

# **Analysis of settlement of migrants using Tiers 1 and 2 of the Points Based System**

**Call for evidence**

**Migration Advisory Committee**

June 2011



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## 1. The Migration Advisory Committee's commission

1. On 9 June 2011, the Government launched a public consultation on settlement of Points Based System (PBS) Tier 1 and Tier 2 migrants, Tier 5 migrants and overseas domestic workers<sup>1</sup>. Proposals made in the consultation document included the following, with changes to be applied to those entering the PBS from April 2011:

- Categorise all visas as either 'temporary' or 'permanent'. Permanent visas will be those which allow migrants to apply for settlement (Indefinite Leave to Remain) in the UK.
- Consider capping the maximum period of Tier 1 temporary leave at five years and restricting the number of exceptional talent migrants granted settlement.
- Define Tier 2 as temporary and thereby end the assumption that settlement will be available for those who enter on this route.
- Consider whether certain categories of Tier 2 migrant (for example, ministers of religion, elite sportspeople, those earning over £150,000 and those in occupations of specific economic or social value to the UK) should retain an automatic route to settlement.
- Create a new category into which, after three years in the UK, most exceptional Tier 2 migrants can switch and go on to apply for settlement.
- Apply robust selection criteria to those Tier 2 migrants who wish to switch and possibly a limit on the total number of migrants allowed to switch.
- Allow those Tier 2 migrants who do not switch into a settlement route to stay for a maximum of five years with the expectation that they and any dependants will leave at the end of their leave.

2. In parallel to this Government consultation, the Government commissioned the Migration Advisory Committee (MAC) to consider and provide advice on the following question:

*What would be the economic effects of restricting or removing settlement rights in Tiers 1 and 2 and/or restricting leave to a maximum of 5 years?*

*If settlement were to be restricted:*

*i. which economic criteria could be used to identify the most economically important Tier 2 migrants for settlement?*

*ii. would there be merit in making allowance for specific skills or occupations as part of the assessment criteria, based on factors including strategic economic importance, provision of key public services, and ensuring that the UK attracts the top global talent?*

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<sup>1</sup> [www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/employment-related-settlement/](http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/employment-related-settlement/)

## 2. The MAC's call for evidence

### 3. We are seeking views and evidence in relation to supplementary questions set out in section 4 and summarised at the end of this document.

Corporate partners are invited to submit material to this call for evidence. 'Corporate partners', or just 'partners', refers to 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. The MAC is required to report to the Government by the end of September 2011. Therefore **responses to the call for evidence must be received by the closing date of 31 August 2011.**

4. The MAC secretariat is available to answer any questions you might have. Contact details and information on how to submit evidence are provided at the end of this note. Please note that, unless you specifically tell the MAC otherwise, it will be assumed that your response to the call for evidence can be described in MAC publications. The MAC may quote from all evidence where relevant, unless specifically requested not to do so. You should also be aware that under the Freedom of Information Act 2000, the MAC may be obliged to release evidence in the future.

## 3. Policy and data context

### Settlement rights

5. After living in the UK for a certain length of time some PBS Tiers 1 and 2 migrants may apply to settle here. In this document this is referred to as the right to 'settlement' but is also sometimes known as 'indefinite leave to remain' or 'permanent residence.'

6. Once a person has obtained settlement, he or she is entitled to live in the UK permanently, without immigration restrictions, to travel freely into and out of the UK and to access state benefits, including access to the NHS on the same basis as a British citizen. A person present and settled in the UK may sponsor an immigration application, for example to be joined by a spouse or an elderly dependent relative; and a child born in the UK to a settled parent will be a British citizen.

7. Settlement is not the same as citizenship; it does not entitle a person to a British passport, or to vote in general elections. However, a person in the UK without time restrictions attached to their stay may apply for naturalisation as a British citizen.

8. Settlement rights may be lost if a person lives outside the UK for more than two years, but otherwise settlement rights are generally only removed in cases of fraud or deception, or where a person is liable to deportation or removal but they cannot be deported for legal reasons.

