Institution of Civil Engineers 2007 salary

survey; or from information supplied by the relevant sector skills council and other bodies, as in the case of hotel and accommodation managers where the salary is based on information from salary surveys conducted by Reed and the Berkley Recruitment Group, Caterer.com, Prospects UK and People 1st.

- Rates can instead be taken from the latest Annual Survey of Hours and Earnings (ASHE) data at the 25th percentile by four-digit Standard Occupational Classification (SOC) code, such as in the cases of managers in mining and energy, and financial institution managers.

2.60 The SOC is maintained by the Occupational Information Unit at the Office for National Statistics. The SOC is designed as a classification applicable to all paid jobs performed by economically active persons in the UK. SOC 2000 utilises four levels of aggregation within the classification:

- Major groups: 9 in total.
- Sub-major groups: 25 in total.
- Minor groups: 81 in total.
- Unit groups: 353 in total.

2.61 The unit group (four-digit) SOC code therefore represents the lowest level of available disaggregation of occupations, and is the most detailed job or occupational breakdown for which national level data are available.

2.62 The advantage of taking the information from sources other than ASHE is that this can provide disaggregation below the four-digit SOC code. However, there is considerable variation between these sources of information. There is also variation between any given source of information, and data taken from ASHE.

- 2.63 Therefore the going rate will be dependent on the salary distribution within that occupation, the method used to calculate the appropriate rate, and whether or not the UKBA chooses to use information from other sources or the ASHE data. Occupations may experience a step change in the going rate if the method used to calculate this rate is changed.
- 2.64 The UKBA reports that 40 per cent of its codes of practice use sources of going rates other than ASHE, and that the majority of posts that Tier 2 immigrants fill (based on past work permit trends) also tend to have their rates calculated by means other than ASHE data. This is because the UKBA devotes more resources to locating relevant, occupation-specific information for those occupations where it expects the largest inflows.
- in the UK, with the difference between that and the appropriate UK going rate made up through cost of living allowances. There is no limit on these, with the exception of cost of accommodation allowances.
- 2.67 In the case of allowances provided solely for the purpose of accommodation, only those up to 30 per cent of the total gross salary package are taken into account for the purposes of awarding points and assessing whether the salary achieves the appropriate going rate. This applies whether such allowances are made available in cash or in kind. For example, where an applicant's prospective salary plus (accommodation and other) allowances is £20,000, the maximum accommodation allowance that will be taken into account is 30 per cent of £20,000, which is £6,000. And if the accommodation allowance is £6,000 or less, the UKBA will take all of it into account. But if it is more than that, the UKBA will take only £6,000 into account.

### Allowances

- 2.65 Allowances are included in the calculation for total salary under the Tier 2 shortage occupation and RLMT routes when that allowance would be paid to the equivalent domestic worker. For example, London weighting would be included, while transport from the home country to the UK would not. Other benefits, such as overtime, bonuses, incentive pay, travel and subsistence are not included.
- 2.66 Due to the higher costs of short-term accommodation, revised UKBA guidance for sponsors states that accommodation allowances up to 40 per cent of the gross salary will be taken into account for short-term transfers of 12 months or less. In the example above, this means that up to £8,000 (40 per cent of £20,000) will be taken into account.

- 2.66 Allowances included under the intra-company transfer route are more complex. Some allowances that would not be included under the other routes count towards the salary calculation. These include daily payments to cover the additional cost of living while in the UK but do not include expenses to cover travel between the home country and the UK. In many cases, the immigrant remains on their overseas salary for the duration of their stay

### Fees

- 2.69 A fee must be paid by an employer to become licensed and join the register of sponsors. The cost of a sponsor licence for a small business, if registering for the first time, is £300 for Tier 2 or £400 for other tiers. A sponsor licence for a medium or large business is £1,000 for Tier 2, and this does not increase if applying for other tiers at the same time. Licences are valid for four years, after which they must be renewed.

2.70 A one-off fee of £170 must also be paid to assign a certificate of sponsorship under this tier. Sponsors do not have to pay a fee when issuing certificates of sponsorship to nationals from countries that have ratified the 1961 Council of Europe Charter or the 1996 European Social Charter (revised), namely Albania, Andorra, Armenia, Azerbaijan, Croatia, Georgia, Macedonia, Moldova, Turkey and Ukraine.

2.71 In addition, a Tier 2 immigrant must pay a fee for their visa. This is presently £265 for an out-of-country visa and £465 (£665 if an application is made in person to the UKBA, rather than through the post) for an in-country visa.

### **Enforcement**

2.72 The UKBA does not presently perform pre-licensing checks under the RLMT unless it has cause to query an application. Plans are being introduced to check the Jobcentre Plus reference number on the certificate of sponsorship. During post-licensing visits, the UKBA visiting officer will check that the sponsor has:

- made a valid attempt to recruit from the resident labour market;
- advertised the vacancy in Jobcentre Plus (for all jobs advertised on or after 31 March 2009);
- advertised by one other method, as permitted by the relevant UKBA code of practice;
- advertised the vacancy for a minimum of two weeks if the salary is £40,000 or under, and a minimum of one week if the salary is over that amount; and
- employed a PBS immigrant in the job that was advertised.

In addition, the sponsor must retain details of:

- all applications short-listed for final interview, in the format in which they were received;
- the number and names of applicants short-listed for interview; and
- notes of the final interviews conducted and, for each EEA national who was rejected, the reasons for not employing them.

2.73 The UKBA carries out pre-licensing checks to establish whether or not the sponsor has the ability to meet and fulfil its duties, and keep the appropriate documentation that is required of them as part of the general sponsorship requirements. Checks are made against five human resource areas:

- monitoring immigration status and preventing illegal employment;
- maintaining immigrant contact details;
- record keeping;
- migrant tracking and monitoring; and
- professional accreditations and registrations.

2.74 The UKBA also carries out post-licensing checks on the sponsor to ensure that:

- the job is skilled at National Vocational Qualification/Scottish Vocational Qualification level 3 or above, cross-referenced against the skill level guidelines in the relevant UKBA Tier 2 code of practice;
- any supplementary employment (i.e. not secondary employment requiring a second certificate of sponsorship) meets the supplementary employment rules;

- the employee is being paid a salary and/or other allowances at or above the appropriate rate (as stated in the relevant Tier 2 code of practice);
  - where required, the employee has been working in the UK or overseas for the sponsoring organisation for at least six months directly prior to their transfer (the UKBA will check for evidence of this in payslips and bank statements);
  - the employee intends to, and is able to, do the specific skilled job in question; and
  - the employee can produce evidence of claimed qualifications, for example degree certificates, copies of any registration and/or professional accreditation documents, and/or copies of the confirmation letter required for the job.
- 2.75 The UKBA will suspend a sponsor's licence if it believes the sponsor is breaching its duties. A Tier 2 or Tier 5 sponsor will not be able to assign any certificates of sponsorship and a Tier 4 sponsor should not issue any visa letters while it is suspended. All sponsors must continue to comply with all of their sponsor duties throughout the period of suspension.
- 2.76 If a sponsor is suspended, this will apply to all the tiers in which it is registered. The UKBA will remove the sponsor's ratings from the public version of the register during the suspension period. If the suspension is lifted, the UKBA will reinstate the sponsor's name on the register with the ratings awarded.
- 2.77 Immigrants who are being sponsored at the time of the suspension will not be affected, unless the UKBA chooses to revoke the sponsor's licence.
- 2.78 Following a suspension, the sponsor's licence may be revoked, preventing them from sponsoring immigrants, and the sponsor will be removed from the register. The sponsor can submit a fresh licence application at any time following revocation.
- 2.79 We have looked to see what rules exist to prevent a company laying off its UK workers and replacing them with cheaper labour from outside the EEA. The going rate is the primary tool to remove the incentive to replace UK workers with immigrants. Additionally, UKBA guidance to sponsors<sup>4</sup> states: "*The migrant should not be directly replacing a settled worker.*" The key word here is 'directly'. In a situation where one company is outsourcing work to another, the immigrant will be an indirect replacement for the UK worker as the two are employed by different companies. The UKBA takes the view that outsourcing work is a business decision for the company, rather than an abuse of the rules.

## 2.6 The business visitor visa

- 2.80 The business visitor visa is not part of Tier 2, but is introduced here because it came up frequently in our evidence from employers in relation to Tier 2. We discuss it further in Chapter 6.
- 2.81 The business visitor visa was introduced by the UKBA to provide the business community with clarity on the activities that are permissible in the UK during a short-term business visit. For example, people coming for training in techniques can only do so for a specific one-off purpose. This is because acquiring on-the-job training and work experience in the UK is provided for by other routes within the PBS.

<sup>4</sup> Available at [www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/guidancefrom31mar09/sponsorapplicationsguidance.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/guidancefrom31mar09/sponsorapplicationsguidance.pdf?view=Binary).

2.82 The business visitor visa allows a non-EEA national to enter the UK for a period of up to six months, except for academic visitors who can stay for a maximum of 12 months. Permissible activities include:

- attending meetings or conferences;
- arranging deals, and negotiating or signing trade agreements or contracts;
- undertaking fact-finding missions, provided the information is of benefit to a branch abroad only, and checking details or goods; and
- conducting site visits and promotional activities.

2.83 The UKBA has also clarified that permissible 'business-like' activities may include the following:

- representatives of overseas news media;
- film crews on location shoots;
- visiting professors accompanying students undertaking study abroad programmes; and
- secondees from overseas companies who have a contract with a UK company, provided they are being paid abroad.

2.84 Other persons permitted entry into the UK as business visitors include:

- directors attending board meetings in the UK;
- speakers at conferences, provided they are a one-off and the event is not run as a money-making concern; and
- representatives of computer software companies coming to enhance, install or debug their product.

2.85 Notwithstanding the variety of individuals who may legitimately use the business visitor visa for a number of purposes and activities, we were told on several occasions that some of those using

this route would work – in breach of the injunction that they do not do so.

## 2.7 Dependants

2.86 The Government's policy on how the PBS should apply to dependants is set out in the Statements of Intent it published to accompany the introduction of the PBS (UK Border Agency, 2007, 2008). The Government said:

*"Successful applicants will be able to bring dependants (children, spouses, civil partners, same-sex partners, and unmarried partners) into the UK if they can prove to us that they can maintain them. Dependants of migrants in the Highly Skilled tier will be able to seek employment but they will not be able to switch into any points system tier other than as a dependant of a successful applicant. If dependants subsequently wish to apply to be in the UK in their own right, they will need to leave the UK in order to apply. This is in line with our policy to export our border controls."*

2.87 The requirements for grants of entry clearance and leave to enter for dependants of PBS immigrants are set out in paragraphs 319A to 319K of the Immigration Rules. PBS immigrants may bring their partner (defined as the spouse, civil partner, same-sex partner or unmarried partner) and their children under the age of 18 to stay with them in the UK. They may not bring in any other dependants.

2.88 Dependants apply separately for a visa and pay the same fee as the main applicant for an out-of-country visa, which is £265. For an in-country visa, the cost per dependant is £50.

2.89 To bring in a dependant, sufficient funds must be available to either that dependant or the PBS immigrant. Where a Tier 1 immigrant (other than a Tier 1 (investor)



- immigrant) is outside the UK, or has been in the UK for a period of less than 12 months, there must be £1,600 in funds. Where the principal immigrant has been in the UK for 12 months or more, or is applying outside or inside the UK as a Tier 2 immigrant, the sum is £533.
- 2.90 For example, a non-EEA immigrant who is applying from outside the UK to come and work in the UK under Tier 1 of the PBS and wishes to bring their spouse and two children with them must show that there is £1,600 for the spouse and a further £1,600 for each child, in addition to the £800 that is required for their own support. In total, the family will require evidence that they hold £5,600 in available funds ( $£1,600 \times 3 = £4,800 + £800$ ).
- 2.91 If the same Tier 1 immigrant has been legally present in the UK for over 12 months, the total amount for the family is £2,399 ( $£533 \times 3 = £1,599 + £800$ ). If the immigrant were applying under Tier 2, the total amount for the family would also be £2,399 ( $£533 \times 3 = £1,599 + £800$ ), regardless of whether the immigrant was applying from inside or outside the UK.
- 2.92 If a dependant applies separately from the Tier 2 immigrant, there must still be enough funds to support each member of the family. Therefore, in the example above, if the family has a third child and the family applies for leave to remain for the third child separately, they must provide evidence that they have an additional £533 in available funds.
- 2.93 This requirement to have sufficient available funds to support dependants can be met by:
- having the relevant amount in savings (which must have been held for at least three months prior to the date of application); or
  - the Tier 2 A-rated sponsor providing a written undertaking that, should it become necessary, it will maintain and accommodate the dependants until the end of the first month of employment.
- 2.94 Dependants granted leave to enter or remain can take on any employment provided that the PBS immigrant has been granted more than 12 months' permission to stay in the UK, subject to two restrictions: there is a prohibition on undertaking employment as a doctor in training; and family members of Tier 4 immigrants granted less than 12 months' leave to enter or remain are not permitted to work.
- 2.95 Like PBS immigrants, dependants are not generally immediately entitled to access to public funds. But where dependants have paid National Insurance contributions, they will qualify for contributory benefits.

## 2.8 Conclusions

- 2.96 It follows from our consideration of the main elements of Tier 2 that there are a number of ways in which this tier can be altered to give effect to different policy outcomes. Either some or all of these options could have formed part of our final recommendations:
- All routes other than the shortage occupation route could be closed. Therefore skilled immigrants could only come to work in the UK to fill an occupation included on the Government's shortage occupation list. Alternatively, only one of the RLMT or intra-company transfer routes could be closed.
  - Another option would be to alter the number of points awarded to immigrants for meeting the specified requirements under this route. The number of points

could be increased or decreased for either some or all of the pay and qualification requirements. Alternatively, the points could remain as they are, but the requirements could be amended.

- The entitlements to leave, public funds, permanent residency and citizenship that follow from immigration under Tier 2 could be amended. There could be changes to some or all of these entitlements, making it harder or easier to acquire each of them.
- The pay accepted by the UKBA as meeting the going rates for occupations or the methodology used to calculate these could change. Alongside this, or independent of it, there could be changes in the allowances that can be used to count towards pay for points purposes.
- Fees charged to both employers and immigrants could be either increased or decreased.
- Changes could be made to the requirements under the current RLMT, such as changing the period for which jobs are advertised or the nature of the test itself.
- The UKBA could change its processes for ensuring compliance with Tier 2.

2.97 The options and the ramifications are considered in more depth in Chapters 5 and 6 of this report, along with our final recommendations for Tier 2. Before moving on to consider these, the next two chapters consider the context of our considerations and provide details of the types of evidence we have received on these issues.

### 3.1 Introduction

3.1 This chapter examines the wider background to our recommendations. The state of the economy and its impact on the labour market will affect the flows and economic contribution of Tier 2 immigrants and dependants in the Points Based System (PBS). First, we present a macro-economic overview of the UK economy. Next, we look at UK labour market data. Then we examine the latest data and evidence on immigration stocks and flows and the impact of the UK and global recession on migration.

### 3.2 The economy

3.2 The global economy is in a severe recession inflicted by a massive financial crisis and acute loss of confidence.

The latest *World Economic Outlook Update* (International Monetary Fund, 2009) projects that world output is to decline by 1.4 per cent in 2009, the first annual decline since 1946, and to recover in 2010, growing by 2.5 per cent.

3.3 In terms of Gross Domestic Product (GDP), the UK performed slightly worse than the advanced economy average in 2008, and is expected to fare worse again in 2009 and 2010, as shown in Table 3.1.

3.4 Figure 3.1 shows that the UK economy has been in recession for five quarters, beginning in the second quarter of 2008. GDP contracted by 5.7 per cent over this period and is currently falling at its greatest annual rate for over 50 years. From 1992 to 2007 the UK experienced a sustained period of economic growth, averaging 2.8 per cent per annum.

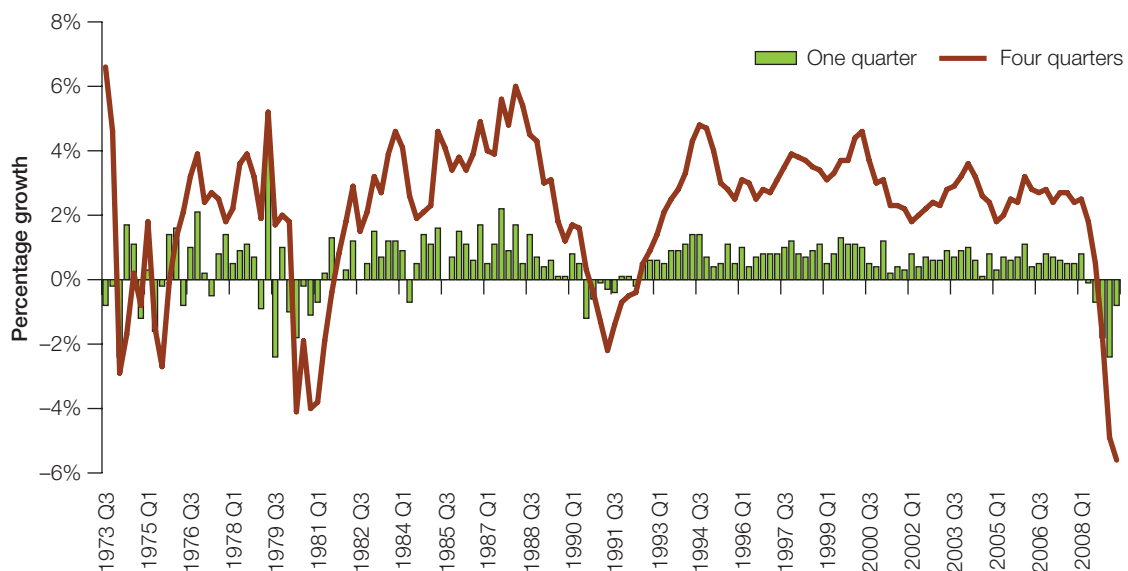


**Table 3.1: International Gross Domestic Product growth comparison**

		Per cent annual growth		
		2008 (outturn)	2009 (forecast)	2010 (forecast)
World		3.1	-1.4	2.5
Advanced economies		0.8	-3.8	0.6
European Union		1.1	-4.7	-0.1
G7 countries				
	United Kingdom	0.7	-4.2	0.2
	United States	1.1	-2.6	0.8
	Japan	-0.7	-6.0	1.7
	France	0.3	-3.0	0.4
	Germany	1.3	-6.2	-0.6
	Canada	0.4	-2.3	1.6
	Italy	-1.0	-5.1	-0.1

Note: The source document lists 33 countries in the advanced economies group in Table B.  
 Source: International Monetary Fund (2009)

**Figure 3.1: One quarter and four quarter growth of real Gross Domestic Product, UK, 1973 Q2 to 2009 Q2**



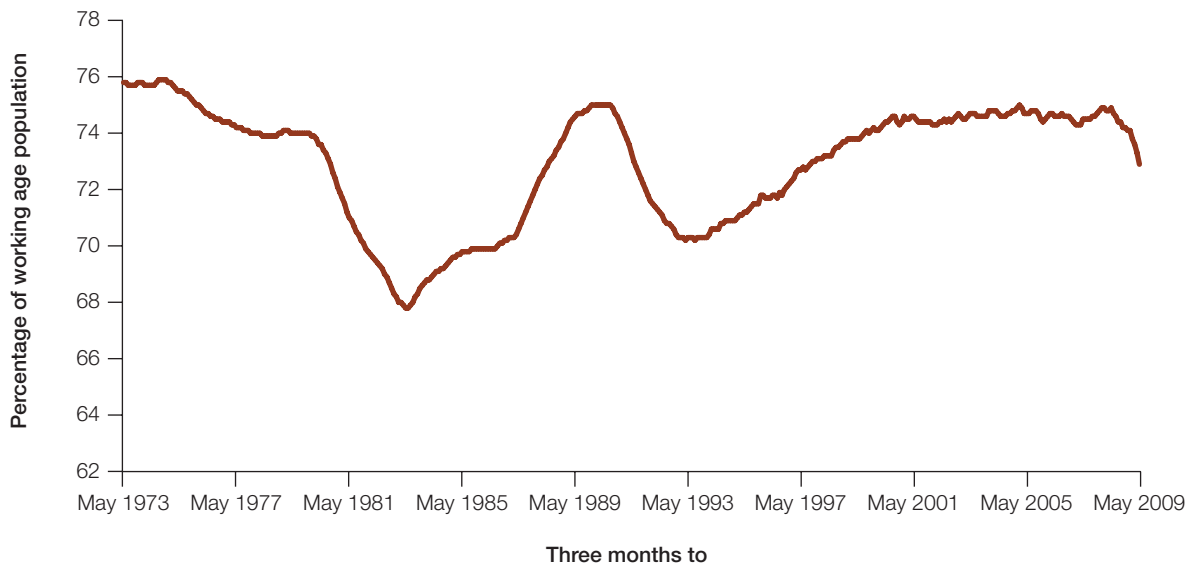
Note: Seasonally adjusted, market prices, chained volume measure, constant 2005 prices. 2009 Q2 figure is preliminary.  
 Source: Office for National Statistics (2009a)

- 3.5 Short and medium-term forecasts are subject to exceptional uncertainty and continue to be revised. A selection of forecasts from leading institutions published monthly by HM Treasury (2009) shows that the average expected rate of growth of UK GDP for 2009 has been revised downwards continuously over the last year and currently stands at  $-4.0$  per cent, while the average expected rate of UK growth for 2010 is  $0.7$  per cent.
- 3.6 The National Institute of Economic and Social Research (NIESR) (2009) forecasts UK GDP contraction of  $4.3$  per cent in 2009, followed by growth of  $1.0$  per cent in 2010. World GDP is expected to contract by  $1.5$  per cent in 2009 and grow by  $2.9$  per cent in 2010. The Independent Treasury Economic Model (ITEM) Club (2009) expects UK GDP to fall by  $4.4$  per cent in 2009, but a modest recovery to begin in 2010. It also forecasts business investment to fall by  $10.5$  per cent in 2009 and a further  $1.0$  per cent in 2010. The Confederation of British Industry (CBI) (2009) forecasts a contraction of  $3.9$  per cent in 2009 and also expects growth to resume in 2010.
- 3.7 Consumer Prices Index (CPI) annual inflation was  $1.8$  per cent in June, down from a peak of  $5.2$  per cent in September 2008. Retail Prices Index (RPI) annual inflation was  $-1.6$  per cent in June, down from a peak of  $5.0$  per cent in September 2008. The latest HM Treasury forecast summary (HM Treasury, 2009) shows an average expected fall in CPI inflation and a rise in RPI inflation to  $1.1$  per cent and  $-1.3$  per cent respectively by the end of 2009, followed by an increase in both measures to  $1.7$  per cent and  $2.7$  per cent respectively by the end of 2010.

### 3.3 The labour market

- 3.8 In the past year there have been significant developments in the UK labour market. In this section we summarise the main labour market indicators in aggregate and by occupation.
- 3.9 Figure 3.2 shows that the UK employment rate was  $72.9$  per cent in the three months to May 2009, down from a peak of  $74.9$  per cent a year ago – a fall of 2 percentage points. In the last recession in the early 1990s, the employment rate fell by 2.4 percentage points in a year from its peak of  $75.0$  per cent.
- 3.10 Over the last year, the number of individuals working part time has increased slightly, while the proportion working part time because they could not find a full-time job has increased by 3.4 percentage points.

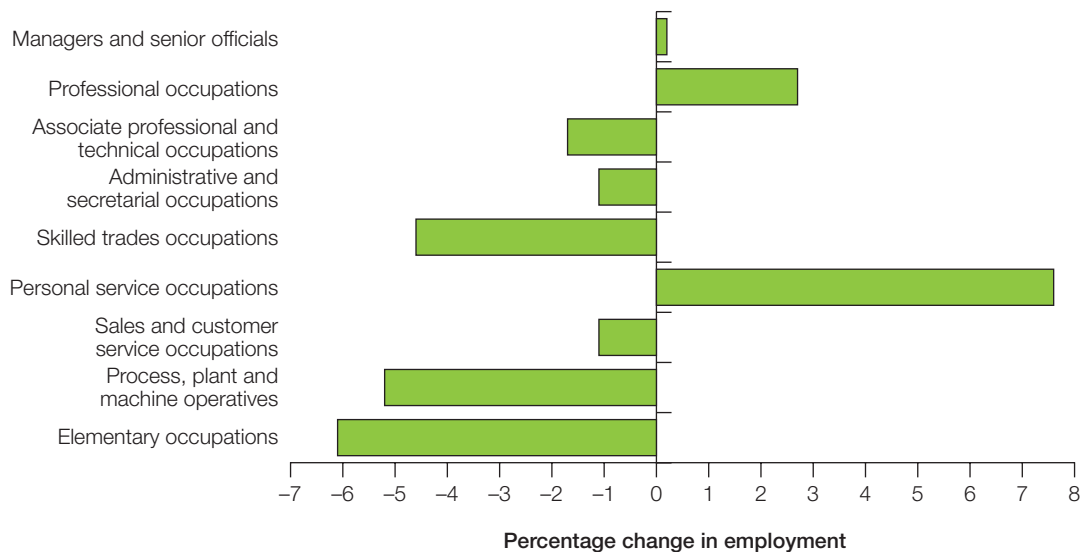
**Figure 3.2: Working age employment rate, UK, Mar–May 1973 to Mar–May 2009**



Note: Seasonally adjusted. The employment rate is calculated from the Labour Force Survey (LFS) and comes from the number of working age individuals who did at least one hour's paid work in the week prior to their LFS interview, or who had a job that they were temporarily away from, as a proportion of the working age population.  
 Source: Office for National Statistics (2009b)

3.11 Figure 3.3 shows that the fall in employment over the last year has not been uniform across all occupations, and that some occupations have experienced an increase in employment.

**Figure 3.3: Change in employment by occupation, UK, 2008 Q1 to 2009 Q1**

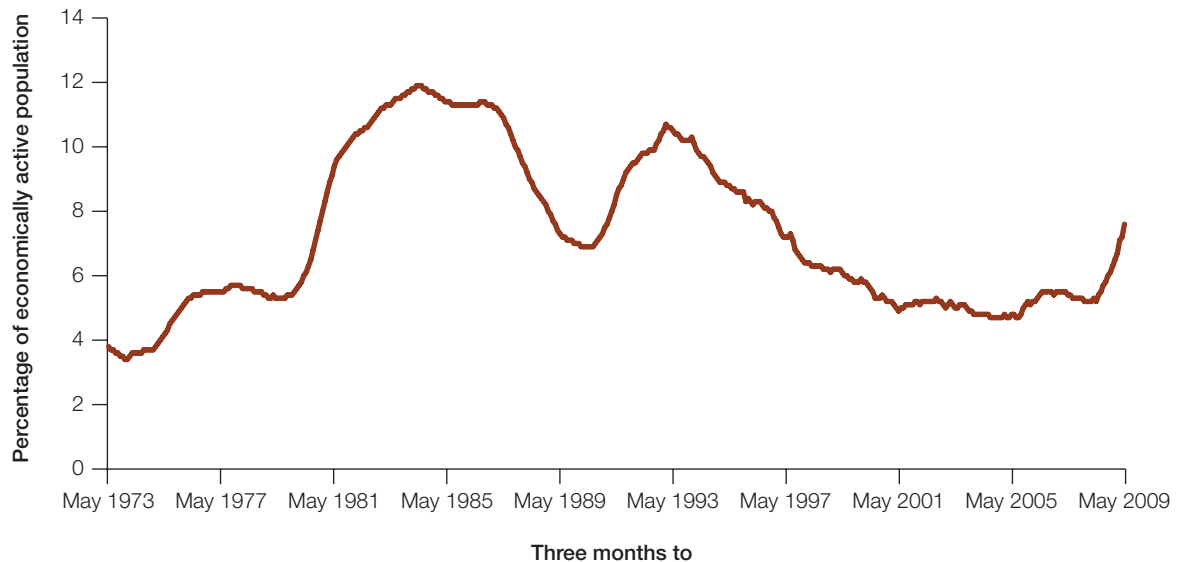


Note: Employment is calculated from the Labour Force Survey (LFS) and is given by the number of individuals who did at least one hour's paid work in the week prior to their LFS interview, or have a job that they are temporarily away from.  
 Source: Office for National Statistics (2009f)

3.12 Figure 3.4 shows that the unemployment rate was 7.6 per cent in the three months to May 2009, up from a low of 5.2 per cent a year ago – a rise of 2.4 percentage points

over the period. In the early 1990s the rate rose by 1.9 percentage points in a year from its peak of an initial rate of 6.9 per cent.

Figure 3.4: Unemployment rate, UK, Mar–May 1973 to Mar–May 2009



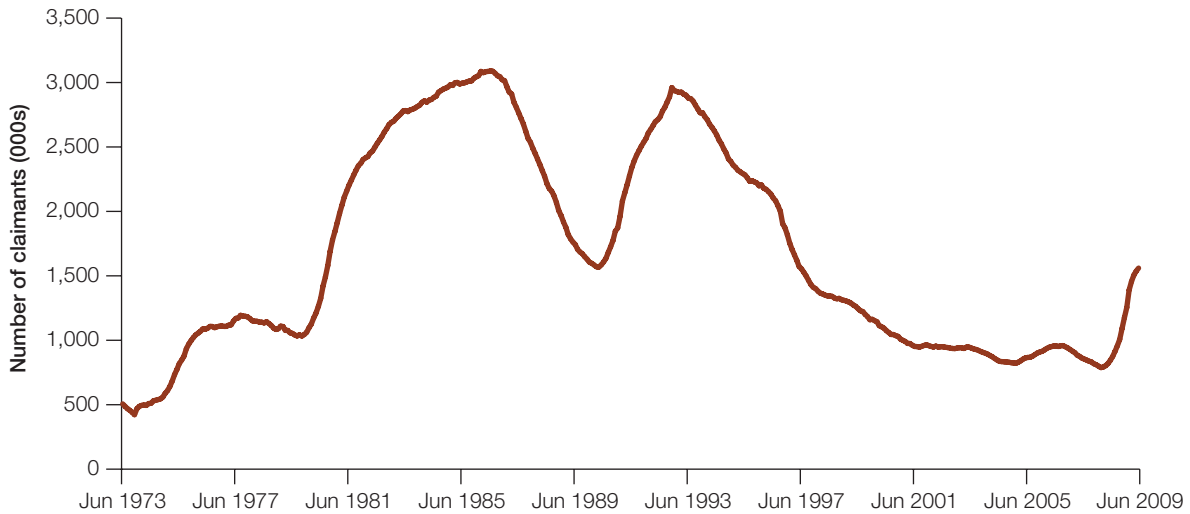
Note: Seasonally adjusted. The definition of unemployment is internationally agreed and recommended by the International Labour Organization (ILO), where every individual aged 16 or over is classified as in employment, unemployed or economically inactive. Individuals are defined as unemployed if they are without a job, want a job, have actively sought work in the last four weeks and are available to start work in the next two weeks; or are out of work, have found a job and are waiting to start it in the next two weeks. The unemployment rate is calculated from the LFS and comes from the proportion of the economically active population (either in employment or unemployed) who are unemployed.

Source: Office for National Statistics (2009b)

3.13 The claimant count has increased to 1.56 million in June 2009, from around half that figure in February 2008, and now stands at its highest level since June 1997, as shown in Figure 3.5. In June 2009 there

were 354,100 inflows to the claimant count, down from the previous month, and 324,000 outflows from the claimant count, up from the previous month. Therefore, the rate of increase slowed in that month.

Figure 3.5: Claimant count, UK, Jun 1973 to Jun 2009

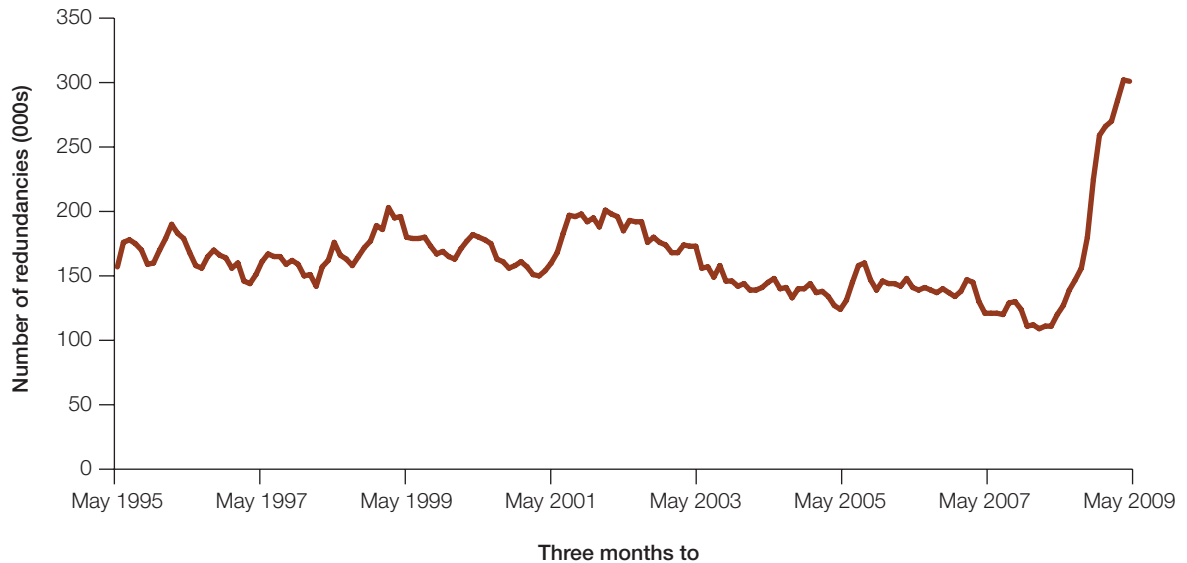


Note: Seasonally adjusted. The claimant count consists of all people aged 18 and over claiming Jobseeker's Allowance at Jobcentre Plus local offices. They must declare that they are out of work, but capable of, available for and actively seeking work during the week in which their claim is made.  
Source: Office for National Statistics (2009b)

3.14 Figure 3.6 shows that in the three months to May 2009, redundancies were up 31,000 from the previous quarter and up 182,000 from a year earlier to 301,000. The redundancy rate was 11.9 per 1,000

employees, up 1.3 per 1,000 employees from the three months to February 2009 and up 7.2 per 1,000 employees from a year earlier.

Figure 3.6: Total redundancies, UK, Mar–May 1995 to Mar–May 2009



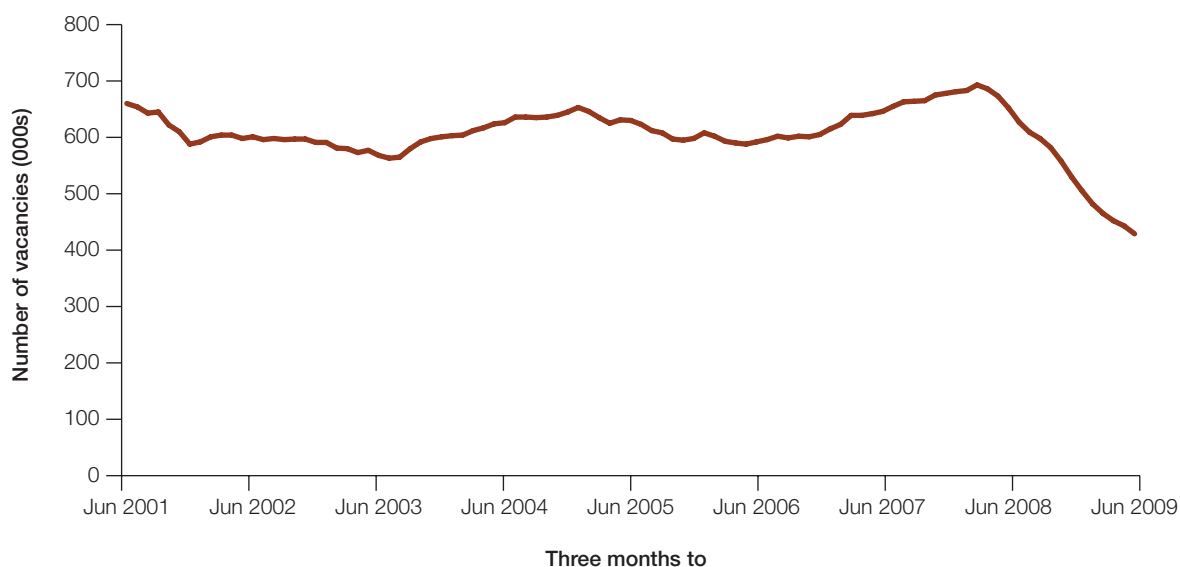
Note: Seasonally adjusted. Total redundancies are estimated from the LFS and describe the number of people – working or not – who had been made redundant or had taken voluntary redundancy in the month of the survey or in the two calendar months prior to it.

Source: Office for National Statistics (2009b)

3.15 In the three months to June 2009, job vacancies were down 35,000 from the three months to March 2009, and down 222,000 from a year earlier to 429,000, as shown in Figure 3.7. There were 1.6

vacancies per 100 employee jobs in the most recent three-month period, down 0.1 per 100 employee jobs on the previous quarter and down 0.9 per 100 employee jobs over the year.

**Figure 3.7: Total vacancies, UK, Apr–Jun 2001 to Apr–Jun 2009**



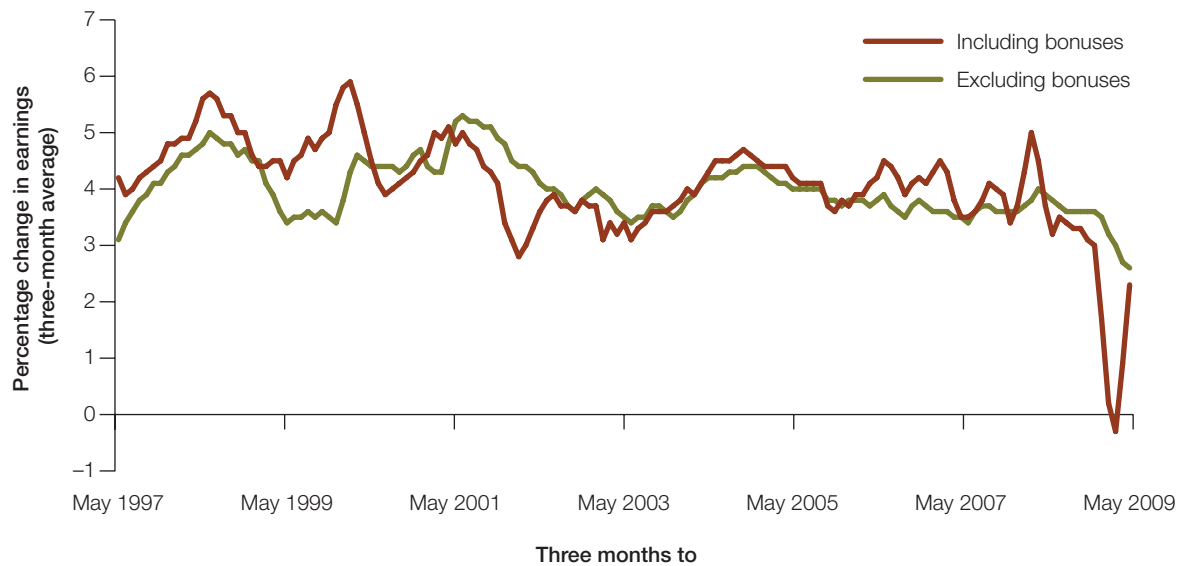
Note: Seasonally adjusted. Total vacancies are estimated from the monthly Vacancy Survey, which asks employers how many vacancies they have in total for which they are actively seeking recruits from outside their organisation (for example by advertising or interviewing).  
Source: Office for National Statistics (2009b)

3.16 Although most forecasters expect mild GDP growth in 2010, the selection of forecasts from leading institutions published by HM Treasury (2009) shows that the claimant count is expected to approach 2 million by the end of 2009, and to reach 2.3 million a year later. The ITEM Club (2009) says it expects unemployment, by the International Labour Organization (ILO) definition, to peak at 2.75 million (or 8.8 per cent of the labour force) next spring, while NIESR (2009) predicts that the ILO unemployment rate will peak at 9.6 per cent in 2011.

3.17 Changes in earnings are an important indicator of labour market pressure. Figure 3.8 shows the deterioration in overall earnings growth since the end of 2008. This is especially pronounced when bonuses are included, to the extent that the three-month rate of earnings growth including bonuses fell below zero in the three months to March 2009, before rebounding to 2.3 per cent in the three months to May 2009. The recent trend has been driven largely by private sector services, which have experienced lower than average growth in earnings for the last five months.



Figure 3.8: Average earnings growth, Great Britain, Mar–May 1997 to Mar–May 2009



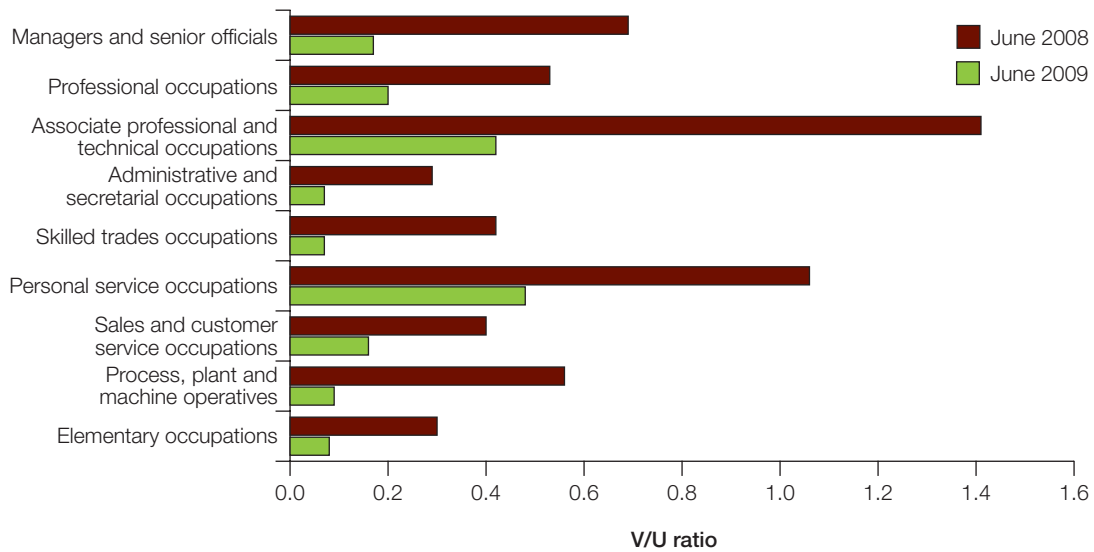
Note: Seasonally adjusted. Average earnings are calculated by dividing the total amount paid by the total number of employees paid. The growth rate is equal to average earnings over a three-month period against the same three-month period a year ago.

