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# The Points Based System (PBS) and migrant cap on non-EEA workers : An accessible guide

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# The Points Based System (PBS) and migrant cap on non-EEA workers: an accessible guide

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## Glossary

<b>A2</b>	Accession 2 – the countries which joined the European Union in January 2007 (Bulgaria and Romania)
<b>A8</b>	Accession 8 – the countries which joined the European Union in May 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia)
<b>A &amp; E</b>	Accident and Emergency
<b>CBI</b>	Confederation of British Industry
<b>CEE</b>	Central and Eastern Europe
<b>EEA</b>	European Economic Area – European Union, plus Iceland, Liechtenstein and Norway
<b>ENT</b>	Ear, Nose and Throat
<b>EU</b>	European Union – Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom
<b>FE</b>	Further Education
<b>GLA</b>	Greater London Authority
<b>HEBRG</b>	Higher Education Better Regulation Group
<b>HEIs</b>	Higher Education Institutions
<b>HR / HRM</b>	Human Resources / Human Resources Management
<b>IPPR</b>	Institute for Public Policy Research
<b>ICT</b>	Information and Communications Technology
<b>LFS</b>	Labour Force Survey
<b>MAC</b>	Migration Advisory Committee
<b>NMDS-SC</b>	National Minimum Data Set for Social Care
<b>NHS</b>	National Health Service
<b>PBS</b>	Points Based System
<b>UKBA</b>	UK Border Agency

# 1. Introduction

According to Anderson and Ruhs (2009, p. 2) 'the regulation of labour immigration is one of the most important and controversial public policy issues in high income countries'. Indeed, as migration has increased over the past few decades, public demands for 'managed migration' have risen (Chappell and Mulley, 2010).

Within this context, governments across the world have increasingly grappled with key questions concerning how many migrants could or should be admitted to a particular country, and on what basis migrants should be selected. In many instances the economic benefits *vis a vis* costs of immigration have dominated policy-making processes, although attempts to derive an optimal balance are notoriously difficult to define given conflicting evidence and the extent to which 'on the ground' impacts can be effectively captured.

Consequently, the introduction of the Points Based System (PBS) by the former Labour Government in 2008 and the more recent imposition of a cap (from April 2011) by the current Coalition Government on the numbers of non-European Economic Area (EEA) workers allowed entry into the UK demands our attention. In essence, there is a need for clarity on the key elements and characteristics of such a system of 'managed migration', the impact it has had to date, and potential future implications. These issues are pertinent given the evolving nature of international migration - for example, the 'transitional' restrictions on EEA migrants now being lifted across the European Union - the impact of restricting new arrivals set against foreign investment and patterns of global trade, and the rationale for maintaining such an approach in the UK in the medium to longer term.

This report therefore attempts to provide an accessible guide to the intricacies of the UK PBS; the issues that have arisen with the imposition of the recent cap on non-EEA workers; and the potential future impacts that may become evident in the UK.

## 2. What is the Points Based System (PBS)?

### 2.1 The Points Based System

In the UK, the arrival of increasing numbers of Central and Eastern European (CEE) migrants since 2004 has led to the phasing out by the Government of a number of (traditional) low skill immigration schemes for individuals from other parts of the world (Home Office, 2006). Within this context, **a new Points Based System (PBS)** was introduced in February 2008 to manage migration from outside of the European Economic Area (EEA – i.e. the European Union (EU) plus the countries of Iceland, Norway and Lichtenstein).

In summary, the PBS consists of five tiers:

#### **The five tiers of the UK Points Based System for managing migration from non-EEA countries**

**Tier 1: Highly skilled individuals to contribute to growth and productivity**

**Tier 2: Skilled workers with a job offer to fill gaps in the UK labour force**

**Tier 3: Limited numbers of low-skilled workers needed to fill specific temporary labour shortages** (this is currently suspended as EEA workers have been identified as being able to fill such vacancies)

**Tier 4: Students**

**Tier 5: Youth mobility and temporary workers** (the Youth mobility scheme applies to those travelling from Australia, Canada, Japan, Monaco and New Zealand)

Within these tiers, it is possible to develop a more detailed breakdown of eligibility criteria. This is set out below.

## More detailed breakdown of Tiers 1 and 2 of the UK Points Based System (PBS)

**Tier 1: Visas for highly skilled migrants, entrepreneurs, investors and foreign graduates of UK educational institutions**

**Tier 2: *General*:** for people coming to the United Kingdom with a job offer to fill a gap that cannot be filled by a settled worker which may or may not be on the Shortage Occupation List.

***Intra-Company Transfers*:** for employees of multi-national companies who are being transferred by an overseas employer to a skilled job in a UK-based branch of the organisation.

***Sports People*:** for elite sportspeople and coaches whose employment will make a significant contribution to the development of their sport at the highest level; and

***Ministers of Religion*:** for those people coming to fill a vacancy as a Minister of Religion, Missionary or Member of a Religious Order.

### Tier 2

In relation to the Tier 2 '**General**' category, current legislation now defines that such jobs must now be at graduate level or above. Non-EEA migrants falling into this category must also earn the appropriate salary for that job in the UK.

