

Call for Evidence

Partial review of the Shortage
Occupation List: Nurses

Migration Advisory Committee

November 2015



Migration Advisory Committee,
3rd Floor, Seacole Building,
2 Marsham Street,
London,
SW1P 4DF.

<https://www.gov.uk/government/organisations/migration-advisory-committee>
email: MAC@homeoffice.gsi.gov.uk

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1. Introduction

- 1.1 In February 2015, the MAC published a partial review of the shortage occupation list which looked at occupations in the health and digital technology sectors and overhead linesworkers¹. On the basis of the evidence it received, the MAC recommended that nurses should not be added to the shortage occupation list.
- 1.2 At the time of that report, employers could use the Tier 2 Resident Labour Market Test (RLMT) route to bring nurses from outside the European Economic Area (EEA) to the UK. The fact that the monthly limit on restricted certificates of sponsorship (RCoS) has been reached for each of the last five months since June 2015 means that it has been very difficult for employers to use the RLMT route (see Annex for more detail on the operation of the Tier 2 route). This is because the salary thresholds used so far to allocate certificates when the limit has been reached are beyond what most employers offer to migrant nurses.
- 1.3 The salary thresholds for places within the limit in June, July, August, September and October 2015 were £46,000, £32,000, £24,000, £27,000 and £22,000 respectively. The minimum salary for a registered nurse (Band5) is £21,692 with pre-registration nurses being paid less than this. Staff in Inner London attract a high cost supplement of 20 per cent of basic salary (subject to a minimum payment of £4,076 and a maximum payment of £6,279), while Outer London attracts 15 per cent of basic salary (subject to a minimum payment of £3,448 and a maximum payment of £4,395) and Fringe attracts 5 per cent of basic salary (subject to a minimum payment of £942 and a maximum payment of £1,632). The MAC understands that nursing is the occupation most heavily affected by the monthly allocation limit being reached and that the majority of the 4,000 rejected applications since June 2015 have been for nursing RCoS.
- 1.4 On 15 October, the Home Secretary wrote to the MAC and commissioned it to examine whether there is a shortage of nurses or specific nursing job titles which it would be sensible to fill through non-European Economic Area (EEA) migration.
- 1.5 In her letter commissioning the MAC, the Home Secretary said:

“I am conscious that the MAC considered the issue of nursing shortages in the health sector in your partial review of shortage occupations published in February this year and that you recommended against adding nurses to

¹ “Partial review of the shortage occupation lists for the UK and for Scotland”, Migration Advisory Committee, February 2015. Report is available here <https://www.gov.uk/government/publications/partial-review-of-the-shortage-occupation-lists>

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the shortage occupation list, as well as removal of certain specialist nursing roles. I regret asking you to look at this again so soon.

“I understand that your recommendation in February was based on the evidence available at the time, including detailed submissions from the Centre for Workforce Intelligence on behalf of the Department for Health and from the Royal College of Nursing and other health sector organisations. However, since then increasing numbers of NHS Trusts and other interested organisations have raised concerns about nurse staffing levels, highlighting recent changes to recommended safe staffing levels within the NHS. In addition, developments since February include the Government’s manifesto pledge to deliver a seven-day NHS and new rules to clamp down on the use of agency staff. I am advised that nursing vacancy rates may be as high as 10% across the health and social care sector, which if so would be twice the maximum level recommended by NICE. It is not for the Home Office to judge these representations and I should therefore be grateful if the MAC could consider the latest evidence.

“In view of the potential risks associated with high vacancy rates and the fast-approaching winter period in which we can expect the NHS to be under particular pressure, I have exceptionally agreed to place nurses on the shortage occupation list on a temporary basis pending that full review of the evidence and your subsequent advice.”

- 1.6 The MAC has been asked to submit its report to the Government by 15 February 2016.