Source: Office for National Statistics (2009b)

3.18 The ratio of vacancies to unemployment ( $V/U$ ) is a good additional measure of the state of the labour market, and in Figure 3.9 we present this ratio by occupation. Total vacancies are limited to those recorded at Jobcentre Plus, and so account for only a proportion of total UK vacancies. Unemployment data are given by the claimant count and so account for only a proportion of the total number of unemployed individuals. We assume that the measurement error over a 12-month period is approximately constant, allowing us to derive meaning from the change in this ratio over the last year.

3.19 Figure 3.9 illustrates that, in June 2009, for all Standard Occupational Classification major groups (see paragraph 2.60 onwards for a description), the ratio has fallen substantially compared to a year ago, indicating that the supply of employees has risen relative to demand for all occupations.

**Figure 3.9: Notified Jobcentre Plus vacancies per claimant by occupation, Great Britain, Jun 2008 and Jun 2009**



Note: Vacancies are live and unfilled and are recorded at Jobcentre Plus. The claimant count is as defined above. Source: Nomis (2009)

3.20 In conclusion, it is clear that we need to take account of the recent downturn in the economy and uncertainties about the scale of the slowdown in considering our recommendations for Tier 2 and dependants.

### 3.4 Immigration context

3.21 Here we look at the characteristics of immigration and its long-term role in the labour market. A number of different data sources are used in this section, some of which are subject to considerable lags, meaning that more recent data have yet to be made available. Box 3.1 sets out the various sources and the latest data available.

### Box 3.1: Data sources on immigration to the UK

**International Passenger Survey (IPS)** – describes the flows of passengers to and from the UK. Immigrants can be defined by country of birth, nationality, intended purpose of visit and length of stay. Long-term migration is defined in the survey as applying to those intending to change their place of residence for a year or more. Latest available finalised data relate to 2007, but provisional estimates are available for the year to September 2008: these may vary slightly from finalised estimates and do not report reasons for migration by nationality.

**Control of Immigration statistics** – describe the inflows of passengers holding work permits who are admitted to the UK. Leave to enter the UK is required for those subject to immigration control, primarily non-European Economic Area (EEA) nationals. Immigrants are defined by immigration status and can be differentiated by nationality and length of stay. These data are published in *Control of Immigration: Statistics* (Home Office, 2008b), the most recent version of which relates to 2007.

**Management information data** – collected from the PBS (and the work permit arrangements that preceded it) by the UK Border Agency (UKBA), but not routinely published. Some of these data have been made available to the Migration Advisory Committee to produce the analysis for this report. It is important to note that these data are neither national statistics nor quality-assured to national statistics standards, and are therefore presented for research purposes only. Immigrants are defined by immigration status and can be differentiated by nationality. We have received data up to and including May 2009.

**National Insurance Number allocations** – can be used as a proxy for inflows of workers. Migrants are defined by nationality. Figures are published quarterly by the Department for Work and Pensions, and the latest available data relate to 2008.

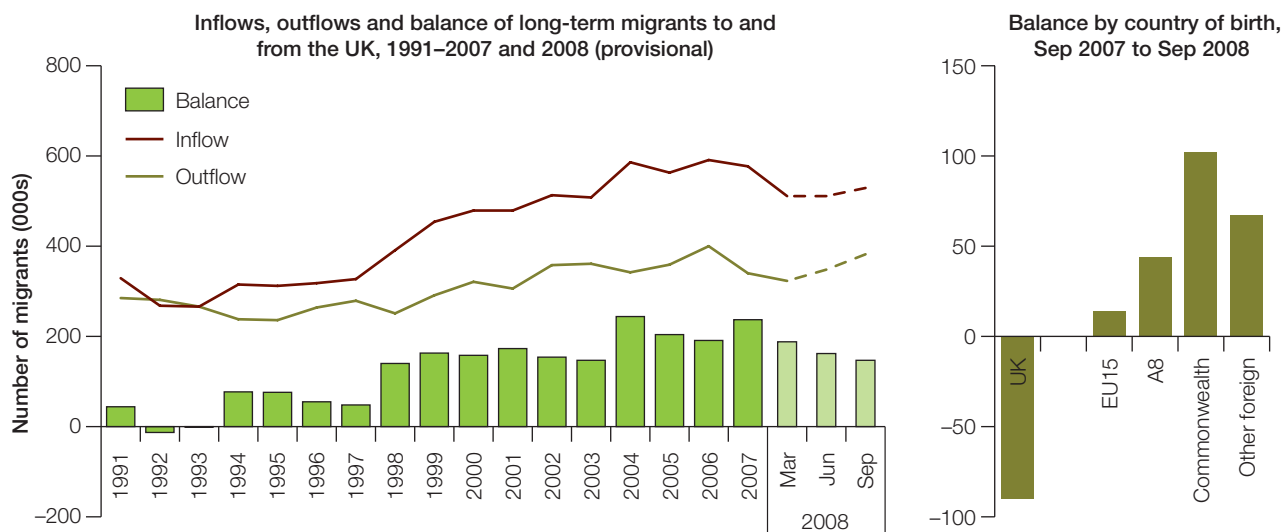
**Labour Force Survey (LFS)** – the best source of data currently available on stocks of immigrants in the UK and their labour market status. Immigrants can be defined by country of birth, nationality and length of stay in the UK, but not by immigration status. The latest available data relate to Q1 2009. The Office for National Statistics (ONS) publishes migrant-specific tables from the LFS in its migrant worker estimates (Office for National Statistics, 2009c).

#### Overall flows and stocks

3.22 Since the end of the last recession in 1993, inflows of long-term immigrants (defined as those intending to change their place of residence for one year or more) have exceeded outflows, resulting in positive net inflows of immigrants to the UK, as shown in Figure 3.10. In the year to September 2008, provisional data from the IPS show that 90,000 more UK-born individuals left the UK as long-term migrants than entered: a net outflow. In contrast, net inflows of

long-term migrants were recorded for those born outside the UK. In the same period, a net inflow of 58,000 long-term migrants was recorded for those born within the EU, and for those born outside the EU a net inflow of 169,000 long-term migrants was recorded. Provisional data for 2008 suggest that while gross inflows have been relatively stable in recent months, outflows have increased, leading to reductions in the net balance between inflows and outflows.

**Figure 3.10: Flows of long-term migrants to and from the UK**



Note: Long-term migration is defined in the survey as applying to those intending to change their place of residence for a year or more. This definition includes all nationalities and countries of birth, including the UK. Chart shows calendar years 1991–2007. Provisional estimates to March, June and September are provided for 2008.  
 Source: International Passenger Survey 1991–2008, published in Office for National Statistics (2009c, 2009d)

3.23 The fact that net inflows have been positive in recent years is reflected in the increasing stock of immigrants, defined as non-UK born, in the UK. The LFS estimates that approximately 13 per cent of the working age population in the UK in 2008 were born overseas, up from 9 per cent a decade earlier.

**Character of managed migration flows to the UK**

3.24 This report is particularly concerned with the PBS. The remit of the PBS excludes immigration by EEA citizens, who may travel freely to the UK and, in most cases, work without restriction. Neither does it cover those admitted to the UK for humanitarian reasons or family reunification purposes. In this section, unless otherwise stated, we discuss non-EEA immigrants, defined by nationality or country of birth.

3.25 Although immigration of workers tends to be the focus of public debate, many come to the UK for other reasons. Figure 3.11 shows net long-term immigration of non-EU nationals, split by their reason for immigration, between 1991 and 2007. In recent years, net inflows of non-EU nationals have been strongly dominated by those coming for formal study. Net immigration for those with a definite job has been lower, and for those looking for work, the UK experiences net emigration of non-EU nationals. The situation for EU15<sup>5</sup> nationals (people from the 15 EU countries that made up the EU prior to its expansion on 1 May 2004) and A8 nationals is very different. A much higher proportion of the inflows from these groups is for work purposes.

<sup>5</sup> The EU15 comprised Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

3.26 For those looking for work, outflows have exceeded inflows since 2000. However, if we look at non-EU nationals migrating with a definite job between 2006 and 2007, a considerable change in flows has occurred. Table 3.2 expands on Figure 3.11, showing the gross inflows and outflows as well as the net inflows. In 2006, 79,000 non-EU nationals came to the UK with a definite job, while 36,000 left for the

same reasons. For 2007, there was a slight drop in inflows as 68,000 non-EU nationals came to the UK with a definite job, but a large increase in outflows – with 72,000 leaving the UK. The fact that more non-EU nationals left the UK for work purposes than entered in 2007 is a significant point to bear in mind when we consider immigration flows later in this chapter.

Figure 3.11: Balance of non-EU nationals by reason for migration, 1991–2007



Note: The figures describe the balance of non-EU nationals intending to change their place of residence for a year or more. Although provisional estimates for some migration series from the IPS are available up to September 2008, at the time of publication of this report, the latest data available by country of birth and reason for migration relate to 2007. Finalised 2008 data will be published by the ONS in November 2009. For 1995, those looking for work were not recorded separately from 'Other reasons'.  
 Source: International Passenger Survey 1991–2007, published in Office for National Statistics (2009e)

Table 3.2: Inflows, outflows and net balance of non-EU nationals to the UK by reason for immigration, 1991–2007

		1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
All reasons (000s)	Inflow	112	88	92	100	108	108	120	144	180	202	209	234	266	329	287	315	333
	Outflow	74	81	70	63	57	56	65	65	83	91	77	99	101	92	108	115	203
	<b>Balance</b>	<b>+38</b>	<b>+6</b>	<b>+23</b>	<b>+37</b>	<b>+51</b>	<b>+52</b>	<b>+55</b>	<b>+80</b>	<b>+97</b>	<b>+111</b>	<b>+132</b>	<b>+135</b>	<b>+165</b>	<b>+236</b>	<b>+179</b>	<b>+200</b>	<b>+129</b>
Definite job (000s)	Inflow	14	16	17	19	15	20	23	28	41	53	62	59	64	77	67	79	68
	Outflow	9	15	20	21	18	16	18	20	22	31	18	27	27	27	28	36	72
	<b>Balance</b>	<b>+5</b>	<b>+1</b>	<b>-3</b>	<b>-2</b>	<b>-4</b>	<b>+4</b>	<b>+4</b>	<b>+8</b>	<b>+19</b>	<b>+22</b>	<b>+44</b>	<b>+31</b>	<b>+37</b>	<b>+49</b>	<b>+39</b>	<b>+42</b>	<b>-4</b>
Looking for work (000s)	Inflow	5	8	9	7	-	13	11	20	23	22	20	25	21	37	25	22	36
	Outflow	3	10	13	13	-	19	20	19	22	30	29	33	36	37	46	44	50
	<b>Balance</b>	<b>+2</b>	<b>-3</b>	<b>-5</b>	<b>-5</b>	<b>-</b>	<b>-7</b>	<b>-9</b>	<b>+1</b>	<b>+0</b>	<b>-9</b>	<b>-9</b>	<b>-8</b>	<b>-15</b>	<b>-2</b>	<b>-21</b>	<b>-22</b>	<b>-14</b>
Accompany/join (000s)	Inflow	42	33	36	33	29	29	34	34	44	50	54	45	58	74	65	74	74
	Outflow	20	23	21	15	15	11	13	11	17	14	10	14	13	11	10	12	34
	<b>Balance</b>	<b>+22</b>	<b>+11</b>	<b>+15</b>	<b>+18</b>	<b>+15</b>	<b>+18</b>	<b>+22</b>	<b>+23</b>	<b>+27</b>	<b>+37</b>	<b>+44</b>	<b>+31</b>	<b>+44</b>	<b>+62</b>	<b>+55</b>	<b>+62</b>	<b>+41</b>
Formal study (000s)	Inflow	26	22	21	30	31	33	35	40	50	55	55	76	99	110	95	114	110
	Outflow	3	3	5	3	2	4	4	5	4	4	3	6	6	4	4	3	10
	<b>Balance</b>	<b>+23</b>	<b>+20</b>	<b>+15</b>	<b>+28</b>	<b>+30</b>	<b>+29</b>	<b>+31</b>	<b>+35</b>	<b>+46</b>	<b>+50</b>	<b>+53</b>	<b>+70</b>	<b>+94</b>	<b>+106</b>	<b>+90</b>	<b>+110</b>	<b>+100</b>

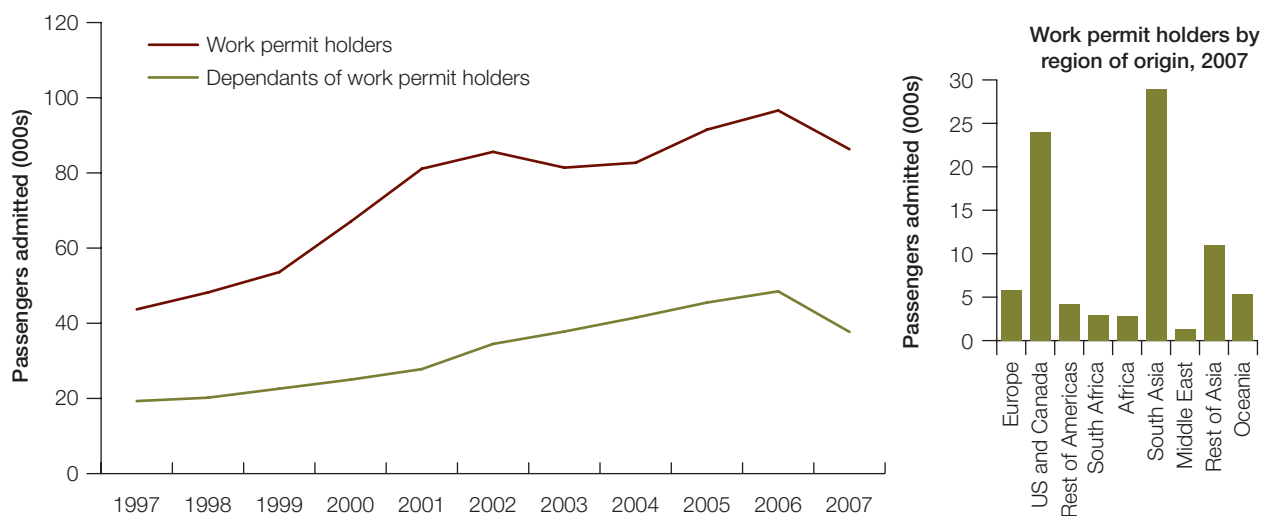
Note: The figures describe the balance of non-EU nationals intending to change their place of residence for a year or more. Due to rounding, the balance does not necessarily equal the inflow minus the outflow. Although provisional estimates for some migration series from the IPS are available up to September 2008, at the time of publication of this report, the latest data available by country of birth and reason for immigration relate to 2007. Finalised 2008 data will be published by the ONS in November 2009. For 1995, those looking for work were not recorded separately from 'Other reasons'.

Source: International Passenger Survey 1991–2007, published in Office for National Statistics (2009e)

3.27 Control of Immigration statistics provide an estimate of gross inflows of non-EEA immigrants with permits to work in the UK, as shown in Figure 3.12. In order to be admitted to the UK for the purposes of work, non-EEA economic immigrants who are subject to immigration control must have permission to work in the UK – whether through the PBS or the previous

work permit arrangements – and obtain entry clearance. The number of work permit holders admitted to the UK has grown considerably over the last decade; however, a significant decline in inflows is evident between 2006 and 2007. No equivalent figures are available on outflows of those subject to immigration control.

Figure 3.12: Passengers admitted to the UK: work permit holders and their dependants, 1997–2007



Note: The figures are for the number of non-EEA citizens holding a work permit who were admitted to the UK – not for the number of work permits issued each year. Dependants are defined as spouses or partners and/or children who are accompanying or joining a work permit holder in the UK. For consistency, South Asia is defined as India, Pakistan, Bangladesh and Sri Lanka.  
Source: Home Office (2008b)

3.28 In addition to the recent declines observed in estimates of long-term immigration from the IPS and Control of Immigration statistics, falls are evident in the number of National Insurance Numbers allocated to non-EEA nationals. This number was 8 per cent lower in 2008 than in 2007,

reversing recent trends, as shown in Table 3.3. For EEA nationals, a 22 per cent reduction in National Insurance Numbers issued was observed between 2007 and 2008.



**Table 3.3: National Insurance Number allocations to overseas nationals, 2002–2008**

	Number of National Insurance Numbers allocated (000s)							% change 2007 to 2008
	2002	2003	2004	2005	2006	2007	2008	
EEA (excl. UK)	90	108	162	331	367	470	368	–22
Non-EEA	221	255	251	287	266	327	301	–8
<b>Total</b>	<b>311</b>	<b>362</b>	<b>413</b>	<b>618</b>	<b>633</b>	<b>797</b>	<b>670</b>	<b>–16</b>

Note: National Insurance Number allocations to UK nationals are not shown. Figures do not necessarily sum due to rounding.  
Source: Department for Work and Pensions (2009)

3.29 Totals from Control of Immigration statistics for work permit holders admitted to the UK include those coming for short periods, as well as for a year or more. Of the 86,300 work permit holders admitted to the UK in 2007, around 42 per cent were for employment of periods less than 12 months (Home Office, 2008b). The most common nationalities of work permit

holders admitted to the UK in 2007 are shown in Table 3.4. For employment for more than 12 months, Indian nationals were the most common nationality of work permit holder admitted to the UK, while for employment under 12 months, the US accounted for the highest proportion of work permit holders admitted.

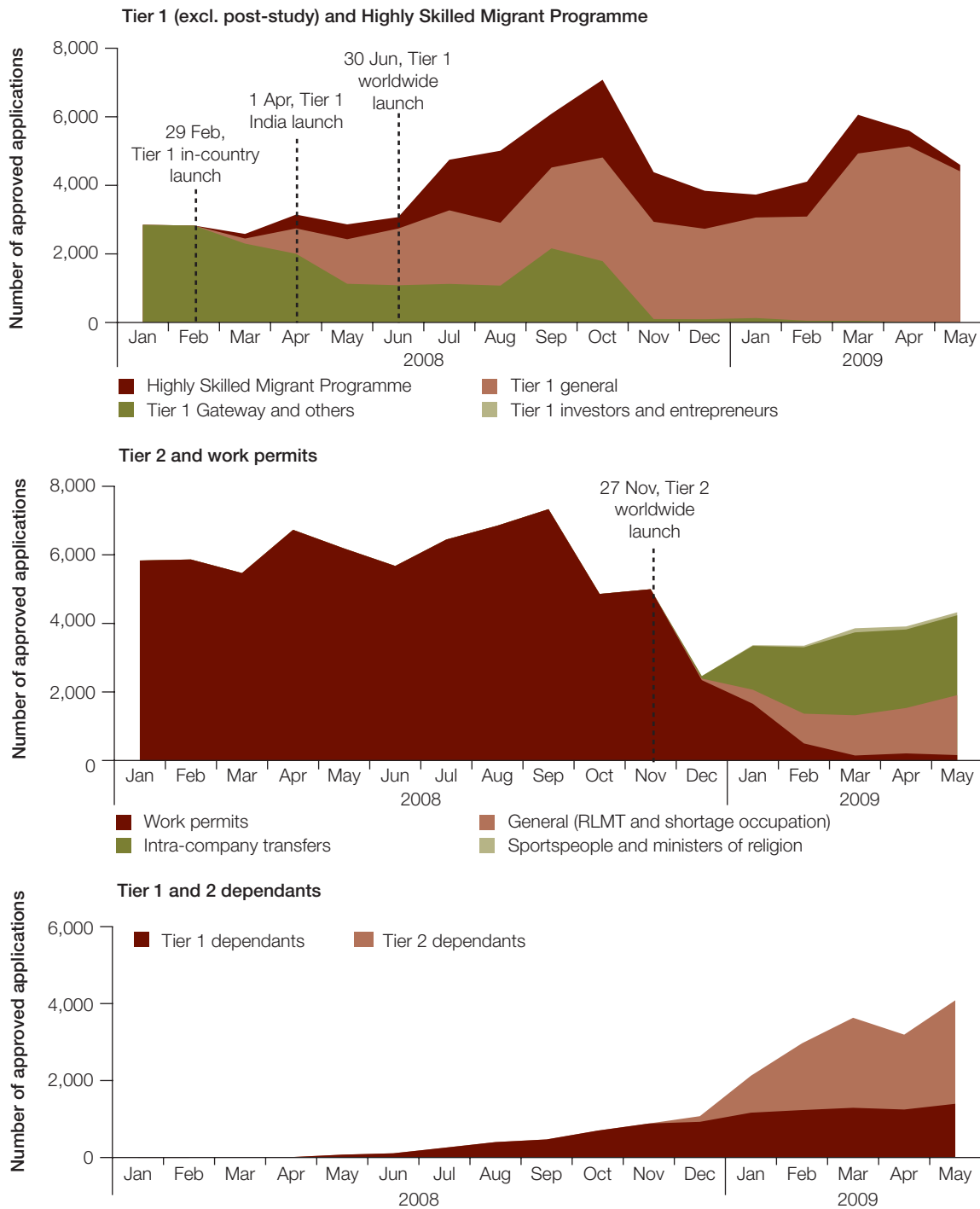
**Table 3.4: Passengers admitted to the UK: selected nationalities, 2007**

	Number of work permit holders			Number of dependants
	Employment for 12 months or more	Employment for less than 12 months	Total	
Total world, excl. EEA	50,400	35,900	86,300	37,700
India	21,200	5,020	26,220	13,500
US	6,170	14,800	20,970	4,780
Australia	2,670	1,450	4,120	1,150
China	2,450	654	3,104	2,060
Canada	1,210	1,850	3,060	600
South Africa	1,830	1,060	2,890	1,190
Japan	1,730	695	2,425	1,790
Philippines	1,740	205	1,945	2,760
Pakistan	1,260	385	1,645	820
New Zealand	710	465	1,175	260
Nigeria	300	140	440	775

Note: The above Control of Immigration statistics describe the number of non-EEA citizens holding a work permit who were admitted to the UK in 2007. The ratio of dependants per immigrant by nationality is analysed further in Chapter 7.  
Source: Home Office (2008b)

- 3.30 Management information data from the work permit system and the PBS describe the number of permits issued under various immigration routes and schemes. The PBS and the previous work permit arrangements account for the majority (but not all) of immigration by non-EEA nationals to the UK for work or study.
- 3.31 In Figure 3.13 we present some PBS management information that provides an indication of relative flows through the various tiers and routes of the PBS. These data are operational management information, not national statistics, and are therefore provisional and may be subject to change. The data are most closely comparable with the numbers of work permits issued under the previous work permit arrangements. They are not equivalent to statistics describing the number of passengers admitted, for a number of reasons: most importantly, because they include applications made by those already in the UK, but also because there will be a lag between applications approved and passengers arriving, and some initial decisions about applications (on which the management information data are based) may change.
- 3.32 Figure 3.13 shows some of these data, alongside equivalent figures from the previous work permit arrangements and Highly Skilled Migrant Programme (HSMP). We have tried to match routes as closely as possible, although it is important to note that the new PBS tiers and routes are not necessarily equivalent to the previous arrangements. We exclude Tier 1 post-study from this analysis because a number of different post-study schemes existed prior to Tier 1, and figures to date show strong seasonal variation – making trends difficult to interpret. We have not been provided with data on dependants of Tiers 4 and 5, although we were told by the UKBA that numbers are very small.
- 3.33 There are some risks associated with drawing conclusions on short time-series: transitional effects around the launch dates for the PBS, seasonal variation (for example a drop in casework decisions over the Christmas period), and the UKBA's prioritisation of resources may all contribute to variation. Nevertheless, we have been able to make the following observations:
- In terms of flows, Tier 1 is larger than the previous HSMP.
  - Flows under Tier 2 have been lower, so far, than under the previous work permit arrangements. But monthly totals have continued to grow, so the gap may yet close.
  - Flows of dependants are relatively small in comparison to PBS main applicants. Although Tier 2 is smaller, it accounts for a larger proportion of dependants coming through the PBS.

**Figure 3.13: Approved monthly applications under selected PBS routes and previous work permit arrangements, Jan 2008 to May 2009**



Note: 'Tier 1 general' includes all except post-study, investors and entrepreneurs. 'Tier 1 Gateway and others' mainly covers transitional cases where immigrants are switching from the HSMP. It also includes some cases reconsidered following a judicial review judgment on 8 April 2008, which may also have been counted in previous figures. 'Work permits' includes in-country and out-of-country approvals, extensions and changes in employment. These data are provisional and are not national statistics. Figures are based on initial decisions and include both in-country and out-of-country applications. They cover extensions and changes in employment, so do not equal the number of immigrants to whom permits have been granted. Numbers of Tier 1 investors and entrepreneurs are very small and are therefore difficult to distinguish in the chart. We have not been provided with data on dependants for Tiers 4 and 5, although we are told by the UKBA that the numbers are very small. Comparable data are not readily available on dependants of work permit holders and those under the HSMP. Source: UK Border Agency management information data for work permits, Highly Skilled Migrant Programme and Points Based System, 2008–09

### Migrants in the UK labour market

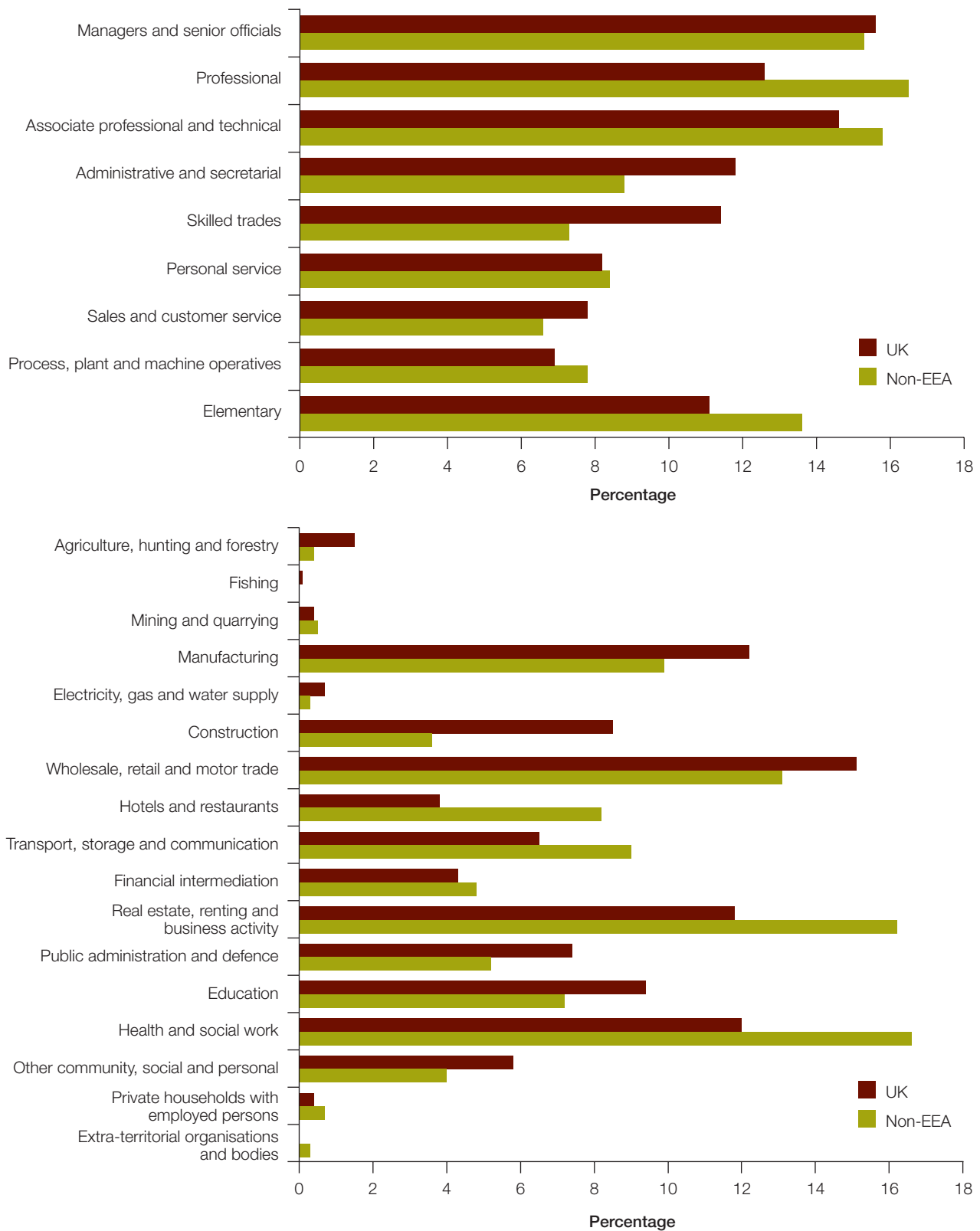
- 3.34 Here we consider the stock of immigrants in the UK labour market, defined by country of birth, which accounts for 13 per cent of the working age population. In later chapters we will consider more tightly defined subsets of immigrants and flows under specific routes.
- 3.35 Those born outside the EEA accounted for 68 per cent of the stock of immigrants in 2008. This figure drops to 58 per cent if we consider only immigrants who came to the UK in 2003 or onwards. Of the stock of non-EEA immigrants, 82 per cent are of working age and 32 per cent are aged 20 to 34. In contrast, 64 per cent of UK-born individuals are of working age and 18 per cent are aged 20 to 34. Of the non-EEA immigrants in the UK, 51 per cent are female.
- 3.36 Employment rates among foreign-born people in the UK are around 68 per cent, in comparison with a rate of 74 per cent for UK-born people (Office for National Statistics, 2009c). There is considerable variation by country of birth. Employment rates for those born in Australia or New Zealand are around 86 per cent, compared to 49 per cent for those born in Pakistan or Bangladesh, as shown in Table 3.5. Employment rates are lower among some nationalities because females are much less likely to be in employment.
- 3.37 The occupational and sectoral distribution of non-EEA immigrants differs from that of UK-born people, as shown in Figure 3.14. Non-EEA born immigrants tend to be over-represented in some high and low skill occupations. Greater proportions are found in professional and associate professional occupations, but also in elementary occupations. Non-EEA immigrants are also over-represented in certain sectors, notably real estate, renting and business activity, and health and social work. This may be the result of historical immigration patterns from the Commonwealth, as well as the effect of work permit arrangements.

**Table 3.5: Employment rates and levels by country of birth, Jan–Mar 2009**

Country of birth	Employment rate (per cent)	Employment level (000s)
UK	74.1	25,281
Non-UK (foreign-born)	68.4	3,806
EU14 countries	75.3	682
A8 countries	81.8	518
US	68.9	76
Africa (excl. South Africa)	61.5	582
South Africa	82.4	151
Australia and New Zealand	85.8	133
India	72.7	337
Pakistan and Bangladesh	48.6	273

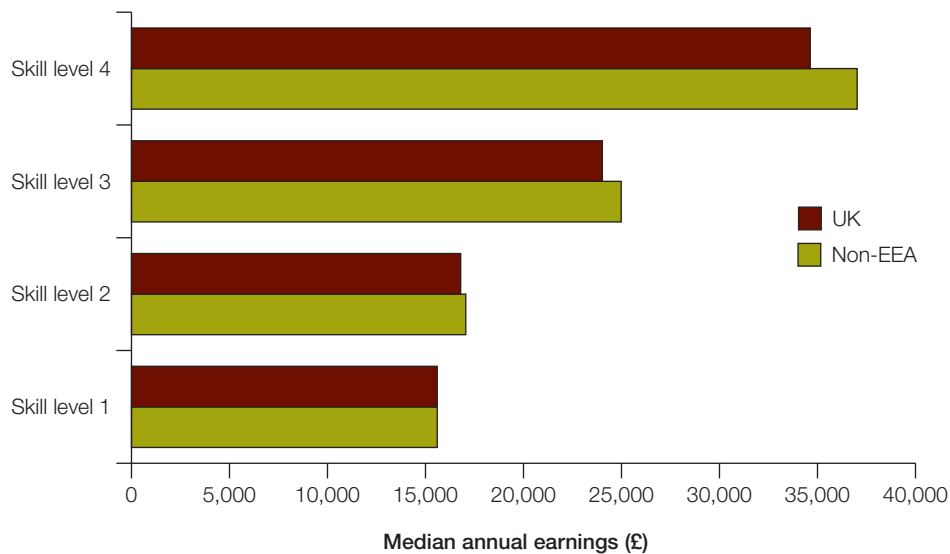
Note: Employment rates are given for the working age population (defined as females aged 16 to 59 and males aged 16 to 64). Employment levels are given for those aged 16 and over. Data are not seasonally adjusted. EU14 refers to members of the EU prior to 2004 apart from the UK. Migrants are defined by country of birth.  
Source: Office for National Statistics (2009c)

**Figure 3.14: Shares of non-EEA born immigrants by occupation and sector, 2008**



Note: Charts show the percentage of working age non-EEA born people in each occupation and sector, and the equivalent percentage of UK-born individuals. Immigrants are defined by their country of birth. The charts exclude non-UK, EEA-born individuals.  
 Source: Labour Force Survey, 2008

Figure 3.15: Earnings differential between UK-born and non-EEA born by occupational skill level, 2008



Note: Chart shows the average pay levels of working age full-time UK-born and non-EEA employees by occupational skill level (as defined in the Standard Occupational Classification: level 1 represents lowest-skill occupations and level 4 the highest-skill occupations). Non-EEA immigrants are defined by country of birth.  
Source: Labour Force Survey, 2008

- 3.38 On average, non-EEA immigrants earn more than UK-born individuals, although the difference is largely due to the greater proportion of non-EEA immigrants in London. Descriptive evidence from the LFS suggests that earnings differences between UK-born workers and immigrants vary by skill level, with greater differences observed in higher-skill occupations – as shown in Figure 3.15.
- 3.39 A growing body of evidence addresses the impact of immigrants on resident workers in the labour market. Economic theory indicates a number of potential ways in which immigration might affect the wages and employment of resident workers. However, the empirical evidence is equivocal.
- 3.40 In general, we might expect increases in the labour supply as a result of immigration to depress wages. However, the balance of empirical evidence suggests that the impacts of immigration on wages and employment of UK-born workers tend to be small (Reed and Latorre, 2009; Lemos and Portes, 2008). A reason for this may be that immigrants are imperfect substitutes for existing workers, a hypothesis which is supported by Manacorda *et al.* (2006).
- 3.41 Dustmann *et al.* (2008) examine the effect of immigration along the wage distribution. They find the overall effect to be small and positive. At the high end, they find that immigration has a positive effect on the wages of resident workers, but at the lower end, immigration depresses wages. Nickell and Salaheen (2008) look at effects on different occupational groups, but their result tallies with Dustmann *et al.* They find a negative effect of immigration overall, but more notable evidence of wage depression in semi-skilled or unskilled services (such as caring and personal service occupations, and leisure, sales and customer service occupations).

### 3.5 Immigration and the labour market under recession

3.42 The increase observed in the net inflows and stock of immigrants in recent years has occurred under conditions of relatively stable economic growth in the UK. This period of stability ceased with the current recession. There are a number of potential ways in which the recession could impact on immigration to the UK, including the following:

- Inflows of economic migrants may decline as employment prospects deteriorate, though the global nature of the recession may mean that employment prospects relative to those in source countries are unchanged.
- Employment rates of immigrants may fall, perhaps faster than those for the UK-born (a 'last in, first out' effect). Or conversely, if employers have a preference for immigrants, immigrant employment rates may be more resistant to the downturn.
- There may be longer-term labour market effects, for example 'scarring' of recently arrived immigrants who fail to obtain work.
- There may be impacts on immigrant welfare and impacts on source countries (through, for example, changes in remittances and return migration).

3.43 We conclude this chapter by examining evidence on the first two of these issues, which are the most relevant to the subject of this report.

### Immigration flows during recession

3.44 Economic prospects in destination countries are a well established driver of migration. For a wider examination of the links between recession, the labour market and immigration, see Somerville and Sumption (2009).

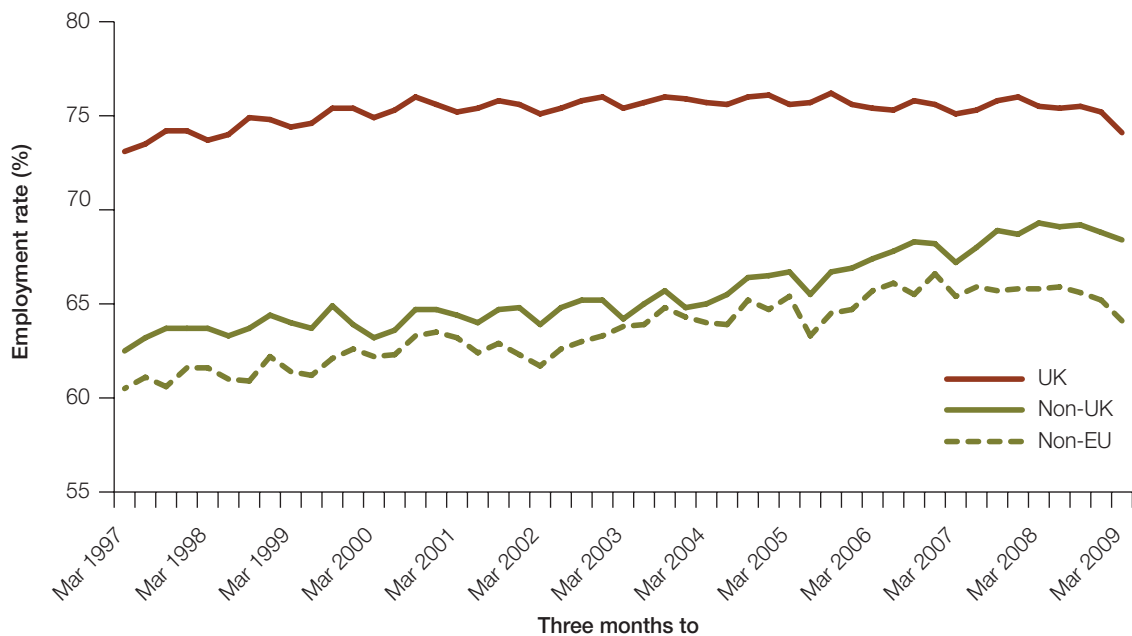
3.45 For the UK, Mitchell and Pain (2003) found that inflows are influenced by income levels relative to those in source countries, UK growth rates and UK unemployment rates. A recent study by NIESR, commissioned by the Department for Communities and Local Government (2009), builds on the previous work by Mitchell and Pain to forecast impacts on flows to the UK resulting from the global downturn. Their short-run analysis reflects the global downturn, as it takes account of UK growth relative to that in source countries.

3.46 The analysis started from a July 2008 baseline estimate of gross inflows, when GDP growth for the UK in 2009 was forecast at 1.9 per cent. This estimated gross inflows in 2015 of long-term migrants, including UK nationals, to be 719,000; this compares with inflows of 577,000 recorded in the IPS in 2007. From this baseline, the analysis (conducted in January 2009 when UK GDP growth for 2009 was forecast to be -4.14 per cent) yielded a reduction of 52,000 to the baseline estimate of gross inflows in 2015 – a downward revision of around 7 per cent. The largest reductions in inflows were predicted to come from the A8 countries, while inflows from Indian and Asian Commonwealth countries were predicted to experience a more subdued response to the recession.



- 3.47 Ernst and Young (2009) also predicts reductions in inflows, noting that *“poorer economic prospects will discourage potential migrants from moving to the UK and will lure earlier migrants elsewhere. This effect will be compounded by the weakness of sterling, which causes a narrowing of relative wage differentials.”*
- 3.48 Somerville and Sumption (2009) argue that the long-term impact of the recession on the number of immigrants in the UK is likely to be small, because many of the underlying drivers of immigration will pick up in a recovery. They examine past recessions in the UK and internationally, finding that temporary reductions in inflows are recorded, but outflows do not generally rise significantly.
- 3.49 The Organisation for Economic Co-operation and Development (OECD) also reviewed evidence on the immigration response to the business cycle. It found that in many cases *“downturns [are] marked by a rapid reduction of migration and recoveries by an increase, the correlation being particularly noticeable during the most severe slumps”* (OECD, 2009b).
- 3.50 Dobson, Latham and Salt (2009) argue that the lessons from past recessions are that although inflows may fall and outflows rise in the short term, the effect is ephemeral. The mid-1970s downturn following the 1973 oil crisis did not result in major falls in stocks of foreign workers in Europe.
- Migrant outcomes during recession**
- 3.51 We now consider the employment of immigrants in the UK labour market. OECD (2009b) argues that during downturns *“the expected consequences on labour market outcomes of immigrants are unambiguous: past experience has shown that immigrants are among those hardest hit”*. There is empirical evidence to show that labour market outcomes are more affected by the business cycles for immigrants than for native labour. Dustmann *et al.* (2006) examined labour market outcomes for immigrants and natives through the previous cyclical variations in the UK and Germany. They found a significantly larger unemployment response to economic shocks for immigrants relative to natives within the same skill group. Their research found little evidence for differential wage responses to economic shocks between immigrants and natives.
- 3.52 Latest employment figures show little evidence of a differential response so far. Figure 3.16 shows that employment rates for non-UK born exhibit smaller declines, albeit from a lower base, than for UK-born. However, this includes immigrants from the A8 countries, who have driven up the foreign-born employment rate considerably. If they are made unemployed they may return home. Non-EU immigrants show a similar pattern to UK-born in recent months.
- 3.53 A study undertaken by Rogers *et al.* (2009) suggests a number of possible scenarios for immigrant workers during a recession. Whether immigrants stay in the UK and in employment depends on a variety of factors, including employer demand, relative conditions in source countries and social factors affecting both immigrants and resident workers.