For the '**Intra-Company Transfer**' category, multinational companies can transfer their employees to the UK under four different routes:

- i. Long-term staff and short-term staff* – allows the transfer of skilled employees to the UK branch of their organisation to fill a graduate level post (see below and following section) that cannot be filled by a 'settled' worker. Long term staff can come for up to 5 years and short-term staff for up to 12 months.
- ii. Graduate trainees* – allows the transfer of graduate recruits for training purposes.
- iii. Skills transfer* – allows the transfer of recruits to a UK branch of the organisation to acquire skills and knowledge or to impart their own skills and knowledge to the UK workforce.

In relation to the '**Sports People**' category, these individuals must have an international reputation and who will be based within the UK.

Finally, in relation to the '**Ministers of Religion**' category, these individuals can work in the UK for up to 3 years, although working full-time in a school run by a church or missionary organisation does not qualify.

A migrant under Tier 2 will need to score at least 70 points in total before a 'Certificate of Sponsorship' can be assigned by an employer (see the UK Border Agency website for a more detailed breakdown of how points are assigned).

It must be reiterated that in early April 2011, the skills threshold for non-EEA migrants applying through the Tier 2 'General' category was changed and occupations below this level have now been removed from the UK Shortage Occupation List that the Migration Advisory Committee (MAC) had drawn up as part of implementing the PBS. In essence, they no longer qualify under Tier 2 of the PBS, although those non-EEA migrants who had approval to extend their employment in non-graduate occupations are exempt. In addition, the new graduate skills threshold does also not apply to work permit applications to employ Bulgarian or Romanian nationals.

#### **Tier 4**

For Tier 4 (**Students**), in general this covers students aged 16-17 who want to come to the UK for their post-16 education. It also includes those coming to the UK to study for an English language qualification. In addition, it covers those aged 4-15 who come to the UK to be educated at an independent fee paying school.

Students aged 16 or above were allowed to work for up to 20 hours a week in term time and could undertake full-time work during vacation periods if they were studying foundation degree courses or courses at National Qualifications Framework level 6 or above. This reduced to 10 hours a week if they are studying below this level.

A student under Tier 4 will need to score at least 40 points.

However, from April 2011 new rules were introduced in the light of the Government claiming that 26 per cent of a sample of Tier 4 students studying at private institutions could not be accounted for (see <http://www.ukba.gov.uk>). Therefore the coalition government is now attempting to ensure that student immigration from non-EEA countries is temporary and targeted at the highest achieving individuals. The key changes proposed are set out in the box below:

- From April 2012 all sponsors of students will need to apply for and achieve 'Highly Trusted' sponsor status and will need accreditation from a statutory education inspection body by the end of 2012.
- Students coming to study for a degree in the UK will need improved English language attainment.
- Students who do not attend either a university or a publicly funded further education college will have no right to work.
- Only postgraduate students at universities and government-sponsored students will be able to bring their dependants.
- Student visas will be limited to three (lower level) and five years (higher level) respectively.
- The Tier 1 Post-study work route which allows students to seek work for up to 2 years after their course ends will be closed – only graduates who have an offer of a skilled job will be able to stay to work.
- But, innovative "student entrepreneurs" who are identified as creating wealth will be allowed to stay in the UK to pursue their ideas.

Finally, it is proposed that the above changes will be implemented alongside reforms to family and settlement routes for non-EEA workers, and which are scheduled to be published by the coalition government later in 2011.

## **Tier 5**

In relation to Tier 5 (**Youth mobility and temporary workers**), youth mobility refers to young people from the currently participating countries of Australia, Canada, Japan, Monaco and New Zealand who can come to the UK for up to two years to do whatever work they wish apart from setting up their own business, playing a professional sport or working as a doctor. The scheme works on a reciprocal basis.

The temporary worker category includes a 'creative and sporting' category, charity workers, religious workers, government authorised workers (for up to 24 months), and an 'international agreement' category (e.g. employees of overseas governments).

A temporary worker under Tier 5 will need to score a total of 40 points before a certificate of sponsorship can be assigned by an employer.

## **2.2 Tools of relevance to the imposition of the Points Based System**

A number of 'tools' are of relevance to the imposition of the PBS. These are as follows:

**1. The Resident Labour Market test** – this requires employers to demonstrate that they have filled vacancies from within the UK and the EEA before they are able to recruit from outside Europe. As part of this process, all vacancies must be advertised to settled workers for at least 28 days in order to try and recruit initially from within these areas. The only ways that employers can be exempt from the Resident Labour Market Test would be if:

- a) The migrant will be doing a job on the Shortage Occupation List (see below);
- b) The migrant is an existing employee in the same job and currently has permission to stay in the UK;
- c) The migrant is a postgraduate doctor or dentist who has been in further speciality training; and
- d) The migrant will be undertaking a job with a gross salary of £150,000 or more.

**2. Registration as a Licensed Sponsor** – The concept of sponsorship lies at the heart of the PBS. If an employer wants to employ a migrant or enrol a migrant as a student then in general terms the employer must be their sponsor during their stay in the UK (but there are exceptions if they are coming to the UK for 6 months or less in certain circumstances). Before employers can sponsor a migrant they must obtain a sponsor's licence. To do this they need to show the UK Border Agency (UKBA) that they are:

- a) A genuine organisation operating legally in the UK;
- b) No threat to immigration control (history is important here);
- c) Able to send all necessary supporting documents when applying for the relevant sponsorship licence relating to Tiers 2, 4 and 5 detailed above (registration and application is on-line through the UKBA website and under the sponsorship management system); and
- d) Compliant with sponsor duties, such as having an appropriate Human Resources (HR) system in order to carry out specific duties (both compliance and HR are seen as crucial). They must also have designated an 'authorising officer' who is responsible for the staff using the sponsorship management system, a 'level 1' user (who sets up accounts for all additional sponsorship management system users), a 'level 2' user (who can assign certificates of sponsorship to migrants) and a 'key contact' within their organisation. These roles can be filled by the same person or by different persons.

