

Analysis of the Points Based System

List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Migration Advisory Committee

October 2012



Migration Advisory Committee,
2nd Floor, Fry Building,
2 Marsham Street,
London,
SW1P 4DF.
www.ukba.homeoffice.gov.uk/mac
email: MAC@homeoffice.gsi.gov.uk

Analysis of the Points Based System:

List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Migration Advisory Committee

October 2012

Contents

Chairman’s Foreword	1
The Migration Advisory Committee and secretariat	3
Summary	5
Context (Chapter 1 and Chapter 2)	5
The codes of practice (Chapter 3)	6
Updating the list of skilled occupations (Chapter 4).....	6
Setting minimum pay thresholds (Chapter 5 & Chapter 6)	6
Advertising requirement for the Resident Labour Market Test (Chapter 7)	7
Conclusions (Chapter 8).....	8
Chapter 1 Introduction	11
1.1 Scope of this report.....	11
1.2 What we did.....	12
1.3 Structure of the report.....	14
1.4 Thank you.....	14
Chapter 2 Policy and data context	15
2.1 Introduction.....	15
2.2 Overview of the Points Based System and Tier 2.....	15
2.3 Data context for Tier 2	18
2.4 The Tier 2 codes of practice	19
2.5 International comparisons.....	26
Chapter 3 Codes of practice framework	35
3.1 Introduction.....	35
3.2 The current codes of practice framework.....	35
3.3 The proposed design of the codes of practice framework	36
3.4 Other issues raised by our partners.....	39

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Chapter 4	Conversion of list of NQF6+ occupations to SOC 2010	43
4.1	Introduction	43
4.2	The Standard Occupational Classification 2010	43
4.3	Our skill methodology	45
4.4	Conclusions	50
Chapter 5	Setting minimum pay thresholds	51
5.1	Introduction	51
5.2	Approach for setting pay thresholds for occupations	52
5.3	Defining new entrant and experienced employees	58
5.4	Pay thresholds for experienced employees by occupation	63
5.5	Pay thresholds for new entrant employees by occupation	65
5.6	Progression from new entrant to experienced employee threshold	68
5.7	Regional variation of pay thresholds	70
5.8	Conclusions	74
Chapter 6	Minimum pay thresholds	75
6.1	Introduction	75
6.2	Pay thresholds for SOC 2010 occupations using ASHE data	75
6.3	Evidence from partners on alternative data sources to ASHE	78
6.4	Conclusions	104
Chapter 7	Advertising criteria	105
7.1	Introduction	105
7.2	A review of the current policy arrangements	105
7.3	Approach to setting the advertising requirement	109
7.4	Advertising criteria	112
7.5	Conclusions	120
Chapter 8	Conclusions	123
8.1	Introduction	123
8.2	Our recommendations	123
8.3	Codes of practice framework and updating the codes of practice	135
8.4	Future work	136
Annex A	Consultation	139
A.1	List of organisations that responded to the call for evidence	139
A.2	Indicative List of organisations we met with/attended our forums	140

Annex B	List of NQF6+ occupations in SOC 2010.....	143
Annex C	Technical analysis	147
C.1	Introduction.....	147
C.2	Methodology	147
C.3	Results.....	148
Abbreviations	151
References	155

Chairman's Foreword



Tier 2 (General) of the immigration Points Based System exists so that firms and other organisations can bring in skilled migrants to fill graduate-level vacancies. But

there are stringent conditions attached. First, unless the job or occupation is on the shortage occupation list, the firm must initially seek to fill its vacancy from the British or EEA workforce. Second, the immigrant must not undercut the pay of equivalent resident workers.

The Tier 2 codes of practice regulate the labour market testing and minimum pay requirements. But the present codes have grown Topsy-like and are out of date. For example, the Office for National Statistics recently set out a revised classification of occupations (Standard Occupation Classification 2010). And many of the minimum pay criteria refer to data some five years old. Therefore, the Government asked the Migration Advisory Committee (MAC) to update and simplify the codes as a matter of good housekeeping. The MAC has adopted a very straightforward approach. We believe that, with a few exceptions, the minimum pay rate should be set at the 25th percentile (lower quartile) of the pay distribution for the particular

occupation. For new entrants the rate should be set at the 10th percentile (lowest decile). The data source for these minimum thresholds is the Annual Survey of Hours and Earnings, a 1 per cent sample of British employees.

We believe that it is not appropriate to set out detailed prescriptive rules concerning the advertising of vacancies. Firms know their own requirements best. Therefore, we simply set out certain stipulated criteria concerning the location and content of the advertising. We also suggest that the Government may wish to review the requirement to advertise most vacancies via Jobcentre Plus (JCP). Alas, JCP is not much used for matching skilled workers with graduate vacancies.

Our recommendations are unlikely to impact on immigration numbers. Tier 2 (General) (i.e. the shortage occupation list and Resident Labour Market Test routes) is already limited to 20,700 people per year. And intra-company transfers already have quite high pay thresholds. But we hope that these revised, recommended codes of practice will find favour with stakeholders via their transparency and simplicity.

A handwritten signature in black ink that reads "David Metcalf".

Professor David Metcalf CBE

The Migration Advisory Committee and secretariat

The Migration Advisory Committee (MAC) is a non-departmental public body comprised of economists and migration experts that provides transparent, independent and evidence-based advice to the Government on migration issues. The questions the Committee addresses are determined by the Government.

Chair



Professor David Metcalf CBE

Members



Dr Diane Coyle OBE



Dr Martin Ruhs

UK Commission for Employment and Skills representative



Lesley Giles



Professor Jonathan Wadsworth



Professor Rob Wilson

Home Office representative



Glyn Williams

The secretariat

Vanna Aldin; Harsimran Arora; Anne Ball; Jeremy Clarke; Cordella Dawson; Adrian Duffy; Stephen Earl; Emily Eisenstein; Jocelyn Goldthorp; Tim Harrison; Kyle Magee; Margaret Mcgrath; Daniella Oliviero; Nupur Takwale; Josephine Thomas.

Summary

Context (Chapter 1 and Chapter 2)

1. On 27 April 2012 the Minister for Immigration wrote asking that we update the list of occupations that qualify for Tier 2 of the Points Based System (PBS) to reflect the Standard Occupational Classification (SOC) 2010 and undertake a review of the codes of practice used under Tier 2.
2. The Minister's letter also stated that this exercise was a matter of good housekeeping rather than a strategic review. Our approach has therefore been to restrict the parameters of our review to the general operating procedures of Tier 2 of the PBS.
3. Our overall assessment of the Tier 2 codes of practice has been based on feedback from a call for evidence we launched in May 2012, along with a series of general and sector-specific information events held across the UK. We met with representatives from over 120 different organisations and received 77 written responses to the call for evidence. This feedback has been combined with our own analytical work and an assessment of relevant literature and economic theory. We also looked at some examples of procedures in other countries with an immigration pattern similar to the UK.

“To update the list of occupations skilled to National Qualifications Framework 6 to reflect the new SOC 2010 classification.

To advise on the design of the Codes of Practice Framework including:

(a) how the codes of practice should be divided between sectors and occupations;

(b) whether the current codes could be simplified or streamlined;

(c) whether and how the consistency of approach across different sectors and occupations could be improved; and

(d) how often and in what manner the codes of practice should be updated.

To advise on the minimum appropriate pay for occupations and (as appropriate) job titles, taking into account the minimum salary threshold for the Tier 2 route and identifying, where necessary, separate occupation specific minimum salaries for both new entrants and experienced employees.

To advise on what the appropriate advertising medium (in addition to Jobcentre Plus) should be for occupations and job titles to satisfy the Resident Labour Market Test.”

Extract from the letter from the Minister for Immigration to the Chair of the MAC

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

The codes of practice (Chapter 3)

4. The codes of practice are set by the UK Border Agency and have to be included in the Immigration Rules to have legal effect. The codes set out minimum pay and advertising criteria for occupations and job titles under Tier 2 and seek to minimise the scope for pay undercutting and to ensure that employers make appropriate efforts to seek suitable resident jobseekers for vacancies prior to hiring non-EEA migrant workers.

5. Currently there are 19 separate codes organised by sector which then list the relevant occupation code and job titles according to the SOC 2000. In some cases regional variations apply for minimum pay, although overall Tier 2 is subject to a default minimum annual pay threshold of £20,000.

6. As well as the need to update the codes to reflect the latest version of SOC (SOC 2010), we have considered areas where the codes could be simplified and have concluded that the top-level disaggregation by industry is an unnecessary complication. We accept that this will mean some short-term familiarisation costs for business, but the aim in the longer run is to have better-functioning codes of practice based on a single list of relevant occupation codes. Businesses would incur familiarisation costs in any event through the changes to occupation codes that reflect SOC 2010. With improved access, navigation and guidance through the UK Border Agency website we believe this amounts only to a modest additional change.

Updating the list of skilled occupations (Chapter 4)

7. Since June 2012 the minimum skill requirement for Tier 2 occupations has been raised to National

Qualifications Framework level 6 and above (NQF6+), broadly corresponding to bachelor's degree level. Having previously published a list of NQF6+ occupations according to SOC 2000, our task here was to update these for the new SOC 2010.

8. Drawing on our established top-down methodology for determining skill levels we found that 97 of the total 369 SOC 2010 occupations were skilled at NQF6+, which represents around 6 million full-time employees in the UK (practically a third of the total number of full-time employees). A full list of the 97 occupations is presented in Annex B.

Setting minimum pay thresholds (Chapter 5 & Chapter 6)

9. We considered a number of potential approaches for setting pay thresholds and, of these, determined that the Annual Survey of Hours and Earnings (ASHE), being a large and representative dataset produced by the Office for National Statistics (ONS), would be sufficient to set pay thresholds for the majority (around two-thirds) of the 97 NQF6+ identified occupations. For the remainder, where ASHE was deemed inappropriate, we propose using either existing national pay scales in the public sector (for healthcare and education) or evidence from partners, generally for those remaining occupations in the private sector.

10. We were also asked to distinguish between new entrant and experienced employees and to set separate pay thresholds accordingly. We consider that years since left full-time education is an appropriate definition, with new entrant employees defined as those having left full-time education less than three years ago. New entrants would also include those on employer graduate schemes.

11. In terms of minimum pay thresholds, for experienced employees broadly the options were to use the median (50th percentile) of the pay distribution by occupation or the lower quartile (25th percentile). As the median measure could disadvantage both regional workers and less experienced (but not new entrant) employees, we determined that the 25th percentile would be more appropriate.

12. Similarly we considered carefully the evidence for new entrant employees and felt that a pay threshold set at the 10th percentile of the pay distribution would be appropriate. One potential complication arising from having two separate thresholds is that after three years a migrant worker originally classified as a new entrant would have to have experienced a progression in pay taking him or her from the 10th to the 25th percentile. We recognise this and while we believe these pay thresholds should still apply, there may be room for some discretion by UK Border Agency caseworkers, especially where wage growth may be slower than usual due to the economic climate. A full list of the minimum pay thresholds for experienced employees and new entrants for all the NQF6+ occupations is presented in Table 8.1 in Chapter 8.

13. Finally, we examined the issue of regional variation of pay thresholds and in particular the fact that pay rates are often higher in London than elsewhere in the UK. We do not suggest different thresholds for different regions of the UK. This would increase the potential complexity of the codes of practice. Further, by setting a national minimum pay threshold by occupation at the 25th percentile this mechanism effectively allows for higher pay rates in London

being concentrated at the upper end of the earnings distribution.

Advertising requirement for the Resident Labour Market Test (Chapter 7)

14. Minimum advertising requirements apply only to sponsors seeking to use the Resident Labour Market Test (RLMT) route under Tier 2 and are designed to ensure that resident jobseekers can access adverts for vacancies before they are offered to non-resident jobseekers.

15. Currently all jobs must be advertised through Jobcentre Plus (JCP) plus one other medium (national press, professional journal, milkround graduate recruitment scheme or a selected internet recruitment site).

16. Although the JCP advertising requirement did not fall within our commission, we consider that the increased skill level requirement for Tier 2 may mean that the placing of advertisements in JCP is less effective in matching resident workers to advertised vacancies and we suggest the Government keeps this requirement under review.

17. Beyond this we believe the current 28-day advertising requirement should be retained as well as the current practice of accepting the advertised salary as “*competitive salary*” where this is the standard practice in the industry.

18. In contrast to the current advertising requirement, we recommend a criteria-based approach whereby employers are given greater flexibility to choose locations to advertise vacancies, conditional on the selected media meeting the criteria detailed in the table below.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 1: Recommended criteria for advertising media to satisfy the RLMT

Medium	Criteria
Jobcentre Plus*	Required for all vacancies except: <ul style="list-style-type: none"> - selected jobs within the creative arts; - jobs with a stock exchange disclosure requirement; - certain milkround graduate recruitment schemes; - Named researchers - PhD-level occupations; and - vacancies offering salaries above £70,000.
Plus at least one of:	
Milkround * (new graduates and interns only)	If the employer recruits through a milkround and has visited at least three UK universities as part of the milkround, they are not required to advertise the job in JCP. The employer would, however, need to have advertised the vacancy through two external recruitment media permitted by the codes of practice (one of which must be a recruitment website which satisfies the website criteria: www.jobs.ac.uk ; www.prospects.ac.uk and www.milkround.com) in addition to the milkround. Where fewer than three UK universities provide the relevant course, the employer must have visited all those UK universities which offer the course concerned.
Newspaper	Must be marketed throughout: <ul style="list-style-type: none"> - the UK; or - one of the devolved nations. Must have a minimum weekly publication frequency.
Professional Journal	Must be available nationally or through subscription. Must have a minimum monthly publication frequency. Content must be related to the nature of the vacancy, i.e. trade journals, official journals of professional occupational bodies or subject-specific publications related to the occupation.
Websites	May be an online version of a newspaper or professional journal which would satisfy the criteria discussed above. May be the website for a prominent professional or recruitment organisation. May be organisations' own website if they are a multinational organisation or employing more than 250 permanent UK employees.
Note: *Criteria exist as part of the current advertising requirement	

Conclusions (Chapter 8)

19. We have considered the framework of the codes of practice and recommend that the structure be revised to exclude the Standard Industrial Classification (SIC) 2007 top-level disaggregation and that the codes of practice be presented in a single list using the SOC 4-digit relevant codes for occupations skilled at NQF6+.

20. The key elements of the codes of practice that we expect to change over

time are the minimum pay thresholds and the advertising criteria. The former will change as pay varies within occupations according to prevailing economic factors while the latter will change as new locations and new media gain a stronger foothold in the market place.

21. We recommend that the pay thresholds for the occupations set at the 25th or 10th percentile of the ASHE distribution are updated according to the annual ASHE data (currently published by the ONS in the fourth quarter of the

year). For those pay thresholds based on partners' evidence we recommend updating annually according to the national pay inflation of full-time workers from the annual ASHE data. For those pay thresholds based on national professional pay scales, such as the NHS Agenda for Change or national teachers' pay scales, we recommend updating in line with their annual increase.

22. We recommend that the minimum pay thresholds for experienced employees in SOC 1136 information communication and technology directors, SOC 2133 IT specialist managers and SOC 2134 IT project and programme managers should be updated using the

latest data from the Incomes Data Services database.

23. We do not identify specific media for use under the RLMT but rather a set of criteria in order to determine the appropriateness of the media being used. Therefore, we do not see a need to update annually to take account of whether a website or publication is no longer a market-leader. We do not see a need to annually update the set of criteria we are recommending for the advertising requirements, but we recognise they should be revisited, alongside the minimum pay requirements, in 3 to 5 years.

Chapter 1 Introduction

1.1 Scope of this report

1.1 On 27 April 2012 the Minister for Immigration wrote to us asking that we update the list of occupations that qualify for Tier 2 of the Points Based System (PBS) and undertake a review of the codes of practice used under Tier 2. The commission from the Government asked us:

“To update the list of occupations skilled to National Qualifications Framework 6 to reflect the new SOC 2010 classification.

“To advise on the design of the Codes of Practice Framework including: (a) how the codes of practice should be divided between sectors and occupations; (b) whether the current codes could be simplified or streamlined; (c) whether and how the consistency of approach across different sectors and occupations could be improved; and (d) how often and in what manner the codes of practice should be updated.

“To advise on the minimum appropriate pay for occupations and (as appropriate) job titles, taking into account the minimum salary threshold for the Tier 2 route and identifying, where

necessary, separate occupation specific minimum salaries for both new entrants and experienced employees.

“To advise on what the appropriate advertising medium (in addition to Jobcentre Plus) should be for occupations and job titles to satisfy the Resident Labour Market Test.”

1.2 The Government’s commission stated that this exercise was a matter of good housekeeping rather than a strategic review. We have therefore approached this exercise as an update of the general operating procedures of Tier 2 of the PBS.

1.3 In response to the commission this report considers potential ways to streamline and update the codes of practice. It then provides the list of occupations skilled at National Qualifications Framework level 6 and above (NQF6+) in the Standard Occupational Classification (SOC) 2010. It reports on the recommended pay thresholds for occupations and job titles skilled at NQF6+ within the Tier 2 codes of practice and finally considers the different ways the Resident Labour Market Test (RLMT) advertising requirements could be revised.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Box 1.1: Technical terms and definitions used in this report

Annual Survey of Hours and Earnings (ASHE) - This survey is produced by the Office of National Statistics (ONS) and provides information about the levels, distribution and composition of earnings and hours worked for employees in all industries and occupations. ASHE is based on a one per cent sample of employee jobs taken from HM Revenue & Customs PAYE records. ASHE is a key data source for the analysis presented in this report.

National Qualifications Framework (NQF) - This is a credit transfer system developed for qualifications in England, Wales and Northern Ireland. The framework has nine levels covering all levels of learning in secondary education, further education, vocational and higher education. The current skill level required for migrants coming to the UK under Tier 2 is NQF6 or above. This broadly corresponds to bachelor's degree level.

Standard Occupational Classification (SOC) - This is a classification system of occupational information for the UK produced by the ONS. Jobs are classified in terms of their skill level and grouped by occupation. The latest version is SOC 2010 and classifies 27,966 job titles into 369 occupations.

Standard Industrial Classification (SIC) - This is a classification system for use in organising business establishments and other statistical units by the type of economic activity in which they are engaged. It is produced by the ONS and the latest version was produced in 2007. The UK Border Agency's codes of practice under Tier 2 are organised by reference to the SIC system.

1.2 What we did

1.4 Alongside our analysis of quantitative data, we carried out a call for evidence to collect the views and opinions of partners. In this report "corporate partners", or just "partners", refers to all parties with an interest in our work or its outcomes, so private and public sector employers, trade unions, representative bodies and private individuals are included within this term. While the focus of the report is on Tier 2, the analysis and evidence from corporate partners also takes into account the wider migration context.

1.5 The call for evidence was launched on 11 May 2012 and closed on 27 July 2012. Our call for evidence document restated the Government's commission and identified some sub-questions on which we wished to receive corporate partners' views. The document was sent to over 1,500

partners and posted on our website.

1.6 The questions in our call for evidence were:

"Could the current codes be simplified or streamlined and, if so, how?"

"How often do the codes of practice need to be updated?"

"With reference to the 25th and 50th percentile earnings listed in Table A.1 in the Annex to the call for evidence, what is the minimum appropriate pay (i.e. that will prevent undercutting of the resident labour force) for occupations on the NQF6+ list and/or for specific job titles within those occupations?" Respondents were asked to specify the relevant 4-digit SOC 2010 code when submitting evidence.

“Within the occupations on the NQF6+ list, are people typically employed at a lower salary because they are less experienced (for example, through recent graduate recruitment schemes, traineeships or apprenticeships) and are you aware of, or do you operate, specific schemes for recruitment and development of less experienced employees?” Respondents were asked to provide details in their evidence.

“What are the typical characteristics, or range of characteristics, of these less experienced employees? For instance, what qualifications do they hold, how old do they tend to be, how many years has it been since they graduated, how many years experience have they had in the industry?”

“With reference to the potential 10th percentile of the pay distribution for occupations listed in Table A.1 in the call for evidence document, what are the appropriate minimum pay thresholds for low experience workers to prevent undercutting for occupations on the NQF6+ list and/or for specific job titles within these occupations?” Respondents were asked to specify the relevant 4-digit SOC 2010 code when submitting evidence and also to explain how they identify “low experience workers”.

“What has been the impact on you of the requirements in the current codes of practice with regard to advertising locations (in addition to advertising in Jobcentre Plus) on recruitment? If you are an employer, has

adhering to the requirements led to you recruiting from the resident workforce? If not, why not?”

“Where would you expect to see advertisements for vacancies in your occupation?”

“What factors do, or should, employers take into account when considering which advertising locations to use for recruitment into jobs which could ultimately be filled by non-EEA migrants?”

1.7 We hosted two public general information events in London to discuss our commission and held five sector specific meetings covering:

- information technology (IT);
- health and social care;
- education and science;
- engineering and construction; and
- finance and business.

1.8 We received 75 written submissions of evidence from organisations and two from individuals. All of the written and verbal evidence from partners was considered alongside our own data analysis and examination of the relevant theory and literature. A list of those who supplied evidence, and who have not requested anonymity, is provided in Annex A.1 to this report.

1.9 We attended or hosted further events in Scotland and several English regions. We also held two teleconferences providing the same information as during the events. During the call for

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

evidence we met with representatives from over 120 different organisations. An indicative list of those we met with is provided in Annex A.2 to this report.

1.3 Structure of the report

1.10 This report is structured as follows:

- Chapter 2 presents the relevant policy and data context including an overview of the PBS and Tier 2 in particular along with the role of the codes of practice. It also looks at some comparisons with practices in other countries.
- Chapter 3 sets out our recommendations on simplifying the codes of practice framework.
- Chapter 4 presents the list of NQF6+ occupations using SOC 2010 and discusses issues arising from the conversion from SOC 2000.
- Chapter 5 sets out our recommendations on how minimum pay thresholds should be set for occupations on the NQF6+ list.

- Chapter 6 presents our analysis of evidence from partners on setting pay thresholds for occupations, or job titles within an occupation, using sources of data other than those recommended in Chapter 5.

- Chapter 7 discusses the advertising requirements for the RLMT.
- Chapter 8 concludes the report and summarises the recommendations and pay thresholds for all NQF6+ occupations.

1.11 Annex B provides the list of 4-digit SOC 2010 occupations we consider to be skilled at NQF6+. Annex C details the analysis that has been undertaken to set the minimum pay thresholds for occupations.

1.4 Thank you

1.12 We are grateful to all our partners who responded to our call for evidence and to those who engaged with us at meetings and events. We are particularly grateful to those partners who organised or hosted events on our behalf.

Chapter 2 Policy and data context

2.1 Introduction

2.1 This chapter presents an overview of the UK Points Based System (PBS) for immigration with a focus on Tier 2, including an overview of the data context. The role of the codes of practice is described in detail. This chapter also looks at examples of minimum pay thresholds and advertising requirements in other countries. Detailed discussion of how the codes have been updated since they were first introduced and how the pay thresholds and advertising requirements are determined in the current codes are in Chapter 3, Chapter 5 and Chapter 7 respectively of this report. Discussion of the Standard Occupational Classification (SOC)

system and why the list of occupations skilled at National Qualifications Framework (NQF) level 6 and above has been updated is in Chapter 4.

2.2 There are codes of practice for Tier 2 and Tier 5 and for occupations skilled at NQF3, 4 and 6. We have reviewed the codes of practice for skilled occupations at NQF6+ only and this chapter does not cover all codes of practice used in the PBS.

2.2 Overview of the Points Based System and Tier 2

2.3 The PBS for migration to the UK from outside the European Economic Area (EEA) was introduced in 2008. It now consists of five tiers as set out in Table 2.1.

Table 2.1: The five tiers of the Points Based System

Name of tier	Immigrant groups covered by tier
Tier 1	Investors, entrepreneurs, and exceptionally talented migrants.
Tier 2	Skilled workers with a job offer in the UK.
Tier 3	Low-skilled workers needed to fill specific temporary labour shortages. Tier 3 has never been opened.
Tier 4	Students.
Tier 5	Youth mobility and temporary workers. This route is for those allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives.

Source: Migration Advisory Committee analysis, 2012

2.4 As set out in the Government's commission in Chapter 1, Tier 2 is the focus of this report. The Tier 2 (General) route applies to two

categories of skilled workers: those coming to fill jobs that have been advertised under the Resident Labour Market Test

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

(RLMT), and those coming to take up jobs on the Government's shortage occupation list. Tier 2 also contains three other routes: the intra-company transfer, ministers of religion and sportsperson routes (the latter two of these routes are not covered by this commission). Tier 2 is subject to a minimum pay threshold of £20,000 with a higher threshold for the intra-company transfer route (detailed in paragraph 2.10) and one exception detailed in paragraphs 2.27 and 2.28. In this report when we refer to Tier 2, we are referring to Tier 2 (General) plus the intra-company transfer route.

2.5 The **RLMT route** enables an employer to bring in a worker from outside the EEA once the employer has shown that there is no suitably qualified worker from within the UK or the EEA available to fill a specific skilled vacancy. Employers are required to advertise the relevant vacancy through Jobcentre Plus and at least one other medium for 28 calendar days. This can be done in one of the two following ways:

- advertise the vacancy for a single continuous period, with a minimum closing date of 28 calendar days from the date the advertisement first appeared; or
- advertise the vacancy in two stages, where each stage lasts no less than 7 calendar days and both stages added together total a minimum of 28 calendar days. For example, the vacancy can be advertised for 14 calendar days. If a suitable worker is identified

who is already allowed to work in the UK, the employer can appoint that person straight away. However, if no suitable worker is identified, the employer cannot appoint a migrant worker who applies at this stage but must re-advertise the vacancy for a further 14 days, making 28 calendar days in total. If no suitable worker who is already allowed to work in the UK is identified during either the first or second stage, then the employer can move to appoint a Tier 2 migrant worker.

2.6 The period of advertising starts from the date the advert first appears. For print adverts, a single advert with a deadline 28 days hence is sufficient. Online adverts must be viewable for the full 28 days.

2.7 Applicants under the RLMT must usually be assigned a Certificate of Sponsorship (CoS) by the employer within six months of the recruitment advertisement being placed. For PhD-level occupations only, the period during which an applicant must be assigned a CoS by the employer is extended from 6 months to 12 months.

2.8 For new graduate posts, sponsors can satisfy the RLMT by visiting at least three UK universities and advertising on a listed graduate recruitment website (www.jobs.ac.uk, www.milkround.com or www.prospects.ac.uk) and at least one other medium. Referred to as the milkround, this can take place up to 48 months before assigning a CoS. The job does not need to be advertised in Jobcentre Plus.

Additionally, following Government acceptance and implementation of our recommendations in Migration Advisory Committee (2012b), jobs that are paid more than £70,000 and specified PhD-level occupations do not have to be advertised in Jobcentre Plus.

- 2.9 Employers can apply to bring in workers from the outside of the EEA without going through the RLMT if the occupation is on the Tier 2 **shortage occupation list**. This details the occupations and job titles presently held to be experiencing a labour shortage that would be sensibly filled using non-EEA labour either in the whole of the UK or in Scotland only. We periodically review the content of the list when commissioned to do so by the Government. The next review is expected to be published in early 2013.
- 2.10 The **intra-company transfer** route is for employees of multi-national companies being transferred to a UK-based branch of the same organisation either on a long-term or short-term basis. Additionally, organisations may use the intra-company transfer route for third-party contracting, bringing in labour from their own company to deliver a business outcome to a third party often in the form of a one-off project. The transferees may work at the third party's premises providing the multi-national organisation remains responsible for their work. Long-term staff brought in under the intra-company transfer route must be paid £40,000 or above or the rate specified in the relevant codes of practice, whichever is higher. They are given permission

to stay for up to three years, with the possibility of extending for a further two years. Short-term staff must be paid £24,000 or above or the rate specified in the relevant codes of practice, whichever is higher, and are allowed to work in the UK for a maximum of 12 months.

Recent changes to Tier 2

- 2.11 Since 6 April 2011, Tier 2 (General) has been subject to an annual limit of 20,700 places for main out-of-country applicants. In 2011/12 the Tier 2 limit was undersubscribed by 52 per cent. We were commissioned to assess this in early 2012 (Migration Advisory Committee, 2012b). The Government accepted our recommendation to keep the limit at this level.
- 2.12 The skill level required to qualify under Tier 2 was increased in June 2012 to NQF6+, broadly corresponding to bachelor's degree level. Occupations and job titles presently on the shortage occupation list but not skilled at NQF6+ and certain creative occupations do not have to comply with the NQF6+ requirement but must be skilled at NQF4+.
- 2.13 In April 2012, the Tier 1 Post Study Work Route, which allowed non-EEA migrant students two years to seek employment in the UK after their graduation, was closed. Non-EEA migrants graduating from a UK university with a recognised degree, post-graduate certificate of education, or professional graduate diploma in education are able to switch from Tier 4 into Tier 2, subject to meeting the relevant

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

requirements. They need a job offer, but the employer is not required to demonstrate that the RLMT has been met, nor will they be subject to the annual limit on Tier 2 (General). The job offer must still be in an occupation skilled at the requisite level, or a job on the shortage occupation list.

out-of-country visas and further leave to remain grants to main applicants and dependants through Tier 2 for the period 2011 Q3 to 2012 Q2. It also shows the ratio of grants to dependants and main applicants by route. These ratios do not account for the fact that many dependants may be associated with previous cohorts of main applicants. For example, a dependant may have been granted a visa in 2012 because of their relationship to a main applicant who was granted a visa in 2010.

2.3 Data context for Tier 2

2.14 This section presents the numerical context for Tier 2 using data that are currently available. Table 2.2 presents the numbers of

Table 2.2: Entry clearance visa grants and further leave to remain grants by Tier 2 route, main applicants and dependants, Q3 2011 to Q2 2012

Route	Main applicants (A)	Dependants (B)	(B)/(A)
Entry clearance visas grants (out-of-country)			
Tier 2 intra-company transfers (long term)	11,113	11,967	1.1
Tier 2 intra-company transfers (short term)	15,912	4,998	0.3
Tier 2 intra-company transfers‡	2,546	10,755	0.9
Tier 2 (General)	8,927		
Tier 2 ministers of religion	306		
Tier 2 sportsperson	211		
Total Tier 2	39,015	27,720	0.7
Further leave to remain grants (in-country)			
Tier 2 intra-company transfers	7,369	6,961	0.9
Tier 2 (General)	14,709	8,524	0.6
Tier 2 ministers of religion	487	487	1.0
Tier 2 sportsperson	88	95	1.1
Total Tier 2	22,653	16,067	0.7

Notes: From 6 April 2011, intra-company transfers have been classified as short term, long term, skill transfer or graduate trainee. Tier 2 (General) includes the RLMT and shortage occupation routes. Published data on volumes of visas granted to in-country and out-of-country applicants are not broken down to show how many were issued via shortage occupation list and RLMT routes separately. ‡ Includes pre-6 April 2011 intra-company transfer route, skill transfer route and graduate trainee route.

Source: Home Office (2012), Q3 2011 to Q2 2012.

2.15 The majority of Tier 2 visas were granted to intra-company transfer migrants, with 29,571 of these granted between 2011 Q3 and 2012 Q2. The intra-company

transfer route accounted for around 75 per cent of all Tier 2 visa grants over this period. Visa grants to Tier 2 (General) main applicants were 8,927 over the

same period, accounting for around 25 per cent of Tier 2 visa grants. UK Border Agency management information suggests that the shortage occupation route accounted for approximately 15 percent of Tier 2 (General) visas over the 12 months to 30 June 2012 while the RLMT route constituted the remaining 85 per cent.

- 2.16 Table 2.3 presents the occupations issued with the highest numbers of CoS used by Tier 2 (General) and intra-company transfer main applicants. Table 2.4 presents data for occupations with the highest number of CoS used by the RLMT, shortage occupation, short term intra-company transfer and long term intra-company transfer routes. Both tables report occupations using the old SOC 2000 classifications because eligible occupations for Tier 2 are currently defined using these classifications. Data using the SOC 2010 classification are not yet available.
- 2.17 As shown in Table 2.3 and Table 2.4, around 32 per cent of Tier 2 (General) and intra-company transfer migrants applied under SOC code 2132 software professionals, with the majority of these coming through the intra-company transfer route. SOC 2423 actuaries, economists and statisticians and 1136 information and communication technology managers accounted for around 6 per cent and 5 per cent of Tier 2 (General) and intra-company transfer applications respectively.

2.4 The Tier 2 codes of practice

- 2.18 The UK Border Agency uses codes of practice to detail further conditions that must be met by migrants and their sponsors for applications under Tier 2. Following the Supreme Court judgment of 18 July 2012 in the case of *Alvi v Secretary of State for the Home Department*, the codes of practice must be included in the Immigration Rules in order to have legal effect. They were added to the Rules on 20 July 2012 and are set out in Appendix J of the Immigration Rules.
- 2.19 The codes have been set up and maintained by the UK Border Agency since their introduction in 2008 and they list:
- the occupations and some job titles for which sponsors can issue a CoS, although this is not a comprehensive list;
 - the minimum appropriate pay for occupations and some job titles. Some of the pay thresholds in the current codes have evolved from discussions between the UK Border Agency and its partners. Some are set using national data taken from the Annual Survey of Hours and Earnings (ASHE) for 2009 to calculate the 25th percentile of the pay distribution of an occupation. Other thresholds are set using industry specific data sources some of which date from 2006; and

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

- the advertising requirements that employers need to fulfil in order to show that there is no suitably qualified worker from within the UK or the EEA available to fill a specific skilled vacancy.

Table 2.3: Top 10 SOC 2000 occupations skilled at NQF6+ by out-of-country and in-country Resident Labour Market Test, shortage occupation and intra-company transfer main applicants, 2011 Q3 to 2012 Q2

4-digit SOC	Occupation	Shortage occupation	Resident labour market test	Intra-company transfer	Total
2132	Software professionals	35	1,835	13,234	15,104
2423	Management cons., actuaries, economists and statisticians	14	1,022	1,940	2,976
1136	Information and communication technology managers	-	248	2,035	2,283
1132	Marketing and sales managers	-	661	1,507	2,168
2211	Medical practitioners	945	1,208	5	2,158
3534	Finance and investment analysts/advisers	-	1,026	923	1,949
2131	IT strategy and planning prof.	-	245	1,283	1,528
1112	Directors and chief executives of major organisations	5	478	850	1,333
2329	Researchers n.e.c.	-	1,284	19	1,303
2421	Chartered and certified accountants	-	594	658	1,252
Total top 10 occupations by CoS used		999	8,601	22,454	32,054
Total for all Tier 2 occupations (subject to restrictions below)		2,765	15,912	28,181	46,858

Note: Applicants are required to meet the criteria for Tier 2 from the most recent major immigration rule change (14 June 2012) at the point of being allocated a certificate of sponsorship. Data for the period covered will include some individuals who would have met the pre-14 June 2012 visa rules for Tier 2 but would not have met the subsequent rules. These data have therefore been filtered to exclude those individuals who would not meet the current visa rules. Therefore totals do not match published overall totals for Tier 2 CoS used published in *Immigration Statistics April-June 2012*, due to the following: First, a main applicant to the RLMT route has been excluded if the occupation is not skilled at NQF6+ (unless the occupation is one of the creative occupations exempt from this: 3411, 3412, 3413, 3414 and 3422) and/or earnings on the job are less than £20,000 per year and/or they are clergy (who would use the Tier 2 minister of religion route). Second, a main applicant to the shortage occupation route has been excluded if the occupation is not on the shortage occupation list as at 14 November 2011 and/or earnings in the job are less than £20,000 per year and/or they are chefs earning less than £28,260 per year. Third, a main applicant to the long-term intra-company transfer route has been excluded if their occupation is not skilled at NQF6+ (or is one of the creative occupations) and/or earnings in the job are less than £40,000 per year. Finally, a main applicant to the short term intra-company route has been excluded if their occupation is not skilled at NQF6+ (or is one of the creative occupations) and/or earnings in the job are less than £24,000 per year. Further, data are excluded if the salary reported is not annual or we were unable to distinguish between in/out of country applicants. Not all the individuals using CoS may be granted visas since some may have their visa applications rejected. Furthermore, even when a visa is granted, a person may not travel to the UK and on arrival they may also not be admitted. All of the figures quoted are management information which have been subject to internal quality checks, but have not been quality assured to the same standard as National Statistics. As much of the input data (for example, salary levels) is self declared by the sponsor, UK Border Agency is not able to validate the quality of the source information, and we are advised by the UK Border Agency that data quality anomalies could impact on the findings. These data are provisional and subject to change.