Figure 3.16: Employment rates for UK and non-UK born, 1997 Q1 to 2009 Q1



Note: Migrants are defined by country of birth. Chart shows employment rate for those born outside the UK and those born outside the EU.

Source: Migration Advisory Committee calculations, Office for National Statistics migrant worker tables

### 3.6 Conclusions

3.54 Some relevant key themes from our examination of the data and literature on the labour market, the economy and immigration are as follows:

- The UK and world economies are currently in a deep recession, and UK output will contract in 2009. Most commentators expect positive but modest output growth in 2010.
- In recent months, unemployment and redundancies have risen, and the employment rate has fallen. It is likely that recovery in the job market will lag behind the end of the economic recession by at least 12 months – and possibly longer.
- The impact of the recession has not been uniform across all sectors and occupations. Some occupations actually saw employment increase in the year to 2009 Q1.
- Net immigration to the UK was lower in 2008 than 2007, but still strongly positive. Nevertheless, the net balance of non-EU immigrants coming to the UK for work purposes in recent years has been negative: in other words, the UK sends more people abroad to work than come to the UK. This important point is usually missed in public debates about immigration.
- Flows of immigrants through Tier 2 appear to have been smaller than under the old work permit system. However, this situation may not persist in the longer term: Tier 2 was introduced in the midst of a recession, and flows have been increasing month on month.
- Intra-company transfers are the largest route under Tier 2, followed by the RLMT and shortage occupation routes.
- Flows of dependants are relatively small compared to PBS main applicants.

3.55 In the absence of policy change, we can expect a modest contraction of immigration flows to the UK, possibly in comparison to previous years, and probably relative to what would have happened in the absence of a recession. However, these effects are likely to be short-term only, with respected forecasters predicting that immigration will rise from current levels over the longer term, continuing the trend of the past decade.

## 4.1 Introduction

4.1 This chapter sets out how we gathered evidence about the questions we have been asked. It outlines the questions we asked in our call for evidence and the responses we received. We provide details of the meetings we held with key stakeholders and what we did to access other relevant sources of evidence. Key themes emerging from the evidence we received, including a short account of those themes that do not relate directly to our current remit, are also briefly discussed. Finally, we outline our broad methodological framework in terms of thinking about labour market and economic impacts and skilled immigration, and we consider the implications of the economic recession for our work.

## 4.2 Conceptual paper and call for evidence

4.2 The Government asked us in February 2009 to consider the questions relating to Tier 2 and dependants. In April 2009 we published a conceptual paper (Migration Advisory Committee, 2009c) outlining our initial thinking on ways to approach these questions, identifying possible data sources and inviting contributions from stakeholders through a call for evidence. This paper was published on our website and copies were sent to over 350 key stakeholders.

4.3 Our conceptual paper incorporated a call for evidence that put various questions to stakeholders in order to provide evidence from which we could form our conclusions.

4.4 The Government asked us, *“Is there an economic case for restricting Tier 2 to shortage occupations only?”* We therefore sought the views of stakeholders on the following questions:

- Does the current allocation of points by entry route achieve the right balance to reflect the relative difficulties of entering the UK via each route?
- Should the current length of leave to enter or remain according to entitlement by entry route be altered to reflect relative shortages, and their likely duration, by occupation?
- For relevant routes, should points and/or leave to enter or remain be changed to respond to current and future changes in economic and labour market conditions? Are the points thresholds too low, given the current economic conditions?
- **Shortage occupations:** If the intra-company transfer and/or general Tier 2 points are changed, or the routes are suspended, what does this imply for future policy on, or analysis of, shortage occupations? Alternatively, is there a case in the current economic climate for suspending the shortage occupation route and requiring all Tier 2 sponsors to carry out a Resident Labour Market Test?

- **Resident Labour Market Test (RLMT) route:** What evidence is there of the potential impact on the UK economy and labour market of suspending this route until further notice? Is there evidence of displacement of domestic workers under this route? Is the route operating effectively: for instance, should the required advertising time be longer than one or two weeks?
  - **Intra-company transfer:** What evidence is there of the potential impact on the UK economy and labour market of suspending this route until further notice? Is there any evidence of displacement of domestic workers or undercutting? Do workers who gain entry through the intra-company transfer route complement the skills of the domestic workforce? Do such workers fill roles that genuinely require a current company employee?
  - **Elite sportspeople and ministers of religion:** Do the requirements need to change to respond to current and future changes in economic and labour market conditions?
- 4.5 The Government also asked, “*What is your assessment of the economic contribution made by the dependants of Points Based System migrants and their role in the labour market?*” We therefore asked for contributions from stakeholders on the following questions:
- What is the current labour market contribution of dependants of Points Based System (PBS) immigrants?
  - What evidence is there of the current economic contribution of dependants of PBS immigrants?
  - How do the economic and labour market impacts of dependants of PBS immigrants differ according to their own characteristics and to those PBS immigrants they are accompanying?
  - What impact does policy on dependants have on the decision of principal immigrants to come to the UK to work?
  - Is there a case for linking the PBS points awarded to the main applicant positively to the skill levels of dependants?
- 4.6 We received over 250 responses to our call for evidence. A list of all respondents, and of other organisations or groups we worked with, with the exception of those who asked not to be identified, is in the Annex to this report. Evidence received in written submissions is quoted throughout this report.
- ### 4.3 Visits and meetings
- 4.7 In addition to the call for evidence, we undertook an extensive series of visits and meetings to engage directly with as wide a variety of stakeholders as time and resources would allow. Many companies, organisations and individuals submitted both oral and written evidence to us.
- 4.8 We went to see an information technology (IT) project at Heathrow which involved a number of staff coming from India on intra-company transfers to instruct local employees on the installation and operation of a new computerised check-in system. We also met with representatives from the Indian IT trade body the National Association of Software and Services Companies (NASSCOM).
- 4.9 We went to the Chinese and Japanese Embassies and the Australian High Commission to meet with officials and business representatives from those countries. We also met with the New Zealand Minister of Labour and Associate Minister of Immigration.
- 4.10 Linklaters hosted a meeting of the top UK law firms which we attended. We also met with Universities UK and with representatives from major universities.

- 4.11 We attended two forums put together by PricewaterhouseCoopers (PWC) and the Permits Foundation (an international, non-profit, corporate-sponsored initiative to promote access to work for dependants of migrants worldwide). These forums, which were attended by various blue-chip companies, focused respectively on Tier 2 and on the experience of PBS immigrants bringing dependants to the UK.
- 4.12 We took evidence at a number of different events from a wide range of companies, including IBM, Tesco, Ernst & Young, KPMG, Oracle, Clifford Chance, Siemens, Corus, Lockheed Martin, Roche, Cadbury and Unilever.
- 4.13 As well as ensuring that we understood the employer perspective, we took views from unions such as Unite and Unison and other bodies with an interest in our work, such as Migrationwatch UK. We heard direct evidence from individuals of instances where, they stated, immigrant workers had been brought in to undercut and to supplant UK workers.
- 4.14 We had extensive contact across government, including with:
- the UK Border Agency (UKBA), on monitoring, enforcement, fees and earned citizenship;
  - the Department for Work and Pensions and Jobcentre Plus, on the RLMT;
  - the Department for Business, Innovation and Skills, on strategic growth sectors, the business perspective and the higher education system;
  - HM Treasury, on emerging thinking on the recession and the subsequent upswing;
  - HM Revenue and Customs, on the taxation system;
  - the Department for Children, Schools and Families and the Department of Health, on teachers and the healthcare professions, respectively; and
  - the Foreign and Commonwealth Office, on the impact of our work on UK international relations and inward investment.
- 4.15 The written evidence from, and discussions with, government departments were invaluable in terms of helping us to understand the policy and broader context to our work. However, we received no detailed quantitative economic analysis from any government department. The Government Economic Service is the UK's largest employer of economists, with over 1,400 members,<sup>6</sup> a significant proportion of whom are employed in departments that submitted evidence to this review. Other analysts have expertise in areas such as workforce planning and analysis. This knowledge and experience can be tapped into to support our work, without compromising our independence, and we would welcome the opportunity to discuss with government departments how this might be done in the context of future reviews.
- 4.16 Additionally we:
- went to Scotland, where we visited employers and held a forum for over 40 stakeholders;
  - visited Northern Ireland, where we conducted an employer visit and held a forum for over 25 stakeholders; and
  - held a forum in Wales for over 25 stakeholders.

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<sup>6</sup> See [www.ges.gov.uk](http://www.ges.gov.uk).



4.17 The MAC has its own Stakeholder Panel, whom we consult on aspects of our work that are of direct interest to stakeholders. The Panel comprises representatives from the Trades Union Congress (TUC), the Confederation of British Industry (CBI), the British Chambers of Commerce and the NHS. We convened a special meeting of the Panel to discuss our approach to this work and share our emerging findings. We also had bilateral meetings with the TUC and the CBI.

#### 4.4 Themes emerging from the evidence

4.18 Given the amount of evidence we received, and the range of contributors, it is perhaps not surprising that a variety of views were expressed. We were told that immigrant workers take UK workers' jobs but also that immigrant employees create British jobs by transferring key new skills to their UK colleagues. Some argued that most foreign workers are here only temporarily, but others said that access to settlement is a key factor in attracting high quality immigrant workers. We were told that the right enjoyed by dependants to be able to work was an important factor in persuading immigrant workers to choose the UK, but also that many dependants chose not to work. These differing perspectives illustrate that views on immigration and the immigration system depend heavily on the organisation or person expressing them.

4.19 Evidence from stakeholders that is relevant to our remit is discussed in detail in Chapters 5, 6 and 7, but several themes were particularly prominent in the oral and written evidence we received.

- The RLMT route was seen by many as essential in terms of bringing much needed skills into occupations that are experiencing not a national labour shortage but perhaps a more localised

shortage. Many stakeholders seemed to think that the principle of testing the resident labour market was the right one, but many also expressed the view that the current arrangements did not do this effectively. They pointed out that employers have a strong incentive to seek to employ whomever they see as the 'right' candidate, regardless of country of origin.

- It was pointed out that other countries are engaged in attracting global talent in competition with the UK. For example, the EU is introducing a residence and work permit called the EU Blue Card, as discussed in Box 4.1.
- Many stakeholders argued that intra-company transfers were essential to the successful operation of UK businesses. They ensure that the UK has access to people with the right skills from the global talent pool. We were told that the intra-company transfer route was an essential element in making UK companies globally competitive and promoting inward investment into the UK.
- However, it was also frequently put to us that the rules relating to intra-company transfers were not sufficiently stringent in protecting the jobs and pay of UK workers. This was felt strongly in relation to the IT sector, where it was frequently stated that the system was being abused.
- Many stakeholders argued that they have been through significant challenges and expense to comply with the implementation of the PBS, including adapting internal processes, training staff and accepting responsibility for compliance. They felt that it would be unacceptable for the Government to make major changes to the system so soon after its introduction.



- A number of employers said in their oral evidence that the PBS offered much less flexibility than the old work permit system, both in terms of whom employers were allowed to bring in and the routes they could use to do this.
- It was argued that, where they work, dependants of PBS immigrants make a direct positive economic contribution and that, in cases where they do not work, they still make an important indirect economic contribution by making the UK a more attractive destination for the principal immigrant. Furthermore, many felt that maintaining the dignity of the spouse in terms of being allowed to work was as important as the economic arguments.
- We were told that women would be disproportionately affected by a stricter policy on dependants.

#### Box 4.1: The EU Blue Card Scheme

The main principles of the Blue Card Scheme are the facilitation of access to highly skilled employment, entitlements to a series of socio-economic rights, favourable conditions for family reunification and movement across the EU for Blue Card holders.

A European Commission directive determines the common criteria to be set by the EU member states for holders of the Blue Card without prejudice to more advantageous conditions provided for by national laws.

After 18 months of legal residence in the first member state as an EU Blue Card holder, the person concerned and his or her family members may move, under certain conditions, to a member state other than the first member state for the purpose of highly qualified employment. Under the rules set by the directive, EU Blue Card holders will enjoy equal treatment with nationals of the member state issuing the Blue Card, as regards:

- working conditions, including pay and dismissal;
- freedom of association;
- education, training and recognition of qualifications;
- a number of provisions in national law regarding social security and pensions;
- access to goods and services, including procedures for obtaining housing, information and counselling services; and
- free access to the entire territory of the member state concerned, within the limits provided for by national law.

The Blue Card Scheme has been agreed and adopted by EU member states but not yet implemented. The UK and Ireland decided not to opt in to the Blue Card directive and so are not bound by it.

4.20 Unsurprisingly, as well as providing a great deal of evidence and opinion that was relevant to our remit, the individuals and organisations we met and took evidence from also raised broader issues around immigration. We return to some of the issues in later chapters. However, we do not discuss them all in detail in this report and have not examined the validity of all the assertions in great detail, but some recurring themes were as follows.

- Employers reported that they would like greater freedom to sponsor interns under Tier 5 of the PBS than the current system currently allows. Currently 41 schemes are in operation under Tier 5, but some large organisations are not covered by these.
- There is a perceived conflict between the RLMT route, which allows employers to sponsor an immigrant only if no suitable resident workers are available, and the Osborne Clarke legal judgment.<sup>7</sup> This judgment, so employers tell us, prevents employers from screening out immigrant workers during the recruitment process on the basis of their nationality even in cases where the employer has received a large number of applications from the resident labour market.
- Concerns were expressed about using Jobcentre Plus for recruitment of senior executives, where confidentiality may be required. We understand that the Government has since agreed to waive the Jobcentre Plus requirement for senior executives in specified circumstances.
- Some stakeholders highlighted the importance of considering the human and social dimensions of immigration

policy and the consequences of that policy for individuals and their families. It was stated that the Migration Impacts Forum, which is tasked with advising on the social impacts of immigration, appears to play a much smaller role than the MAC (which focuses on the economics of migration) in policy-making.

4.21 Our call for evidence also asked questions specifically related to Tier 1, and we will detail the evidence we received on these questions in our October report on Tier 1. In particular, the requirement to have a master's degree to enter under Tier 1 (General) was said by many stakeholders to be preventing very experienced senior people from coming in who did not necessarily have the right paper qualification.

## 4.5 Methodological approach and the recession

### Conceptual framework

4.22 Our framework for addressing the questions we have been set must include an economic assessment of the costs and benefits of immigration. In our conceptual paper (Migration Advisory Committee, 2009c) we discussed the broad economic framework that we would apply to this work. There we set out that, when considering immigration and policy options, four sets of impacts may be considered:

- short-run labour market factors, such as employment, unemployment and earnings;
- short-run economic factors, such as gross domestic product (GDP), GDP per head and the net fiscal position;

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<sup>7</sup> Osborne Clarke Services v Purohit, Employment Appeal Tribunal 2009, [www.bailii.org/uk/cases/UKCAT/2009/0305\\_08\\_0902.html](http://www.bailii.org/uk/cases/UKCAT/2009/0305_08_0902.html).

- economic factors that are most important in the long run, such as labour market flexibility, inward investment, international trade patterns and technological change; and
- broader social and environmental factors, such as social cohesion and the environment.

4.23 As discussed in Chapter 1, we believe that the Government's request to provide advice on Tier 2 of the PBS and dependants was motivated, in part, by a desire that we consider whether the current economic circumstances require an adjustment to the UK's policy on economic immigration. Partly for this reason we have focused in this report mainly, but not exclusively, on the two short-run sets of issues above.

4.24 In addition, assessment of the longer-run economic factors is particularly analytically challenging. We have nonetheless remained mindful of the need for policy to be designed so as to help secure the UK's long-term economic prosperity and ability to respond to the economic upswing when it occurs. We have considered medium to long-term factors to the best of our ability, as time and resources allow. We also discuss potential options for future research and data collection in these areas.

4.25 Our work did not take account of social and environmental factors, as these are beyond our remit, but the Government may decide to take these into account when considering our advice and recommendations.

### Skilled immigration

4.26 Tier 2 of the PBS is designed to favour skilled immigration through the awarding of points for qualifications and prospective earnings, in addition to the requirement that all jobs be skilled to at least level 3 of the National Qualifications Framework

(NQF). This raises two key methodological questions for our reports. First, is it right for Tier 2 to favour skilled immigration from outside the European Economic Area (EEA)? And, second, are qualifications and earnings appropriate proxies for skill?

4.27 On the first question, Ruhs (2008) sets out how there is a general economic case in high income countries for selecting predominantly skilled immigrants and for admitting the low skilled only in exceptional cases for selected occupations or industries. The general preference for skilled immigrants is mainly due to three factors.

- Skilled immigrants are more likely to complement the skills and capital of existing residents.
- The net fiscal impacts of immigration are more likely to be positive in the case of skilled immigrants.
- Potential long-term growth effects and spill-over benefits, if they exist, are more likely to arise from skilled rather than low-skilled immigration.

4.28 We return to some of the above issues in Chapter 7, when we discuss frameworks for analysing the economic impact of immigrants, including PBS dependants. Ruhs (2008) also highlights some important caveats. One of these is that the optimal skill mix of immigrants is always highly specific to place and time. In addition, the general assessment that skilled immigrants make a bigger net fiscal contribution is plausible in theory but may not always hold in practice: for instance, a skilled immigrant may not always work in a skilled or highly paid job.

4.29 On balance, we believe that the overall approach of Tier 2 in terms of awarding additional points for the skill of the person and the prospective job is reasonable,

- and our analysis in this report is based on that viewpoint.
- 4.30 On the second question of whether qualifications and earnings are an appropriate proxy for skill, in Migration Advisory Committee (2008a) we explained that defining skill in the first place is not a straightforward matter. The National Skills Task Force (2000) reported: *“At the core of the term skill is the idea of competence or proficiency ... Skill is the ability to perform a task to a pre-defined standard of competence ... but also connotes a dimension of increasing ability (i.e. a hierarchy of skill). Skills therefore go hand in hand with knowledge.”* Wilson *et al.* (2003: ch. 1) argue that two broad, practical approaches to defining skill can be identified in the literature: they can be defined by the attributes of the employee or by the characteristics of the jobs that people do.
- 4.31 The Home Affairs Committee investigation into the PBS (Home Affairs Committee, 2009) concluded that *“measuring skill by awarding points for criteria such as past earnings or academic qualifications gives undue priority to easily quantifiable attributes and ignores ability or experience in a job. In particular, the overemphasis on formal qualifications at the expense of professional experience or training is arbitrary and unfair.”*
- 4.32 Our belief is that, to the extent that qualifications confer knowledge, competence or proficiency, they will be a good indicator of skill. In terms of earnings, theoretically, a rational employer will not pay an employee more than the value of their productive output. Equally, an employee will not accept less, because he or she will be able to secure a higher wage with a different employer. Assuming that skills are associated with productivity, they will therefore also be associated with earnings. Additionally, the labour market should provide, on average, a compensatory wage differential as a return on the investment in education and training.
- 4.33 For the above reasons, we concluded in Migration Advisory Committee (2008a) that qualifications and earnings were appropriate indicators of skill. However, we also expressed the view that other factors, including on-the-job training and experience and innate ability, were potentially relevant indicators.
- 4.34 Significant practical and methodological challenges would be associated with developing and implementing a measure of skill in addition to, or instead of, earnings and qualifications for use within the PBS. Therefore, in this report, we confine ourselves to working with earnings and qualifications as measures of skill for the purpose of awarding points within the Tier 2 framework. However, the issue of whether a more nuanced definition of skill can be developed for operational purposes is a valid one for further examination, and in this report we list some potential avenues for future research.
- 4.35 Throughout this report we make further use of our previous work on skilled occupations as set out in Migration Advisory Committee (2008a and 2009b). Box 4.2 sets out our approach in more detail.

#### Box 4.2: Previous work by the MAC to define skilled occupations and minimum criteria required for an occupation to be skilled

Individual jobs under Tier 2 of the PBS need to be skilled to at least NQF level 3. Thus it follows that the shortage occupation lists should contain only occupations and job titles at this level or above. Therefore, in Migration Advisory Committee (2008a), where we developed our first recommended shortage occupation lists for the UK and Scotland, we produced a list of occupations 'skilled' to this level.

To define which occupations were skilled, we identified five main indicators that we believed were relevant to determining skill. These were:

- the skill levels defined in the Standard Occupational Classification (SOC) hierarchy;
- formal qualifications;
- earnings;
- on-the-job training or experience required to carry out the job to the appropriate level; and
- innate ability required to carry out the job to the appropriate level.

We used four-digit occupations from the 2000 version of SOC, discussed in more detail in Chapter 2. SOC 2000 breaks down the UK labour market into 353 occupations.

We analysed the first three skill indicators using a top-down approach based on UK-wide data sources. There were no suitable national data for the last two indicators, therefore these were not accounted for when drawing up the list of skilled occupations. However, these indicators were taken into account when considering bottom-up information submitted by stakeholders.

We arrived at criteria for passing as skilled on each of the three top-down indicators by firstly looking at previous research by Elias and Purcell (2004), which classified some of the 353 occupations as graduate level, or NQF level 4 or above.

Our thresholds for defining occupations at NQF level 3 needed to be below threshold values that would capture most graduate occupations, namely: SOC skill level 3 or 4, 50.4 per cent qualified to NQF level 3 or above, and £10.83 for median hourly earnings for all employees. When considering what sensible thresholds should be for an NQF level 3+ we took into account these thresholds, along with the following information.

- Approximately 50 per cent of the workforce and 45 per cent of the working age population had level 3+ or equivalent qualifications.
- The median pay per hour for all employees was approximately £10.14.
- SOC skill level 3, although not directly associated with NQF level 3, relates to occupations normally requiring a period of post-compulsory education, either formally or through significant on-the-job work experience.

### Box 4.2: Previous work by the MAC to define skilled occupations and minimum criteria required for an occupation to be skilled (*continued*)

Using the above information, and through further analysis, we defined an occupation as skilled to level 3 on the basis of national level top-down data if at least two of the following three criteria were satisfied:

- 50 per cent or more of the workforce was qualified to level 3 or above;
- median hourly earnings for all employees were £10 or more; and
- the occupation is defined as skill level 3 or 4 in SOC 2000.

Applying these criteria, 192 out of 353 occupations satisfied our definition of skilled. It was mostly, for our purposes, appropriate to assume that all jobs within these occupations are skilled. In addition to this top-down analysis, our bottom-up analysis allowed for the fact that there may be some specialised skilled jobs within less skilled occupations. In some cases, we also considered other indicators of skill that may not be captured by our top-down indicators, such as on-the-job training, experience and innate ability.

Source: Migration Advisory Committee (2008a)

#### Responding to the recession

- 4.36 It is clear from the discussion in Chapter 3 that the UK economy and labour market are currently seriously disturbed. There is uncertainty with regard to when negative economic growth will cease and when the economy will come out of recession, but we can expect the trends of falling employment and rising unemployment to continue for some time after GDP starts to rise. The timing, size and magnitude of these events will differ across sectors, occupations and regions and between immigrant and non-immigrant groups. Short and long-term impacts may also differ substantially.
- 4.37 An important question for our work is the impact of immigration on the UK labour market. This is a particularly difficult question to answer, not least because the impact of immigration even during more normal times in the business cycle is not well established (see discussion in Chapter 2 of Migration Advisory Committee, 2009b).
- 4.38 Furthermore, traditional theoretical models are somewhat limited in the static, short-term way that they consider immigration and its impacts. They also generally assume that the labour and product markets are in or moving towards equilibrium. Empirical studies of the impact of immigration on earnings and employment, discussed earlier in this chapter, are of some value, but the key UK studies are primarily based on data that relate to very different economic circumstances than prevail today.
- 4.39 Therefore, the issue of how immigration policy should respond to the recession has been at the forefront of our minds and was given particularly close thought at our meetings. We also sought the views of leading UK economists and of economists from government departments with a key interest in this issue, including HM Treasury, the Department for Business, Innovation and Skills and the Home Office. We have taken account of these deliberations and consultations in drawing our conclusions.



- Although we are grateful for the advice and views received, the views expressed are our own.
- 4.40 We remained mindful of the ‘lump of labour’ fallacy. Applied to immigration, this fallacy is the assumption that there is a fixed number of jobs and, therefore, that more new immigrants leads to one-to-one displacement of the resident workforce. This is not the case. One reason for this is that immigrants will themselves create demand for goods and services and therefore create jobs.
- 4.41 Issues of complementarity and substitution complicate the picture still further. The impact of immigration on outcomes for the resident labour force depends on the degree to which immigrants complement or substitute both capital and the existing labour force. If immigrant and native labour are perfect substitutes, increases to the labour supply as a result of immigration are likely to lower wage levels. If, instead, immigrants are imperfect substitutes for native labour, native wages are not necessarily depressed. Since the degree of substitution is likely to fall with the skill demands of a job, the skill levels with which immigrants are entering the labour market is key in this respect.
- 4.42 There may be some theoretical reasons to think that the risk of displacement or downward pressure on wages as a result of immigration may be greater during this recession, but these are tentative hypotheses and are untested against empirical evidence. Given that the economic literature is somewhat equivocal in terms of providing direction to immigration policy even when economic conditions are stable, it is difficult to argue that it provides clear guidance on how immigration policy should respond in a recession.
- 4.43 The fact that the evidence base is incomplete and subject to considerable uncertainty does not, in itself, constitute a case for inaction. Current UK immigration policy includes some mechanisms to avoid potentially undesirable effects of immigration in the labour market (for example, undercutting or displacement of resident workers) regardless of where we are in the business cycle. A well-designed immigration system should therefore, where possible, enable flows to adjust automatically in response to the economic cycle. This avoids the need for constant adjustment to immigration policy, which itself would be sub-optimal because of the lags in economic and immigration data and lead-in times that such adjustments require. Adjusting policy in the context of such lags may result in short-term measures impacting negatively on longer-term policy objectives.
- 4.44 Although we cannot establish whether tougher restrictions in a recession are necessarily desirable, in a system that automatically adjusts with the cycle we would expect inflows to respond to falling labour demand. The evidence we have reviewed, discussed in Chapter 3, suggests that inflows are likely to decline in the short term, even without policy change. The Tier 2 route is demand driven and employer led: immigrants coming through this route must have a sponsor and a valid certificate of sponsorship. As such, it should work in such a way that flows are responsive to the UK’s economic circumstances.

*“Migrant workers tend to be highly mobile and may well leave the UK to find work elsewhere ... The most recent migration statistics are already starting to show this with both National Insurance and Worker Registration Scheme registrations down on the year and ONS [Office for National Statistics] statistics showing increasing levels of emigration amongst non-UK citizens. So, migration tends to naturally adjust to changing economic circumstances, thus increasing the flexibility of the UK labour market.”*

Department for Work and Pensions response to call for evidence

- 4.45 For the above reasons, we have focused much of our attention on how immigration policy should be designed to achieve its stated objectives, regardless of the economic cycle. Therefore we have considered the evidence and analysed the available data to identify improvements to the current Tier 2 arrangements in order to ensure that the use of this route by employers and prospective immigrants is better joined to the intended policy outcome.
- 4.46 The Tier 2 recommendations in this report relate to what a well-designed economic immigration system should look like in general terms. Conversely, it follows that if our recommendations are accepted, the policy changes should not necessarily be reversed when the UK comes out of recession.
- 4.47 For similar reasons, our analysis of PBS dependants focuses on their economic contribution generally rather than specifically in the context of the recession.



## Chapter 5: Tier 2 context

### 5.1 Introduction

5.1 This chapter provides some background context to Tier 2, while Chapter 6 discusses it in more detail and sets out our recommendations. First, we analyse the number of permits issued and the characteristics of the immigrant labour market under Tier 2 and the system that preceded it. Then we provide information on relevant policies in other countries.

### 5.2 Tier 2 data context

5.2 We used management information from the Points Based System (PBS) and the previous work permit system to consider trends over time in the use of different routes. Tier 2 started to operate in November 2008. It is still bedding in and, as a result, we are cautious in our interpretation of management information data we received from the UK Border Agency (UKBA).

5.3 Two types of management information are recorded with respect to the PBS. The first, which we have already presented in Chapter 2, is information about leave to enter or remain. This information provides an estimate of the number of immigrants who have their applications approved under the PBS but does not record many details pertinent to the role that immigrants play in the labour market. In particular, it fails to systematically record the points which immigrants are awarded for prospective earnings and qualifications; we discuss the implications of this further in Chapter 6.

5.4 The second type of data flows from the certificates of sponsorship issued by employers through the online sponsor management system. These data do not necessarily correspond with approved applications, as they do not record whether or not an immigrant's application has been approved. The data on certificates of sponsorship do, however, contain information about the job into which an immigrant is recruited, such as the industry of the employer, and occupational group into which the job falls. They also record the pay and allowances offered, which are discussed in Chapter 6. The information is provided by employers when they submit a certificate of sponsorship, and the accuracy of the information provided is only checked by UKBA during consideration of a migrant's application.

5.5 We utilise information in the rest of this chapter from the certificates of sponsorship issued by employers for immigrants under Tier 2. We consider only those certificates which have been 'used', i.e. that have a corresponding application made against them, but we do not consider whether the application was approved. Certificates of sponsorship will overstate flows of immigrants under Tier 2 to some extent because the corresponding application may not be approved, or some applicants may choose not to come to the UK. We present limited management information relating to sportspeople and ministers of religion separately in Chapter 6.

## Routes

- 5.6 We noted in Chapter 3 that the number of applications under Tier 2 is skewed towards intra-company transfers. Table 5.1 shows that between the launch of Tier 2 in November 2008 and May 2009, and excluding sportspeople and ministers of religion, intra-company transfers accounted for 60 per cent of certificates used under Tier 2. Those issued following completion of a Resident Labour Market Test (RLMT) accounted for 32 per cent, while shortage occupations accounted for just 8 per cent. The in-country RLMT figures include those who have switched from a post-study category.
- 5.7 By comparison, the proportions in equivalent routes under the previous work permit arrangements were broadly similar to those in Table 5.1, if we ignore the schemes which do not have direct equivalents under Tier 2.<sup>8</sup> Of work permits and first permissions issued in 2008, 55 per cent were for intra-company transfers, 38 per cent for the RLMT route and 7 per cent for shortage occupations.

## In-country and out-of-country

- 5.8 Just over one-third of certificates of sponsorship used under Tier 2 have been for immigrants already in the UK, as shown in Table 5.1. When we include extensions to work permits, this is broadly equivalent to the proportion of work permits issued in-country under the previous arrangements. Intra-company transfers, which require the applicant to have been working for the same company overseas, account for a high proportion of out-of-country certificates issued.
- 5.9 The significant proportion of certificates issued for immigrants who are already in the UK continues a trend identified under the previous work permit arrangements. These data are discussed in greater detail in Migration Advisory Committee (2008a). In-country applicants under Tier 2 include those switching from an existing work permit in order to extend their stay as well as those who are switching from a post-study category.

**Table 5.1: Certificates of sponsorship used under Tier 2, Nov 2008 to May 2009**

	In-country	Out-of-country	Total	Percentage of total for all routes
Resident Labour Market Test	3,832	2,826	6,658	32%
Intra-company transfer	2,480	9,841	12,321	60%
Shortage occupation	1,078	652	1,730	8%
<b>Total</b>	<b>7,390</b>	<b>13,319</b>	<b>20,709</b>	<b>100%</b>

Note: The above figures describe 'used' certificates of sponsorship, where an application that corresponds to the certificate has been submitted but not necessarily approved. RLMT figures include those switching from a post-study category.

Source: UK Border Agency management information data, Nov 2008 to May 2009

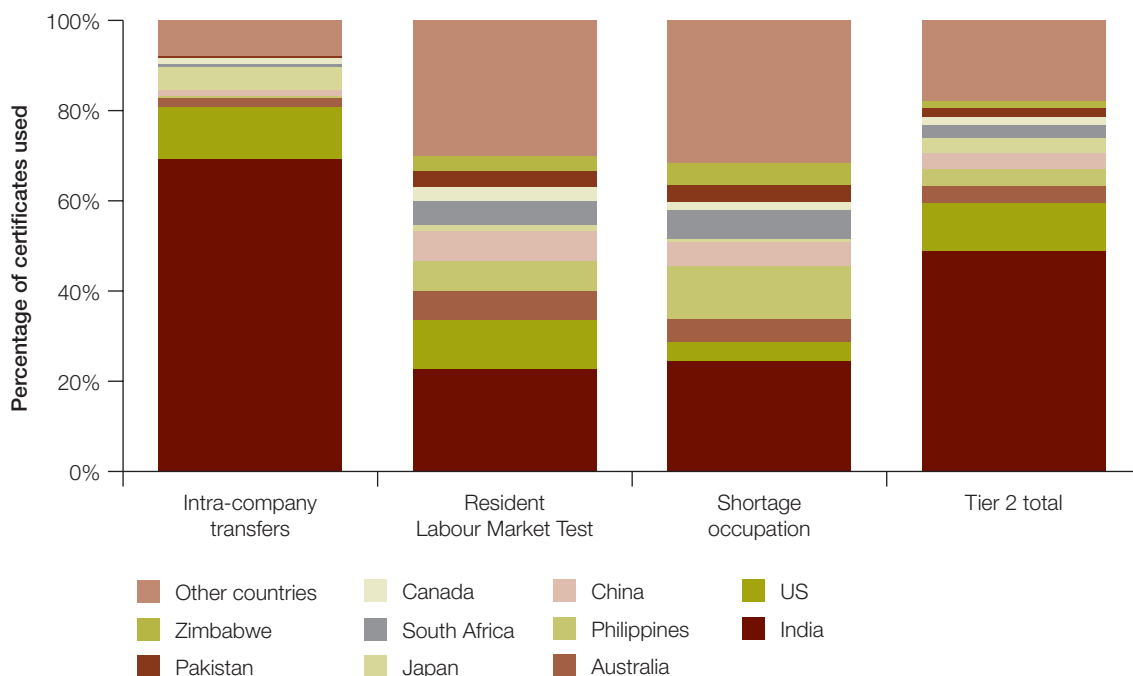
<sup>8</sup> These are: board level posts, the Sector Based Scheme, Postgraduate Doctors and Dentists, the Training and Work Experience Scheme and the Inward Investment route.

**Country of origin**

5.10 Just under half of all certificates of sponsorship used have been issued to applicants from India, as shown in Figure 5.1. This figure rises to 69 per cent for intra-company transfers. The US is the second most common country for applicants, accounting for 11 per cent of certificates. India is also the largest country of applicants for the RLMT and shortage occupation routes, although it accounts for less than a quarter of immigrants under both. For the RLMT and shortage routes, the distribution of nationalities is wider, with significant numbers from the Philippines, Australia, China, South Africa, Zimbabwe and Pakistan.

5.11 The pattern is similar to the work permit arrangements in 2008, where India accounted for 42 per cent of work permits and first permissions (Salt, 2008). A decade previously, India accounted for only 15 per cent of work permits and first permissions. In 2008, the figure of 26,500 work permits issued to Indian nationals was over four times the number a decade earlier. In contrast, absolute numbers of work permits and first permissions issued to immigrants from the United States have remained relatively constant, fluctuating between 8,000 and 11,000 annually.

**Figure 5.1: Nationalities of immigrants for whom certificates of sponsorship have been assigned under Tier 2, Nov 2008 to May 2009**



Note: The above figures describe 'used' certificates of sponsorship, where an application that corresponds to the certificate has been submitted but not necessarily approved. The top ten nationalities account for around 82 per cent of certificates used.

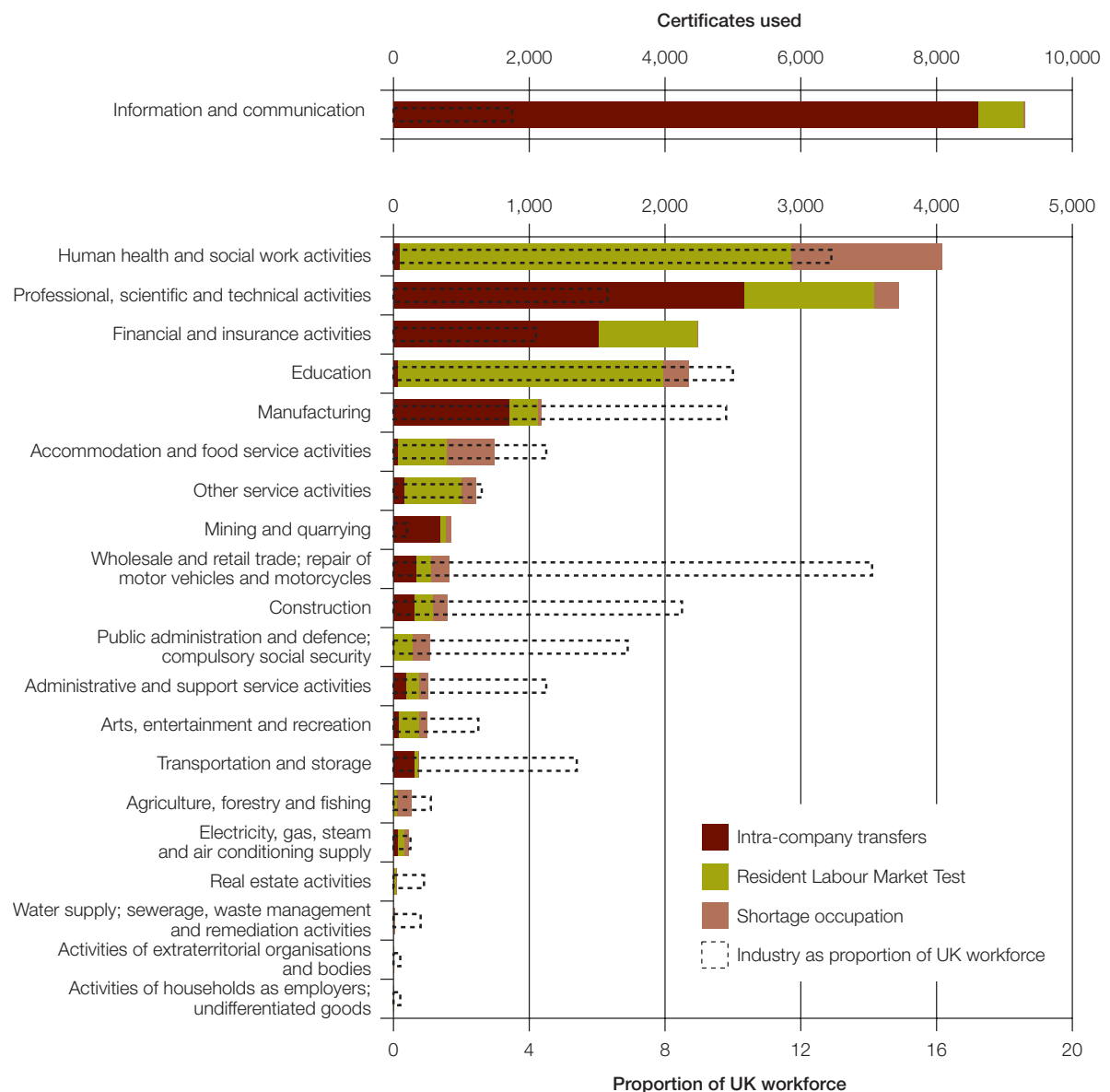
Source: UK Border Agency management information data, Nov 2008 to May 2009

## Industries and occupations

5.12 As shown in Figure 5.2, examination of the sectoral distribution of certificates suggests that use is skewed towards a narrow range of industries. Firms in the information and communication sector are the highest users of Tier 2 by a considerable margin and are heavy users of intra-company transfers.

Health and social work activities are also strongly represented and constitute the highest usage of certificates issued after an RLMT. The second largest user of the RLMT is the education sector. Taking health, social work and education all together, it appears that the public sector is a heavy user of the RLMT.