**3. Certificates of Sponsorship** – This is a 'virtual' document' (it is not a paper certificate) assigned by an employer (who must also be a licensed sponsor) to a migrant. The migrant must quote the certificate's reference number when applying for permission to work in the UK under Tier 2 or Tier 5 of the PBS. Different types of certificates exist, including those for the creative sector, group certificates (for example, those in the migrant's entourage – i.e. sportspeople under Tier 5) and multiple entry certificates of sponsorship to allow migrants from overseas to enter the UK on a regular basis to work for the same sponsor.

The current application fees for sponsorship licences under the PBS in the UK and current fees for assigning certificates of sponsorship from employers to migrants vary depending upon the status of the employer. For example, charity or small sponsors generally pay between £310 and £410 for a sponsor licence fee whilst medium or large sponsors pay between £410 and £1025 according to the tier in question. However, if they have already registered the fees are reduced considerably.

Fees for assigning certificates of sponsorship are £175 for Tier 2 migrants (May 2011) and £10 for Tier 5 migrants (those from Croatia, Macedonia and Turkey).

### **2.3. The Points Based System and the migrant cap on non-EEA workers allowed into the UK**

Given ongoing concerns over the impact of migration on the UK, in June 2010 the coalition government introduced a **temporary cap** on the number of non-EEA migrant workers allowed into the UK. They also announced that this would be followed by a **permanent cap** that would be introduced from 1 April 2011, "in order to restrict entry only to those who can make a real difference" (UKBA, 2010a, p.4).

The new restrictions on non-EEA migration that were imposed with the temporary cap in June 2010 related to Tier 1 and Tier 2 of the PBS in the first instance (and with Tier 3 being indefinitely suspended). The immediate net result of the temporary cap was a five per cent reduction (1,300 individuals) in the numbers of highly skilled migrants and skilled non-EEA workers in other categories of job allowed into the UK between July 2010 and March 2011.

Currently, there is no annual limit on Tier 5 migrants but those in Tier 4 (Students) – as we have already noted – will have increasing restrictions placed on them from April 2012. This is an important point, given the recent figures available for non-EEA migration to the UK for the 12 months up to and including June 2010 (see Table 1). Indeed, the Table suggests that the bulk of non-EEA immigration arises from students. This is an important point which we will return to later.

Table 1: Number of non-EEA migrant arriving in the UK for the 12 months up to and including June 2010

	Main applicants and dependants
<b>Tier 1 (Highly skilled workers)</b>	
Tier 1 - General	18,875
Tier 1 - Post Study	7,720
Tier 1 - Other	870
<b>Tier 1 (Total)</b>	<b>27,465</b>
<b>Tier 2 (Skilled workers)</b>	
Tier 2 - General	11,010
Tier 2 - Intra-Company Transfers	26,480
Tier 2 - Other	21,805
<b>Tier 2 (Total)</b>	<b>59,300</b>
<b>Tier 4 (Students)</b>	<b>307,155</b>
<b>Tier 5 (Youth mobility and temporary workers)</b>	<b>35,905</b>
<b>Total</b>	<b>429,825</b>
of which: employment	122,670

Source: UK Border Agency (2010a)

Subsequently, the Government has taken advice from the Migration Advisory Committee (MAC) – through a consultation – on where the permanent annual cap should be set, taking into account both the potential *economic* impact on employers (and particularly those in ‘migrant dense’ sectors) as well as *social* impacts; for example, pressures on schools, hospitals, social housing and other public services (Home Office, 2010; Migration Advisory Committee, 2010).

This led to a decision in November 2010 that that the migrant cap from 1<sup>st</sup> April 2011 would be set at 21,700 skilled non-EEA migrants per annum. Within this figure, 1,000 non-EEA migrants are allowed into the UK under a revamped Tier 1 – ‘*the exceptionally talented route*’. However, this now only applies to entrepreneurs, investors and ‘exceptionally talented individuals’ (in the fields of science, engineering and the arts) (UKBA, 2010b). This is a considerable reduction on the figure of 27,465 for Tier 1 workers in 2009/10 – see Table 1 above).

Under the new visa rules for investors, those who invest £5 million will be allowed to settle in the UK after 3 years, and those investing £10 million+ will be allowed to settle after 2 years, as opposed to the minimum 5-year requirement that was in place.

The remaining 20,700 migrants are allowed entry to the UK under Tier 2 – “*the skilled route*” (this number of ‘restricted certificates of sponsorship’ will be issued). As we have already detailed, the requirements remain the same in terms of individuals i) having to apply through the points-based system; ii) having to be of graduate level; iii) having to be sponsored by an employer; and iv) points being awarded based on scarcity of skills and salary. They also have to work for at least 30 hours per week and have their salary paid directly into their bank account.

