

Raising the bar



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THE HOME SECRETARY, JACQUI SMITH, announced measures on 22 February 2009 to raise the bar for foreign workers wishing to enter the UK. She said that the new rules are a reflection of the current economic situation and the Home Office is taking advantage of its new points-based system (PBS) for immigration, which allows greater flexibility to adapt to market conditions, helping British workers through the hard times of the recession.

PUBLIC AND POLITICAL DEBATE

The impact of immigration on the UK labour market has become a controversial issue in public and political debate, with critics suggesting that immigration reduces wages or employment for the UK-born population, and supporters stating that migration has the potential to bring substantial benefits to the UK economy and society as a whole. The contribution that migrants make to the economy has been one of the most contested areas in research, policymaking and the media. Researchers produce often contradictory evidence on the impacts of immigration, political parties argue about how best to manage migration and its impacts, and the media is full of stories about various aspects of immigration.

Most recently the employment of foreign labour has been a high-profile issue after the dispute at the French-owned Lindsey oil refinery, which was settled when operators Total agreed to hire more local employees. The perception of the British workers was that foreign contractors were taking their jobs. However, an independent report carried out by Acas, the arbitration service, has rejected claims that the wages migrants were paid undercut British employees. The unions have responded that the EU's directive on workers posted abroad allows employers to pay less to foreign workers than their British counterparts. The directive says that workers should not receive less than the law requires, ie the national minimum wage, but unions want this expanded to reflect industry-wide agreements between employers and unions on pay and conditions.

Arguments in favour of migration

The Institute for Public Policy Research published a paper in February 2009 that adds much evidence to the argument that migrants have not taken jobs from local

workers or depressed wage levels to any degree. The research shows that migrants have come to the UK to fill skill gaps and to do jobs that British workers do not want to do. In the process, they are adding to growth and spending money in the local economy, thereby helping to create jobs. The report shows that migrants are often a dynamic economic force, bringing a strong work ethic and an entrepreneurial drive into the countries that attract them. They don't only pick fruit in the fields; they also start up businesses in the towns and cities. They work hard doing some of the dirtiest jobs in the UK economy, but they are also among the brightest and best in hi-tech industries.

Reverse arguments

Over recent years, the arguments against migration to the UK have also become more prominent in the press. These arguments have often focused on the arrival of large numbers of migrants from central and eastern Europe since 2004. However, from a legal perspective, the ability of the UK to control such immigration is much constrained as a result of the obligations of the UK under the Treaty on European Union (Maastricht, 7 February 1992). The Treaty gives a general right to citizens of member states to move to, or to reside and work in, other member states (although these rights have been subject to some temporary restrictions in relation to the A8 countries).¹

The economic impacts of immigration depend critically on the skills of immigrants. Different types of immigration can have very different effects on the economy. The issue is not whether immigration is needed but what level and type of immigration is needed. The development of future immigration, including from eastern Europe, is uncertain. Net immigration may decline due to the current economic recession, economic growth in the A8 countries and the full opening up of other EU labour markets to A8 workers. The UK has already

NOTES

- 1 Countries that became member states on the 1 May 2004 - Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia - are collectively known as the A8 countries.

seen a decline in the numbers of A8 workers coming to the UK and indeed many already here are leaving due to the present financial conditions. In addition, there has been a decrease in the numbers of work permissions granted to non-European Economic Area (EEA) nationals that can only be attributed to the recession and, in particular, the decline of the banking industry in the City of London.

So are these measures to be introduced by Jacqui Smith really necessary? Will they have any effect on the economic situation? Would there automatically be a downturn in the figures of net immigration in the recession without such intervention?

WHAT ARE THE NEW RULES?

First, consideration needs to be given to the tougher rules that are to be put in place to limit the numbers of non-EEA nationals qualifying to work in the UK. The changes announced are that, as of 1 April 2009:

- Employers must advertise jobs to resident workers through Jobcentre Plus for Tier 2-skilled workers before they can sponsor an overseas national.
- The shortage occupation list drawn up by the independent Migration Advisory Committee (MAC) will be used to trigger skills reviews to focus on training resident workers for these occupations, making the UK less dependent on foreign workers in the future.
- The criteria for those applying for the Tier 1 'highly skilled' category is lifted to a master's degree and minimum past earnings of the equivalent of £20,000.

In addition, the Home Secretary asked the MAC to report on:

- whether there is an economic case for restricting Tier 2-skilled workers to shortage occupations only;
- the economic contribution made by dependants of PBS migrants and their role in the labour market; and
- whether there should be further changes to the criteria for Tier 1 in 2010/11 given the changing economic circumstances.

