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Immigration, politics and quotas

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DUE TO THE CURRENT ECONOMIC CLIMATE, immigration has continued to generate a great deal of media interest in the need to bring foreign workers to the UK to participate in the UK labour market. At the same time, immigration continues to remain at the front of huge political debates, in particular the impact of migration on the availability of work for resident workers and social infrastructure.

Immigration played a huge role in the just concluded UK parliamentary elections, with each political party promising to reduce the number of migrants entering the UK. However, with the elections now over and no party obtaining a clear majority to single-handedly implement its own policies, it appears that the newly formed government has agreed to adopt the Liberal Democrat approach on introducing caps on the number of migrants allowed into the UK over a given period.

Although all three main political parties share the view that stronger measures to curb immigration are required, in practice it is difficult to implement a policy that would balance the need to bridge the skills gap in the UK, while at the same time alleviating the impact immigration has on social amenities.

This article will try to identify some of the challenges that we believe employers, schools, immigration practitioners and even the general populace may face should caps be introduced in the UK.

POINTS-BASED SYSTEM (PBS)

As part of the last government's efforts to evidence that immigration was firmly under control, in 2008 it implemented one of the biggest changes in UK immigration for 40 years and brought about the introduction of the PBS.

The PBS – the current operating policy – is modelled on the Australian style of immigration and this is currently made up of five tiers that are briefly discussed below.

Tier 1

This is a category for highly skilled people and is sub-divided into four categories:

- General – application essentially mirrors the former highly skilled migrant scheme,

where individuals are required to score a minimum of 75 points for their application to be successful. Should an application be successful the applicant is granted a visa for an initial two-year period that can be extended for an additional three years.

- Post-study – this is another type of visa that enables applicants who have graduated from a UK university within the past 12 months to stay in the UK and access the labour market. Successful applicants are granted a period of two years. However, this type of visa cannot be extended and applicants are required to transfer into a different immigration category should they decide to remain in the UK.
- Investor – this enables high-net-worth individuals to live in the UK. Applicants must have a minimum of £1m out of which a minimum of £750,000 must be invested in the UK.
- Entrepreneur – this is for those applicants who have a minimum of £200,000 to invest in a UK business. The applicant is also required to hire two individuals on setting up their business in the UK.

Tier 2

These applications are normally sponsored by employers who either wish to transfer their employees to the UK or wish to hire a new recruit. This category is currently divided into two types:

- General – this is for those jobs that cannot be filled by a resident worker or that appear on the shortage occupations list. For a migrant to work under this category the employer must first advertise the position to enable EU and European Economic Area (EEA) applicants to apply for the role.
- Intra-company transfers (ICTs) – this is for multinational companies to transfer an overseas employee to a skilled job in the UK branch of the company. However, in line with the changes introduced on 6 April 2010, this category was sub-divided into several categories:
 - a) established staff – this is for those employees who have worked for

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their employers for a minimum of 12 months and are transferred to the UK;

- b) skills transfer – this is for those employees who have worked for a multinational company and are being transferred to the UK branch of the same organisation in a graduate occupation to learn the skills and knowledge while still performing their job overseas, or to impart specialist skills to the UK workforce; and
- c) graduate trainee – this is for recent graduates of a multinational company that are being transferred to the UK branch of the same organisation as part of a structured graduate training programme, which clearly defines progression towards a managerial or specialist role.
- d) minister of religion – this is for ministers of religion undertaking preaching and pastoral work, missionaries or members of a religious order, taking up employment or a post/role within their faith community in the UK.

Tier 3

This category is currently suspended but caters for low-skilled workers. Since the last government believed these numbers could be made up from the EU, this category has yet to be activated.

Tier 4

This category currently caters for all students who are from non EU and EEA countries. Each student is now required to be sponsored by their educational institution and is issued with a confirmation of acceptance of studies (CAS) before being granted a visa to take up their studies in the UK.

Tier 5

This enables individuals to enter the UK for a short period to take up temporary work before returning to their country of origin. This category has also been sub-divided into three categories:

- Youth mobility worker – this essentially mirrors the old working holidaymaker

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scheme with a few amendments. However, it enables applicants under the age of 30 from certain countries to enter and work in the UK for two years.

- Temporary worker – this category was created to enable individuals to take up temporary employment in the UK. An example of this is interns. However, the applicants need to be issued with a certificate of sponsorship by an overarching body that has previously been approved by the UK Border Agency. There are currently 43 registered overarching bodies allowed to issue certificates of sponsorships to applicants.
- Creative and sporting persons – this enables artists, entertainers or sports people to enter the UK to perform at a particular event. With sports people, the applicants must be internationally established at the highest level of their sport and their presence will make a significant contribution to sports.