### Economic routes to settlement in scope for this review

9. The following migration routes are the focus of this call for evidence:

- The Tier 2 (General) **Resident Labour Market Test (RLMT)** route enables employers to bring an employee from abroad to fill a vacancy in the UK if it

has not proved possible to employ a worker from the resident labour market. The job needs to be skilled to National Qualifications Framework level 4 or above (NQF4+).

- The Tier 2 (General) **shortage occupation** route enables migrants to come to the UK to work in certain occupations and job titles on the shortage occupation lists for the UK and Scotland. Occupations need to be skilled to NQF4+ and experiencing a shortage of labour that would sensibly be filled from outside the EEA. The lists are periodically reviewed.
- The Tier 2 **ministers of religion** route is for ministers of religion undertaking preaching and pastoral work, missionaries or members of religious orders, taking up employment or a post/role within their faith community in the UK.
- The Tier 2 **sportspeople** route is for elite sportspeople and coaches whose employment will make a significant contribution to the development of their sport at the highest level.
- The Tier 1 **exceptional talent** route is for migrants who are internationally recognised as world leaders or potential world leaders in science or the arts. A designated competent body must endorse entry through this route.

10. Ministers of religion, sportspeople and those Tier 2 General migrants earning over £150,000 annually are exempt from the annual limit on Tier 2 migration for 2011/12. All other main migrants coming from outside the UK through the routes listed above are subject to a limit on entry of 21,700 in 2011/12. Dependants and in-country switchers to Tiers 1 and 2 are not directly subject to the limit.

### **Other Tier 1 and Tier 2 routes**

11. This call for evidence is not concerned with the following routes:

- The Tier 2 intra-company transfer route enables employers to send skilled employees to work in the UK offices of their company. It is not a route to settlement.
- The Tier 1 investors route is for high net worth individuals making a substantial financial investment in the UK. Investors can qualify for settlement after a two, three or five year period.
- The Tier 1 entrepreneurs route is for migrants who wish to establish, join or take over one or more businesses in the UK. Entrepreneurs can apply for settlement after a three or five year period.

### **Acquiring settlement**

12. To qualify for settlement after five years, Tier 1 and 2 migrants will generally need to show they have spent a continuous period of five years lawfully in the UK and demonstrate knowledge of the English language and life in the UK. Criminal convictions will usually act as bar to settlement.

13. With regard to migrants in the UK under the Tier 2 **RLMT** or **shortage occupation** routes, the sponsor who issued the Certificate of Sponsorship that led to the applicant's last grant of leave must also certify in writing that (i) he still requires the applicant for the employment in question, and (ii) that the applicant is paid at or above the appropriate rate for the job as set out in the relevant UK Border Agency Code of Practice for sponsored skilled workers.

14. There are no requirements additional to those set out in paragraph 13 above for persons in the UK under the **sportspeople** or **ministers of religion** routes applying for settlement.