Source: UK Border Agency management information, 2011 Q3 to 2012 Q2.

Table 2.4: Top five SOC 2000 occupations by used Certificates of Sponsorship (CoS) for the RLMT, shortage occupation, short term intra-company transfer and long term intra-company transfer routes, 2011 Q3 to 2012 Q2.

RLMT route				
Occupation		CoS used	Percentage of total CoS used*	Median annual pay (£)
2132	Software professionals	1,835	12	35,000
2329	Researchers n.e.c.	1,284	8	30,000
2211	Medical practitioners	1,208	8	45,000
2321	Scientific researchers	1,178	7	31,000
3211	Nurses	1,091	7	24,000
Total for all Tier 2 occupations		15,912	100	36,000
Shortage occupation route				
Occupation		CoS used	Percentage of total CoS used*	Median annual pay (£)
2211	Medical practitioners	945	34	47,000
5434	Chefs, cooks	254	9	29,000
2314	Secondary education teaching professionals	179	6	29,000
2121	Civil engineers	172	6	54,000
5243	Lines repairers and cable jointers	140	5	35,000
Total for all Tier 2 occupations		2,765	100	37,000
Short term intra-company transfer route				
Occupation		CoS used	Percentage of total CoS used*	Median annual pay (£)
2132	Software professionals	8,606	68	37,000
2423	Management consultants, actuaries, economists and statisticians	763	6	72,000
1136	Information and communication technology managers	615	5	39,000
3534	Finance and investment analysts/advisers	280	2	69,000
2126	Design and development engineers	259	2	36,000
Total for all Tier 2 occupations		12,688	100	44,000
Long term intra-company transfer route				
Occupation		CoS used	Percentage of total CoS used*	Median annual pay (£)
2132	Software professionals	4,254	30	48,000
1136	Information and communication technology managers	1,354	10	72,000
1132	Marketing and sales managers	1,250	9	55,000
2131	IT strategy and planning professionals	1,052	7	80,000
2423	Management consultants, actuaries, economists and statisticians	862	6	80,000
Total for all Tier 2 occupations		14,104	100	64,000

Note: See notes in Table 2.3. Median annual pay rounded to the nearest thousand. * Totals do not match published overall totals for Tier 2 CoS used published in Immigration Statistics April-June 2012, due to filters applied to the data. Median annual salaries are calculated using both in and out-of-country CoS used and as such may double count some individuals.

Source: UK Border Agency management information, 2011 Q3 to 2012 Q2.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

- 2.20 There are 19 separate codes arranged by sector¹. Additional codes of practice have been agreed with the creative sector for workers in dance, theatre, film and television. To bring migrants to the UK in these occupations under Tier 2, the employer would need to comply with the relevant Section R (Arts, entertainment and recreation) code of practice and the relevant creative occupation code for ballet dancers; dancers (other than ballet); performers in theatre and opera; performers in film and television; or workers in film and television.
- 2.21 Each code of practice lists relevant SOC 2000 codes and corresponding job titles, stating the relevant pay thresholds and required advertising media for each. The minimum pay thresholds do not always apply equally to all regions and countries of the UK, depending on the data the UK Border Agency has used. For instance, the Section A (Agriculture, forestry and fishing) code of practice gives the source for the pay threshold for the head greenkeeper job title as the Committee for Golf Club Salaries and records the minimum pay threshold as follows:
- head greenkeeper - London (30 mile radius): £33,593
 - head greenkeeper - South East England, Essex, Hertfordshire: £32,289
- head greenkeeper - Rest of United Kingdom: £29,822.
- 2.22 Other job titles with different regional minimum rates in the codes of practice include electrician, financial director, financial manager, solicitor, lawyer, press photographer, school inspector, and teaching professional occupations.
- 2.23 Before an employer can sponsor a skilled migrant, the employer must check that the job meets the requirements as to the skill level and the appropriate rate of pay as set out in the codes of practice. If the job does not meet those requirements, the employer cannot issue a CoS.
- 2.24 The UK Border Agency groups the codes of practice to reflect the skill level of the occupations that they cover. They are grouped according to whether they cover:
- occupations skilled at NQF6+ for use under Tier 2 after 14 June 2012²;
 - occupations skilled at NQF4+ but below NQF6; and
 - occupations skilled at NQF3+ but below NQF4.
- 2.25 The latter two groups are for in-country Tier 2 extensions and changes of employment for migrants who entered Tier 2 when the skill threshold was NQF4+ or NQF3+. This report deals only with the codes of practice for occupations skilled at NQF6+. The

¹ The codes are organised by reference to the 2007 Standard Industrial Classification (SIC) system at the 2-digit level.

² This is the date from when the increase in skill level from NQF4 to NQF6 took effect.

commission from the Government did not ask us to do any updating for NQF3+ or NQF4+ extensions and changes of employment.

Minimum pay for occupations and job titles

- 2.26 As stated in paragraph 2.4, all occupations and job titles under Tier 2 are subject to a default minimum pay threshold of £20,000. The pay thresholds set out in the codes of practice constitute a tailoring of this minimum amount to reflect the going rate for individual occupations and job titles. Applicants under Tier 2 must be paid either £20,000 or the amount specified in the relevant code of practice, whichever is higher.
- 2.27 There is one exception to this. The current Section Q (Human health and social work activities) code of practice discusses nurses and midwives that are undergoing a period of learning or supervised practice to gain Nursing and Midwifery Council (NMC) registration and who may be sponsored under Tier 2 provided they meet the full points requirements. Points will be awarded for the guaranteed annual salary that will be paid when the individual achieves NMC registration, provided he or she has a guaranteed job offer. If the individual has not achieved NMC registration after nine months, the UK Border Agency may consider curtailing his or her leave to remain. These supervised practice nurses and midwives are paid at Agenda for Change band 3, listed as £15,190 in the current codes of practice.
- 2.28 The UK Border Agency confirmed that these nurses and midwives are permitted to be sponsored under Tier 2 below the £20,000 minimum pay threshold for a period of time. This is the only exception to the £20,000 minimum threshold for new entrants to Tier 2 and is discussed further in paragraph 6.31 of this report. Migrants who entered Tier 2 before 6 April 2011 can still apply for extensions or to change employment, without being subject to the £20,000 threshold. This is because before this date there was not an absolute minimum pay threshold for Tier 2. Points could be traded off between salary and qualifications, and for shortage occupations there was no minimum threshold at all. This transitional arrangement prevents the £20,000 threshold being retrospectively applied to them.
- 2.29 A breakdown of all the codes, which are identical with their corresponding SIC categories, is presented in Table 2.5 showing the number of SOC codes and pay thresholds in each, with the percentage of pay thresholds set using the ASHE for each code.
- 2.30 Around 15 per cent of the pay thresholds are set using the 25th percentile of hourly earnings taken from the ASHE at the 4-digit SOC code level. Others are set using such industry or occupation specific data sources as: Engineering UK, Police Officers Pay Review, Hays, Ministry of Justice, Royal Planning Institute, and the British Trout Association.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 2.5: Breakdown of the Tier 2 codes of practice showing number of NQF4+ and NQF6+ SOC codes and number of pay thresholds covered in each

Code of practice		Number of SOC codes	Number of pay thresholds	Percentage of the covered pay thresholds set using ASHE
A	Agriculture, forestry and fishing	3	6	33
B	Mining and quarrying	1	1	100
C	Manufacturing	5	7	57
D	Electricity, gas, steam and air conditioning supply	0	0	0
E	Water supply, sewerage, waste management and remediation activities	1	1	100
F	Construction	6	23	9
G	Wholesale and retail trade, repair of motor vehicles and motorcycles	0	0	0
H	Transportation and storage	3	4	25
I	Accommodation and food service activities	1	1	100
J	Information and communication	4	70	0
K	Financial and insurance activities	9	25	28
L	Real estate activities	3	3	66
M	Professional, scientific and technical activities	17	50	22
N	Administrative and support service activities	11	23	39
O	Public administration and defence, compulsory social security	8	11	64
P	Education	9	86	7
Q	Human health and social work activities	23	117	3
R	Arts, entertainment and recreation	8	6*	33
S	Other service activities	7	9	67
Total		119	443	15

*Some job titles in this code do not have specific pay thresholds, but direct the reader to industry sources. Some of these industry sources are no longer available.

Source: UK Border Agency, 2012b.

2.31 Only 9 per cent of pay thresholds in the construction sector are based on ASHE, the rest come from either a 2007 salary survey by the Institution of Civil Engineers or from information supplied by Construction Skills (the Sector Skills Council for the construction sector). None of the pay thresholds in relation to the information and communication sector come from ASHE and are instead taken from a 2009 salary

survey by Salary Services Ltd and a 2008 salary survey by the Independent Game Developers Association. The pay thresholds across the financial and insurance activities sector that do not come from ASHE are derived from a variety of other salary surveys.

2.32 The professional, scientific and technical activities sector encompasses a variety of disparate occupations including

research and development managers, chemists and physicists, mechanical and electrical and chemical engineers, scientific researchers, solicitors, lawyers, judges and coroners. The pay thresholds not taken from ASHE come from a variety of sources including the Institution of Chemical Engineers, the Universities and Colleges Employers Association, and the Ministry of Justice.

2.33 The majority of pay thresholds across the education sector are taken from information supplied by the Universities and Colleges Employers Association, the University and College Union, Ofsted, the devolved administrations and DCSF (the former name of the Department for Education). The NHS Agenda for Change pay scales are used in the vast majority of health-related occupations under Section Q (over 100 pay thresholds).

2.34 Pay thresholds using the ASHE are based on pay per hour. Rates set using other sources are generally annual salaries. We discuss our recommendations for the pay thresholds in the codes of practice in Chapter 5 and Chapter 6.

Advertising requirement under the RLMT route

2.35 The requirements within the codes of practice relating to advertising media are discussed in more detail in Chapter 7 of this report.

2.36 The current codes of practice list a number of specialist websites that

can be used to ensure compliance with the RLMT. These were either carried over from the work permit³ occupational guidance or are new additions. The UK Border Agency told us they receive many requests each year for new websites to be accepted for inclusion onto the list of websites within the codes. The UK Border Agency uses the following criteria to determine whether nominated websites are appropriate for inclusion:

- the number of vacancies carried;
- whether they are household names;
- how quickly they came up on relevant Google searches; and,
- whether key stakeholders (such as regulatory bodies, Sector Skills Councils, and government departments) are content with their inclusion.

2.37 We discuss our recommendations for the advertising requirements in Chapter 7 and summarise our recommendations in Chapter 8.

Current updating arrangements

2.38 Initially, the UK Border Agency updated the codes quarterly where new information or data were available. Due to the ad-hoc nature of these updates some of the pay thresholds have become outdated. Updated versions of the codes were published in June 2012 to reflect the uplift of the

³ Work permits were part of the immigration system that preceded the introduction of the PBS.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

minimum skill requirement to NQF6+. The previous review in 2011 was the first in a year and updated only some pay thresholds. Some salaries are still based on information from 2006. The job titles and grades cited in the codes have all evolved from discussions with partners, and evidence sources have also tended to evolve rather than develop from a set methodology.

- 2.39 The UK Border Agency initiated a consultation between January and March 2012 on the codes of practice. We have taken account of this consultation and the evidence provided to it by partners in reaching our recommendations in this report. We discuss our recommendations for updating the codes of practice in Chapter 8.

2.5 International comparisons

- 2.40 This section sets out a brief summary of the approaches in different countries to test the resident labour market and set minimum pay thresholds. The countries we looked at are Australia, Canada, Sweden and the United States because in each case we felt there were some similarities with the UK's PBS. Three themes emerge from these comparisons.

Australia

- 2.41 There are two main routes for migrants to work in Australia. The programme for employers to sponsor overseas workers to work in Australia on a temporary basis (between one and four years) is the Temporary Business (Long Stay) visa, otherwise known as Subclass 457. This visa is for employers who would like to

employ overseas workers to fill nominated skilled positions in Australia.

- 2.42 An employer hiring a foreign worker in Australia is expected to pay the migrant worker at the pay level of an Australian working in the same region in the same occupation, or at the average pay for that occupation in that region. They do not have pay thresholds by occupation as under the UK Tier 2 codes of practice. However, the pay level is subject to a minimum, nationwide, pay threshold of AUD 49,330 per annum. Based on a relative purchasing power parity (PPP) conversion at 2011 rates (Organisation for Economic Co-operation and Development (OECD)), this is approximately equal to £21,440.
- 2.43 Where workers are paid over AUD 180,000 employers are not required to submit evidence. Again using a PPP conversion at 2011 rates, this is approximately £78,200.
- 2.44 Verification of the appropriate pay level is straightforward where collective industry pay agreements exist. In cases where collective agreements do not exist, however, the evidence submitted by firms must be sufficient to satisfy caseworkers that employees will be paid appropriately.
- 2.45 There are no requirements for an employer to establish whether there is a jobseeker among the resident labour market that can fill the vacancy before the migrant is sponsored. Instead, employers who apply for approval as sponsors under Subclass 457 must demonstrate that they have

- a strong record of employing local labour and demonstrate their contribution, and commitment, to the training of Australians.
- 2.46** Should an employer in Australia wish to hire a foreign worker, they must commit a percentage of pay roll to the training of Australian citizens. The training benchmark can take two forms. Employers must either pay at least 2 per cent of the payroll of the business into a government-administered, industry-specific fund which organises the development of skills for Australian citizens in that industry, or employers must dedicate at least 1 per cent of the payroll to training Australian citizens currently in their employment.
- 2.47** The second route for an employer wishing to employ a migrant worker in Australia (on either a temporary or permanent basis) is the Labour Agreement programme. This takes the form of a negotiated agreement between the employer and the Australian Government and the criteria varies on a case by case basis. In general terms, the employer is required to provide information on employment, education, training and industrial relations matters.
- 2.48** The Labour Agreement programme is only available in relation to skilled, semi-skilled or specialised employment where the necessary skills cannot be developed in a short time-frame. Where the necessary skills can be developed in a short time-frame, a Labour Agreement will not be authorised as the employer is expected to source employees from the resident labour market, providing training where required.
- 2.49** Similar to the requirement to the resident labour market test under Tier 2 of the UK PBS, and unlike the Subclass 457 route, the employer is required to demonstrate that there is a demand for the nominated occupation and that there is insufficient supply within the resident labour market. The employer is required to demonstrate that they have made significant attempts to recruit from the resident labour market, through regular advertising online and in print, the use of recruitment agencies or the use of a government job programme.
- 2.50** To successfully negotiate a Labour Agreement, the employer must also demonstrate a record of commitment to developing the skills of Australian nationals. This is most commonly demonstrated by evidence of expenditure on training programmes for existing employees, the recruitment of Australian graduates and participation in Australian apprenticeship or trainee programmes.
- 2.51** In addition, the employer is required to demonstrate a commitment to continued training of Australian nationals, particularly during the term of the Labour Agreement. This mirrors the requirement of the Subclass 457 route in that a percentage of payroll must be committed to this purpose.
- 2.52** The employer is also required to consult with relevant partners during the negotiation process. Relevant partners include the

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

industry professional body, the industry trade union and other partners who may be affected by the successful application for a Labour Agreement, such as schools or health services.

- 2.53 The salary requirements for employers using the Labour Agreement route mirror those of the Subclass 457 route, i.e. an employer is expected to match the pay level of an Australian working in the same region in the same occupation, or at the average pay for that occupation in that region.
- 2.54 Finally, the employer is required to demonstrate that the number of overseas employees requested in the Labour Agreement will represent a minority proportion of that employer's workforce.
- 2.55 Monitoring of sponsors may take place during the period of sponsorship and for up to five years after the sponsorship period has ceased. Sponsorship licences expire after three years. If the sponsor reapplies, they must submit evidence of compliance with rules on pay for existing sponsored workers.

Canada

- 2.56 Prior to being authorised to sponsor a migrant worker, Canadian employers are required to apply for a Labour Market Opinion (LMO) from the government. This LMO tests whether or not the employment of a migrant worker will adversely impact the domestic labour market.
- 2.57 When requesting a LMO, employers must specify the wage offered to the migrant worker and undertake that this is consistent with typical wages paid to similar employees for that region and industry. A positive LMO, one which authorises a sponsor to employ a worker from abroad, requires that the prospective employee is paid a comparable wage to that of a resident worker doing the same job in the same region.
- 2.58 An employer cannot pay less than 15 per cent below the median wage for a high-skill occupation and 5 per cent below the median for a low-skill occupation. High-skill occupations are defined as codes 0, A and B in the Canadian National Occupational Code – these correspond to managerial and professional occupations; and occupations requiring college/trade diplomas respectively.
- 2.59 Additionally, a foreign worker cannot be paid a wage different from the wage paid to someone doing the same job in the same location. For instance, if in Toronto a company employs plumbers at C\$40, and the median pay for that region is C\$35, a temporary foreign worker in that company cannot be paid less than C\$40. If the workers in the same company are paid instead C\$15 per hour, a foreign worker cannot enter under a contract to earn C\$15 since it is more than 15 per cent below the regional median.
- 2.60 When applying for a new LMO, employers are required to demonstrate that they have complied with the rules. This will include providing evidence to demonstrate that the pay and conditions for foreign workers are

substantially the same as for native employees.

2.61 An employer who is found to have employed temporary foreign skilled workers with wages which are not substantially the same as native workers, may be deemed ineligible for a LMO, and barred from access to the temporary foreign worker programme for two years. Similarly, an employer found, during compliance reviews, to be in breach of any of the conditions set out in the LMO, is barred from hiring temporary foreign workers for two years.

2.62 In addition to requirements relating to appropriate pay levels, positive LMO's require evidence that recruitment activities are consistent with the general practice within the occupation. For example, by advertising on recognised internet job sites, in journals, newsletters or national newspapers or by consulting unions of professional associations.

2.63 For managerial and professional occupations, employers may choose to advertise:

- in a manner consistent with the practice within the occupation; or
- on a national job bank (equivalent to Jobcentre Plus in the UK).

2.64 For occupations requiring trade or college diplomas, employers are required to advertise:

- in a manner consistent with the practice within the occupation; and

- on a national job bank or provincial (for example, Quebec or Newfoundland) equivalent.

2.65 Recruitment attempts need to be evidenced in the LMO application and therefore, the employer must attempt to advertise and recruit from the resident labour force before applying for the LMO.

2.66 The following details are required in the advertisements:

- the company operating name;
- job duties (for each position, if advertising for more than one vacancy);
- wage range (i.e. an accurate range of pay being offered to Canadians and permanent residents). The range must always include the prevailing wage for the position;
- the location of work (local area, city, or town); and
- the nature of the position (i.e. project based, or permanent position).

Sweden

2.67 Swedish labour migration policy was dramatically reformed in 2008, as a result of concerns about labour shortages and an ageing population. Unlike other countries, there are no skill requirements, salary thresholds or limits on the number or renewability of permits in place. This has resulted in a labour migration system described by the OECD as one of the most liberal in the world (OECD, 2011a). The system is employer led, meaning

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

employers judge their own need for migrant labour.

approximately £985 per month, or £11,820 per annum⁴.

- 2.68 For a non-EU worker to be employed in Sweden, they will, in most cases, need to hold a work permit. In order for the employee to get a work permit the employer must fulfil a number of requirements. First, they must have prepared an offer of employment. This must classify the occupation of the employee according to the Swedish Standard Classification of Occupations.
- 2.69 Second, they must have advertised the job in Sweden and the EU for 10 days. This is most easily done through the Public Employment Service, which also provides access to the European Job Mobility Portal. The employer must show that they have satisfied this requirement to the Swedish Migration Board, the government body responsible for implementing labour migration management policy. It is not compulsory, however, to interview or respond to candidates.
- 2.70 Third, the terms of employment must be equal to or better than those provided under a Swedish collective agreement or that are customary for the occupation or sector. Fourth, the offer must provide the immigrant with enough to support himself or herself, in practice at least SEK 13,000 per month before tax. Based on a relative purchasing power parity (PPP) conversion at 2011 rates (OECD, 2011b), this is

- 2.71 The final stipulation requires that the relevant trade union be given an opportunity to express an opinion on the terms of employment. The Swedish labour force is heavily unionised, with 70 per cent of the labour force in a union. These trade unions play an important role in the Swedish economy and they are expected to verify that the pay and conditions of the job are consistent with industry standards. Although this may provide a robust test of the labour market in unionised industries, it is likely to prove a less effective mechanism in industries where the union coverage is lower.
- 2.72 As of January 2012 some industries face additional requirements in addition to the above. Employers in these industries must prove that the company can guarantee the work permit applicant's salary and produce tax statements for the previous three months.
- 2.73 There are some exemptions altogether from the work permit requirement. For example, EEA nationals or nationals of Nordic countries or of Switzerland need not hold a work permit no matter what professional category they are in. This also applies to foreign

⁴ By comparison, an employee working at the UK National Minimum Wage for approximately 37.5 hours a week for 52 weeks would earn an annual salary of £11,856. This suggests that wages above the minimum pay in Sweden are not designed to prevent undercutting, so much as ensure an adequate standard of living for all employees.

citizens with a permanent residence permit, students with a residence permit, visiting researchers and, in some cases asylum seekers. In addition, particular professional categories for those who only plan to work for a short time in Sweden are, under certain conditions, exempt. These include, amongst others, transport staff for international traffic, urgently required technical instructors or fitters, performing artists, and athletes taking part in international occupations.

United States

- 2.74** The US Immigration and Nationality Act (INA) bars the admission of any alien who seeks to enter the United States to perform skilled or unskilled labour, unless there are insufficient US workers able, willing, qualified and available. The employment of the alien must not adversely affect the wages and working conditions of similarly employed workers in the United States.
- 2.75** Employers wishing to sponsor a migrant are required to first obtain a Labour Condition Application (LCA) from the Department of Labor (DoL) and then an approved petition from the United States Citizenship and Immigration Service (USCIS). Prior to submitting a LCA, however, the employer is required to conduct a number of recruitment activities. Exceptions to this requirement exist for applications for college or university teachers selected as part of a competitive process, shepherders and occupations on Schedule A (comparable to the Shortage Occupation List).
- 2.76** In order to recruit into a professional occupation, the employer needs to place an advert with the local State Workforce Agency and two print media (either two different Sunday edition newspapers or a professional journal) for a minimum of 30 days. If the vacancy is in a rural area with no Sunday edition newspaper, then the employer may use the edition with the widest circulation in the area of employment.
- 2.77** Furthermore, the employer must select three additional recruitment steps from the following: jobs fairs; websites; on-campus recruitment and campus placement offices; trade or professional organisations; private employment firms; employee referral programmes; local and ethnic newspapers; or radio and television advertisements.
- 2.78** If, upon completion of the required recruitment steps, the employer has been unable to locate a suitably able and qualified US worker, they may submit a LCA to the DoL, confirming that:
- the migrant will be paid the required wage, which is the greater of the prevailing wage for the job title and location (available from the National Prevailing Wage Center (NPWC)) or the actual wage paid to other employees in the same position;
 - the employment of the migrant will not adversely affect the employment conditions of those similarly employed workers;

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

- existing employees of the organisation were given notice of the application, and a copy provided to the representing agent if the role is in a unionised occupation; and
- there was no lockout, strike, or other labour dispute at the premises to prevent existing employees seeing the application.

2.79 The NPWC is part of the DOL and uses the department's Prevailing Wage Determination Policy Guidance in issuing wage determinations for non-agricultural Immigration Programs (the Temporary Agricultural Program does not have a requirement to match a prevailing wage).

2.80 Within 180 days of the LCA being certified, the employer must file an Immigrant Petition for an alien worker. The application will certify to the USCIS that there are not sufficient US workers able, willing, qualified and available to accept the job opportunity in the area of intended employment and that employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed US workers.

Themes from the international comparisons

2.81 We have picked out three themes from the comparison of migration systems used in different countries which appear to be of relevance to our work on the Tier 2 codes of practice. We also highlight below some specific points directly relating to other sections of this report.

2.82 First, all of the countries we looked at have some sort of mechanism that allows resident workers to apply for vacancies that are being offered to migrant workers.

- The Labour Agreement programme in Australia requires that employers demonstrate that they have made significant attempts to recruit from the resident labour market through advertising, the use of recruitment agencies or the use of a government job programme.
- In Canada, employers must provide evidence of their attempts to advertise and recruit from the resident labour force before applying for a Labour Market Opinion from the government, testing whether or not the employment of a migrant worker will adversely impact the domestic labour market.
- For a non-EU worker to be employed in Sweden, the employer must have advertised the job in Sweden and the EU for 10 days.
- In order to employ a migrant worker in the US an employer is required to conduct a number of recruitment activities including placing an advert with the local State Workforce Agency and two print media for a minimum of 30 days as well as selecting three additional recruitment steps.

2.83 Second, all of the countries we looked at set some sort of

minimum pay threshold for migrant workers.

- The Subclass 457 visa in Australia requires that an employer hiring a foreign worker in Australia pays the migrant worker at the pay level of an Australian working in the same region, in the same occupation, or at the average pay for that occupation in that region as well as complying with a minimum, nationwide, pay threshold.
- In Canada, prospective migrant employees must be paid a comparable wage to that of a resident worker doing the same job in the same region and an employer cannot pay less than 15 per cent below the median wage for a high-skill occupation and 5 per cent below the median for a low-skill occupation.
- The terms of employment for migrant workers in Sweden must be equal to or better than those provided under a Swedish collective agreement or that are customary for the occupation or sector and must provide the migrant with enough to support himself. Additionally, in Sweden trade unions are expected to verify that the pay and conditions of the migrant job are consistent with industry standards.
- In the US, employers wishing to sponsor a migrant are required submit a Labour Condition Application to the Department of Labor confirming that the migrant will be paid either the prevailing

wage for the job title and location or the actual wage paid to other employees in the same position, whichever is greater.

- 2.84 Third, there are systems in some of the countries that we looked at which provide for an employer to face consequences for failing to comply with requirements. In Australia, monitoring of sponsors may take place during the period of sponsorship and for up to five years after the sponsorship period has ceased. In Canada, employers are required to demonstrate that they have complied with the rules. An employer who is found to be in breach of the rules may be barred from access to the temporary foreign worker programme for two years. Similarly, an employer found, during compliance reviews, to be in breach of any of the conditions set out in the LMO, is barred from hiring temporary foreign workers for two years. These latter provisions are analogous to the powers the UK Border Agency has to remove sponsorship status from employers.
- 2.85 Additionally, it is worth noting that within their systems both Australia and Canada use the median point to establish pay thresholds (albeit with some regional variation). Should we decide in Chapter 5 to recommend a pay threshold point lower than the median then we are recommending an implicitly more generous provision than these countries.
- 2.86 The Canadian system requires employers to demonstrate that recruitment activities are

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

consistent with the general practice within the occupation. For example, by advertising on recognised internet job sites, in journals, newsletters or national newspapers or by consulting unions of professional associations. Chapter 7 of this report looks at the advertising requirements under the Tier 2 codes of practice and considers the suitability of many of the same requirements as used in the Canadian system.

2.87 The US system provides that in order to recruit into a professional occupation, an employer needs to place an advert with the local State Workforce Agency. This seems to us to be analogous with

the UK requirement to use Jobcentre Plus and perhaps is an indication that the requirement to use Jobcentre Plus to advertise all vacancies is not such an anomaly as portrayed to us in the some of the evidence from partners and as discussed in Chapter 7.

2.88 We have picked out these aspects of the regimes in different countries to show that the UK system is not operating in a vacuum and that other countries with a similar immigrant profile to the UK are engaged in considering the same sort of issues as we deal with in this report.

2.89 Chapter 3 will consider the design of the codes of practice.

Chapter 3 Codes of practice framework

3.1 Introduction

3.1 This chapter is concerned with the following section of our commission from the Government, which asked us to:

“Advise on the design of the codes of practice framework including: (a) how the codes of practice should be divided between sectors and occupations; (b) whether the current codes could be simplified or streamlined; (c) whether and how the consistency of approach across different sectors and occupations could be improved.”

3.2 Our recommendations on “(d) how often and in what manner the codes of practice should be updated” are presented in Chapter 8.

3.3 We address this section of the commission as follows:

- In Section 3.2 we describe the current codes of practice framework and its purpose. We also outline the need to update and review the current codes.
- In Section 3.3 we detail our findings for simplifying and streamlining the design of the framework. We recommend how the codes of practice should be divided between sectors and occupations, and

point to areas where the consistency of approach could be improved.

- In Section 3.4 we outline issues raised by our partners which fall outside the scope of our commission and are not addressed elsewhere in this report.

3.2 The current codes of practice framework

3.4 Chapter 2 presented an overview of the current codes of practice framework. This section provides more detail and highlights those parts of the framework of relevance to the rest of this chapter.

3.5 The Tier 2 codes of practice are broken down into 19 subdivisions according to sections A to S of the Standard Industrial Classifications (SIC) 2007. These form 19 separate documents, each detailing minimum pay thresholds and advertising locations for occupations and job titles.

3.6 In order for an employer to locate the requirements for a particular job, they first need to choose the appropriate industry-based subdivision. Then, they have to navigate through the list of occupations and job titles detailed within the code to find the relevant

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

minimum pay and advertising requirements.

3.7 A wide variety of data sources are used to inform the minimum pay thresholds detailed in each code, which are presented in a mix of annual and hourly pay formats. Some pay thresholds are still based on information from 2007. The job titles and grades quoted have all evolved from discussions with partners, and evidence sources have also tended to evolve rather than develop from a set methodology.

3.8 In setting out minimum pay and advertising requirements for occupations and job titles, the codes of practice aim to perform two key functions. These are:

- to minimise the undercutting of resident workers by potentially lower-paid migrant labour; and
- to ensure that employers make appropriate efforts to seek suitable resident jobseekers for vacancies prior to hiring migrant workers.

3.9 In order for the codes of practice to meet these objectives, it is important that employers find them clear, relevant and easy to use. The next section summarises responses to our call for evidence and details our recommendations for improving the design of the codes.

3.3 The proposed design of the codes of practice framework

3.10 Our proposed approach is to have a single list of annual pay thresholds for each 4-digit occupation skilled at National Qualifications Framework level 6

and above (NQF6+), removing the current SIC 2007 breakdown. Our default position would be to use pay threshold data from the Annual Survey of Hours and Earnings (ASHE) unless partners raise instances where an alternative source may be more appropriate. In addition, if an occupational pay threshold is found not to be appropriate, for example because it does not adequately take into account the variance in pay within the occupation, then exceptions for specific job titles could be made. To avoid repetition and in order to streamline the codes, advertising requirements should be moved to an annex or separate list but remain within the single document.

3.11 Some partners told us that they favoured keeping the SIC 2007 breakdown pointing to the benefits of an industry-based division as a simple and user-friendly means of signposting employers to the appropriate occupation or job title. Sponsors did not have to go through every occupation in order to find the relevant one. This was argued to be particularly helpful in finding lesser-used codes.

“We do not consider that the current structure is particularly unwieldy and we would caution against any artificial attempt to over-simplify this area which is, by nature, always going to be complex.”

Prospect response to MAC call for evidence

correct occupation code can prove difficult and frustrating.

“On the whole, higher education employers find the current codes reasonably clear and helpful. The format is structured in such a way that the information is specially drafted for the sector in which the potential sponsor is based and is therefore clear about the requirements of advertising, salary etc. A single list might not be so clear but if carefully worded could be a possible approach in the future.”

Universities UK, GuildHE and the Universities and Colleges Employers Association response to MAC call for evidence

“Stakeholders consistently request clear, accessible guidance. The Codes of Practice are regularly cited as incomprehensible and time consuming to navigate.”

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

“Where there are a number of job descriptions within a single SOC code, each with a separate minimum salary, it can often be a complicated process to ensure that the position for which the employer wishes to issue a CoS is mapped to the correct SOC code.”

Response from a global business consultancy to MAC call for evidence

3.12 While it is the case that the SIC codes cover most of the relevant occupations and job titles for use under Tier 2 of the Points Based System, certain occupations and jobs in areas such as Engineering and IT will potentially fall across several of the Section A to S codes. This can cause confusion in a sector-based division.

3.13 Overall, we consider that using the SIC 2007 top-level disaggregation by industry is an unnecessary complication to the process of identifying relevant occupations and job titles. We therefore propose that the structure be revised to exclude the SIC 2007 disaggregation.

3.14 The partners we met at our events and several written respondents were content with our proposed change to an occupation list approach. Some partners said that the design of the current codes is unclear and ambiguous and that navigating through complex subdivisions in order to locate the

3.15 A number of partners also noted that the length and repetitiveness of the current codes leads to inconsistencies and conflicting requirements. For example, we were told that the current mix of annual and hourly pay rates within occupations leads to confusion about how hourly pay should be converted into an annual amount, and that there should be a consistent approach across occupations. This sense of confusion, we were told, was exacerbated by a lack of up-to-date guidance to sit alongside the codes.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

“At present there is no consistency across code format: e.g: salary information is expressed as an annual figure for some codes and as an hourly rate in others; some codes take junior positions into consideration when setting salary levels and/or salary varies according to region – other codes are not drafted with junior post or regions in mind. There does not appear to be any reason for the inconsistency in approach and this needs to be rectified.”

Deloitte LLP response to MAC call for evidence

“...from a Rolls-Royce perspective (and we suspect this will be the case for most Tier 2 sponsors who issue a critical mass of certificates of sponsorship), we now have a familiarity of, and competence in, the way the Codes of Practice are presented. We are familiar with the location of those codes which we use on a high frequency basis and we are able to identify the 4-digit SOC codes which are less common with ease (should the need arise). Further, although the Codes of Practice are broken down into 19 subdivisions they are supported by an overriding index with links to the relevant sections.”

Rolls-Royce plc response to MAC call for evidence

- 3.16 On the other hand, a number of respondents were wary of the proposed change. One concern was that wholesale redesign of the framework would be of little benefit to some partners and to them would merely represent a new administrative burden in

familiarising themselves with the new framework.

- 3.17 However, partners acknowledged that this would tend to apply mainly to larger and regular users, who have been able to grow accustomed to the framework over time. These firms tend to have HR departments or allocated staff to dedicate to the task of navigating the codes. For smaller or first-time users, the current codes were seen as difficult to master, complex and unwieldy.

“For those organisations that use the codes of practice infrequently, the codes can be difficult to navigate and do rely on employers to have extensive knowledge of the current codes and understanding of the immigration sponsorship process.”

Balfour Beatty Utility Solutions response to MAC call for evidence

“Although staff within the HR Division have become familiar with which codes to use over time, for staff who do not use these regularly they can prove to be very confusing.

We therefore agree with the MAC’s view that it would be simpler to move to a single list perhaps on similar lines to the existing SOC Code Summary Table which already details the SOC code, primary SOC code description, related job titles, sector, and skill level.”

Imperial College London response to MAC call for evidence

- 3.18 The move from Standard Occupational Classification (SOC)

2000 to SOC 2010 will result in changes to the current codes of practice, regardless of the recommendations in this report. It also seems that any changes to the design of the codes of practice should coincide with the move from SOC 2000 to SOC 2010. The proposed design for the codes will be significantly easier for new users to navigate and we believe that existing users will benefit from the simplification in the long run.

- 3.19 We recommend that the codes of practice be presented in a single list using the SOC 4-digit relevant codes for occupations.** There should be one document detailing annual pay thresholds for experienced and new entrant workers, with advertising requirements either in an annex or separate list but contained within the codes document

3.4 Other issues raised by our partners

- 3.20** In the course of gathering evidence for this report, a number of other issues were raised by partners that were outside the terms of the current commission from the Government. These issues are reflected in this section and we leave it for the Government and the UK Border Agency to determine whether any of these require further reflection or action.

Current application process under Tier 2

- 3.21** A number of concerns were raised by partners on the accessibility of the UK Border Agency website and Tier 2 guidance. The website was regularly cited as inaccessible, frustrating or difficult

to navigate, with “*error on page*” notices appearing often. The Tier 2 guidance was said not to be consistent with updates to the codes, and to lack clarity. Similarly, UK Border Agency helpline staff were said not to be always up-to-date with changes to the codes.

“The UKBA website is not user friendly and the codes are not easy to locate or access and are often not found in a single location.”