In practice, the changes now mean that from April 2011, non-EEA migrants will be competing against other applicants for a visa to enter the UK and, in months when the limit is oversubscribed, only those with the most points will qualify for one of the certificates of sponsorship available each month (UKBA, 2010b). Notwithstanding this, only 1,028 of the 4,200 certificates of sponsorship available in April 2011 were taken up. It has been reported that this 'is not indicative of a lack of demand...rather it is a sign of confusion over the government's new system' (Migrants' Rights Network, 2011).

However, it must be noted that Intra-Company transfers are not part of the annual limit (an unlimited amount of transfers are allowed), although the regulations since April 2011 have changed in three main ways: first, the job has to be an occupation on the graduate occupation list; second, only those paid more than £40,000 per annum will be able to stay for more than a year (up to five years in total) and third, those paid between £24,000 and £40,000 will be allowed to come to the UK for no longer than 12 months, at which point they must leave and will not be able to re-apply for a further 12 months (again see UKBA website for more detail).

Furthermore, there is no restriction on the number of Tier 2 (General) certificates of sponsorship that can be assigned to non-EEA migrants earning over £150,000, or who are already in the UK and either have permission to extend their stay or who are eligible to switch into this category from another.

## **2.4 Concerns over the new system of 'managed migration'**

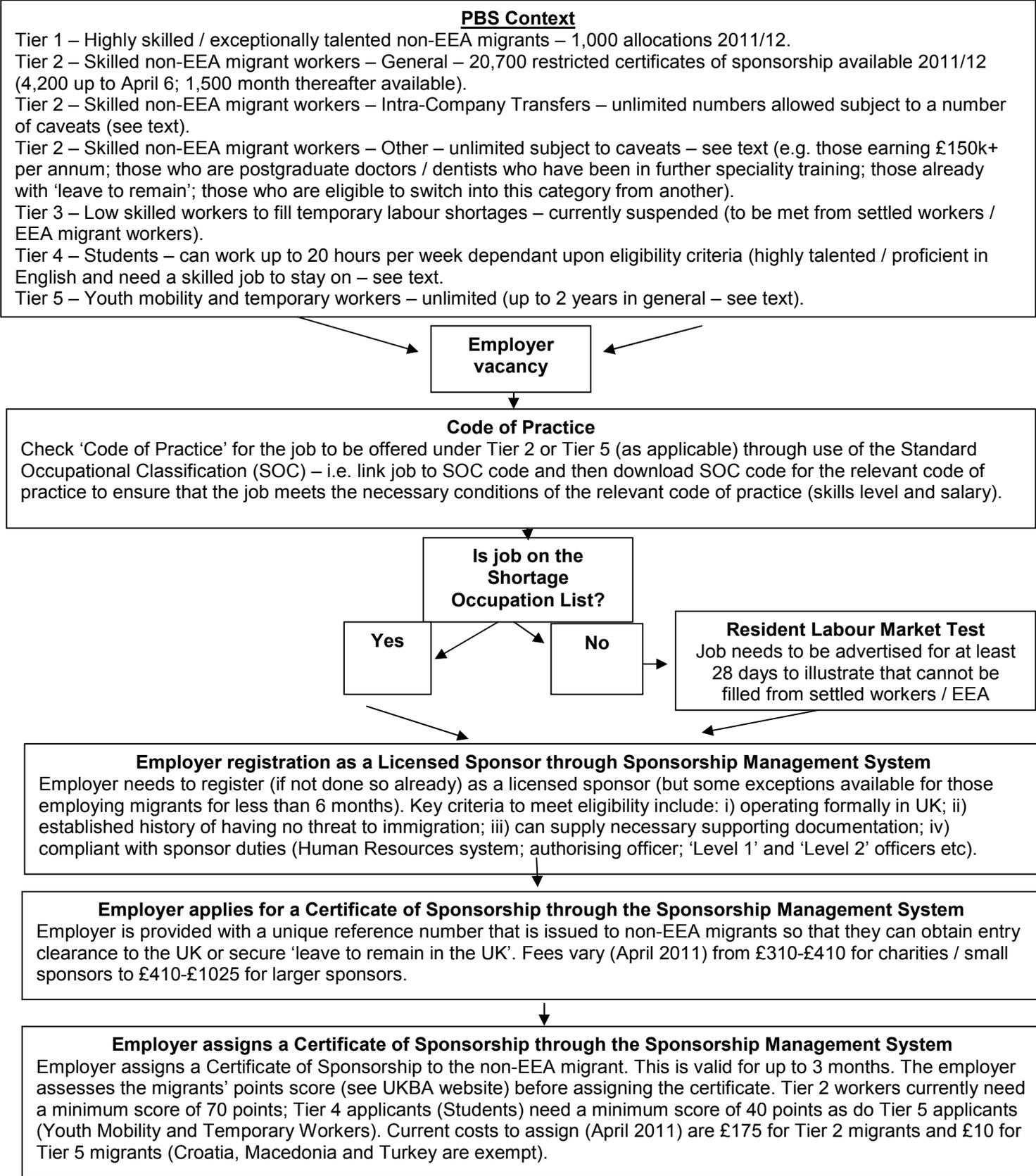
Despite the Government arguing that the permanent cap would be imposed in a 'flexible' way to aid the economic recovery, employers have raised concerns about the detrimental impact this will have on their competitiveness. Indeed, a recent MAC report (2010, p.10) highlights widespread concern amongst employers, who have argued that 'the restrictions could affect businesses' ability to be competitive, stunt economic recovery, and lead to reduced investment'. Scepticism has also been raised in relation to the ability to train indigenous British workers to fill vacancies that become available. Furthermore, the MAC report highlights gaps in the existing evidence base, particularly in relation to the social and public service impacts of migration (2010, p.17).