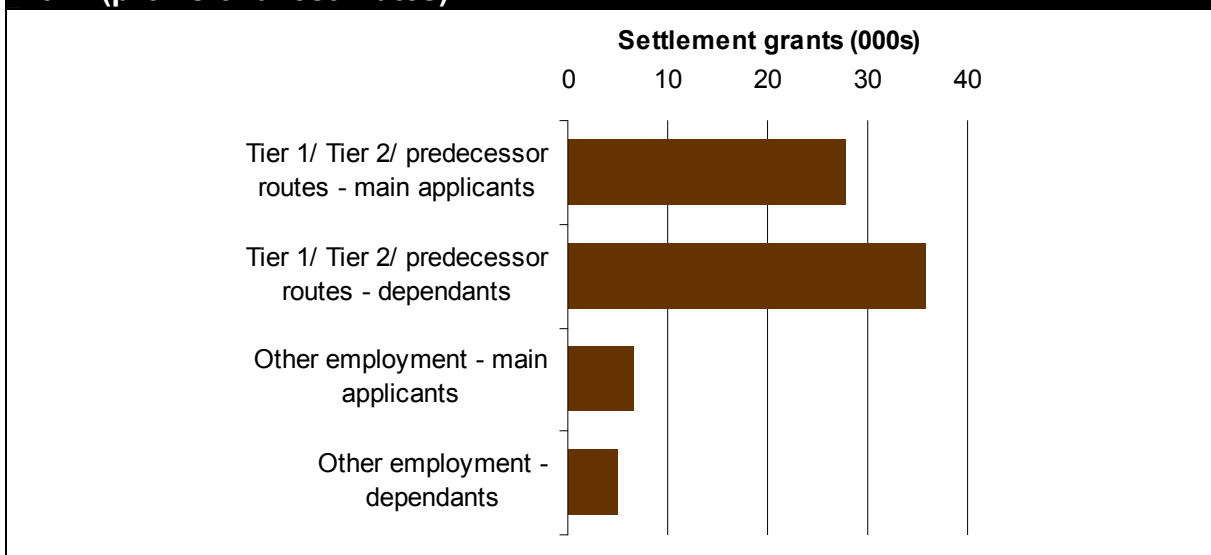
15. To qualify for settlement through the Tier 1 **exceptional talent** route, the applicant must be economically active in his expert field as previously endorsed by a designated competent body, in employment or self-employment or both. The designated competent body must not oppose the current application on the grounds that the applicant is not operating in his expert field.

16. Dependants are eligible to apply for settlement at the same time as the principal migrant, as long as they have lived with him or her in the UK for a minimum of 2 years. Children are usually eligible to apply for settlement at the same time as their parents.

### Settlement data

17. Figure 1 provides data on the composition of recent employment-related settlement grants. The majority of such grants were to migrants using Tiers 1 or 2 of the PBS or predecessor routes. There were more grants to dependants than to main applicants. Figure 2 shows that the number of employment-related grants has increased in recent years.

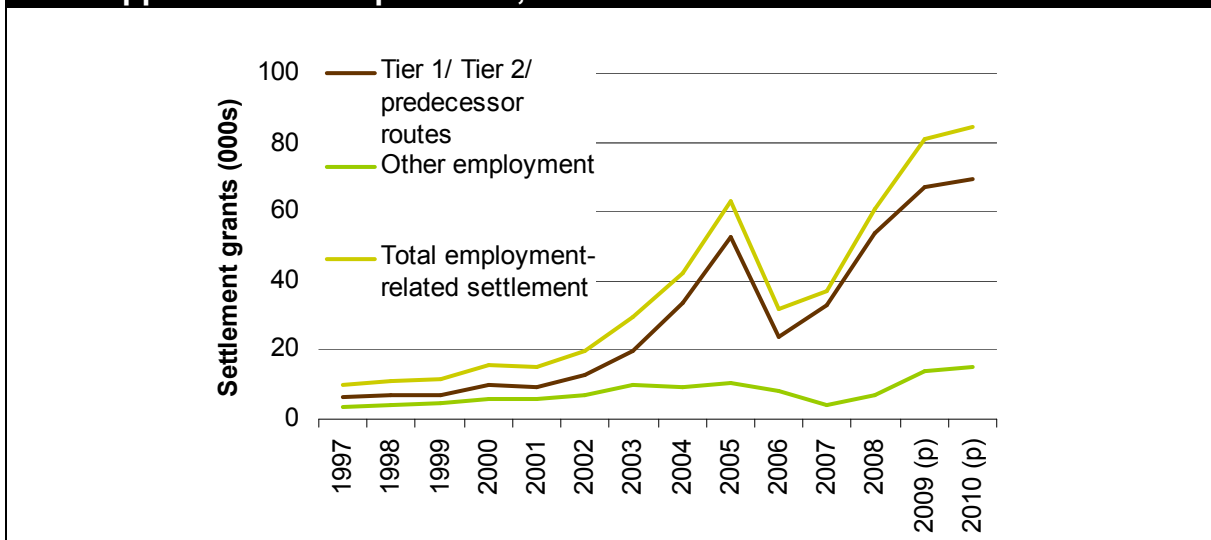
**Figure 1: Employment-related settlement grants by category, Q2 2010-Q1 2011 (provisional estimates)**



Note: 'Other employment' includes settlement grants to main applicants (and their dependants) in permit-free employment; businessmen; persons of independent means; and commonwealth citizens with a UK-born grandparent.