The helpline staff often appear confused by the codes and find difficulty in reconciling the conflicting specific information for some occupation groups against the general code information.”

East Midlands Healthcare Workforce Deanery response to MAC call for evidence

“The recent introduction of a step-by-step guide on the UKBA website, is a step in the right direction, however there are existing concerns about the quality of training for support staff at the UKBA helpline. It is crucial that support staff are fully up-to-date with changes to the migration system and are able to support businesses on a case-by-case basis.”

EEF response to MAC call for evidence

- 3.22** Partners suggested that the guidance should be updated every time changes to the codes are made. Other suggestions to improve accessibility included placing a table at the start of the codes detailing changes that have

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

been made so that employers can quickly see if they have been affected.

- 3.23 Another suggestion was to place the occupational list in an Excel workbook or other programme that would facilitate searching. This would be similar to systems for searching for occupational classification codes in New Zealand and Canada.

Allocating job titles to the 4-digit Standard Occupation Classification (SOC) codes

- 3.24 A number of partners highlighted problems they had encountered when trying to allocate specific job titles to the relevant 4-digit SOC codes. There was concern that this led on occasion to the rejection by the UK Border Agency of Certificate of Sponsorship (CoS) applications made by employers in good faith. Partners were worried that in the absence of clear guidance employers can inadvertently fall foul of the rules. One suggestion partners made was to add space on the CoS application to allow employers to present their case and explain the rationale behind the choices reflected in the application.

“Any simplification or streamlining of the codes should allow sponsors to be able to determine the relevant code with ease, and allow sponsors to be able to demonstrate to the UK Borders Agency that due diligence has been undertaken to ensure the correct code is applied.”

Research Councils UK response to MAC call for evidence

- 3.25 Partners have also drawn our attention to a small number of occupations where there has been particular difficulty in identifying where job titles now sit in the SOC 2010 classification. The example of university researchers and educational professionals was raised by several academic institutions including Heriot-Watt University, the University of Edinburgh, the University of Oxford and the University of Westminster. Universities UK, the Universities and Colleges Employers Association and GuildHE also mentioned this issue in a joint response to our call for evidence. These partners were concerned that SOC 2000 code 2329 researcher not elsewhere classified no longer exists as a free-standing occupation in the SOC 2010. In their opinion the revised SOC 2010 is not accounting for the growing number of inter-disciplinary research fields, for which they had used the “not elsewhere classified” category. They were concerned that this could create difficulties when attempting to extend migrant visas.

“If a sponsored employee moves between disciplines we may potentially encounter difficulties when extending a migrant’s certificate of sponsorship as the original SOC code must be used for an extension to be agreed by UKBA.”

University of Edinburgh response to MAC call for evidence

“Specifically with regard to posts previously covered by SOC code 2329 (Researchers not elsewhere classified), the job titles of University Researcher and University Research Fellow are now included in SOC 2010 under SOC code 2119. However, the description of SOC code 2119 is ‘Natural and Social Science Professionals not elsewhere classified’. This would appear to exclude university researchers in other fields (e.g. Physical and Mathematical Sciences, Humanities, Medical Sciences etc).”

University of Oxford response to MAC call for evidence

- 3.26 However, the Office for National Statistics (ONS) told us that where university researchers cannot be associated clearly with a specific job title in the SOC classification (for example, because they may move into multi-disciplinary work), SOC 2010 code 2119 should be used. Where researchers are not associated with a university, SOC 2010 code 2426 business and related research professional should be used.
- 3.27 Where partners or individuals experience difficulties in assigning a job title to a 4-digit SOC 2010 code, we recommend looking up the job title in the SOC 2010 user guidance: ONS publishes the coding index of the SOC 2010 codes and a description of tasks for each occupation in ‘*Standard Occupational Classification 2010: Volume 1 – Structure and Descriptions of Unit Groups*’ (ONS, 2010a). Also available is ‘*Standard Occupational Classification 2010: Volume 2 – The Coding Index*’ (ONS, 2010b), which contains a detailed list of all job-titles in the SOC 2010 classification. These are both searchable documents, and can be used by employers to facilitate allocating job titles to SOC codes. These can be found on the ONS website.
- 3.28 The ONS can be contacted with queries regarding SOC 2010 at Occupation.information@ons.gsi.gov.uk.
- 3.29 The next chapter describes our methodology for determining the list of occupations skilled at NQF6+ to SOC 2010.

4.1 Introduction

4.1 In June 2012 the minimum skill requirement for Tier 2 of the Points Based System (PBS) was raised to National Qualifications Framework level 6 and above (NQF6+), which broadly corresponds to bachelor's degree level. The list of occupations skilled at NQF6+, published in Migration Advisory Committee (2012b), was compiled using the Standard Occupational Classification (SOC) 2000. In 2010, this classification was revised and updated into the new SOC 2010 and has now been incorporated into both the Labour Force Survey (LFS) since Q1 2011 and the Annual Survey of Hours and Earnings (ASHE) 2011, which we use to compile the list of skilled occupations.

4.2 The Government has asked us:

“To update the list of occupations skilled to National Qualifications Framework 6 to reflect the new SOC 2010 classification.”

4.3 In this chapter we briefly summarise the main differences between SOC 2000 and the new SOC 2010. We then describe the methodology used to convert the list of occupations skilled at

NQF6+ to SOC 2010 format, including a number of minor amendments compared to that used to produce the list of skilled occupations in SOC 2000. Finally we present our conclusions.

4.2 The Standard Occupational Classification 2010

4.4 The SOC classifies job titles into groups marked by similar skills and knowledge. Over time, the composition of jobs carried out in the UK changes as new technologies are introduced at home and abroad. Therefore, it is necessary to periodically revise the SOC. This revision is carried out approximately every ten years by the Office for National Statistics (ONS).

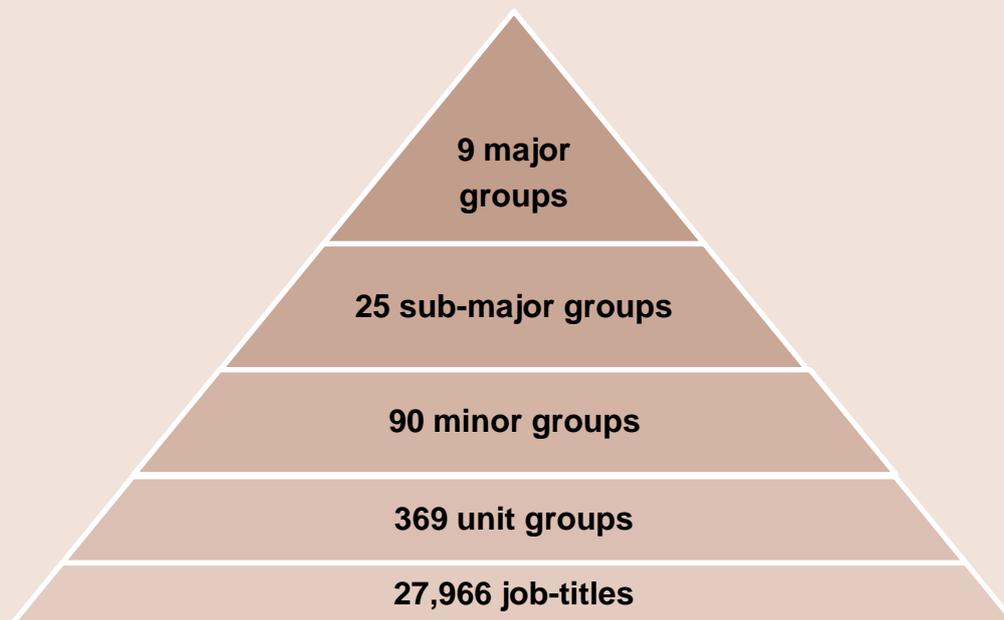
4.5 The levels of SOC code aggregation in SOC 2010 remain the same as in SOC 2000, with 1-, 2-, 3- and 4-digit SOC codes. One-digit SOC codes correspond to major occupational groups, of which there are nine. The 4-digit SOC codes are the lowest level of occupational coding in the SOC and refer to the unit groups. Through the rest of this report, when referring to occupations we are referring specifically to those occupations defined at the 4-digit level. The structure of the SOC

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

2010 and how the different groupings in the classification

relate to each other are shown graphically in Figure 4.1 below.

Figure 4.1: Structure of the Standard Occupational Classification 2010



Source: ONS (2010b)

4.6 The most significant changes made from SOC 2000 to SOC 2010 as part of the revision (ONS 2010a) were:

- the introduction of a stricter definition of managers, to incorporate more strategic managerial positions rather than predominately supervisory or administrative roles;
- the expansion of the 2-digit group for health professionals, which now includes some health occupations previously designated at associate professional level, including nursing occupations;
- the creation of new 4-digit occupations associated with information technology: for example, measured over the four quarters of 2011, individuals employed in job

titles classified under the occupation SOC 2000 2132 software professionals are now disaggregated into 11 new SOC 2010 occupations;

- the creation of a new 3-digit category for conservation and environmental occupations;
- the creation of a number of 4-digit SOC 2010 occupational titles that merge job titles/equivalent job titles from several 4-digit SOC 2000 occupations. For example, SOC 2010 2449 welfare professionals (not elsewhere classified) comprises job titles/equivalent job titles previously included under the 4-digit SOC 2000 occupations 2442 social workers, 3231 youth and community workers and 3232 housing and welfare officers; and

- changes to the job titles included under some 4-digit SOC 2010 and SOC 2000 occupations where the 4-digit SOC code remains the same. For example, the job titles investment administrator and trader (stock exchange) were added to SOC 2010/2000 3532 brokers, while the job titles commodity trader, financial broker and shipbroker were removed.
- 4.7 In total, there are 369 occupations under the SOC 2010 classification compared to 353 occupations under the SOC 2000 classification (ONS 2010a). The coding index for SOC 2010 contains 27,966 job titles, compared to 26,160 job titles in SOC 2000. This includes 2,206 additions, 1,210 deletions and 812 replacements (ONS 2010b).
- ### 4.3 Our skill methodology
- 4.8 The methodology used to determine whether an occupation is skilled at NQF6+ was presented in detail in Migration Advisory Committee (2012b), based in turn on the approach we first used to identify occupations skilled at NQF3+ in Migration Advisory Committee (2008). There is no single, objectively defined measure of the skill level of an occupation. As in previous publications, the five main indicators that we believe are relevant to assessing the skill level of an occupation are:
- the skill level defined in the SOC 2000 or 2010 hierarchy;
 - formal qualifications;
 - earnings;
 - on-the-job training or experience required to carry out the job; and
 - the level of innate ability required.
- 4.9 The last two indicators of skill were assessed using bottom-up analysis of partner evidence in Migration Advisory Committee (2012b). Given that we have been asked to convert the list of occupations skilled at NQF6+ to SOC 2010 rather than carry out a full review, for the purposes of this report we did not explicitly ask for evidence regarding the skill level of occupations or job titles. No partner raised any concerns regarding the skill level of any occupation.
- 4.10 We determine the passing thresholds for the first three of these indicators by top-down analysis of data available in the LFS and ASHE. Each of the three top-down indicators is assessed against a threshold value, at or above which we consider an occupation to demonstrate skill at NQF6+. We consider an occupation to be skilled if it passes at least two out of the three top-down indicators.
- 4.11 The following changes were made to our methodology, in comparison with previous reports:
- the inclusion of full-time employees who are not of working age. Employees are used as Tier 2 of the PBS is not open to the self-employed;
 - using only the last four quarters of LFS data. This is because SOC 2010 data were

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

only available in the LFS from Q1 2011; and

- the incorporation of NQF6+ equivalent vocational qualifications from the Qualifications and Credit Framework (QCF).

4.12 An additional change to the methodology relates to how foreign degrees are treated in the data. Since January 2011 a change in the order of questions in the LFS survey means that those respondents with degrees

obtained abroad can be explicitly identified in the data. We have assumed that foreign degrees are skilled at NQF6+ in our analysis.

4.13 Our analysis is based on the assumption that the proportion of occupations considered skilled at NQF6+ is equal to the proportion of full-time employees in the UK labour force skilled at NQF6+. The basis for making this assumption is explained in Box 4.1 below.

Box 4.1: Basis for assuming that the proportion of occupations skilled at NQF6+ is equal to the proportion of full-time employees skilled at NQF6+

To estimate the proportion of occupations in the UK that are skilled at NQF6+, the preliminary assumption is made that this proportion is equal to the percentage of full-time employees in the UK workforce that are qualified at NQF6+.

This is based on the premise that the supply of appropriately skilled workers should, in equilibrium, match the demand for such workers. Adjustments over time in factors including occupational earnings, the structure of product markets, methods of production and the provision of places in training and education could plausibly lead to such an equilibrium being reached.

According to the LFS, the proportion of full-time employees in the UK workforce that hold NQF6+ qualifications is 30.3 per cent. This includes all degrees obtained abroad and so is slightly higher than the proportion of working-age full-time employees skilled to NQF6+ presented in Migration Advisory Committee (2012b).

The above assumption does not require all individuals in the labour market with NQF6+ qualifications to be working in NQF6+ occupations, or that all individuals without such qualifications are not in NQF6+ occupations. Such assumptions would clearly be unrealistic because there are both over-qualified workers (with qualifications at a higher level than are required by their jobs) and under-qualified workers (with lower-level qualifications than are required by their jobs) in the labour market. On average, these two factors broadly balance each other.

4.14 This assumption underpins the analysis because for both of the qualifications and earnings indicators, a passing threshold is set such that the proportion of occupations passing each is equal to the proportion of full-time

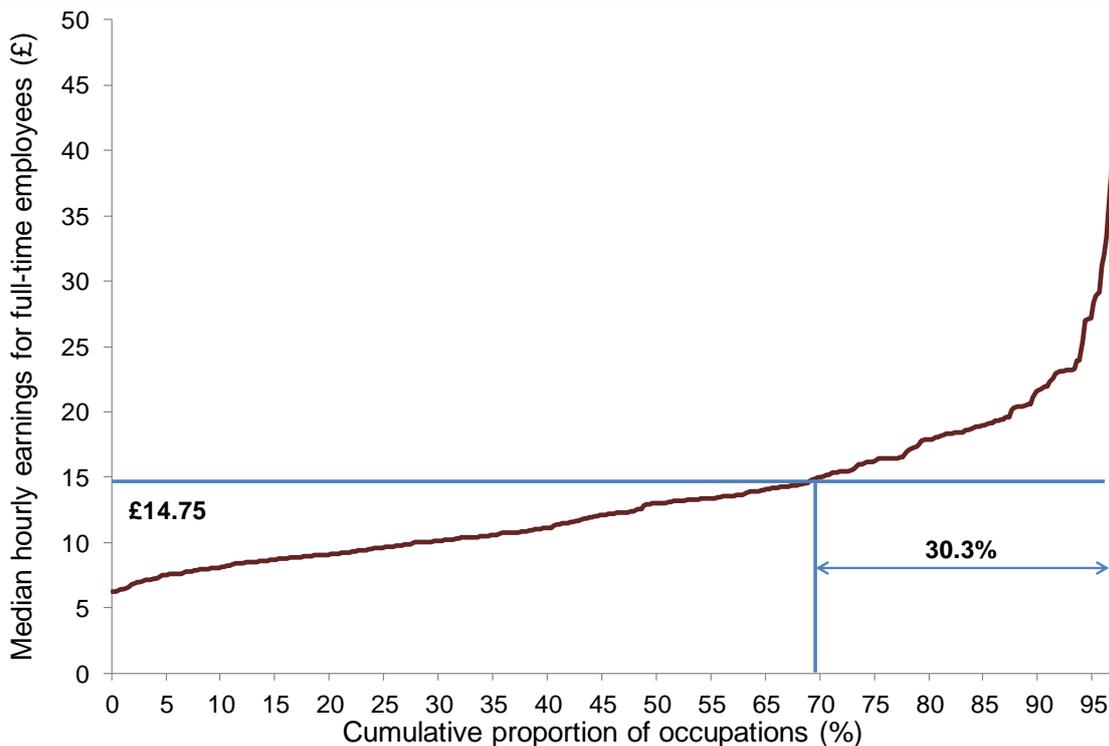
employees skilled at NQF6+ in the UK workforce.

4.15 The methodology used to produce the list of 4-digit SOC 2010 occupations skilled at NQF6+ involves a number of steps. These

are explained below, using the earnings indicator as an example:

- The proportion of full-time employees in the UK qualified at NQF6+ is estimated to be 30.3 per cent (LFS Q1 2011 - Q4 2011).
- The 369 SOC 2010 occupations are ranked by median hourly earnings for full-time employees, taken from ASHE (2011). This ranking produces a distribution of median hourly earnings, from highest to lowest.
- Starting at the top of the ranking and working down, the proportions of the distribution represented by each occupation are added in turn. This process is continued until the point where the cumulative proportion of occupations that will pass exceeds 30.3 per cent. The earnings threshold is set at this point. This is shown graphically in Figure 4.2 below.
- The same approach is used to calculate the qualifications threshold.

Figure 4.2: Illustration of the method for estimating the earnings threshold



Source: MAC analysis of the Labour Force Survey (2011) and ASHE (2011) in SOC 2010 format. ASHE (2011) in SOC 2010 format is provisional and subject to change.

4.16 The thresholds calculated according to this approach will allow 30.3 per cent of occupations to pass each indicator. This is shown in Table 4.1, again using

the earnings indicator as an example.

4.17 The passing threshold values yielded by this analysis for each indicator are presented in Box 4.2.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 4.1: Example of the ranking of SOC 2010 occupations according to median hourly earnings for full-time employees in order to determine the earnings threshold

SOC 2010 Code	Occupation	Rank	Median Hourly Earnings (£)	Cumulative proportion of occupations (%)	Pass/fail indicator
3512	Aircraft pilots and flight engineers	1	44.49	0.27	Pass
1115	Chief executives and senior officials	2	39.24	0.54	Pass
1116	Elected officers and representatives	3	37.10	0.81	Pass
1242	Residential, day and domiciliary care managers and proprietors	111	14.89	30.08	Pass
3113	Engineering technicians	112	14.80	30.35	Pass
2319	Teaching and other education professionals n.e.c.*	113	14.72	30.62	Fail
3219	Health associate professionals n.e.c.*	114	14.56	30.89	Fail

Note: *n.e.c. - not elsewhere classified.

Source: MAC analysis of the Labour Force Survey (2011) and ASHE (2011) in SOC 2010 format. ASHE (2011) in SOC 2010 format is provisional and subject to change.

Box 4.2: Minimum threshold values used to identify occupations skilled at NQF6+

- **Earnings:** We require median hourly earnings for full-time employees within an occupation to be £14.75 per hour or more. This is measured using the ASHE (2011) in SOC 2010 format.
- **Formal Qualifications:** We require 36.4 per cent or more of the workforce within an occupation to be qualified to NQF6+. This is measured using the LFS covering the four quarters of Q1 2011 - Q4 2011.
- **SOC skill level:** We require an occupation to be classified at level 4 in the SOC 2010 hierarchy.

An occupation must pass at least two of the three top-down indicators of skill to be considered skilled at NQF6+. The threshold values differ from those presented in Migration Advisory Committee (2012b). These differences arise from the changes made to the methodology used to generate the list outlined in paragraphs 4.11 and 4.12.

4.18 As stated above, the threshold for the earnings indicator was estimated using the 2011 ASHE (SOC 2010). Data for 11 of the 4-digit SOC occupations were either missing or considered unreliable by the ONS due to low sample sizes, and therefore are not published. These occupations are listed in Table 4.2. In our calculation of the threshold for the

earnings indicator, if the earnings data for a given 4-digit SOC occupation are missing, we used the earnings data from the associated 3-digit occupation. This approach was established in Migration Advisory Committee (2011a) as the best method to overcome the problem of missing 4-digit SOC occupation earnings data.

Table 4.2: 4-digit SOC occupations with missing data in the ASHE in SOC 2010 format and their corresponding 3-digit categories

4-digit SOC code	Occupation	3-digit SOC code	Minor group
1116	Elected officers and representatives	111	Chief executives and senior officials
1171	Officers in armed forces	117	Senior officers in protective services
1213	Managers and proprietors in forestry, fishing and related services	121	Managers and proprietors in agriculture related services
2215	Dental practitioners	221	Health professionals
3216	Dispensing opticians	321	Health associate professionals
3413	Actors, entertainers and presenters	341	Artistic, literary and media occupations
3414	Dancers and choreographers	341	Artistic, literary and media occupations
3441	Sports players	344	Sports and fitness occupations
5419	Textiles, garments and related trades n.e.c*	541	Textiles and garments trades
7124	Market and street traders and assistants	712	Sales related occupations
7215	Market research interviewers	721	Customer service occupations

Note: *n.e.c - not elsewhere classified.

Source: ASHE (2011) in SOC 2010 format. ASHE (2011) in SOC 2010 format is provisional and subject to change.

Results of our top-down analysis

- 4.19** Based on the passing threshold values presented in Box 4.2, of the 369 4-digit SOC 2010 occupations, 97 were found to be skilled at NQF6+. This compares to the 89 SOC 2000 occupations we identified as skilled at NQF6+ in Migration Advisory Committee (2012b). The full results of our analysis are presented in Annex B.
- 4.20** The number of occupations skilled at NQF6+ has increased relative to our February 2012 NQF6+ list because the SOC 2010 classification reflects changes in the number and types of jobs carried out by workers in the UK. Increases in the number of distinct specialist roles in the economy mean there are a larger number of

occupations under consideration in SOC 2010 relative to SOC 2000. As was mentioned in Section 4.2, there have been a wide variety of changes made between the classifications. Therefore it is not straightforward to draw comparisons between the SOC 2010 list we present in Annex B and the SOC 2000 list presented in Migration Advisory Committee (2012b).

- 4.21** It is possible to calculate how many employees are classified as skilled at NQF6+ under the different lists. Using LFS data for 2011, we found that approximately six million (or 32.8 per cent of) full-time employees worked in occupations on the SOC 2010 list presented in Annex B. The list of 89 SOC 2000 occupations defined as skilled at NQF6+ in Migration

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Advisory Committee (2012b) accounted for 5.9 million, or 32.2 per cent, of full-time employees.

4.4 Conclusions

4.22 We carried out the top-down analysis described in this chapter to produce a list of SOC 2010 occupations skilled at NQF6+. We did not receive any partner evidence relating to the skill level of occupations and as such did not make any changes to the list produced by our top-down analysis. Overall we identified 97 occupations as skilled at NQF6+.

A full list of these occupations is provided in Table B.1 of Annex B to this report. This compares to the 89 SOC 2000 occupations we identified as skilled at NQF6+ in Migration Advisory Committee (2012b).

4.23 **We recommend that the list of SOC 2010 occupations presented in Annex B be regarded as skilled at NQF6+.** In the following chapters we consider the minimum appropriate salary thresholds for Tier 2 and the appropriate advertising media for the Resident Labour Market Test.

Chapter 5 Setting minimum pay thresholds

5.1 Introduction

5.1 This chapter together with Chapter 6 responds to the following section of the Government's commission:

"To advise on the minimum appropriate salary rate for occupations and (as appropriate) job titles, taking into account the minimum salary threshold for the Tier 2 route and identifying, where necessary, separate occupation specific minimum salaries for both new entrants and experienced employees."

5.2 In this chapter we present our recommendations on how minimum pay thresholds should be set using available national level data for the majority of occupations skilled at National Qualification Framework level 6 and above (NQF6+), whether there should be separate thresholds for new entrants and experienced employees, and, if so, how these should be determined.

5.3 In Chapter 6 we consider evidence provided by partners relating to specific occupations and job titles where that evidence indicated that national level data may not be appropriate. In that chapter we also recommend whether pay thresholds for these occupations and job titles should

be set according to the approach presented in this chapter or by another identified method. Our overall recommended list of pay thresholds is presented in Chapter 8.

5.4 The structure of this chapter is as follows:

- Section 5.2 considers potential approaches to setting pay thresholds for occupations.
- Section 5.3 considers how to define new entrant employees for the purpose of setting separate pay thresholds.
- Sections 5.4 and 5.5 recommend the appropriate pay thresholds in occupations eligible for Tier 2 for experienced and new entrant employees respectively.
- Section 5.6 considers issues relating to progression from new entrant to experienced employee thresholds.
- Section 5.7 considers whether pay thresholds should vary across regions.
- Section 5.8 summarises the key recommendations from this chapter.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

5.2 Approach for setting pay thresholds for occupations

5.5 This section initially discusses the issues raised by partners in the evidence we received, particularly in relation to undercutting. It also presents the approaches we considered for setting pay thresholds for occupations skilled at NQF6+ and above.

5.6 Some partners argued against the concept of setting pay thresholds for occupations and job titles. They said that there is little evidence that Tier 2 main applicants undercut UK wages or displace resident workers. Furthermore, they argue that pay thresholds present an unnecessary administrative burden on employers and potentially prevent many from legitimately hiring the staff they require.

“Minimum salary thresholds appear to serve little purpose in terms of safeguarding wages of UK workers. Instead they are an unnecessary administrative burden for employers seeking to fill skills gaps in the short term with skilled migrant labour.”

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

5.7 The empirical evidence for the impact of migrants is mixed. Some evidence indicates that migrants may put downward pressure on wages for the lowest earning employees, but upward pressure on wages for those at the top of the wage distribution (Dustmann *et al.*, 2008). Specific effects have been suggested in lower skilled

occupations such as caring and personal services (Nickell and Saleheen, 2008).

5.8 However, there is currently no empirical evidence suggesting that Tier 2 migrants directly lead to the wages of British workers being undercut at the bottom of the pay distribution for occupations eligible for Tier 2.

Undercutting and equality issues

5.9 In contrast to the above quote from the Department for Business, Innovation and Skills, a number of respondents to our call for evidence did express concern about the possibility of migrant workers undercutting resident workers. We were told by an individual that IT workers should receive greater protection as they are more exposed to undercutting. The example was given of Australia where before 2009 there was a separate minimum salary requirement under the Subclass 457 visa scheme (see Section 2.5) for Information and Communication Technology occupations, and we were told this was typically 40 per cent more than for all other occupations. In 2009 Australia changed to using market salary rates rather than minimum salary levels, but still kept a high salary safety net for Information and Communication Technology occupations. It was suggested that the UK should consider setting a minimum salary safety net for Information and Communication Technology occupations at £50,000 to significantly reduce undercutting.

5.10 For a number of occupations in the current codes of practice, where the threshold has been

calculated using the Annual Survey of Hours and Earnings (ASHE), it has been done so using the 25th percentile of the pay distribution. Concern was expressed that use of the 25th percentile in preference to the 50th could lead to undercutting of resident workers.

“PCG strongly believes that the 50th percentile must be used as the basis for the minimum salaries, not the 25th percentile as now. Using the 25th percentile, it is possible for a migrant to earn less than the majority of equivalent UK or EEA employees fulfilling a similar role.”

Professional Contractors Group
response to MAC call for evidence

“In capturing the minimum appropriate pay that will prevent the undercutting of the resident labour force, the 50th percentile thus represents both a fair solution in practical and statistical terms, as well as one which encapsulates the perspective of modern employment practice.”

Prospect response to MAC call for evidence

- 5.11 Within an occupation there will be a distribution of pay levels which vary for a number of reasons including age, experience and skill. Undercutting may occur at any point in the distribution of pay for the occupation. A single minimum pay threshold is unlikely to prevent undercutting at the top of the pay distribution for an occupation. If employers were to use Tier 2 main applicants to undercut wages, a minimum pay

threshold for a given occupation is only likely to prevent undercutting for those for whom the going rate is just above the pay threshold.

- 5.12 Empirical evidence for the impact of migrants on UK employment and unemployment is mixed. A report by the National Institute of Economic and Social Research (NIESR) used National Insurance data to consider the impact of migration on the UK claimant count rate. The report found an insignificant correlation between migrant inflows and UK unemployment. In our own study of the labour market impacts of migration, we found a *“tentative negative association between working-age migrants and native employment when the economy is below full capacity, for non-EU migrants and for the period 1995-2010”* (Migration Advisory Committee, 2012a). Neither study distinguished between the impacts of migrant inflows on the pay for skilled residents (the focus of Tier 2 migration) and the impacts on the pay for unskilled workers. Therefore, it cannot be inferred from these results that Tier 2 main applicants have affected the employment of UK-born residents.

- 5.13 It is also understood that, due to the heterogeneous nature of some occupations, firms may also be obliged to pay Tier 2 main applicants above the going rate for their job title or grade in order to meet the pay thresholds for the occupation. This may be viewed as discrimination against UK and EU national employees and potentially result in equal pay claims against employers.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

“Furthermore, setting the salary threshold at a level that is considerably higher than the average pay of domestic workers occupying the same role, may lead to an increase in the number of equal pay claims which would be of great concern to businesses. This concern is exacerbated by the recent announcement that employers who lose an equal pay claim will have to carry out a pay audit, which will have significant cost implications associated with it.”

EEF, The Manufacturers’ Organisation response to MAC call for evidence

- 5.14 This risk is likely to be mitigated, however, by selecting a pay threshold from the lower section of the pay distribution as the pay threshold is less likely to exceed the market rate for a given job title within the occupation.

Approach to setting pay thresholds

- 5.15 We considered four potential approaches to setting pay thresholds for occupations:
- the ASHE approach;
 - the salary survey approach;
 - the Annual Population Survey (APS) approach; and
 - the staff turnover rate approach.
- 5.16 The ASHE and APS approaches could be used to set pay thresholds for both new entrant and experienced employees, whereas the salary survey and turnover rate approaches can only

be used to set pay thresholds for new entrant employees. Each of these approaches is considered in turn below.

- 5.17 The **ASHE approach** uses data from the latest ASHE to set pay thresholds. Pay thresholds could be set for new entrant and experienced employees in a given occupation at specific percentiles of the pay distribution for that occupation. Where pay data are reported as unreliable for a certain 4-digit SOC 2010 occupation, pay thresholds could be set using data for the corresponding 3- or 2-digit SOC 2010 occupation as appropriate.
- 5.18 The ASHE is the largest annual salary survey for the UK, sampling 1 per cent of employees using Pay As You Earn (PAYE) records (the 2011 ASHE was based on approximately 180,000 returns). It is a statutory requirement under the Statistics of Trade Act (1947) to provide accurate information in response to the ASHE. The large sample size of the ASHE is likely to improve the reliability of the implied pay thresholds. In addition, the ASHE is produced annually, allowing the pay thresholds to be regularly updated.
- 5.19 A disadvantage of the ASHE approach is that the ASHE does not record employees’ years of work experience or the number of years since they left full-time education. It is therefore necessary to proxy the appropriate pay for new entrant employees in a given occupation based on the pay distribution for all employees in that occupation. There is no theoretical reason to

presume that newly-qualified graduates typically earn around the same percentile of the pay distributions for each occupation eligible for Tier 2.

- 5.20 A further disadvantage is that the ASHE only reports the pay of employees and not self-employed workers. While the majority of Tier 2 main applicants are employees, if the ASHE approach were adopted it may be necessary to use other data sources to set pay thresholds for occupations or job titles with a high proportion of self-employed workers.
- 5.21 The **salary survey approach** sets pay thresholds for new entrant employees using salary survey data for graduate-entry jobs. For example, a number of partners have recommended that pay thresholds for new entrant employees should be set using salary survey data from the Destination of Leavers from Higher Education Survey (DLHE) (2012) produced by the Higher Education Statistics Authority (HESA). The most recent survey received responses from around 400,000 graduates 6 months after graduating in 2010-11 and includes data for their current pay and occupations. Pay thresholds may therefore be set for new entrant employees in a given occupation at the median pay for that occupation in the DLHE, assuming that the middle earner receives the going rate for their occupation.
- 5.22 The key advantages of the DLHE data are the large sample size and that it covers only new graduates, allowing pay thresholds to be set more accurately for new entrants

than would be achieved by setting pay thresholds at the same percentile of the pay distribution for each occupation. The DLHE is also undertaken on an annual basis, allowing the thresholds to be updated regularly.

- 5.23 The current codes of practice do include graduate pay for some occupations using the DLHE as the relevant data. During the review of the codes carried out by the UK Border Agency earlier this year many respondents reported that they were pleased with the addition of graduate salaries to the codes, they found that the graduate salaries quoted were correct and that they were happy to accept their inclusion with the caveat that they wanted clear guidance on when a graduate salary could be used and a full definition of what a graduate salary meant. It was noted, however, that graduate salaries were not appropriate for every occupation. Feedback received from the UK Border Agency (primarily casework teams) was that they felt that graduate salaries could be used by sponsors to avoid paying the going rate for an occupation and that clear guidance and enforcement would be needed to minimise this.
- 5.24 However, the DLHE currently records occupations using the old SOC 2000 classifications rather than the SOC 2010 classifications. Since it is proposed that the occupations eligible for Tier 2 will be defined using the SOC 2010 classifications, it would be necessary to convert the DLHE data from SOC 2000 to SOC 2010 to set pay thresholds, introducing inaccuracies. Furthermore, the

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

data for the pay of newly-qualified graduates by occupation from the DLHE survey is not among the datasets made freely available by HESA. The UK Border Agency would, therefore, need to commission these data in order to update the pay thresholds.

- 5.25 We therefore propose to use the DLHE survey to inform whether the proposed pay thresholds for new entrant employees are appropriate, rather than using them to set pay thresholds. The Government may wish to keep under review whether to use the DLHE survey to set pay thresholds in future years, since HESA intends to use the latest SOC 2010 classifications in next year's survey.
- 5.26 Another possibility is to use salary survey data collated by the Association of Graduate Recruiters (2012) for graduate-entry jobs. The advantage of these data is that they refer exclusively to graduate-entry job vacancies. However, most of the firms responding to this survey are large companies and organisations, suggesting that these data may over-estimate typical graduate-entry pay as such firms are likely to pay more, particularly if they are London based. Furthermore, data are provided by sector whereas we have been commissioned to recommend pay thresholds by occupation or potentially by job title. We do not recommend that these data are used to calculate pay thresholds for new entrant employees.
- 5.27 The **APS approach** uses data from the APS to set pay

thresholds. The APS is a quarterly survey of households in Great Britain undertaken by the Office for National Statistics. This survey combines data from the Labour Force Survey (LFS) with sample boosts from England, Wales and Scotland. The APS includes a variable for the number of years since leaving full-time education which could be used as a proxy for experience in an occupation.

- 5.28 The disadvantage of the APS approach is that the sample size of the APS is smaller than that of the ASHE, providing less reliable information with which to set pay thresholds. For example, the mean sample sizes for full-time employees in the 97 4-digit SOC 2010 occupations eligible for Tier 2 are 385 in the ASHE for 2011 and 276 in the APS for Q2 2011 to Q1 2012 respectively.
- 5.29 The **staff turnover rate approach** considers the rate at which new hires in an occupation replace those who leave the occupation. This approach requires the assumption that employees' earnings are perfectly correlated with their employment tenure and that employees never change jobs. Consequently, the only people starting new jobs are new entrants to the labour market. The advantage of this approach is that it allows thresholds to be set at different percentiles of the pay distribution in different occupations. However, this approach requires a number of unrealistic assumptions to generate pay thresholds, and is therefore likely to result in inaccurate results.

Table 5.1: Potential approaches to setting pay thresholds for occupations

Approach	Advantages	Disadvantages
Annual Survey of Hours and Earnings	Largest annual salary survey for the UK	Does not record employees' years of work experience or the number of years since they left full-time education. Does not cover self-employed.
Salary survey (for example DLHE, Association of Graduate Recruiters)	Large sample size Covers only new graduates Available annually	Not available in SOC 2010 May be biased by large London-centric organisations Does not contain data for experienced workers
Annual Population Survey	Quarterly survey of households in Great Britain Includes a variable for the number of years since leaving full-time education	Sample size is smaller than that of the ASHE
Staff turnover rate	Allows thresholds to be set at different percentiles of the pay distribution in different occupations	Requires the assumption that employees' earnings are perfectly correlated with their employment tenure and that employees never change jobs

5.30 Of the approaches discussed above, the ASHE approach is our preferred method. The ASHE is the largest annual salary survey for the UK, providing reliable data with which to set pay thresholds. Furthermore, this approach allows pay thresholds to be updated on an annual basis when new ASHE data become available.