Figure 5.2: Sectors for which certificates of sponsorship have been used under Tier 2, Nov 2008 to May 2009

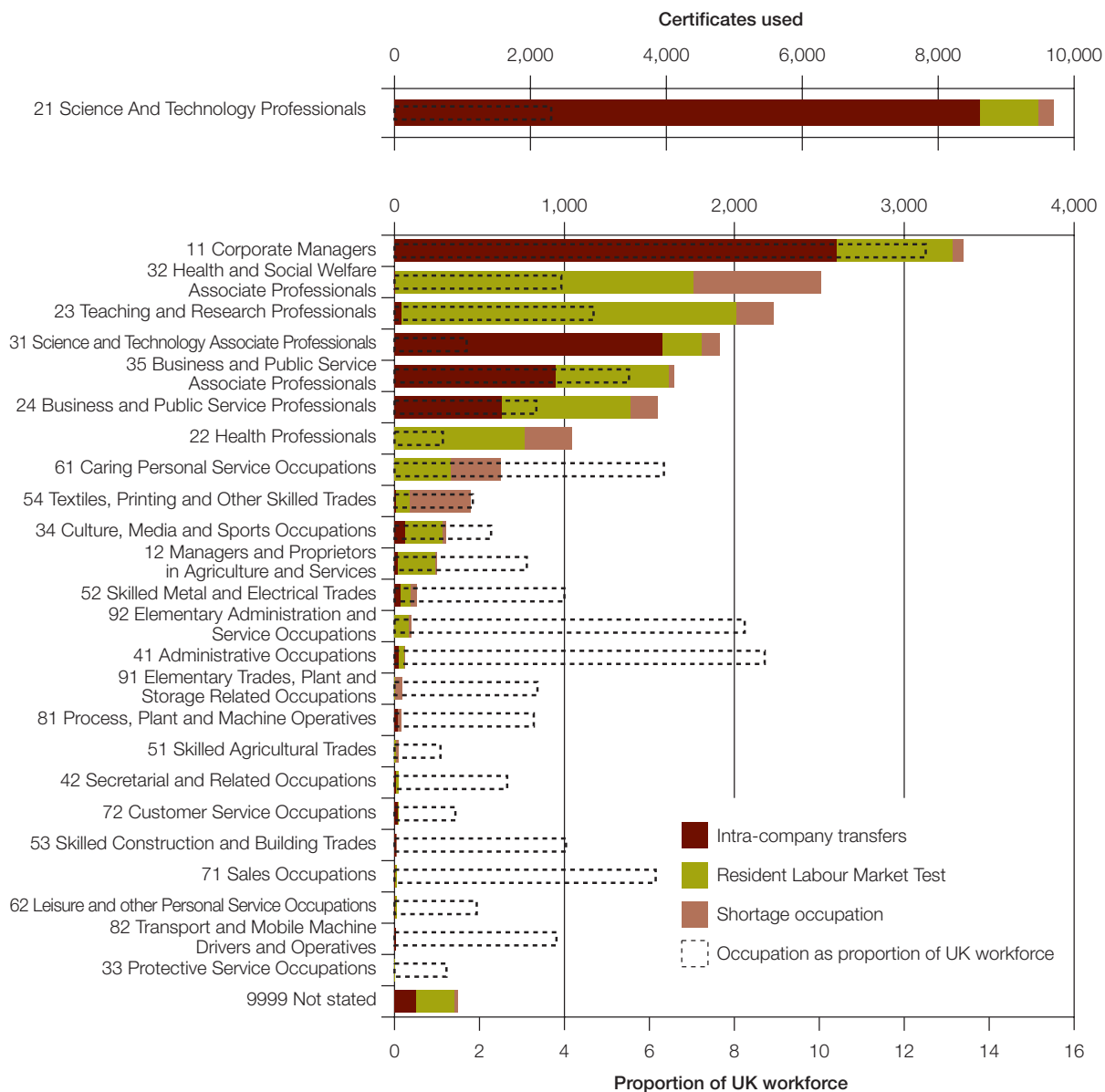


Note: The above figures describe 'used' certificates of sponsorship, where an application that corresponds to the certificate has been submitted but not necessarily approved. A different scale is used for information and communication industries as they comprise a much larger proportion of the tier. Employers issuing certificates of sponsorship are classified by industry according to the Standard Industrial Classification (SIC) 2007. The Labour Force Survey (LFS) has only recently begun coding to SIC 2007; workforce estimates are therefore based on only one quarter of LFS data. This may differ from annual estimates because of seasonal employment in industries such as agriculture and hospitality. Sources: UK Border Agency management information data, Nov 2008 to May 2009; Labour Force Survey, Jan to Mar 2009

5.13 Figure 5.3 shows the occupations for which certificates have been used, identified by the Standard Occupational Classification (SOC) at the two-digit occupational level. As may be expected, there are some parallels with the pattern of certificates issued across industries. Science and

technology professionals outnumber other occupational groups by a considerable margin, the vast majority of whom came through the intra-company transfer route. Corporate managers are also strongly represented under Tier 2, again primarily using the intra-company transfer route.

**Figure 5.3: Occupations for which certificates of sponsorship have been used under Tier 2, Nov 2008 to May 2009**



Note: The above figures describe 'used' certificates of sponsorship, where an application that corresponds to the certificate has been submitted but not necessarily approved. A different scale is used for science and technology professions as they comprise a much larger proportion of the tier. SOC 2000 two-digit level occupations are shown. For each certificate of sponsorship, the occupation is chosen by the employer at four-digit level. Sources: UK Border Agency management information data, Nov 2008 to May 2009; Labour Force Survey, 2008

- 5.14 The occupations which are the heaviest users of the RLMT route are health and social welfare associate professionals and teaching and research professionals. These occupations are also relatively heavy users of the shortage occupation route, in addition to caring personal service occupations and textiles, printing and other skilled trades.
- 5.15 Most of the jobs under Tier 2 are skilled, with over two-thirds falling into the highest occupational skill level defined in SOC 2000, i.e. occupational codes 11, 21, 22, 23 and 24. However, a small fraction are less skilled jobs, including occupations defined in Migration Advisory Committee (2008a) as not skilled. Some of these are occupations on the current shortage occupation list for a particular job title or segment of the occupation regarded as skilled. However, a small number of certificates have been issued for other occupations or through the RLMT. This highlights that the certificates of sponsorship are not checked until an application has been received and therefore do not indicate whether an application will be approved or not.
- 5.16 The narrow focus of Tier 2 is also apparent when we look in more detail at the certificates issued. Using the most disaggregated occupational breakdown available (SOC 2000 four-digit data, discussed in Chapter 2), around 7,500 certificates of sponsorship under Tier 2 were used by IT software professionals (SOC 2132) alone, over three times the number for nurses, the next highest occupation. Tier 2 is particularly heavily used by information and communication firms to bring in IT professionals, largely from India, via intra-company transfers, where they constitute over 60 per cent of the total.
- 5.17 Overall, the emerging picture is that, like the previous work permit arrangements, use of Tier 2 does not reflect the overall composition of the UK labour market. The most significant user of Tier 2, by a large margin, is the IT sector, which makes significant use of the intra-company transfer route to bring in workers from India. Other distinct users identified are health occupations and teaching.

### Earnings

- 5.18 We used data from certificates of sponsorship to estimate prospective earnings of immigrants under Tier 2. This is the gross pay, plus any allowances, as stated by the employer when issuing the certificate of sponsorship. It is a good indication of the points that an immigrant will score, because UKBA case workers check the points claimed for prospective earnings against the pay stated on the certificates of sponsorship. We excluded from the analysis a small number of cases where no pay period was stated or where allowances were recorded against a non-annual pay period. Table 5.2 presents summary statistics on prospective earnings (including allowances) for jobs offered under Tier 2. Figure 5.4 shows the distribution of earnings for each route in more detail.
- 5.19 The first observation is that prospective earnings are relatively high. Median earnings under Tier 2 are £35,500 per annum. The mean salary is higher than the third quartile, a result of the substantial skew in the distributions that can be seen in Figure 5.4. These averages mask considerable variation between the different routes. Prospective earnings for jobs under the intra-company transfer route are considerably higher than those under the RLMT and shortage routes. The shortage route offers, on average, the lowest prospective earnings.

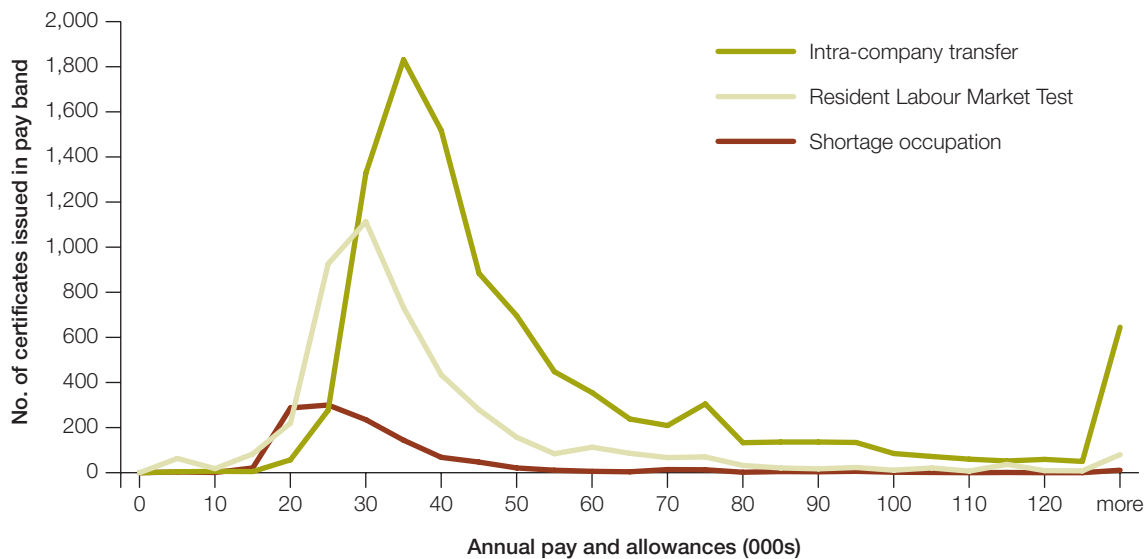
**Table 5.2: Summary statistics of prospective earnings for jobs under Tier 2, Nov 2008 to May 2009**

	First quartile (£)	Median (£)	Third quartile (£)	Mean (£)
Tier 2 total	28,400	35,500	50,000	71,600
Intra-company transfer	31,900	39,800	58,700	92,600
Resident Labour Market Test	24,500	30,000	39,900	38,500
Shortage occupation	20,000	25,000	31,400	31,700

Note: Summary statistics are rounded to the nearest £100. Analysis is based on used certificates of sponsorship issued under Tier 2. Prospective earnings are annual, including both the basic salary and allowance. Around 5 per cent of salaries were not stated on an annual basis; assumptions have been made to calculate annual pay, and those with allowances on a non-annual salary are excluded for data quality issues. Where the salary period is not stated (for example, contract or performance-related pay), these are excluded from the analysis.

Source: UK Border Agency management information, Nov 2008 to May 2009

**Figure 5.4: Distribution of prospective earnings for jobs under Tier 2, Nov 2008 to May 2009**



Note: See note to Table 5.2. Chart shows the number of certificates issued for jobs that fall within increments of £5,000. The x-axis shows the maximum for each earnings increment.

Source: UK Border Agency management information, Nov 2008 to May 2009

5.20 Table 5.3 shows how the prospective earnings for jobs through the intra-company transfer and RLMT routes compare with the current points thresholds for Tier 2. The table shows the proportion of used certificates with prospective earnings that fall within the Tier 2 prospective earnings

points bands. It is striking that 98 per cent of jobs through the intra-company transfer route fall into the highest earnings band. This means that less than 2 per cent of intra-company transfer posts under Tier 2 require the applicant to claim any points at all for qualifications.



**Table 5.3: Proportion of jobs under Tier 2 that meet the current points thresholds for prospective earnings**

Prospective earnings threshold (£)	Percentage of used certificates	
	Intra-company transfer	RLMT
Below threshold	0.2	4.1
17,000–19,999	0.0	1.9
20,000–21,999	0.9	7.9
22,000–23,999	0.7	6.9
24,000+	98.2	79.3

Note: See notes for Box 6.1 in Chapter 6. It is not necessary to score points for earnings for the shortage occupation route.

Source: Migration Advisory Committee analysis based on UK Border Agency management information, Nov 2008 to May 2009

5.21 For the RLMT route, just over 20 per cent of jobs require the applicant to use qualifications to meet the points criteria. A small number of certificates are issued with salaries below the minimum earnings threshold. We assume these are applications that will be subsequently refused.

### 5.3 International comparisons: lessons from other countries

5.22 We now briefly discuss the policies and systems used to manage skilled immigration in some other countries. We focus specifically on routes which are broadly equivalent to the RLMT and intra-company transfer routes to the UK. We first consider labour market tests and then intra-company transfers.

#### Labour market tests

5.23 Many countries use labour market tests or shortage occupation lists to bring in immigrants where there is a shortage of resident workers, but precise arrangements differ. For example, Spain uses labour market tests and a shortage occupation route; Australia uses a shortage occupation route only; and Norway uses just a labour market test (OECD, 2009b).

5.24 The most important difference between different countries' tests is whether the application requires **certification** or **attestation**.

- **Certification** is where an employer needs to obtain confirmation from a particular body that the requirements of the labour market test have been met before the application is submitted. The success of certification depends on the design of and enforcement of pre-admission checks.
- **Attestation** does not involve any pre-admission checks before the application is submitted and instead a statement of actions is taken. The success of attestation depends on the design and enforcement of post-admission checks. It will depend on the knowledge that employers and employees have of the regulations and their willingness to comply with them, and also on the resources made available to check that employers comply with the requirements of the labour market test.



- 5.25 In Ireland, employers are required to obtain a certificate from the public employment service (FAS) to certify that they have advertised the vacancy and that no local workers were matched to the job before they apply for a work permit (Citizens Information, 2009). In the UK, employers are required to advertise with the public employment service (Jobcentre Plus). They have to attest this in their application, and there is no certification requirement.
- 5.26 The US uses certification of labour market tests for temporary agricultural workers (those on the H-2A visa) and temporary non-agricultural workers (H-2B visa). Conversely, the H-1B visa for temporary professional workers relies on attestation rather than certification. Employers wishing to bring in an H-1B worker must attest in an application to the Department of Labor that they pass the labour market test requirements, namely that they will pay the H-1B worker the prevailing wages and that other employees will not be adversely affected (United States Department of Labor, 2009). These requirements are discussed in more detail later in this chapter.
- 5.27 The US H-1B route has been criticised for using attestation rather than certification. Hira (2007) argues that the attestation requirement for H-1B employers is not enforced and that firms are very rarely audited or investigated.
- 5.28 Where certification is required, the body that is responsible for certification varies by country. For example, in Sweden, as of 2009, the verification of job listing is carried out by the Swedish Immigration Board. This was changed from the previous responsibility with the public employment service in order to accelerate the verification process (OECD, 2009b). In Spain 'negative certification' is given by the public employment service to say that the job has been advertised and that employers have interviewed job applicants (OECD, 2009c).
- 5.29 The **work permit holder** also varies by country. In the US an immigrant with an H1-B visa is tied to a job, similar to Tier 2 of the PBS. However, in Ireland the employment permit is granted to the immigrant rather than tied to the job and includes a statement of the immigrant's rights and entitlements. Nonetheless, although the immigrant holds the work permit, they cannot change employers for one year, and any new job must be within the same economic sector or within another 'eligible sector' (Migration Rights Centre Ireland, 2009). The immigrant must also apply for a new work permit when applying for a new job, although the labour market test no longer needs to be passed.
- 5.30 Some countries have **quotas** attached to the labour market test route such that, even if a job passes the test, it is not guaranteed that an immigrant will be allowed to be brought in. For instance, the H-1B route in the US has had an annual quota of 65,000 for the past five years (OECD, 2009b).
- 5.31 **Additional arrangements** for employers and sectors that depend heavily on immigration are made in some countries. In Ireland a work permit will not be issued to companies where the granting of the permit would mean that more than 50 per cent of the employees would be non-European Economic Area (EEA) nationals (Citizens Information, 2009). In the US, employers that are defined as H-1B dependent (that is, at least 15 per cent of their workforce are employees with H-1B visas) are required to meet additional labour market tests. For example, the employer must attest that they made a 'good faith' effort to recruit and hire US workers for the position (Workpermit.com, 2009a).

### Requirements of labour market tests

- 5.32 In addition to differences in the nature of countries' labour market tests, the individual features of the tests also vary. The most common feature of labour market tests is the **requirement to advertise** the job. This requirement can vary in the length of time for which an employer is required to advertise the job, where the job must be advertised and other conditions.
- 5.33 In the UK the **length of time for which a job must be advertised** is one or two weeks, depending on the pay being offered. Most countries require a job to be advertised for between 15 and 30 days. However, Sweden requires ten days, and Ireland requires 56 days (OECD, 2009c).
- 5.34 In regard to **where a job must be advertised**, several European countries and Turkey require an employer to advertise using the European Job Mobility Portal (EURES). For example, Ireland and Sweden make this a requirement (OECD, 2009c). Other countries, such as Spain and the UK, require jobs to be advertised via their public employment service. Some countries, such as Canada and Korea, allow employers to advertise via private channels. In Korea, however, the type of advertising media used determines the length of time for which the job must be advertised: three days for newspaper advertisements, seven days for advertisements in the public employment service and one month for advertisements in other media (OECD, 2009c).
- 5.35 **Other conditions attached to the labour market test** include the common requirement that employers must advertise jobs at a wage that is at least equal to the average wage and working conditions prevailing in the relevant occupation or industry. Since September 2008, Australia has imposed strict **prevailing wage criteria** on employer applications for temporary workers. At the end of 2008 the US changed its required conditions for the H-1B and H-2B programmes, with the main changes concerning the centralisation of calculation of the prevailing wage threshold.
- 5.36 Employers may also be required to **interview candidates sent by public employment services**. Spain requires employers to explain why they cannot hire local candidates. New Zealand also requires employers of temporary workers to justify any refusal of local candidates. There are questions concerning the practical effect of this measure, as employers can pay lip service to the measure without ever seriously considering local candidates. OECD (2009c) cites the example of Italy, where no non-EEA applicant has ever been rejected after a referral by the public employment service. There is no requirement in the UK for an employer to interview or hire a candidate sourced specifically from Jobcentre Plus.
- 5.37 In some countries, such as Austria, there is a requirement for **verification that no registered unemployed person is available** to take the job before an employer is allowed to pass the labour market test. In Korea, passing the labour market test also requires a check on the number of unemployed people with experience of a sector or occupation (OECD, 2009c).
- 5.38 Another feature of some labour market tests is the requirement that **no local workers be laid off** during a specified period before and after the employment of an immigrant. This is one of the requirements of the H1-B dependent programme in the US, which requires that the employer will not displace and did not displace any similarly employed US workers within 90 days before or after the date of filing any H-1B visa petition (H-1B Overview, 2009).

5.39 As in the UK, some labour market tests require that the job be **skilled**. Ireland, Sweden and Germany have **minimum pay thresholds** which the employer must pay if they want to recruit an immigrant.

5.40 Some countries have a requirement for a **labour opinion** from a specified body on the impacts of recruitment from abroad on the local labour market and/or on the national economy (OECD, 2009b).

- In Denmark and Iceland trade unions are able to contest employers' applications for workers from abroad.
- Until 2009, trade unions in Sweden also held a right of veto over applications; now they can still give their opinion on the application, but they can no longer reject it.
- In Canada the Labour Market Opinion body is asked to consider possible negative or positive impacts on the Canadian economy: for example, whether the employment of a foreign worker could directly create or retain jobs in Canada.
- In France the labour market test considers the 'technological and commercial added value' represented by the applicant.

5.41 These various labour market test requirements leave a substantial margin for discretion and subjective opinion. They also impose significant additional burdens on employers.

### **Intra-company transfers**

5.42 Intra-company transfers are a mechanism to facilitate the temporary transfer of workers from one country to another within the same company. The requirements that an employer has to fulfil in order to bring in an immigrant on the intra-company

transfer route differ by country. However, in most countries a reference to **performing specialised tasks** must be included. For example, the intra-company transfer visa in the US (visa L-1) requires employees to be executives or managers or in positions that require specialised knowledge (Workpermit.com, 2009b).

5.43 Some countries require that an intra-company transferee be paid a **minimum salary**, for instance Ireland (Department of Enterprise, Trade and Employment (Ireland), 2009) and the UK. Most countries require employers to offer such transferees the prevailing wage and conditions available to non-immigrant employees. The US is one exception to this prevailing wage requirement (Workpermit.com, 2009c).

5.44 Immigrants coming through the intra-company transfer route are usually initially granted stay for one or two years, after which they can renew the application. Some countries have a **limit on the number of years** that an intra-company transfer employee can stay in a job. For example, Canada and the US both limit the stay to seven years for executives and five years for specialised workers. Italy and Ireland allow transferees to stay for up to five years. Japan grants renewable permits for one or three years (OECD, 2009c).

5.45 In many countries, such as Ireland (Department of Enterprise, Trade and Employment (Ireland), 2009), an employee must have been **employed for at least 12 months** within the company in a foreign country before the transfer. In contrast, the UK requires that an employee have worked for the company abroad for six months. As we set out in Chapter 2, the UK's obligations under the General Agreement on Trade and Services (GATS) allow the UK to extend this period to up to 12 months, but no longer than that.

5.46 Hira (2007) argues that in the US the lack of a quota, a prevailing wage requirement, and a labour test for the intra-company transfer route (L-1) have led to abuse of this route by employers. Hira also argues that the poor design of this route has meant that the L-1 visas are used to facilitate and accelerate the outsourcing of US jobs.

## 5.4 Conclusions

5.47 Some key findings emerging from Tier 2 management information, and previous data from the work permit system, are as follows.

- Intra-company transfers are the most popular route under Tier 2, accounting for 60 per cent of 'used' certificates so far. The RLMT and shortage routes account for 32 per cent and 8 per cent of certificates, respectively. About one-third of these have been issued to immigrants already in the UK. These figures represent a broad continuation of trends observed under the work permit system.
- Just under half of all certificates of sponsorship used have been issued to applicants from India, including 69 per cent of those issued to intra-company transferees.
- Tier 2 does not reflect the overall composition of the UK labour market. The most significant user of Tier 2, by a large margin, is the IT sector, which makes significant use of the intra-company transfer route, especially to bring in employees from India.
- Health and social work activities constitute the highest usage of certificates issued following an RLMT. The second largest user of the RLMT is the education sector.
- Prospective earnings under Tier 2 are high. Median earnings under Tier

2 are £35,500 per annum. However, prospective earnings for jobs under the intra-company transfer route are considerably higher than those under the RLMT, and the shortage route offers the lowest average prospective earnings.

5.48 Other countries provide some pointers in terms of possible UK policy options, some of which we consider further in Chapter 6. If the UK wished to it could adopt some or all of the following features of foreign labour market tests:

- the introduction of an element of certification as well as, or instead of, attestation;
- a change in the duration of advertising vacancies;
- a change in the way the going rate is calculated and advertised;
- checks of the number of unemployed in an occupation;
- a requirement that no workers be laid off for a period either side of the date of hiring an immigrant;
- a requirement to take into account labour market opinion from the relevant trade union or other body; and
- quotas on the numbers of immigrants who may be employed.

5.49 Possible options for amending the intra-company transfer route, drawing on practice in other countries, are:

- an increase in the time an employee has been working for a company before that employee can come in under this route; and
- setting a limit on the maximum time an intra-company transfer immigrant can work in the UK, although the UK's obligations under the GATS mean that this must not be less than three years.

## 6.1 Introduction

6.1 We were asked: *“Is there an economic case for restricting Tier 2 to shortage occupations only?”* The short answer to this question is that we do not think there is an economic case for restricting Tier 2 to the shortage occupation route only. The evidence we received strongly pointed us towards this conclusion. In this chapter we set out our reasons for maintaining each of the current non-shortage routes under Tier 2.

*“... the contribution of migrants from outside Europe, and the ability of companies investing in the UK to transfer and recruit staff from outside Europe, remain indispensable advantages for employers and inward investors.”*

IChemE response to call for evidence

*“The intra-company transfer and Resident Labour Market Test route of the Tier 2 scheme are vital to Airbus UK’s ongoing success geographically within the market. Any restrictions placed on these two primary migration routes would unquestionably be detrimental to our UK-based operations.”*

Airbus response to call for evidence

6.2 A number of stakeholders asserted that as the new Points Based System (PBS) had been in place for only six months, it needed time to bed in. We were specifically told that because the PBS is

new there has not been sufficient time to test its effects on businesses and on the wider economy. The Greater London Authority pointed out that, given the length of time the PBS has been in place and the lack of monitoring data from the UK Border Agency (UKBA), there is not enough evidence to recommend restricting Tier 2 in any way. In addition, some stakeholders questioned whether enough time had elapsed to make a quantitative and qualitative assessment of how the PBS is working.

*“We would also stress that UK businesses have been through significant challenges to comply with the PBS implementation – adapting their internal processes and procedures, educating staff, ensuring ongoing compliance and accepting rigorous duties and responsibilities as a sponsor – and therefore it is unacceptable that the system to which we signed up is to be amended or curtailed to such an extent, so soon after implementation.”*

Ricardo plc response to call for evidence

6.3 The Home Affairs Committee (2009) recognises that *“in the context of the current economic climate it is all the more important that the Points Based System is able to respond flexibly to changing economic and labour market needs, and that the process of assessing shortage and awarding points for skill is accurate, fair and transparent ... [I]t is obvious and right that employers should seek to recruit first from the UK labour market. However,*



*where there are certain skills of which a genuine shortage exists, recruitment from outside the EEA [European Economic Area] should be allowed ... otherwise the UK's global competitiveness could be harmed."*

- 6.4 We agree that the system is still bedding in, but it was designed to be flexible. This report represents our first examination of the PBS, except for the shortage occupation route. We do believe that the design and enforcement of some routes, most notably the Resident Labour Market Test (RLMT) and intra-company transfer routes, need to change. However, we have remained mindful of the need to avoid placing unnecessary burden on employers, immigrants and government bodies.
- 6.5 Our assessment of the routes under Tier 2 in the rest of this chapter will first discuss the calibration of points for earnings and qualifications. Changes in this area will have implications for the RLMT and intra-company transfer routes. Next we discuss potential policy changes relating specifically to those two routes in turn. Then we discuss areas where we are not currently recommending major changes,

namely fees and the shortage occupation, ministers of religion and sportspeople routes. We then discuss an issue outside but related to our remit, the business visitor route. We conclude with a summary of our main recommendations on Tier 2 and an outline of potential areas for future research and analysis.

## 6.2 Calibration of points for earnings and qualifications

- 6.6 Table 2.1 in Chapter 2 sets out the current points criteria. Table 6.1 sets out the minimum requirements to enter the RLMT or intra-company transfer routes of Tier 2, according to the highest qualification held by an applicant. Prospective earnings and qualifications held are used as indicators of skill in Tier 2. As such, the highest points are awarded for higher levels of earnings and qualifications.
- 6.7 The existing points for earnings are structured such that the minimum pay of £17,000 is required to reach 20 points and so meet the Tier 2 threshold for non-mandatory requirements. This salary is sufficient only where the applicant holds a PhD. Higher minimum salaries are then required for lower levels of qualifications.

**Table 6.1: Current minimum entry criteria under the RLMT and intra-company transfer routes of Tier 2, according to highest qualification**

Highest qualification (points awarded)	Minimum prospective annual earnings needed to gain entry (points awarded)
No qualification (0)	£24,000 (20)
GCE A-level (5)	£22,000 (15)
Bachelor's degree (10)	£20,000 (10)
Master's degree (10)	£20,000 (10)
PhD (15)	£17,000 (5)

Note: Prospective earnings are before tax and can be adjusted periodically to reflect inflation and/or labour market requirements. Allowances will be taken into consideration in calculation of salary.

Source: Migration Advisory Committee analysis based on UK Border Agency (2008)

An applicant holding no qualifications (above GCE A-level equivalent, or level 3) can meet the Tier 2 threshold with prospective earnings of £24,000 or above.

6.8 Assessing the calibration of points for earnings and qualifications would be made easier if data were available on the points scored against these criteria by applicants under the PBS. Data on the points that PBS applicants achieve could also inform any proposed adjustments to the points criteria. However, we understand that these data are not currently recorded by the UKBA in a reliable way. This is a missed opportunity in terms of realising the Government’s intention that the points criteria be adjusted to respond flexibly to changing labour market conditions (Home Office, 2005a), since understanding the impact of any changes is severely hampered. On the other hand, even if such data were collected systematically, their use would be limited, as some applicants may have higher qualifications than those they choose to claim for under the PBS. However, as we set out in Chapter 5, data are available on the gross pay and allowances for jobs under Tier 2, as these are recorded separately on the certificates of sponsorship.

6.9 Next we bring together evidence received from stakeholders and our own analysis to consider two questions in turn. First, is the calibration of points for qualifications as set out in Tables 2.1 and 6.1 correct? And, second, are the points for earnings appropriately calibrated?

### Points for qualifications

6.10 We received a wide range of views regarding which qualifications should accrue points, and how many points they should accrue. Microsoft told us that the current thresholds were appropriate and should not be changed. NHS Employers

told us that raising the qualifications thresholds would seriously impact on their ability to recruit Tier 2 immigrants.

*“... lowering the points awarded to holders of bachelor’s degrees would impair Microsoft’s ability to hire highly skilled employees in the UK.”*

Microsoft response to call for evidence

6.11 Migrationwatch UK told us they believed that all Tier 2 applicants should be required to hold at least a GCE A-Level or equivalent, but other stakeholders argued that qualifications were not a good measure of skill in their industry.

*“Some artists would find it difficult to acquire the 70 points under Tier 2 to obtain entry clearance. This is because of the nature of qualifications and earnings in various parts of the arts sector and [is] not a reflection of the status or talent of the artist in question.”*

National Campaign for the Arts response to call for evidence

6.12 A range of employers expressed the view that professional sector-specific qualifications are a more realistic demonstration of skill than academic qualifications, as they reflect on-the-job training and as such should be awarded points in Tier 2. For example, law firms would like to see sector-specialised qualifications recognised in Tier 2. Currently applicants with an LLB (bachelor of laws) degree or its US equivalent the Juris Doctor (JD) qualification cannot score extra points for these qualifications.

6.13 The issue of which qualifications should count for points purposes requires a more detailed examination on a case by case basis, and that cannot be done in this report. However, **the UKBA**

- should consider whether specific professional qualifications should be regarded as equivalent to National Vocational Qualification (NVQ) level 3, or bachelor's or master's degree level, when allocating points under the PBS, where there is good evidence to support such claims.**
- 6.14 Currently the points awarded for qualifications implicitly assume that bachelor's and master's degrees indicate the same level of skill and that these qualifications indicate a lower level of skill than a PhD and a higher level than an A-level.
- 6.15 Estimates in the academic literature of financial returns for specific qualifications give the expected earnings premiums associated with increasing levels of qualifications while controlling for other factors such as age and gender. The most common application of these calculations is to estimate what the value to the individual of obtaining a particular qualification is likely to be, in terms of higher future earnings. However, this literature may also shed light on the points for qualifications that should be awarded in the PBS, on the basis that there is an economic argument that more 'valuable' qualifications should accrue additional points.
- 6.16 O'Leary and Sloane (2004) found that the estimated return for a master's (postgraduate) degree is substantially higher than that for a bachelor's (undergraduate) degree. On the other hand, the estimated return for a master's degree does not differ substantially from that for a PhD, as shown in Table 6.2. Further studies reveal that the return for higher degrees, generally master's and PhDs, are substantially higher than those for bachelor's degrees (Sianesi, 2003; Dearden *et al.*, 2000).
- 6.17 The PBS currently does not award additional points for holding a master's degree over and above those awarded for a bachelor's degree. It does award additional points for a PhD. On the basis of the evidence discussed above, we believe that an individual holding a master's degree will, all other things being equal, make a greater economic contribution than somebody with only a bachelor's degree. **We therefore recommend that a master's degree be awarded 15 points in Tier 2, instead of the current 10 points.**

#### Points for earnings

- 6.18 We received evidence from a number of stakeholders regarding potential changes to pay thresholds. Many argued that the current thresholds should remain as

**Table 6.2: Estimated percentage returns for first and higher degrees for men and women**

	Men	Women
Undergraduate degree	20.2%	35.5%
Master's degree	29.2%	54.0%
PhD	31.4%	60.0%

Note: All returns are measured relative to 2+ A-levels and are statistically significant at the 95 per cent confidence level.  
Source: O'Leary and Sloane (2004)



- they are. The National Campaign for the Arts, for example, stated that an increase would exacerbate the difficulties that Tier 2 currently presents, in that points for earnings do not fully reflect the status and talent of artists, as salaries in the arts are lower than in other parts of the economy. Concerns were expressed regarding recruitment into key public sector occupations, as discussed below.
- 6.19 At the other end of the scale, some stakeholders argued that the current earnings thresholds needed to increase substantially or that a rise would not create major problems for them. Migrationwatch UK argued that the earnings thresholds should be increased in order to better select only skilled immigrants. Unite told us that the minimum salary for Tier 2 should be increased substantially to £40,000.
- 6.20 Tier 2 is designed for skilled employment only, where skilled is defined as equivalent to National Qualification Framework level 3. We outlined in Chapter 4 of this report and in Migration Advisory Committee (2008a) that earnings are generally likely to be a good indicator of skill, but not the sole indicator: *“while high pay is often indicative of high skill, low pay does not necessarily indicate that a job is low skilled”*. The RLMT and intra-company transfer routes do not allow scope for consideration of sector-specific issues to the same extent as the shortage route because they use a smaller number of indicators of skill. The two approaches are not inconsistent: it makes sense to go into particular detail to define skill in those occupations where shortages of skilled jobs are believed to exist.
- 6.21 It follows that it is not possible to draw a firm line, in terms of pay and qualification benchmarks, between all skilled jobs
- and all unskilled ones: a degree of misclassification is inevitable. However, in considering whether the earnings thresholds need to be recalibrated, we have considered how they may be positioned in order to keep the number of misclassifications to an acceptable minimum.
- 6.22 To reach the required points under the RLMT and intra-company transfer routes, at least 5 points are needed for earnings. The lower threshold for awarding 5 points for prospective earnings is the minimum salary required, currently £17,000.
- 6.23 In our previous analysis to identify skilled occupations, summarised in Chapter 4 and discussed more extensively in Migration Advisory Committee (2008a), we concluded that a minimum annual salary equivalent to approximately £10 per hour indicates that an occupation is skilled; £10 per hour is equivalent to slightly over £20,000 per year for a typical working week of 40 hours.
- 6.24 It is difficult to argue, except in specific circumstances where pay may not be a good indicator of skill, that a job paying less than £20,000 per year is skilled to level 3: it is roughly equivalent to only the 30th percentile of the earnings distribution for full-time workers (Annual Survey of Hours and Earnings (ASHE), April 2008). Therefore **we recommend that 5 points be awarded for prospective earnings of at least £20,000 per annum instead of the current £17,000.**
- 6.25 The lower threshold for awarding 20 points for prospective earnings is, in effect, the minimum salary required for intra-company transfer and RLMT immigrants with no qualifications at level 3 or above. Currently this figure is £24,000. This salary appears to be too low to guarantee that an individual holding no qualifications is

skilled: ASHE data for April 2008 show that the median pay of full-time, working age employees in skilled occupations in the UK labour market is £32,000. We have defined skilled occupations using the approach we developed in Migration Advisory Committee (2008a), discussed in Chapter 4.

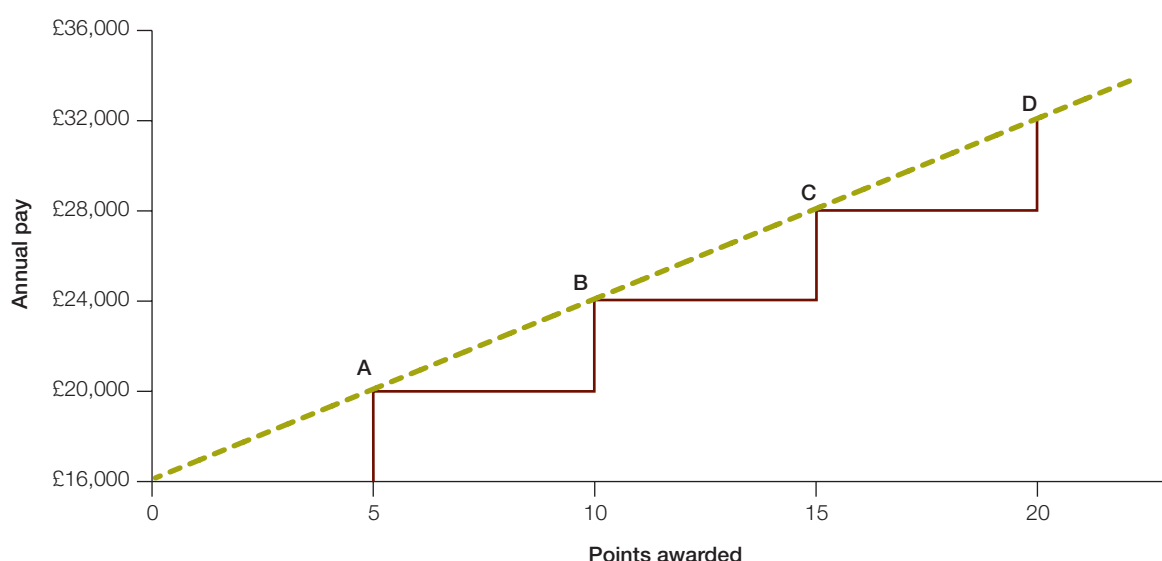
- 6.26 To be assured that an individual who is awarded no points for qualifications is employed in a skilled occupation, it seems reasonable to require that the individual be earning at least the median salary for skilled jobs. We believe it is appropriate that if an individual does not hold qualifications they should be in the top half of the overall skilled pay distribution for their job to be regarded as skilled.
- 6.27 **We recommend that 20 points be awarded for prospective earnings of at least £32,000 per annum instead of the current £24,000.**

6.28 In addition, it is necessary to consider what minimum levels of earnings should be required to obtain 10 points and 15 points. To calculate the position of these intermediate earnings thresholds, we make the assumption that the relationship between skill and the position on the relevant part of the salary distribution is linear and positive.

6.29 In other words, 5 points are awarded for being in the bottom third of the £20,000 to £32,000 pay distribution, 10 points for being in the middle third and 15 points for being in the top third.

6.30 This distribution is generated from a sample comprising the most recent four quarters of the Labour Force Survey (2008 Q2 to 2009 Q1), restricted to full-time, working age employees in skilled occupations only. As it happens, the wage distribution is approximately uniform: there are similar numbers of employees between points A and B in Figure 6.1

Figure 6.1: Calculating intermediate thresholds for prospective earnings required to gain 10 or 15 points under MAC proposed thresholds



Note: The dotted line represents the assumed linear relationship between skill (and so points awarded) and salary. The salary distribution in this sample is approximately linear, and so the y-axis could equivalently read 'pay distribution'. Points A–D give the lower threshold for each of the four salary point bands.

Sources: Annual Survey of Hours and Earnings 2008; Labour Force Survey 2008 Q2 to 2009 Q1; Migration Advisory Committee calculations

(earning between £20,000 and £24,000) as between points B and C (£24,000 to £28,000) and C and D (£28,000 to £32,000). Therefore, points awarded for earnings should rise on a linear basis, as illustrated in Figure 6.1. This means awarding 5 points for earnings of £20,000 to £23,999, 10 points for earnings of £24,000 to £27,999 and 15 points for earnings of £28,000 to £31,999.

6.31 **We recommend raising the minimum threshold for gaining 10 points to £24,000 per annum, and raising the minimum threshold for gaining 15 points to £28,000 per annum.** These figures compare to £20,000 and £22,000, respectively, under the current system.

6.32 We believe that the earnings thresholds should rise in line with earnings inflation. However, we discussed above the need for the PBS to act as an automatic stabiliser, partly in order to provide greater certainty for employers. We therefore advise that the thresholds for points awarded for prospective earnings should be automatically updated to reflect earnings inflation with each new release of ASHE rather than reviewed as a separate exercise each time on an annual basis.

### Occupations providing key public services

6.33 The Department of Health (DH) told us that increasing the salary thresholds would disproportionately impact on the NHS, as existing pay scale bands would no longer allow recruitment under Tier 2, a claim which was backed up by NHS Employers. DH's submission stated that band 5 qualified nurses, who according to Migration Advisory Committee (2008a) are skilled, may not meet the points criteria for Tier 2 if the current minimum threshold for prospective earnings of £17,000 were raised significantly. They also told us that

any increase in the current prospective earnings threshold may impact the social care sector.

*"If the Migration Advisory Committee were to recommend an uplift from the current lower threshold of £17k, then this may well have an impact on the social care sector. Although there is a system of local pay bargaining for adult social workers, any uplift to lower thresholds may rule out bringing newly qualified social workers into the workforce through the Points Based System route ... The Department's long-term aim is to support this sector to move towards self sufficiency but reiterates the viewpoint expressed by social care stakeholders (including employer groups), who argue that any attempts to restrict entry to the social care workforce would be detrimental to service delivery and ultimately to service users."*

DH response to call for evidence

6.34 The Department for Children, Schools and Families (DCSF) argued that increasing the effective threshold for teachers (who will typically have a bachelor's degree) from £20,000 per annum would have a major impact on the ability of schools to recruit overseas trained teachers (OTTs) in the outer London and fringe areas, which are among the areas most likely to make use of these teachers.

6.35 OTTs, when they first arrive in the UK, will usually be classed as unqualified teachers, even if they hold a teaching qualification from their country of origin. OTTs are required to be awarded Qualified Teacher Status (QTS) within four years or stop teaching. QTS should take a maximum of one year to obtain, and OTTs are encouraged to make arrangements to undertake the training as soon as possible after they take up their first teaching post.

- 6.36 However, when they are employed in the UK, schoolteachers coming through the RLMT route or switching from the Tier 1 post-study category will typically be paid on the pay scale for unqualified teachers, set out in Table 6.3. As stated above, the outer London and fringe areas are, according to DCSF, among the areas most likely to make use of OTTs; but whereas teachers in inner London have to be on scale point 3 before their annual salary reaches £23,000, those outside the London area have to be on scale point 6 before their salary reaches £23,000. Schools and local authorities do have the flexibility to top up pay with an allowance for unqualified teachers, but DCSF does not hold data on the extent to which these payments are made.
- 6.37 Our recommendations as described above would require immigrant teachers, who typically have a degree as their highest qualification, to have a prospective salary of £24,000 in order to work in the UK. There is a risk, as outlined above, that many would not reach this benchmark at the outset of their employment.
- 6.38 We believe that teaching is a skilled occupation. The same applies to many healthcare posts, including nurses at band 5 and above. Immigrant recruitment into these posts is an issue because nurses and teachers tend to come in, initially, towards the bottom of a progressive pay scale. Furthermore, the pay level will reflect constrained public finances and non-pay benefits and rewards that come from doing the job, such as final salary pensions, which can account for a significant portion of the total reward package.
- 6.39 We recognise that certain occupations that provide key public services currently depend significantly on immigrant labour. Many public services are aiming to move towards greater self-sufficiency: DH, for example, told us that it has significantly improved UK training levels, recruitment and retention to reduce its reliance on migrant healthcare professionals. In the long run, further efforts should be made to up-skill the UK workforce to do these jobs. In the shorter term, consideration should be given to how existing investment in

Table 6.3: Annual pay scale for unqualified teachers (2009)

Scale point	England and Wales, excluding London (£)	Inner London area (£)	Outer London area (£)	Fringe areas (£)
1	<b>15,461</b>	<b>19,445</b>	<b>18,366</b>	<b>16,477</b>
2	<b>17,260</b>	<b>21,242</b>	<b>20,165</b>	<b>18,274</b>
3	<b>19,058</b>	<b>23,041</b>	<b>21,964</b>	<b>20,072</b>
4	<b>20,856</b>	24,838	<b>23,764</b>	<b>21,870</b>
5	<b>22,655</b>	26,636	25,562	<b>23,668</b>
6	24,453	28,434	27,362	25,466

Note: Fringe areas cover the whole of Surrey and parts of Berkshire, Buckinghamshire, Essex, Hertfordshire, Kent and West Sussex. Points on the scale where pay is below £24,000 per annum are highlighted in bold text.  
Source: Department for Children, Schools and Families

training and pay budgets can respond more flexibly to regional and occupation-specific shortages and, where such flexibilities already exist, ensuring that employers use them.