Consequently, although there appears to be a degree of acceptance of the need to reduce net migration to the UK (Sachrajda, 2010), it has been highlighted that the cap will have little overall impact. Indeed, the MAC report (2010, p.13) suggested that closing all non-EEA *work-related* migration routes would not bring net migration down on its own (this would only contribute 20% of the Government's target to reducing immigration from 196,000 in 2010 to 'tens of thousands' by 2015). Consequently, it is proposed that achieving the other 80 per cent will come from reducing student immigration (it is envisaged that there will be a 40 per cent reduction of the 325,000 who arrive in the UK each year) and through restricting family reunification and long-term rights to settlement. Nevertheless, the latter actions will clearly take time to filter through the system.

A more detailed discussion on the impact of the recent migrant cap on employers can be found in the following section.

## 2.5 Summary of key elements of sponsoring migrants from non-EEA countries under the Points Based System

The following diagram attempts to summarise key elements of the sponsoring process for non-EEA migrants that employers now need to be aware of in relation to the current operation of the PBS / migrant cap:



## **2.6 Further help and support**

For further help and support on the PBS, the following details are of relevance:

### **UK Border agency website**

<http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/eligibility/>

### **UK Border agency sponsorship and employers helpline**

0300 123 4699

### **UK Border agency email support**

[sponsorshipPBSenquiries@ukba.gsi.gov.uk](mailto:sponsorshipPBSenquiries@ukba.gsi.gov.uk)

For general enquiries on sponsorship; replies within two working days.

### **3. What has been the impact of the (UK's) managed migration system?**

Chapter 2 has highlighted the policy backdrop in relation to the 'managed migration' system in the UK and the introduction – from February 2008 – of the Points Based System (PBS) for migration from outside of the European Economic Area (EEA). It has also provided a comprehensive overview of the different Tiers of the PBS and the changes to these Tiers as a result of the government's cap on non-EEA migrants.

While the main purpose of this guide is to provide an understanding of the Points Based System and recent changes, it is also useful to explore some of the reported and potential impacts of the system. This chapter therefore draws on a range of secondary sources, including research reports, briefing papers, and press releases to provide an overview of some of the concerns that have been raised in relation to the PBS and cap on migration.

The first section focuses on issues raised in relation to the implementation of the Points Based System more generally, while the second section explores more recent debates around the new migrant cap.

#### **3.1 Concerns over the Points Based System (PBS)**

##### **Length of the process, increased administration and associated costs**

Recent research has highlighted an increase in the length of time it takes to get someone 'in post' under the Points Based System (PBS). The Greater London Authority (GLA) (2011), for example, commissioned an online survey to find out how arts and culture organisations and higher education institutions felt about the PBS and to explore the impact of the PBS on their organisation. This survey – which was based on 122 responses – highlighted that while organisations had an *expectation* that it should take 14 days to process the visa application, respondents reported that *in reality* it was taking up to 6 weeks.

The survey carried out by the GLA highlighted that organisations had been affected by increased administration tasks and costs as a result of the PBS. Of the 122 organisations they surveyed, for example, 82% had experienced increased administration tasks and 77% had experienced increased administration costs. The increases in administration and costs were due to processing certificates of sponsorship, sponsor licences and delays with visa processing and checks (as highlighted above). Indeed, 63% of the organisations who were surveyed indicated that at some point they had had to cancel or change an event at the last minute due to artists not being granted visas in time incurred. In these situations a number of the organisations had incurred a financial cost.

This issue was also highlighted in recent research carried out in the health and social care sector (see Pemberton and Scullion, 2010). The research involved in-depth interviews with HR and Equality and Diversity representatives from a number of NHS Trusts and social care providers. The respondents highlighted problems with the time associated with international recruitment, including delays in the application / sponsorship / visa process, but also the cost associated with filling the post in the

interim. An example given by a number of NHS Trusts was the onerous cost of paying agency locums to cover the role during the application process.

### **Concerns over interpreting the rules correctly**

As highlighted in Chapter 2, the system has created confusion for some employers (Migrants Rights' Network, 2011). Research on the health and social care sector, referred to above, found that employers were experiencing uncertainty in terms of whether they were interpreting immigration legislation correctly. Indeed, it was suggested that since the introduction of the PBS, employers – and especially those in the private sector – had become much more *cautious* about recruiting non-EEA migrant workers, even where fundamental skills gaps existed. Moreover, it was suggested that there had been a number of examples where employers had 'shedded' non-EEA workers for no reason apart from uncertainty over their rules of employment. In this particular study, while most of the HR and Equality and Diversity representatives felt that they had a general understanding of the PBS, there appeared to be conflicting perspectives on how such legislation was being interpreted and implemented both across and within different sectors, which was leading to a great deal of uncertainty on recruitment decisions. Consequently, it was felt that clear and informative guidance, but also a greater level of communication from the UKBA was vital for employers.