5.31 Some partners commented that we should use multiple sources of data to set pay thresholds to improve their accuracy. Professional Contractors Group said that agreement on acceptable data sources for salaries should be reached with the relevant sector panels. They felt that there is a need for diversity in the sources used to calculate minimum salaries. Data sources on salaries should be based, they said, on a mixture of sources, ideally ASHE data plus at least two additional sources. Also,

consideration should be given to using the contract rates given by sources such as ITJobsWatch, in addition to the going rates for employees in order to calculate minimum salaries and minimise undercutting.

“There is a need for diversity in the sources used to calculate minimum salaries. Data sources on salaries should be based on a mixture of sources, ideally at least ASHE data plus at least two additional sources.”

Professional Contractors Group response to the MAC call for evidence

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

“On the question of finding an appropriate source for setting salary rates, our members converged on the advantage of using multiple methods: data on salaries of job titles from ICT sponsors (both large and small), wider industry benchmarks (e.g. recruitment consultants and websites) and national salary data. Using exclusively any one source (e.g. the ASHE) could potentially provide misleading or out of date information.”

NASSCOM response to the MAC call for evidence

5.32 ASHE data provides a large and representative dataset. We consider that it is sufficient to set pay thresholds for occupations. Using one source has the advantage of simplicity and makes updating the thresholds easier. Nevertheless, we have used other sources of data to check that the pay thresholds calculated using ASHE are appropriate. We also consider in Chapter 6 whether it is preferable to set pay thresholds for specific occupations or job titles using data sources other than ASHE.

5.33 In the rest of this chapter we use gross annual full-time pay for all employees by occupation from the ASHE. The following chapter discusses where thresholds should be set using alternative data.

5.3 Defining new entrant and experienced employees

5.34 This section considers how new entrant and experienced employees should be defined for the purpose of setting separate

pay thresholds within a given occupation or job title. We consider the maximum number of years of relevant work experience (or an appropriate proxy) that should be used to define new entrant employees. We also consider other indicators that a Tier 2 main applicant is new to their role or sector, such as whether they have a job offer on a graduate scheme.

5.35 Perhaps the most obvious measure of labour market experience is an individual's years of relevant work experience in a given sector or role. Indeed, Tata Consultancy Services did suggest that the less experienced entrants to occupations could be those with between 1 and 7 years of experience. This is likely to be difficult for caseworkers to verify, since a Tier 2 main applicant may omit years of relevant work experience from their application. In addition, it may be difficult for caseworkers to verify what constitutes relevant work experience.

5.36 Using age as a proxy is problematic because there may not necessarily be a correlation between age and experience (or youth and lack of experience) and because employers do not ask for the age of prospective employees, nor do they record this information.

5.37 It is therefore preferable for years since left full-time education to be used as a proxy for years of relevant work experience. The number of years since left full-time education is likely to be a better proxy of years of relevant work experience for newly-qualified

graduates. For example, a 25-year-old who left full-time education 4 years ago is likely to have more years of relevant work experience than a 25-year-old who left full-time education 1 year ago, but less than a 35-year-old who left education 10 years ago.

5.38 We did consider whether we should expand the wording above to include the fact that it was further education that was being taken account of, rather than, say, secondary education. However, the increased skill level for Tier 2 of itself predicts that new entrants will have relevant skills to qualify them for degree equivalent occupations and that any further addition to the wording would be redundant. It also allows for the scenario of a person who has just left school entering the electronic games industry under Tier 2.

5.39 **We therefore recommend that years since left full-time education should be used to define new entrant and experienced employees for the purpose of setting separate pay thresholds within a given occupation or job title.**

5.40 Next it is necessary to determine the maximum number of years since they left full-time education before an individual no longer qualifies as a new entrant employee. In order to determine the typical years since leaving full-time education for full-time employees earning at different percentiles of the pay distribution, we estimated the relationship between the pay percentiles and years since left full-time education for full-time employees working in

occupations eligible for Tier 2 as reported in the APS. We used this to determine the maximum number of years since left full-time education for an individual to qualify as a new entrant employee.

5.41 This relationship was estimated using individual data from the APS from Q2 2011 to Q1 2012 and using data for the gross annual pay distributions of full-time employees by occupation from the ASHE for 2011. The results of this analysis are illustrated graphically in Figure 5.1 and further details of how this relationship has been estimated are presented in Annex C.

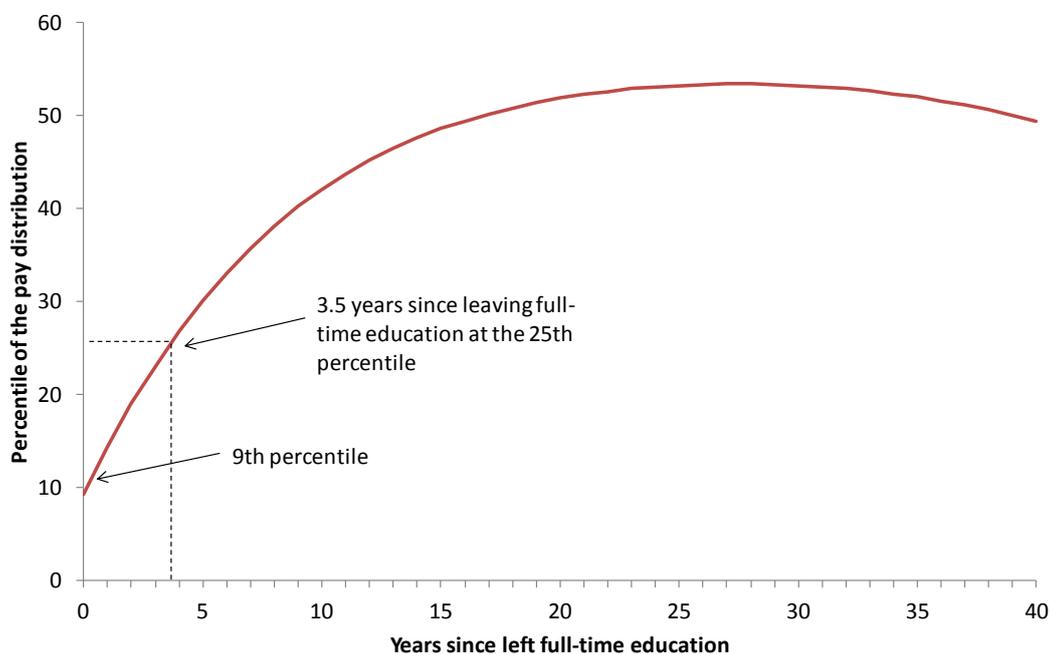
5.42 The results from Figure 5.1 suggest that a full-time employee working in an occupation eligible for Tier 2 earning at the 25th percentile of the pay distribution for their occupation has typically left full-time education around three and a half years previously.

5.43 Given that an employee's pay normally increases with the number of years since they left full-time education (at least at the start of their careers), we expect that most full-time employees working in occupations eligible for Tier 2 who have left full-time education three or more years ago earn at least the 25th percentile of the pay distribution for their occupation.

5.44 **We therefore recommend that new entrant employees should be defined as full-time employees who have left full-time education less than three years ago.**

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Figure 5.1: Estimated relationship between pay percentiles and years since left full-time education for full-time employees in occupations skilled at National Qualification Framework level 6 and above



Source: Annual Population Survey, April 2011 to March 2012 and Annual Survey of Hours and Earnings, 2011

- 5.45 Some partners commented that it would not be appropriate to define new entrant employees solely on the basis of their years since left full-time education, since this may be viewed as age discrimination. Rather, new entrant employees should be defined as employees who are new to a given role or sector.

“Any definition of low experience workers simply by reference to the number of years since their graduation would risk preventing UK employers from hiring the brightest and best into these and other talent management schemes. There is also a risk that not being able to hire older applicants into these programmes would encourage age discrimination in recruitment and employment practices.”

Kingsley Napley response to MAC call for evidence

“...companies are concerned about setting pay rates aligned to length of experience. We have moved a long way from managing compensation and benefits in terms of time in work and see using such terms as a backward step, as well as being contrary to the Age Discrimination legislation enacted in 2006.”

Oil and Gas UK response to MAC call for evidence

“The majority of individuals on the [graduate recruitment] programme are recent graduates or those who have graduated within the last 3 years.”

Response from a global consultancy company to MAC call for evidence

“Some typical characteristics of those recruited to graduate training schemes are:

- *Recent graduate (completing their degree in the last 2-3 years)...”*

Association of Graduate Advisory Services response to MAC call for evidence

5.46 We therefore considered other indicators that an employee is new to a given role or sector and should therefore be classified as a new entrant employee. These include whether an employee is part of a graduate recruitment scheme, whether the employee is part of a pre-registration training scheme, whether an employee is an intern or whether an employee is studying part-time for professional qualifications. Each of these issues is considered in turn.

5.47 Employees in **graduate training schemes** are likely to have little or no prior experience of the role or sector. As a consequence, it seems appropriate that employees on these schemes should be classed as new entrant employees and therefore face lower pay thresholds than experienced employees.

5.48 Evidence from partners suggests that the majority of new entrants to graduate training schemes have left full-time education in the previous three years and would therefore already be classified as new entrant employees using the definition above.

5.49 However, we also received evidence that not all entrants to graduate trainee schemes are recent graduates. To define new entrant employees as only those who have left full-time education in less than three years therefore does not cover all entrants to graduate training schemes.

“Our less-experienced workers enter a structured graduate training scheme which is open to all ages and levels of experience (however the majority of applicants have graduated within 3 years). We would not wish to preclude individuals who have experience from other sectors, and so would define “less-experienced” workers as those entering our graduate training scheme.”

Accenture response to MAC call for evidence

5.50 **We therefore recommend that all entrants to graduate**

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

recruitment schemes are also classified as new entrant employees for the purpose of setting pay thresholds.

5.51 We have also considered whether Tier 2 main applicants with job offers in **pre-registration training schemes** should be classed as new entrant employees. The purpose of these schemes is for employees to qualify into their profession, for example: trainee pharmacists and barristers must undertake 12 months of work experience before qualifying. Employees in such schemes are almost certainly new to the role or sector, implying that they should be classified as new entrant employees for the purpose of setting pay thresholds.

5.52 Evidence from the Royal Pharmaceutical Society suggests that the vast majority of pre-registration pharmacists come straight from full-time education. If we concluded that new entrant employees should be defined as full-time employees who have left full-time education within the previous three years, it would be unnecessary to make specific allowances for pre-registration pharmacist's job when defining new entrant employees.

5.53 By contrast, the Bar Council presented evidence that it is common for there to be a substantial time gap between trainee barristers leaving full-time education and entering pupillages.

"...because of the high level of competition for pupillages (an estimated 2000 compete for 450 places per year), there is more commonly than not a delay of years before an individual who has completed the Bar Professional Training Course is able to secure an offer of pupillage. There is also frequently a delay of between 12 months and 24 months between being offered pupillage and beginning pupillage. Chambers recruit one or two years in advance for pupillage positions. This practise of recruitment being conducted far in advance is similar to the recruitment for training contracts with law firms."

Bar Council response to MAC call for evidence

5.54 Given that not all trainee barristers entering pupillages will therefore have left full-time education within the preceding three years, we recommend that trainee barristers entering pupillages should be classified as new entrant employees for the purpose of setting pay thresholds.

5.55 We also considered whether Tier 2 main applicants with offers of **internships** in occupations eligible for Tier 2 should be classified as new entrant employees. TIGA state in their evidence that new entrants to the video gaming sector typically enter as interns for 6 to 12 months, after which around half are recruited and that the vast majority of interns come straight from university. Given this, interns would fall within the group of new entrant employees defined as those who have left full-time

education in the previous three years.

5.56 We also considered whether employees in jobs requiring them to study for **professional qualifications** should be classified as new entrant employees. Employees in such occupations (e.g. trainee accountants, actuaries, lawyers etc) are likely to be new to their role or sector, suggesting it would be appropriate for them to be classified as new entrant employees. However, we received no evidence from employers in these sectors stating that the definition of new entrants as full-time employees who have left full-time education in the previous three years would be insufficient. We suggest that the Government keeps this under review and invites partners to provide evidence if they consider this to be inappropriate.

5.57 **We therefore recommend that new entrant employees are defined as:**

- **full-time employees who have left full-time education in the previous three years; and/or**
- **employees on graduate training schemes; and**
- **trainee barristers on pupillages.**

5.4 **Pay thresholds for experienced employees by occupation**

5.58 This section considers options for setting pay thresholds for experienced employees (i.e. those who are not new entrant

employees) by occupation, using the ASHE approach. It considers which percentile of the pay distribution for full-time employees would be appropriate for experienced employees.

5.59 One option we consider is to set pay thresholds for experienced employees at the median pay (50th percentile of the pay distribution) for full-time employees by occupation. The rationale for this is that the middle earner may be considered to receive the going rate for their occupation. We received some support for this view from partners.

“...the minimum appropriate pay that will prevent the undercutting of the resident labour force is best captured by the 50th percentile of the appropriate pay distribution ... [The 50th percentile] represents the ‘market rate’ for the job. Furthermore, this reflects the approach of modern employers for the market median to be the point towards which individual salary levels tend to gravitate for those with competence and a certain level of experience in the role”

Prospect response to the MAC call for evidence

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

“PCG strongly believes the minimum salaries for specific occupations should be based on at least the 50th percentile, and not the 25th percentile of the distribution of pay within that occupation... using the 25th percentile means that even if the minimum salary is paid to a migrant, the migrant is still earning less than the majority of UK workers in similar roles, with similar levels of experience.”

Professional Contractors Group
response to the MAC call for evidence

“In consultation with members, the CBI recommends that the 25th percentile should remain the default position for experienced employees... A higher minimum threshold, at the 50th percentile, would effectively say that half the people employed in any occupation are paid below the minimum appropriate rate. Cutting off everyone below the middle of a given occupation artificially raises the skill level to a senior level, and is not representative of the range of salaries for experienced employees in a given occupation. Higher than average levels will also simply lead to inflationary trends, as migrant workers are forced to always be paid above the median level.”

Confederation of British Industries
response to the MAC call for evidence

- 5.60 Other partners argued that it would be inappropriate to set pay thresholds for experienced employees at the 50th percentile. They stated that setting pay thresholds at the median pay would disadvantage Tier 2 applicants at the beginning of their

careers who no longer qualify as new entrant employees.

- 5.61 We also considered setting pay thresholds for experienced employees at the 25th percentile of the pay distribution for an occupation. In the current codes of practice, where the pay thresholds are set for occupations using data from the ASHE, they are set at the 25th percentile of the pay distribution for full-time employees by occupation.

- 5.62 The inter-quartile range of the pay distribution (those paid between the 25th and 75th percentile) is considered a more robust measure of the spread of pay in an occupation; it is less subject to extreme values in the data.

- 5.63 Furthermore, it could be argued that an increase from the 25th percentile is a de facto increase in skill levels assuming pay as a proxy for skill. We have not been commissioned to increase skill levels; therefore we are reluctant to move from the 25th percentile without very strong evidence in support of such a move. We received evidence from partners in support of continuing to use the 25th percentile.

“We would welcome the setting of a minimum salary standard for the SOC codes and believe that the ‘default’ earnings threshold should be set at a maximum of the 25th percentile for experienced employees.”

Accenture response to the MAC call for evidence

“25th percentile option is considered as reasonable minimum salary threshold for ‘experienced’ Oil & Gas UK occupations.”

Total response to the MAC call for evidence

5.64 We therefore recommend that the pay thresholds for experienced employees in an occupation should be set at the 25th percentile of the pay distribution for full-time employees.

5.65 Our recommended approach contrasts with that adopted in Australia and Canada (as discussed in Chapter 2), which are based on the median (or 50th percentile) of the pay distribution for the occupation, and would result in higher thresholds.

5.66 We received evidence that our recommendation would result in excessively high pay thresholds for certain occupations, notably those in the education and health sectors, and excessively low thresholds for certain jobs in the information technology sector. We consider exemptions for specific occupations and job titles in Chapter 6.

5.5 Pay thresholds for new entrant employees by occupation

5.67 This section presents options for setting pay thresholds for new entrant employees by occupation. Given that we recommend the ASHE approach to set generic pay thresholds for occupations, this section considers the appropriate pay percentile at which to set

thresholds for new entrant employees.

Separate thresholds for new entrants and experienced employees

5.68 The Government asked us to identify, where necessary, separate pay thresholds for new entrant and experienced employees in a given occupation or job title. Some partners state that this would not be desirable; arguing that setting lower thresholds for new entrant employees may result in employers recruiting these migrants to undercut the wages of resident employees.

“PCG believes it is unnecessary to have separate minimum salaries for both ‘new entrants’ and experienced employees. This creates further opportunities for undercutting, especially if the proposed 10th percentile is used as a basis for the ‘new entrant’ salaries.”

Professional Contractors Group response to the MAC call for evidence

5.69 Other partners stated that it is desirable to have separate pay thresholds for new entrant and experienced employees in a given occupation or job title. Since employees typically earn less at the beginning of their careers, setting the same pay thresholds for all Tier 2 main applicants with job offers would disadvantage those at the beginning of their careers.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

“...a recent graduate from Nottingham Trent University, who received a distinction in Computer Systems Engineering – a subject area not commonly studied by British students – was offered employment at a British company for a salary of £27,000 per year, however, the Code of Practice required a salary of around £28,000 and the company could not afford to pay that much, in addition to the resources required to become a Tier 2 sponsor. As a result, the student lost their job offer, and the company lost the chance to employ a highly qualified graduate in an area that Britain has a growing skills deficit in.”

National Union of Students response to the MAC call for evidence

- 5.70 Other partners argued that lower pay thresholds should be set for new entrant employees to compensate for the closure of the Tier 1 Post-Study Work route in 2011. This route formerly allowed newly-graduated Tier 4 migrants to remain in the UK for up to 2 years in search of employment.

“Given the closure of the post-study Tier 1 route, it is now particularly important that new graduates are recognised in the codes, reflecting both the levels of experience of those participating in graduate schemes, and the significant investment in training and development that accompanies graduate programmes.”

Confederation of British Industries response to the MAC call for evidence

- 5.71 Some partners recommended that pay thresholds for new entrant employees be set at £20,000 for

all occupations and job titles eligible for Tier 2. The justification for this being that a single threshold for all new entrant employees simplifies the rules, reducing the administrative burden for employers. Furthermore, lowering the pay thresholds for new entrant employees may increase the incentive for international students to come to the UK to study.

“The committee may wish to consider applying the £20,000 base for all low experience workers to make the system simple for employers and prospective employees.”

Universities UK, Universities and Colleges Employers Association and GuildHE response to MAC call for evidence

- 5.72 The disadvantage of setting a single pay threshold for all new entrant employees is that the going rate for certain occupations might be significantly greater than £20,000. In which case, there is the potential for employers to pay Tier 2 migrants less than the going rate for their job, undercutting resident wages.
- 5.73 Importantly, however, Tier 2 is already subject to a minimum pay requirement of £20,000 per annum (as discussed in Chapter 2). We calculated the difference between the current £20,000 threshold and the 10th percentile of the pay distribution for full-time employees from the ASHE for 2011 (a potential proxy for the pay of new entrant employees). On average, the 10th percentile was greater than £20,000 for occupations eligible for Tier 2 by

around £2,800. This suggests that a default minimum pay threshold of £20,000 for occupations eligible for Tier 2 is appropriate.

- 5.74 Furthermore, it is recommended that the default pay threshold for a given occupation is the experienced pay threshold. Employers should provide evidence to support the need for the non-resident employee to be subject to the new entrant threshold.
- 5.75 Not all newly-qualified graduates entering employment start at the bottom of the pay scale for their occupation. It would therefore not be appropriate to set pay thresholds for new entrant employees at the first percentile of the pay distribution (i.e. the bottom salary) for their occupation. Furthermore, an approach whereby the threshold tracks the lowest pay offer in an occupation could prevent resident workers competing on pay.
- 5.76 A potential alternative is to set the pay threshold for new entrant employees at the 10th percentile of the pay distribution for full-time employees in a given occupation.
- 5.77 Our analysis, discussed further in Annex C and illustrated in Figure 5.1, considered the relationship between years since leaving full time education and percentile of the pay distribution for an occupation. It shows that the typical new entrant to occupations eligible for Tier 2 may expect a starting salary at the 10th percentile of the pay distribution. This was calculated using individual data from the APS for the period Q2 2011 to Q1 2012 and ASHE data for 2011 for the

pay distributions of occupations eligible for Tier 2.

- 5.78 We received some evidence from partners that setting pay thresholds for new entrant employees at the 10th percentile would be too high for certain occupations. These are considered on a case-by-case basis in Chapter 6.

“Setting the earnings threshold at the 10th percentile is likely to impact on the graduate labour market in a number of professions either by excluding non-EU graduates completely or requiring that they be paid more than the graduate average.”

Universities UK, Universities and Colleges Employers Association and GuildHE response to MAC call for evidence

- 5.79 Additionally, not all employers within a sector ran some sort of graduate recruitment scheme. For instance, within the IT sector Tata Consultancy Service and Accenture said that they did run such a scheme whilst other respondents said that they did not. Some respondents were in favour of using the 10th percentile for new entrants to these occupations.

“We would welcome the setting of a minimum salary standard for the SOC codes at the 10th percentile for less-experienced workers.”

Accenture response to MAC call for evidence

- 5.80 We compared the pay thresholds from ASHE against the median

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

pay by occupation from the DLHE survey. For the occupations for which there was a one-to-one mapping between SOC 2000 and SOC 2010 codes, the DLHE median pay was found, on average, to be above the ASHE threshold by less than £250, broadly confirming the 10th percentile from ASHE as appropriate. However, this only applied to 12 of the occupations defined as skilled to NQF6+ (in Chapter 4) where a one-to-one mapping was possible.

5.81 Relaxing the one-to-one restriction to requiring at least a 95 per cent match between the SOC 2000 and SOC 2010 codes increased this to 38 occupations skilled to NQF6+. Here the median wage in the DLHE fell below the ASHE 10th percentile by, on average, about £875. On this basis, we still consider the ASHE 10th percentile to be appropriate.

5.82 **We recommend that pay thresholds for new entrant employees be set at the 10th percentile of the pay distribution for full-time employees in occupations eligible for Tier 2.**

5.83 We recognise that there will be some occupations where the term “new entrant” will not be interchangeable with “not experienced”. This is because some occupations inherently suggest a high level of experience, for example SOC code 1115 chief executives and senior officials. Some partners also told us that, in certain occupations, they do not take new entrants. We expect, in these cases, that the distribution of pay

will reflect the nature of the occupation, and the 10th percentile will be correspondingly higher.

5.84 We did not find an appropriate data source for calculating or accurately estimating the numbers of occupations containing no full-time employees who left full-time education less than three years previously. The APS only covers a sample of UK residents and it is possible that there may be new entrant employees in an occupation even if the APS reports the sample size as zero. In the absence of better data or suitable criteria that could be used to select those occupations where new entrant pay thresholds are not required, **we recommend that any such occupations also use the 10th percentile of the ASHE distribution to set pay thresholds for new entrants.**

5.85 In Chapter 6 we consider whether it is necessary for there to be exemptions for specific occupations or job titles.

5.6 Progression from new entrant to experienced employee threshold

5.86 An issue raised by partners was whether a Tier 2 migrant entering the UK as a new entrant employee who later applies for further leave to remain should be required to meet the new entrant pay threshold or the experienced employee pay threshold. For example, should a Tier 2 main applicant who entered the UK as a new entrant employee and who no longer qualified as a new entrant employee at the point of applying for further leave to remain (i.e. had left full-time education at least

three years previously or was no longer on a graduate training scheme), have to meet the pay threshold for a new entrant or experienced employee?

- 5.87 We received evidence from partners that newly-qualified graduates can experience low pay growth in their first few years of employment in certain occupations, particularly in the research sector, during economic downturns and in jobs requiring employees to undertake professional qualifications. As a consequence, they argue that it may be unrealistic to increase the pay threshold from the 10th to the 25th percentile of the pay distribution for an employee applying for leave to remain.

“Within higher education, academics and researchers could take many years to progress from an entry-level salary to the 25th percentile.”

Universities UK, Universities and Colleges Employers Association and GuildHE response to MAC call for evidence

“Most graduate recruiters hire at the bottom of a salary scale and graduates do not expect rapid basic salary progression during their first two or three years of employment. This is particularly true where there is a professional training route associated with the role, such as in law, accountancy or engineering.”

Association of Graduate Advisory Services response to MAC call for evidence

- 5.88 Table 5.2 shows the implied pay progression required in the first three years of entering an occupation if a new entrant is to progress from the 10th percentile to the 25th percentile of the pay distribution. The table shows the progression for ten occupations selected on the basis of a best match with those SOC 2000 occupations shown to make the highest use of Tier 2 in the year ending Q2 2012.
- 5.89 Discussion with UK Border Agency has shown that where new entrant thresholds exist in the current codes of practice, the approach taken has been to consider the nature of the job the migrant is doing. Therefore, if at the time of applying for an extension of leave to remain they had not moved on from that entry level role, they would be allowed to be paid the same salary.
- 5.90 By our definition discussed earlier of a new entrant as compared to an experienced employee, a Tier 2 main applicant applying for entry to the UK with three years of experience in an occupation would face the experienced threshold. If a Tier 2 main applicant who entered as a new entrant but subsequently applies for further leave to remain after three years continues to face the new entrant pay threshold rather than the experienced pay threshold, then this is likely to facilitate undercutting. There would be an inconsistency whereby the in-country applicant could face a lower threshold simply by virtue of already being in the UK.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 5.2: Implied pay progression for ten selected SOC 2010 occupations skilled at National Qualifications Framework level 6

SOC 2010	Occupation	10 th percentile	25 th percentile	Implied pay progression over three years (per cent)
1115	Chief executives and senior officials	£25,104	£41,124	64
2211	Medical practitioners	£30,205	£44,631	48
2139	Information technology and telecommunications professionals n.e.c.	£19,666	£28,399	44
3545	Sales accounts and business development managers	£21,707	£29,462	36
2423	Management consultants and business analysts	£22,332	£29,518	32
2133	IT specialist managers	£25,519	£33,378	31
2231	Nurses	£20,678	£26,041	26
2136	Programmers and software development professionals	£24,000	£29,750	24
3534	Finance and investment analysts and advisers	£20,796	£25,757	24
2119	Natural and social science professionals n.e.c.	£24,194	£29,818	23

Notes: Occupations selected on the basis of a best match with the top ten occupations with highest use of Tier 2.

Source: Annual Survey of Hours and Earnings (2011)

5.91 On balance, we recommend that a Tier 2 main applicant who entered the UK as a new entrant, but is applying for further leave to remain after three years, should continue to face the default experienced pay threshold in spite of the pay progression implied for some occupations. We do, however, recognise that there may be circumstances where such pay progression may not be possible and caseworkers should be able to make exceptions in these cases. One example of such an exceptional circumstance may be during an economic downturn, when some people may experience very low, or no pay progression despite gaining experience.

5.7 Regional variation of pay thresholds

5.92 As stated in Chapter 2, a number of the pay thresholds in the current codes of practice are set to allow variation for different regions of the UK. A number of partners stated that pay thresholds should vary among regions to reflect regional variations in living costs.

5.93 Many pay rates are set at higher levels in London than the rest of the UK. However, even if half, or even nearly three-quarters, of workers in a particular occupation were employed in London, the 25th percentile of the ASHE pay distribution would, by definition, refer to a worker employed outside of London. Therefore, the arguments below for a lower pay

threshold for roles outside of London are already accommodated by taking the 25th percentile of the pay distribution.

“The [Professional and Business Services] Group is not in favour of a single national pay level. Our concern is that in areas of the country with a lower cost of living businesses will be unable to address skill shortages due to their inability to sponsor foreign workers.”

Professional Business Services response to MAC call for evidence

“In a survey by Reed Accountancy Finance, a recruitment agency specialising in accounting professionals, for a newly qualified accountant, the salary range for Central London is £40,000- £45,000, while for the North East it is £30,000 to £35,000 and for the North West is £28,000 to £34,000. The salary range for a newly qualified Corporate Tax professional in London is £44,000 - £48,000, while for Wales is £22,000 to £28,000.

“The above evidence clearly illustrates the significant disparity in salaries for the same role in different parts of the UK, and therefore the need to adjust the SOC Code salary requirements to reflect these.”

KPMG response to MAC call for evidence

- 5.94 KPMG told us that they have a regional variant applied to their pay scales. These are benchmarked to the local market rather than a centralized average. None of the SOC codes reflect

any regional variances in pay despite the fact that there is a recognized difference in pay depending on an individual’s geographical location. KPMG say that they have experienced two cases out of the current year’s graduate intake where if the individuals affected had applied to an alternative office they would have met the minimum pay requirements set in the current codes of practice.

“KPMG has salary scales which are extensively benchmarked at least annually, including reference to local salary levels across our 23 office locations. Regional salary norms are consistently lower than the comparative role based in London. The salary requirements under the SOC code are a single national rate. Previous experience of recruiting for roles based in the Regions, such as qualified Chartered Accountant 2421, Taxation Expert 3535 and Management Consultant 2423 positions for our regional offices (e.g. Birmingham), the SOC code required rate exceeds KPMG’s benchmarked regional salary rate for the role.”

KPMG response to MAC call for evidence

- 5.95 Deloitte told us that they favour setting different pay levels outside London. A FTSE 100 financial services company said that the roles of management accountants and management consultants, actuaries, economists and statisticians may prove difficult to fill in their regional offices. These are low experience roles and tend not to be based in London. They told us that in London, the pay for a graduate role is £10,000 more

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

than the salary for the same position in Manchester. If the minimum salary as set out in SOC 2010 codes remains in line with the 25th percentile for less experienced employees then the same company told us they may struggle to hire migrant workers in regional locations to fill such a role. Another leading global financial services company made a similar point in relation to financial advisors as did a global consultancy company in relation to chartered and certified accountants.

- 5.96 Respondents also raised regional disparities as an issue in the salaries paid for occupations in the IT sector. e-skills UK, the Sector Skills Council responsible for Business and Information Technology, said that there are notable differences in pay across the UK depending upon the region of work. They cited examples of IT and technology specialist managers in London earning on average 56 per cent more than those in the North East, and 53 per cent more than their counterparts in the East Midlands.

“For example, the current minimum appropriate rate for a programmer is £26,000. £26,000 might be slightly too high for a javascript programmer in Leeds but would significantly undercut a java programmer with investment banker experience in London (who would typically earn over £60,000 p.a.).”

An individual’s response to MAC call for evidence

- 5.97 The University of East Anglia said that in respect of IT occupations,

the local job evaluation scheme used for the specific vacancy being filled will affect the salary available. An artificially high salary set in accordance with the 25th or 50th percentile might substantially undermine the labour market for such professionals outside of particular areas such as London where wages are inflated in comparison to other regions. Some jobs which fall within these occupations might also, due to local labour market forces, command a lower salary than that of the 25th percentile and on occasion less than the 10th percentile.

- 5.98 We have previously considered whether the Points Based System should reflect regional variations in pay (Migration Advisory Committee (2010) and Migration Advisory Committee (2012b)). In Migration Advisory Committee (2010) we considered the economic rationale behind the payment of London weighting. We concluded that this reflects a variety of factors including:

- wage differentials, with higher wages paid to provide compensation for the greater relative cost of living in London and the South-East. For example, higher costs of living could reflect greater pressure on the housing market due to rising population density;
- composition effects where, even within a given occupation, the average London job may be more skilled, or senior, than an equivalent job elsewhere in the UK. Migration Advisory Committee (2010) highlighted that this may occur where a

company locates its global headquarters in London and more senior staff are employed in that office than elsewhere;

- the relative scarcity of available labour in London, where employment rates tend to be higher than average, putting upward pressure on wages;
- differing levels of capital intensity between the regions; and
- agglomeration effects, where the London weighting may also affect the higher output or productivity of workers because of increasing returns to proximity and lower costs of production, assuming the labour supply remains fixed.

5.99 As an indication of how far differences in wages between regions are the result of variations

in the cost of living, we compared the difference between regional price and wage levels and their equivalent national averages (shown in Table 5.3).

5.100 Price levels in London were 7.9 per cent higher than the UK average in 2010. However, wage levels for full-time employees were 23.6 per cent higher. This suggests that variations in the cost of living cannot be the only factor that explains regional wage differentials. Indeed, in a flexible labour market, employers will not pay an employee more than they are worth. Businesses could not pay a significant wage premium to employees in London and the South-East unless they were more productive or more senior than those in other regions of the UK or they would find themselves out-competed by those with lower labour costs.

Table 5.3: Regional consumer price and wage indices (UK=100)

	Price level*	Wage levels**
London	107.9	123.6
South-East	102.3	111.4
East	101.2	105.2
West Midlands	100.6	92.3
Scotland	99.7	96.9
South-West	99.5	94.6
East Midlands	99.4	94.5
Wales	98.4	90.8
North-West	98.2	93.9
North-East	98.2	89.6
Northern Ireland	98.1	86.5
Yorkshire and the Humber	97.0	92.5

Note: *Supplementary results from ONS (2012). Regional price levels are weighted using 'regional weights'. Regional weights apply regional consumption patterns to the CPI basket and price the regional cost of the corresponding regional basket. This enables comparisons to be made of the relative purchasing power of the pound, for a representative basket of goods for each individual region, compared with what that basket would cost if bought at national average prices. ** Wage levels are calculated using gross, median, annual pay for full-time workers, taken from ASHE 2010. Data for 2011 are available, however the 2010 data is used for comparability with the regional consumer price indices.

Source: ASHE (2010) and Office for National Statistics (2012) "UK Relative Regional Consumer Price levels for Goods and Services for 2010".

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

5.101 In addition, as discussed earlier, London wages will be located towards the higher end of the wage distribution. By taking the 25th percentile of the pay distribution, therefore, we expect the resulting wage to be drawn from among the regions.

5.102 As a final point, we would like to reiterate that in Migration Advisory Committee (2012b), a number of partners highlighted that as well as being difficult to administer and monitor, a system of regional pay thresholds would be complex and confusing. We were also advised that the creation of such a system would impose a high administrative burden on businesses as many migrants move working location while in the

UK. This would have to be incorporated into the migration system in order to avoid abuse.

5.8 Conclusions

5.103 In this chapter we presented our recommendations on how minimum pay thresholds should be set using ASHE. We also recommend setting new entrant and experienced thresholds for all occupations eligible for Tier 2.

5.104 In the next chapter we look at what the actual pay thresholds will be for each of the NQF6+ occupations and job titles using the methods determined in this chapter and also take account of the evidence we received from corporate partners in relation to this.

Chapter 6 Minimum pay thresholds

6.1 Introduction

6.1 This chapter considers the actual pay thresholds to be applied to the occupations and job titles skilled to NQF6+. First, it sets out the thresholds to be determined using the Annual Survey of Hours and Earnings (ASHE) data following the method set out in the previous chapter. Next, it considers the evidence we received from partners about thresholds which could be determined using data from sources other than ASHE, and makes recommendations about whether identified alternative data sources are appropriate for this purpose.

6.2 Pay thresholds for SOC 2010 occupations using ASHE data

6.2 Chapter 5 considered how minimum pay thresholds could be set using available national level data. We concluded that data from ASHE should be the default source for these thresholds and that separate thresholds should be set for experienced and new entrant employees. Table 6.1 lists

the pay thresholds which we recommend be set using data from ASHE for occupations skilled at NQF6+. For each occupation, the threshold for an experienced employee is set at the 25th percentile of the pay distribution for that occupation based on ASHE, and the threshold for a new entrant employee is set at the 10th percentile of the distribution. It is important to note that the overall minimum pay threshold of £20,000 for all applicants under Tier 2 will take precedence over any lower figure from the ASHE data.