6.40 We accept that, in the short term, the revised points criteria we set out above need to make allowance for some public sector jobs. There are two basic ways of doing this. One option is for an additional 5 points to be awarded to individuals coming via the RLMT route into specific occupations providing key public services, in cases where there is insufficient evidence of national shortage for inclusion on the shortage occupation list. This would also apply to individuals switching from the Tier 1 post-study route. This list could be drawn up with reference to occupations that require professional or vocational qualifications. In the case of a teacher with a bachelor's degree, this would bring down the salary required to gain a certificate of sponsorship from £24,000 to £20,000.

6.41 The main argument against this approach is that it effectively brings a new points category to the PBS and so adds slightly to its complexity. On balance, however, we believe this to be the best solution. Therefore **we recommend that certain occupations involved in the delivery of key public services, to be set out by the Government, be awarded an extra 5 points under the RLMT route. This would also apply to individuals working in these occupations switching to Tier 2 from the Tier 1 post-study category.**

6.42 An alternative solution would be to increase the number of points awarded for arrivals via the RLMT route from 30 to 35. The RLMT route and intra-company transfer routes both currently attract 30 points. There may be some basis for awarding more points for coming via the RLMT route because, as discussed later in this chapter, the route effectively exists to make jobs available for British workers.

6.43 Figures presented in Chapter 5 illustrate that a large proportion of current recruitment via the RLMT route is into health and education-related occupations. Awarding an extra 5 points across the board for the RLMT route would effectively water down our proposals to raise the points thresholds for earnings and would make it easier to bring less-skilled immigrants into jobs that are not concerned with the provision of key services. Therefore, this is a second-best option.

### **Summary of points for earnings and implications**

6.44 A summary of our recommendations regarding points awarded for qualifications and earnings is provided in Tables 6.4 and 6.5, reflecting the change in points awarded for a master's degree, the increase in salary thresholds and (in Table 6.4 only) the additional points for occupations concerned with the provision of key public services.

Table 6.4: MAC recommendations on points, salary and qualifications for Tier 2 of the PBS

Section	Routes		Requirements: qualifications (or equivalents)		Requirements: prospective earnings (£)	
			Points	Qualifications	Points	Earnings
<b>A</b> (50 points needed)	Offer of job in shortage occupation	50	No qualifications	0	20,000–23,999	5
	Offer of job that passes RLMT (in key occupation)	30 (+5)	GCE A-level	5	24,000–27,999	10
	Intra-company transfer	30	Bachelor's degree	10	28,000–31,999	15
			Master's degree or PhD	15	32,000+	20
<b>B</b>	Maintenance requirement (mandatory)					10
<b>C</b>	Competence in English (mandatory)					10

Note: Prospective earnings are before tax and can be adjusted periodically to reflect inflation and/or labour market requirements. Allowances will be taken into consideration in calculation of salary. Key occupations are jobs concerned with the provision of key public services, as defined by the Government. The extra 5 points also applies to those switching from a post-study category to the RLMT route for a job that provides a key public service.

Sources: Migration Advisory Committee calculations based on 'Skilled worker under the Points Based System (Tier 2): Statement of Intent' (UK Border Agency, 2008); Labour Force Survey 2008 Q2 to 2009 Q1; Annual Survey of Hours and Earnings 2008

Table 6.5: MAC recommendations on new minimum entry criteria under the RLMT and intra-company transfer routes of Tier 2, according to highest qualification

Highest qualification (points awarded)	Minimum prospective annual earnings needed to gain entry (points awarded)
No qualification (0)	£32,000 (20)
GCE A-level (5)	£28,000 (15)
Bachelor's degree (10)	£24,000 (10)
Master's degree (15)	£20,000 (5)
PhD (15)	£20,000 (5)

Note: Excludes key public sector occupations.  
Source: Migration Advisory Committee analysis

6.45 Because of the lack of information about PBS immigrants' qualifications available from PBS management information, estimating the impact of any changes to the earnings and qualifications thresholds

on the level and type of flow through Tier 2 is very difficult. Some indication with respect to the earnings thresholds only is available from the earnings data recorded in the certificates of sponsorship.



**Table 6.6: Proportion of jobs under Tier 2 meeting MAC's proposed points thresholds for prospective earnings**

Earnings threshold (£)	Percentage of used certificates	
	Intra-company transfer	RLMT
Below threshold	0.2	6.0
20,000–23,999	1.6	14.7
24,000–27,999	8.3	20.1
28,000–31,999	15.1	17.4
32,000+	74.8	41.8

Note: See notes for Table 6.1. It is not necessary to score points for earnings for the shortage occupation route.  
Source: Migration Advisory Committee analysis based on UK Border Agency management information Nov 2008 to May 2009

6.46 Table 6.6 shows the proportion of jobs under Tier 2 to date that would have fallen into our recommended earnings thresholds. It uses the same methodology as the earning calculations discussed in Chapter 5. Around three-quarters of intra-company transfers have prospective earnings of £32,000 or more, meaning that the number needing to demonstrate a qualification to gain the required points would increase from 2 per cent of the total number of intra-company transfers to 25 per cent. For jobs under the RLMT, the number needing to demonstrate a qualification would increase from 21 per cent of the total to 58 per cent. Of course, these data do not indicate what qualifications PBS immigrants possess, so they cannot tell us the extent to which the number meeting the overall PBS points criteria would change.

### **Benchmarking against the UK workforce**

6.47 We can, however, benchmark our recommendations against the UK workforce to examine how our proposed changes to the qualifications and earnings criteria might work in combination with each other. We scored full-time, working age employees against the points

criteria under Tier 2. Table 6.7 shows the proportion of the UK workforce meeting the current and proposed criteria, in a hypothetical scenario where Tier 2 points are awarded to the UK workforce. Fifty three per cent of the UK workforce earn £24,000 or more and would score 20 points for earnings under the current system, while 31 per cent earn £32,000 or more and would score 20 points for earnings under our proposed threshold. At the same time, the number scoring the maximum 15 points for earnings rises from the current 2 per cent to 8 per cent under our proposals.

6.48 Looking at earnings and qualifications together, under the current criteria 60 per cent of the UK workforce would score the necessary 20 points. Under our proposed criteria, we estimate that this would fall to 46 per cent of the workforce. In Migration Advisory Committee (2008a) we demonstrated that approximately 50 per cent of the UK workforce score are skilled to National Qualifications Framework (NQF) level 3 or above. Our proposed points for earnings and qualifications bring the fraction of the workforce covered to a similar proportion. The proportion of

the UK workforce that would gain the 20 points required for an RLMT job or an intra-company transfer under Tier 2 would therefore be 14 percentage points lower than at present.

- 6.49 However, the characteristics of PBS immigrants and the UK workforce differ substantially, as highlighted by the difference in the earnings distributions between Table 6.6 and Table 6.7. This means that the results in Table 6.7 cannot be a reliable basis for making estimates of the number of PBS immigrants who would be affected: it is likely to overestimate the impact on Tier 2 immigrants.

### 6.3 The Resident Labour Market Test

- 6.50 Key features of this route are set out in Chapter 2. It is used by employers for jobs that cannot be filled through the other Tier 2 routes. The RLMT currently requires that the job be advertised in Jobcentre Plus, and at least one other medium, for at least two weeks, or one week if the salary is over £40,000 per annum.
- 6.51 The requirement to advertise the job in Jobcentre Plus was introduced in March 2009. Although we have received some comments questioning the suitability and usefulness of using Jobcentre Plus,

**Table 6.7: Benchmarking our recommended changes to earnings and qualifications criteria for Tier 2 against the UK workforce**

Current		MAC proposal		Change (%)
<i>Percentage of workforce at each qualification points level:</i>				
No qualifications (0)	22	No qualifications (0)	22	0
GCE A-level (5)	43	GCE A-level (5)	43	0
Bachelor's/master's (10)	33	Bachelor's (10)	27	-6
PhD (15)	2	Master's/PhD (15)	8	+6
<i>Percentage of workforce at each earnings points level (£):</i>				
Less than 17,000 (0)	25	Less than 20,000 (0)	35	+10
17,000–19,999 (5)	10	20,000–23,999 (5)	12	+2
20,000–21,999 (10)	8	24,000–27,999 (10)	13	+5
22,000–23,999 (15)	4	28,000–31,999 (15)	10	+6
24,000+ (20)	53	32,000+ (20)	31	-22
<i>Percentage of workforce gaining 20 points through combination of earnings and qualifications</i>				
Fewer than 20 points	40	Fewer than 20 points	54	+14
20 points or more	60	20 points or more	46	-14

Note: The sample is restricted to full-time, working age employees who report both their salary and their highest qualification level, such that the same sample is used in all sections of the table. We assume that those working in the public sector and in the education or health and social welfare industries, as defined by the Standard Industrial Classification (SIC), would be awarded the extra 5 points for working in a key occupation. Numbers may not sum due to rounding.

Source: Labour Force Survey 2008 Q2 to 2009 Q1



especially for senior positions, many firms reported that they did not anticipate major problems in complying with this new requirement.

6.52 Chapter 5, which discussed similar practice in other countries, explained how a Resident Labour Market Test can have elements of attestation or certification, or both. In the UK the sponsor attests that the RLMT has been carried out. The success of this attestation in ensuring compliance depends on the incentives created by the policy and post-admission enforcement.

6.53 Below we consider whether the RLMT route should continue. Then we consider potential amendments to the route if it does continue. Finally we consider the issue of enforcement.

### **Should the RLMT route continue?**

6.54 We received a large amount of evidence in support of this route. We were told that the RLMT route is indispensable: for instance, according to the Confederation of British Industry (CBI), it allows firms to test the market for the relevant skills themselves and thus bring the flexibility and speed required in a fast-paced global economy. The Department for Business, Innovation and Skills expressed similar sentiments.

6.55 The CBI carried out a survey of its members in order to feed into our call for evidence. The survey recorded that 84 per cent of the respondents believe that suspending the RLMT would make it more difficult to fill skill gaps.

*“... The RLMT provides flexibility in the system and is the ‘business-driven’ element that allows flows of economic migrants to match demand from business. As such we strongly support maintaining the RLMT route.”*

Department for Business, Innovation and Skills response to call for evidence

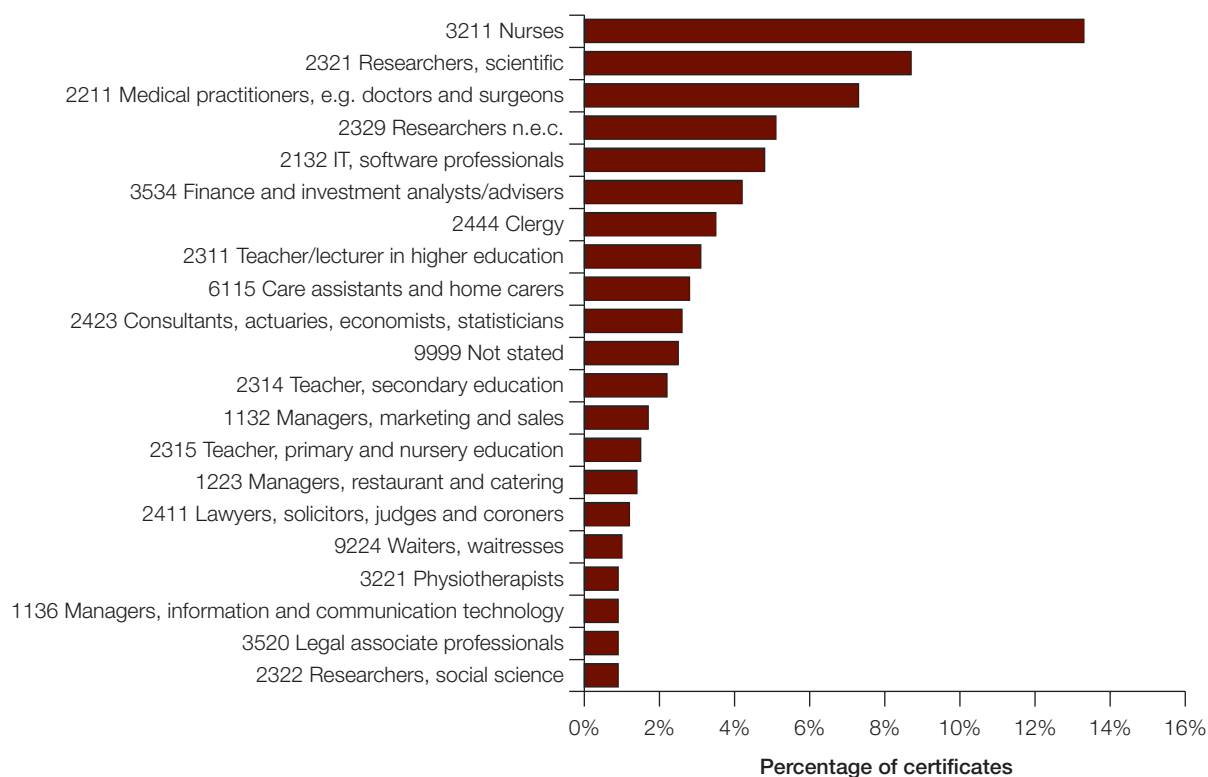
6.56 As recognised in OECD (2009c), resident labour market tests provide a certain degree of flexibility by providing for employment testing for occupations that are not on the shortage list. This can take into account local conditions and help to compensate for any imperfections in the identification of shortage occupations.

6.57 As shown in Figure 6.2, public sector-dominated occupations such as healthcare and teaching are particularly prominent users of the RLMT. This supports evidence we have received, including that discussed above, that the RLMT is used particularly by the public sector to fill shortages. We noted in Chapter 5 that a small number of less-skilled occupations, such as waiters and waitresses, are apparent in the certificates of sponsorship. This demonstrates the caveats to these data, in that the immigrant application that corresponds to a used certificate of sponsorship may not necessarily be approved. We assume that the immigrant application will be refused where the job does not meet the skill criteria for Tier 2.

*“The RLMT allows the employer to change and adapt its strategies to recruit its skilled employees from the necessary pools. Removal of the route constrains the employer to a particular pool ... Within the health sector the impacts would be detrimental to patient care and not of added value to the economy.”*

NHS Employers response to call for evidence

Figure 6.2: Top 20 occupations where Tier 2 certificates of sponsorship were used following an RLMT, Nov 2008 to May 2009



Note: The above figures describe 'used' certificates of sponsorship, where a migrant application that corresponds to the certificate has been submitted but not necessarily approved. 'n.e.c.' stands for not elsewhere classified.  
Source: UK Border Agency management information data, Nov 2008 to May 2009

- 6.58 Researchers are also common among RLMT certificates, which is probably due to demand for named researchers, where an exception to advertising the post has been granted under Tier 2. Named researchers are defined as those whose employment is linked to specific research grants awarded to higher education institutions or research institutes by external organisations. They will be named specifically on the research grant because their knowledge and expertise in the relevant field means they are the only person able to undertake the research.
- 6.59 Due in particular to the important role of the RLMT route in providing skilled employment to key public services, and its ability to respond more rapidly to changing needs of employers than the shortage

occupation route, **our conclusion is that this route should be retained.** However, in addition to amending the points criteria as discussed above, we believe that some alterations are required to address concerns that the RLMT is not testing the local labour market as effectively as it could. These are discussed in the remainder of this section.

#### Should the RLMT route be amended?

- 6.60 One recurrent concern expressed to us is that the current requirements that vacancies be advertised for only two weeks, and just one week if the salary is over £40,000 per annum, are too short. In their submissions to us, both the Department for Work and Pensions (DWP) and the Department for Communities and Local Government suggested that

the period of time for which employers are required to advertise jobs as part of the RLMT should increase to at least four weeks. NHS Employers suggested that for jobs currently requiring only one week the period should be increased to two weeks. Other stakeholders expressed similar views.

*“It is hard to believe that advertising for just one or two weeks is sufficient.”*

Migrationwatch UK response to call for evidence

*“If there were concerns ... then an increase in the length of the required advertising might reduce the displacement of domestic workers.”*

NFU response to call for evidence

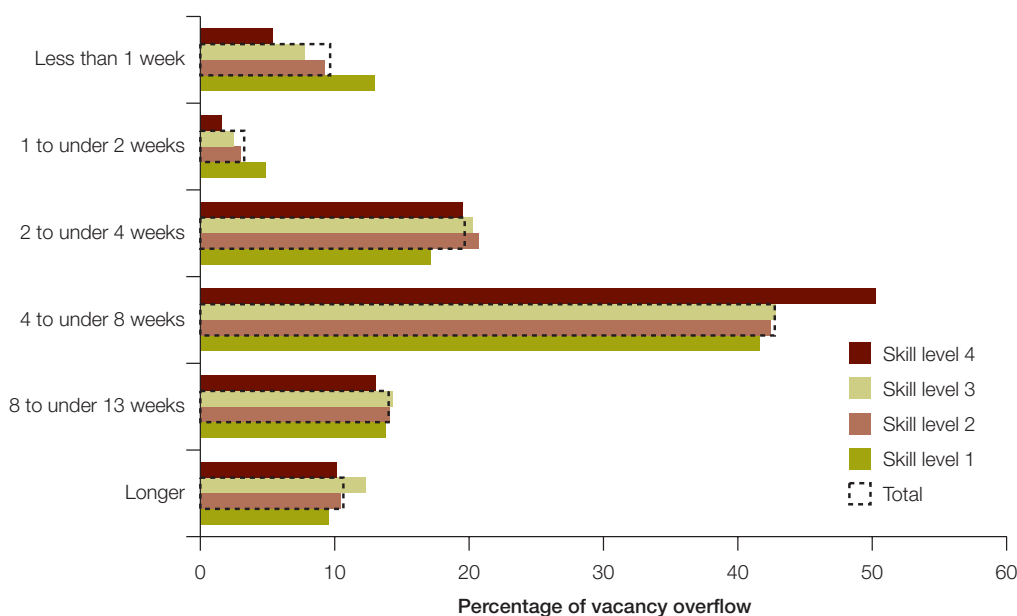
6.61 Some employers, however, told us that two weeks was sufficient. Nevertheless, we agree with many of our stakeholders that two weeks is not long enough to ensure that the local market is tested fully. This view is supported by analysis of durations of vacancies in the UK labour market. Since the ONS vacancy survey does not cover durations, we examined those vacancies advertised through Jobcentre Plus. These data describe the duration of a vacancy between opening and closure. Typically closure occurs either because the closing date has been reached or the vacancy is filled before the closing date (although there may be some lag in notification). The default closing date, if an employer does not specify one, is four weeks.

6.62 In 2008, 13 per cent of vacancies that were filled or withdrawn from Jobcentre Plus systems had been filled or withdrawn within two weeks, and a further 20 per cent within four weeks, as shown in Figure 6.3. Over 40 per cent of filled or withdrawn vacancies have durations of between four and eight weeks. This is not surprising, given the default closing date, but it suggests that most vacancies take more than two weeks to fill. Around a quarter of vacancies take longer than eight weeks to fill. This all suggests that one to two weeks is an insufficient length of time to test the resident labour market. A duration of at least four weeks is needed.

6.63 We do not believe that more highly paid jobs should be advertised for a shorter period. One argument put to us was that undercutting is less likely at the high-skill end of the spectrum. But, even if that is true, the Tier 2 codes of practice, rather than the RLMT, exist to prevent undercutting.

6.64 Furthermore, vacancies in skilled occupations generally take longer to fill than those in unskilled occupations. Figure 6.3 shows that the most highly skilled jobs (level 4) in particular are less likely to be filled within short durations. Jobcentre Plus is not representative of the whole labour market, so data on high-skilled jobs in particular need to be treated with caution. However, there is no evidence to refute the hypothesis that higher-skilled jobs will, on average, take longer to fill.

Figure 6.3: Durations of Jobcentre Plus vacancy outflows by occupational skill level, 2008



Note: Vacancy durations describe the time between a vacancy being opened and closed by Jobcentre Plus (JCP). Skill levels defined in the Standard Occupational Classification (SOC): level 1 represents the lowest skill level and level 4 the highest. Vacancy outflow includes both those filled by JCP and withdrawn from JCP. These levels are related to, but differ from, the MAC definition of skilled and unskilled.

Source: Jobcentre Plus vacancy outflows by four-digit occupation, 2008 (Nomis, 2009)

6.65 In more recent data it is not possible to distinguish between those vacancies filled by Jobcentre Plus and those withdrawn, because of changes in the way Jobcentre Plus systems operate. Examination of 2005–06 data suggests that around a quarter of vacancies are eventually filled by Jobcentre Plus, as opposed to being withdrawn by employers because they have filled the vacancy themselves or no longer wish to continue advertising the vacancy using Jobcentre Plus. Of those eventually filled by Jobcentre Plus in 2005–06, around one-third were filled within two weeks, and 10 per cent were withdrawn.

6.66 This suggests that the RLMT should not be limited to Jobcentre Plus vacancies. The majority of vacancies are probably filled outside Jobcentre Plus, and a test of the labour market should not be determined by one recruitment method. The best additional advertising medium will vary from sector to sector.

6.67 On the basis of the analysis presented above and the evidence received, **we recommend that the required duration of vacancy advertising be increased to four weeks for all jobs**, regardless of prospective earnings.

### Enforcing the RLMT

6.68 As set out in Chapter 2, in order to become a sponsor under the PBS an employer must demonstrate to the UKBA that it has the ability to meet and fulfil its duties, including keeping appropriate records. When issuing a certificate of sponsorship, the employer must either confirm that the RLMT has been carried out or that it does not apply. The UKBA does not perform pre-licensing checks under the RLMT unless it has cause to query an application, although plans are being introduced to check the Jobcentre Plus reference number on the certificate of sponsorship.

- 6.69 Post-entry checks by the UKBA examine whether a valid attempt was made to recruit from the resident labour market and whether the job was advertised in the appropriate places for the required length of time.
- 6.70 Therefore, compliance with the letter and the spirit of the RLMT relies on rigorous sponsorship requirements and sufficiently frequent and effective post-compliance checks. To the extent that these arrangements leave scope for abuse, they then rely on employers and immigrants understanding the system and engaging with it in the intended manner.
- 6.71 Some responses to our call for evidence expressed concern regarding this scope for abuse of the RLMT.

*“[N]ow that the employer’s role is that of a sponsor, the RLMT reporting arrangements have been made ‘lighter touch’. As Semta understands it, the notification now required of employers is limited to a simple confirmation that they have carried out the test (whereas before the PBS, a number of specific details of the RLMT were required to be provided). While there is subsequent checking of the RLMT specifics in a random post hoc sampling, the overall level of scrutiny of the rigour of the RLMT is now comparatively low.”*

Semta response to call for evidence

*“... the MAC may wish to consider recommending a more robust policing of sponsors applying the RLMT to demonstrate that migrant workers are not undercutting the domestic workforce.”*

Marshall Aerospace response to call for evidence

- 6.72 The Home Affairs Committee (2009) concludes that *“the current RLMT does not seem to command confidence amongst jobseekers, employers or other commentators.”*
- 6.73 It may not be possible to develop a monitoring and enforcement regime that ensures that all employers comply fully with the RLMT at all times. Information asymmetry between employers and the UKBA in terms of the requirements for the job, and the process of sifting, interviewing and selecting candidates, means that a degree of non-compliance may be inevitable. Nonetheless, we have considered whether the system should be strengthened in such a way that the scope for abuse is at least reduced.
- 6.74 As explained in Chapter 5, some countries give a role to unions or other labour market bodies in vetting the request to bring in an immigrant worker. But introducing these sorts of arrangements in the UK would be costly, place extra burdens on employers and introduce more subjectivity into the decision-making process.
- 6.75 An alternative approach would be to introduce certification that the labour market test has been met before the application is submitted, as in some other countries such as Sweden, Denmark and the US. Were certification to be introduced in the UK, Jobcentre Plus would be the logical body to administer it. There are various options in terms of the exact form the certification process could take. First, the record of certification could be held by either the employer or Jobcentre Plus, or both, and examined as part of any post-entry checks. Alternatively, the UKBA could require that the certificate be presented to them before leave to enter is granted.

- 6.76 Second, certification could be required for all immigrants entering under the RLMT route, which may mean in the order of 1000 certificates per month being issued, based on the number of immigrants who have come in through the RLMT route since Tier 2 came into existence (see Table 5.1). Alternatively, certification could be required for a sample of posts being filled via the RLMT, selected on either a random basis or on an assessment of risk.
- 6.77 Third, there are various options as to precisely what is certified. Most straightforwardly, Jobcentre Plus could confirm that the vacancy had been advertised for the required length of time. In addition, it could certify that the vacancy was advertised in a way that provided fair and reasonable access to local applicants. Jobcentre Plus may also provide details of any candidates put forward for consideration by itself and the results of that process. Finally, it could use labour market intelligence to certify that there was not a pool of local workers available to do the job.
- 6.78 Jobcentre Plus and DWP told us that they agree that, in many circumstances, it is appropriate to test the resident labour market before an employee is brought in from outside the EEA. However, as shown in Chapter 3, the recession has substantially increased the number of unemployed clients that Jobcentre Plus is dealing with, and we are mindful that certification arrangements could further increase burdens on Jobcentre Plus, at least in the short term.
- 6.79 In addition, introducing a further step into the process of recruiting an immigrant is likely, to some extent, to slow down the process of bringing people in to fill genuine vacancies, at a time when many employers are already facing very challenging market conditions.
- 6.80 There are also some practical issues around introducing a certification regime. Jobcentre Plus currently advertises 85 to 90 per cent of its vacancies as ‘apply direct’, which means that customers can apply directly to employers and therefore have no contact with Jobcentre Plus. This means that Jobcentre Plus is only able to provide robust management information for non-apply direct vacancies, where the customer needs to actively contact Jobcentre Plus. Furthermore, where jobs require very specific skills and knowledge, Jobcentre Plus may not be able to provide a view on the pool of available resident labour.
- 6.81 Although it might be possible as part of the RLMT for employers to request that vacancies be advertised as non-apply direct, the Jobcentre Plus strategy is to move towards more self-service for employers. It would place an additional burden on their resources if all Tier 2 vacancies were advertised in that way.
- 6.82 However, Jobcentre Plus did tell us that it might be possible for a relatively small number of employers, perhaps those identified in some way as ‘high risk’ by the UKBA, to be required to notify their vacancies to Jobcentre Plus as non-apply direct. This would then enable Jobcentre Plus to gather data relating to the number of customers who applied for those vacancies. Jobcentre Plus also pointed out that it would need a solid statutory footing on which to base the disclosure of information relating to specific employers, and that this would require further discussion with the UKBA.
- 6.83 In its review of the PBS, the Home Affairs Committee (2009) also recommended that the Government review the operation of the RLMT to ensure that it is rigorously enforced, including considering the introduction of some form of independent inspection of its application.



6.84 We understand that there are issues to work through. However, on balance, **we think that there is scope and a need for the Government to consider introducing a certification regime, and we recommend that the UKBA, DWP and Jobcentre Plus study the matter in more detail.**

## 6.4 Intra-company transfers

6.85 The intra-company transfer route under Tier 2 allows established employees of multinational companies with at least six months' company experience to be transferred to a skilled job in a UK-based branch of the organisation or to provide a service for a third party. The route awards 30 points, and applicants need to obtain the rest of the required points from the mandatory requirements and the salary and qualification requirements.

6.86 There are specific rules on allowances that count towards the salary package that the UKBA considers when awarding the points. In order to prevent undercutting, the employer needs also to consider the 'prevailing wage' agreed with the UKBA in the code of practice for the relevant sector.<sup>9</sup> A more detailed explanation of these issues is given in Chapter 2.

6.87 In the previous work permit system an employer recruiting through the intra-company transfer route had to confirm that:

- the sponsored employees had company-specific knowledge and experience that was specifically required for the post on offer and that could not be provided by a resident worker; and

- the pay and conditions had to be at least equal to those normally given to a resident worker doing similar work.

6.88 The first requirement described above, which was intended to prevent displacement of resident workers, has now been replaced with the requirement for the sponsored employee to have had at least six months of employment with the company prior to the transfer to the UK. The second is still enforced through the application of the 'prevailing wage' for the relevant sectors, as agreed in the relevant code of practice.

6.89 First, we consider whether the route should be abolished altogether. We then consider options for amending it, looking particularly at residency and citizenship and at the requirement to have previously spent time working for the company abroad. Then, we consider whether the rules can be better enforced. Finally, we consider use of allowances by intra-company transfer workers and employers.

### Should the intra-company transfer route continue?

6.90 Inflows of intra-company transferees have grown over time, in absolute terms as well as in proportion to other work permits, as shown in Table 6.8. More data on flows by route within Tier 2 were discussed in Chapter 5.

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<sup>9</sup> Codes of practice are available on the UKBA website: [www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/employingmigrants/codesofpractice](http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/employingmigrants/codesofpractice)



**Table 6.8: Growth in the number and proportion of permits issued as intra-company transfers, 1992–2009**

	1992	1997	2007	2008	2009
Number of intra-company transfers	7,185	15,428	46,770	45,766	*
Percentage of total work permits	26.7	38.9	47.8	52.3	59.5

Note: Data include work permits, first permissions and extensions but exclude technical changes and changes of employment. Intra-company movements via the Training and Work Experience Scheme and Highly Skilled Migrant Programme are not considered in these figures. The figures for 2008 are based on work permits only and do not include the small number of PBS intra-company transfers approved in December 2008. \*For 2009, indicative data on the proportion of total certificates of sponsorship used for intra-company transfers between January and May is given only. Sources: For 1992 and 1997, Dobson *et al.* (2001); for 2007–09, UK Border Agency management information data from the work permit system and the Points Based System

- 6.91 This increase in the number of intra-company transferees in recent years can also be observed in the Labour Force Survey. This survey contains information that makes it possible to identify transferees from the same company overseas. Salt (2008) estimates that in 2008, of all those who were working abroad a year previously, 44 per cent of UK nationals and 34 per cent of foreign nationals were working for the same company and could therefore be regarded as transferees. This amounts to approximately 23,000 foreign nationals and 12,000 UK nationals working for the same company in the UK, as they had a year previously outside the UK. This compares with 16,000 foreign nationals and, again, 12,000 UK nationals in 2000: an increase in foreign nationals but no change for UK nationals.
- 6.92 We have received more evidence from stakeholders on this route of Tier 2 than any other. The overwhelming majority told us that the abolition of this route would have a negative impact on their business. There was a general consensus that the intra-company transfer route is an essential part of global mobility policies designed to support international business, trade and investment. We were told that this route facilitates the operation and growth of multinational organisations, which in turn leads to the creation of UK jobs.
- 6.93 A leading management consultancy surveyed its clients on our behalf, approximately two-thirds of whom reported that closure of the intra-company transfer route would cause major disruption in terms of reorganisation of business and transfer of training to outside the UK.
- 6.94 The ability to bring in relevant knowledge and experience from overseas, despite the downturn, is vital, according to the CBI. Company-specific knowledge and knowledge transfers, both into and out of the UK, were cited as an important reason for employing non-EEA staff. UK Trade & Investment (UKTI) told us that, among other purposes, *“The [intra-company transfer] route also provides entry to the UK for what are ‘global jobs’, which a company may decide to locate in the UK in support of a specific project. These are not UK jobs taken by migrant workers.”*

*“... the availability of the intra-company transfer route provides an incentive for firms to invest in the UK instead of competitor nations, and the removal of such a route would have substantial negative impacts on the UK economy ... 71 per cent of respondents to our survey indicated that they would move parts of their business offshore if the intra-company transfer route was closed.”*

CBI response to call for evidence

- 6.95 Many offices of multinational companies operating in the UK function as the headquarters for the EMEA (Europe, Middle East and Africa) regions. For these companies, we were told, it is extremely important to be able to bring in international assignees.

*“Too much restriction and the UK will not only become uncompetitive or unattractive to overseas companies but original indigenous companies could also look elsewhere to headquarter their operations.”*

Intellect response to call for evidence

*“If the UK Government closed Tier 2 to only Shortage Occupations, 19.2 per cent of respondents to the Fragomen survey would seriously consider relocating their UK operations to another country and 47.2 per cent would seriously consider relocating part of the UK operations to another country.”*

Fragomen response to call for evidence

- 6.96 We also received evidence from, and met with, numerous Japanese companies (which, according to the Foreign and Commonwealth Office, account for £25.2 billion inward investment each year), as well as evidence from the Embassy of Japan and the British Ambassador to Japan, in support of the intra-company transfer route as an important means to secure Japanese investment in the UK. This evidence is discussed further in Box 6.1.

- 6.97 Inward investment is a particularly important contributor to the UK economy. UKTI told us that, according to data from the United Nations Conference on Trade and Development, the UK remains the second largest recipient of foreign direct investment globally, behind only the US, with 9.4 per cent of the world's stock.

- 6.98 We were also told that reciprocity was a major concern should the Government decide to close this route. Representatives of the Japanese, Australian and New Zealand Governments all raised this issue with us.

- 6.99 Any account of how intra-company transfers are used must acknowledge the central role that the IT sector plays in employer-driven immigration. Figure 6.4 shows that the sector accounted for a growing proportion of work permits issued between 2003 – a low-water mark following the burst of the ‘dot com’ bubble – and 2007.

### Box 6.1: Evidence from Japanese companies based in the UK

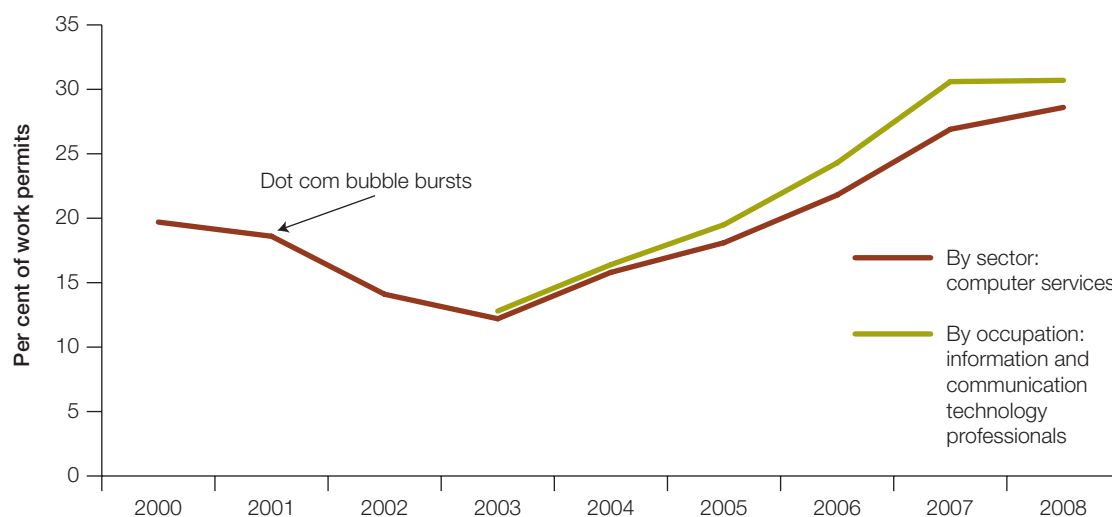
We looked closely at the case of Japanese companies. We met with the Japanese Embassy four times, including through a session the embassy facilitated where we took evidence face to face from major Japanese companies, including Hitachi Europe Ltd, Honda of UK Manufacturing Ltd, Mitsubishi Corporation (UK) plc, Nissan Motor Manufacturing (UK) Ltd, Toyota Motor Manufacturing (UK) Ltd, the Japanese Chamber of Commerce and Industry in the UK, the Bank of Tokyo-Mitsubishi Ltd and the Japan Green Medical Centre.

Overall 92 Japanese companies submitted evidence to us, many filling in a questionnaire designed and distributed by the Japanese Embassy.

The evidence mainly raised concerns about any possible closure of the intra-company transfer route. It highlighted the adverse impact that any such action would have on the ability of Japanese companies to operate and expand their businesses in the UK and Europe. The majority of the respondents to the questionnaire said that the closure or suspension of the intra-company transfer route would result in them withdrawing their businesses from the UK or scaling back their UK activities, which would cause job losses among the UK workers they employ.

In its evidence to us, the Japanese Embassy quoted a January 2008 survey of ten Japanese companies conducted by the then Department for Business, Enterprise and Regulatory Reform. This found that, for every Japanese national employed by these firms, an average of 73 non-Japanese nationals were employed by these companies in the UK.

Figure 6.4: Trends in IT sector's use of work permits, 2000–2008



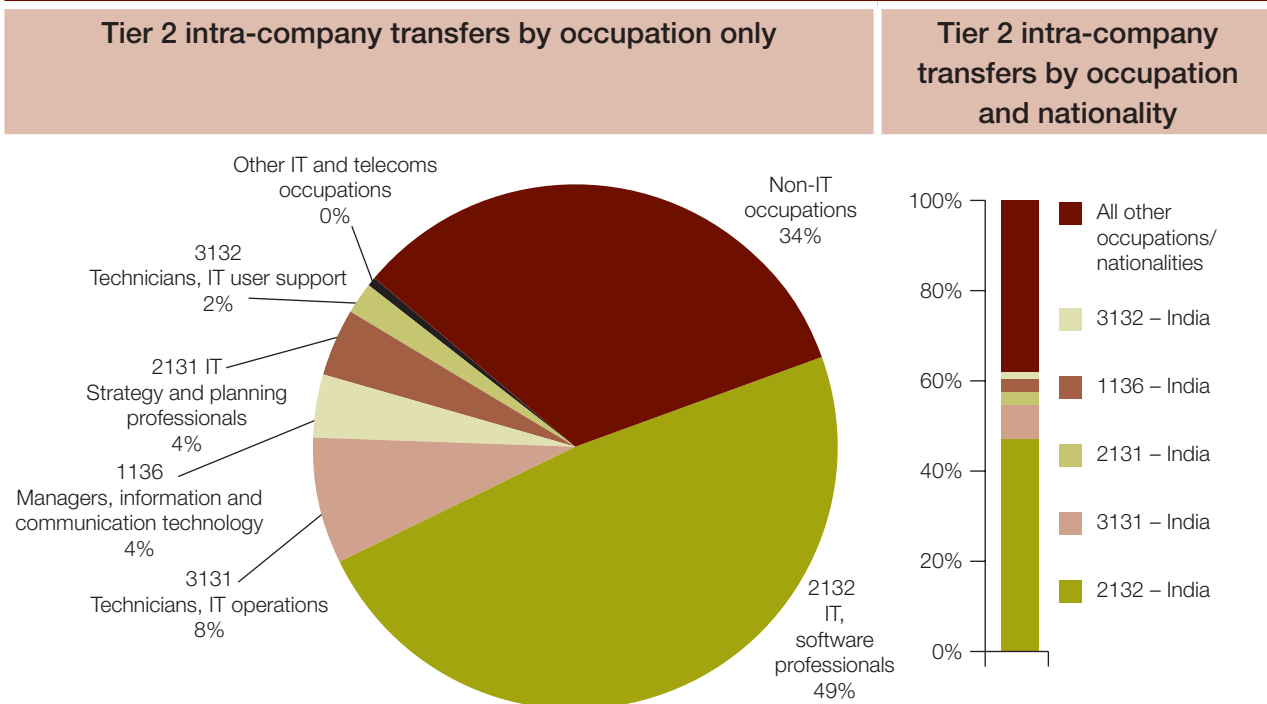
Note: Occupation coded to SOC two-digit; sector category from UKBA management information.  
Source: Salt (2008)

6.100 Early data from the PBS for 2009 show that approximately one-third of all Tier 2 applications are for IT professionals. By industry, IT activities account for around 35 per cent of Tier 2 applications, the vast majority of which are for computer programming, consultancy and related activities.

6.101 At a more detailed level, data from the PBS show that IT and telecommunications occupations account for 66 per cent of intra-company transfers, with the vast majority being software professionals, who account for 49 per cent of intra-company transfers alone, as shown in Figure 6.5. Most of these are for out-of-country applicants. However, around 20 per cent of IT and telecoms intra-company transfers were for immigrants already in the UK.

6.102 The majority of intra-company transfers are for Indian nationals, who account for 69 per cent of the route. Almost half (48 per cent) of intra-company transfers are for Indian nationals in just one occupation: software professionals. Other significant nationalities using the route are those from the US, Japan and Australia. Indian nationals are also important in other sectors. For example, the Law Society told us that “two key markets of considerable interest to the UK legal sector are India and China. The Indian legal market is currently closed to foreign law firms and London is one of the biggest international centres for India-related work. Lawyers qualified in India with knowledge of the legal and regulatory framework are essential to servicing clients in this market.”