### **Lack of flexibility for certain sectors**

A key concern around the 'managed migration' system raised by employers in recent research relates to the perceived lack of consideration of the PBS to the needs of particular employment sectors. Looking at the findings of the GLA survey, referred to above, while a large proportion of respondents were positive about the PBS overall, it was felt that it could be improved to better meet the needs of the arts and culture sector. The example given in the report related to artists / academics falling into 'borderline' categories in the PBS, thus making them difficult to allocate under the Tier system. Consequently, it was felt that the current system was 'impacting on London's position as a world city for arts and culture' (GLA, 2011, p.1).

Similarly, research carried out with health and social care representatives highlighted concerns that the Shortage Occupation List was outdated, and needed to be much sharper in identifying speciality areas where labour shortages exist (Pemberton and Scullion, 2010). Moreover it was felt that definitions of occupations on the list needed to be more reflective of the diversity and specificity of roles within the health and social care sector, and that there should be a further system of review for 'one-off' situations, with greater flexibilities being granted for certain professions over others. Indeed, it has been noted in a recent Home Affairs Committee Report (2010) on migration that the social care and education sectors are most likely (in the medium term) to be adversely affected.

### **Equality impacts**

Finally, a further impact of the PBS related to concerns in relation to the equality implications. For example, the Equality Challenge Unit (2008), writing at a time when the PBS was being implemented, stated that the system would have equality implications for international staff and students subject to the PBS. They criticised the additional monitoring that Higher Education institutions (HEIs) would have to carry

out in terms of progress / attendance of students or the attendance of staff. With regards to staff, for example, the HEI would have a duty to report to the UKBA if a member of staff with a Tier 2 visa fails to start work at that HEI, or is absent for a period of 10 working days without prior granted permission. The Equality Challenge Unit (2008) felt that this could lead to 'clocking in and out' procedures targeted at particular staff members. Concerns were also raised over the increased likelihood of educational institutions facing 'unannounced' visits from the UKBA (Gilhooley, 2009).

### **3.2 Concerns over the recent cap on non-EEA migrants**

As highlighted in Chapter 2, in June 2010 the coalition government in the UK announced the introduction of a **temporary cap** on the number of workers from outside the European Economic Area (EEA) allowed entry into the UK, followed by a **permanent cap** from April 2011. The introduction of the temporary and permanent cap on non-EEA migrant workers is perceived as simply adding to a 'tightening up' of the use of such labour that had already become apparent since the introduction of the PBS in 2008 (Pemberton and Scullion, 2010). As such, it exacerbates the concerns highlighted above in relation to the PBS.

While the restrictions on Tier 1 and Tier 2 are seen to have little impact on reducing overall migration figures the impact on employers reliant on these workers is causing concern. As highlighted in Chapter 2, despite the government arguing that the permanent cap would be imposed in a 'flexible' way to aid the economic recovery, employers have raised concerns about the detrimental impact the cap will have on their competitiveness. The Migration Advisory Committee report (2010, p. 10) highlighted widespread concern amongst employers, who argued that 'the restrictions could affect businesses' ability to be competitive, stunt economic recovery and lead to reduced investment'. Given how recently the changes have been implemented there is currently little research focusing on the impact of the cap; however, this section provides an overview of some the key issues raised in recent publications in this area, including the research carried out by the authors in relation to the health and social care sector.

#### **Concerns over continuing skills shortages**

King's College London's HRM Learning Board published its third annual report on *The State of HR* (Clinton and Woollard, 2011). The report was based on a survey of 550 HR professionals representing a workforce of over 2 million. The survey highlighted that nearly half of the respondents worked at organisations employing non-EEA nationals; of these respondents over 40% reported a negative impact on their businesses due to the changes (Clinton and Woollard, 2011: 3). Indeed, the authors highlight that 'One of the key challenges facing organisations in 2011 is a skills shortage which, coupled with the tightening of immigration legislation and the introduction of the interim cap on the number of non-EU migrants employed by organisations, will serve to further exacerbate the problem' (ibid: 4). They go on to highlight that one in three organisations had reported experiencing a shortage of key staff in an area of their organisation, compared to just over one in five last year. The key shortages were predominantly in relation to professional, managerial or technical areas.

The concerns over skills shortages have been noted in particular by those sectors historically reliant on migrant labour. Taking the example of the health and social care sector, recent figures from the National Minimum Data Set for Social Care (NMDS-SC) show that more than a third of adult social care workers in England (35%) recruited in the 12 months to June 2010 were from outside the EEA (Lombard, 2010). Furthermore, Labour Force Survey (LFS) analysis suggests that almost one third of medical practitioners and approximately one fifth of nurses, dental practitioners and pharmacists currently working in the UK were born outside the EEA – a large proportion of which were from India (MAC, 2010).

While efforts are being made to increase the domestic supply of skilled labour in the medical profession, there are concerns about the length of time it takes to train people to the required skills levels. Indeed, a *Skills for Health* representative who took part in the MAC consultation on the migrant cap stated that:

'It is possible for the health sector to reduce its overall dependence on Tier 1 and Tier 2 migrants. However, to train and develop a health care professional can take years – and for those in consultant roles, sometimes decades' (MAC, 2010: 172).

Recent research carried out by Pemberton and Scullion (2010) in the health and social care sector highlighted ongoing skills shortages in the NHS, particularly in relation to medical specialisms such as Ear, Nose and Throat (ENT) consultants, cardiac nurses and middle grade doctors to work in Accident and Emergency (A&E) departments. The respondents in this study stated that non-EEA workers were vital to filling these skills gaps.

