



## Immigration: Permanent settlement reforms (workers)

Standard Note: SN/HA/06037  
Last updated: 15 March 2012  
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Section: Home Affairs Section

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In April 2012, new restrictions on non-EEA skilled workers' eligibility for permanent settlement will be introduced. These are part of Government efforts to reduce net migration levels and be more selective about which migrants are allowed to stay in the UK.

'Permanent settlement' ('Indefinite Leave to Remain') entitles a person to live and work in the UK with no time restriction. Settlement is not the same as British citizenship, but persons with settled status enjoy many of the same rights and entitlements as British citizens. Settlement is usually available after migrants complete a period of temporary residence, although not all temporary immigration categories directly lead to permanent settlement. Common eligibility criteria for settlement include being free from unspent convictions, and demonstrating knowledge of English language and life in the UK. Other requirements vary, depending on the immigration category.

Until now, most highly skilled and skilled workers (Tiers 1 and 2 of the points-based system) have been eligible for settlement after five years in the UK (sooner for Investors and Entrepreneurs). Persons entering under the UK Ancestry or Migrant Domestic Worker routes have also been able to apply for settlement after five years' working in the UK.

The Immigration Rules will change with effect from 6 April 2012. Tier 1 migrants' settlement rights will remain the same. However, in order to be eligible for permanent settlement, some Tier 2 migrants will be subject to a new requirement to earn at least £35,000 per annum. This will affect persons applying for settlement after April 2016. Scientists and researchers doing PhD level jobs, and workers filling vacancies on the shortage occupation list, will be exempt from this settlement pay threshold.

Migrant domestic workers will no longer be eligible for permanent settlement (discussed in a [separate Library standard note](#)), and new maximum lengths of stay will be introduced for some skilled and temporary workers (i.e. Tiers 2 and 5).

The previous government was also developing ideas to restrict migrants' settlement rights towards the end of its time in office, but had not finalised its plans by the general election.

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## Contents

<b>1</b>	<b>What is ‘settlement’?</b>	<b>2</b>
1.1	What rights and entitlements does it give?	2
1.2	The link between temporary migration and settlement	3
1.3	Settlement grants in recent years: statistics and related data	4
<b>2</b>	<b>Why is the Government restricting workers’ settlement rights?</b>	<b>5</b>
<b>3</b>	<b>April 2012 Immigration Rules changes</b>	<b>6</b>
3.1	Changes affecting Tier 2 migrants’ settlement rights	6
3.2	Other categories of work visa affected by the changes	7
<b>4</b>	<b>What difference will the changes make? Impact assessments</b>	<b>8</b>
<b>5</b>	<b>Commentary on restricting settlement rights</b>	<b>10</b>
	<b>Annex: ‘Earned citizenship’ - Labour Government proposals for change</b>	<b>11</b>

## 1 What is ‘settlement’?

### 1.1 What rights and entitlements does it give?

The immigration status Indefinite Leave to Enter/Remain (also known as ‘settlement’ or ‘permanent residence’) means that a person is entitled to live in the UK with no time restriction.

Persons who have settled status enjoy many of the same rights and entitlements as British citizens - for example, they can access welfare benefits, work without restrictions, and sponsor immigration applications from other family members. However, it is an immigration status - it is not the same as having British citizenship (or any of the other types of British nationality). It does not entitle a person to a British passport or to vote in a general election. Having settled status does not mean that a person is ‘free from immigration control’. Settled persons can lose their indefinite leave status. They can be deported from the UK if this is recommended by a court, or if it is decided that to do so would be ‘conducive to the public good’ (e.g. following criminal behaviour).<sup>1</sup>

Persons are eligible to apply to naturalise as a British citizen after they have had settled status for a year (subject to other eligibility criteria).<sup>2</sup> Persons born in the UK become British citizens at birth if, at the time of their birth, either parent was a British citizen or permanently settled in the UK.<sup>3</sup>

Under the ‘[returning residents rules](#)’, persons with Indefinite Leave to Remain can spend up to two continuous years overseas without losing their status in the UK. If they are away from the UK for longer than two years they may still be readmitted as a returning resident if they

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<sup>1</sup> [Immigration Act 1971](#) (as amended), s3(5)(a) and s3(6)

<sup>2</sup> See Library standard note [SN/3232 Naturalising as a British citizen](#)

<sup>3</sup> [British Nationality Act 1981](#), s1

can demonstrate that they have strong ties in the UK. Otherwise they may have to apply for a new visa from overseas, or only be given temporary permission to re-enter the UK.<sup>4</sup>

Removal action can be initiated against a person if there is evidence to suggest that they obtained limited or indefinite leave to remain by deception.<sup>5</sup> The leave would be invalidated once removal directions were set.