6.3 Table 6.1 also includes occupations for which we received evidence that the thresholds should be set using data from sources other than ASHE but where we concluded that it would not be appropriate to do so. In these cases, the evidence and our consideration of it are discussed in the body of this chapter. Of the 97 occupations we consider skilled to NQF6+, the pay thresholds for 67 are set for both new entrants and experienced employees using ASHE data.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 6.1: Minimum pay thresholds set using ASHE (£)

SOC Code	Occupation	New entrant threshold using 10 th percentile (£)	Experienced employee threshold using 25 th percentile (£)
1115	Chief executive and senior official	25,100	41,100
1116	Elected officer and representative+	23,500	39,500
1121	Production manager and director in manufacturing	20,500	29,800
1122	Production manager and director in construction	18,800	27,900
1123	Production manager and director in mining and energy	20,000	35,300
1131	Financial manager and director	25,600	37,500
1132	Marketing and sales director	28,500	44,200
1133	Purchasing manager and director	26,400	33,400
1134	Advertising and public relations director	25,300	36,500
1135	Human resource manager and director	25,300	33,500
1139	Functional manager and director n.e.c.*	20,400	29,200
1150	Financial institution manager and director	21,700	30,600
1161	Manager and director in transport and distribution	21,000	27,000
1171	Officer in armed forces+	31,100	43,700
1172	Senior police officer	51,400	53,500
1173	Senior officer in fire, ambulance, prison and related services	31,100	36,400
1181	Health services and public health manager and director	25,400	34,000
1184	Social services manager and director	25,400	31,000
2121	Civil engineer	20,700	27,900
2122	Mechanical engineer	24,100	29,100
2123	Electrical engineer	23,600	34,000
2124	Electronics engineer	23,600	26,400
2126	Design and development engineer	24,800	29,100
2127	Production and process engineer	23,600	27,400
2129	Engineering professional n.e.c.*	23,600	30,000
2135	IT business analyst, architect and systems designer	24,900	30,600
2136	Programmer and software development professional	24,000	29,800
2137	Web design and development professional	20,000	25,200
2139	Information technology and telecommunications professional n.e.c.*	19,700	28,400
2141	Conservation professional	21,100	25,000
2142	Environment professional	21,400	25,500
2150	Research and development manager	27,200	33,100
2216	Veterinarian	23,200	32,400
2317	Senior professionals of educational establishment	22,400	31,000
2318	Education adviser and school inspector	20,200	26,900
2319	Teaching and other educational professional n.e.c.*	14,000	18,400

Table 6.1: Minimum pay thresholds set using ASHE (£) (continued)

SOC Code	Occupation	New entrant threshold using 10 th percentile (£)	Experienced employee threshold using 25 th percentile (£)
2413	Solicitor	23,000	30,200
2419	Legal professional n.e.c.*	21,900	37,600
2421	Chartered and certified accountant	19,900	26,300
2423	Management consultant and business analyst	22,300	29,500
2424	Business and financial project management professional	24,000	31,900
2425	Actuary, economist and statistician	22,000	33,600
2426	Business and related research professional	22,000	25,600
2429	Business, research and administrative professional n.e.c.*	22,500	28,400
2432	Town planning officer	21,400	27,200
2433	Quantity surveyor	17,600	26,400
2434	Chartered surveyor	21,400	25,300
2436	Construction project manager and related professional	22,300	26,000
2443	Probation officer	19,500	29,500
2444	Clergy+	18,500	20,600
2449	Welfare professional n.e.c.*	19,500	21,600
2451	Librarian	21,500	27,300
2452	Archivist and curator	21,500	24,500
2461	Quality control and planning engineer	23,500	27,700
2462	Quality assurance and regulatory professional	23,200	29,000
2463	Environmental health professional	23,100	28,100
2471	Journalist, newspaper and periodical editor	20,700	25,000
2472	Public relations professional	20,600	25,700
2473	Advertising accounts manager and creative director	21,900	27,400
3415	Musician	16,700	21,700
3416	Arts officer, producer and director	20,800	27,000
3512	Aircraft pilot and flight engineer	28,000	49,500
3532	Broker	22,400	33,900
3534	Finance and investment analyst and adviser	20,800	25,800
3535	Taxation expert	24,100	29,000
3538	Financial accounts manager	21,300	27,600
3545	Sales accounts and business development manager	21,700	29,500

Notes: All thresholds rounded to nearest £100. *n.e.c. – not elsewhere classified.

Where the ASHE threshold falls below £20,000 the threshold will be overridden by the Tier 2 minimum pay requirement. + Occupation unable to use Tier 2 (General) due to the requirements of the occupation or because a specific route is available.

Source: Annual Survey of Hours and Earnings

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

6.3 Evidence from partners on alternative data sources to ASHE

6.4 We received a variety of evidence from partners arguing that the pay thresholds derived from the ASHE data were inappropriate for certain occupations. In some cases the partners argued that the thresholds were too high above the market rate and would prevent them from recruiting staff from outside the European Economic Area (EEA). Others argued that the thresholds were too low and would allow undercutting of the resident labour market. In some cases alternative sources of pay data were suggested as more accurate and appropriate than ASHE, for instance nationally agreed pay scales. Some partners highlighted that certain occupations have particular early career progression patterns which need to be reflected in the codes of practice.

6.5 This section considers the evidence received and provides our recommendations for relevant occupations, job titles or groups of occupations. Where the evidence ranged across several occupations in a related area we have grouped discussion of the occupations under a collective heading. Where the evidence related only to one occupation this is discussed in isolation.

Information Technology related occupations

6.6 The Information Technology (IT) industry is one of the largest users of Tier 2 with high numbers of workers using the intra-company transfer and RLMT route. As

shown in Table 2.3, SOC 2000 code 2132 IT, software professional was the largest user of certificates of sponsorship (CoS) between Q3 2011 and Q2 2012. Of the 46,858 CoS used for all occupations eligible for Tier 2, this one occupation used 15,104 or 32 per cent. Another IT occupation, SOC 2000 code 2131 IT strategy and planning professional also features among the top ten occupations for the number of CoS used in this period, accounting for a further 1,528 of the CoS issued.

6.7 We received conflicting evidence from partners about how minimum pay thresholds should be set for IT occupations. Some partners told us that we should recommend minimum pay thresholds for job-titles in addition to occupations while other partners said that job titles are interchangeable within the industry and cannot be used reliably. As an example of the latter, we were told that job titles such as graduate developer, programmer, analyst programmer, senior programmer, software engineer, senior software engineer, systems developer and senior systems developer all encompassed similar software development roles. We were given the example of a technology architect in one company who may be performing the same role as a systems analyst in another.

6.8 The current codes of practice have a large number of job titles included within each IT code. The SOC codes have changed with the introduction of SOC 2010 but, as an example, the code of practice for SOC 2000 occupation 1136 information and

communication technology manager (Section J (Information and communication) has 22 job titles listed with salary thresholds varying from £25,000 to over £83,000. Having been asked by the Government to simplify the codes, we are reluctant to replicate this complexity of job titles. But given the high usage of CoS by IT occupations, it is important to develop a workable alternative.

- 6.9** Evidence about the value of the pay thresholds was also conflicting. Some employers stated that ASHE data would be a reasonable source of pay thresholds for occupations within their industry. A number of respondents from across the IT sector indicated that they had no objections to the use of ASHE data in establishing minimum pay thresholds for use under Tier 2. Tata Consultancy Services and Accenture agreed with the proposal to set the minimum salary at the 25th percentile of the distribution for the occupation, although Accenture felt that they would wish to consider this in light of the job descriptions underpinning the SOC 2010 codes.
- 6.10** In contrast, others took the view that the ASHE data were too low and that the 50th percentile of the ASHE distribution would be preferable. Prospect said that this represented the market rate for the job therefore it would be more rational to use this figure rather than the 25th percentile.
- 6.11** The Sector Skills Council for Business and Information Technology, e-skills UK, stated that employers seeking to recruit via the Tier 2 route should be expected to offer remuneration at a level equal to or above the UK median rate of pay for the occupation. If a lower rate were acceptable then this would permit employers to advertise at below the market rate, increasing the probability that UK resident workers would not apply for the job in question. This in turn would seem to strengthen the case for bringing in labour from outside the EEA.
- 6.12** Significantly, for IT related SOC codes, the 25th percentile of the ASHE distribution for IT related occupations is in some cases lower than the thresholds in the current codes. For certain occupations and job-titles the difference is considerable. Table 6.2 compares the 25th percentile of the ASHE pay distributions for IT SOC codes with the pay threshold for the approximately matching IT job-titles in the current codes of practice.
- 6.13** According to research by e-skills UK (2012), demand for IT professionals has recovered substantially over the past two years, though still at low levels relative to the situation prior to the recession. One would therefore not expect a very significant fall in pay thresholds in the IT sector compared to the current Section J code of practice.
- 6.14** We also heard the concerns of some partners that the undercutting of UK resident workers is a particular problem in the IT sector.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

“Large IT outsourcing companies (also referred to as third-party contracting firms in the IT sector) use Tier 2 migrant workers to undercut existing UK workers. The current system does not prevent this. The minimum pay requirements need to be raised to protect existing workers, and also to protect the pipeline of future talent in the UK”

Individual response to MAC call for evidence

Table 6.2: Salary thresholds in the current UK Border Agency codes of practice and 25th percentiles from ASHE

SOC 2010 occupation	ASHE 25 th percentile (£)	Examples of job titles in the current codes of practice	Current pay threshold (£)
1136 Information technology and telecommunications director	42,100	IT director or IS director	83,200
2133 IT specialist manager	33,400	MIS manager or IT manager	44,700
		Systems development manager	41,600
		Computer services manager	43,600
		Software manager or programming manager	40,500
			34,100
2134 IT project and programme manager	35,000	Development team leader	41,600
		Project leader or senior systems analyst	41,600
		Projects manager	39,000
2135 IT business analyst, architect and systems designer	30,600	Systems analyst	31,200
		Business analyst	31,200
		Operations analyst	27,000
2136 Programmer and software development professional	29,800	Senior programmer	31,200
		Programmer	26,000
		Lead designer	30,000
		Senior games designer	27,000
		Games designer	20,000
		Software engineer	30,100
2137 Web design and development professional	25,200	Web designer	26,000
		Webmaster	28,000
2139 Information technology and telecommunications professional	28,400	Systems auditor	34,600
		Network communications analyst or engineer	29,100

Source: Migration Advisory Committee analysis, 2012

- 6.15 A significant number of intra-company transferees are brought to the UK as part of the Business Process Outsourcing Model (BPOM) or third-party contracting. The issue of whether or not UK workers are displaced as a result of the third-party contracting was explored in some detail in Migration Advisory Committee (2012b), and there we concluded that it is difficult to ascertain whether this model was of benefit to the UK economy. However, we did find it likely that some UK workers, particularly in the IT sector, lose out from this practice.
- 6.16 Taking into account that using the 25th percentile of the ASHE distribution to set minimum pay thresholds for IT occupations across the board would result in a reduction from the current pay thresholds in a number of IT sector jobs, in addition to concerns about undercutting in the sector and evidence of the rising demand for staff in the IT sector, we believe that it is not appropriate to base pay thresholds for all IT sector occupations on the 25th percentile. We are therefore minded to consider alternative methods for setting IT pay thresholds.
- 6.17 At the events in support of our call for evidence and at meetings with representatives from the IT sector we asked partners to supply us with actual pay data from across the sector but only two such examples were received. Steria gave us examples of their internal data showing the 25th percentile of their salary distribution for programmer, senior programmer and project manager jobs, which represented 60 per cent of non-EEA employees who come to work at Steria in the UK through the intra-company transfer route. The Independent Game Developers Association (TIGA) provided us with the UK Games Software Developers Salary Survey for 2011/12 carried out by Aon Hewitt. We have taken account of both of these sources in our consideration.
- 6.18 A number of different pay sources were suggested to us by partners. Incomes Data Services (IDS) produce a database of pay data received from over 500 organisations and we felt that the range of job-titles available through the IDS offered the best opportunity to match pay thresholds to SOC occupations. The IDS database is updated on a rolling annual basis. Table 6.3 below compares IDS salary data with the 25th and 50th percentiles from the ASHE distribution for each IT related occupation.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 6.3: IT pay data

SOC 2010 occupation	Percentile of the pay distribution	IDS occupation level	IDS job titles	ASHE
1136 Information technology and telecommunications director	25 th	78,600	80,000 - Director 75,600 - Function Head	42,100
	50 th	100,000	115,000 - Director 99,000 - Function head	58,500
2133 IT specialist manager	25 th	40,000	55,000 - Manager 43,000 – Middle manager 32,200 – Junior manager 51,000 – operations manager	33,400
	50 th	51,300	68,700 – Manager 50,000 – Middle manager 36,100 – Junior manager 55,600 – operations manager	43,100
2134 IT project and programme manager	25 th	36,400*	32,000 – Project manager 52,800 – Senior project manager	35,000
	50 th	50,000	44,200 – Project manager 58,200 – Senior project manager	44,100
2135 IT business analyst, architect and systems designer	25 th	30,000	29,900 – Business/ systems analyst 39,400 – Senior business/ systems analyst 28,700 – Systems analyst	30,600
	50 th	33,700	35,000 – Business/ systems analyst 48,000 – Senior business/ systems analyst 31,500 – Systems analyst	38,200
2136 Programmer and software development professional	25 th	28,000	Low sample sizes	29,800
	50 th	36,900		36,700
2137 Web design and development professional	25 th	Low sample sizes		25,200
	50 th			31,700

Table 6.3: IT pay data (continued)

SOC 2010 occupation	Percentile of the pay distribution	IDS occupation level	IDS job titles	ASHE
2139 Information technology and telecommunications professional	25 th	30,000	26,500 – Network/ systems engineer 37,100 – Senior network/ systems engineer 40,600 – network/ systems team leader	28,400
	50 th	37,700	30,000 – Network/ systems engineer 40,900 – Senior network/ systems engineer 49,000 – network/ systems team leader	36,400

Note: *The IDS statistics for job-titles that can be assigned to SOC 2010 2134 IT project and programme manager are based on a relatively low sample size of 45 observations. IDS observations are reported by individual companies and are not weighted by size of company. IDS salaries were extracted from the database on 25 September 2012. The IDS database is updated on a rolling basis and as such figures in the database may not match those included in this table.
Source: Migration Advisory Committee analysis, 2012

6.19 In the absence of pay data provided by partners in the IT sector, we recommend that where the ASHE data are considerably different to the IDS data and the figures quoted in the existing codes of practice, that the 25th percentile of the distribution of the IDS data should be used to set minimum pay thresholds. As highlighted in bold in Table 6.3, this will apply to:

- SOC 1136 information technology and telecommunications director;
- SOC 2133 IT specialist manager; and
- SOC 2134 IT project and programme manager.

6.20 Minimum pay thresholds for experienced employees in all other IT occupations will be set

using the 25th percentile of the ASHE distribution.

6.21 Regarding the new entrant threshold for IT occupations, some respondents argued that the 10th percentile of ASHE distribution was too low, while others were not in favour of having a separate threshold for new entrants at all.

“setting a separate rate for ‘low experience’ workers is neither sensible nor practicable. There can be no clear definition of such a category – essential to a meaningful setting of pay rates – while progression to the rate for the job and the characteristics of local labour market both obviate it.”

Prospect response to MAC call for evidence

6.22 Partners also expressed concern that some migrant workers may be presented as low experience

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

when in fact they may be highly skilled specialists or have unique and valuable experience, knowledge and skills.

“PCG strongly believes that it would be a mistake to introduce a special ‘10th percentile’ minimum salary, for ‘less experienced workers’. This would significantly increase the scope for undercutting. It is wrong to assume that those earning less than their colleagues in the same role are doing so simply because they have less experience.”

PCG (a professional organisation for freelancers, contractors and consultants in the UK) response to MAC call for evidence

6.23 Some, such as Prospect, felt that introducing a single new entrant pay threshold would facilitate the undercutting of UK resident workers. It was argued that the current approach of listing job titles with pay thresholds to cover the entire scope of the occupation, from junior roles with lower pay to more senior roles with corresponding higher pay, dealt effectively with the issue of new entrants to the occupation. We were given the example of pay across three different job titles covering developers:

- graduate developer £22,300 p.a.
- systems developer £31,200 p.a.
- senior systems developer £37,400 p.a.

6.24 Such detailed job titles, it was argued, would negate the need to have separate new entrant

thresholds in the IT sector. However, not all IT occupations have identified similar graduate job titles meaning that we would still have to find some other method for establishing the new entrant pay threshold. In addition, we received evidence from Prospect that one large employer currently recruits IT graduates on a starting pay of £30,500, significantly higher than the graduate pay cited above. Given the need to set a minimum pay threshold for IT occupations and the lack of availability of alternative data at the 10th percentile (for example, from the IDS pay database), we recommend that a new entrant threshold should be set at the 10th percentile of the ASHE distribution for all IT occupations. This reflects the need to simplify the codes of practice, in addition to the fact that we received some partner evidence that suggests that starting salaries in the industry may well be some way above the 10th percentile of the ASHE distribution for some new entrant jobs.

6.25 In summary, we recommend that the minimum pay threshold for experienced employees in IT occupations should be set at the 25th percentile of the ASHE distribution, with the exceptions of SOC 1136 information communication and technology director, SOC 2133 IT specialist manager and SOC 2134 IT project and programme manager. The 10th percentile of the ASHE distribution for each of these occupations will apply for new entrants. The pay thresholds for these three occupations are summarised in Table 6.4.

Table 6.4: Recommended thresholds for IT-related occupations

Thresholds for the following SOC codes: 1136 information technology and telecommunications director, 2133 IT specialist manager, 2134 IT project and programme manager		
Occupation	Threshold (£)	Source
1136 information technology and telecommunications director	New entrant: 25,300 Experienced: 78,600	ASHE IDS
2133 IT specialist manager	New entrant: 25,500 Experienced: 40,000	ASHE IDS
2134 IT project and programme manager	New entrant: 26,700 Experienced: 36,400	ASHE IDS

6.26 For clarity, the 10th and 25th percentile of the ASHE distribution will be used to set the thresholds for the other four IT related SOC codes: 2135 IT business analyst, architect and systems designer; 2136 programmer and software development professional; 2137 web design and development professional; and 2139 IT and telecommunications professional.

Healthcare-related occupations

6.27 There was wide consensus from partners, including the Department of Health, NHS (National Health Service) Employers and the Scottish Government Health and Social Care Directorates, that the NHS national pay scales should be used to set the thresholds for healthcare related occupations on the NQF6+ list.

6.28 The main NHS grading and pay system is the Agenda for Change (AfC). This covers over one million NHS staff (excluding doctors, dentists and some senior managers). NHS staff on AfC are paid according to nine pay bands on the basis of their knowledge, responsibility, skills and effort needed for the job. Within each pay band, there are a number of pay points. As staff develop their

skills and knowledge they progress in annual increments up to the maximum of their pay band. It is standard practice for a new entrant to the band to be paid at the bottom pay point.

6.29 The NHS is the largest employer in the UK healthcare sector with 1.7 million employees. Of those, just under half are clinically qualified. All NHS pay scales are available on the NHS Employers website. The NHS pay scales do not extend to non-NHS staff working in private hospitals, nursing homes, clinics and GP practices. But, according to the Royal College of Nursing, the current NHS pay arrangements influence private health service employers and the terms and conditions that they offer to their staff. For instance, the pay of many non-NHS nursing staff in the private and independent sectors matches the NHS AfC terms, although we did receive evidence from one private nursing home who told us they cannot match the pay, conditions and development opportunities offered to nurses in the NHS, and find that their staff are frequently then employed by the NHS once they have completed their training.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

6.30 The national job profiles available on the NHS Employers website enable the private sector to match their posts to equivalent NHS roles. The AfC pay scales are updated annually. Box 6.1 below provides an example of roles in different pay bands.

“Within the NHS the Agenda for Change salary scale ensures that employees are paid the appropriate rate for their job. Therefore the minimum appropriate pay for each pharmacist job would be based on the pay band that the job has been matched to and would be the bottom point of the salary scale for that pay band.”

NHS Pharmacy Education and Development Committee response to MAC call for evidence

6.31 While SOC code 2231 nurse and 2232 midwife posts start at Band 5, there is allowance in the current code of practice for “*Posts at Agenda for Change Band 3 or equivalent*” with a starting salary of under £20,000, as outlined in paragraphs 2.27 and 2.28 of this report. This provision allows overseas trained nurses (non-UK /EEA) to come to the UK as healthcare assistants to undertake an Overseas Nursing Programme (ONP) under Tier 2 to train to gain Nursing and Midwifery Council (NMC) registration as a nurse. Their Tier 2 applications are assessed on the guaranteed annual salary that

will be paid when the individual achieves NMC registration. They may be paid under £20,000 while they are training. If the applicant has not achieved NMC registration after nine months, their leave may be curtailed. Where the applicant is undertaking an ONP the sponsor must have made a guaranteed offer of employment on completion of the ONP. Midwives have a similar arrangement for “supervised practice midwives” on adaptation courses. **We recommend that this provision be maintained.**

6.32 Some social workers are employed on AfC pay scales and the Committee recommends that these are used to set the pay thresholds for the SOC code 2442 social worker. There are no national pay scales for social workers as they can be employed by many different organisations, including the NHS and local authorities, and each has their own pay arrangements.

6.33 The Department for Education stated in their evidence to us that the ASHE data for social workers was very similar to the AfC pay scales and that therefore they did not object to using ASHE to set the pay thresholds. This view was supported by Skills for Care and Development. The Department for Health reported that the social care sector would also be content to use the 10th and 25th percentile of the ASHE data for SOC 2442 social worker.

Box 6.1: Example of roles in different AfC pay bands

Band 5: Nurse (Learning Disabilities)

- Assesses care needs, implements care plans, administers medication, provides advice for patients/clients with learning disabilities.
- Carries out nursing procedures for clients with learning disability
- Provides clinical supervision to other staff, students

Band 6: Nurse Team Leader (Learning Disabilities)

- Assesses care needs, implements care plans, administers medication, provides advice in specialist area for patients/clients with learning disabilities.
- Initiates and promotes practice development
- Supervises staff, co-ordination of staff duty rotas, clinical leadership

Band 7: Nurse Team Manager (Learning Disabilities)

- Leads nursing services for patients with learning disabilities
- Assesses specialist care needs, administers medication, specialist advice.
- Leads practice development and trains staff, patients and carers.
- Manages team resources and staff.

Band 8a: Modern Matron Community

- Manages and provides leadership for managers, specialist nurses/midwives and other staff in a primary care setting.
- Promotes better health, social care and medicines management.
- Provides specialist education and training to other staff.
- Develops and maintains compliance with policies and guidelines, including case management; co-ordinates care in a community setting.

Source: NHS Employers, 2012

6.34 There is a small mismatch between AfC band 6 (£25,528) and the ASHE 25th percentile (£26,100) for social workers. This could cause operational difficulties where NHS trusts wish to appoint new staff at the bottom of the pay band. Therefore, in the interests of consistency across the codes and simplicity, it is suggested that the AfC pay scales are used. We received evidence from the Royal Pharmaceutical Society, the University of East Anglia, Pharmacy Voice, the Council of University Heads of Pharmacy (CUHOP) and the NHS Pharmacy Education and Development Committee that it would be inappropriate to use the AfC to set

a pay threshold for entry level pharmacists as this would exclude pre-registration community pharmacists.

“The pay offered to children and family social workers from outside the EEA will vary depending on the skills and experience of each applicant. Newly qualified social workers will typically start on NHS Agenda for Change pay band 5 or band 6”

Department for Education response to MAC call for evidence

6.35 To acquire registration with the General Pharmaceutical Council (GPhC), pre-registration pharmacists must complete 52

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

weeks of supervised and assessed training and paid employment. Pre-registration pharmacists working in the NHS are paid at band 5 (£21,176). Partners told us that those working in community pharmacy are usually paid between £16,000 and £19,000 (large pharmacy multiples reportedly pay around £18,400).

their studies before the route closed and who do not meet the Tier 2 £20,000 minimum pay requirement are permitted to apply for an extension under the Royal Pharmaceutical Society (RPS) Pharmacy Professional Sponsorship Scheme (PPSS) under Tier 5 of the PBS in order to complete their pre-registration pharmacist training.

“We believe that UK universities providing undergraduate pharmacy education to overseas [students] have a moral obligation to help ensure that their graduates are allowed to complete their initial pharmacy training including the pre-registration year so that they are in a position to become fully qualified pharmacists.”

Council of University Heads of Pharmacy (CUHOP) response to MAC call for evidence

6.36 Previously pre-registration pharmacists used the Tier 1 (Post Study Work) route to work in the UK but this route was closed in April 2012. Students who started

6.37 Partners told us that while the PPSS is a welcome development, it did not extend to cohorts entering the UK to commence study from 2012-13. We are aware that universities are moving towards including the pre-registration year within their courses, which would enable students to remain within Tier 4. However, partners told us that it may be some time before this move is implemented. Therefore, there may be a period during which pre-registration community pharmacists are not eligible for Tier 2.

6.38 Table 6.5 presents a summary of the figures cited in the evidence we received.

Table 6.5: Data on pay for pre-registration pharmacists

Data source	Job post/ threshold	Pay (£)
Royal Pharmaceutical Society	Pre-registration pharmacist (median)	18,200
Pharmacy Voice	Pre-registration pharmacist (mean)	18,400
APS	10 th percentile	19,000
ASHE	10 th percentile	20,000
Agenda for Change paycales	NHS Band 5 (pre-registration hospital pharmacist)	21,176

Source: Migration Advisory Committee analysis, 2012

6.39 Based on the evidence submitted, we consider that this will be a time-limited problem for pre-registration community pharmacists. We appreciate that community pharmacy is a separate career path from the

hospital based pharmacists employed by the NHS and that therefore the AfC paycales may not be appropriate. We therefore recommend that the threshold for pre-registration pharmacists be

set at the ASHE 10th percentile of £20,000.

6.40 The pay scales for doctors and dentists are determined by the Doctors and Dentists Review Body. The pay band for GPs refers to salaried GPs only. Many GPs are self-employed and therefore not paid according to this structure but, being self-employed, they would not be seeking to make use of Tier 2 which is for sponsored employees only. The recommended thresholds for SOC 2211 medical practitioner and for SOC 2215 dental practitioner are set out in Table 6.7 and Table 6.8. Table 6.6 lists recommended pay thresholds

for healthcare-related occupations covered by Agenda for Change.

6.41 Although there is increasing standardisation of job titles across the NHS, some health trusts still use different terms, as may the private sector. For example the East Midlands Workforce Deanery group highlighted that Specialist Registrars may also be called Higher Specialist Trainees. To address the different terminology **the Committee recommends** that “*or equivalent*” is added after each job title for healthcare related occupations, i.e. “*Posts at Band 5 or equivalent; Specialty registrar or equivalent*”.

Table 6.6: Recommended thresholds for healthcare-related occupations covered by Agenda for Change

Thresholds for the following SOC codes:		
2212 psychologist,		2222 occupational therapist,
2213 pharmacist,		2223 speech and language therapist,
2214 ophthalmic optician,		2229 therapy professional,
2217 medical radiographer,		2231 nurse,
2218 podiatrist,		2232 midwife,
2219 health professional n.e.c.,		2442 social worker.
2221 physiotherapist,		
Job title	Threshold (£)	Source
Healthcare assistant undertaking ONP and supervised practice midwife (NHS AfC Band 3)	15,860*	Agenda for Change (2012)
Pre-registration pharmacist (non-NHS)	20,000	ASHE 10 th percentile
NHS AfC Band 5 or equivalent	21,176	Agenda for Change (2012)
NHS AfC Band 6 or equivalent	25,528	
NHS AfC Band 7 or equivalent	30,460	
NHS AfC Band 8a or equivalent	38,851	
NHS AfC Band 8b or equivalent	45,254	
NHS AfC Band 8c or equivalent	54,454	
NHS AfC Band 8d or equivalent	65,270	
NHS AfC Band 9 or equivalent	77,079	

* Exemption from the £20,000 Tier 2 requirement as once the period of training is completed they will be employed by the same organisation on at least AfC band 5.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 6.7: Recommended thresholds for medical practitioners

Thresholds for the following SOC code: 2211 medical practitioner		
Job title	Threshold (£)	Source
Foundation year 1 (F1) or equivalent	22,412	Pay and conditions of service for hospital medical and dental staff, doctors and dentists in public health, the community health service and salaried primary dental care (2012)
Foundation year 2 (F2) or equivalent	27,798	
Specialty registrar (StR) or equivalent	29,705	
Specialty Doctor or equivalent	36,807	
Associate specialist or equivalent	51,606	
Salaried GP or equivalent	53,781	
Consultant or equivalent	74,504	

Table 6.8: Recommended thresholds for dental practitioners

Thresholds for the following SOC code: 2215 dental practitioner		
Job title	Threshold (£)	Source
Foundation Year (F1) (Hospital dental services) or equivalent	22,412	Pay and conditions of service for hospital medical and dental staff, doctors and dentists in public health, the community health service and salaried primary dental care (2012)
Foundation Year (F2) (Hospital dental services) or equivalent	27,798	
Vocational dental practitioner or equivalent	30,132	
Specialist Registrar (StR) (Hospital dental services) or equivalent	30,992	
Band A posts (e.g. community practitioner) or equivalent	37,718	
Band B posts (e.g. senior dental officer) or equivalent	58,672	
Band C posts (e.g. specialist/ managerial posts) or equivalent	70,197	
Consultant (hospital dental services) or equivalent	74,504	

6.42 There are some variations in pay arrangements which need to be addressed through flexibility across the pay thresholds. For instance, specialist trainees in public health from a non-medical route are paid a percentage of the pay of staff qualified to Band 8d for the period of training. There may be other exceptions to the pay scales and **it is recommended** that, rather than attempting to list them all, a clause is included in the codes of practice for healthcare related SOC codes to allow flexibility around such arrangements. For instance: *“Alternative rates of pay for specific roles are acceptable where the sponsor can*

demonstrate that these are agreed in the relevant NHS pay scales”.

6.43 We recognise that the pay agreements within the NHS and within the social care sector may change in the future with a potential move to regionalised pay. The health and social care integration agenda may also impact on pay arrangements. Future updates of the codes of practice will need to take these into account.

6.44 Overall, we believe that the evidence presented to us is sufficiently strong to recommend that the national pay scales set out in Agenda for Change (AfC)

and by the Doctors and Dentists Review Body be used to set the pay thresholds for the healthcare occupations and social work occupations listed in Table 6.6, Table 6.7 and Table 6.8. The advantages of this approach are:

- accuracy, as the pay scales are more precise than the ASHE data;
- clarity for employers, as they will already be using these pay scales or can match their job against the scales;
- simplicity, as the majority of pay thresholds only need to refer to pay bands not the large number of job titles they cover; and
- timeliness, as the pay thresholds will be easy to update.

“The entry grade for the majority of occupations under AfC is at band 5, this being the level at which they become registered. This ... prevents undercutting of the resident labour force, we would therefore recommend that for the health sector, the SOC codes need to remain based on the current pay agreements that exist for the NHS.”

NHS Employers response to MAC call for evidence

Teaching professionals

- 6.45 Following the same reasoning as we took with healthcare occupations, we recommend that the pay thresholds for teaching professionals in schools, further

education and higher education are set using existing pay scales rather than data from the ASHE distribution.

- 6.46 In a joint submission of evidence about **SOC 2311 higher education teaching professional**, Universities UK, GuildHE and the Universities and Colleges Employers Association (UCEA) explained that the National Framework Agreement for higher education staff means that all staff, irrespective of nationality, are placed on the appropriate grade for the job. Universities do not appoint at a salary below that of the grade for the job as this would be in breach of the agreement.

- 6.47 The grading structure is modelled through a system of job evaluation onto a 51 point nationally negotiated pay spine. The grading structures imposed upon the pay spine vary between organisations but remain broadly similar, as we saw in the evidence supplied to us by seven different universities.

“All our posts are evaluated, graded and placed on the relevant pay grade as a result. In accordance with this pay could not be undercut.”

University of Bournemouth response to MAC call for evidence

- 6.48 Several partners told us that they regularly benchmark their rates of pay against internal and external comparators and conduct equality audits to ensure fair pay. They argued that there was no risk of universities using non-EEA migrants to undercut resident workers.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

“Higher education institutions around the world are assessed against a number of criteria to produce various world rankings. A key measure is institutional diversity: the extent to which institutions are able to recruit internationally is recognised around the world as a measure of excellence.”

University of Oxford response to MAC call for evidence

6.49 The 10th percentile of the ASHE distribution for SOC 2311 is £26,200 and the 25th percentile is £35,200. Comparing these with the evidence from partners, it is clear that some universities would have difficulty meeting the 25th percentile for lecturers. The Universities UK joint submission suggested that £30,000 was an appropriate threshold for lecturers. The evidence from individual universities also suggested that £30,000 was a common starting salary for lecturers.

6.50 The SOC code 2311 includes job titles such as higher education teaching assistant and postgraduate teaching assistant. We therefore accept the desirability of a new entrant threshold below the level of lecturer. The Universities UK joint submission suggested that the typical starting pay for an early career Higher Education Teaching Professional is in the region of £23,000 or point 22 on the national pay spine. Point 22 on the pay spine is actually £23,800. One university stated that they paid teaching associates £28,000. No other evidence was received on pay for jobs below lecturer grade.

6.51 We therefore recommend that the thresholds suggested by Universities UK of £23,800 for new entrants and £30,000 for experienced workers (i.e. lecturer and above) be used for SOC 2311 as shown in Table 6.9.

Table 6.9: Recommended thresholds for higher education teaching professional

Thresholds for the following SOC code:

2311 higher education teaching professional

Job title	Threshold (£)	Source
New entrant	£23,800	Evidence from Universities UK, UCEA and GuildHE
Experienced worker	£30,000	

6.52 Pay scales for jobs within **SOC 2312 further education professional** vary across the UK. There are different national negotiation structures in place and pay can vary considerably between colleges. However, while there are regional differences, these are not significant enough to warrant inclusion with multiple thresholds for professionals at the same level. For instance, the pay

for a qualified lecturer in Wales starts at £21,719, in Northern Ireland it is £22,362 and in England it is £23,382. The 10th percentile of the ASHE distribution for this occupation is £22,800 and the 25th percentile is £27,400.

6.53 We did not receive any partner evidence in relation to this occupation. However, in the interests of consistency with our

approach to other education related occupations and simplicity, we recommend that for further education teaching professionals only the lowest pay band for each

staff group is used to set the pay thresholds. This is set out in Table 6.10 using pay agreements for 2011, which are the most recent available.

Table 6.10: Recommended thresholds for further education teaching professional

Thresholds for the following SOC code: 2312 further education teaching professional		
Job title	Threshold (£)	Source
Lecturer or equivalent (new entrant)	£21,719	Teachers' national pay scales
Senior lecturer/ advanced teacher or equivalent	£32,421	
FE management/ Principal lecturer or equivalent	£35,304	

6.54 Pay for **primary and secondary teaching professionals** in maintained schools in England and Wales is determined by the Secretary of State for Education, following recommendations from the independent School Teachers' Review Body (STRB). There are separate pay agreements for Scotland and Northern Ireland but levels of pay are similar. The current codes of practice use these national and regional pay scales.

6.55 The private sector and academies do not have to adhere to the pay scales for teachers in maintained schools. However, in their evidence to us the Department for Education stated that a survey by the Schools Network in March 2012 found that around two thirds of academies had no plans to use their flexibility around terms and conditions. We did not receive any evidence from the private sector.

6.56 The Department for Education explained that non-EEA teachers who are qualified to teach in Australia, Canada, New Zealand or the USA, gain qualified teacher status (QTS) automatically upon taking up post in the UK and are

paid according to the qualified classroom teachers' pay scale. This group represents roughly 70 per cent of all non-EEA teachers coming to the UK. Other teachers from outside the EEA are paid according to the unqualified teachers' pay scale, at a point that reflects their skills and experience. In practice, they are often paid at comparable rates to their similarly experienced peers holding QTS.

6.57 Non-EEA teachers who cannot be awarded QTS automatically upon taking up post in the UK are required to obtain it by undertaking the Overseas Trained Teacher Programme (OTTP). Those who do not obtain the award within four years are no longer permitted to teach in state maintained schools. Once QTS is obtained, the teacher moves on to the qualified teachers' pay scale at the next point above their current pay.

6.58 The Department for Education told us that the Secretary of State for Education has asked the STRB to make recommendations by the end of October 2012 on how to introduce greater flexibility to teachers' pay arrangements.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Accepted recommendations are expected to be implemented from September 2013. Therefore, the Department for Education proposed that no changes be made at this time to the pay thresholds in the current codes, which list the different national pay scales, including geographical variations.

6.59 A comparison of the different pay scales against the 10th and 25th percentiles of the ASHE distribution suggests that if the ASHE data were used it would be difficult for employers to recruit newly qualified teachers using these SOC codes as the 10th percentile is higher than the starting salary for new entrants into the profession. The 10th percentile for secondary school teachers was £24,200 and £22,400 for primary school teachers, compared to £21,438 paid to probationary teachers in Scotland and £21,600 paid to newly qualified teachers in England and Wales and Northern

Ireland. The Department for Education stated that using ASHE data could make recruitment unaffordable for some schools, potentially exacerbating existing shortages and increasing the risk that some subjects are taught by non-specialists, ultimately impacting on attainment. The Department for Education stated that they were not aware of any evidence that teachers from outside the EEA undercut UK resident teachers.