From a social care perspective, the sector is reliant on non-EEA labour to fill senior care worker shortages. Pemberton and Scullion (2010) highlighted shortages of skilled nurses / care workers, with the situation being compounded by the fact that the latter had now been omitted from the Shortage Occupation List due to it being primarily a non-graduate role. Furthermore, evidence from *Skills for Care & Development* in the MAC consultation suggested that a number of employers would not be able to continue to provide care services safely and legally without the continued recruitment of migrant workers.

The Association of Directors of Children's Services urged ministers to rethink the migration cap, with concerns that they will be unable to recruit experienced practitioners (such as social workers) – particularly in London and other metropolitan areas. This highlights the need to take 'regional variance' into account when considering the need for migrant workers and the roles they are required for (see section below for more discussion on concerns over geographical variation).

Furthermore, the Association of Directors of Children's Services stated that policy-makers had not taken into account the importance of staff from countries with similar training and legal systems to the UK (Lombard, 2010). This issue was reiterated by NHS representatives interviewed by Pemberton and Scullion, who highlighted that medical professionals who trained in countries such as Pakistan, India and Dubai had skills that were more transferrable to the UK health system than those from Central and Eastern Europe, for example. Linking in with this was the linguistic capabilities of non-EEA medical professionals who were often taught in English.

## Concerns over geographical variation

In addition to key concerns around ongoing skills shortages, recent research has also highlighted geographical variations in relation to the impact of the migrant cap. Pemberton and Scullion (2010) found that some of the more remote NHS Trusts, for example, felt that they were less likely to be able to entice skilled workers. This was seen to be an inevitable outcome of the further immigration restrictions being imposed as health and social care employers competed with each other to fill vacancies, with claims that intra and inter-regional disparities in the recruitment and retention of such individuals were becoming evident between more remote (rural) areas and more accessible (urban) areas. A number of NHS representatives argued that the PBS needed amending to respond to geographical variations in labour market conditions and the supply and demand of both (skilled) domestic and migrant labour. On the flip-side of the 'urban-rural' debate, due to the size and volume of caseloads that social workers frequently face in urban areas, a number of metropolitan local authorities had strongly argued for a relaxation in the number of permits / certificates of sponsorship they can secure in order to ensure that they have enough skilled social workers / care workers to meet existing demands (Lombard, 2010).

The geographical variation, however, can also be noted in relation to widening North-South divide. For example, after intense lobbying from many companies within the City of London, as well as umbrella-organisations such as the Confederation of British Industry (CBI), a decision was made to *exclude* non-EEA employees transferred by UK-based companies from abroad from Tier 2 of the PBS (MAC, 2010). Such individuals can now stay for up to 5 years in the UK if their salary exceeds £40,000 per annum. Furthermore, firms are also allowed to bring members of staff to work in the UK for up to a year if their job is in Information and Communications Technology (ICT) and their salary exceeds £24,000 per annum (MAC, 2010). Interestingly, an earlier commentary on managed migration by Amicus (2006) questioned the increasing number of intra-company transfers for ICT professionals, stating that 'it is not obvious why many of these skills are not available in the UK from the resident labour force', particularly when there were 'around 10,000 redundancies per quarter amongst [UK] IT professionals'.

To summarise, it appeared that concessions on the implementation of the PBS were privileging certain territories and actors (businesses) operating in particular sectors over others, with London and the South East of England most likely to benefit from the above changes compared to other parts of the UK.

## Concerns over the system acting as a deterrent

Concerns have been raised by NHS Employers (2010), who argue for the need to ensure that the UK remains an attractive destination for highly skilled clinical staff. They make reference to the global shortage of healthcare professionals and also highlight the active global recruitment campaigns of other countries (such as Australia and Canada). This issue was reiterated in research by Pemberton and Scullion (2010) where respondents highlighted that the 'managed migration' policy would deter suitably qualified and experienced applicants from applying in the future, with some suggesting that those who traditionally had viewed the UK as a preferred destination were now actively seeking employment elsewhere in the world.

In a similar vein, UK universities have also expressed their concerns about the impact of the cap on their ability to compete for international staff. Currently around 10% of their academic workforce is comprised of non-EEA nationals, particularly in science, technology, engineering and mathematics subject areas, with the top five nationalities being American, Chinese, Indian, Australian and Canadian (Home Affairs Committee Report, 2010). It was therefore felt that consideration was needed in relation to the attractiveness of the UK compared to other countries – particularly as it becomes more difficult to enter the UK.

These concerns, however, were not just raised in relation to employment but also in relation to student migration. Cunnane (2011), for example, writing before implementation of the student cap highlights that the chief executive of the Australian international student recruitment agency – IDP Education – had reported that students had already been discouraged from applying to the UK and were looking at alternatives as UK was perceived to be ‘toughening up’. Given how recently the changes to the student immigration system have been implemented there are very few publications on the impact. However, the All-Party Parliamentary Group on Migration (2011) have called for ‘full and frank’ economic assessment of international student reforms, while the Higher Education Better Regulation Group (HEBRG) are undertaking a project to explore the impact on UK higher education institutions of complying with the PBS and Tier 4 (General Students) in particular. This project seeks to identify any areas where HEIs’ workload is perceived to have increased as a result of the changes.