Non-lapsing limited or indefinite leave can be curtailed or cancelled whilst the holder is outside the UK.<sup>6</sup>

Section 76 of the *Nationality, Immigration and Asylum Act 2002* gave the Secretary of State power to revoke a person's indefinite leave in certain specified circumstances.<sup>7</sup> These apply to persons who are liable to deportation but cannot be deported for legal reasons, or who obtained their leave by deception but cannot be removed due to legal or practical reasons, or who no longer qualify for refugee protection in the UK.<sup>8</sup>

## 1.2 The link between temporary migration and settlement

A few visa categories give indefinite leave immediately upon entry to the UK, but most require persons to complete a period of temporary residence in the UK before they are eligible to apply for indefinite leave. The Immigration Rules set out the various different immigration routes which give an entitlement to apply for Indefinite Leave to Remain, and the associated eligibility criteria.<sup>9</sup>

Not every temporary immigration category leads on to an entitlement to apply for permanent settlement. For example, persons who enter as visitors, students or intra-company workers cannot apply for settlement after-entry to the UK. Persons who wish to stay in the UK but are in an immigration category which cannot be extended or does not give a direct route to permanent settlement must usually make a new application from overseas (rather than being able to 'switch' into such an immigration category from within the UK). Since the late 2000s, the range of immigration categories which give a direct route to permanent settlement or allow persons to 'switch' immigration category has become more limited.

Persons who are in an immigration category which gives a direct route to permanent settlement will not automatically be granted permanent settlement. They must make an application (and [pay the associated fee](#)) and demonstrate that they satisfy the eligibility criteria attached to the category they are applying under. All applicants must usually be free from unspent criminal convictions and satisfy a '[knowledge of English language and life in the UK](#)' requirement. Other eligibility criteria vary, including the length of time that applicants must have spent in the UK.

The main categories of non-EEA immigrants with a direct route to settlement prior to the April 2012 Immigration Rules changes were:

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<sup>4</sup> Immigration Rules, HC 395 of 1993-4 (as amended), paragraphs 18 - 20

<sup>5</sup> [Immigration and Asylum Act 1999](#), s10(1)(b). As discussed in UKBA *Immigration Directorate Instructions ch9 s5*, 'Curtailed', August 2009

<sup>6</sup> *Immigration (Leave to Enter and Remain) Order 2000 SI 2000/1161*, 13(6 - 7)

<sup>7</sup> The *Nationality, Immigration and Asylum Act 2002 (Commencement No. 2) Order 2003 SI 2003/1*, in force from 10 February 2003

<sup>8</sup> UKBA, *Asylum Policy Instruction*, '[Revocation of indefinite leave section 76 of the Nationality, Immigration and Asylum Act 2002](#)', v3.0

<sup>9</sup> [HC 395 of 1993-4 as amended](#)

- Highly skilled and skilled workers (Tiers 1 and 2 of the points-based system, apart from intra-company transfer sub-category): were (and will continue to be) eligible to apply after five years. High value investors and entrepreneurs are also eligible after a minimum of two or three years respectively.
- Migrant domestic workers in private households: were eligible after working in the UK for five continuous years.
- Commonwealth citizens with a grandparent born in the UK: were (and will continue to be) eligible after working in the UK for five continuous years.
- Certain family members of British citizens/persons settled in the UK: were either immediately eligible for indefinite leave, or eligible after completion of a two year 'probationary period' (in most spouse/partner cases).<sup>10</sup>
- Persons granted refugee status or humanitarian protection: were (and will continue to be) eligible after five years, subject to an "active review" of their ongoing need for protection.<sup>11</sup>

In addition to the above categories, under the 'long residence' rules, a person who had completed at least ten years' continuous lawful residence in the UK in any immigration category, or fourteen years' continuous residence of any legality (excluding time spent in the UK following service of a notice of liability to removal or an intention to deport), could apply for settlement on the basis of their long residence.<sup>12</sup> The grant of settlement would be subject to consideration of the public interest, the applicant's personal circumstances, criminal record and knowledge of English language and life in the UK. The 'fourteen year rule' is currently under review.<sup>13</sup>

### 1.3 Settlement grants in recent years: statistics and related data

The Home Office [Immigration statistics](#) publications include information on grants and refusals of settlement broken down by immigration category. According to the settlement briefing accompanying the October - December 2011 statistics:

The number of people granted settlement in 2011 fell by a third (-32%) to 163,477, compared with 2010 (241,192), although still the fourth highest year on record behind 2010, 2009 and 2005.