Source: Control of Immigration statistics: Q1 2011

**Figure 2: Employment-related settlement grants by category and by year, main applicants and dependants, 1997-2010**



Note: 'Other employment' includes settlement grants to main applicants (and their dependants) in permit-free employment; businessmen; persons of independent means; and commonwealth citizens with a UK-born grandparent. Provisional estimates (p).

Source: Control of Immigration statistics: Q1 2011, 2009, 2004 and 2001

18. As explained above, entry of main out-of-country applicants under certain Tiers 1 and 2 routes is limited in 2011/12. Those who entered the UK in or after April 2011, when the limit was introduced, are the focus of this report. The limit and associated policies may influence the total number of employment-related migrants wishing to apply for settlement in future years.

#### 4. Call for evidence questions

19. The Government has asked the MAC what the economic effects would be of restricting or removing settlement rights in Tiers 1 and 2 and/or restricting leave to a maximum of five years.

20. As discussed in Migration Advisory Committee (2010)<sup>2</sup> potentially relevant economic impacts of migration include those on: economic growth and Gross Domestic Product (GDP) per capita; the labour market; and the Government's budget (also known as the net fiscal impact).

21. The economic impact of restricted rights to residence and settlement would not be simply equivalent to the foregone output of the individual migrants affected. Subject to the annual limits on Tiers 1 and 2, employers will be able to employ new migrants even if existing migrant employees cannot remain indefinitely in the UK. Other issues for consideration include: whether restrictions on length of stay are likely to deter highly skilled migrants from coming to work in the UK in the first place; whether the propensity of migrant workers to enhance the productivity of, or

<sup>2</sup> [www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/mac-limits-t1-t2/](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/mac-limits-t1-t2/)

substitute for, UK workers changes with length of stay; the role of migrants in providing essential public services; and how the net fiscal contribution of migrants and their dependants changes over time as they age and establish families.

22. We are therefore inviting evidence in relation to the questions below about the **effects of restricting or removing settlement rights and/or restricting leave to a maximum of five years** under the RLMT, shortage occupation and exceptional talent routes. We are interested in impacts on individual firms and sectors as well as those at the whole-economy level.

**Q1. What would be the effects on the growth of specific firms, sectors and occupations, and on UK GDP and GDP per capita? This would include impacts on productivity, trade, investment and on attraction of highly skilled migrants to the UK.**

**Q2. What would be the effects on employment opportunities and pay of current permanent UK residents in the labour market as a whole and at the firm, sectoral and occupational level?**

**Q3. What would be the effects, over time, on consumption and provision of public services and benefits and tax payments?**

**Q4. To the extent that negative effects are anticipated, how will employers adapt? Will they replace migrants who have to exit the UK with other migrants, accelerate efforts to upskill and retrain the resident workforce, or adjust in other ways?**

23. The Government has also asked that MAC whether, if settlement were to be restricted, which economic criteria could be used to identify the most economically important Tier 2 migrants for settlement. It has also asked whether there would be merit in making allowance for specific skills or occupations as part of the assessment criteria, based on factors including strategic economic importance, provision of key public services, and ensuring that the UK attracts the top global talent. Other possible criteria include: pay, or a combination of salary and pay; academic, professional or vocational qualifications; working in a recognised shortage occupation; or criteria set by competent professional bodies. We are inviting evidence in relation to the following question.

**Q5. If economic criteria were used under Tier 2, what criteria should be used to identify settlement candidates?**

- Salary, or a combination of salary and age;
- Academic qualifications;
- Professional/vocational qualifications;
- Pre-determined sectoral or occupational groups;
- Working in a recognised shortage occupation at the time of the settlement decision;
- Criteria set by competent professional bodies;
- Other (please specify); and/or
- No opinion.