Background

- 1.7 It is important to stress that the MAC are asked to identify a **national** skill shortage. This means shortage across the whole of the UK, or just Scotland in the case of the separate Scotland shortage list. While it might be the case that an employer in one locality might experience difficulty in recruiting staff, there might be employers in other localities who do not experience this same difficulty. In which case, it will not be possible to assert that this occupation is experiencing a national shortage. In looking at nurses, therefore, the MAC will wish to understand whether one NHS Trust may be experiencing a shortage while another, possibly neighbouring, Trust may not and why this may be the case.
- 1.8 In its February partial review of the shortage occupation list, the MAC considered evidence in relation to nursing job titles it received from partners including: the Centre for Workforce Intelligence on behalf of the Department of Health; Guys and St Thomas NHS Trust; Newcastle-upon-Tyne NHS Trust; North Tees and Hartlepool NHS Trust; UNISON and the Royal College of Nursing. The MAC’s analysis of the top-down data on nurses indicated that this occupation passed only 4 out of the 10 MAC shortage indicators. The MAC considered partner evidence in relation to a number of nursing titles, namely:

- specialist nurses working in neonatal or paediatric intensive care units;
- adult nurses;
- specialist nurses working in operating theatres; and
- non-medical nurse endoscopists.

- 1.9 On the basis of the evidence received, the MAC recommended that specialist nurses working in neonatal or paediatric intensive care units be removed from the shortage occupation list and that the other nursing job titles identified should not be added to that list. Following evidence received by the MAC in relation to Scotland, the MAC recommended that specialist nurses working in neonatal or paediatric intensive care units be retained on the separate Scotland shortage occupation list. The Government accepted all of the MAC's shortage recommendations.
- 1.10 In addition to the evidence on nurses working in the health service, the MAC also received evidence from partners in relation to nurses working in the care sector. The commission from the Government asked the MAC to review occupations within the health sector and thus the MAC's primary focus was on this area. The MAC did not recommend adding care nurses to the shortage occupation list but did suggest that the Department for Health and the Nursing and Midwifery Council consider whether it would be appropriate to relax the language score requirements in respect of care nurses such as changing the requirement to simply an average of 7 over the examinations, rather than requiring 7 or higher in each of the four examination areas.
- 1.11 For those non-EEA nurses already working in the UK, the MAC is aware of the concern that has been expressed by others about the impact of the minimum pay threshold on their ability to remain in the UK after 2015. In 2011, following the MAC's recommendations in its report "*Analysis of the Points Based System: Settlement rights of migrants in Tier 1 and Tier 2*" (Migration Advisory Committee, November 2011), the Government set in place a minimum pay threshold in order to qualify for settlement in the UK of £35,000. This threshold will come into effect on 6 April 2016 and will apply to those admitted from April 2011 who are seeking to settle in the UK after five years' residence as a Tier 2 worker. As Tier 2 leave is limited to six years in total, the MAC has received correspondence from partners within the health and care sectors expressing their concern that non-EEA nurses who arrived in the UK in 2011 would need to leave by 2017 as they would not meet the pay threshold and would not be able to extend their Tier 2 visa beyond that point.
- 1.12 In its 2011 report, the MAC recommended that the adverse impacts of applying economic criteria to settlement decisions should be mitigated for some specific occupations. The MAC recognised there may need to be a limited number of exceptions such that settlement is granted even though the annual pay is below the chosen threshold. These might include some public

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sector jobs and roles in the technology sector which will contribute to future economic growth. The Government chose not to accept this recommendation but did provide for migrants in occupations and jobs on the shortage occupation list at any time while the migrant was sponsored to do it, to be exempt from the income threshold. The pay requirement will therefore not apply to nurses in 2016.

Data

- 1.13 To provide some context of the volumes of non-EEA migrant workers going into nursing in the UK, Table 1 below presents the overall numbers using the shortage occupation and RLMT routes for each of the last five years, as well as to August in 2015. As well as out-of-country applications, the data include in-country applications and therefore include those extending their stay. The table shows the total number of RCoS used each year and those for nurses only as a proportion of the total.

Table 1: Numbers of restricted certificates of sponsorship used in total and in relation to nurses per year, 2010 to August 2015.				
	SOL		RLMT	
	Total	Nurses	Total	Nurses
2010	8,402	421 (5%)	16,851	2,145 (13%)
2011	4,110	149 (4%)	15,271	908 (6%)
2012	3,655	232 (6%)	26,156	1,508 (6%)
2013	3,945	144 (4%)	36,264	2,197 (6%)
2014	3,303	59 (2%)	38,977	2,896 (7%)
To August 2015	2,197	15 (1%)	24,890	1,553 (6%)

Source: Home Office Management Information (August 2015). Includes both in-country and out-of-country applications.