Figure 6.5: Tier 2 intra-company transfers, showing proportion in IT and telecommunications occupations, Nov 2008 to May 2009



Note: Labels show the proportion of intra-company transfers accounted for by IT and telecoms occupations. Occupations are classified at the four-digit level in SOC 2000. IT and telecoms occupations defined in e-skills (2008). Source: UK Border Agency management information data, Nov 2008 to May 2009

- 6.103 We believe that the intra-company transfer route was originally set up to fulfil three different kinds of business need:
- to fill senior management positions for a limited period of time;
  - to transfer knowledge (either to the UK-based company or to acquire knowledge to be used later in the country of origin); and
  - to offer international experience as part of a training programme such as graduate trainee programmes.
- 6.104 We understand that one of the reasons why the intra-company transfer route is used for such diverse business needs is that in its current form it is replacing various routes of the previous work permit system that have now been abolished.
- 6.105 We were also told that companies that would previously have used Tier 1 for their most senior foreign employees are now more frequently using the intra-company transfer route, because most of their most suitable candidates do not have the master's degree that is now compulsory in order to come to the UK through Tier 1.
- 6.106 We attended several meetings with representatives of multinational companies, from which we understand that intra-company transfers are often, and to an increasing extent, used to provide services to a third party, especially in the IT sector.
- 6.107 In order to better understand the high use of these intra-company transfers among multinational IT companies we commissioned Professor John Salt of University College London to complete a short research study (Salt, 2009). The findings are based on interviews with four major companies operating in this sector. Box 6.2 presents an extract from this study explaining the prevalent business model in the IT sector and the related use of intra-company transfers.

### Box 6.2: Use of intra-company transfers in the IT sector

“The IT sector differs from others in its portfolios of mobility of expertise (Millar and Salt, 2008). There is less overt career development mobility, more that is project related and with a preponderance of short and medium-term assignments. Particularly striking for the UK is the conduit from and to India of Indian citizens. Millar and Salt (2008) reviewed the interaction of the work permit system with the globalisation of services in the IT sector. The research included analysis of work permit statistics, combined with empirical information derived from interviews with IT companies. The findings demonstrated the continuing tension between a government concerned with the effects of foreign skills on the domestic market and employers increasingly operating in a global environment. Some of the main findings are briefly rehearsed in the next few paragraphs.

“In the IT sector, sophisticated technologies to support remote work and organisational and process change (e.g. standardisation) combine with temporary international mobility to facilitate both on site and offshore outsourcing, defined as ‘the purchase of goods and services from abroad that were previously produced domestically’ (GAO, 2005). Pressure for outsourcing comes from clients wanting lower costs to remain competitive while operating in a global environment. One consequence is that IT firms build up facilities in lower-cost overseas locations (such as India) in order to capitalise on the market for offshore service delivery. Staff, often with ‘generic’ IT skills, are recruited to undertake short-term, project-related ‘knowledge transfer’ assignments involving the outflow of expertise from the receiving country to the sending country. In a form of symbiosis, these firms use short-term international mobility to build expertise in the sending country during deployment in the receiving country. Intra-company transfers are the agency for doing this.

“Millar and Salt’s (2006) findings suggested that client-imposed downward pressures on costs demanded the use of ever cheaper and, therefore, less experienced staff by IT service providers. In response to these pressures, some IT companies developed global sourcing strategies to recruit internationally.

“The global sourcing model typically involves competitive decisions to locate and redistribute IT production activities among on-site, near-shore and offshore locations that may, previously, have been undertaken domestically, including in-house in client organisations. According to this model, a service provider may use its UK base – perhaps a customer-facing sales and marketing division or a UK-based development centre – to sponsor overseas nationals to work for short periods at or near an end-client’s site. The service provider uses the intra-company transfer route to rotate offshore staff through the client organisation and back overseas where they may help to build up repositories of client-, and market-, specific knowledge. The empirical findings from the present study concur with these earlier ones.

### Box 6.2: Use of intra-company transfers in the IT sector (*continued*)

“According to Millar and Salt (2006), this global model conflicts with government work permit policy in three ways. First, the sourcing model undermines the requirement that overseas nationals should be recruited for genuine and additional posts in the UK because the intent is often to move work offshore as soon as possible. Second, global sourcing may conflict with the requirement for overseas nationals to have ‘specialist company knowledge and experience’ essential to their role in the UK. In practice, when servicing a contract with a UK client it is expertise in that client’s business and practices that is essential to the role in the UK. Third, the global sourcing model can challenge the requirement for the salaries paid to overseas nationals to equal those awarded to resident workers.

“Implementation of work permit arrangements has hitherto been sufficiently flexible to accommodate employers’ sourcing needs although it may be argued that this has been achieved at the expense of the regulations that were intended to progress the interests of the resident workforce (Millar and Dench, 2005). The converse may also be true. The use of the work permit arrangements to support client-oriented temporary moves, that are driven more by client-imposed pressures to cut costs than by domestic labour market conditions, may enhance UK employment through increasing the economic competitiveness of UK clients. By providing clients with access to scarce technical expertise from wherever it is located, IT service providers can make a critical difference to the success or failure of their businesses. This has helped make the UK a prime location for foreign direct investment.”

Source: Salt (2009)

6.108 We have met with several representatives from the IT sector, including the relevant trade unions, and they all confirmed that the increased use of intra-company transfers in recent years is a reflection of a prevailing business model that locates and redistributes IT functions and activities among on-site and offshore locations that were previously undertaken domestically.

Essential to this business model is the use by the service supplier of intra-company transferees to work for short periods at the client site to build up client-specific knowledge. Box 6.3 presents an example of this business model developed between British Airways and Tata Consultancy Services (TCS).



### Box 6.3: Case study provided by Tata Consultancy Services: British Airways and intra-company transfers

The current approach of British Airways (BA) to working with global IT firms, in pursuit of its business objectives, took shape in 2002–03, as it reviewed its needs in the post-9/11 world.

IT and other technology are crucial to the modern airline industry. “Our business is airlines, but we have to be expert in and able to use the best technology available as well,” says Paul Coby, BA’s Chief Information Officer and Head of Transaction Services. “This is core to our being efficient and competitive in world markets.”

The new approach consisted of maintaining major, core IT capabilities in-house (BA today employs 1,500 IT professionals, based in either Heathrow or Newcastle) and seeking help globally for discrete, identified projects. These projects could be minor or mission-critical, such as the online booking system on ba.com. BA agreed a project fee in return for defined deliverables from its external IT firms.

As a global company operating in a global marketplace, BA needs to ensure that its IT department is market competitive within the industry. For BA to remain a strong UK-based IT employer, its IT department regularly benchmarks itself to compare costs, capability, speed and quality. If the IT department was not cost competitive it would result in BA outsourcing this role to a major global company (such as IBM, Electronic Data Systems (EDS) or TCS), resulting in these jobs probably being lost from the UK. To avoid this, BA’s IT department uses a mixture of third-party suppliers to augment its own capability. This gives BA access to specialist skills and lower-cost models and allows it to react to short-term skill or volume needs. BA also requires these suppliers to deliver often to a ‘fixed price’ model where the risk on cost is transferred to the supplier, who must deliver for the committed price.

TCS has been a long-term supplier partner to BA. Mike Croucher, BA’s Head of IT Software Engineering, said, “In going to outside firms for support, I went on a global search, not just to India. We employ ‘UK’ firms for some of our work; and the kinds of large-scale IT solutions we have identified and scoped also mean we search globally, to get the expertise, flexibility and scale we need. We chose TCS as a global firm able to deliver these projects.”

The reason TCS could deliver with certainty was its global delivery model, which is heavily based on India IT professionals, and it could harness the best available for BA’s goals.

While much of the development work is conducted in India, delivering the projects requires TCS professionals to spend some project time on site with BA. The kinds of projects for BA have to be custom designed to its precise needs. It is therefore fundamental that the TCS team designing and building the solution understand at first hand ‘at the coal-face’ how the solution will be used by BA staff and how it will fit into other BA processes and systems.

This way, when the team goes back to India to complete the design, they know what business solution is to be delivered.

### Box 6.3: Case study provided by Tata Consultancy Services: British Airways and intra-company transfers (*continued*)

TCS uses the intra-company transfer route for the staff it brings into the UK on a temporary basis as part of the project to be delivered for BA. It is a crucial part of getting the job done, and the number of IT workers based on site varies over time according to the nature and stage of the project. For a large project at the analysis and design stage, TCS will have large numbers – up to 100 – on site in the UK, usually for several months at a time. Once the project goes into build and operation, the number drops back. In June 2009 TCS had about 40 staff at BA, deployed across 16 projects.

Mike Croucher emphasised the importance of this skill and flexibility: “The projects my team designs need access to highly scalable, flexible, world-class talent – in large or smaller numbers, according to BA’s need. That’s why we go external, supplementing our own team. TCS provides that complementary set of skills, and their business model works for us. Bringing staff in or out of the UK is in a sense their issue – but I want to be sure that TCS staff working on our business really know our needs. They come here on site, in order to go back to India and finish the project for us.

“This flexibility is key – but if I were to give an ‘ideal’ ratio for project delivery, I would say I aim to have 10 per cent on site here, and the 90 per cent balance working on our projects outside the UK, mostly in India.”

A. S. Lakshminarayanan, TCS’s Europe Region Head, added: “British Airways are long-term customers, and we work to understand their needs and provide the solutions accordingly. We have a well-established presence here in the UK, and we see our ideal model as harnessing UK skills and complementing that with global talent. BA is a shrewd and strategic user of this formula.”

Source: Tata Consultancy Services

- 6.109 According to Salt (2009), although all the companies interviewed use intra-company transfers specifically for career development, most intra-company transfers are project related, generally over 85 per cent. Specific career development moves are mostly for senior staff, while project-related moves are used for on-site working with clients because different skill sets are required, depending on the scale and complexity of the project. Therefore, in reality, it is difficult to separate the two forms of mobility, since project-related movement entails accumulation of experience while working on the client’s premises. This means, on the one hand, that an intra-company transfer secondment is a form of training provided on the premises of clients and perhaps at the expense of the domestic workforce, while on the other it increases the level of expertise of the provider’s workforce, enabling it to offer a higher quality of services and products.

6.110 We recognise the importance of this route to many multinational companies operating in the UK and its consequent contribution to the UK's economic prosperity. **Our recommendation is that the intra-company transfer route be maintained.** However, in the following sections we explore some of the concerns that have been raised with us in relation to how the current rules are applied to intra-company transfers and claimed abuses of this route, especially in relation to the provision of services to a third party.

### Should the intra-company transfer route be amended?

6.111 We have heard many claims that the rules of the intra-company transfer route are subject to abuse and that, as a result, there is displacement of resident workers and undercutting, particularly in the IT sector.

*"APSCo believes that the ICT system is being exploited, and abuses of the system have become more prevalent in the light of changing economic circumstances ... The abuse of ICT is detrimental to UK plc and, indeed, a UK information technology market that was once the envy of the world."*

Association of Professional Staffing Companies (APSCo) response to call for evidence

6.112 In considering claims of abuse, it is important to distinguish between situations where:

- employees or employers are operating within the rules of the system, but the rules mean that the system is not being put to its chosen use or achieving its intended outcomes; and
- employers or employees are not operating within the rules of the system.

6.113 We believe that many of the accusations of 'abuse' that were put to us fall within the first category. In such cases, a potential solution is to amend the rules to avoid the adverse outcomes. We discuss these issues below, focusing in particular on the rules on leave and residency and on the amount of time that an employee needs to spend working for the company abroad before coming to the UK on an intra-company transfer. In the second case, stronger enforcement of the rules may be required as well, or instead. We discuss that later on in this chapter.

### Residency and citizenship

6.114 As described in Chapter 2, the leave entitlement awarded to successful intra-company transferees is initially three years' leave to enter followed by a two-year extension if the immigrant still meets the requirements. Under the current rules, after five years of working in the UK on the intra-company transfer route or any other route under Tier 2, it is possible to be granted permanent residency.

6.115 We have received evidence and been told on many occasions that workers coming through this route should not be considered as 'immigrants', because they are coming for a temporary period. In many cases it is in the interests of the employer that these transferees return to work for their company in the country of origin. The CBI told us that it is *"deeply unhelpful to think of these workers as 'immigrants', as they are not here to settle and usually place little burden on the UK's infrastructure"*.

*“There may be scope to examine the extent to which the ICT route is placed on the ‘route to settlement’, given the benefit of the route is normally accrued by temporary transfers.”*

Department for Business, Innovation and Skills response to call for evidence

6.116 IBM told us that intra-company transfers are used to facilitate knowledge transfer to staff ultimately working on projects delivered overseas. Training is undertaken in the UK to address skill shortages in the country from which the transferees come and to which they will return. IBM argued that the transferees are not really undertaking a UK job and that use of intra-company transfers for this purpose actually promotes employment of UK resident workers to manage and up-skill overseas colleagues. The company also made the case that delivering projects for UK clients overseas allowed UK customers to import efficiencies and make themselves – and also the UK economy – more competitive.

6.117 NASSCOM, the trade body of the Indian-based IT and IT enabled services industry, provided evidence that the median stay of intra-company transfer workers in the UK is around 18 months, with 80 per cent of these workers returning to India within three years.

*“The majority of employees who are brought over to the UK are delegates, that is to say that they come on a fixed duration international assignment with the objective of returning to their home country at the end of that period in order to continue their development or support other projects elsewhere across the globe.”*

Siemens response to call for evidence

6.118 J C Bamford Excavators Ltd (JCB) told us that the average period in its case is even shorter than 18 months and that the ability to have short-term secondments to train and pass on in-depth knowledge and experience to overseas employees could be better supported by a new category of ‘short-term intra-company transfers’. The trade union Connect proposed to limit intra-company transfer durations to one year with no extensions.

6.119 However, we were also told that there are cases where a longer period is required, and that it could be detrimental to businesses and unnecessary costly to reduce the current duration. Marubeni, a Japanese company, told us that its *“expats have always been given assignments by the Head Office in Japan to come to the UK for about five years. Three years is insufficient to make any significant business contribution, identify and establish new businesses ... no-one stays permanently in the UK because at the end of their assignment (normally four to five years) they are keen to return to Japan.”*

6.120 Fragomen, an international immigration law firm, undertook a survey of its clients whose results showed that where companies have a short-term assignment policy the average length of international assignments is 1.09 years and that where companies have a long-term assignment policy the average length of assignment permitted is 4.1 years. The average length of an assignment taken in the UK, according to this survey, is 2.5 years, and only 17 per cent of assignees extend their stay in the UK.

6.121 On balance, we believe that the current durations and formula – of three plus two years – for intra-company transfers are important to employers and to support

UK inward investment. But employers tell us that this is a temporary route, and it is clear to us that temporary work is what the route was originally designed to facilitate. Allowing workers to settle permanently in the UK after coming on an intra-company transfer provides an incentive for employees to use it as a route to citizenship, and thus potentially to stay in the occupation permanently without the resident labour market ever being tested.

- 6.122 **We recommend that the intra-company transfer route should not lead to a right to permanent residency** in the way that the rules on settlement and citizenship presently allow. The period spent in the UK under the intra-company transfer route should not count towards qualifying time for settlement and citizenship. It is not possible to make a detailed recommendation at this point because, as explained in Chapter 2, the Government is consulting on how immigrants would earn the right to stay in the UK under new routes to citizenship. But we recommend that the Government consider intra-company transfers as a route to temporary rather than permanent residency in the UK as part of that process.

### **Prior time with the employer**

- 6.123 Several stakeholders have told us that they think the minimum period working with the company prior to the transfer, currently six months, should be increased. Unite and Connect have suggested that it should be 12 months; Migrationwatch UK believes it should be raised to three years because six months is not enough to develop any serious knowledge of an organisation. The argument is that a transferee with limited experience with the company is more likely than a more

experienced employee to be brought in to carry out a job that could be done by a UK worker, as the more experienced employee will be brought to the UK in order to apply their company-specific specialist knowledge.

- 6.124 Under the previous work permit arrangements the sponsor had to confirm that sponsored employees had company-specific knowledge and experience that was specifically required for the post on offer and that could not be provided by a resident worker. Similar requirements are in place in other countries, for example in Ireland.
- 6.125 On balance we decided not to recommend reintroducing these requirements because they are an additional burden imposed on those who are complying with the current rules, leave too much discretion to individual caseworkers (and thus create potential inconsistencies) and contradict the principle of employer sponsorship. Furthermore, an employer determined to abuse these requirements could find a way to do so.
- 6.126 The intra-company transfer route was not, in our opinion, designed to facilitate the employment of workers abroad purely on the basis that they will be subsequently transferred to the UK. Intra-company transferees should also have knowledge of the company they work for.

*“We support a tightening of the conditions ... including ... a requirement for a minimum period of 12 months working with the overseas company prior to transfer.”*

Unite response to call for evidence



6.127 Two of the IT companies interviewed in Salt (2009) said that increasing the period to 12 months would cause problems but that they would not be severe, as most transferees have already been with the company for more than one year and it is unlikely that the attrition rate in India would be affected. However, other companies said that the current six month rule is working well and that problems already arise if a new big project requires a heavy staff input: *“if the rule was increased to 12 months it would be a much bigger issue because attrition rates in India tend to be much higher than they are in the UK and to have someone there for 12 months, biding time until they can take client work, would encourage them to leave and work for someone else.”*

6.128 We believe that extending the minimum qualifying employment period prior to the transfer from six to 12 months would help to ensure that only people with company-specific expertise can be brought to the UK. Therefore **we recommend extending the qualifying period with the company overseas for intra-company transfers from six to 12 months.**

6.129 We recognise that this recommendation has the potential to stop companies from moving graduate trainees around countries on short-term placements. We have no evidence that short-term moves such as these displace UK workers, as employers told us that they often send UK trainees abroad too. The Forum for Expatriate Management expressed concern that other jurisdictions and global offices, in the US in particular, would not take UK trainees if US employees could not do an equivalent training cycle in the UK. We support the human capital accumulation of the UK and global workforce.

6.130 Such trainees are likely to be newly recruited, and we considered the option of dropping the requirement of a prior period of employment before coming to the UK. On balance, we believe that a shorter period of three months for graduate trainees can still meet business requirement while acting as a disincentive to potential misuse of this route.

*“Some organisations also use ICTs [intra-company transfers] as a key part of their international graduate development programmes, allowing UK graduate employees to train in other locations and bring this knowledge back to the UK for the sector, and non-UK graduates to carry out placements within the UK for the same purpose. This flexibility and the vital training it provides is essential for the success of international businesses who rely on a diverse and highly skilled workforce.”*

Oil and Gas UK response to call for evidence

*“A sub-category of Tier 2 CoS [certificate of sponsorship] for on-the-job training or work experience needs to be created which would not entitle the holder to accrue time for settled status and would be limited to 12–24 months’ duration ... A new work experience CoS would encourage trainees to return to their home country after a limited period of time in the UK and not remain in the UK for continuing work or settlement.”*

Leading management consultancy response to call for evidence

6.131 **We recommend a separate scheme for graduates only that would require three months' prior experience with the company, but with a maximum stay in the UK of 12 months.** Graduates coming via this route would not be able to switch to the general intra-company transfer route for a period of time afterwards. We leave it to the Government to consider whether this route should remain in Tier 2 or be moved to Tier 5, which is currently the tier for temporary workers.

6.132 Our recommendations regarding policy on intra-company transfers are summarised in Table 6.9.

### Enforcement of the intra-company transfer route

6.133 We summarised the rules surrounding the use of intra-company transfers in Chapter 2. Some potential ways in which the existing rules could be abused are:

- employers using the route to bring in employees with less than six months' tenure with the company;
- employers paying below the going rate for the occupation in question;

- the worker being employed in a different job to the one named on the certificate of sponsorship, which may be an unskilled job.

6.134 As with the RLMT, enforcement of intra-company transfers relies on a combination of employer sponsorship obligations and a post-entry compliance regime. The Department for Business, Innovation and Skills expressed the view that this represents a fundamental principle of the PBS.

*“One of the fundamental principles of the sponsorship system ... is that sponsors take on more responsibilities and liabilities to sanctions, in return for greater flexibility, efficiency of operation and simplicity in the system.”*

Department for Business, Innovation and Skills response to call for evidence

6.135 We were told of instances where immigrants who, with very little experience and often as new graduates, were brought in from overseas through the intra-company transfer route to work on complex IT projects, for which skilled and experienced resident workers were readily available. We were also told of cases

**Table 6.9: Summary of MAC recommendations on intra-company transfers**

Minimum qualification held	Prior period of employment	Maximum leave duration/extension	Time counts towards qualifying period for citizenship?
No minimum, subject to meeting Tier 2 points criteria	12 months	Three years (can be extended for a further two years)	No
Degree	Three months	One year (need to leave UK or switch to another non-intra-company transfer route after this period)	No

Source: Migration Advisory Committee



where the intra-company transferees were, in reality, paid a much lower amount than that stated in the certificate of sponsorship. However, these reports were only anecdotal and we cannot corroborate them.

- 6.136 The UKBA currently has a team of around 125 visiting staff responsible for monitoring sponsors under Tiers 2, 4 and 5. The sponsorship system is still bedding in, and it was introduced during a recession, so the number of sponsors will increase over time. The UKBA has provided us with some sponsorship data. In July 2009, there were 15,506 A-rated sponsors and 476 B-rated sponsors (data correct as of 24 July 2009). We understand that since the introduction of Tier 2 in November 2008 eight employers have had their licence revoked, which means they are no longer able to sponsor immigrants, and 15 licences are currently suspended, which means that the employers cannot issue any certificates of sponsorship while the UKBA carries out its procedures. The UKBA could not provide information on how many sponsors have been downgraded from A to B rating so far.
- 6.137 When an employer is downgraded or its licence is suspended or revoked, the employer is also removed from the public register. However, the UKBA does not publicly announce changes to this register. The UKBA does not issue fines for non-compliance with the PBS.
- 6.138 Many stakeholders told us that the monitoring and enforcement regime could be improved and made more transparent to ensure that this route is used as intended. CBI told us that *“potential abuse of the system by unscrupulous firms must be addressed through targeted enforcement, not reform of the system itself”*.

*“There should, in our opinion, be a clear regime of sanctions, including the suspension or rescinding of sponsorship licences for serious, repeated transgressions of the rules. It is in all our interests for the new system not only to work, but also to be seen to work.”*

Tata Ltd response to call for evidence

*“We strongly support compliance by all. If abuse is suspected or found, it should be tackled by stricter control of existing regulations and sanctions against those who are not fully compliant.”*

Permits Foundation response to call for evidence

*“The system for monitoring, reporting, and dealing with abuses [of the intra-company transfer system] should be made more robust.”*

Professional Contractors Group response to call for evidence

*“It is ILPA’s [the Immigration Law Practitioners’ Association] understanding that one of the triggers for examining restrictions on Tier 2 of the Points Based System is anecdotal evidence about the way in which the Tier 2 intra-company transfer route is used and whether in practice, in certain cases in certain sectors, it is being used to undercut the resident labour market. Should further research back up such anecdotes, ILPA considers that the Government have ample measures in place that can be used to take such action as is deemed necessary: the immigration rules, the sponsor-licensing system, and the existing obligations on employers. Many of our members have reported that their clients have requested compliance visits, only to be told by the UK Border Agency that this is not a priority.”*

ILPA response to call for evidence

6.139 The Home Affairs Committee (2009) also concluded that *“intra-company transfers give a significant amount of discretion to individual companies ... We therefore conclude that urgent and rigorous investigation is needed into the intra-company transfer route and possible abuses of this route ....”*

6.140 We have noted the reports of abuse of intra-company transfers, but believe that a substantial portion of perceived abuse of the system relates to the current rules not being sufficiently specific to ensure that the route is used only for its intended purposes. We believe that the recommendations made earlier in this chapter will improve the incentives of employers and employees to act in accordance with the intended purpose of this route.

6.141 We did not receive firm evidence of outright abuse of this route. However, strong enforcement activity will allow better information to be collected and better detection of any abuse that is occurring. **We strongly recommend that the Government give consideration to whether the level of resource currently being devoted to enforcement of intra-company transfers is sufficient and whether the degree of transparency around enforcement of the system could be increased.**

6.142 Gaining hard empirical proof of abuse or displacement, or lack of these, under the intra-company transfer route has been challenging. This is a valid and important area for further research over a longer timescale than we have had in which to complete this report.

### **Allowances under the intra-company transfer route**

6.143 Under the intra-company transfer route, allowances for accommodation and travel can count towards up to 30 per cent of the salary total for PBS points purposes, or 40 per cent if the certificate of sponsorship is for a period of 12 months or less. Other allowances can be paid in addition to this. Allowances are not taxed if the immigrant claims to be coming for under two years.

*“When assessing salaries against going rates, caseworkers can only take allowances into account when:*

- *they are a guaranteed part of the salary package and are similar to those normally paid to resident workers doing similar work; or*
- *they are given to ICT workers who are also being paid their overseas salary and are a guaranteed part of their salary package.*

*We have concerns about how this operates in practice. Generally allowances to UK settled workers would be paid in the form of expenses additional to basic salary. In the case of sponsored migrant workers working for a company in the UK under the intra-company transfer scheme, allowances may form part of their salary package. In assessing the proposed pay against going rates, it is essential that proper comparisons should be made, and that like is compared against like to ensure there is no undercutting of UK pay rates.”*

Unite response to call for evidence

6.144 Although immigrants are more likely than resident workers to receive certain types of allowances, such as those for accommodation away from the person’s usual place of residence, the rules concerning taxation of employees’

allowances apply to domestic workers as well as immigrants. It is therefore a tax policy issue and outside the scope of our review. But the issue of whether the treatment of allowances within the PBS allows immigrants effectively to undercut UK workers is within its scope. Consider the hypothetical example in Box 6.4.

- 6.145 Because of the potential to incentivise undercutting, we considered recommending that tax-free allowances should not count towards earnings for points purposes under the PBS. However, employers will often pay allowances for valid reasons, and it seems reasonable to regard them as part of the reward package. Instead **we recommend that allowances used for PBS points**

**purposes be scaled down when calculating points for earnings under the PBS.** We used a figure of 25 per cent for illustrative purposes in Box 6.4, but points should be scaled down by an appropriate factor to be agreed between the UKBA and HM Revenue and Customs (HMRC).

- 6.146 We were also told that, currently, an employer can issue a three-year certificate of sponsorship while the employee simultaneously tells HMRC that he or she is coming to work in the UK for under two years. We understand that it is common for immigrants in receipt of allowances to claim that they intend to stay in the UK for one year and 364 days.

#### Box 6.4: A simplified hypothetical example of using tax-free allowances to undercut resident workers

A multinational company with offices in the UK has a vacancy. It can either use a UK worker to fill this post or bring in a foreign employee on an intra-company transfer. There is a pool of appropriately skilled resident workers available to do the job for £24,000 per annum, of which we assume, for illustrative purposes, that 25 per cent would be payable in income tax.

Under **scenario A**, the employer recruits from within the UK on a salary of £24,000 p.a.

- The salary cost to the employer is £24,000.
- The resident employee receives a salary of £18,000 after tax.

Under **scenario B**, the employer agrees to employ an intra-company transferee on £18,000 per annum, with a tax-free allowance of £5,000.

- The cost to the employer in terms of salary and allowance is £23,000.
- The immigrant employee receives a salary of £13,500 after tax, plus a tax-free allowance of £5,000: £18,500 in total.

The immigrant employee agrees to this because the after-tax take-home pay plus allowances is higher than in scenario A.

So, both the employer and immigrant employee are better off under scenario B, but an immigrant worker is potentially employed in place of a resident one.

Source: Migration Advisory Committee

6.147 In some circumstances it is possible that the employer will issue a three-year certificate of sponsorship for reasons of administrative convenience, even if the expected stay in the UK is under two years. It is also possible that immigrants may initially intend to come to work in the UK for under two years and subsequently change their plans. Nevertheless, where the duration of the certificate of sponsorship is over two years, and the immigrants are claiming that they intend to stay for less than two years, this is evidence of **potential** abuse of the tax system, especially if it occurs repeatedly in relation to employees of a particular company. **We recommend that the UKBA and HMRC should consider the scope for sharing information on what they are being told in relation to the intentions of particular immigrants, and investigate potential abuse of the system on the basis of risk where there is an indication that abuse of the tax system may be occurring.**

## 6.5 Payment of the going rate

6.148 As discussed in Chapter 2, the UKBA has agreed codes of practice for all relevant occupations setting the minimum rate that the employer must pay to Tier 2 immigrants. These rates are derived in one of two ways:

- from industry-specific information, where available; or
- from the latest ASHE data at the 25th percentile by four-digit SOC code.

6.149 The rationale is that undercutting and displacement of the resident UK workforce can be prevented by requiring the employer to pay a salary equivalent to that which they would pay the domestic worker, were that worker available.

6.150 Nevertheless, we were told that the methods used to derive the going rate may not always prevent undercutting. We were told about specific instances of undercutting of salaries and displacement of UK workers. Trade unions have expressed their concerns about the way that intra-company transfers are being used by companies in the IT sector.

*“... the intra-company transfer system is being used by companies in the ITCE [information technology, communications and electronics] sector resulting in the potential for substitution and/or displacement of settled skilled workers and the possible undercutting of pay rates as a means to boost profits at the expense of the resident workforce and the future UK skill base.”*

Unite response to call for evidence

6.151 Connect, the union for professionals in communications, told us that, while it is not sensible to restrict Tier 2 to shortage occupations only, there is an economic case for tightening up the intra-company transfer route in order to maximise the potential of the UK workforce while avoiding damaging the UK's competitiveness. The Professional Contractors Group (PCG) told us that UK IT contractors are replaced by non-EEA workers through intra-company transfers on cost grounds alone.

*“... the intra-company transfer is not being used for its original intention ... it is instead used to cut costs, and facilitate future offshoring activity. It is clear to PCG that migrants brought in under the ICT route are displacing UK IT contractors.”*

PCG response to call for evidence

**Table 6.10: Cost of an average intra-company transfer compared with an equivalent local hire**

Cost of intra-company transfer compared with equivalent local hire	Percentage of responses
50 per cent less	12
25 per cent less	5
Same	34
25 per cent more	16
50 per cent more	15
100 per cent more	5
200 per cent more	8
300 per cent more	5

Source: Confederation of British Industry response to call for evidence

6.152 The CBI survey results showed that for most companies the cost of bringing an intra-company transferee to the UK was significantly higher than that of hiring an EEA worker. As shown in Table 6.10, about half of the companies in the CBI's sample estimated that they were paying a premium of 25 per cent or more for an intra-company transferee than for a local hire. Nearly one in five estimated that they were paying at least double. However, a small minority of companies appear to be achieving significant cost savings, with 16 per cent saving 25 per cent or more, compared with a local hire.

6.153 A leading management consultancy in a survey of its clients also reported that for the vast majority (84 per cent) it is more expensive to hire a Tier 2 worker rather than hire from the domestic workforce. However, 8 per cent reported that it is less expensive.

6.154 We see advantages to use of industry-level codes of practice, as these provide greater granularity than ASHE, but our

main concern with the going rate is the fact that currently it is not applied consistently across all occupations. We believe that the UKBA should corroborate the going rates determined in the industry codes of practice by comparing them with ASHE as a quality assurance test.

## 6.6 Fees

6.155 In addition to the recommendations discussed above, some of which aim to reduce the incentive or scope for the undercutting of UK workers, we considered recommending that the fee for employing immigrants through Tier 2 be increased in order to reduce this incentive.

6.156 As explained in Chapter 2, there are three types of fees associated with bringing in an immigrant through Tier 2. First, an employer must pay a licence fee to join the register of sponsors. Second, a fee must be paid by the employer to obtain a certificate of sponsorship for this tier. Third, Tier 2 immigrants must pay a fee for their visa.



6.157 The fee that we considered recommending a change to was the certificate of sponsorship fee, which is currently a one-off fee of £170. We considered recommending a higher fee, or the introduction of an annual rather than a one-off fee, to reduce the incentive to undercut.

6.158 Assume an employer is paying a salary of £20,000 per annum to an intra-company transferee who will stay in the UK for three years. The total salary package is therefore £60,000. The cost of the certificate of sponsorship is only 0.3 per cent of £60,000. If, alternatively, the salary is £60,000 per annum, the certificate accounts for only 0.1 per cent of the total cost.

6.159 Of course, the above example is highly simplistic. It does not account for the total costs borne by the firm in terms of employing an immigrant worker, which in many cases will be substantially higher than the salary plus the cost of the certificate of sponsorship. As shown in the CBI survey results given in Table 6.10, the multiple differs substantially across sectors. In some cases the employer will also pay for the visa, which costs an additional £265 (out of country) or £465 (in country).

*“Almost all our clients who have submitted evidence to the MAC confirmed that the cost of an ICT [intra-company transfer] was at least 25 per cent more expensive than recruiting locally.”*

Kingsley Napley response to call for evidence

6.160 Employers who wish to use migrant labour to undercut the UK workforce will be more price sensitive than those who do not. If the sponsorship fee was increased by

a factor of 10, it is likely that many financial sector employers would still choose to employ immigrants. On the other hand, an employer using immigrant labour to undercut the UK workforce would think again. Furthermore, higher fees could be justified on a cost-recovery basis if the revenue was used to fund increased enforcement activity.

6.161 However, we are aware that employers may deduct fees from workers' salaries, in which case increasing fees is ineffective at reducing the incentive for employers to undercut wages.

6.162 If our other recommendations, including adequate levels of enforcement activity, are successfully implemented, then an increase in the sponsorship fee should not be required in order to ensure that Tier 2 achieves its objectives. Many stakeholders made the point to us that we should not unnecessarily penalise employers who abide by the rules. None of the stakeholders who commented on this option in their written submissions were in favour of it as a means of preventing abuse of the system. Therefore, on balance, we are not recommending an increase in the fee at this stage.

*“Concerns about potential abuse of the system by unscrupulous firms must be addressed through targeted enforcement, not reform of the system itself. Those who seek to abuse the system are a small minority, and the response must be proportionate; punishing compliant firms by changing the rules after they have invested significant sums of money in delivering the Government's ‘enhanced concept of sponsorship’ would be perverse.”*

CBI response to call for evidence

*“The introduction of Tier 2, with its specific codes of practice and minimum salary requirements, has already considerably reduced the possibility for employers to ‘undercut’ the local workforce by recruiting non-EEA nationals at a lower salary rate than resident workers.”*

A leading financial services company response to call for evidence

6.163 If the issues associated with ensuring that the system is appropriately policed cannot be fully addressed, by our recommendations or other means, the Government should give consideration to using fees as a lever to improve compliance over the longer term.

## 6.7 Shortage occupation route

6.164 Many stakeholders told us that the shortage occupation route alone would not meet their needs. However, most stakeholders were content with the shortage occupation route and its current role in Tier 2.

6.165 Some stakeholders have expressed views on how the shortage route should change. DWP argued that the RLMT should apply to the shortage route. DWP’s suggestion was that employers in occupations on the shortage list should be required to advertise for a minimum of two weeks, while those in other skilled occupations advertise for a minimum of four weeks. DWP accepts that there may be a greater need now to recruit immigrants in occupations on the shortage list and does not believe that now is the right time to significantly increase the restrictions on employers recruiting immigrant workers. However, it believes that because of the increasing number of unemployed people in the UK this extra requirement for employers should be put in place to

ensure that the jobs on the shortage list are still advertised in the UK first.

6.166 We have considered this suggestion. However, we do not accept that the RLMT should apply to shortage occupations. We believe that the current shortage methodology already tests the resident labour market and therefore to apply the RLMT to shortage occupations would be an unnecessary burden on employers suffering from a shortage and on government resources.

6.167 We also considered Tier 2 immigration policy in the context of the Government’s policy on skills activism as set out in the paper *New Industry, New Jobs* (HM Government, 2009b). A more active approach to skills is explained as requiring the skills system to be more flexible and responsive to supply and demand issues, many of which will be driven by demand from growth industries such as ‘low carbon industrial strategies’. The argument was put to us by the Department for Business, Innovation and Skills that it is important that the migration system works in a way that supports demand from those industries that will drive discovery and economic growth and where there are not enough skilled UK workers to meet that demand.

6.168 We believe that our current methodology for the shortage route is flexible enough to enable employers to satisfy demand in areas where the UK supply falls short. We have not been asked to identify strategic growth sectors. However, if the Government or the private sector undertakes significant investment in strategic growth sectors, our shortage methodology can potentially accommodate evidence on future shortages, if the supporting analysis that is provided to us is sufficiently robust.



6.169 In collaboration with the UK Commission for Employment and Skills we have commissioned a research project to carry out a conceptual review of skill shortages and needs. We have also commissioned other projects to inform our shortage occupation methodology. These will, in the longer term, allow us to develop our approach to future growth sectors and shortages in skilled occupations. We will report progress in our reports on the shortage occupation list in autumn 2009 and spring 2010.

6.170 The Home Affairs Committee (2009) expressed the preference to use the shortage occupation list only to provide a degree of flexibility in the short term and for cyclical shortages in exceptional circumstances. Long-term and structural shortage should be addressed by adapting the point criteria rather than by inclusion in the shortage list. We will consider these recommendations in more detail in our next shortage report in autumn 2009.

## 6.8 Ministers of religion and sportspeople

6.171 In Migration Advisory Committee (2009c) we said that our working assumption was that, unless we received evidence to the contrary, these routes do not play a major economic role. Only very few stakeholders

included comments on these Tier 2 routes in their evidence to us. This, in part, reflects the relatively small flows through these routes.

6.172 Analysis of PBS management information data on approved applications shows that sportspeople and ministers of religion are very minor routes under Tier 2 in terms of numbers. Together these routes account for less than 3 per cent of approved immigrant applications, as shown in Table 6.11.

6.173 We were told by Church Communities UK that ministers do not work for the money but in response to a calling. They stated that there are not enough individuals with this calling in the EEA to fill all the posts in the UK. They also stressed the importance of the moral and spiritual contribution of ministers to British society, especially in times of economic hardship.

*“There is generally a lack of resident workers who feel called to serve as a minister of religion, hence the need for migrants from overseas to lead congregations in this country ... Members of religious orders are generally regarded as ‘supernumerary’ and hence do not have an impact on resident workers who may wish to join an order.”*

Church Communities UK response to call for evidence

**Table 6.11: Approved immigrant applications for sportspeople and ministers of religion under Tier 2, Nov 2008 to May 2009**

	In-country	Out-of-country	Total	Percentage of Tier 2
Sportspeople	18	79	97	0.6
Ministers of religion	127	148	275	1.7
Total	145	227	372	2.3

Source: UK Border Agency management information data

6.174 Another stakeholder, who wished to remain anonymous, explained that these two routes account for a very small proportion of the total number of immigrants entering via Tier 2. They also said that economic and labour market conditions are irrelevant, albeit for differing reasons, to these two routes.

6.175 We retain the view that these are not economically significant routes and make no recommendations regarding the existing arrangements for entry under the Tier 2 routes for ministers of religion and sportspeople.

## 6.9 Business visitors

6.176 The business visitor route was summarised in Chapter 2. Some stakeholders raised concerns about the use of the route to gain commercial advantage. Migrationwatch UK told us that it believes that this route has been “*very substantially loosened*”, and others told us that the route is susceptible to abuse because it is vaguely defined and not subject to the restrictions and requirements of Tier 2, such as employer sponsorship, and UK employment law.

*“It would not be at all difficult to rotate staff with business visitor status in such a way as to effectively fill positions in Britain.”*

Migrationwatch UK response to call for evidence

6.177 Connect suggested to us that any tightening up of the intra-company transfer route must be accompanied by changes to ensure that the business visitor route is not used as a means of negating the impact of changes to the intra-company transfer route.

*“We would suggest that, for our sector at least, the business visitor scheme should be capped at one month, which is sufficient time for anyone who is engaged in genuine work covered by the scheme, e.g. attending a conference, undertaking a sales tour or taking part in a training course.”*

Connect response to call for evidence

6.178 It is not within our present remit to make recommendations regarding the business visitor route. Nor have we examined in great depth the comments that were made to us regarding this route. But the Government may wish to keep this route under review in order to ensure that it is achieving its desired objectives and not inadvertently undermining the PBS.

## 6.10 Conclusions and further research

6.179 The structure of Tier 2 is, as a whole, well designed for achieving its economic aims, and for encouraging labour immigration to adjust to changing labour demand over the economic cycle. We do, however, make some recommendations with regard to the design and operation of specific routes within Tier 2.

6.180 Our analysis and recommendations primarily concern the features of a well-designed system for regulating new skilled immigration from outside the UK. We have not considered in depth the issue of how our recommendations should be applied to immigrants already in the UK looking to extend their stay, as we see this as an operational decision for the Government. However, our general view is that, where an individual has operated within the existing rules and requirements, there is a case for putting in place transitional arrangements that would prevent a sudden and unexpected raising of the bar for that person.

6.181 For Tier 2 to achieve the desired economic outcomes, employers, immigrants and other relevant parties need to act in a manner that is consistent with the objectives of the policy. This can be partially achieved by providing the right incentives. The recommendations discussed above aim to achieve that.

6.182 We therefore make the following recommendations with regard to the design and operation of Tier 2. In terms of calibration of points we recommend that:

- the UKBA consider whether specific professional qualifications should be regarded as equivalent to NVQ level 3, or bachelor's or master's degree level, when allocating points under the PBS, where there is good evidence to support such claims;
- a master's degree be awarded 15 points in Tier 2, instead of the current 10 points;
- 5 points be awarded for prospective earnings of at least £20,000 per annum instead of the current £17,000;
- 20 points be awarded for prospective earnings of at least £32,000 per annum instead of the current £24,000;
- the minimum threshold for gaining 10 points be raised to £24,000 per annum, and the minimum threshold for gaining 15 points be raised to £28,000 per annum; and
- certain occupations involved in the delivery of key public services, to be set out by the Government, be awarded an extra 5 points under the RLMT route. This would also apply to individuals working in these occupations switching to Tier 2 from the Tier 1 post-study category.

6.183 In terms of the RLMT we recommend that:

- the route be kept in place;
- the required duration of vacancy advertising be increased to four weeks for all jobs; and
- the Government consider the scope for introducing a certification regime, at least for those employers identified as high risk.

6.184 In terms of the intra-company transfer route we recommend that:

- the route be kept in place;
- the route should not lead to a right to permanent residency;
- the qualifying period with the company overseas be extended from six to 12 months;
- a separate scheme be created for graduates only that would require three months' prior experience with the company, but with a maximum stay in the UK of 12 months; and
- the Government give consideration to whether the level of resource currently being devoted to enforcement of intra-company transfers is sufficient and whether the degree of transparency around enforcement of the system could be increased.