### **Changes in recruitment patterns**

Finally, a press release issued by a large London recruitment agency made reference to changes in recruitment patterns which could be attributed to the cap in immigration (Poolia, 2011). The press release highlighted that there had been ‘a switch in demand from temporary to permanent placements in January 2011’, which was deemed as a ‘stark contrast’ to the recruitment patterns 12 months ago. Poolia suggest that ‘one interpretation of this data is that businesses are shifting the emphasis of their recruitment away from a reliance on short-term workers in advance of the government’s cap on migrant visas...in order to protect themselves from a shortage of a skilled temporary workforce’.

## **4. Conclusions: Moving forward and potential future impacts**

From this brief analysis it is apparent that the current system for managing migration to the UK is by no means straightforward – both in respect of understanding issues concerning eligibility to work and in terms of the actual impact of current immigration policy in geographical terms and in relation to specific sectors. Indeed, some have already commented that the revised guidance issued as part of the imposition of the recent cap on non-EEA workers is privileging wealthy investors and entrepreneurs from overseas whilst tightening entry / ‘leave to remain’ requirements for others (Home Affairs Committee, 2010).

It is therefore likely that the migrant cap will come under increased scrutiny over the next 12 months and against a number of different criteria, including the extent to which the needs of UK businesses are being met; the extent to which settled workers’ skills can be enhanced in the short-term to meet any gaps that are currently evident; and the impact on the UK’s global trade and investment as a consequence of the imposition of additional barriers to entry.

Equally, given that intra-company transfers accounted for 60% of all Tier 2 visas in 2009 and 40% of all Tier 1 and Tier 2 combined (Home Affairs Committee, 2010), the fact that many such transfers are exempt under the current arrangements means that the cap (as it stands) is likely to have only a minimal impact on reducing net immigration (by one or two per cent on average; MAC, 2010).

There is also a need to consider how the removal (on 1 May 2011) of the transitional arrangements for nationals of the A8 countries which joined the EU in 2004 will affect their access to labour markets and state support systems, and how this will impinge on the UK. In essence, such individuals are now no longer required to register under the Worker Registration Scheme (WRS) if they want to work in the UK, and in general terms, if they lose their job, they are likely to be entitled to housing and welfare benefits. A key question, therefore, is whether this will lead to an increase in A8 migrants seeking to access the UK’s welfare system and whether those already in the UK become more welfare dependent. If this does occur, it may become more difficult for employers to recruit workers for lower-skilled positions and lead to demands to open up Tier 3 of the PBS which is currently suspended.

In addition, given that Germany and Austria have now opened up their labour markets consideration is needed as to whether or not this will lead to the UK becoming an increasingly less attractive place to migrate for A8 nationals. Again, this may necessitate a re-assessment of the PBS and the migrant cap currently in place as there could be a risk of a general decline in both the quantity and quality of applicants from both non-EEA and EEA countries seeking to work in the UK. In this respect, there is already a degree of scepticism that EEA migrants offer a suitable alternative to non-EEA migrants due to their differing skills sets and experiences, their linguistic capabilities and their propensity to seek work in particular sectors (see Bach 2010; Crisp, 2007; Pemberton and Scullion, 2010).

Practically, a number of steps could be taken given some of these uncertainties. From an employer perspective, there could be a greater emphasis placed on planned recruitment and on enhanced (long-term) workforce planning that is linked to current immigration policies / procedures (Pemberton and Scullion, 2010). From a

government perspective, there is a need to prepare for a potential increase in undocumented working or unofficial employment. Whilst this is widely acknowledged to be taking place throughout the EEA (Markova and McKay, 2008), the PBS and imposition of the migrant cap in the UK may considerably exacerbate such issues and increase vulnerable or exploitative labour situations (for example trafficking and forced labour; see Kalayaan, 2008).

The tightening of Tier 4 legislation on numbers of non-EU students allowed to study in the UK will also have financial impacts, and these again will be geographically uneven. For example, Kyte and Muchenje (2011) have calculated that in London, fees for Higher Education Institutions (HEIs) may have to rise between £300 and £900 per annum. They suggest the impact would be greater in London than elsewhere given high proportions of non-EU students attending some London universities.

Furthermore, a briefing paper published by the Institute for Public Policy Research (IPPR) (see Mulley and Sachrajda, 2011) suggests that drastic reductions in student immigration to the UK will only deliver small reductions in net migration, given that very few stay long-term or permanently. Conversely, they suggest that there is a risk that the proposed changes will impose substantial costs on the education sector and wider economy (for example, they note that international student expenditure on and off-campus accounts for about £5 billion, and if further education (FE) and private sector colleges are included, this figure rises to £8-10 billion).

To conclude, there needs to be an ongoing discussion in respect of the current merits of the PBS and non-EEA migrant cap given the former's emphasis on controlling the quality of migrants arriving in the UK through different forms of selection criteria and the latter's emphasis on controlling the overall quantity of migration. Any system based on selection alone cannot define an exact level of immigration but setting a cap can be impossible in respect of defining an optimal number of migrants that should be allowed in. A third alternative could be focused around charging employers a 'foreign-worker levy' based on the numbers of migrants currently employed, the skills required for the job and / or sector. However, the key here would be to appropriately define such a 'levy' and to ensure that employers did not try to recover this from migrants' wages (McNeill, 2011). This illustrates neatly the politics of migration and the need to carefully consider the differential needs of employers, communities and governments alike, and how these may vary across time, space and by occupational sector.

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