- 1.14 These figures look at nurses as a single occupation and do not take account of the proportion of RCoS used in respect of nursing specialties, some of which have featured on the shortage occupation list in previous years. This might partly explain the decline in allocations to nurses under the SOL concurrent with the rise in allocations under the RLMT.
- 1.15 The majority of nurses appear under the RLMT route. While their share of all RCoS used has remained steady since 2011, their volume has risen in line with an overall increase in usage of RLMT. In 2014, there were almost 2,900 RCoS used for nurses. This suggests that measures being taken to reduce reliance on migrant nurses are not yet having an effect.
- 1.16 Whereas Table 1 demonstrates actual *usage* of RCoS, Table 2 below shows the recent increase in RCoS *applications*. In the report “*Analysis of Salary Thresholds*” (Migration Advisory Committee, August 2015), the MAC presented data showing that in between April and July 2015 there

were over 2,250 RCoS out-of-country applications for nurses, which is more than three times the volume for the same period in 2014².

Table 2: Growth in RCoS applications, 2014 (April-July) and 2015 (April-July)

Occupation	2014	2015	Change	Percent change
Nurses	733	2264	1531	209%
Medical Practitioners	476	900	424	89%
Chartered and certified accountants	197	482	285	145%
Programmers and software development professionals	567	816	249	44%
Secondary education teaching professionals	116	346	230	198%
Management consultants and business analysts	466	594	128	28%
Finance and investment analysts and advisers	386	476	90	23%
IT business analysts, architects and systems designers	290	378	88	30%
Health professionals not elsewhere classified	9	94	85	944%
Primary and nursery education teaching professionals	56	132	76	136%

Source: Home Office Management Information (July 2015). Out-of-country applications only. Table 1 is not directly comparable to Table 2 as the former is for all CoS issued, the latter is for RCoS applied for.

- 1.17 Although these data indicate an increase in demand for nurses, the MAC stresses to partners that this is not in itself sufficient evidence of a shortage of nurses. The MAC is keen to explore whether this increase in demand is occurring as a result of employers not adequately exploring the alternatives to bringing in nurses from outside the EEA. These can include expanding recruitment from within the EEA, instituting measures to improve retention of nurses, and encouraging those who have left the profession to return to it. Over the longer term, another alternative would be to increase the domestic supply of nurses through increased numbers of training places, for example.

2. Submitting evidence to the MAC

- 2.1 This section provides information on ways in which evidence can be submitted to the MAC. During the course of reviews the MAC has carried out in the past 12 months, we have received a considerable amount of evidence in relation to nurses and the shortage occupation list. We are conscious of not placing too great a burden on partners in terms of replicating this information during this review. We will therefore refer again to any earlier evidence received since October 2014. However, we do of course very much welcome new and additional evidence that partners may wish to provide, particularly around the challenges they may be facing in light of recent developments affecting recruitment in the health sector (e.g. clamp down on use of agency nurses, minimum staffing ratios,

² It is recognised that some of the increase in 2015 may be due to repeat applications if the RCoS application was refused in previous months.

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reaching the Tier 2 limit, etc). They are invited to send that evidence to the MAC at the address given at the end of this document.

- 2.2 For this review we would be keen to visit and meet with partners to discuss these issues in more depth, subject to the available timeframe and our resources. More details on how to pursue this are given below.
- 2.3 The MAC has been given a short timeframe in which to complete this review. Consequently the period for our call for evidence is shorter than we would have wished. The closing date for receipt of evidence is **noon on Thursday 31 December 2015**.
- 2.4 As stated, the MAC's review of health occupations earlier this year focussed on occupations within the health sector. For the avoidance of doubt, it is stressed that this review is looking at nurses only (all job titles under SOC code 2231) but this is not restricted to shortages in the NHS. This means that this review is not looking at midwives (SOC Code 2232).
- 2.5 The MAC welcomes evidence in relation to this commission from all employers within the health and care sectors including within the National Health Service but also including care homes and private health care providers. The MAC would also particularly like to hear the experience of nurses (whether from within or outside the EEA) in finding work in the UK and from any nurses who have left the profession.
- 2.6 Additionally, partners may prefer to give evidence to the MAC and its representatives face to face. The MAC value this contact as it will enable it to clarify, test and challenge the evidence presented. The MAC will look to meet with as many partners with an interest in this commission as possible during the course of its review. If you would like to meet with the MAC or host a meeting at which the MAC could hear from a number of interested partners, you are invited to contact the MAC secretariat at mac@homeoffice.gsi.gov.uk. Notification of any relevant upcoming events will be placed on the MAC website at <https://www.gov.uk/government/organisations/migration-advisory-committee>.
- 2.7 In addition, the MAC will host an open session with interested partners as follows:
 - 12 November 2015 from 3.30pm to 5.30pm
- 2.8 The session will be held in conference room 3b at 2 Marsham Street, London, SW1P 4DF. If you would like to attend this session, please contact the MAC Secretariat (contact details below) who will provide you with instructions on how to attend. Depending on demand, the MAC will look at arranging further sessions.
- 2.9 This document refers to "corporate partners" or just "partners" in relation to the submission of evidence. This term is used to cover all parties with an interest in the MAC's work or its outcomes, so private and public sector