ID CARDS

In January 2010 the Labour government introduced mandatory identity cards for British citizens under the age of 18 and all migrants from outside the EEA when applying to extend their permission to stay for more than six months under Tier 2 and Tier 4 of the PBS. Applicants are currently required to submit both their fingerprints and digital photographs as part of their application to extend their stay.

The new coalition government on the other hand has agreed to scrap ID cards in light of the breach of the freedom of individuals. Unfortunately, no clear guidance has yet to be released on whether they will scrap ID cards for migrants. However, it appears that these have already been scrapped for UK citizens under the age of 18.

CAPS ON IMMIGRATION

Since 2007 the Labour government implemented restrictions on unskilled immigration with the introduction of the PBS.

The Conservative and Liberal Democrat coalition government has already agreed that there should be an annual limit on the number of non-EU economic migrants admitted into the UK to live and work.

While there has been no major consultation on the idea of an immigration cap yet, from all indications it appears that the cap will only be introduced to Tier 2 skilled migrants of the PBS. This means that employers who sponsor skilled workers by hiring them or transferring them from their overseas office will be affected by the new limits.

The question, however, is whether these new measures will really have any impact on immigration numbers of low-skilled overseas workers and if these caps were to be introduced to other categories of the PBS what impact would it have on other sectors of the economy.

Currently, if a job is not on the shortage occupation list, a skilled worker can still be issued with a certificate of sponsorship for the job, but employers are then required to advertise the position. However, where the employer can demonstrate, after advertising, that there is no suitably qualified resident or EU citizen candidate available to fill the vacancy, a sponsorship certificate can be issued to the non-EU citizen.

According to recent statistics 70% of immigration to the UK comes from the EU and as long as the UK is part of the EU it is almost impossible to curb the influx of low-skilled EU workers that leads to the displacement of the UK unskilled working class.

In light of this it is almost impossible to monitor the total number of EU nationals entering the UK or taking vacancies that could be filled by UK nationals.

Worker Registration Scheme

The Worker Registration Scheme was introduced to monitor the work that eastern Europeans undertake in the UK. Currently, it is unlikely that the new government will scrap the working restrictions for eastern Europeans but, as this will automatically come to an end in 2011 in accordance with the European Treaty of Accession, it will be interesting to see whether the government will implement any measures to keep track of the number of migrants entering the UK to take up employment.

Unfortunately, the UK cannot withdraw from the EU treaty and therefore no limit can be placed on low-skilled EU workers. However, tighter monitoring of the minimum wage will prevent employers from giving preference to EU workers, who are willing to work for a much lower salary than UK nationals.

CONCLUSION

Provided the UK continues to remain a destination of choice for both businesses and individuals alike, immigration will continue to generate a great deal of attention from the media.

While we agree that it is important to monitor and provide appropriate border control measures, it would be wrong to underestimate the importance and contribution that migrants make to the UK economy as there is significant evidence to confirm that migration has led to economic growth in the UK.

Non-EU immigrants are already contributing to public services by way of tax contributions, National Insurance payments and the high application fees for immigration applications. Presently, non-EU migrants are unable to claim any public funds and must evidence sufficient funds in their possession before being allowed to enter the UK.

In looking at Tiers 1 to 5 of the PBS it is difficult to determine under which category these caps will be introduced. On the basis that most UK universities currently depend on foreign students for the majority of their funding it will be catastrophic to introduce caps to this sector and this is the case for most of the other categories.

It is for this reason that we believe that any proposed cap will have a negative impact on the skilled workers that the UK relies on to provide skills that are not readily available in the UK and will bring no solution to the

unemployment of unskilled UK nationals. The UK needs skilled individuals to maintain its economic attractiveness, in particular for London to continue to be seen as the centre of international business and finance. As global competition for highly skilled migrants increases in future years, schemes to retain migrants in the UK may become as important as attracting them in the first place.

While no concrete details are yet to be rolled on how these caps will work, it is hard to imagine an executive director of an investment bank, a consultant on the NHS or the likes of Didier Drogba being denied entry to the UK on the basis that the quota for whichever category they wish to enter the UK has been filled.

If caps are finally introduced, businesses, HR representatives and immigration lawyers will have their work cut out for them in trying to determine the most suitable candidate to be transferred or hired in the UK. Only time will tell whether or not this will have any effect on immigration numbers in the UK as a whole.

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