6.185 Regarding allowances for Tier 2 immigrants, we recommend that:

- allowances used for PBS points purposes be scaled down when calculating points for earnings under the PBS; and
- the UKBA and HMRC consider the scope for sharing information on what they are being told in relation to the intentions of particular immigrants, and

investigate potential abuse of the system on the basis of risk where there is an indication that abuse of the tax system may be occurring.

- 6.186 We are not recommending an increase in the sponsorship fee at this stage. However, if the issues around ensuring that the system is appropriately policed cannot be fully addressed by our recommendations or other means, the Government should give consideration to using fees as a lever to improve compliance over the longer term.
- 6.187 We have had limited time in which to carry out this analysis, and some questions would benefit from consideration over a longer timescale, including:
- whether there is a case for developing a more nuanced definition of skill under the PBS, and the practical issues associated with implementing this;
  - whether Tier 2 has the balance right between points for earnings and qualifications;
  - whether NQF level 3 is the appropriate skill threshold for Tier 2;
  - a review of the UK and international literature examining how labour market and immigration policies can be designed to create employee and employer incentives that aid the practical enforcement of the policies;
  - the importance of language skills in determining immigrants' economic success; and
  - the appropriate level of maintenance requirement under Tier 2.

## Chapter 7: **Dependants**

### **7.1 Introduction**

- 7.1 Chapter 2 of this report set out the UK Border Agency (UKBA) rules and regulations governing how Points Based System (PBS) immigrants can bring dependants to the UK. Under the PBS, an immigrant may bring with them the following categories of person as a dependant: a spouse, partner or fiancée/ fiancé, and children under 18 years of age. 'Partner' includes civil partners, same-sex partners and unmarried partners.
- 7.2 This chapter considers the economic impact of dependants of PBS immigrants, and their place in the labour market. The Government has not asked that we advise on policy in this area. However, there is scope for the Government to amend the Immigration Rules to prevent dependants from obtaining employment or to restrict their ability to work in some way.

### **7.2 Data, literature and evidence**

- 7.3 There are very limited data on dependants because they are not required to inform the authorities about what they are doing in the UK, and a person's dependant immigration status is not recorded in national datasets. Data from the previous work permit arrangements did not cover dependants and, although management information is available from the PBS, this contains little detailed information about immigrants' dependants.
- 7.4 We have obtained some UKBA Control of Immigration statistics relating to dependants, although we have already made the point in Chapter 5 that we are cautious in our interpretation of these statistics.
- 7.5 We have been able to carry out some limited analysis using data from the Labour Force Survey (LFS). In this analysis we have attempted to define principal immigrants and their spouses and cohabiting partners, but not dependant children. (Only dependant children aged 16 or 17 would be relevant to the analysis of the short-term economic contribution of dependants, but preliminary work has shown that the number of such individuals would be too small to allow meaningful results to be derived.) We do not attempt to define any other type of dependant.
- 7.6 The 2008 Eurostat ad hoc module *The Labour Market Situation of Migrants and their Immediate Descendants* was added to the LFS in 2008, and contains additional questions to those usually asked. However, as this module was only included in one quarter of the LFS, the sample size derived from it is very small, and the additional questions provide only a small amount of further information relevant to our analysis. The LFS analysis in this chapter refers to the general survey unless otherwise specified.

- 7.7 The LFS data did not allow us to directly identify PBS immigrants and their spouses/partners. We therefore needed to make assumptions using proxy groups based on a range of LFS variables when distinguishing between principal immigrants and their spouses/partners.
- 7.8 We could either have looked at all non-European Economic Area (EEA) immigrants who have entered the UK in 2009, only covering the life of the PBS, or used data from a longer time period. The first method leads to severe sample size problems, in that the numbers coming in have been below those required to generate meaningful results. The second method gives a larger sample size, but includes those who came under the old system as well as those who arrived under the PBS.
- 7.9 We decided that the sample size problem was terminal, and so used the four most recent quarters of LFS data (2008 Q2 to 2009 Q1). Immigrants were defined as those who reported non-EEA nationality and who first entered the UK not more than five years ago. We also restricted the sample to those of working age.
- 7.10 Married or cohabiting immigrant pairs were matched using identifiers for LFS wave, family unit, person within the family unit and intra-household relationship. Within these pairs, the person who entered the UK first was initially defined as the principal immigrant. This method allowed us to distinguish between principal immigrants and their spouse/partner in around half of the pairs in our sample.
- 7.11 We then considered alternative methods for distinguishing within the remaining pairs, to allow us to increase the size of our sample. One option was to define the principal immigrant as the head of the household (an LFS derived variable). Another was to define the principal immigrant as being the individual with the higher annual salary. However, both of these methods are likely to give a sample that is biased towards men being defined as principal immigrants.
- 7.12 We decided to distinguish the principal immigrant from their spouse using year and month of entry variables: this was the only method to provide a sufficient degree of accuracy. Where this method was unable to define immigrant types (i.e. where the variables were missing or equal within the pair), the pair was dropped altogether. This left us with 400 pairs – quite a small sample. It is important not to place too much emphasis on the results derived from the LFS sample and presented below.
- 7.13 The method used to generate the LFS sample described here is likely to lead to misclassification. Pairs of observations may enter our sample as immigrant pairs, when in fact they should be omitted. Examples of this are given below:
- Two completely unrelated immigrants have entered the UK, then met and married at a later date. In this case, the pair do not represent a principal immigrant and a dependant.
  - A principal immigrant or spouse/partner as defined in our sample has entered the UK as a refugee or through a family reunification route. In this case, it is inappropriate to use this individual as a proxy for PBS immigrants.
- 7.14 In considering these data we looked particularly at the labour market characteristics and outcomes of immigrant spouses or cohabiting partners. We also looked at how the characteristics and outcomes of principal immigrants and their spouses or cohabiting partners compared.



- 7.15 LFS results are discussed below. We also obtained some survey data from the Confederation of British Industry (CBI) and the Permits Foundation. The CBI conducted a small survey of its members, garnering 185 responses and generating some data on dependants.
- 7.16 The Permits Foundation (an international non-profit corporate initiative to promote access to employment for dependants through improvements in work permit regulations) conducted a survey of spouses and partners worldwide, including around 250 UK-based respondents (this figure varied slightly by question). But the distribution of nationalities did not match that from the PBS management information data, and so the sample was not representative. In addition, Permits Foundation data is likely to be biased towards large, multinational companies – as distinct from small to medium-sized companies. However, the survey did directly identify dependants. On balance, we concluded that it did provide useful indicative data that we could consider alongside findings from the LFS and the CBI.
- 7.17 There is very little theoretical or empirical literature that looks specifically at dependants of immigrants. This is probably because it is very difficult to identify dependants in national data, and administrative data contain little detailed information. Some of our analysis and assumptions have had to be based on evidence about immigrants in general, rather than on specific information about dependants. Where we have located relevant literature, we draw attention to it in the rest of this chapter.
- 7.18 With the exception of the Permits Foundation survey, the evidence from stakeholders did not contain detailed information about the extent to which

dependants of PBS immigrants are in employment. Very little evidence was received in favour of restricting dependants' access to the labour market. The written evidence we received on dependants was mostly from employers and those involved in the recruitment of immigrant workers. Despite attempts to elicit such information, we received very little written evidence from individuals or groups of PBS immigrants, or from their dependants.

### **7.3 The role that dependants play in the UK labour market**

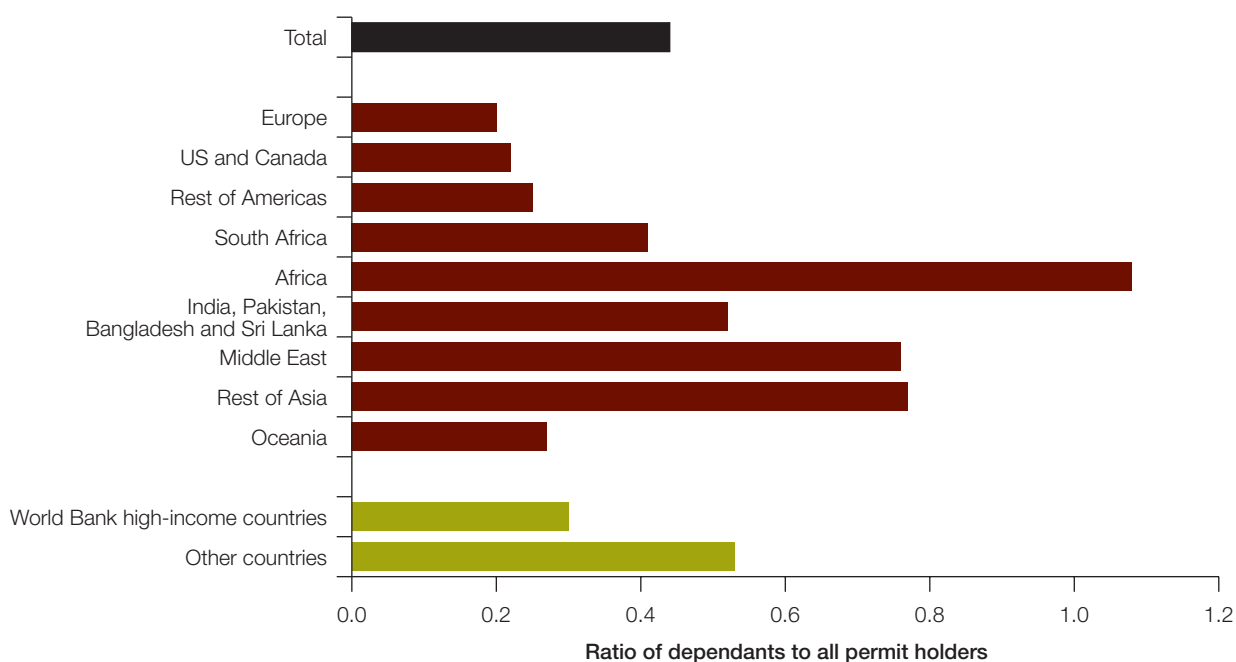
- 7.19 Because there is no readily available statistical data on dependants' role in the UK labour market, we have used proxy data and evidence from stakeholders to develop a picture of the defining characteristics of dependants, each of which are discussed below.

#### **Totals of dependants of PBS immigrants in the UK**

- 7.20 Overall inflows of dependants of work permit holders (and specifically those coming in under the PBS) are set out in Chapter 3. Control of Immigration statistics, which included a wider set of non-EEA immigrants than those coming through the PBS, show that in 2007, 37,700 dependants of work permit holders were admitted to the UK, in comparison to 86,300 possessing a work permit. This represents a ratio of approximately 0.44 dependants per work permit holder.
- 7.21 Figure 7.1 sets out how the ratio of dependants to work permit holders admitted to the UK varies according to their region of origin. In general, fewer dependants are recorded for permit holders from wealthier countries (although it is important to note that permit holders from wealthier countries are more likely to be short-term immigrants).



Figure 7.1: Ratio of dependants to work permit holders admitted to the UK by region of origin, 2007



Note: Figures show passengers holding work permits admitted to the UK, and therefore relate to out-of-country permit holders only (hence do not include what were previously called First Permissions, nor in-country extensions or employment changes). These data also encompass those admitted with non-PBS work visas.

Source: Control of Immigration statistics, 2007

7.22 Table 7.1 looks more specifically at those admitted as dependants of PBS immigrants under Tiers 1 and 2. Dependants are permitted under Tiers 4 and 5, but we were told by the UKBA that at present very few have been recorded. In total, the number of dependants of Tiers 1 and 2 applicants

admitted is around half the number of principal applicants, and dependants are almost equally divided between spouses and children. Overall, Tier 1 applicants record fewer dependants, although this is due to the low numbers recorded against main applicants under the Post Study route.

Table 7.1: Ratio of dependants to principal applicants under the PBS

		Average number of dependants per principal applicant		
		Spouse	Children	Either
Tier 1	General	0.45	0.38	0.83
	Investors, entrepreneurs	0.60	0.97	1.57
	Post Study	0.09	0.04	0.13
	<b>Tier 1 total</b>	<b>0.27</b>	<b>0.22</b>	<b>0.49</b>
Tier 2	<b>Tier 2 total</b>	<b>0.31</b>	<b>0.29</b>	<b>0.60</b>

Note: These data are calculated from both in-country and out-of-country applications, and include those extending from previous work permit or Highly Skilled Migrant Programme arrangements. Data on route of main applicant under Tier 2 are not recorded against dependants for in-country data.

Source: UK Border Agency management information data

7.23 The 2008 Q1 ad hoc LFS module provides some information on the stocks of dependants, as shown in Table 7.2. This shows that, in the second quarter of 2008, 214,889 immigrants (or 27.3 per cent of the total stock) had entered the UK in the previous five years to join a family or spouse.

7.24 The CBI survey recorded that only 75 firms – or 40 per cent of those who responded – commented on whether workers brought to the UK were accompanied by dependants. Of these firms, 77 per cent believed that principal PBS immigrants were accompanied by dependants, while 17 per cent did not consider this to be the case. The remainder were unsure.

### Age

7.25 LFS data indicate that there is little difference in the average age of spouses/partners and principal immigrants, with a mean age of 33 for the former and 34 for the latter. In 59 per cent of cases, the spouse/partner was younger than the principal immigrant.

### Gender

7.26 Management information data from the PBS on the gender of spouses/partners and main applicants was provided for out-of-country applications only, and is set out in Table 7.3. Under Tier 1, 80 per cent of dependant spouses/partners are female, and this proportion rises to 92 per cent under Tier 2. Lower proportions of women are recorded as main applicants. On the assumption that the majority of partnerships will be male–female ones, the difference in the proportion of females recorded for main applicants and spouses/partners suggests that, typically, female spouses/partners are more likely to accompany a male main applicant than vice versa.

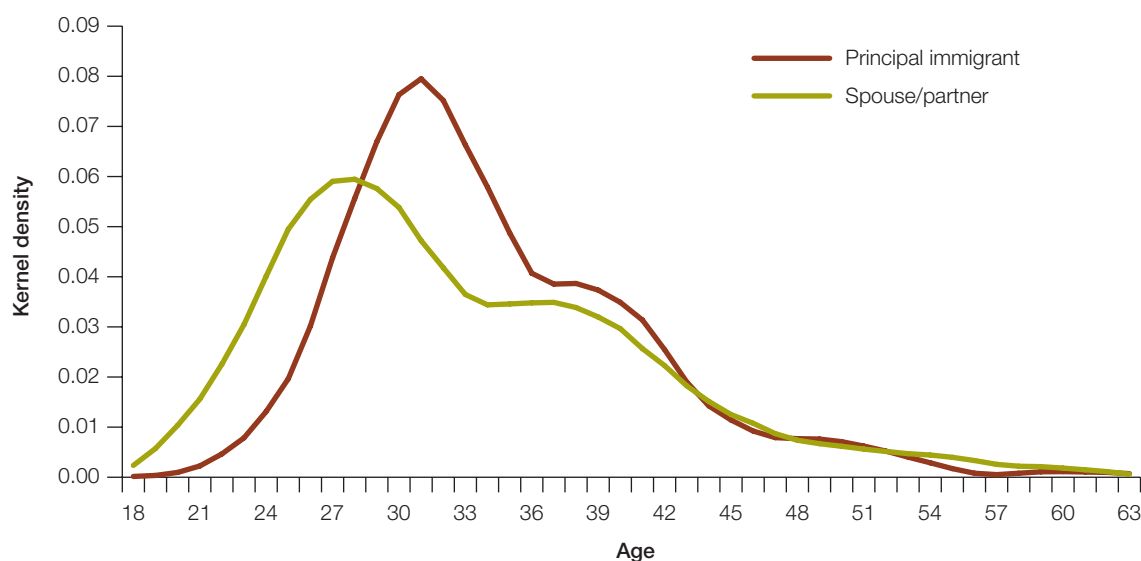
**Table 7.2: Stock of immigrants by reason for coming to the UK**

	Stock	Percentage of total
Employment	191,684	24.3
Study	208,867	26.5
Get married/form civil partnership in the UK	62,913	8.0
Join family/spouse already in the UK	214,889	27.3
Asylum	43,282	5.5
Some other reason	66,742	8.5

Note: Sample consists of individuals born in a non-EEA country who entered the UK not more than five years before the survey interview.

Source: 2008 Eurostat ad hoc module *The Labour Market Situation of Migrants and their Immediate Descendants*

Figure 7.2: Age distribution of principal immigrants and their spouses/partners



Source: Labour Force Survey 2008 Q2 to 2009 Q1

Table 7.3: Proportion of out-of-country visas issued under Tiers 1 and 2 by gender, Nov 2008 to May 2009

		Percentage of total	
		Male	Female
Tier 1	Main applicant	66	33
	Spouse/partner	20	80
Tier 2	Main applicant	78	21
	Spouse/partner	8	92

Note: Data on gender of applicants were not supplied for in-country applicants. These data are calculated from out-of-country applications and therefore do not include those extending their stay. Percentages do not always total 100 due to rounding.

Source: UK Border Agency management information data

7.27 Our LFS sample recorded 62 per cent of spouses/partners as female and 38 per cent as male. There are no same-sex recent immigrant pairs in the sample. The Permits Foundation survey recorded 81 per cent of dependants as female.

### Qualifications

7.28 Due to a lack of knowledge about the UK qualification framework on the part of immigrants, LFS data on qualifications held by immigrants are highly unreliable. However, for completeness – and due to the lack of a fully reliable and representative source – results are reported here. For consistency with the way that points are awarded for qualifications under Tier 2, the ‘no qualifications’ category here includes those who hold qualifications below A-level.

7.29 As shown in Figure 7.3, in the LFS a large proportion of immigrants report their highest qualification held as 'other qualification'. Of these individuals, 63 per cent of principal immigrants and 78 per cent of spouses/partners obtained these 'other qualifications' in a foreign country.

7.30 Analysis of the remaining individuals indicates that immigrant spouses/partners are more likely than principal immigrants to have no qualifications, while principal immigrants are more likely to hold all levels of qualifications at A-level or above. In 36 per cent of cases, the principal immigrant held a higher level of qualification than the spouse/partner, and in 48 per cent of cases the principal immigrant held the same level of qualification.

7.31 For comparison, the distribution of qualifications for the UK population is also given in Figure 7.3, showing that spouses/partners are more likely to hold a master's

degree or higher, but are also more likely to hold no qualifications.

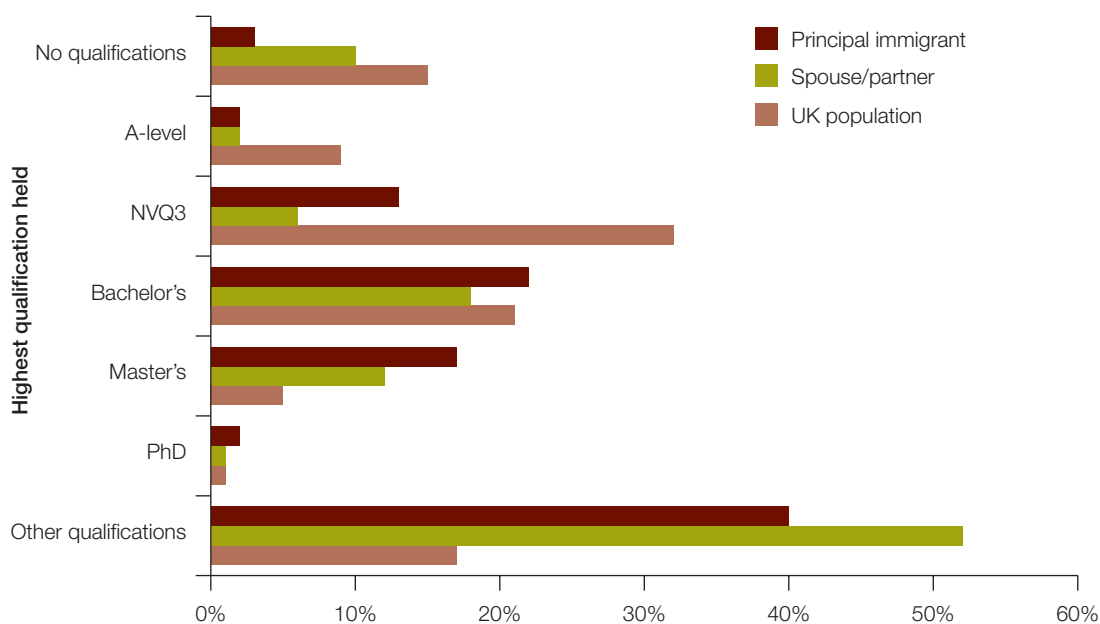
7.32 The Permits Foundation data recorded that 34 per cent of the sample of dependants held a bachelor's degree and 46 per cent held a master's degree, compared with 17 per cent and 12 per cent respectively according to the LFS data. In part, this difference between the two sources might be explained by immigrants having difficulty over qualification equivalence, as well as the Permits Foundation survey being restricted to a smaller group.

7.33 The Association of Foreign Banks told us that partners of PBS immigrants are typically skilled and make a contribution to the UK economy themselves.

### Employment

7.34 Overall, evidence on the employment of spouses/partners of PBS immigrants is sparse. The information we have gathered does not present a unified picture.

Figure 7.3: Highest qualification held by principal immigrants and their spouses/partners, compared with the domestic population average



Note: UK population is working age only. Qualifications defined in the LFS not as 'other qualifications' but below A-level will be defined here, as in Tier 2, as 'no qualifications'.

Source: Labour Force Survey 2008 Q2 to 2009 Q1

*“The issue of the economic contribution of dependants is complicated by the difficulty of obtaining statistics on their engagement with the labour market. The much lower response rates received in the CBI survey on this issue is partly explained by the fact that very few HR systems are designed to record the activities of employees’ dependants; it may also reflect that firms are uncomfortable reaching into the family lives of their employees.”*

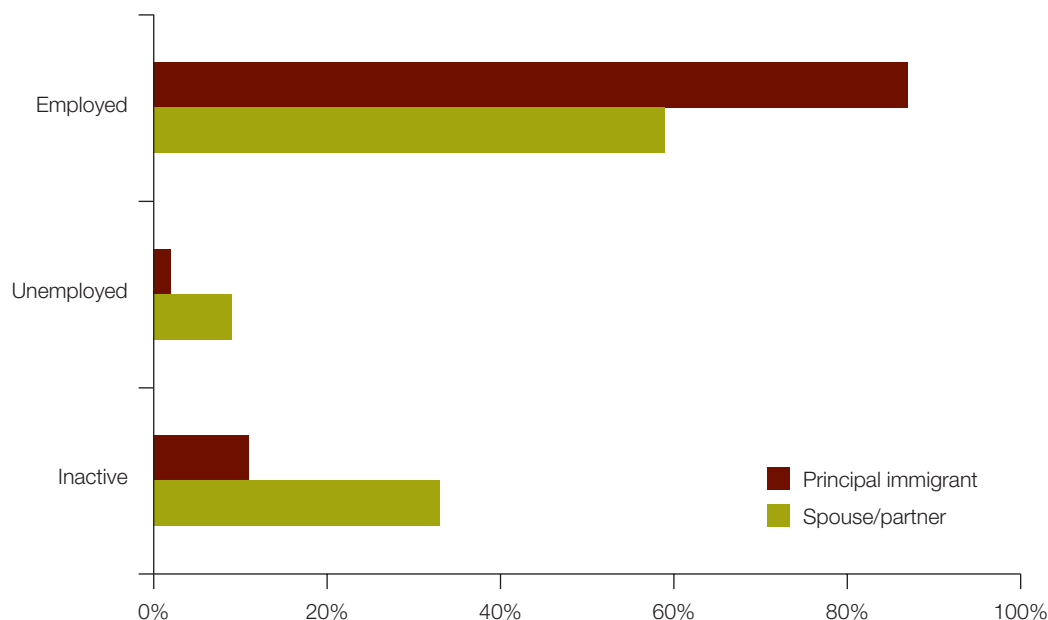
CBI response to call for evidence

7.35 Within the CBI survey, only 25 per cent of respondents (47 firms) commented on whether the spouse/partner of the immigrant was employed. Of those who did respond to this question, 20 per cent said that the spouse/partner would be employed. At a meeting with Japanese companies and medical clinics at the

Japanese Embassy, we were told that, in the case of PBS immigrants coming to work for these employers, dependants typically did not work. Rather, families were encouraged to actively participate in the local community.

7.36 Within the Permits Foundation sample, 85 per cent of dependants were employed before coming to the UK. This figure drops to 46 per cent after arrival in the UK. Of those not in employment, 73 per cent wished to be employed, pointing to a considerable gap in the integration of immigrant spouses/partners into the UK labour market. However, these proportions are greater in the UK than in the worldwide survey information collected by the Permits Foundation. By way of contrast, BP told us that approximately 10 per cent of the spouses/partners of their PBS immigrants choose to work in the UK.

Figure 7.4: Economic activity of principal immigrants and their spouses/partners



Note: The definition of unemployment is internationally agreed and recommended by the International Labour Organization, where every individual aged 16 or over is classified as either in employment, unemployed or economically inactive. Individuals are defined as employed if they did at least one hour’s paid work in the week prior to their LFS interview, or have a job that they are temporarily away from. Individuals are defined as unemployed if they are without a job, want a job, have actively sought work in the last four weeks and are available to start work in the next two weeks; or are out of work, have found a job and are waiting to start it in the next two weeks.

Source: Labour Force Survey 2008 Q2 to 2009 Q1

- 7.37 As shown in Figure 7.4, the LFS data record that 87 per cent of principal immigrants and 59 per cent of spouses/partners were employed. Thirty-three per cent of spouses/partners were inactive, while 9 per cent were unemployed and seeking work. Of those who are employed, 94 per cent of principal immigrants and 83 per cent of spouses/partners work full time.
- 7.38 Table 7.4 shows that 81 per cent of spouses/partners were employed in unskilled occupations, compared with 38 per cent of principal immigrants, by our definition of skilled and unskilled as developed in the Migration Advisory Committee's reports (2008a and 2009b) and as discussed in Chapter 4 of this report.
- 7.39 Compared with their spouse/partner, principal immigrants are more likely to be employed in higher skilled occupations, as shown in Table 7.5. Dependants are most likely to be employed in personal service occupations and elementary occupations.
- 7.40 At a meeting with the Permits Foundation and PricewaterhouseCoopers, attended by representatives from various blue-chip companies, it was confirmed that some dependants work in unskilled jobs. This was said to be a matter of choice and could be on account of interrupted career patterns, limited language skills, a lack of available support networks, part-time working and qualifications not being recognised in the UK.
- 7.41 Limited evidence on international labour market outcomes for immigrants is available from the international literature. An Australian survey of visa holders and their spouses in Khoo, McDonald and Hugo (2005) found that 62 per cent of spouses were employed. Spouses of visa holders in managerial occupations had the lowest employment rate: just 44 per cent. This is consistent with the proportions of spouses in employment in the Permits Foundation data, where a significant proportion of the principal immigrants can be expected to be in managerial occupations.
- 7.42 The largest number of spouses in the Australian survey were employed in the health and community services. The percentage of spouses employed in the IT and communications industry was also relatively high, although not as high as for the visa holders themselves. A larger percentage of spouses than visa holders were employed in education, personal services and retail. Overall, there were fewer spouses in managerial occupations and more in clerical, sales and services occupations compared with the visa holders themselves.
- 7.43 Cooke (2007) looked at female spouses of Chinese principal immigrants to the UK, and found that they have a lower employment status here than they did in China – and perhaps even lower than that of their UK counterparts with similar qualifications, work experience and childcare constraints.

**Table 7.4: Percentage of principal immigrants and their spouses/partners employed in skilled occupations**

	Unskilled	Skilled
Principal immigrant	38	62
Spouse/partner	81	19

Note: Occupations defined as skilled at the four-digit Standard Occupational Classification level, as discussed in Chapter 4 and the Migration Advisory Committee's reports (2008a and 2009b).

Source: Labour Force Survey 2008 Q2 to 2009 Q1

**Table 7.5: Employment of principal immigrants and their spouses/partners by occupation**

	Percentage of total	
	Principal immigrant	Spouse/partner
Managers and senior officials	9.8	8.0
Professional occupations	28.9	12.6
Associate professional and technical occupations	32.7	10.5
Administrative and secretarial occupations	0.6	2.1
Skilled trades occupations	3.8	5.0
Personal service occupations	13.9	26.8
Sales and customer service occupations	2.0	8.0
Process, plant and machine operatives	2.9	9.6
Elementary occupations	5.5	17.6

Note: Figures read downwards, such that the figures in the first column give the proportion of principal immigrants who are employed in a given occupation, and the figures in the second column give the proportion of spouses/partners who are employed in a given occupation. Occupations defined at the four-digit Standard Occupational Classification level. Percentages do not total 100 per cent due to rounding.

Source: Labour Force Survey 2008 Q2 to 2009 Q1

## Pay

7.44 As pay data are collected only from a relatively small proportion of LFS interviews, there were insufficient observations in our sample to enable us to analyse the pay of principal immigrants and their dependants. Neither is this information available from CBI data, Permits Foundation data or PBS Management Information.

### Summary of labour market outcomes for dependants of PBS immigrants

7.45 Although the data and evidence on dependants set out above are not exhaustive, and data sources are not strictly comparable, some tentative findings do emerge. In summary:

- the majority of principal immigrants are male;

- spouses/partners tend to be younger than the principal immigrant;
- principal immigrants tend to hold a higher level of qualification than their spouse/partner;
- the proportions of spouses/partners holding qualifications is lower than that of the UK population for each identified qualification, with the exception of master's degrees. However, a greater proportion of spouses/partners are recorded as holding other qualifications. In addition, spouses/partners are less likely than the domestic population to have no qualifications;
- a significant proportion of spouses/partners are in employment; and
- the majority of spouses/partners are employed in unskilled occupations.



- 7.46 The PBS data on dependants define a spouse as including civil partners, same-sex partners and unmarried partners (fiancés and fiancées), as well as married partners of the opposite sex, while the LFS data include spouses and cohabiting partners. There is a risk that we are not comparing like exactly with like, but we have taken the view that they are similar enough for our purposes.
- 7.47 The LFS data tell us that 9 per cent of spouses are unemployed. The proportion of spouses employed in unskilled occupations is indicative of them either being for the most part unskilled, or of them pursuing a different occupation in the UK than they did in their country of origin. We can assume different reasons for this (a lack of opportunities, a short-term period of stay, personal choice, greater focus on childcare or a difference in equivalence of qualifications), but the overall effect is that the majority of spouses go into competition for jobs with the less skilled segment of the UK workforce. However, it is also the case that these data do not solely relate to immigrants entering via the PBS, the majority of whom will be skilled.
- 7.49 Because of a lack of data, we have looked at whether a crude analogy can be drawn between dependants of PBS immigrants and immigrant nationals from the A8 member states.<sup>10</sup> (Large numbers of immigrants from A8 member states have come to the UK to work in recent years, and there is some tentative evidence of their impact on the resident labour market.) Both groups of people work in low-skilled occupations but are themselves relatively skilled.
- 7.50 Comparisons and differences between these two groups are set out in Box 7.1. This indicates that A8 immigration has not historically had any significant adverse impact on the wages or employment prospects of UK workers (although all of the empirical evidence pre-dates the recession). Furthermore, we should stress here that we are only comparing the labour market impacts of the A8 immigrant group with those dependants who are in work.

### **Outcomes for UK workers**

- 7.48 A key area of interest for policymakers is the impact on the labour market outcomes of resident workers of employing dependants of PBS immigrants. Presumably due to the lack of data, there is no direct quantitative evidence on this.

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<sup>10</sup> Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

### Box 7.1: Comparison of dependants of PBS immigrants and immigrants from A8 member states

We looked at the situation of nationals from the A8 member states in the Migration Advisory Committee's reports (2008b and 2009a) when we reported on the maintenance of transitional arrangements for nationals of A2 countries (Bulgaria and Romania) and A8 countries respectively.

There are some similarities between the dependants of PBS immigrants (on the basis of the information we have received) and the A8 immigrants. Both groups tend to be young and reasonably well educated, and both groups tend to be employed in low-skilled occupations despite their relatively high level of qualifications. Analysis of the LFS suggests that over three-quarters of A8 immigrants were in occupations classified as 'lower skilled' (Migration Advisory Committee, 2008b). Similarly, the LFS data indicate that 81 per cent of spouses were employed in unskilled occupations.

A recent report (Dustmann, Frattini and Halls, 2009) shows that the A8 countries have made a positive contribution to the UK fiscal system, paying more in taxes than they receive in direct and indirect public transfers (such as benefits, NHS healthcare and education): "... *this paints a very positive picture of A8 immigration to the UK, one of highly educated young people entering into the UK predominantly to work, with subsequent positive contributions to the tax system.*"

The study also shows that, on average, A8 workers have a better educational background than UK-born workers, but receive lower wages – especially in the period immediately after coming to the UK.

Despite this disparity, A8 immigrants are net contributors to the public finances. The main reason for this is that they have a higher rate of labour force participation (this is where they differ from the dependants of PBS immigrants), and make less use of benefits and public services.

As stated above, employment rates among immigrants from A8 countries have been very high since accession. In 2008, the employment rate was around 80 per cent and the unemployment rate around 5 per cent (Migration Advisory Committee, 2009a). By contrast, the LFS data on dependants recorded that 60 per cent of spouses were in employment and 9 per cent were unemployed and seeking work, with the remainder inactive.

Despite the fact that A8 workers are disproportionately in low-skilled jobs, in the A8 report we did not find evidence that this competition was serving to displace UK workers – unskilled or otherwise. "*Our analysis of WRS [Worker Registration Scheme] and claimant count data ... suggests there is little evidence of a relationship (positive or negative) between the numbers of A8 immigrants registering in a local authority area and the change between 2007 and 2008 in claimant count unemployment in that area. This is consistent with similar findings prior to the current economic downturn by Gilpin et al. (2006) and Lemos and Portes (2008).*" (Migration Advisory Committee, 2009a)

At the same time as claimant count not being affected directly, it appears that vacancies in lower-skill occupations (the sort taken by A8 immigrants) fell substantially between January 2008 and January 2009. This combination suggests that the A8 were finding work without displacing existing workers.

### Box 7.1: Comparison of dependants of PBS immigrants and immigrants from A8 member states (*continued*)

In the Migration Advisory Committee's report (2009a) we found that A8 immigrants were particularly concentrated in elementary occupations and process, plant and machine operative occupations. The main sectors of employment for A8 nationals registering under the Worker Registration Scheme in 2008 were hospitality and catering, agriculture, manufacturing and food processing (UK Border Agency, 2009). Data from the LFS, which included those who are self-employed, also suggests that manufacturing, wholesale and retail, hotels and restaurants, and construction were the main sectors in which A8 immigrants were employed (Migration Advisory Committee, 2008b). It does not seem unreasonable to suppose that jobs in at least some of these occupations are also being taken by dependants of PBS immigrants – especially in retail and hospitality – but we do not have sufficient evidence to claim this with certainty.

- 7.51 Recent studies of the labour market impacts of immigration, discussed in Chapter 3, suggest that immigration has lowered the wages of workers in some low-waged sectors, while at the same time raising the wages of workers in medium and highly-paid jobs. However, these studies do not distinguish between the impact of dependants and the impact of other groups.
- 7.52 We have not been able, in the time available, to locate or develop any strong or systematic evidence to enable us to make robust statements about the impact of dependants on resident workers. This is an important area for future research, and we discuss the need for better data and analysis later in this chapter.
- 7.53 Although many dependants appear to be skilled, our limited analysis suggests that the majority are working in low-skilled occupations. In theory, then, we would expect to see the greatest impact on low-skilled labour markets – but there is no empirical evidence of this.

## 7.4 The role that dependants play in the wider economy

### Introduction

- 7.54 Consideration of the economic contribution of dependants of PBS immigrants shares strong common themes with the measurement of the contribution of other immigrant groups, or of immigrants in general. Below, we first consider frameworks for the measurement of the economic impact of immigration in general. We then examine how similar approaches may apply to PBS dependants, and consider associated practical issues such as data availability.

### Conceptual frameworks

- 7.55 There are numerous methodological difficulties associated with carrying out an economic assessment of the contribution of immigrants and of specific immigrant groups. Challenges, discussed below, include defining the appropriate metric, the degree of coverage, and timescales.

- 7.56 In order to assess the economic contribution of dependants, we need to define what contribution we are interested in. It could refer, for instance, to the impact of PBS dependants on gross domestic product (GDP), GDP per head, or the public finances. The correct metric, or metrics, to use to inform policy decisions will be dependent on the precise nature of the question under consideration, and the underlying objectives. The objectives are determined by the Government rather than by our Committee.
- 7.57 The recent House of Lords report into the economic impact of immigration (House of Lords, 2008) examined in detail the issue of what the appropriate metric for immigration policy purposes might be, concluding that: *“GDP per capita is a better measure than GDP because it takes account of the fact that immigration increases not only GDP but also population”*. HM Government (2008), in its response, agreed to some extent: *“The Government has been crystal clear that GDP per capita growth must be the principal determinant of success.”* However, the response goes on to say that *“The Government does not agree with the House of Lords that GDP itself is an irrelevant or misleading statistic when assessing the economic impact of immigration on the UK economy. We believe it is important to know the scale of the economic contribution of new migrants.”*
- 7.58 Whichever metric is used, in order to estimate their impact on economic output, we need to consider how the presence of immigrants (as a whole or a sub-group) has impacted on GDP relative to what would have happened in their absence. This, in turn, requires an understanding of the complementarity of and substitution effects of immigrant labour. As discussed above, there is only limited evidence on whether immigrants complement or substitute UK workers, and the results of those studies are highly specific to time and place.
- 7.59 Additionally, in order to evaluate the impact of immigration on GDP per head, we need to define what is meant by ‘per head’. The variable of interest could be GDP per head of UK citizens or resident workers, for instance. House of Lords (2008) noted that *“even GDP per capita is an imperfect criterion for measuring the economic impacts of immigration on the resident population, because it includes the per capita income of immigrants.”*
- 7.60 Therefore, the development of a comprehensive framework for considering the economic impact of dependants would need to explicitly address the issue of whether and how the direct costs and benefits to immigrants themselves should be factored in. In addition, it would need to include (or exclude) indirect costs and benefits such as remittances to the home country, as well as the impact (positive or negative) of the emigration on the source country.
- 7.61 The above discussion does not consider the possibility of dynamic and/or spillover effects that could be felt in the longer term, and which are not captured in static cost–benefit frameworks. There may be long-term costs and benefits of having more scope for specialisation, a more diverse society, a greater range of skills and experience, a higher population density and more congested living spaces. The House of Lords report pointed out that *“In theory, such dynamic and/or spillover effects could be positive or negative, that is, they could raise or lower the productivity of the resident population, even in the long run”*, but it also noted that economists are divided about the likely existence and direction of the net impacts arising from such effects.

7.62 The above issues would all apply, to a significant extent, to any comprehensive attempt to assess the contribution of PBS immigrants. These challenges exist alongside practical ones arising from a lack of relevant data, as discussed later on in this section.

### **Net fiscal impacts**

7.63 In the UK, some studies have considered the net fiscal impact of immigration. Broadly speaking, these studies compare the contribution that an immigrant makes to public finances (through tax receipts) with what they take out (through their use of public services).

7.64 Taking many of the above factors into account, Gott and Johnston (2002) find an overall positive net fiscal impact of immigration in the UK. This methodology is largely adopted by Sriskandarajah *et al.* (2005), who conclude that the net contribution of immigrants to the UK has been greater than that of non-immigrants. However, other studies (such as Coleman and Rowthorn (2004)) suggest that there could have been negative impacts.

7.65 There are some positive arguments for using the net fiscal impact of immigrants as a framework for considering economic impacts. The broad question is fairly clearly defined: to what extent do immigrants impose additional costs in terms of public finances, and how does this compare with their contribution? Furthermore, in some cases, the question of which costs and benefits are relevant is resolved. For instance, income tax payments clearly count as a positive fiscal benefit, while use of the NHS counts as a cost.

7.66 Gott and Johnston (2002) based their analysis on the premise that an individual's fiscal outcome in any one year depends on

the value of their tax contributions, welfare receipts, and use of publicly provided goods and services. Such factors will, in turn, depend on individual characteristics (such as age, skills, qualifications, labour market experience, English language proficiency, occupation and industry, and patterns of consumption) and contextual factors such as the social, economic and labour market environment at the time.

7.67 However, one key problem is a lack of data on many items that would need to be included in a comprehensive fiscal impact study. Furthermore, results differ across studies. This is largely because empirical assessments of the net fiscal impacts of immigration depend in practice on the methodology adopted and decisions about how to allocate certain costs or benefits between immigrants and non-immigrants, such as those associated with children, as discussed in Riley and Weale (2006). Findings are also sensitive to time and place: the findings of Gott and Johnston (2002) were criticised because they related to 1999–2000, when the government budget was in surplus overall.

7.68 Gott and Johnston (2002) and Sriskandarajah *et al.* (2005) took what the House of Lords report (2008) describes as a 'snapshot' or static approach, but a dynamic, long-term, approach would be preferable. It would assess the expected fiscal costs and benefits of immigrants over their entire lifetime. But the complexity of such calculations means that no such studies have been completed for the UK. As Home Office (2007) puts it: "*Any such estimate would of course be subject to a large degree of uncertainty as the tax and benefit system and earnings and employment profiles are difficult to predict accurately in the long run.*"



7.69 In summary, studies looking at the net fiscal impact can play a role in assessing the costs and benefits of immigration, but their usefulness is limited by a combination of conceptual uncertainties and practical difficulties. Nonetheless, because such studies attempt to categorise some of the costs and benefits that need to be taken into account when attempting to assess the economic contribution of different immigrant groups, they help us to consider more fully practical issues around measurement and assessment. We take this discussion further below.