6.60 We recommend that the pay scales continue to be used to set the pay thresholds for primary, secondary and special needs teaching professionals (and updated when new arrangements come in following the report from the STRB) but in the interests of simplification we recommend that only the lowest pay band is used for each staff group as shown in Table 6.11. We have used the 2011 pay agreements which are the most recent available.

Table 6.11: Recommended thresholds for other teaching professionals

Thresholds for the following SOC codes:

2314 secondary education teaching professional,
2315 primary and nursery education teaching professional,
2316 special needs education teaching professional

Job title	Threshold (£)	Source
Unqualified teacher undertaking OTTP and equivalent	£20,000	Teachers' national pay scales (2011)
Qualified teacher and equivalent	£21,438	
Post-threshold teacher and equivalent	£34,181	
Leadership group, assistant head teacher, principal teacher and equivalent	£37,284	

Science and research professionals

6.61 Scientists and researchers are significant users of Tier 2

(General), in particular the RLMT route. Partners, including the research councils, universities and the Department for Business,

Innovation and Skills (BIS), raised concerns about the pay thresholds being set at the 10th and 25th percentile of the ASHE distribution, particularly for entry-level researchers. For SOC codes 2111 chemical scientist, 2112 biological scientist and biochemist, 2113 physical scientist, 2114 social and humanities scientist and 2119 natural and social science professional n.e.c., the 10th percentile of the ASHE distribution was between £20,500 and £24,200. The 25th percentile ranged from £26,600 to £30,700.

- 6.62 Partners told us that international mobility is crucial for the science and research sector to facilitate international collaborations and the transfer of skills and knowledge. International scientists and research staff bring additional funds and skills to the UK and collaborations often result in further investment. They felt it important therefore that the codes of practice enable suitable non-EEA scientists and researchers to come to the UK.

“The UK’s research base is fluid, dynamic and internationally collaborative. This is a key reason for its success.”

BIS response to MAC call for evidence

- 6.63 The research sector is a priority for the Government in terms of economic benefit, as reflected in the recent relaxation of the rules regarding advertising of PhD level jobs.

“Despite enormous pressure on public spending, funding for science and research programmes has been protected, demonstrating the Government’s commitment to rebalancing the economy and promoting economic growth.”

Research Councils UK response to MAC call for evidence

- 6.64 Scientists and researchers coming under the codes 2111, 2112, 2113, 2114 and 2119 may be employed and funded by a number of different types of organisations including universities, research councils, other funding bodies, private industry, health trusts or partnerships between academic and private enterprises. While groups of these organisations have their own pay scales (in particular the universities and research councils) there is no single scale that covers the whole sector. In addition there are complicating arrangements such as post-doctoral researchers who may be employed by the university but under terms and conditions determined by an external funding body.

- 6.65 Many of these organisations are inflexible in their levels of pay due to pay agreements and funding regulations and restrictions. Increasing salaries in order to meet the Tier 2 thresholds is usually not an option.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

“Academic and academic-related salaries are invariably lower than in similar occupations outside the higher education sector. Using national pay data is inappropriate as they will produce artificially high pay thresholds for HE jobs, which will inhibit recruitment to universities.”

University of Oxford response to MAC call for evidence

- 6.66 Universities and research councils were keen for a lower threshold for new entrants to the occupation as they were concerned that a threshold at the 25th percentile of the ASHE distribution would make it very difficult to recruit non-EEA scientists and researchers into entry level positions. One university raised fears that if pay thresholds for less experienced workers are set too high, early career researcher schemes will become unaffordable and sponsoring bodies will look to other countries to support their research.
- 6.67 The Research Councils UK (RCUK) reported that 77 per cent of the researchers they currently sponsor under SOC 2000 code 2321 scientific researcher would not meet the 25th percentile threshold under SOC 2010 code 2119 natural and social science professional n.e.c.. Oxford University stated that the 25th percentile of the ASHE distribution for the relevant codes would exclude 57 per cent of their Grade 6 (entry level) research staff. LSE provided analysis which showed that all of their 284 staff employed in entry-level research and teaching roles meet the 10th percentile pay threshold of SOC
- 2119, but only 51 per cent meet the 25th percentile. Others suggested that even the 10th percentile would prevent some researchers from being recruited.
- 6.68 Some partners told us that some of their early career scientists and researchers would not be paid at the 10th percentile (£21,500) and would even be paid below the Tier 2 overall minimum of £20,000 per annum. The Research Councils also provided evidence of low starting salaries in their pay bands. For example, someone awaiting the results of their PhD may be employed as a Career Development Fellow paid £21,000. Once they receive their PhD they will be paid £26,000.
- 6.69 The University of Oxford suggested that, in line with the relaxation of other regulations on PhD level jobs, there should be a Tier 2 threshold of £20,000 applied to all PhD level jobs, or at least PhD level posts in higher education institutions.
- 6.70 Universities UK, GuildHE and UCEA proposed that post-doctoral and other specific early career positions in higher education institutions with highly trusted sponsorship status be completely exempt from the £20,000 earnings threshold for a limited period of up to three years where terms and conditions are set by external funding bodies. We do not think it is appropriate for such researchers to potentially be paid under £20,000. Such individuals have invested hugely in their human capital (mainly via foregone earnings) and we are surprised that Universities UK,

GuildHE and UCEA should suggest such a course.

- 6.71 Therefore, taking the evidence from partners into account, we recommend that for SOC 2111 chemical scientist, 2112 biological scientist and biochemist, 2113 physical scientist, 2114 social and humanities scientist and 2119

natural and social science professional a threshold for new entrant scientists and researchers of £20,000 be set. We recommend a threshold for experienced workers of £26,000. Our recommendations for this occupation are summarised in Table 6.12.

Table 6.12: Recommended thresholds for science and research professionals

Thresholds for the following SOC codes:

- 2111 chemical scientist,
- 2112 biological scientist and biochemist,
- 2113 physical scientist,
- 2114 social and humanities scientist,
- 2119 natural and social science professional

Job title	Threshold (£)	Source
New entrant	£20,000	Evidence from partners
Experienced worker	£26,000	

Other issues for researchers and university academics

- 6.72 The response to the call for evidence highlighted several interrelated issues concerning researchers, scientists and university academics which suggest that some aspects of these occupations do not fit neatly within the Tier 2 framework. These are gathered together and discussed in one place here. Having considered the evidence and arguments the partners submitted, we are sympathetic to the following requests. The UK Border Agency may wish to consider these issues and discuss them with the higher education sector.

- 6.73 First, the sector raised issues about using the discipline-specific codes for researchers and scientists (SOC 2111, 2112, 2113, 2114 and 2119) rather than the general code that was previously

available under SOC 2000. Applications for extensions under Tier 2 must be made using the same SOC code as used for the initial Tier 2 application. Scientists increasingly work across disciplines and may move from one to another in the course of their research. Therefore, at the time of their extension application they may be engaged in work under a different SOC code to that used for their initial application meaning they will be unable to apply for an extension.

- 6.74 Second, senior university roles often involve both lecturing and research, and more junior staff may also do both as they explore different career paths. It can therefore be difficult for applicants to know which SOC code to use: that applying to higher education teaching professionals or one of the researcher codes. Universities UK, UCEA and GuildHE suggested that the five researcher

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

codes and SOC 2311 higher education teaching professional could be grouped within Tier 2 to enable migrants to move between them.

- 6.75 Third, the sector asked for an exemption from the RLMT for instances where, as part of the terms of a grant, an individual changes employer at a pre-designated time. For example, some grant conditions state that after working at the university for 18 months an individual will transfer to another employer. In such cases, the current need to carry out the RLMT again causes problems for the individual and the employer. Partners asked that an exemption be made for such cases.
- 6.76 Fourth, Universities UK, GuildHE and UCEA had a number of suggestions to facilitate the movement of named researchers. Currently researchers whose employment is linked to specific research grants are considered to have already passed the RLMT as they are 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. RCUK suggest that where such researchers have access to grants and funding that could lead to individuals bringing research opportunities and further collaboration funding to the UK, they should be encouraged to come to the UK in a similar manner to Tier 1 (Entrepreneur). They provided a number of suggestions on how this could be managed.

- 6.77 Given the Government's commitment to promoting science and research in the UK, these points, in combination with the issues already discussed on pay, suggest that the academic and research sector may benefit from further consideration under Tier 2.

2123 Electrical engineer

- 6.78 Engineering related occupations are very diverse and include a large number of specialist roles. We acknowledge that the thresholds calculated at occupational level will cover a variety of job-titles which may have different rates of pay. We assessed the suitability of the pay thresholds calculated from the 25th and 10th percentile of the ASHE distribution for SOC engineering related occupations using a range of partner evidence and found them to be appropriate.
- 6.79 However, we did receive evidence in relation to SOC 2123 electrical engineer which argued that the 25th percentile of the ASHE distribution (£34,000) was too high for this code. For example, the National Grid said that a number of their specialist roles under this code require at least two years of relevant experience and have a starting pay of £31,100. They stated that setting the pay threshold at the 25th percentile could have significant implications for their business.
- 6.80 The Energy and Utility Skills Council (EU Skills) also said that the 25th percentile was too high and would have a detrimental impact on an employer's ability to be competitive in the marketplace.

“SOC 2123 is used to recruit critical roles such as Power System Engineer and Protection Engineer – both of which are included on the Shortage Occupation List. The 25th percentile threshold is felt to be too high for this SOC code, being equivalent to an employee with several years’ experience.”

Energy and Utility Skills response to MAC call for evidence

- 6.81 The manufacturers’ organisation, the Engineering Employers’ Federation (EEF), told us that while the 10th percentile pay threshold for new entrants to electrical engineering was appropriate, the 25th percentile was too high as it required an electrical engineer’s salary to increase by over £10,000 over the course of only two or three years experience. They were concerned that this kind of pay increase would be unrealistic.
- 6.82 EEF highlighted that their Professionals’ Pay Benchmark Survey showed that both the 50th percentile (£32,100) and the 25th percentile (£28,400) of basic pay for electrical engineers were below the ASHE figure for the 25th percentile. These figures were calculated using a sample of 143 employees.
- 6.83 However, data on senior electrical engineers from the same survey showed that the median basic pay for this group was £39,000, while the 25th percentile was £36,800. Bringing together the more and less experienced electrical engineers we would expect the 25th percentile to fall somewhere between £28,400 and £36,800.
- This was calculated using a sample size of 108 employees.
- 6.84 The current minimum pay threshold for SOC 2123 electrical engineer in the codes of practice is £23,000 for new graduates and £16.27 per hour for other jobs. Both thresholds have been set using 2009 ASHE data. For the purposes of comparison with the new proposed pay thresholds, we converted the hourly figure to an annual equivalent. We did this by multiplying earnings by 37.5 (hours) multiplied by 52 (weeks), in line with the method used by the UK Border Agency to convert hourly to annual pay rates. This calculation yields an annual salary of £31,727. This is lower than the proposed threshold at the 25th percentile. However, this figure has not increased in line with wage inflation in the occupation since 2009.
- 6.85 While there is some evidence to suggest that for certain very specific roles within this occupation setting the pay threshold at the 25th percentile of the ASHE distribution may be too high, evidence that this applies to the whole occupation is less strong. We are mindful of the need to balance the requirements of very specific roles against the prevention of undercutting across the occupation as a whole but we see no need to lower the salary threshold significantly or adopt a data source other than the ASHE. We therefore recommend that the ASHE threshold of £23,600 for new entrants and £34,000 for experienced workers be used across this occupation.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

2412 Barrister

6.86 Our consideration of the evidence in relation to setting the pay thresholds for occupations within the finance and legal sector identified that the 10th and 25th percentiles from the ASHE distribution may not be appropriate for barristers under SOC 2412 barrister and judge.

6.87 The Bar Council told us that on qualification (following a period described as pupillage - a compulsory year of training in a set of chambers) a barrister joins a set of chambers but is self-employed. A qualified barrister is not paid a salary but earns fees for the work they are instructed to

do by clients. Qualified barristers under these circumstances will not be able to come to the UK using Tier 2 of the PBS as there is no sponsoring employer. However, the Bar Council told us that this self-employment model is not universally applied to barristers and there is still a need for a minimum pay threshold to be established.

6.88 In conjunction with the Institute of Barristers Clerks, the Bar Council provided us with earnings estimate for barristers (see Table 6.13). The Bar Council reported that the estimates are based on clerks' current experience in chambers.

Table 6.13: Barristers' earnings ranges

Position	Salary range
Pupils inside London	£12,000 - £60,000
Pupils rest of UK	£12,000 - £30,000
Newly qualified barristers (i.e. post pupillage) inside London	£30,000 - £85,000
Newly qualified barristers (i.e. post pupillage) rest of UK	£25,000 - £65,000
Qualified barrister with 3 years experience obtained post-pupillage, inside London	£35,000 - £100,000
Qualified barrister with 3 years experience obtained post-pupillage, rest of UK	£30,500 - £75,000

Source: The Bar Council and the Institute of Barristers Clerks

6.89 Table 6.13 shows the wide variance in potential earnings for barristers on account of different remuneration depending on the area of practice, the barrister's seniority, geographical location and how frequently the barrister is instructed. The difference between these figures and 25th percentile of the ASHE distribution for this occupation (£23,200) is partly explained by the fact that ASHE does not include the self-employed.

6.90 We consider it reasonable to expect that pay which is not

contingent on client fees or frequency of instruction will fall towards the lower end of the salary distribution presented in Table 6.13. Therefore, in the case of experienced employees, we recommend that the minimum salary threshold is set at £30,500, which mirrors the suggestion from the Bar Council.

6.91 With regard to new entrants, the Bar Council told us that pay for pupils takes account of the benefits acquired by the pupil through their training and also take account of the very high

demand for pupillages. The minimum salary recommended by the Bar Council in their evidence to us (£12,000) falls significantly below the minimum Tier 2 pay threshold of £20,000 while the 10th percentile of ASHE for the occupation is £22,300. We have taken into account the very high

demand for pupillages and see no reason to provide for an exception to the minimum Tier 2 pay threshold. We therefore recommend that the minimum pay threshold for new entrant barristers be set at £20,000. Table 6.14 summarises our recommendations.

Table 6.14: Recommended thresholds for barristers

Thresholds for the following SOC code:
2412 barrister and judge

Job title/ threshold	Threshold (£)	Source
New entrant	£20,000	
Experienced worker	£30,500	Bar Council

2431 Architect

6.92 In their evidence to us the Royal Institute of British Architecture (RIBA) outlined the professional training route required to practice as an architect and to join the UK Register of Architects. It takes a minimum of seven years to become a registered architect consisting of five years academic study at university and two years practical experience. The first 12-month period of practical work experience (stage one) takes place after a three year period studying for a Bachelor’s degree. The second period of work experience (stage two) takes place after a two year Postgraduate Diploma/master’s degree.

6.93 When we met with them RIBA told us that setting a minimum pay threshold at the 10th percentile of the ASHE distribution (£21,400) would be too high for architects undertaking stage one of their practical work-based training. This issue was also raised in the combined submission received

from Universities UK, Universities and Colleges Employers Association and GuildHE and in the submission from Association of Graduate Careers Advisory Services (AGCAS).

“International architecture students used to be able to use the PSW [Post Study Work Route] to complete the next stage of work experience they required. This is now gone and salary requirements [for] those pre-registration years do not usually fit with the opportunity that Tier 2 affords.”

AGCAS response to the MAC call for evidence

6.94 RIBA proposed the following five pay thresholds for the occupation of architect to reflect the distinct levels of qualification and experience required. These are based on RIBA’s analysis of data from ASHE 2011, the Fees Bureau Architects Earnings Survey 2012, HESA, information from the RIBA Appointments

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Recruitment Agency, and their own Destinations Survey 2011 (Part 1 graduates) and RIBA Student Earnings Survey 2011:

- Part 1 graduate: £20,000.
- Part 2 graduate: £22,000.
- Part 3 graduate/ newly registered architect: £26,000.
- Architect 3-5 years experience: £28,000.
- Architect 6 or more years experience: £35,000.

6.95 We accept that the different levels of qualification and experience for this occupation as outlined by RIBA are widely recognised in the UK and should be reflected in the

codes of practice. We are also mindful of the need to update the codes on a regular basis. For this reason, we recommend that the pay thresholds for parts 1 and 2 identified above be regarded as commensurate with the stage one and stage two periods for a qualifying architect and that part 3 be regarded as commensurate with a newly-registered architect and that the pay thresholds for these should be set using data provided by RIBA. We do not see sufficient reason to divert from our preferred deployment of the 25th percentile for experienced members of this occupation and recommend that the 25th percentile taken from the ASHE distribution (£30,000) should apply. Table 6.15 summarises our recommendation.

Table 6.15: Recommended thresholds for architects

Thresholds for the following SOC code:
2431 Architect

Job title/ threshold	Threshold (£)	Source
Part 1 graduate	20,000	RIBA
Part 2 graduate	22,000	
Part 3 graduate/ newly registered architect	26,000	
Experienced worker	30,000	ASHE 25 th percentile

3416 Arts officer, producer and director

6.96 The current minimum pay threshold in the Tier 2 code of practice for SOC 3416 arts officer, producer and director states that *“payment should be commensurate with the relevant industry standards in the UK and of at least the minimum salary for Tier 2 of £20,000”*. The ASHE thresholds calculated at the 10th and 25th percentile of the pay distribution are £20,800 and £27,000 respectively.

6.97 We received evidence from partners in relation to the pay thresholds for from the UK Screen Association recommending that the minimum salary threshold for SOC 3416 be set at the 25th percentile of the ASHE distribution (£27,000). However, their evidence was specifically in relation to workers in visual effects roles.

6.98 The Producers Alliance for Cinema and Television (PACT) argued that the structure of payments in the film and television

industry were too complex to determine whether an annualised salary at a fixed point in the pay distribution would be appropriate or not. PACT said that employees in this occupation often received some basic pay but that the final remuneration is dependent on the contribution made by the individual to the production, and on the success of the production as determined by the royalties it generates.

- 6.99 The issue created by a royalty-based pay structure is that the actual pay received by the worker is dependent on the success or otherwise of the production. It is difficult therefore to determine whether, at the point of application, the pay would exceed the required minimum pay threshold.
- 6.100 While PACT told us that the use of royalty payments makes it difficult to confirm the appropriateness of the 10th and 25th percentile for salary thresholds, they did suggest that a royalty agreement of less than 1 per cent of net profit would appear low and that caseworkers should urge employers to justify why this is the case.
- 6.101 PACT also told us that UK production in film and television is often dependent on securing a relatively small number of workers from overseas who are recognised for their experience, track record and/or high profile in the creative arts industry. PACT told us that these are the qualities which investors may determine as conditional to their decision to invest in a production. In some cases, if specific non-EEA workers

cannot be recruited, this may prevent the production taking place as funding may not be secured.

- 6.102 The current codes of practice refer employers to the BECTU (independent trade union for those working in broadcasting, film, theatre, entertainment, leisure and interactive media) and PACT websites for roles within SOC 3416. However, neither PACT nor BECTU publish minimum salary information. PACT told us that they simply refer the employer to various sources of salary information.

“It is important to note that minimum rates are not usually relevant in the creative industries when seeking to engage foreign nationals who are more likely to be engaged as part of the requirements of the financing package or are providing special skills which the local labour force cannot provide.”

Producers Alliance for Cinema and Television response to MAC call for evidence

- 6.103 At present, when applying for a certificate of sponsorship, the employer is required to state the salary including any guaranteed bonuses that the prospective employee would earn. Royalty payments, however, are not guaranteed as the production may not be successful and are therefore unlikely to be considered as a means of satisfying the pay threshold. However, we understand that royalty-based pay is a significant feature of the pay structure in this industry and we suggest that the Government

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

engage with the industry to determine more robust methods of preventing undercutting in this context.

- 6.104 We expect that the ASHE will to an extent capture that the pay of workers in this occupation who are receiving royalty payments and that the resulting pay distribution is likely to reflect this. In light of the evidence and the absence of an alternative source of pay data, **we recommend that for SOC 3416, the default thresholds are set at the 10th and 25th percentiles of the ASHE distribution for new entrants and experienced workers (£20,800 and £27,000 respectively).**

6.4 Conclusions

- 6.105 As described in this chapter, we recommend that the 10th and 25th percentiles of the ASHE distribution are used to set the new entrant and experienced worker pay thresholds for 67 of the 97 occupations skilled to NQF6+. We recommend the pay thresholds for occupations that are dominated by the public sector employers, namely education and healthcare, be set using the nationally recognised pay scales. This approach covers a further 20 occupations. We recommend the pay thresholds for the remaining occupations be set using evidence from partners. A full list of the pay thresholds for all occupations on the NQF6+ list is provided in Chapter 8.

Chapter 7 Advertising criteria

7.1 Introduction

7.1 This chapter considers the following section in our commission from the Government:

“To advise on what the appropriate advertising medium (in addition to Jobcentre Plus) should be for occupations and job titles to satisfy the Resident Labour Market Test.”

7.2 The chapter is divided into five sections. In Section 7.2 we discuss the current advertising requirements necessary to satisfy the Resident Labour Market Test (RLMT). Section 7.3 sets out our approach for reviewing and setting new requirements. In Section 7.4 we propose new advertising requirements for the RLMT. Our conclusions for this chapter are presented in Section 7.5.

7.2 A review of the current policy arrangements

7.3 This section sets out the advertising requirements to satisfy the RLMT in the current codes of practice. The advertising requirements have the purpose of ensuring that resident jobseekers can access adverts for vacancies for a minimum time period and may apply before they are offered to non-resident workers.

7.4 For the purposes of the RLMT, a “resident” worker is defined as any person who is a national of the European Economic Area (EEA) or is legally residing in the UK and has permission to work in the country. We adopt this definition throughout this report.

7.5 As described in Chapter 1, this commission was considered a matter of good housekeeping rather than a strategic review. As such we are only looking at the advertising requirements for satisfying the RLMT. We have not conducted a full review of the occupations which are currently required to complete the RLMT. We have assumed that where an occupation is currently required to use the RLMT in order to recruit a foreign worker, it will continue to be required do so, and where exemptions to the RLMT exist, these are assumed to remain in place.

7.6 The current codes of practice specify which advertising locations are accepted as a minimum test of the resident labour market. The employer is free to advertise further and recruit in other ways, but the codes specify the minimum advertising requirements that must be satisfied in order to recruit a non-resident worker. A number of different types of media

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

are listed, and can generally be classified into: Jobcentre Plus (JCP) and the other permissible non-Jobcentre Plus locations.

Jobcentre Plus

7.7 JCP is a government-run, free advertising service for employers with the potential to expose millions of jobseekers across the UK to vacancy information. In addition to providing an advertising service, JCP provides a free recruitment advisory service to assist employers in identifying a worker with the right skills set to fill the vacancy. Furthermore, JCP provides an application sifting service to attempt to match jobseekers with employers' needs.

7.8 In addition to advertising the vacancy to UK residents, placement of an advert in JCP provides employers with access to the European Employment Service (EURES), a web service for providing information to employers and jobseekers. All vacancies on the JCP system are shared automatically with the EURES website. As a result, any vacancy advertised in JCP has the potential to be accessed by any resident jobseeker across the EEA. Employers may also register free of charge and advertise through EURES directly if they wish.

7.9 In order to satisfy the RLMT, current policy requires that any vacancy offering a salary below £70,000 and vacancies for non-PhD level occupations⁵ must be

advertised in JCP and at least one other recruitment medium before a non-resident jobseeker can be selected to fill the role.

7.10 The current list of PhD-level occupations is defined under the Standard Occupational Classification (SOC) 2000 coding and has not been updated to SOC 2010 as part of this review. **We recommend that the Government, in consultation with the Office for National Statistics (ONS), release an updated list of SOC 2010 PhD-level occupations** as part of any announced changes to the advertising requirements resulting from our recommendations in this chapter.

7.11 For occupations which are required to complete the RLMT to hire non-resident workers, exemptions from the requirement to advertise in JCP currently exist for:

- selected jobs within the creative arts;
- jobs with a stock exchange disclosure requirement;
- certain milkround graduate recruitment schemes; and
- named researchers⁶.

Chemists; (2112) Biological Scientists and Research Chemists; (2113) Physicists, Geologists and Meteorologists; (2311) Higher Education teaching Professionals; (2321) Scientific Researchers; (2322) Social Science Researchers; (2329) Researchers not elsewhere classified.

⁶ 'Named researchers' are defined as those whose employment is linked to specific research

⁵ The PhD level SOC 2000 codes are: (1137) Research and Development Managers; (2111)

7.12 The Government did not commission us to review the requirement to advertise in JCP and as such we have not done so. We did, nonetheless, receive evidence in relation to this requirement as part of our call for evidence, which we discuss later in this chapter.

Non-Jobcentre Plus advertising media

7.13 As well as advertising in JCP, the RLMT requires that the vacancy be advertised using the employment section, appropriate for the job, of

- a national newspaper;
- a professional journal;
- a milkround graduate recruitment scheme; or
- selected internet recruitment websites.

7.14 The codes of practice do not prescribe which newspapers are acceptable (except certain instances for Northern Ireland, Scotland and Wales). Newspapers are, however, required to be national and available throughout the UK from the majority of newsagents.

7.15 In contrast to the conditions for newspapers, the current codes of practice specify 177 professional journals which satisfy the RLMT. Different journals from within this

list are valid for different occupations. A professional journal is described as one that is published for a particular professional or academic field and is available nationally, either at a majority of newsagents or through subscription.

7.16 There is currently no requirement for newspapers or journals to be available in countries across the EEA.

7.17 The codes of practice also specify a list of internet sites which could be used to satisfy the RLMT. The 306 specialist websites currently listed in the codes of practice include those carried over from existing Work Permit occupational guidance. New websites were included because they were recommended to the UK Border Agency by employers and other partners in the sector and it was agreed (by the UK Border Agency) that they were appropriate. This assessment was based on the following criteria:

- the number of vacancies carried;
- whether they were widely known;
- ranking on internet search engines; and
- consultation with key partners such as regulatory bodies, Sector Skills Councils, and Government departments.

7.18 In addition to those sites specified, firms are also permitted to use their own websites if the organisation is a multinational or global company, or a large

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.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

organisation with more than 250 permanent employees in the UK.

7.19 Certain sections of the codes of practice permit employers to recruit new graduates and interns using an annual graduate recruitment scheme, known as a milkround. If the employer recruits through a milkround and has visited at least three UK universities as part of the milkround, they are not required to advertise the job in JCP. The employer does, however, need to have advertised the vacancy through two external advertising locations permitted by the relevant code of practice (one of which must be a recruitment website from those specified in the codes of practice) in addition to the milkround.

7.20 Some codes of practice also specify occupations for which an agency or headhunter can be used to complement the JCP as a means of advertising. The agency or headhunter may carry out the RLMT on behalf of the employer, as specified in the code of practice and the guidance for Tier 2 sponsors.

7.21 It is not the case that all sections of the current Tier 2 codes of practice describe advertising requirements in the same way. The code of practice for workers in film and television, for example, simply requires that *“the sponsor must advertise the role to suitably qualified resident workers in an appropriate journal, newspaper, website or online directory. The choice of advertising medium should be appropriate for the role.”* It then provides a number of

examples of media which may be appropriate.

7.22 Similarly, where advertising locations are no longer seen as relevant by industry partners, there are no stated processes in place to remove them. As a result RLMT requirements in the codes of practice contain advertising locations which are not likely to be used by employers.

7.23 As well as setting conditions on the use of certain media, the current codes of practice also require that the vacancy advert include specific contents. These include the:

- job title;
- duties and responsibilities;
- skills and qualifications required;
- an indication of the salary on offer;
- location; and
- closing date.

7.24 According to the current codes of practice, if a resident jobseeker applies for the job but does not have the necessary qualifications, experience or skills, the employer cannot refuse to employ them unless they specifically requested those qualifications, experience or skills in the job advert.

7.25 To ensure that the resident labour market is not undercut, all migrant workers recruited through the Tier 2 routes covered by the codes of practice must be paid above the minimum pay threshold for the occupation or job title specified in

the relevant code. To ensure that employers have genuinely tried to fill the vacancy with a resident jobseeker, all vacancies must therefore be advertised at the appropriate rate of pay for that job in the UK. Chapter 5 and Chapter 6 include further discussion on the setting of the minimum pay thresholds across occupations.

7.26 Discussions with UK Border Agency caseworkers suggest that, where it is not industry practice to quote pay figures in adverts, the words “*competitive salary*” would be accepted instead of a quoted figure or range. Importantly, however, alternative wording such as “*negotiable salary*” would not satisfy the RLMT requirements.

7.27 In order to employ a worker through Tier 2, the employer must either advertise the vacancy with a closing date at least 28 continuous days from the date the advert was placed, or advertise in two stages which together total at least 28 calendar days. This duration was based on our recommendations in Migration Advisory Committee (2009) and Migration Advisory Committee (2012b).

7.28 There is currently no RLMT requirement on the language in which the advert has to be written.

7.3 Approach to setting the advertising requirement

7.29 This section discusses a number of possible approaches to set the advertising required to satisfy the RLMT. We believe that the optimal approach would balance improvements in the employment of residents, through increased ability to compete for jobs, against the potential cost to employers.

7.30 Given our commission, it is assumed throughout this chapter that, where there is a requirement to advertise in JCP, this requirement will remain in place. Therefore the following discussion will relate to the advertising media which should be used in addition to JCP when testing the resident labour market. We do, however, consider evidence from partners in relation to the requirement to advertise in JCP later in this chapter.

Determining the level of prescription

7.31 It is our intention that the advertising requirement for the RLMT be simple and consistent across occupations. As part of the review of the advertising requirements it was important to consider whether we should recommend a specific list of advertising media that satisfy the RLMT or whether we should recommend a set of criteria that advertising media would need to satisfy. Our considerations included: the rapidly changing nature of advertising; and the need for clear, simple and enforceable rules.

“There must be clear guidance on the workings of any new approach, providing examples of how employers might satisfy the requirements. What ‘reasonable’ means must be clear to both employers and enforcement staff.”

Confederation of British Industry
Employment and Skills Directorate
response to MAC call for evidence

7.32 The options that we considered for the degree of prescription in the

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

advertising media (excluding JCP) are listed below.

- A **prescriptive** list would attempt to capture all the possible advertising media for each eligible occupation.
- A set of **criteria** that the media must meet would leave the employer free to choose the most appropriate media conditional on the requirement that they can provide proof that the criteria are satisfied.
- A **JCP-plus-one** approach would require only that at least one other advertising medium were used, in addition to JCP.
- An opt-out **fee-paying approach** would allow employers to pay a fee instead of undertaking the required advertising.

7.33 The prescriptive approach would involve a high level of detail, the lowest degree of flexibility for employers and require the list of acceptable advertising media to be updated regularly. It would however provide a relatively high level of certainty for the employer if they knew exactly which advertising media would satisfy the RLMT. We received varying views on the possible options from partners. Some partners expressed a preference for the certainty provided by this approach.

“... having a minimum level for advertising is helpful for us to work with because we are clear and confident when an advertising campaign will or will not meet the Resident Labour Market Test.”

London School of Economics and Political Science response to MAC call for evidence.

7.34 It was pointed out to us that organisations which are named on the list may, by virtue of being on the list, charge clients more to advertise a role as they are the only means through which to employ migrant workers. A prescriptive list which restricts employers to a handful of pre-defined advertising media may therefore distort prices in certain parts of the recruitment industry.

7.35 It was emphasised to us during discussions with UK Border Agency enforcement officers that if the criteria-based approach were adopted, any criteria would need to be clearly defined in order to avoid ambiguity for sponsors and caseworkers. Nevertheless, the majority of partners who commented on this aspect of the review advocated the use of a criteria-based approach, citing flexibility, reduced need for continual revision, stability and cost effectiveness as potential benefits.

“A greater flexibility in the media locations advertised would be greatly appreciated by employers.”

Department of Health response to MAC call for evidence

“At present, we are restricted to using certain advertising locations as set out in the current codes of practice. Although this hasn’t posed any particular issues as these websites are popular sites for the roles that we recruit, it does restrict our choice somewhat and gives those organisations something of a monopoly or guaranteed business.”

Research Councils UK response to MAC call for evidence

“The criteria could be set so that reference could be made to “a nationally recognised...vacancy website” so that if jobs.ac.uk went out of business, or monster.co.uk changed its name, it would not automatically render invalid placing the advert on a different forum with the same reach.”

Heriot-Watt University response to MAC call for evidence

7.36 It was suggested to us that, in addition to clearly defined criteria, the codes of practice provide examples of advertising media which could satisfy the requirements. Where mainstream advertising media can be identified for an occupation (or job title), these could be specified as examples of acceptable advertising locations. This would closely resemble the requirements currently in place for the code of practice for workers in film and television, except examples would be provided to give firms at least an element of certainty as to which media would satisfy the criteria. This list would not be exhaustive, nor would employers be restricted to using only those media named on the list of examples.

7.37 The JCP-plus-one approach would be the lowest level of prescription. Under this approach the employers who are subject to the RLMT would simply be required to demonstrate that the vacancy had been advertised in one location in addition to JCP to satisfy the RLMT. Such an approach, however, may be open to abuse by employers who wish to place an advert where a UK or EEA national jobseeker is unlikely to find it.

7.38 Alternatively, if the advertising requirements are intended to overcome the concern that employers do not advertise widely enough to provide resident jobseekers sufficient opportunity to compete, then a fee-paying approach could encourage employers to reconsider resident jobseekers before hiring non-resident jobseekers. Such an approach could be compared to that used in Australia, whereby firms pay a contribution towards training and development of resident workers. This is discussed further in Chapter 2. Under this approach, firms could pay a fee to the Government in order to recruit a migrant without the need to advertise more extensively. The funds raised

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

might then be directed into training and up-skilling of the resident workforce. Such an approach, however, is likely to disadvantage smaller employers who will find it harder to absorb the cost of an inflexible fee, which may not reflect the nature of the vacancy.

7.39 We considered the criteria-based approach to provide the best opportunity to achieve the balance between a flexible, future-proof, relevant and appropriate system, whilst acknowledging significant media in given occupations. The rest of this chapter therefore proceeds on the basis that future advertising requirements will be criteria-based, with mainstream media for occupations being highlighted as examples where they can be identified.

7.4 Advertising criteria

7.40 When setting the required criteria, there are two important factors to consider:

- The first is the degree of exposure a UK or EEA jobseeker would be likely to have to the advertising media. There are a number of metrics which might be used to measure this, such as the volume of circulation for newspapers and journals, and the number of visitors to a website. The criteria regarding the placement of the advert would therefore ensure that there is a high chance of appropriate applicants finding the job advertisements, taking into account the additional burden these criteria place on the employers and the enforcers of the policy. We

refer to these as the **location criteria**.

- The second factor is the degree to which the advert, once seen, increases UK and EEA jobseekers' likelihood of competing for the vacancy. We refer to criteria which address this second factor as **content criteria**.

7.41 The following criteria have been developed, taking into consideration the evidence provided by partners.

Location criteria

7.42 Whereas the current codes of practice have different requirements for each occupation, we have assumed as part of the overall simplification of the codes, a single set of criteria across occupations. If an employer is required to complete a resident labour market test to fill a vacancy then we assume that the same criteria are faced by all occupations. It is expected, however, that there will be different media that would satisfy the criteria in different occupations.

7.43 It is normal practice for firms to use a variety of different methods to advertise vacancies. In order to specify criteria for the advertising requirements, it was necessary to identify the potential media available for recruitment, and then determine which media would be acceptable to satisfy the RLMT.

7.44 We have assumed that, where the JCP requirement currently exists, this will continue as the primary advertising location and the firm will advertise in at least one other

advertising media to satisfy the RLMT. Exemptions for certain jobs within creative arts, stock exchange, specified PhD-level occupations and vacancies for jobs offering over £70,000 should remain in place.