employers, trade unions, representative bodies and private individuals are included within this term.

- 2.10 This call for evidence document has been placed on the MAC's website at <https://www.gov.uk/government/organisations/migration-advisory-committee> and has also been sent to those partners in the health and care sectors whose contact details are recorded on the MAC's database, and recipients are encouraged to circulate this document further to any interested party. Hard copies of this document are available by contacting the MAC at mac@homeoffice.gsi.gov.uk.

3. The review of the shortage occupation list

- 3.1 The methodology developed by the MAC for determining whether to recommend an occupation or job title be placed or retained on the shortage list requires that the occupation or job pass three tests:
- first, is the individual occupation or job title sufficiently **skilled** to be included on the list;
 - second, is there a **shortage** of labour within each skilled occupation or job title sufficient to merit inclusion or retention on the list; and
 - third, is it **sensible** for immigrant labour from outside the EEA to be used to fill this shortage.
- 3.2 Reports providing further detail on the MAC's methodology and previous MAC reviews of the shortage occupation lists can be accessed at <https://www.gov.uk/government/collections/migration-advisory-committee-research>. This call for evidence provides an overview of the methodology and sets out some of the evidence the MAC finds useful in considering occupations and job titles.
- 3.3 The questions asked provide a general pointer to the information the MAC find helpful in determining whether to recommend an occupation or job title for inclusion on the shortage list. It is accepted that nurses are skilled to the requisite level, so there is no need to provide evidence in relation to the skill criteria in respect of registered nurses. As stated above, if partners have already submitted all the evidence they have on shortage, then there is no need to resubmit this. **The MAC will be most interested in understanding partners' evidence in relation to sensible**, in particular why is bringing nurses from outside the EEA held to be the most sensible option over the alternatives.

4. What partners can tell the MAC about nurses

Skilled

- 4.1 The skill level required to qualify under Tier 2 of the Points Based System is, with some exceptions, NQF6+ (that is, graduate level). Appendix J to the Immigration Rules lists the occupations regarded as being skilled to

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this level and this is available here

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302699/20140410_Immigration_Rules_-_Appendix_J_MASTER.pdf.

- 4.2 To be considered for inclusion on the shortage occupation list, jobs need to be under one of the skilled occupations listed in the document above. The occupation of registered nurse is held to be skilled to NQF 6 and there is, therefore, no need for partners to provide the MAC with additional evidence of this.

Shortage

- 4.3 The MAC took evidence earlier this year on whether nurses were in shortage. Partners have also provided the MAC with further evidence on whether nurses are in shortage as part of their responses to the MAC's salary threshold review and also its wider review of Tier 2.
- 4.4 The MAC will re-examine all the evidence it has received on shortage since October 2014. The MAC will also examine its ten available quantitative measures of labour shortage which include indicators based on vacancy numbers and durations, and changes in pay and hours worked. Partners are asked to bear in mind that both these indicators and the evidence received on shortage focus on the occupation of nurses as a whole. If partners wish to argue for the inclusion of speciality nursing jobs on the shortage list, whether instead of or in addition to the adult nurse job title, then they are invited to send in evidence of shortage in relation to those job titles. Partners can also refer to earlier evidence on shortage that they have provided to the MAC and can update this if they have more recent data.
- 4.5 In particular, the MAC would value evidence in response to the following issues in relation to shortage:

Demand for nurses

1. What are the overall trends in recruitment of foreign (EEA and non-EEA) born nurses in recent years?
2. What are the factors driving current demand for non-EEA nurses? Are these factors temporary or more structural?
3. What has been the impact, if any, of the monthly limit on RCoS allocation being reached? Have you had any RCoS applications rejected? If so, how many and what have you done to address your vacancies?