RESIDENT LABOUR MARKET TEST

The PBS was only introduced on 27 November 2008 and less than three months later, changes are already being made to the criteria. Jacqui Smith says that this is the flexibility that the PBS afforded the government to respond to changing economic circumstances. However, is this change really going to help British workers? Under the previous rules, an organisation with over 250 employees could advertise vacancies on their company website or in an appropriate advertising medium laid out in each sector's code of practice drawn up by industry experts and the MAC. To fill a vacant position an employer has therefore always had to carry out a resident labour market test to prove that the overseas national is the only appropriate candidate for the role.

It is difficult to see how changing the location of the advertisement to a Jobcentre site is supporting British workers. Historically, the Jobcentre has been used by employers to advertise low- to medium-skilled jobs in local areas. A skilled professional is currently far more likely to approach either a specialist recruiter directly or trawl company websites or specialist websites, such as those prescribed by the codes of practice. The fact that these codes have been developed by industry experts indicates that extensive research has already been carried out as to where professional-qualified British workers look for vacant positions. Unless there is a change in the public's perception of Jobcentre advertising and the quality of positions advertised through them, this measure will be purely a cosmetic one in an attempt to curb the cries of British jobs for British workers.

SKILLS REVIEWS

Many public and private enterprises, from the NHS to the construction industry, currently rely on migrants to fill shortage occupations. Industry experts have recognised that employers rely on overseas nationals to fill labour shortages. The fact that this has been possible both under the PBS system and the previous work permit rules could be perceived as a 'quick fix' and that the underlying issue is why the UK has such skill shortages. The Business Secretary, Lord Mandelson, and the Skills Secretary, John Denham, announced on 16 February

2009 that their departments will conduct a review of productivity and skills in the construction sector. The review will assess the state of productivity in engineering construction in the UK and identify the key inhibitors to productivity, including skills aspects. It will make recommendations on ways to improve skills and productivity in the UK engineering construction industry – such as through government procurement requirements – and identify specific factors influencing success for UK-based companies bidding for UK and foreign engineering construction contracts.

Action by the government to properly improve the skills of and train British workers can only be seen as a benefit to the UK population, economy and employers. However, it is also important that the avenue to recruit such trained workers from outside the EU is not closed until it can be adequately demonstrated that the resources are available in resident workers.

UPLIFTING OF TIER 1 CRITERIA

The Home Office has predicted that 'raising the bar' to a master's degree and minimum earnings of £20,000 would have reduced the number of successful Tier 1 applications processed in 2008 from 26,000 to 14,000. It has been announced that those already present in the UK in this immigration category will be able to apply to extend their stay under the rules upon which their first application was approved and will not have to meet the new criteria. On this occasion it seems that the government did not want to face another judicial review from unhappy migrants for whom the boundaries changed after entry to the UK!

However, it does appear to be a harsh decision for those migrants who potentially entered the UK as an international student to take a bachelor's degree, and subsequently progressed to a Tier 1 post-study visa, to then have no further self-sponsored option. It would be possible for an employer to apply for a Tier 2-skilled worker permission but this would only be possible if the individual were to be a full-time employee, which may not be the case. After contributing to the economy for five years by paying overseas student fees, taxes and National Insurance, in line with the government's current philosophy

on migrants earning the right to be in the UK, those affected could feel personally aggrieved with this current situation.

MAC REPORT

With regard to the areas on which the MAC has been asked to report back, we can only wait and see what their findings will be. The removal of the rules that currently allow companies to transfer overseas employees to the UK for very specific, short-term projects or secondments could severely affect the viability of international companies doing business in the UK. Denying the trailing spouse permission to be able to work or even accompany the worker on assignment could significantly affect the UK's ability to attract those senior skilled professionals whom are still seen as an asset to the UK economy. To compete in a global market, our immigration

system needs to be capable of supporting companies to transact business efficiently and cost-effectively, and to ensure that the UK is seen as a country of first choice for international businesses and skilled migrants.

COMMENT

In an international context, immigration into the UK is part of the wider phenomenon of increased human mobility around the world. Figures produced by the UN, in August 2008, estimated that 200 million people live outside their country of birth, a doubling of numbers in just 25 years. Some of these people are forced migrants, ie refugees, but the majority are those who move to work or study in another country. Migrants bring skills and the UK's universities, hospitals and IT sectors are still heavily dependent on skilled migrants. The political debate

will continue as to the economic and social benefits of migration and the effects on the UK population. Past immigration policies have promoted the UK as a financially rewarding environment seeking to attract highly skilled individuals to the economy. In spite of the current recession across the western world, it appears that international migration is inevitable. It is therefore vital that the UK policies do not become preoccupied with numbers of migrants and population growth, but instead look to facilitate the movement into the UK of those migrants we need to promote economic and social development.

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