24. The above question is equivalent to question 12 in the Government's consultation paper. Partners are free to submit the same response to both the Government consultation and this call for evidence. The MAC would also find it helpful if partners could expand on their views and provide supporting evidence. In relation to some specific lines of enquiry that the MAC wishes to pursue, partners are particularly invited to provide further evidence on any or all of the questions below.

**Q6. Should the pay or income criteria for *settlement* of Tier 2 migrants differ from the time of *entry*? To what extent should candidates for settlement show evidence of economic progression during their time in the UK?**

**Q7. Should age be considered alongside pay, on the basis that, on average, younger migrants have more years of economic activity ahead of them than older migrants?**

**Q8. Is the long-term economic value of professional and vocational qualifications always reflected in levels of pay? If not, why not?**

**Q9. Does attraction and retention of top global talent in certain sectors or occupations make a particularly valuable long-term or strategic economic contribution or a crucial contribution to key public services? If yes, will the list of such sectors and occupations change over time?**

**Q10. Should competent professional bodies have a role in deciding which Tier 2 migrants can settle permanently in the UK, and what form might that role take?**

**Q11. For those Tier 2 routes for which access to settlement is determined on the basis of objective criteria, should the criteria used differ between routes (RLMT, shortage occupation, ministers of religion, sportspeople)? If yes, why and how?**

## **SUMMARY OF HOW TO SUBMIT EVIDENCE**

The MAC invites evidence by **31 August 2011** relating to the following questions about **the effects of restricting or removing settlement rights and/or restricting leave to a maximum of five years under the RLMT, shortage occupation and exceptional talent routes.**

**Q1. What would be the effects on the growth of specific firms, sectors and occupations, and on UK GDP and GDP per capita? This would include impacts on productivity, trade, investment and on attraction of highly skilled migrants to the UK.**

**Q2. What would be the effects on employment opportunities and pay of current permanent UK residents in the labour market as a whole and at the firm, sectoral and occupational level?**

**Q3. What would be the effects, over time, on consumption and provision of public services and benefits and tax payments?**

**Q4. To the extent that negative effects are anticipated, how will employers adapt? Will they replace migrants who have to exit the UK with other migrants, accelerate efforts to upskill and retrain the resident workforce, or adjust in other ways?**

The MAC also welcomes evidence in relation to the following questions:

**Q5. If economic criteria were used under Tier 2, what criteria (see list on page 6) should be used to identify settlement candidates?**

**Q6. Should the pay or income criteria for settlement of Tier 2 migrants differ from the time of entry? To what extent should candidates for settlement show evidence of economic progression during their time in the UK?**

**Q7. Should age be considered alongside pay, on the basis that, on average, younger migrants have more years of economic activity ahead of them than older migrants?**

**Q8. Is the long-term economic value of professional and vocational qualifications always reflected in levels of pay? If not, why not?**

**Q9. Does attraction and retention of top global talent in certain sectors or occupations make a particularly valuable long-term or strategic economic contribution or a crucial contribution to key public services? If yes, will the list of such sectors and occupations change over time?**

**Q10. Should competent professional bodies have a role in deciding which Tier 2 migrants can settle permanently in the UK, and what form might that role take?**

**Q11. For those Tier 2 routes for which access to settlement is determined on the basis of objective criteria, should the criteria used differ between routes (RLMT, shortage occupation, ministers of religion, sportspeople)? If yes, why and how?**

If evidence cannot be cited in MAC reports this will limit its scope to influence MAC recommendations. The MAC will assume evidence has *not* been provided in confidence unless specifically told otherwise.

Please send responses to:

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1<sup>st</sup> Floor, Green Park House  
29 Wellesley Road  
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CR0 2AJ

Or email to: [mac@homeoffice.gsi.gov.uk](mailto:mac@homeoffice.gsi.gov.uk)

For further advice please call 020 8760 2812