Supply of nurses

4. What are the challenges faced in recruiting nurses generally? Why is this?

5. If there is a national shortage of nurses, the relative pay of nurses would be expected to rise. Has this happened? If not, why not?
6. What are the issues around retention of nurses?
7. Do some areas of the UK experience a shortage of nurses while others do not? If so, what are some areas doing that others are not?
8. Information about trained nurses not working in the profession:
 - a) To what extent are there qualified nurses of working age, resident in the UK, who are not working in the profession?
 - b) If there are significant numbers of trained and/or registered nurses not working in the profession, what are the reasons behind this?
 - c) What is being done to attract these back to the profession?

How does supply and demand for nurses vary by specialty?

9. Are there specific nursing specialties that are held to be in particular shortage?
10. What are these and what evidence is there for shortage?

Sensible

- 4.6 The MAC considers four indicators of whether it is sensible to employ migrants from outside the EEA:
- What are the alternatives to employing migrants?
 - How would bringing in migrants relate to skills acquisition of the UK workforce? Are there enough UK resident workers in training and education to fill shortages? Will bringing in migrants reduce employers' incentives to invest in training and up-skilling of UK workers?
 - How will the employment of migrants affect investment, innovation and productivity growth?
 - How will a decision to add an occupation to the Tier 2 shortage occupation list affect the wider UK labour market and economy? How, if at all, will access to migrant labour affect employment opportunities and conditions of the UK workforce?

What partners can tell the MAC about Sensible

- 4.7 In particular, the MAC would value evidence on nurses in response to the following issues in relation to its sensible criteria:

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11. To what extent can existing nurses be retrained to do the jobs of specialist nurses who have left?
 12. To what extent are migrant nurses (whether from within the EEA or outside of the EEA) adequate substitutes for experienced nurses (whether from within the UK or outside of it)?
 13. To what extent could shortages of nurses be addressed by the numbers of nurses who could re-enter the profession if they were incentivised to do so?
 14. What proportion of trainee nurses do not go on to practice nursing as a profession? What is being done to reduce this number?
 15. What is being done to improve workforce planning to reduce a reliance on migrant nurses?
 16. What is being done to reduce the use of migrant nurses as a safety valve at times of peak demand/maximum shortage?
- 4.8 The MAC and its secretariat will be happy to offer advice to partners on the type and quality of evidence partners intend to submit. It is important that the MAC have the best possible evidence available on which to base any recommendations to the Government. The MAC particularly encourage partners to provide quantitative evidence.
- 4.9 Responses to this call for evidence can be sent by noon Thursday 31 December 2015 direct to the MAC at either: mac@homeoffice.gsi.gov.uk or

Migration Advisory Committee
3rd Floor
Seacole Building
2 Marsham Street
London
SW1P 4DF

To contact the secretariat, please call 020 7035 1764.

- 4.10 **Please note that the MAC may quote evidence received, attributed to the individual or organisation that supplied it, in their published report unless they are explicitly asked not to do so.**

Annex

Tier 2

1. The Points Based System (PBS) for migration to the UK from outside the European Economic Area (EEA) was introduced in 2008. It consists of five tiers:
 - 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.
2. Tier 2 comprises Tier 2 (General), which is made up of the resident labour market test (RLMT) route (which enables employers to bring in a worker from outside the European Economic Area (EEA) once they have shown that there is no suitably qualified worker from within the UK or the EEA available to fill a specific vacancy) and the shortage occupation route;
 - the intra-company transfer route; and
 - the ministers of religion and sportsperson routes.
3. The shortage occupation route enables employers to 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. The shortage occupation list details the occupations and job titles held to be experiencing a labour shortage that could be sensibly filled using non-EEA labour.
4. Since 6 April 2011, Tier 2 (General) has been subject to an annual limit of 20,700 places. Following analysis from the MAC in early 2012, the limit has been kept at the same level of 20,700 since 2011/12.
5. The skill level required to qualify under the Tier 2 RLMT and intra-company transfer routes is NQF6+, raised from NQF4 in June 2012. Persons applying to work in certain creative occupations were exempt from this change. Tier 2 is also subject to a minimum pay threshold of £20,800 with a higher threshold for the intra-company transfer route.

The shortage occupation list route

6. 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. The Government periodically asks the MAC to review the content of the list. The current shortage occupation list comprises occupations and jobs employing under 1 per cent of the workforce (both migrants and British workers).