### **Data on the economic impact of dependants**

7.70 There is a reasonably small but growing and useful set of literature on the economic theory surrounding immigration and research into its impacts. However, there are very limited data on particular aspects of immigration and its impacts and, more generally, a severe lack of data and research around dependants.

*“With regard to the dependants of work and student migrants, we have insufficient robust evidence at the moment to allow us to quantify their contribution to the UK economy, balance this against their potential impacts on services provision and cohesion at the local level and therefore to call for any changes to their entitlements.”*

Department for Communities and Local Government response to call for evidence

7.71 Table 7.6 considers data and information available on dependants of PBS immigrants in relation to some of the variables that would need to be included in an assessment of the economic contribution of immigrants or their dependants. The table looks first at characteristics, and then at broader economic and social factors.

7.72 Various broader and longer-term factors are not covered in Table 7.6: impacts on demand for (and supply of) housing and infrastructure; population size and structure; intergenerational effects; and social cohesion.

7.73 As Table 7.6 demonstrates, relevant data on dependants are severely limited. House of Lords (2008) expressed similar concerns: *“The gaps in migration data create significant difficulties for the analysis and public debate of immigration, the conduct of monetary policy, the provision of public services and a wide range of other public policies.”* It also noted that *“Some of the wider impacts from rising population are hard to measure and highly regional. Some, such as the impact of increasing population density on the cost and speed of implementation of public infrastructure projects, remain poorly understood.”*

7.74 Evidence from stakeholders can fill some of the gaps in qualitative or anecdotal terms, or at least help us understand the potential unexpected or unintended consequences of changing policy on dependants. We received qualitative and anecdotal evidence on the role of dependants in promoting inward investment in the UK, as detailed later on in this chapter. In its evidence to us, Amazon said that dependants and principal immigrants could be put off coming to the UK if the dependants were not going to be able to work. The company also said that employers could end up being forced to substantially increase the salaries and benefits packages offered to immigrant employees to persuade them to come to the UK under these circumstances.

*“In Amazon’s view, if the UK acts now to restrict the working rights of the partners of migrants, this would be a retrograde step.”*

Amazon response to call for evidence

**Table 7.6: Key data on the economic and other contributions of dependants**

<b>1) Characteristics</b>	
<b>Issue of interest</b>	<b>Data</b>
Numbers (stocks and flows)	<ul style="list-style-type: none"> <li>• Control of Immigration statistics</li> <li>• PBS management information</li> <li>• Proxy data from LFS</li> </ul>
Characteristics	<ul style="list-style-type: none"> <li>• Control of Immigration statistics</li> <li>• PBS management information</li> <li>• Proxy data from LFS</li> <li>• Ad hoc surveys</li> </ul>
Labour market outcomes	<ul style="list-style-type: none"> <li>• Proxy data from LFS</li> <li>• Ad hoc surveys</li> </ul>
Use of public services	<ul style="list-style-type: none"> <li>• No data (the data that do exist cannot be disaggregated for dependants)</li> </ul>
Consumption	<ul style="list-style-type: none"> <li>• No data</li> </ul>
Remittances	<ul style="list-style-type: none"> <li>• No data</li> </ul>
<b>2) Wider labour market and economic impacts</b>	
<b>Issue of interest</b>	<b>Data</b>
Employment and unemployment of resident workers	<ul style="list-style-type: none"> <li>• No quantitative evidence of whether dependants of PBS immigrants complement or substitute UK workers, and no data available to make a reliable assessment</li> </ul>
Training/up-skilling of UK workers	<ul style="list-style-type: none"> <li>• If reliable data existed about where in the labour market dependants worked, this could be assessed on a qualitative and granular basis, as in Migration Advisory Committee (2008a and 2009c). At present, no assessment can be made</li> </ul>
Inflation and macroeconomy	<ul style="list-style-type: none"> <li>• No quantitative evidence</li> </ul>
Investment and economic growth (directly or indirectly via principal immigrant)	<ul style="list-style-type: none"> <li>• No quantitative evidence</li> </ul>

Note: Because PBS dependants do not have to earn points to come to the UK, administrative data are less detailed than for principal immigrants.

Source: Migration Advisory Committee analysis



- 7.75 The Trades Union Congress (TUC) made the point that it felt it was difficult to see how restrictions could be placed on spouses without driving some into the informal economy through desperation.
- 7.76 Other stakeholders highlighted what they saw as the benefits of allowing dependants to work.

*“While almost all PBS migrants would be direct taxpayers, the dependants would contribute through the expenses connected with their living in the UK and other societal contributions such as voluntary work.”*

Intellect response to call for evidence

*“Dependants coming to the UK create significant economic benefits from spending on housing, schooling and general expenditure as well as tax revenues.”*

The Law Society response to call for evidence

- 7.77 However, if the Government wishes to make evidence-based policy decisions in this area, consideration should be given to whether existing sources such as the LFS and PBS management information could be better designed than at present to gather such information. The use of survey data would be another way of improving the information base. We have used survey data from the Permits Foundation in this chapter but, to our knowledge, this was a one-off survey, and the size of the UK sample and the coverage of the questions was limited.
- 7.78 The UKBA, in cooperation with other interested parties including ourselves, is investigating the feasibility of conducting a large-scale survey of immigrants. The survey is intended to provide richer information on reasons for migrating to

or from the UK, on migrant work and education, and on the economic and social impacts of migration on the UK.

- 7.79 However, a Statistics Authority report (2009) raises some concerns about the value of introducing a new migration survey and suggests that greater benefit will be gained through further investment in existing administrative sources: *“It might be more appropriate to concentrate on the most effective use of integrated administrative sources rather than embark on costly surveys which may inadequately capture migrant populations.”* The report also expresses concern that *“the derivation of an appropriate sampling frame for data capture is likely to be a major hurdle to effective implementation”*.

## **7.5 Impact on UK international competitiveness**

- 7.80 It was put to us in the evidence we received that there is a global marketplace for talent and employers have to compete in this market. For the UK to succeed against its closest competitors, it is argued, it makes economic sense to make best use of its legal and policy structures to increase its attractiveness to the global talent pool.

*“The ability of a spouse or partner to work is, in members’ experience, a factor influencing the decision of workers to come to the UK where their presence helps to maintain UK competitiveness in relation to sourcing the best international talent in a global market.”*

Immigration Law Practitioners’ Association response to call for evidence

7.81 In relation to PBS dependants, the above issue raises two key questions: should the UK be doing more to attract the most skilled dependants because of the contribution they could make in their own right? And does policy on dependants play an important role in terms of helping to attract the best and brightest principal immigrants to the UK? We consider these questions in turn.

*“We are aware that spouses and partners being permitted to work in the UK makes the process of transferring the principal individual much more successful. Executives are unable to fill their roles effectively if they have an unhappy and unfulfilled ‘trailing spouse’.”*

ASG Immigration Limited response to call for evidence

### Points for skilled dependants?

7.82 The UK allows dependants of PBS immigrants to work in the UK, and evidence from the Permits Foundation shows that this has been described as liberal, compared with other countries. A number of countries with points based systems allocate more points to the principal applicants if their dependants can be demonstrated to be more likely to integrate with the native population. Integration is primarily determined by the spouses’ qualifications, language ability, age and work experience. The points allocated by different countries are illustrated in Table 7.7.

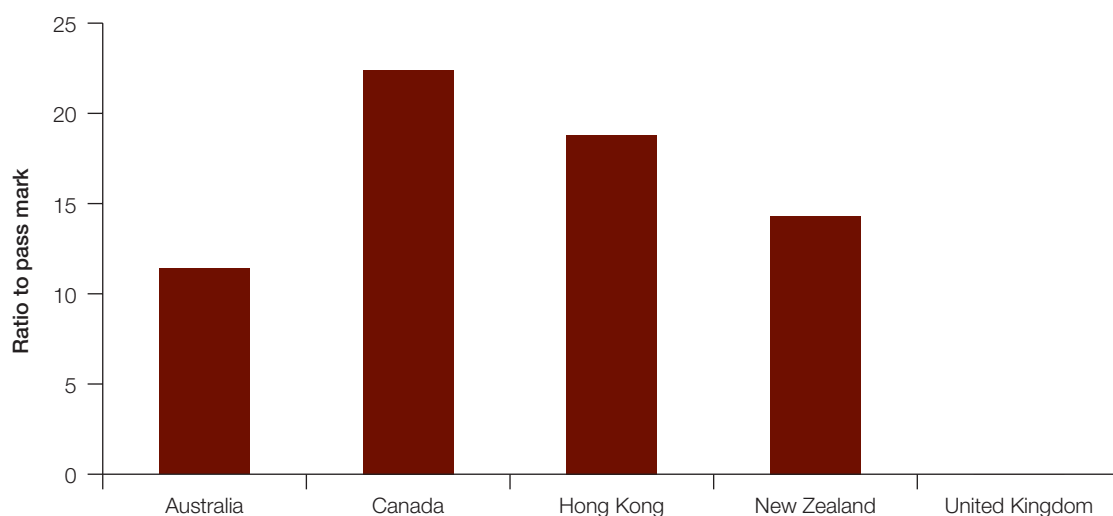
7.83 The weight placed on dependants’ skills in the overall application procedure is shown in Figure 7.5. Canada awards the greatest percentage of points: 22 per cent of points awarded to the principal immigrant can be contributed by their spouse’s skills and qualifications. The UK does not currently award points to an immigrant based on the skills of their spouse.

**Table 7.7: Points allocation for dependants**

Country	Name of points based system	Basis for points
Australia	General Skilled Migrant Program	Spouse age, English ability, work experience and qualifications (in addition, the spouse must obtain a skills assessment)
Canada	Canada Skilled Worker	Educational level and previous work experience
Hong Kong	Quality Migrant Admission Scheme	Partner’s qualifications and the presence of dependants under 18
New Zealand	Skilled Migrant Category	Skilled employment and recognised qualifications

Source: Papademetriou *et al.* (2008)

Figure 7.5: Proportions of points awarded for skills of spouse



Note: Figure shows the ratio of points awarded on the basis of spouse skills to the overall pass mark. The higher the ratio, the more spouse skills are valued in a country's points system.  
Source: Papademetriou *et al.* (2008)

### Impact of dependant policy on principal's immigration decision

7.84 The Permits Foundation worldwide survey (2008) reported that 96 per cent of respondents felt that countries that enabled spouses and partners to work were an attractive destination. Other conclusions from this survey were that:

- spouses who are working are more likely to report a positive impact on adjustment to the location than those not working;
- spouses who are working are more likely to report a positive impact on their health or well-being than spouses who are not working; and
- spouses who are working are more likely to report a positive impact on their willingness to go on a new assignment than those not working.

*"Integration of family members into the local community is vital to embedding migrant workers into the UK and the company. We have a small number of examples where poorly integrated dependants have resulted in the migrant workers choosing to return to their country of origin. Being able to work in the UK is an important step in establishing community links and relationships essential for full integration of the family."*

Doosan Babcock Energy response to call for evidence

7.85 All of the above factors might plausibly influence the principal's immigration decision. In addition, firms responding to the CBI survey reported that 20 per cent of their immigrant workers would not have come to the UK if their dependants had been prevented from finding employment.

*“A change to the rules on dependants that may deter up to one-fifth of the non-EEA workforce by threatening their family lives must be carefully studied.”*

CBI response to call for evidence

7.86 Within the survey conducted by the Permits Foundation, 22 per cent of principal PBS immigrants said that they had declined an international job offer or assignment because of concerns about a dependant’s access to employment. Sixty-three per cent of respondents said they would probably or definitely not relocate to a country where it would be difficult for a spouse or partner to get a work permit. Various stakeholder groups made similar points in their evidence to us. However, these arguments probably apply primarily to the dependant of the most highly skilled immigrants to the UK, under Tier 1 or Tier 2. They will not apply uniformly to all Tier 2 immigrants.

*“Our research with highly skilled migrants suggests that the ability of dependants to work is an important factor in influencing their choice of destinations. The UK is seen as particularly attractive in this regard vis-à-vis the US. Restricting dependants’ access to the labour market would negatively impact on the number of highly skilled migrants the UK could attract.”*

Institute for Public Policy Research response to call for evidence

*“Restrictions could ... do long-term damage to the UK’s ability to attract skilled and highly skilled workers.”*

TUC response to call for evidence

## 7.6 Equality issues

7.87 Although it is beyond the remit of the question we were asked, we have remained aware of the social and equality impact of allowing dependants to come and work in the UK, and here we briefly reflect on this.

7.88 Kofman *et al.* (2009) looked at the equality implications for immigrants into Britain under both the old work permits system and the PBS. They report that the fixed maintenance requirement under the PBS – unmodulated according to the wealth of the country of origin – is likely to deter immigrants from bringing in family members, and that this might be particularly difficult for women (given their caring responsibilities). The issue of the across-the-board maintenance requirement was also raised with us at our stakeholder forum event in Wales. However, an A-rated sponsor is allowed to underwrite the maintenance requirement.

7.89 At a meeting with the Permits Foundation and PricewaterhouseCoopers, attended by representatives from various blue-chip companies, we were told that women would be disproportionately affected by a stricter policy on dependants.

*“The data available suggest that more accompanying spouses and partners are women than men. Thus proposals to restrict the access of spouses and partners to the labour market would affect more women than men. This raises the prospect that to deny spouses and partners access to the labour market would entail discrimination against women.”*

Immigration Law Practitioners’ Association response to call for evidence

7.90 The available data indicate that the majority of dependants are women. In considering the economic impact of those dependants who are in employment, account should be taken of the gender pay gap in the UK: the gap between women’s median hourly pay and men’s was 12.8 per cent in 2008.<sup>11</sup> Globally, the gender pay gap averages about 16 per cent (Kofman *et al.* (2009)). In the UK, the gender pay gap increases with educational level and is higher in female-dominated occupations; for instance, it is over 20 per cent in education, health and social work (Kofman *et al.* (2009)). Women who work part time earn 41 per cent less per hour than men who work full time (Equalities Review (2007)). Therefore, on the whole, female dependants are likely to receive lower pay than male dependants. However, this does not take account of women’s indirect economic impact (as a result of childcare and domestic responsibilities).

*“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.”*

Immigration Law Practitioners’ Association  
response to call for evidence

7.91 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.

*“The TUC has consistently argued that migrant workers should have a right to a family life. In reality, for many, such family life can only be sustained in the UK if the spouse is allowed to work.”*

TUC response to call for evidence

7.92 We received evidence of concerns over the age limit for dependant children: the current rules exclude children who are over 18 but still dependent, and it was reported that potential employees had been lost as a result. The CBI told us that the restrictions had deterred 12 skilled workers from coming to the UK in the previous year, according to their survey. In these cases the dependants were either disabled or genuinely dependent in some other way, with the principal immigrant being responsible for their care.

7.93 In Chapter 2 we explained that the Government has the power to vary the Immigration Rules to restrict the ability of dependants to work in the UK. Alternatively, it may choose to completely limit access to the UK for dependants. We are aware of the relevant legislation in this area, including Articles 8 and 12 of the European Convention on Human Rights, as well as the relevant legal judgments setting out what signatories to the Convention are able to do in this regard. But we have not looked at this in detail – partly because we think the Government will want to take account of other factors (such as the social impact) and partly because such consideration would be beyond our remit.

<sup>11</sup> See the Office for National Statistics website: [www.statistics.gov.uk/cci/nugget.asp?id=167](http://www.statistics.gov.uk/cci/nugget.asp?id=167) (November 2008)

## 7.7 Conclusions and further research

7.94 At first glance, it does seem counter-intuitive that dependants of PBS immigrants are subject to no conditions regarding their skills or where they work, when the PBS was explicitly set up to ensure that, to a significant extent, immigrants from outside the EEA working in the UK were skilled, and working in skilled jobs.

*“It may be considered a bit of an anomaly that economic migrants have to clear certain hurdles to be able to work in the UK – including often the Resident Labour Market Test – whereas their spouses are faced with few restrictions.”*

TUC reponse to call for evidence

7.95 There are very limited data on dependants of PBS immigrants, their labour market outcomes, and their impacts on the labour market outcomes of others. However, a significant proportion of dependants are skilled, and in work. On the basis of the limited information we have, there is not sufficient reason to conclude that greater restrictions on working rights for dependants would lead to improved outcomes – either for UK workers or for the UK economy. It is notable that the stakeholder evidence we received on this issue almost universally supported the ability of dependants to work.

7.96 In this chapter we have set out a broad framework for starting to think about the wider economic contribution of PBS immigrants. Although it is not possible to provide statistical proof that the UK’s relatively liberal policy on dependants helps to promote investment in the UK and helps the UK to attract the best and brightest workers, the frequency with which this argument was put to us is notable.

7.97 The economic and labour market contribution of dependants is an issue we will be happy to examine in more detail over a longer time period, if the Government wishes us to do so. The Department for Communities and Local Government commented that at present there is insufficient robust evidence to quantify the economic contribution of dependants, and suggested the following questions as a guide for future research. (Note that some of them go beyond our current remit to provide economic and labour market advice and analysis.)

- How important is the right for spouses to work full time in the UK as a ‘pull factor’ for older immigrant students to come and study in the UK?
- What impact do school age dependants of immigrant students have on schools and health services at the local level?
- What would be the effect on immigrant student volumes of restricting the right for spouses to work full time and/or restricting the entitlement of dependants to state schooling and health services during their stay in the UK?

7.98 Note that any programme of research into these issues will have to address the serious lack of data currently available.



## Chapter 8: **Conclusions**

### **8.1 Policy and economic context**

- 8.1 The Points Based System (PBS) was set up to better identify and attract immigrants who have the most to contribute to the UK, and to provide a more efficient, transparent and objective application process, combined with improved compliance and reduced scope for abuse. We have considered how aspects of the system are meeting these aims, and how policy (on Tier 2 in particular) can be best designed to do so.
- 8.2 The UK and world economies are in deep recession. We reported earlier this year that the UK labour market was seriously disturbed, and we believe that this is still the case. It is likely that an upturn in the job market will lag behind the economic recovery forecast for 2010 onwards.

### **8.2 Tier 2 context**

- 8.3 Flows of immigrants through Tier 2 of the PBS appear to have been smaller than under the previous work permit system. However, Tier 2 was introduced in the midst of a recession, and flows have been increasing month on month. Intra-company transfers are the largest route under Tier 2, in terms of numbers of users, followed by the Resident Labour Market Test (RLMT) and shortage occupation routes. Flows of dependants are relatively small compared with flows of PBS main applicants.

- 8.4 There is a general economic case in high-income countries for selecting predominantly skilled immigrants, and for admitting the low-skilled only in exceptional cases – for selected occupations or industries. First, skilled immigrants are likely to have greater complementarities with the skills and capital of existing residents. Second, the net fiscal impacts of immigration are more likely to be positive for skilled immigrants. Finally, potential long-term growth effects and spillover benefits, if they exist, are more likely to come from skilled than low-skilled immigration.
- 8.5 We have considered the consequences of the recession for our work, but a well-designed points system for immigration should operate so that flows can automatically adjust in response to changing economic circumstances. Therefore, we have focused much of our attention on how immigration policy should be designed to achieve its stated objectives – regardless of where we are in the economic cycle.
- 8.6 Use of Tier 2 does not reflect the overall composition of the UK labour market. The most significant user of Tier 2, by a large margin, is the information technology sector, which makes extensive use of the intra-company transfer route to bring in workers (predominantly from India). Other distinct users, such as the health and education sectors, can also be identified.



8.7 Options for amending Tier 2, based on policy in other countries, include the introduction of an element of certification and a change in the vacancy advertising duration for the RLMT route. Under the intra-company transfer route, options include increasing the time a person needs to be employed by a company before they can come to work in the UK, and setting a limit on the maximum duration of stay in the UK.

### 8.3 Tier 2 recommendations

8.8 In terms of our thinking about recommendations on Tier 2, we examined whether and how the rules of the system could be appropriately monitored and enforced in order to achieve the stated objectives. In addition, on the basis that perfect monitoring is unlikely to be feasible, we considered how the system could be designed to provide incentives for employers, employees and other relevant parties to act in accordance with the intended objectives.

8.9 We considered in great depth a large volume of stakeholder evidence and opinion in order to complete our analysis. We carried out our own analysis of labour market data, examined the relevant literature and commissioned external research. We do not think there is an economic case for restricting Tier 2 to the shortage occupation route only, but we do make 16 specific recommendations (which we outline below) about the design and enforcement of some routes under Tier 2.

8.10 In terms of the calibration of points awarded under Tier 2, we recommend the following:

- **Recommendation 1:** that the UK Border Agency (UKBA) considers whether specific professional qualifications should be regarded as equivalent to National

Vocational Qualification level 3, or bachelor's or master's degree level, when allocating points under the PBS, where there is good evidence to support such claims.

- **Recommendation 2:** that a master's degree be awarded 15 points in Tier 2, instead of the current 10 points.
- **Recommendation 3:** that 5 points be awarded for prospective earnings of at least £20,000 per annum instead of the current £17,000.
- **Recommendation 4:** that 20 points be awarded for prospective earnings of at least £32,000 per annum instead of the current £24,000.
- **Recommendation 5:** that the minimum threshold for gaining 10 points be raised to £24,000 per annum, and the minimum threshold for gaining 15 points be raised to £28,000 per annum.
- **Recommendation 6:** that certain occupations involved in the delivery of key public services, to be set out by the Government, be awarded an extra 5 points under the RLMT route. (This would also apply to individuals working in these occupations switching to Tier 2 from the Tier 1 post-study category.)

8.11 In terms of the RLMT, we recommend the following:

- **Recommendation 7:** that the route be kept in place.
- **Recommendation 8:** that the required duration of vacancy advertising be increased to four weeks for all jobs.
- **Recommendation 9:** that the Government considers the scope for introducing a certification regime for at least those employers identified as high risk.

8.12 For the intra-company transfer route, we recommend the following:

- **Recommendation 10:** that the route be kept in place.
- **Recommendation 11:** that the route should not lead to a right to permanent residency.
- **Recommendation 12:** that the qualifying period with the company overseas is extended from six to twelve months.
- **Recommendation 13:** that a separate scheme is created for graduates only, requiring three months' prior experience with the company, but with a maximum stay in the UK of 12 months.
- **Recommendation 14:** that the Government gives consideration to whether the level of resource currently being devoted to the enforcement of intra-company transfers is sufficient, and whether the degree of transparency around enforcement of the system could be increased.

8.13 Regarding allowances for Tier 2 immigrants, we recommend the following:

- **Recommendation 15:** that allowances used for PBS points purposes are scaled down when calculating points for earnings under the PBS.
- **Recommendation 16:** that the UKBA and Her Majesty's Revenue and Customs consider the scope for sharing information on what they are being told in relation to the intentions of particular immigrants, and investigate potential abuse of the system on a risk-based basis where there is an indication that abuse of the tax system may be occurring.

## 8.4 Dependants

8.14 Data on PBS dependants are highly limited, and any findings are subject to important caveats, but it appears that spouses and partners tend to be younger than the principal immigrant. Just over half of spouses and partners are in employment – although this varies according to the occupation of the principal immigrant – and, even though a significant proportion are highly qualified, the majority of employed dependants are in unskilled occupations.

8.15 Currently, dependants granted UK leave to enter or remain can usually take on any employment provided that the PBS immigrant has been granted more than 12 months' permission to stay in the UK. However, the Government could restrict dependants' access to the labour market if it wished to do so.

8.16 We have not been asked to make policy recommendations on the economic contribution of dependants. But, on the basis of the limited information we have, there is not sufficient reason to conclude that greater restrictions on working rights for dependants would lead to improved outcomes – either for UK workers or for the UK economy. However, we emphasise that these are extremely tentative conclusions, due to the very limited data on dependants of PBS immigrants, their labour market outcomes, and their impacts on the labour market outcomes of other resident workers. This is an area that is ripe for further data collection and research.

## 8.5 Next steps and future work

8.17 It is for the Government to decide whether and when to accept our recommendations, and the timescales for implementing those that are accepted. The PBS was designed to be flexible and the majority of our recommendations can be implemented quite quickly, if accepted. In some cases, the Government could decide to give our recommendations consideration as part of related processes, such as the consultation on points for citizenship.

8.18 Throughout this report, we have identified the areas where further research and analysis may be justified. Some potential topics are as follows:

- Whether there is a case for developing a more nuanced definition of 'skill' under the PBS, and the practical issues associated with implementing this.
- Whether Tier 2 has the balance right between points for earnings and qualifications.
- Whether National Qualification Framework level 3 is the appropriate skill threshold for Tier 2.
- The importance of language skills in determining immigrants' economic success.
- A review of the UK and international literature examining how labour market and immigration policies can be designed to create employee and employer incentives that aid their practical enforcement.
- An analysis of the importance of the right for spouses to work full time and access public services in the UK as a 'pull factor' for students and highly skilled workers.

- An analysis of the options for developing a more comprehensive framework for considering the economic impact of immigrants and their dependants, including an assessment of how to address the serious lack of data currently available on this issue.

8.19 A successful programme of research will need to address issues of data availability in many of the relevant areas – either through the development of new data collection methods or through the better collection and collation of data through existing means (such as the Labour Force Survey and PBS management information).

8.20 We will publish our next reports, setting out our recommendations on Tier 1 and the shortage occupation lists, in autumn 2009.

### A.1 List of organisations that submitted evidence

Advantage West Midlands	CASIO Electronics Co Ltd
AES Electric Ltd	CEMEX UK Services Ltd
Airbus (UK)	Central Japan Railway Company
Air Products plc	Chamber of Shipping
Ajinomoto Pharmaceuticals Europe Limited	Chubu Electric Power Co Inc
All Nippon Airways Co Ltd	Church Communities UK
Amazon.co.uk Ltd	Confederation of British Industry
ASG Immigration Ltd	Connect
Association for Consultancy and Engineering	Credit Suisse
Association of Foreign Banks	Daikin Airconditioning UK Ltd
Association of Graduate Recruiters, Engineering, Energy and Industry	Dainippon Screen MFG Co Ltd
Association of Professional Staffing Companies	Daiwa Securities SMBC Europe Ltd
AstraZeneca plc	Daiwa Securities Trust and Banking (Europe) plc
BAE Systems plc	Deloitte LLP
Bank of England	Denso Sales UK Ltd
BBSRC (Biotechnology and Biological Sciences Research Council)	Department for Business, Innovation and Skills
BECTU	Department for Children, Schools and Families
BHP Billiton	Department for Communities and Local Government
BP International Ltd	Department for Work and Pensions
BOC Ltd (Member of the Linde Group)	Department of Health
British-American Business	Deutsche Bank
British Chambers of Commerce	Development Bank of Japan Inc
British Embassy Tokyo	DOCOMO Europe Ltd
British Hospitality Association	Doosan Babcock Energy Ltd
British Medical Association	Dowa Insurance Company Ltd
Buckinghamshire Golf Club	East Midlands Development Agency (on behalf of all Regional Development Agencies with the exception of London)
Burges Salmon LLP	East & West Restaurants Ltd
Business Application Software Developers Association (BASDA)	EDF Trading Ltd
Canon Europe Ltd/Canon (UK) Ltd	ED & F Man Holdings Ltd
Capital Group Corporate International	Eisai Europe Ltd
Cardiff University	Embassy of Japan
	Embassy of the People's Republic of China
	Embassy of the United States of America
	Emigra Europe Ltd

Energy & Utility Skills  
Energy Solutions EU Ltd  
Engineering Council UK  
English Community Care Association  
Enterprise Rent-A-Car  
Equality South West  
Ernst & Young LLP  
Exlayer Ltd  
Ferguson Snell & Associates Ltd  
Financial Services Skills Council  
Financial Times  
Fluor Ltd  
Foreign and Commonwealth Office  
Forum for Expatriate Management  
Four Seasons Health Care  
Fragomen LLP  
Freshcatch Ltd  
FUJIFILM UK Ltd  
Fujisankei Communications International  
General Medical Council  
GlaxoSmithKline  
Ground Forum  
Habia  
Herbert Smith LLP  
Hitachi Capital (UK) plc  
Hitachi Europe Ltd  
Hitachi Zosen Europe Ltd  
Hochiki Europe (UK) Ltd  
Honda Motor Europe Ltd  
HSBC  
Hurlingham Polo Association  
Ibiden UK Ltd  
IBM United Kingdom Limited  
ICAP plc  
Immigration Advisory Service  
Immigration Law Practitioners' Association  
Institute for Public Policy Research  
Institution of Chemical Engineers  
Intellect UK  
International Paint Ltd  
Investec Bank plc  
ISI-Dentsu of Europe Ltd  
Japan Airlines International Co Ltd  
Japan Energy (UK) Ltd  
Japan Green Medical Centre Ltd  
J C Bamford Excavators Ltd  
JCB International (Europe) Ltd  
JFE Steel Europe Ltd  
Jobcentre Plus  
Jones Kelleher & Associates Ltd  
Kajima Europe Ltd  
Kawasaki Heavy Industries (UK) Ltd  
KDDI Europe Ltd  
Kellogg Brown & Root  
"K" Line (Europe) Ltd  
K Mikimoto & Co Ltd  
KPMG LLP  
Kubota (UK) Ltd  
Lantra  
Law Society  
L.E.K. Consulting  
Lifelong Learning UK  
Lockheed Martin UK  
London Business School  
London First  
London Investment Banking Association  
London Iryo Centre  
Manhattan Associates  
Marshall Aerospace/Aeropeople/KLM UK/  
Bombardier Aerospace/Monarch Aircraft  
Engineering (combined response)  
Marubeni Europe plc  
Mayor of London  
MCX Exploration (UK) Ltd  
Meiji Yasuda Europe Ltd  
Metal One UK Ltd  
Microsoft Ltd  
Migrationwatch UK  
Miki Travel Ltd  
Minerva Capital Ltd  
Minova Ltd  
Mintz Levin Cohn Ferris Glovsky and Popeo PC  
Mitsubishi Corporation European Corporate  
Centre  
Mitsubishi Corporation Finance plc  
Mitsubishi Corporation (UK) plc  
Mitsubishi Electric Europe B.V.  
Mitsubishi Heavy Industries Europe Ltd  
Mitsubishi UFJ Trust and Banking Corporation  
Mitsui & Co Europe plc  
Mitsui Fudosan (UK) Ltd  
Mitsui O.S.K. Bulk Shipping (Europe) Ltd

Mitsui Sumitomo Insurance Co (Europe) Ltd	RIG Radiography Recruit
Mitsui Zosen Europe Ltd	Rolls-Royce
Mitsukoshi (UK) Ltd	Royal College of Veterinary Surgeons
Mitutoyo (UK) Ltd	Royal Institution of Chartered Surveyors (RICS)
Mizuho Corporate Bank Ltd	SANYO Europe Ltd
Mott MacDonald Ltd	Sato Corporation
Mrs Kay's Ltd	Scottish Chambers of Commerce
MSHK	Scottish Council for Development and Industry
Muji Europe Holdings	SEGA Europe Ltd
MW Kellogg Ltd	Semta
NASSCOM	Sharp Electronics (UK) Ltd
National Association of Medical Personnel Specialists	Sharp Telecommunications of Europe Ltd
National Australia Group Europe Ltd	Shinwa (UK) Ltd
National Campaign for the Arts (endorsed by the Association of British Orchestras, the Birmingham Royal Ballet, the Independent Theatre Council, the Royal Opera House, the Society of London Theatre and the Theatrical Management Association)	Skillfast UK
National Care Association	Skills for Care and Development
National Farmers' Union (NFU)	Speechly Bircham LLP
NEC Europe Ltd	Sun Life Assurance Company of Canada (UK) Ltd
News International Ltd	Swansea University
New Zealand High Commission	Tata Consultancy Services
NGK Spark Plugs (UK) Ltd	Tata Ltd
NHS Employers	Teikyo Foundation UK Ltd
NHS Pharmacy Education & Development Committee	The Bank of New York Mellon
Nikkei Europe Ltd	The Bank of Tokyo-Mitsubishi UFJ
Nippon Club	The Colt Car Company Ltd
Nissin Travel Service (UK) Ltd	The Daimaru Inc
NTT Communications	The Norinchukin Bank
NYK Group Europe Ltd	Thomson Reuters
Oil & Gas UK	ThoughtWorks Ltd
Panasonic Communications Company (UK) Ltd	Tokio Marine Europe Ltd/Tokio Marine Europe Insurance Ltd
Panasonic Europe Ltd	Tokyo Electric Power Company Inc
Panasonic Manufacturing UK Ltd	Toray Industries Inc
Permits Foundation	Toyota Motor Manufacturing (UK) Ltd
Petro-Diamond Risk Management Ltd	Trades Union Congress
Princes Ltd	Transcal Ltd
Procter & Gamble	TRB Ltd
Professional Contractors Group	Triland Metals Ltd
PwC Legal	Tsubakimoto UK Ltd
Recruitment and Employment Confederation	UHY Hacker Young LLP
Ricoh Europe plc	UK Screen Association
	UK Trade & Investment
	Unilever plc
	UNISON
	Unite
	Universal Shipbuilding Europe Ltd
	Universities UK



University of Exeter  
University of Oxford  
University of Sheffield  
University of Warwick  
Visallogic Ltd  
VT Education and Skills  
Wellcome Trust Sanger Institute  
Westinghouse Electric Company UK Ltd &  
Uranium Asset Management Ltd  
Westpac Banking Corporation  
Windows Catering Co (Four) Ltd (trading as  
Di Maggio's)  
Withers LLP  
Yuasa Battery Europe Ltd

Department for Innovation, Universities and Skills  
Department for Work and Pensions  
Deutsche Bank AG  
DHL Supply Chain Ltd  
DTZ  
EC Harris LLP  
EEF  
Eli Lilly and Company Ltd  
Embassy of Japan  
Embassy of the People's Republic of China  
Embassy of the United States of America  
Ernst & Young LLP  
Ferguson Snell & Associates Ltd  
Fidelity  
Financial Services Authority  
Foreign and Commonwealth Office  
Foster Wheeler  
Foster Wheeler Energy Ltd  
Fragomen  
Freshfields  
Fujitsu Services  
Genpact UK  
GMAC  
Go Native – Corporate Housing  
Google  
Harsco Corporation  
Hess Services UK Ltd  
Hitachi Europe Ltd  
HM Revenue and Customs  
HM Treasury  
Honda Motor Europe Ltd  
Honda of UK Manufacturing Ltd  
HSBC  
IBM  
Inflight Engineering  
Intellect UK  
International Personnel Management Ltd  
IT Sector Skills Advisory Panel  
Japanese Chamber of Commerce and Industry  
in the UK  
Japan Green Medical Centre  
J C Bamford Excavators Ltd  
Jobcentre Plus  
Kingsley Napley  
KLM UK  
KPMG LLP

## **A.2 List of organisations met with**

ABN AMRO  
Accenture  
AET  
AET Tankers  
AIM Henshalls  
Allen & Overy LLP  
Anglo American  
Atos Origin  
BAE Systems plc  
Bank of America  
Barclays  
Bombardier  
British Airways  
British American Tobacco  
BP  
BT  
Cabinet Office, Strategy Unit  
Cadbury Schweppes  
Cap Gemini  
CB&I  
Chevron UK Ltd  
Citi  
Clifford Chance  
CMS Cameron McKenna LLP  
Complinet Ltd  
Confederation of British Industry  
Denso Sales UK Ltd  
Department for Business, Innovation and Skills  
Department for Children, Schools and Families

Law Society	Slaughter & May
Linklaters LLP	Smith & Nephew plc
Lloyds TSB	Society of British Aerospace Companies (SBAC)
Lockheed Martin UK	Speechly Bircham LLP
Logica	Steria
London Iryo Centre	Tata Consultancy Services
Macquarie	Tesco Stores Ltd
Magrath LLP	The Bank of Tokyo-Mitsubishi Ltd
Marsh	Thomson Reuters
Marshall Aerospace	Tiffany & Co
Mastek (UK) Ltd	Totally Expat
Merrill Lynch	Towers Perrin
Microsoft Ltd	Toyota Motor Manufacturing (UK) Ltd
Migrationwatch UK	Trades Union Congress
Mindtree	TUI Travel plc
Mitsubishi Corporation (UK) plc	UBS AG
Mitsui & Co Europe plc	UHY Hacker Young LLP
Morgan Dias Immigration Consultants Ltd	UK Border Agency
Motorola	UK Trade & Investment
MW Kellogg Ltd	Unilever
NASSCOM	Unite
New Zealand Minister of Labour	Washington E&C Ltd, Washington Div, URS Corporation
Nikkei Europe Ltd	WestLB
Nippon Club	
Nissan Motor Manufacturing (UK) Ltd	
Nomura International plc	
Norton Rose LLP	
NTT Europe Ltd	
NYK Group Europe Ltd	
Oracle	
PACT and Shine	
Penningtons Solicitors LLP	
Permits Foundation	
PricewaterhouseCoopers	
Primacy Relocation	
Research in Motion (BlackBerry)	
Ricardo plc	
Rio Tinto	
Roche Products Ltd	
Royal Bank of Scotland	
RSA	
SANYO Europe Ltd	
Sarah Buttler Associates LLP	
Semta	
Siemens International Delegations Unit	
Siemens plc	

### **A.3 List of stakeholder forum attendees**

#### **Scotland**

Alliance of Sector Skills Councils  
 Contract Scotland  
 Convention of Scottish Local Authorities  
 Corporate Social Responsibility  
 David Hulme Institute  
 Development Scotland  
 Federation of Small Businesses  
 Financial Services Skills Council  
 First Permit Ltd  
 Future Skills Scotland  
 Harlequin Leisure  
 Hilton  
 Lantra  
 Maggios  
 Mother India  
 National Australia Group  
 Nuffield Health

Oil & Gas UK  
Overseas Nurses Network  
People 1st  
Registered Nursing Home Association  
Scotland Office  
Scottish Care  
Scottish Chambers  
Scottish Council for Independent Schools  
Scottish Enterprise  
Scottish Government  
Scottish Southern  
Scottish Tourism Forum  
TalentScotland  
Transcal Ltd  
UK Border Agency  
UNISON  
University of Edinburgh  
Windows Catering Co (Four) Ltd

#### **Northern Ireland**

ABP Lurgan  
AngloBeef  
Anglo-North Irish Fish Producers Organisation Ltd  
Bombardier  
Business in the Community  
Carman Leather Ltd  
Dunbia  
Foyle Food Group  
Gangmasters Licensing Authority  
Gems NI  
Invest NI  
Irish Congress of Trade Unions  
Lantra  
Linden Foods  
Northern Ireland Committee  
Northern Ireland Council for Ethnic Minorities  
Northern Ireland Fish Producers Ltd  
Northern Ireland Food and Drink Association  
Northern Ireland Meat Exporters Association  
Office of the First Minister and Deputy First Minister  
Queen's University  
STEP NI  
University of Ulster

#### **Wales**

Airbus  
Bronglais General Hospital  
Caerphilly County Borough Council  
Cardiff and Vale NHS Trust  
Cardiff University  
Care Council for Wales  
Care Forum Wales  
Cogent  
Community Cohesion Unit, Welsh Assembly  
Cwm Taf NHS Trust  
e2e Linkers Ltd  
Matchworkers  
Panasonic  
Periconsultancy  
SRK Consulting  
Trades Union Congress  
UK Border Agency  
University of Glamorgan  
Uwch Swyddog Ymchwil  
Valleys Race Equality Council  
Velindre NHS Trust  
Wales Strategic Migration Partnership  
Welsh Assembly Government  
Welsh Local Government Association

## Abbreviations

A2	The two European countries, Romania and Bulgaria, that joined the EU on 1 January 2007	GATS	General Agreement on Trade in Services
A8	The eight eastern European countries that joined the EU in 2004	GDP	gross domestic product
APSCO	Association of Professional Staffing Companies	HMRC	Her Majesty's Revenue and Customs
ASHE	Annual Survey of Hours and Earnings	HSMP	Highly Skilled Migrant Programme
BA	British Airways	IBM	International Business Machines
BIS	Department for Business, Innovation and Skills	ICT	intra-company transfer
CBI	Confederation of British Industry	ILO	International Labour Organization
CoS	certificate of sponsorship	ILPA	Immigration Law Practitioners' Association
CPI	Consumer Prices Index	IMF	International Monetary Fund
DCSF	Department for Children, Schools and Families	IPS	International Passenger Survey
DH	Department of Health	IT	information technology
DWP	Department for Work and Pensions	ITEM	Independent Treasury Economic Model
EDS	Electronic Data Systems	JCP	Jobcentre Plus
EEA	European Economic Area	LFS	Labour Force Survey
EMEA	Europe, Middle East and Africa	MAC	Migration Advisory Committee
EMN	European Migration Network	MBA	Master of Business Administration
EU	European Union	NASDAQ	National Association of Securities Dealers Automated Quotations
EURES	European Employment Services	NASSCOM	National Association of Software and Services Companies
EU15	Number of EU member countries before the accession of ten candidate countries on 1 May 2004. Comprising Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom	NHS	National Health Service
FAS	Foras Áiseanna Saothair (Irish National Training and Employment Authority)	NIESR	National Institute for Economic and Social Research
FDI	foreign direct investment	NQF	National Qualifications Framework
GAO	US Government Accountability Office	NVQ	National Vocational Qualification
		OECD	Organisation for Economic Co-operation and Development
		ONS	Office for National Statistics
		OTT	overseas trained teacher
		PBS	Points Based System
		PCG	Professional Contractors Group
		PhD	Doctor of Philosophy
		PSA	Public Service Agreement
		PWC	PricewaterhouseCoopers

## Analysis of the Points Based System: Tier 2 and dependants

QTS	qualified teacher status
RLMT	Resident Labour Market Test
RPI	Retail Prices Index
SIR	Skilled Independent Regional
SVQ	Scottish Vocational Qualification
SOC	Standard Occupational Classification
TCS	Tata Consultancy Services
TUC	Trades Union Congress
UK	United Kingdom
UKBA	United Kingdom Border Agency
UKTI	UK Trade & Investment
V/U	ratio of vacancies to unemployment
WTO	World Trade Organization

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