- 7.45 We were not asked and have not sought to undertake a review of the appropriateness or otherwise of the requirement to advertise in JCP. However, we do draw the Government's attention to the concerns raised by a number of employers in several sectors regarding the appropriateness of the JCP requirement.
- 7.46 When we reviewed the requirement to advertise vacancies in JCP in Migration Advisory Committee (2009), we considered JCP a logical body to administer a certification process to verify that the resident labour market had been tested. There were various options for how the certification process might work: JCP could confirm that the vacancy had been advertised for the required length of time; it could certify that the vacancy was advertised in a fair and reasonable way; and it might also provide labour market intelligence to certify whether or not there was a pool of labour available to do the job. However, the reality is that JCP is neither set up to fulfil this function, nor does it have the resources to do so in the future.

“Members recognise the important role of JobCentre Plus in addressing the levels of unemployment in the UK labour market, however some members find challenges in the requirement to use JobCentre Plus for advertising vacancies”.

Scottish Council for Development and Industry (SCDI) response to MAC call for evidence.

- 7.47 The evidence from partners, indicates that JCP has not evolved into the central database of vacancies we initially envisaged.
- Highly skilled jobseekers do not search for jobs via JCP so employers do not receive applications from suitable qualified applicants via JCP.
 - Employment law requires employers to consider all applications for a vacancy, which imposes costs to employers and slows the hiring process.
- 7.48 The recent increase in skill level for Tier 2 from National Qualifications Framework level 4 to level 6 has exacerbated these challenges as, partners argued, jobseekers in highly skilled occupations were unlikely to seek employment through JCP.
- 7.49 As discussed in Chapter 2, however, the UK is not the only country to require advertisement in a state employment agency. For example, the US requires that an employer wishing to recruit into a professional occupation place an advert in the local State Workforce Agency before a non-resident can be used to fill the vacancy.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

- 7.50 We therefore suggest that the Government keep the requirement to advertise in JCP under review.

“We have never recruited a settled worker from Job Centre Plus (for RLMT purposes where we are recruiting for highly skilled roles) largely due to the skill level of the applicants applying via this route.”

BP response to MAC call for evidence.

“Due to the economic uncertainty, we are observing that parts of the candidate market are “inactive” (i.e. individuals are not actively seeking to change jobs), so we are increasingly recruiting these “passive” candidates via headhunting and networking (including our “refer a friend” scheme)”.

Accenture response to MAC call for evidence

- 7.51 As discussed in Chapter 4, there are some occupations and job titles under the SOC 2010 classification which did not exist in the SOC 2000 classification and would therefore not have any pre-existing advertising requirements. Where such new occupations have been created as a result of the reclassification of occupations, the requirement to advertise in JCP is assumed to apply.

- 7.52 It is common for sponsors to outsource the recruitment of new staff to an agency (particularly small employers with no in-house human resourcing department) or to make use of referral schemes and to recruit directly from their competitors.

- 7.53 However, employment of representative recruiters such as headhunters or agencies may not in themselves lead to greater access for jobseekers to information on vacancy availability. If, for example, a headhunter only approached one resident jobseeker, this could not be considered an appropriate test of the resident labour market. **We recommend that employing headhunters and agencies to advertise a vacancy should not be sufficient to satisfy the objectives of the advertising requirement for the RLMT.** Similarly, referrals from existing employees are not considered sufficient to satisfy the advertising requirement for the RLMT.

- 7.54 The current codes of practice also refer to the possibility of recruiting through the milkround graduate recruitment schemes. **We recommend that milkround recruitment should continue to constitute an acceptable additional advertising media to JCP for the purposes of satisfying the RLMT (including the exemptions described in Section 7.2 above).**

“In general, the milkround advertising requirements set out in the Tier 2 guidance do reflect the actual advertising that companies undertake for their graduate programmes.”

Response from a global consultancy company to MAC call for evidence.

- 7.55 In Canada, among the list of advertising media accepted as proof of appropriate recruitment activities for a “positive” Labour Market Opinion (discussed in Chapter 2), are journals and newspapers.
- 7.56 The criteria which could apply to newspaper, journals and electronic media in the codes of practice were considered as follows:
- **Who** is exposed to the medium in question? This relates to the ‘reach’ of the media.
 - **When** can the information be accessed by potential applicants? This relates to the frequency of publication.
 - **What** is the normal subject matter in the medium? Would applicants expect to find a vacancy advert there?
- 7.57 The “reach” of a vacancy advert is a measure of the number of people who are exposed to the advert. One measurement of reach for newspapers and journals is the readership of a publication. The average issue readership is the number of people who have read or looked at an average issue of a publication, and is based on those who say they have read a publication within the

period since the last issue was published.

- 7.58 Some evidence reported a decline in effectiveness of advertising campaigns using traditional print media. In the year to Q1 2011, the National Readership Survey recorded net average issue readership of national daily newspapers was approximately 19.8 million per issue. This survey showed a continual decline in readership of national daily newspapers to a level of 18.5 million per issue in the year to Q2 2012.

“Research into job hunting behaviour suggests that early career staff do not normally carry out job searches using traditional print media.”

Universities UK response to MAC call for evidence.

- 7.59 That said, traditional print media continues to provide significant, albeit declining, reach at a national level. As such, **we recommend that a newspaper may be considered as having a sufficient reach to have tested the resident labour market if it is marketed throughout:**
- **the UK; or**
 - **one of the devolved nations.**
- 7.60 Where an advertisement is run in a publication marketed in one of the devolved nations, the vacancy must be in the relevant nation.
- 7.61 In addition to the reach of the newspaper, we are interested in defining an acceptable frequency of publication. The daily national

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

newspapers are published every weekday and several have a Sunday edition. Some national and regional papers, however, are only published on a weekly basis or only run a dedicated employment section once a week. **We believe that an acceptable publication frequency is at least once per week.**

7.62 We did not feel that it is necessary to place a criterion on the content or subject matter of the newspaper as it was assumed that newspapers will cover broad topical areas.

7.63 Unlike newspapers, professional journals were expected to have a much more focussed and specific subject matter. We therefore expect that, in order to achieve a comparable reach, the minimum acceptable availability would need to be at the national level or through subscription.

7.64 Furthermore, given that the subject matter of professional journals are likely to be more relevant to the occupation or profession of the vacancy, **we recommend that a minimum publication frequency of monthly would be appropriate.**

7.65 The minimum publication frequency of professional journals would, however, need to be accompanied by a requirement that the content of the professional journal be related to the nature of the vacancy to be advertised. This may be indicated either by:

- journals recognised as official journals for professional bodies representing certain occupations, for example 'Accountancy and Finance' is

the official journal for the Association of Chartered Certified Accountants, a global body for accountants;

- trade journals, for example 'Computer Weekly', the 'Times Higher Education Supplement', 'The Banker', etc; or
- journals which are specialist subject publications, such as "The Economist", the "New Scientist" or "Physics World".

7.66 Other publications such as business and consumer magazines, for example "The Stage", may be assessed as professional journals if they contain a dedicated employment section, and the subject matter is sufficiently focussed that a jobseeker could reasonably be expected to search for a job in the publication.

7.67 The use of online recruitment has grown in recent years. The Monster Employment Index (2012), a monthly gauge of online job posting activity based on a real-time review of millions of employer job opportunities in the UK, reported an estimated 3 per cent year-on-year growth in the use of online recruitment in May 2012, and 20 per cent growth in the engineering sector.

7.68 The criteria in the codes of practice relating to online media need to allow enough flexibility to accommodate for rapid change in online advertising locations, whilst remaining clearly structured to prevent abuse of the RLMT.

7.69 In 2012, the UK Border Agency initiated a consultation on the codes of practice. This revealed

that some of the websites listed in the codes are no longer available or have changed their site maps rendering the provided links obsolete. The UK Border Agency considered that any stated web links need to be checked and updated regularly and that this would be a time consuming exercise.

7.70 Additionally, there was a risk that the UK Border Agency be seen as endorsing particular websites and excluding others to the latter's detriment. Partners commented that by only accepting specific websites it can become confusing and on occasion cause delay and extra expense in their recruitment process where they did not originally use an approved website to advertise.

7.71 The UK Border Agency considered whether to specify clearly in the codes of practice the type of website acceptable for inclusion along the lines of the criteria for newspapers and journals cited above or other agreed objective criteria but that the codes would not limit sponsors to specific sites. This alternative approach would remove the need for occupation-specific guidance, meaning named websites could be removed from the codes of practice. This would negate the need for time consuming updates and dealing with requests for website inclusion from interested parties. The UK Border Agency consultation and any prospective proposals it might have made have been considered and superseded by our commission from the Government.

7.72 The current codes of practice restrict the possibility of advertising on the employers' own website to those firms with more than 250 permanent UK employees. The Department for Business, Innovation and Skills (BIS) argued that the criteria relating to the organisation's own website be extended to Small and Medium sized Enterprises (SMEs).

"... for SMEs, there does appear to be an anomaly that they are required to advertise in two different places in addition to Job Centre Plus if one of the two is the company's own website. This should be brought in line with the requirements for large organisations."

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

7.73 We acknowledge the point made by BIS that this requirement may disadvantage small and medium sized firms who would need to incur the additional cost of advertising externally, although no other partners commented on this point. In the absence of further evidence in support of the BIS view, we recommend that the minimum firm size for using the employers' own website to recruit continue to be one which employs a minimum of 250 permanent UK employees. However, we are open-minded concerning the minimum size of the organisation and we recommend that the Government keep this requirement under review.

7.74 Our engagement with partners made us aware of the increasing use of social media for recruitment

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

purposes. Where a social media website may satisfy the aforementioned criteria for online media it may be considered an appropriate advertising location.

“One of the fastest growing forms of candidate sourcing has been through social networking. Businesses are realising the potential that new forms of communication, such as Blogs, Facebook, Online Videos, Twitter, Social Bookmarking, LinkedIn, etc.”

Balfour Beatty Utility Solutions response to MAC call for evidence.

they are a multinational or global organisation, or a large organisation employing more than 250 permanent UK employees; or

- **the website may be an online version of a newspaper or professional journal which would satisfy the criteria discussed above; or**
- **the website may be the online version for a prominent professional or recruitment organisation, for example ‘Hays Recruitment’ or ‘TotalJobs.com’.**

7.75 However, while we recognise the rapid increase in popularity of social media, we did not feel that these media are sufficiently tested in terms of longevity and that their usages are sufficiently well established to warrant a separate consideration as a minimum test of the resident labour market. We do however recommend that the Government keeps the use of advertising through social media under review.

7.76 Rather than specify each website for each occupation and job title in the codes of practice, **the following criteria are recommended for online locations:**

- **the adverts on the website must be accessible to non-members. i.e. not restricted to members of the site, or selected groups. Adverts must be freely accessibly to any internet user; and**
- **the website may be the recruitment section of the organisation’s own website if**

Content criteria

7.77 The requirements on the content of the advert serve to ensure that potential applicants are adequately informed of the details of the vacancy. The purpose of this is to increase the likelihood that appropriate UK or EEA national jobseekers view and apply for the vacancy. The following section takes the existing requirements in the codes of practice relating to advertisement content (listed in Section 7.2 above) and considers whether additional criteria are necessary.

7.78 Together, the job title and the duties and responsibilities should clarify the employer’s expectations for the role. This should include the main purpose, tasks and the scope of the job. Details on the skills and experience required should be sufficiently clear to allow applicants to self-assess whether they will be able to complete the duties expected of them.

- 7.79 The expected level of pay, or the pay range, should be consistent with the pay thresholds as specified elsewhere in the codes of practice, and should clearly show what additional benefits are available and included in the figure.
- 7.80 As the purpose of the salary requirement in the codes of practice is to ensure that the resident labour market is not undercut, it would be sensible that the advertisement is made in a manner consistent with industry norms. Therefore, if the standard industry practice is to advertise the salary as a “*competitive salary*” rather than quoting a specific value or range, **we recommend this should continue to be accepted** in adverts submitted for the purposes of the RLMT. To require otherwise is likely to distort the manner in which effective, legitimate recruitment occurs in some occupations. If, however, there are no clear justifications for the use of the wording “*competitive salary*” then we recommend that it should be the case that the advert clearly indicates the pay or pay range on offer.
- 7.81 The advert should be clear regarding the primary location where the work is to be carried out, including if relevant, the degree of geographic mobility required of the applicant.
- 7.82 A number of partners commented that the requirement to include closing dates in advertisements and to have a minimum period of 28 days between the date the advert first appears and the time

when the employer can hire a non-EEA applicant, is onerous, can be counter-productive and has not had any positive effect on the recruitment from the resident labour market.

“Within the NHS, the majority of jobs are advertised for a period of 2 weeks. The requirement to advertise for a 4 week period was introduced in 2009 to ensure that the resident workforce had ample time to apply for vacancies – however, we have not seen any evidence that this ruling has had an impact on reducing the need for migrant labour.”

NHS Employers response to MAC call for evidence

“We do not include closing dates as many of our roles are for rolling recruitment, i.e. there are multiple roles or we are always interested in receiving CVs. If we were to include a closing date this would be misleading and could mean that fewer resident workers respond to our adverts.”

Deloitte response to MAC call for evidence

- 7.83 In Migration Advisory Committee (2012b) we considered the required duration between the initial advertisement in an appropriate media and the closing date on the advert; recommending that it should be set at 28 days. We do not believe there is sufficient evidence to change this requirement and **recommend maintaining this 28 day duration for occupations required to complete the RLMT.**

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

7.84 It is therefore important that the advert states the closing date for applications, so that if a non-resident jobseeker is recruited through Tier 2, the employer can demonstrate that resident workers were given sufficient time to compete for the role. We would however, suggest that the Government continues to monitor the effectiveness of requiring a closing date 28 days after the initial advertisement in appropriate media.

7.85 In addition to containing information that can increase resident jobseekers' awareness of vacancies, it is also important that the advert is comprehensible. Although the definition of 'resident worker' for the purposes of the RLMT includes EEA countries where the national language may not be English, **we recommend that adverts should be written in English (or Welsh for vacancies in Wales).**

7.5 Conclusions

7.86 We were asked for advice on the appropriate advertising media for occupations and job titles to satisfy the RLMT. In response to our commission we recommend that the Government adopt a criteria-based approach for the advertising requirement. Rather than specify a prescriptive list of advertising locations, the code of practice should set a minimum set of criteria that an advertising location should meet in order to be considered as a sufficient test of the resident labour market.

7.87 We did not review which occupations are or are not subject to the RLMT, and we did not review which occupations are

required to advertise in the JCP. This commission was an exercise in good housekeeping, designed to provide clarity and consistency across the codes of practice. It was not a complete review of the RLMT.

7.88 We have assumed that all requirements and exemptions for JCP advertising remain as they are in the existing codes of practice. We do, however, recommend that the Government continues to monitor the effectiveness of maintaining the requirement to advertise in JCP, in light of the increase in skill level of Tier 2 and the apparent poor effectiveness of JCP in matching skilled workers and firms. We would point out however, that the requirement to advertise in JCP ensures that vacancies are advertised at a national level whilst other advertising media need not provide this level of coverage. Should the Government choose to review the use of JCP we would recommend that employers advertise across two approved media, one of which must cater to a national audience.

7.89 Table 7.1 below summarises our recommended criteria for advertising media to satisfy the RLMT. It is recommended that these same criteria are applied consistently across occupations.

7.90 In addition to criteria relating to advertising locations, we **recommends that job adverts must include the following content to satisfy the RLMT:**

- **job title;**
- **duties and responsibilities;**

- skills and qualifications required;
- an indication of the salary on offer;
- location;
- closing date; and
- advert is written in English (or Welsh for appropriate vacancies in Wales).

Table 7.1: Recommended criteria for advertising media to satisfy the RLMT

Medium	Criteria
Jobcentre Plus*	Required for all vacancies except: <ul style="list-style-type: none"> - selected jobs within the creative arts; - jobs with a stock exchange disclosure requirement; - certain milkround graduate recruitment schemes; - Named researchers; - PhD-level occupations; and - vacancies offering salaries above £70,000.
Plus at least one of:	
Milkround* (new graduates and interns only)	If the employer recruits through a milkround and has visited at least three UK universities as part of the milkround, they are not required to advertise the job in JCP. The employer would, however, need to have advertised the vacancy through two external recruitment media permitted by the codes of practice (one of which must be a recruitment website which satisfies the website criteria: www.jobs.ac.uk ; www.prospects.ac.uk and www.milkround.com) in addition to the milkround. Where fewer than three UK universities provide the relevant course, the employer must have visited all those UK universities which offer the course concerned.
Newspaper	Must be marketed throughout: <ul style="list-style-type: none"> - the UK; or - one of the devolved nations. Must have a minimum weekly publication frequency.
Professional Journal	Must be available nationally or through subscription. Must have a minimum monthly publication frequency. Content must be related to the nature of the vacancy, i.e. trade journals, official journals of professional occupational bodies or subject-specific publications related to the occupation.
Websites	May be an online version of a newspaper or professional journal which would satisfy the criteria discussed above. May be the website for a prominent professional or recruitment organisation. May be organisations' own website if they are a multinational organisation or employing more than 250 permanent UK employees.

Note: *Indicates criteria exists as part of the current advertising requirement

Chapter 8 Conclusions

8.1 Introduction

8.1 This chapter lists all the recommendations we makes in response to the Government's commission:

- *“To update the list of occupations skilled to National Qualifications Framework 6 to reflect the new SOC 2010 classification.*
- *To advise on the minimum appropriate pay for occupations and (as appropriate) job titles, taking into account the minimum salary threshold for the Tier 2 route and identifying, where necessary, separate occupation specific minimum salaries for both new entrants and experienced employees.*
- *To advise on what the appropriate advertising medium (in addition to Jobcentre Plus) should be for occupations and job titles to satisfy the Resident Labour Market Test.*
- *To advise on the design of the Codes of Practice Framework including: (a) how the codes of practice should be divided between sectors and occupations; (b) whether the current codes could be simplified or streamlined; (c)*

whether and how the consistency of approach across different sectors and occupations could be improved; and (d) how often and in what manner the codes of practice should be updated.”

It also considers the frequency codes of practice should be updated and review and looks at future work of the MAC.

8.2 Our recommendations

List of Standard Occupation Classification (SOC) 2010 occupations skilled at NQF6+

8.2 We recommend that the list of SOC 2010 occupations presented in Annex B be regarded as skilled at NQF6+.

8.3 In total, we found that of the 369 4-digit SOC 2010 occupations, 97 were skilled at NQF6+. The number of occupations skilled at NQF6+ has increased relative to our February 2012 NQF6+ list because the SOC 2010 classification reflects changes in the number and types of jobs carried out by workers in the UK. Increases in the number of distinct specialist roles in the economy mean there are a larger number of occupations under consideration in SOC 2010 relative to SOC 2000.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

8.4 Using Labour Force Survey (LFS) data for 2011, we found that approximately six million (or 32.8 per cent of) full-time employees worked in the 97 occupations skilled at NQF6+.

Minimum pay requirements for experienced and new entrant applicants under Tier 2

8.5 We recommend the following:

- pay thresholds for experienced employees should normally be set at the 25th percentile of the pay distribution for full-time employees in that occupation.
- pay thresholds for new entrant employees should be set at the 10th percentile of the pay distribution for full-time employees in that occupation.

8.6 Table 8.1 lists all the SOC 2010 4-digit occupations skilled at NQF6+ for which the 25th and 10th percentile of the Annual Survey of Hours and Earnings (ASHE) pay distribution are to be used to set minimum pay thresholds. It also lists those occupations and relevant job titles where alternative data sources are used to set the experienced and the new entrant minimum pay requirement.

8.7 We recommend that the number of years since left full-time education is used to define new entrants for the purpose of setting lower pay thresholds within a given occupation or job title. We recommend that:

- new entrant employees be defined as full-time employees who have left full-time

education less than 3 years ago;

- all entrants to graduate recruitment schemes be classified as new entrant employees for the purpose of setting pay thresholds; and
- trainee barristers entering pupillages be classified as new entrant employees for the purpose of setting pay thresholds.

8.8 We recommend that a Tier 2 main applicant who joined a UK-based establishment as a new entrant, when applying for further leave to remain after three years should face the default experienced pay threshold. Where the recommended pay threshold(s) for an occupation are not set using distinct “new entrant” and “experienced” worker categories, i.e. in health and education-related occupations, we recommend that the applicant for further leave to remain should face the most relevant pay threshold to their current employment status. We do, however, recognise that there may be circumstances where such pay progression may not be possible and caseworkers should be able to make exceptions in these cases. One example of such an exceptional circumstance may be during an economic downturn, when some people may experience very low, or no pay progression despite gaining experience.

8.9 A number of factors make it difficult to draw comparisons between our proposed minimum pay thresholds and the existing ones in the UK Border Agency

codes of practice and assess the impacts of our recommendations. The revision of the SOC means that the job-titles contained within some occupations have changed, while new occupations have been created. In addition, some of the job-titles in the UK Border Agency codes of practice are not directly comparable with those listed in the SOC classifications

- 8.10 Nonetheless, in some instances it is possible to draw tentative comparisons. For example, the job-titles included under SOC 2000 3212 midwives remain the same in the revised codes of practice, with bandings dictated by the NHS Agenda for Change. These job-titles are now classified as SOC 2010 2232 midwives. The salary threshold in the current codes of practice for midwives at 'band 5' is £20,710, while the proposed threshold is £21,176, still at 'band 5' but based on the latest Agenda for Change pay scales.
- 8.11 Taking another example, the current code practice sets a minimum hourly pay threshold for SOC 2000 1121 production, works and maintenance managers, which would equate to £28,743 per annum using ASHE 2011 in the old SOC 2000 format. This is based on 37.5 hours per week (as per the current code of practice methodology) for 52 weeks. The stricter definition of managers in the reclassification for SOC 2010 1121 production managers and directors in manufacturing to include only the more senior grades has resulted in a higher annual pay threshold of £29,800.

Advertising requirement for the Resident Labour Market Test (RLMT) route

- 8.12 We have considered the location and the content of the advert and we recommend that the current prescriptive rules on how to fulfil the advertising requirement under the RLMT route are replaced with a list of criteria. On the content of the advert we recommend it should include the following:
- job title;
 - duties and responsibilities;
 - skills and qualifications required;
 - an indication of the salary on offer. If the standard industry practice is to advertise the salary as a “*competitive salary*” this should continue to be accepted;
 - location;
 - closing date.
- 8.13 We also recommend the advert be written in English (or Welsh for appropriate vacancies in Wales) and the current 28 day duration for occupations required to complete the RLMT be retained.
- 8.14 On the location of the advert we recommend a set of criteria be adopted as summarised in Table 8.2.
- 8.15 We also recommend that the Government release an updated list of SOC 2010 PhD-level occupations as part of any announced changes to the advertising requirements resulting from our recommendations.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 8.1: Recommended pay thresholds for occupations skilled at NQF6+

SOC	Occupation	Job title or threshold type	Threshold	Source
1115	Chief executives and senior officials	New entrant	£25,100	ASHE 10 th Percentile
		Experienced worker	£41,100	ASHE 25 th Percentile
1116	Elected officers and representatives	New entrant	£23,500	ASHE 10 th Percentile
		Experienced worker	£39,500	ASHE 25 th Percentile
1121	Production managers and directors in manufacturing	New entrant	£20,500	ASHE 10 th Percentile
		Experienced worker	£29,800	ASHE 25 th Percentile
1122	Production managers and directors in construction	New entrant	£18,800	ASHE 10 th Percentile
		Experienced worker	£27,900	ASHE 25 th Percentile
1123	Production managers and directors in mining and energy	New entrant	£20,000	ASHE 10 th Percentile
		Experienced worker	£35,300	ASHE 25 th Percentile
1131	Financial managers and directors	New entrant	£25,600	ASHE 10 th Percentile
		Experienced worker	£37,500	ASHE 25 th Percentile
1132	Marketing and sales directors	New entrant	£28,500	ASHE 10 th Percentile
		Experienced worker	£44,200	ASHE 25 th Percentile
1133	Purchasing managers and directors	New entrant	£26,400	ASHE 10 th Percentile
		Experienced worker	£33,400	ASHE 25 th Percentile
1134	Advertising and public relations directors	New entrant	£25,300	ASHE 10 th Percentile
		Experienced worker	£36,500	ASHE 25 th Percentile
1135	Human resource managers and directors	New entrant	£25,300	ASHE 10 th Percentile
		Experienced worker	£33,500	ASHE 25 th Percentile
1136	Information technology and telecommunications director	New entrant	£25,300	ASHE 10 th Percentile
		Experienced worker	£78,600*	Incomes Data Services
1139	Functional managers and directors n.e.c.	New entrant	£20,400	ASHE 10 th Percentile
		Experienced worker	£29,200	ASHE 25 th Percentile

Table 8.1: Recommended pay thresholds for occupations skilled at NQF6+ (continued)

SOC	Occupation	Job title or threshold type	Threshold	Source
1150	Financial institution managers and directors	New entrant	£21,700	ASHE 10 th Percentile
		Experienced worker	£30,600	ASHE 25 th Percentile
1161	Managers and directors in transport and distribution	New entrant	£21,000	ASHE 10 th Percentile
		Experienced worker	£27,000	ASHE 25 th Percentile
1171	Officers in armed forces ++	New entrant	£31,100	ASHE 10 th Percentile
		Experienced worker	£43,700	ASHE 25 th Percentile
1172	Senior police officers	New entrant	£51,400	ASHE 10 th Percentile
		Experienced worker	£53,500	ASHE 25 th Percentile
1173	Senior officers in fire, ambulance, prison and related services	New entrant	£31,100	ASHE 10 th Percentile
		Experienced worker	£36,400	ASHE 25 th Percentile
1181	Health services and public health managers and directors	New entrant	£25,400	ASHE 10 th Percentile
		Experienced worker	£34,000	ASHE 25 th Percentile
1184	Social services managers and directors	New entrant	£25,400	ASHE 10 th Percentile
		Experienced worker	£31,000	ASHE 25 th Percentile
2111	Chemical scientist	New entrant Experienced worker	£20,000 £26,000	Evidence from partners
2112	Biological scientists and biochemists			
2113	Physical scientists			
2114	Social and humanities scientists			
2119	Natural and social science professionals n.e.c.			

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 8.1: Recommended pay thresholds for occupations skilled at NQF6+ (continued)

SOC	Occupation	Job title or threshold type	Threshold	Source
2121	Civil engineers	New entrant	£20,700	ASHE 10 th Percentile
		Experienced worker	£27,900	ASHE 25 th Percentile
2122	Mechanical engineers	New entrant	£24,100	ASHE 10 th Percentile
		Experienced worker	£29,100	ASHE 25 th Percentile
2123	Electrical engineers	New entrant	£23,600	ASHE 10 th Percentile
		Experienced worker	£34,000	ASHE 25 th Percentile
2124	Electronics engineers	New entrant	£23,600	ASHE 10 th Percentile
		Experienced worker	£26,400	ASHE 25 th Percentile
2126	Design and development engineers	New entrant	£24,800	ASHE 10 th Percentile
		Experienced worker	£29,100	ASHE 25 th Percentile
2127	Production and process engineers	New entrant	£23,600	ASHE 10 th Percentile
		Experienced worker	£27,400	ASHE 25 th Percentile
2129	Engineering professionals n.e.c.	New entrant	£23,600	ASHE 10 th Percentile
		Experienced worker	£30,000	ASHE 25 th Percentile
2133	IT specialist manager	New entrant	£25,500	ASHE 10 th Percentile
		Experienced worker	£40,000*	Incomes Data Services
2134	IT project and programme manager	New entrant	£26,700	ASHE 10 th Percentile
		Experienced worker	£36,400*	Incomes Data Services
2135	IT business analyst, architect and systems designer	New entrant	£24,900	ASHE 10 th Percentile
		Experienced worker	£30,600	ASHE 25 th Percentile
2136	Programmers and software development professionals	New entrant	£24,000	ASHE 10 th Percentile
		Experienced worker	£29,800	ASHE 25 th Percentile
2137	Web design and development professionals	New entrant	£20,000	ASHE 10 th Percentile
		Experienced worker	£25,200	ASHE 25 th Percentile

Table 8.1: Recommended pay thresholds for occupations skilled at NQF6+ (continued)

SOC	Occupation	Job title or threshold type	Threshold	Source
2139	Information technology and telecommunications professionals n.e.c.	New entrant	£19,700	ASHE 10 th Percentile
		Experienced worker	£28,400	ASHE 25 th Percentile
2141	Conservation professionals	New entrant	£21,100	ASHE 10 th Percentile
		Experienced worker	£25,000	ASHE 25 th Percentile
2142	Environment professionals	New entrant	£21,400	ASHE 10 th Percentile
		Experienced worker	£25,500	ASHE 25 th Percentile
2150	Research and development managers	New entrant	£27,200	ASHE 10 th Percentile
		Experienced worker	£33,100	ASHE 25 th Percentile
2211	Medical practitioner	Foundation year 1 (F1) & equiv.	£22,412	Pay and conditions of service for hospital medical and dental staff, doctors and dentists in public health, the community health service and salaried primary dental care
		Foundation year 2 (F2) (or equiv.)	£27,798	
		Specialty registrar (StR) & equiv.	£29,705	
		Specialty Doctor & equiv.	£36,807	
		Assoc. specialist & equiv.	£51,606	
		Salaried GP & equiv.	£53,781	
		Consultant & equiv.	£74,504	
2212	Psychologist	Supervised practice nurses and midwives	£15,860**	Agenda for Change (2012) (Band 3)
2213	Pharmacist			
2214	Ophthalmic optician	Pre-registration pharmacists (non-NHS)	£20,000	ASHE 10 th percentile
2217	Medical radiographer	Band 5 & equiv. Band 6 & equiv. Band 7 & equiv. Band 8a & equiv. Band 8b & equiv. Band 8c & equiv. Band 8d & equiv. Band 9 & equiv.	£21,176 £25,528 £30,460 £38,851 £45,254 £54,454 £65,270 £77,079	NHS Agenda for Change (2012)
2218	Podiatrist			
2219	Health professional n.e.c.			
2221	Physiotherapist			
2222	Occupational therapist			
2223	Speech and language therapist			
2229	Therapy professional			
2231	Nurse			
2232	Midwife			
2442	Social worker			

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 8.1: Recommended pay thresholds for occupations skilled at NQF6+ (continued)

SOC	Occupation	Job title or threshold type	Threshold	Source
2215	Dental practitioner	Foundation Year (F1) (Hospital dental services) & equiv.	£22,412	Pay and conditions of service for hospital medical and dental staff, doctors and dentists in public health, the community health service and salaried primary dental care
		Foundation Year (F2) (Hospital dental services) & equiv.	£27,798	
		Vocational dental practitioner & equiv.	£30,132	
		Specialist Registrar (StR) (Hospital dental services) & equiv.	£30,992	
		Band A posts (e.g. community practitioner) & equiv.	£37,718	
		Band B posts (e.g. senior dental officer) & equiv.	£58,672	
		Band C posts (e.g. specialist/ managerial posts) & equiv.	£70,197	
		Consultant (hospital dental services) & equiv.	£74,504	
2216	Veterinarians	New entrant	£23,200	ASHE 10 th Percentile
		Experienced worker	£32,400	ASHE 25 th Percentile
2311	Higher education	New entrant	£23,800	Evidence from Universities UK, UCEA and GuildHE
		Experienced worker	£30,000	
2312	Further education	Lecturer or equivalent (new entrant)	£21,719	Teachers national pay scales
		Senior lecturer/ advanced teacher & equiv.	£32,421	
		FE management/ Principal lecturer & equiv.	£35,304	

Table 8.1: Recommended pay thresholds for occupations skilled at NQF6+ (continued)

SOC	Occupation	Job title or threshold type	Threshold	Source
2314	Secondary education teaching professionals	Unqualified teachers undertaking OTTP & equiv.	£20,000	Teachers national pay scales
2315	Primary and nursery education teaching professionals	Qualified teachers & equiv.	£21,438	
2316	Special needs education teaching professionals	Post-threshold teachers & equiv.	£34,181	
		Leadership group, assistant head teacher, principal teacher & equiv.	£37,284	
2317	Senior professionals of educational establishments	New entrant	£22,400	ASHE 10 th Percentile
		Experienced worker	£31,000	ASHE 25 th Percentile
2318	Education advisers and school inspectors	New entrant	£20,200	ASHE 10 th Percentile
		Experienced worker	£26,900	ASHE 25 th Percentile
2319	Teaching and other educational professionals n.e.c.	New entrant	£14,000	ASHE 10 th Percentile
		Experienced worker	£18,400	ASHE 25 th Percentile
2412	Barrister and Judge	New entrant	£20,000	Bar Council
		Experienced worker	£30,500	
2413	Solicitors	New entrant	£23,000	ASHE 10 th Percentile
		Experienced worker	£30,200	ASHE 25 th Percentile
2419	Legal professionals n.e.c.	New entrant	£21,900	ASHE 10 th Percentile
		Experienced worker	£37,600	ASHE 25 th Percentile
2421	Chartered and certified accountants	New entrant	£19,900	ASHE 10 th Percentile
		Experienced worker	£26,300	ASHE 25 th Percentile
2423	Management consultants and business analysts	New entrant	£22,300	ASHE 10 th Percentile
		Experienced worker	£29,500	ASHE 25 th Percentile
2424	Business and financial project management professionals	New entrant	£24,000	ASHE 10 th Percentile
		Experienced worker	£31,900	ASHE 25 th Percentile

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 8.1: Recommended pay thresholds for occupations skilled at NQF6+ (continued)

SOC	Occupation	Job title or threshold type	Threshold	Source
2425	Actuaries, economists and statisticians	New entrant	£22,000	ASHE 10 th Percentile
		Experienced worker	£33,600	ASHE 25 th Percentile
2426	Business and related research professionals	New entrant	£22,000	ASHE 10 th Percentile
		Experienced worker	£25,600	ASHE 25 th Percentile
2429	Business, research and administrative professionals n.e.c.	New entrant	£22,500	ASHE 10 th Percentile
		Experienced worker	£28,400	ASHE 25 th Percentile
2431	Architect	Part 1 graduate	£20,000	RIBA
		Part 2 graduate	£22,000	
		Part 3 graduate/ newly registered architect	£26,000	
		Experienced worker	£30,000	ASHE 25 th percentile
2432	Town planning officers	New entrant	£21,400	ASHE 10 th Percentile
		Experienced worker	£27,200	ASHE 25 th Percentile
2433	Quantity surveyors	New entrant	£17,600	ASHE 10 th Percentile
		Experienced worker	£26,400	ASHE 25 th Percentile
2434	Chartered surveyors	New entrant	£21,400	ASHE 10 th Percentile
		Experienced worker	£25,300	ASHE 25 th Percentile
2436	Construction project managers and related professionals	New entrant	£22,300	ASHE 10 th Percentile
		Experienced worker	£26,000	ASHE 25 th Percentile
2443	Probation officers	New entrant	£19,500	ASHE 10 th Percentile
		Experienced worker	£29,500	ASHE 25 th Percentile
2444	Clergy +	New entrant	£18,500	ASHE 10 th Percentile
		Experienced worker	£20,600	ASHE 25 th Percentile
2449	Welfare professionals n.e.c.	New entrant	£19,500	ASHE 10 th Percentile
		Experienced worker	£21,600	ASHE 25 th Percentile

Table 8.1: Recommended pay thresholds for occupations skilled at NQF6+ (continued)

SOC	Occupation	Job title or threshold type	Threshold	Source
2451	Librarians	New entrant	£21,500	ASHE 10 th Percentile
		Experienced worker	£27,300	ASHE 25 th Percentile
2452	Archivists and curators	New entrant	£21,500	ASHE 10 th Percentile
		Experienced worker	£24,500	ASHE 25 th Percentile
2461	Quality control and planning engineers	New entrant	£23,500	ASHE 10 th Percentile
		Experienced worker	£27,700	ASHE 25 th Percentile
2462	Quality assurance and regulatory professionals	New entrant	£23,200	ASHE 10 th Percentile
		Experienced worker	£29,000	ASHE 25 th Percentile
2463	Environmental health professionals	New entrant	£23,100	ASHE 10 th Percentile
		Experienced worker	£28,100	ASHE 25 th Percentile
2471	Journalists, newspaper and periodical editors	New entrant	£20,700	ASHE 10 th Percentile
		Experienced worker	£25,000	ASHE 25 th Percentile
2472	Public relations professionals	New entrant	£20,600	ASHE 10 th Percentile
		Experienced worker	£25,700	ASHE 25 th Percentile
2473	Advertising accounts managers and creative directors	New entrant	£21,900	ASHE 10 th Percentile
		Experienced worker	£27,400	ASHE 25 th Percentile
3415	Musicians	New entrant	£16,700	ASHE 10 th Percentile
		Experienced worker	£21,700	ASHE 25 th Percentile
3416	Arts officers, producers and directors	New entrant	£20,800	ASHE 10 th Percentile
		Experienced worker	£27,000	ASHE 25 th Percentile
3512	Aircraft pilots and flight engineers	New entrant	£28,000	ASHE 10 th Percentile
		Experienced worker	£49,500	ASHE 25 th Percentile
3532	Brokers	New entrant	£22,400	ASHE 10 th Percentile
		Experienced worker	£33,900	ASHE 25 th Percentile

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table 8.1: Recommended pay thresholds for occupations skilled at NQF6+ (continued)

SOC	Occupation	Job title or threshold type	Threshold	Source
3534	Finance and investment analysts and advisers	New entrant	£20,800	ASHE 10 th Percentile
		Experienced worker	£25,800	ASHE 25 th Percentile
3535	Taxation experts	New entrant	£24,100	ASHE 10 th Percentile
		Experienced worker	£29,000	ASHE 25 th Percentile
3538	Financial accounts managers	New entrant	£21,300	ASHE 10 th Percentile
		Experienced worker	£27,600	ASHE 25 th Percentile
3545	Sales accounts and business development managers	New entrant	£21,700	ASHE 10 th Percentile
		Experienced worker	£29,500	ASHE 25 th Percentile

Note: All pay thresholds derived from the ASHE (2011) have been rounded to the nearest hundred. * IDS pay thresholds have been calculated using the following combinations of job-titles from the IDS database: IT and telecommunications directors - IT director and IT function head. IT specialist managers - managers, middle, junior and operations managers. IT project and programme managers - project and senior project managers. Where a salary threshold falls below the minimum pay requirement for Tier 2 (£20,000), the higher thresholds supersedes the lower.

** Exemption from the £20,000 Tier 2 requirement as once the period of training is completed they will be employed by the same organisation on at least NHS Agenda for Change band 5.

+ Occupation has its own route under Tier 2.

++ Occupation unlikely to use Tier 2, but included in table for the purposes of analysis.

Table 8.2: Recommended criteria for advertising media to satisfy the RLMT

Medium	Criteria
Jobcentre Plus*	Required for all vacancies except: <ul style="list-style-type: none"> - selected jobs within the creative arts; - jobs with a stock exchange disclosure requirement; - certain milkround graduate recruitment schemes; - Named researchers - PhD-level occupations; and - vacancies offering salaries above £70,000.
Plus at least one of:	
Milkround* (new graduates and interns only)	If the employer recruits through a milkround and has visited at least three UK universities as part of the milkround, they are not required to advertise the job in JCP. The employer would, however, need to have advertised the vacancy through two external recruitment media permitted by the codes of practice (one of which must be a recruitment website which satisfies the website criteria: www.jobs.ac.uk ; www.prospects.ac.uk and www.milkround.com) in addition to the milkround. Where fewer than three UK universities provide the relevant course, the employer must have visited all those UK universities which offer the course concerned.
Newspaper	Must be marketed throughout: <ul style="list-style-type: none"> - the UK; or - one of the devolved nations; Must have a minimum weekly publication frequency.
Professional Journal	Must be available nationally or through subscription. Must have a minimum monthly publication frequency. Content must be related to the nature of the vacancy, i.e. trade journals, official journals of professional occupational bodies or subject-specific publications related to the occupation.
Websites	May be an online version of a newspaper or professional journal which would satisfy the criteria discussed above. May be the website for a prominent professional or recruitment organisation. May be organisations' own website if they are a multinational organisation or employing more than 250 permanent UK employees.

Note: * Criteria exist as part of the current advertising requirement

8.3 Codes of practice framework and updating the codes of practice

8.16 We recommend that the structure of the codes of practice be revised to exclude the Standard Industrial Classification (SIC) 2007 top level disaggregation and that the codes of practice be presented in a single list using the SOC 4-digit relevant codes for occupations skilled at NQF6+.

8.17 The key elements of the codes of practice that we expect to change over time are the minimum pay thresholds and the advertising criteria. The former will change as pay varies within occupations according to prevailing economic factors while the latter will change as new locations and new media gain a stronger foothold in the market place.

8.18 We recommend that the pay thresholds for the occupations set at the 25th or 10th percentile of the

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

ASHE distribution are updated according to the annual ASHE data (currently published by the Office for National Statistics (ONS) in the fourth quarter of the year). For those pay thresholds based on partners' evidence (Royal Institute of British Architects, Universities UK, the Bar Council, etc), unless these partners can provide robust evidence of annual pay updates, we recommend updating annually according to the national pay inflation of full-time workers from the annual ASHE data. We recognise that the ASHE 2012 data will be published soon after the publication of this report. Therefore, the next update to the codes of practice by using ASHE 2013 will reflect pay growth over a two year period.

- 8.19 Pay thresholds based on national professional pay scales, such as the NHS Agenda for Change or national teachers' pay scales, should be updated in line with their annual increase.
- 8.20 We recommend that the minimum pay thresholds for experienced employees in SOC 1136 information communication and technology directors, SOC 2133 IT specialist managers and SOC 2134 IT project and programme managers should be updated using the latest data from the Incomes Data Services (IDS) database.
- 8.21 We do not identify specific media for use under the RLMT but rather a set of criteria in order to determine the appropriateness of the media being used. Therefore we do not see a need to update annually.

8.22 However, we do recognise the need to revisit the pay thresholds set at the 25th and 10th percentile of the pay distribution of the ASHE and the location and content criteria set out for the advertising requirement in 3 to 5 years.

8.4 Future work

Research

8.23 We are in the process of commissioning a research project entitled "*Determinants of the demand for, and supply of, labour in low-skilled sectors of the UK economy.*" The purpose of this research is to further develop our understanding of whether and why demand for migrant labour persists in low-skilled sectors of the UK economy, despite historically high levels of unemployment.

Government commissions

8.24 On 1 August 2012 the Government commissioned us to undertake a review of the impact of ending the restrictions on A2 workers. Specifically, we have been asked the following question:

"The current transitional restrictions on A2 workers will be removed at the end of 2013 and the current sector-based schemes for A2 workers (covering agriculture and food processing) will then close. What impact across the whole of the UK will this have on the sectors currently covered by the sector-based schemes?"

8.25 We have been asked to report to the Government by 31 March 2013 and will be launching a call for evidence in due course.

8.26 On 20 August 2012 the Government commissioned us to undertake a review of the shortage occupation list (SOL) for the UK and for Scotland and also to assess whether creative occupations should continue to be included within Tier 2 of the Points Based System. Specifically, we have been asked the following questions:

“1. In which occupations or job titles skilled to at least NQF level 6 is there a shortage of labour that it would be sensible to fill using labour from outside the EEA and which merit inclusion on the shortage occupation list (SOL)?

2. The Government has indicated that it wishes to remove from the SOL all occupations that have been on it for more than a given period, in principle two years, regardless of shortages affecting the sectors concerned. This reflects the fact that inclusion on the SOL is intended to provide temporary relief while measures are taken to mitigate the shortages. The MAC is asked to advise on:

i) a standard period after which removal from the SOL should become automatic and whether exceptions should be permitted; and,

ii) whether a transitional period should be accorded to those occupations currently on the SOL and which have exceeded the advised standard period.

In advising on 2 i.) and ii.) the MAC should have regard to time already spent on the SOL and mitigation measures taken, plans for further mitigation measures and the business impact of removal from the SOL.

3. Tier 2 is now reserved for occupations skilled to at least NQF level 6 and in general the SOL should be aligned with that policy. For those job titles currently on the SOL which are not skilled to NQF level 6, is there a shortage of labour that it would be sensible to fill using labour from outside the EEA and, a case for retaining them on the list?

If so, which pay limit should be applied in the relevant codes of practice for those job titles which the MAC recommends for inclusion on the SOL?

4. The government has retained within Tier 2 the following creative occupations in the arts and design field which are not skilled to NQF level 6: artists, authors, actors, dancers and designers. Does the MAC see a case for continued inclusion of certain creative occupations in Tier 2 and, if so, on what terms?

8.27 We have been asked to report to the Government by 31 January 2013 and we have issued a call for evidence in relation to this commission which is available on our website: <http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/mac/>

Annex A

Consultation

A.1 List of organisations that responded to the call for evidence

Accenture	Ground Forum
Aeropeople Ltd	Guild of Healthcare Pharmacists
Association of Graduate Careers Advisory Services	Heriot-Watt University
Association of School and College Leavers	ICAP
Balfour Beatty Utility Solutions	Imperial College London
Bangor University	Infosys Technologies
Bournemouth University	IOP Publishing Limited
BP plc	Kingsley Napley LLP
BritishAmerican Business and the British-American Business Council	KPMG
Brooklands Nursing Home	London Deanery
CGGVeritas	London School of Economics and Political Science
Cine Guilds GB	Morgan Stanley
Confederation of British Industry	NASSCOM
Council of University Heads of Pharmacy Schools	National Grid
Deloitte LLP	National Union of Students
Department for Business, Innovation and Skills	NHS Employers
Department for Education	NHS Pharmacy Education & Development Committee
Department for Health	Oil & Gas UK
East Midlands Healthcare Workforce Deanery	Opcare
EDF Energy	Producers Alliance for Cinema and Television
EEF	Professional Contractors Group
Energy & Utility Skills	Pharmacy Voice
Engineering Council	PricewaterhouseCoopers
e-skills UK	Professional Business Services Group
General Electric	Prospect
	RCUK Shared Service Centre Ltd
	Rolls-Royce plc
	Royal Bank of Scotland
	Royal Institute of British Architects
	Royal Pharmaceutical Society

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Scottish Council for Development & Industry
Scottish Government Health and Social Care Directorates/NHSS Scotland
Skills for Care and Development
Steria
Tata Consultancy Services
The Bar Council
The University of Sheffield
TIGA
Total E&P UK Ltd
Toyota Motor Manufacturing (UK) Limited
UK Council for International Student Affairs
UK Screen Association
Universities UK, GuildHE and the Universities and Colleges Employers Association
University of East Anglia
University of Edinburgh
University of Oxford
University of Portsmouth
Welsh Government
Wipro Technologies
Zurich

Two additional responses from individuals

A.2 Indicative List of organisations we met with/attended our forums

Accenture
Aeropeople Ltd
Akzo Nobel Powder Coatings Ltd
ASG Immigration Limited
ATKINS
AtoS
Balfour Beatty Rail Ltd
Balfour Beatty Utility Solutions (teleconference)
Barclays plc
Birmingham Royal Ballet Trust
Blitz Games Studio

Bournemouth University
BP plc
British Bankers Association
BT Group plc
Capgemini UK Plc
Careys Manor Hotel & Senspa
Chesterfield GP Speciality Training Programme
Confederation of British Industry
COSLA Strategic Migration Partnership
Deloitte LLP
Department for Business, Innovation and Skills
Department for Education
Department for Health
Derby Hospitals
EEF
Embassy of Japan in London
Energy & Utility Skills
Engineering Council (teleconference)
Ernst & Young
Ferguson Snell & Associates
First Permit
Fragomen
Gateleys
Gateshead Health NHS Foundation Trust
GE Oil & Gas
Goldsmiths, University of London
Greater Glasgow and Clyde Health Board
Ground Forum
Harvey Nash
Hemat Gryffe Women's Aid
Heriot-Watt University
Infosys
Institute of Directors
Intellect
International Paint Ltd
Jagex
Japanese Chamber of Commerce & Industry in the United Kingdom
Kettering General Hospital

Kingsley Napley LLP
KLM UK Engineering Ltd
Kobusch UK Ltd
Laura Devine Attorneys LLC
(teleconference)
Laura Devine Solicitors (teleconference)
Lincolnshire Partnership NHS Foundation
Trust
London Deanery
London First
London School of Economics and
Political Science
Manchester Metropolitan University
Mazars LLP
Medical Research Council
Migrants' Rights Scotland
Morgan Stanley
NASSCOM
National Care Association
Natural Environment Research Council
Nautilus International
NHS Greater Glasgow and Clyde Mental
Health Services
NHS South of Tyne and Wear
NHS Tayside
Nomura International plc
North East Strategic Migration
Partnership
North Tees & Hartlepool NHS Trust
Northumbria Tyne & Wear NHS
Foundation Trust
Northumbria University
Nottinghamshire Healthcare NHS Trust
NTT
Nuvia Limited
Opcare
OSG Ship Management (UK) Ltd
Producers Alliance for Cinema and
Television
PricewaterhouseCoopers LLP
Prospect (teleconference)
Rambert Ballet Company
Register Larkin
Relocation Advisory Services
Research Councils UK
Robert Gordon University
Rolls-Royce plc
Royal Institute of British Architects
Sarah Butler Associates (teleconference)
Science and Technology Facilities
Council
Scottish Council for Development &
Industry
Scottish Government
Scottish Social Services Council
Scottish Trades Union Congress
Smith Stone Walters
Society of London Theatre and Theatrical
Management Association
Sopra Group Ltd
South East Strategic Partnership for
Migration
South Tees Hospitals NHS Foundation
Trust
Steria Limited
St John's Hospital
Sunderland Teaching Primary Care Trust
Synechron Limited
Systems Europe Ltd
TalentScotland
Tata Consultancy Services
The Newcastle upon Tyne Hospitals NHS
Foundation Trust
The Royal Ballet
TIGA
Trades Union Congress
TVT
Ubisoft
UCEA
UK Border Agency
Unison
United Lincolnshire Hospitals NHS Trust
Universities UK
University Hospitals of Leicester

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

University of Aberdeen

University of Birmingham

University of Durham

University of Edinburgh

University of Newcastle upon Tyne

University of St Andrews

University of Westminster

Work Permit Services

Zurich

Annex B

List of NQF6+ occupations in SOC 2010

B.1 This annex provides the list of 4-digit Standard Occupational Classification (SOC) 2010 occupations we consider to be skilled at National Qualifications Framework level 6 and above (NQF6+), in Table B.1 below. An

occupation must pass at least two of the three top-down indicators of skill described in Chapter 4 to be considered skilled. The minimum threshold values for each of the top-down indicators are set out in Box 4.1.

Table B.1: List of 4-digit SOC 2010 occupations skilled to NQF6+

SOC Code	Occupation	Median earnings (£/hr)	Per cent qualified to NQF6+	SOC skill	Indicators passed
1115	Chief executives and senior officials	39.24	71.04	4	3
1116	Elected officers and representatives	37.10	50.18	4	3
1121	Production managers and directors in manufacturing	20.37	32.19	4	2
1122	Production managers and directors in construction	17.89	26.09	4	2
1123	Production managers and directors in mining and energy	19.42	37.35	4	3
1131	Financial managers and directors	28.32	49.80	4	3
1132	Marketing and sales directors	32.08	51.12	4	3
1133	Purchasing managers and directors	21.57	49.88	4	3
1134	Advertising and public relations directors	33.43	68.76	4	3
1135	Human resource managers and directors	23.13	57.34	4	3
1136	Information technology and telecommunications directors	31.14	57.26	4	3
1139	Functional managers and directors n.e.c.*	23.27	56.58	4	3
1150	Financial institution managers and directors	23.20	36.86	4	3
1161	Managers and directors in transport and distribution	16.25	19.44	4	2
1171	Officers in armed forces	25.48	60.71	4	3
1172	Senior police officers	27.01	28.90	4	2

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table B.1: List of 4-digit SOC 2010 occupations skilled to NQF6+ (continued)

SOC Code	Occupation	Median earnings (£/hr)	Per cent qualified to NQF6+	SOC skill	Indicators passed
1173	Senior officers in fire, ambulance, prison and related services	20.62	24.93	4	2
1181	Health services and public health managers and directors	23.04	56.46	4	3
1184	Social services managers and directors	20.34	54.87	4	3
2111	Chemical scientists	16.17	77.61	4	3
2112	Biological scientists and biochemists	18.97	85.37	4	3
2113	Physical scientists	19.08	85.80	4	3
2114	Social and humanities scientists	13.91	88.86	4	2
2119	Natural and social science professionals n.e.c.*	18.04	93.36	4	3
2121	Civil engineers	16.40	70.19	4	3
2122	Mechanical engineers	19.33	39.97	4	3
2123	Electrical engineers	20.17	33.49	4	2
2124	Electronics engineers	18.87	40.20	4	3
2126	Design and development engineers	17.89	60.51	4	3
2127	Production and process engineers	16.40	43.19	4	3
2129	Engineering professionals n.e.c.*	17.31	37.03	4	3
2133	IT specialist managers	21.74	51.10	4	3
2134	IT project and programme managers	23.20	61.57	4	3
2135	IT business analysts, architects and systems designers	19.33	56.79	4	3
2136	Programmers and software development professionals	18.38	67.31	4	3
2137	Web design and development professionals	15.34	61.96	4	3
2139	Information technology and telecommunications professionals	18.40	56.79	4	3
2141	Conservation professionals	15.37	75.17	4	3
2142	Environment professionals	15.43	78.29	4	3
2150	Research and development managers	22.53	69.21	4	3
2211	Medical practitioners	29.17	92.36	4	3
2212	Psychologists	18.08	98.25	4	3
2213	Pharmacists	19.13	85.75	4	3
2214	Ophthalmic opticians	18.33	85.06	4	3
2215	Dental practitioners	22.91	97.34	4	3
2216	Veterinarians	16.21	85.93	4	3
2217	Medical radiographers	18.94	86.43	4	3
2218	Podiatrists	17.86	75.15	4	3
2219	Health professionals n.e.c.*	16.00	68.23	4	3
2221	Physiotherapists	15.13	88.56	4	3

Annex B: List of NQF6+ occupations in SOC 2010

Table B.1: List of 4-digit SOC 2010 occupations skilled to NQF6+ (continued)					
SOC Code	Occupation	Median earnings (£/hr)	Per cent qualified to NQF6+	SOC skill	Indicators passed
2222	Occupational therapists	15.35	75.08	4	3
2223	Speech and language therapists	15.45	87.44	4	3
2229	Therapy professionals n.e.c.*	17.87	67.95	4	3
2231	Nurses	16.04	43.14	4	3
2232	Midwives	18.32	46.33	4	3
2311	Higher education teaching professionals	23.94	94.63	4	3
2312	Further education teaching professionals	18.38	82.48	4	3
2314	Secondary education teaching professionals	21.92	93.85	4	3
2315	Primary and nursery education teaching professionals	20.45	86.16	4	3
2316	Special needs education teaching professionals	21.09	67.49	4	3
2317	Senior professionals of educational establishments	23.94	77.07	4	3
2318	Education advisers and school inspectors	19.43	72.61	4	3
2319	Teaching and other educational professionals n.e.c.*	14.72	70.91	4	2
2412	Barristers and judges	18.87	91.13	4	3
2413	Solicitors	21.91	91.67	4	3
2419	Legal professionals n.e.c.	28.86	85.37	4	3
2421	Chartered and certified accountants	18.81	64.10	4	3
2423	Management consultants and business analysts	20.38	69.49	4	3
2424	Business and financial project management professionals	21.63	61.20	4	3
2425	Actuaries, economists and statisticians	23.20	84.65	4	3
2426	Business and related research professionals	15.99	58.73	4	3
2429	Business, research and administrative professionals n.e.c.*	16.89	72.31	4	3
2431	Architects	18.39	84.25	4	3
2432	Town planning officers	16.49	83.97	4	3
2433	Quantity surveyors	18.26	62.56	4	3
2434	Chartered surveyors	17.06	65.88	4	3
2436	Construction project managers and related professionals	18.37	32.95	4	2
2442	Social workers	16.46	62.41	4	3
2443	Probation officers	15.85	71.90	4	3
2444	Clergy	11.95	66.49	4	2
2449	Welfare professionals n.e.c.	15.16	43.44	4	3
2451	Librarians	13.05	77.46	4	2

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Table B.1: List of 4-digit SOC 2010 occupations skilled to NQF6+ (continued)

SOC Code	Occupation	Median earnings (£/hr)	Per cent qualified to NQF6+	SOC skill	Indicators passed
2452	Archivists and curators	15.61	93.84	4	3
2461	Quality control and planning engineers	16.47	39.03	4	3
2462	Quality assurance and regulatory professionals	19.63	52.84	4	3
2463	Environmental health professionals	17.12	69.29	4	3
2471	Journalists, newspaper and periodical editors	16.42	77.99	4	3
2472	Public relations professionals	15.55	80.02	4	3
2473	Advertising accounts managers and creative directors	19.17	58.90	4	3
3415	Musicians	18.63	45.60	3	2
3416	Arts officers, producers and directors	16.19	60.84	3	2
3512	Aircraft pilots and flight engineers	44.49	50.36	3	2
3532	Brokers	27.12	43.65	3	2
3534	Finance and investment analysts and advisers	18.62	56.75	3	2
3535	Taxation experts	23.07	52.98	3	2
3538	Financial accounts managers	18.70	42.71	3	2
3545	Sales accounts and business development managers	19.58	42.20	3	2

Note: *n.e.c. - Not elsewhere classified.

Source: MAC analysis of the Labour Force Survey, 2011 Q1-Q4 and ASHE (2011) in SOC 2010 format.

Median hourly earnings are gross earnings for full-time employees only. ASHE (2011) in SOC 2010 format is provisional and subject to change.

C.1 Introduction

C.1 In Chapter 5 we recommend the Annual Survey of Hours and Earnings (ASHE) for 2011 should be used to set minimum pay thresholds for occupations, complemented by evidence provided by partners. We also recommend that the pay threshold for experienced employees in a given occupation should be set at the 25th percentile of the pay distribution for that occupation.

C.2 This section details the analysis that has been undertaken to estimate the relationship between pay percentiles and the number of years since leaving full-time education for full-time employees working in occupations skilled at National Qualification Framework level 6 and above (NQF6+).

C.3 For a given employee, this allows us to estimate their expected number of years since leaving full-time education at each percentile of the pay distribution for their occupation.

C.4 The purpose of this analysis is twofold:

- First, we wish to estimate the typical pay for full-time employees who have just left full-time education. This percentile could then be used

to set pay thresholds for “new entrant” employees.

- Second, we wish to determine the typical number of years since leaving full-time education for full-time employees earning at the 25th percentile of the pay distribution for their occupation. This could help us identify and define which applicants should face the new entrant threshold and which should face the experienced pay threshold.

C.2 Methodology

C.5 This relationship has been estimated as follows:

- First, we have obtained data from the Annual Population Survey (APS) from Q3 2011 to Q1 2012 for full-time employees in occupations skilled at NQF6+.
- Then, using data from the ASHE for 2011, we have estimated for each observation in the APS dataset where they are located in the distribution of pay for their occupation. We use the ASHE dataset to determine distribution of pay as it has the larger sample size.
- Third, we have regressed the resulting employees’ pay

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

percentile on their years since leaving full-time education. In order to allow for a non-linear relationship we included higher powers of years since leaving full-time education as explanatory variables (e.g. years since leaving full-time education squared, cubed, etc). Adding higher powers of the explanatory variable incrementally, the preferred regression model specification has been selected as that for which all of the explanatory variables are statistically significant at the 1 per cent level.

C.6 The final specification for the regression is given as follows:

$$y_i = \alpha_0 + \alpha_1 x_i + \alpha_2 x_i^2 + \alpha_3 x_i^3 + \alpha_4 x_i^4 + \alpha_5 x_i^5 + \varepsilon_i$$

C.7 The terms in this formula are defined as follows:

- y_i is individual i 's pay as a percentile of the pay distribution for their occupation.
- x_i is individual i 's years since leaving full-time education.
- α_0 is the constant term to be estimated.
- $\alpha_1, \alpha_2, \alpha_3, \alpha_4$ and α_5 are the slope coefficients to be estimated.

C.8 Other factors affecting an employee's pay percentile such as health, qualifications and occupation are not included as explanatory variables in the regression. This is so that the constant term α_0 can be interpreted as the expected pay percentile for full-time employees

in occupations skilled at NQF6+ who have just left full-time education.

C.3 Results

C.9 The estimated coefficients from the preferred model specification are presented in Table C.1 and the relationship is illustrated graphically in Figure C.1.

C.10 The results from Table C.1 indicate that an employee who has just left full-time education typically earns around the 9th percentile of the pay distribution for their occupation. This suggests **it would be appropriate to set the threshold for new entrant employees at the 10th percentile of the pay distribution for any given occupation.**

C.11 The results also indicate that an employee earning at the 25th percentile of the pay distribution for their occupation typically left full-time education around 3.5 years ago.

C.12 Given that an employee's pay typically increases with their years since leaving full-time education (at least at the start of their careers), one would expect that most full-time employees working in occupations skilled at NQF6+ who have left full-time education 3 or more years ago earn at least the 25th percentile of the pay distribution for their occupation. **We therefore recommend that new entrant employees should be defined as full-time employees who have left full-time education less than 3 years ago.**

C.13 Using the APS for 2011 Q2 to 2012 Q1, the 25th percentile of the

gross annual pay distribution for all skilled full-time employees was £27,612, while the 10th percentile

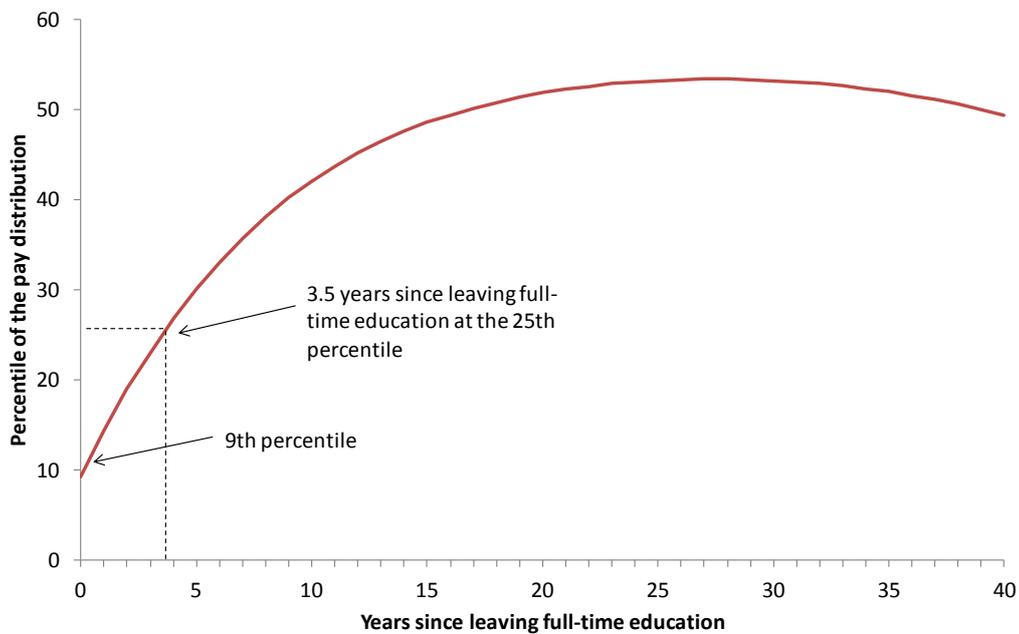
of the same distribution was £21,112.

Table C.1: Summary statistics for the regression of pay percentile on years since leaving full-time education for full-time employees in occupations skilled at NQF6+

Explanatory variables (x=years since left full-time education)	Estimated coefficients	Standard errors	Confidence intervals	
			Lower 95 per cent	Upper 95 per cent
x	0.054	0.0038	0.047	0.061
x^2	-0.0027	0.00037	-0.0034	-0.0020
x^3	0.000076	0.000015	0.000047	0.00011
x^4	-0.0000012	0.00000026	-0.0000017	-0.00000069
x^5	0.0000000068	0.0000000017	0.000000003	0.000000010
Constant (α_0)	0.092	0.013	0.067	0.12
Descriptive statistics				
Sample Size	21,178	R^2	0.0905	

Note: Regression of full-time employees' pay percentile for their occupation on their years since leaving full-time education and higher powers of years since leaving full-time education (second, third, fourth and fifth powers). All data are presented to two significant figures except for sample size and all coefficients are statistically significant to the 1 per cent level.
 Source: Annual Population Survey, Q2 2011 to Q1 2012 and Annual Survey of Hours and Earnings, 2011.

Figure C.1: Estimated relationship between pay percentile and years since leaving full-time education for full-time employees in occupations skilled at NQF6+



Source: Annual Population Survey, April 2011 to March 2012 and Annual Survey of Hours and Earnings, 2011

Abbreviations

ACCA	Association of Chartered Certified Accountants
AfC	Agenda for Change
AGCAS	Association of Graduate Careers Advisory Services
APS	Annual Population Survey
ASHE	Annual Survey of Hours and Earnings
BIS	Department for Business, Innovation and Skills
CBI	Confederation of British Industry
CoS	Certificates of Sponsorship
CUHOP	Council of University Heads of Pharmacy
DfE	Department for Education
DOL	Departure of Labor
DLHE	Destination of Leavers from Higher Education
EEA	European Economic Area
EEF	Engineer Employers Federation
EMBO	European Molecular Biology Organisation
EU	European Union
EURES	European Employment Services (Job Mobility Portal)
GPhC	General Pharmaceutical Council
HESA	Higher Education Statistics Agency
ICT	Information and Communications Technologies
IDS	Incomes Data Services

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

INA	Immigration and Nationality Act (United States)
IT	Information Technology
LCA	Labor Condition Application
LFS	Labour Force Survey
MAC	Migration Advisory Committee
LMO	Labour Market Opinion
NASSCOM	National Association of Software and Services Companies
NHMRC	National Health and Medical Research Council
NHS	National Health Service
NIESR	National Institute of Economic and Social Research
NMC	Nursing and Midwifery Council
NPWC	National Prevailing Wage Centre
NQF	National Qualifications Framework
NQF6+	National Qualifications Framework level 6 and above
NMC	Nursing and Midwifery Council
ONP	Overseas Nursing Programme
ONS	Office for National Statistics
OECD	Organisation for Economic Co-operation and Development
OTTP	Overseas Trained Teacher Programme
PACT	Producers Alliance for Cinema and Television
PAYE	Pay As You Earn
PBS	Points Based System
PCG	Professional Contractors Group
PPP	Purchasing Power Parity
PPSS	Pharmacy Professional Sponsorship Scheme
PSW	Post Study Work
PwC	PricewaterhouseCoopers

Abbreviations

QCF	Qualifications and Credit Framework
QTS	Qualified Teachers Status
RCUK	Research Council UK
RIBA	Royal Institute of British Architecture
RLMT	Resident Labour Market Test
RPS	Royal Pharmaceutical Society
SIC	Standard Industrial Classification
SOC	Standard Occupational Classification
STRB	School Teachers Review Body
TIGA	The Independent Game Developers Association
UCE	University Council for Education
UCEA	Universities and Colleges Employers Association
USCIS	United States Citizenship and Immigration Services

References

Association of Graduate Recruiters (2012). *Association of Graduate Recruiters (AGR) Graduate Recruitment Surveys*. Available to purchase at: <http://www.agr.org.uk/index/IndexSegmented.aspx?subject=13&subjectname=Surveys>

Dustmann, C., Frattini, T. and Preston, I. (2008). *The effect of immigration along the distribution of wages*. CReAM discussion paper series 0803, Centre for Research and Analysis of Migration (CReAM), Department of Economics, University College London.

e-skills UK Sector Skills Council (2012). *Technology Insights 2012*. Available at: <http://www.e-skills.com/research/research-publications/insights-reports-and-videos/technology-insights-2012/>

Higher Education Statistics Agency (2012a). *Destinations of Leavers from Higher Education Institutions*. Available to purchase at: http://www.hesa.ac.uk/index.php?option=com_pubs&task=show_pub_detail&pubid=1708&Itemid=286

Higher Education Statistics Agency (2012b). *Destination of Leavers of Higher Education Survey, 2010-11*.

Home Office (2012). *Immigration Statistics April - June 2012 Second edition*. Available at: <http://www.homeoffice.gov.uk/publication>

[s/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q2-2012/](http://www.homeoffice.gov.uk/publication/s/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q2-2012/)

Migration Advisory Committee (2008). *Skilled, Shortage, Sensible: the recommended shortage occupation lists for the UK and Scotland*. Migration Advisory Committee, London. September 2008.

Migration Advisory Committee (2009). *Analysis of Points Based System: Tier 2 and dependants*. Migration Advisory Committee, London. August 2009.

Migration Advisory Committee (2010). *Report into the possible exclusion of London weighting from earnings in calculations under the points-based system*. Migration Advisory Committee, London. August 2010

Migration Advisory Committee (2011a). *List of occupations skilled to NQF level 4 and above for Tier 2*. Migration Advisory Committee, London. February 2011.

Migration Advisory Committee (2011b). *Revised UK shortage occupation list for Tier 2 comprising jobs skilled to NQF level 4 and above*. Migration Advisory Committee, London. March 2011.

Migration Advisory Committee (2011c). *Full review of the recommended shortage occupation lists for the UK and Scotland*. Migration Advisory Committee, London. September 2011.

Analysis of the Points Based System: List of occupations skilled at NQF level 6 and above and review of the Tier 2 codes of practice

Migration Advisory Committee (2011d). *Settlement rights of migrants in Tier 1 and Tier 2*. Migration Advisory Committee, London. November 2011.

Migration Advisory Committee (2011e). *Review of the minimum incomes requirement for sponsorship under the family migration route*. Migration Advisory Committee, London. November 2011.

Migration Advisory Committee (2011f). *Review of the transitional restrictions on access of Bulgarian and Romanian nationals to the UK labour market*. Migration Advisory Committee, London. November 2011.

Migration Advisory Committee (2011g). *Analysis of the Points Based System: London Weighting*. Migration Advisory Committee, London. August 2010.

Migration Advisory Committee (2012a). *Analysis of the impacts of migration*. Migration Advisory Committee, London. January 2012.

Migration Advisory Committee (2012b). *Limits on Migration: Limit on Tier 2 (General) for 2012/13 and associated policies*. Migration Advisory Committee, London. February 2012.

Monster Job Index (2012). *May 2012 Index Highlights*. Available at: http://www.about-monster.com/sites/default/files/employment-index/EUMEI_May12_UK_FINAL.pdf

National Readership Survey (2012). *NRS Readership Estimates - Newspapers and Supplements*. Available at: <http://www.nrs.co.uk/toplinereadership.html>

Nickell, S. and Saleheen, J. (2008). *The impact of immigration on occupational wages: evidence from Britain*. Working Paper No. 08-6, Federal Reserve Bank of Boston.

Office for National Statistics (2010a). *Standard Occupational Classification 2010: Volume 1 - Structure and Descriptions of Unit Groups*. Palgrave MacMillan, Basingstoke. 2010. Available at: <http://www.ons.gov.uk/ons/guide-method/classifications/current-standard-classifications/soc2010/soc2010-volume-1-structure-and-descriptions-of-unit-groups/soc2010-volume-1.pdf>

Office for National Statistics (2010b). *Standard Occupational Classification 2010: Volume 2 - The Coding Index*. Palgrave MacMillan, Basingstoke. 2010. <http://www.ons.gov.uk/ons/guide-method/classifications/current-standard-classifications/soc2010/soc2010-volume-2-the-structure-and-index/soc2010-volume-2.pdf>

Office for National Statistics (2012a). *Annual Survey of Hours and Earnings (ASHE) micro-data, 2011*.

Office for National Statistics (2012b). *Annual Population Survey (APS) micro-data, 2011 Q2-2012 Q1*.

Office for National Statistics (2012c). *Annual Survey of Hours and Earnings (ASHE). 2011*. Available at: <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2011-provisional-results--soc-2010-/index.html>

Organisation for Economic Co-operation and Development (2011a). *Recruiting Immigrant Workers: Sweden 2011*. Organisation for Economic Co-operation and Development. December 2011

Organisation for Economic Co-operation and Development (2011b). *Purchasing Power Parities for GDP and related indicators*. Available at: <http://stats.oecd.org/Index.aspx?DataSetCode=PPPGDP>

UK Border Agency (2012a): *Tier 2 of the Points Based System - Policy Guidance*
UK Border Agency, August 2012

UK Border Agency (2012b). *Occupational codes of practice for Tier 2 sponsors*. Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pointsbasedsystem/june2012-cop/>

Migration Advisory Committee Report
October 2012
www.ukba.homeoffice.gsi.gov.uk/mac

© Crown copyright.
ISBN: 978-1-84987-995-8