The largest part of the fall in 2011 can be accounted for by grants on a discretionary or other basis, which fell 64% to 29,892 (from a record 82,686 in 2010). In addition, there was a 27% fall in family related grants to 50,793 (69,228 in 2010) and a 17% fall in work-related grants to 69,904 (from the record 84,347 in 2010).

In previous years there have been significant increases in the numbers of grants. These were particularly due to a large number of grants on a discretionary basis (82,295 grants in 2010) mainly under measures aimed at clearing the backlog of outstanding unresolved cases. The 2011 figures suggest the peak has been passed;

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<sup>10</sup> In summer 2011 the Government proposed significant changes to family members' settlement rights. It is expected to confirm its plans for change in the near future. See Library standard note [SN06216 Immigration: Reforms to family migration routes](#)

<sup>11</sup> Immigration Rules, HC 395 of 1993-4 (as amended), Part 11

<sup>12</sup> Immigration Rules, HC 395 of 1993-4 (as amended), paragraph 276B-D

<sup>13</sup> UKBA, [Family migration - a consultation](#), July 2011, p.62

factors are detailed in the 'Grants by category' section below, and include the completion of the asylum backlog case review.

(...) Of the total decisions in 2011, 94% (163,477) were grants and 6% were refusals (9,518).

(...)

Work-related grants of settlement fell by 17% from 84,347 in 2010 to 69,904 in 2011. This decrease follows a broadly rising trend in work-related grants that partly reflect the trends in the number of people admitted in work categories five years earlier. The dip in the number of work-related grants in 2006 and 2007 reflects a change in the qualifying period for settlement from 4 to 5 years, delaying grants that would otherwise have occurred earlier.

(...)

Over half (51% or 121,812) of those granted settlement in 2010 were nationals from Asia and 27% (64,875) were African nationals.

The ten countries whose nationals accounted for the largest number of grants in 2010 were India (37,436); Pakistan (21,382); China (14,616); Nigeria (10,031); the Philippines (9,934); Zimbabwe (9,848); Sri Lanka (9,422); Iran (8,401); South Africa (7,532) and Iraq (7,066). These nationalities accounted for 56% of the total grants.<sup>14</sup>

*The Migrant Journey*, a Home Office Research Report published in September 2010, provides statistical data and analysis on the pathways of migrants who entered the UK immigration system in 2004 and those who were granted settlement in 2009.<sup>15</sup>

The *briefing on settlement* prepared by the Migration Observatory (based at the University of Oxford) presents a range of statistical data on grants of settlement over the past 20 years.<sup>16</sup>

## 2 Why is the Government restricting workers' settlement rights?

Since coming into office, the Government has consistently argued that it has been "too easy" for migrants to progress from temporary leave to obtaining permanent permission to stay in the UK.<sup>17</sup>

It implemented some initial changes to the general eligibility criteria for Indefinite Leave to Remain in April 2011.<sup>18</sup> These have required that applicants be free from any unspent criminal convictions at the time of applying. Also, Tier 1 and Tier 2 migrants have been given less flexibility over how to demonstrate their knowledge of English language, and are required to satisfy the same minimum salary/appropriate rate criteria that applied when they last extended their temporary leave to remain.

More extensive proposals for reforms to workers' settlement rights were made in June 2011, when a three-month *consultation* on *Employment-related settlement, Tier 5 and overseas*

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<sup>14</sup> Home Office, *Immigration statistics October - December 2011*, Settlement briefing, 23 February 2012

<sup>15</sup> Home Office, *Research Report 43: The Migrant Journey*, September 2010

<sup>16</sup> Migration Observatory, *Settlement in the UK*, 31 January 2012

<sup>17</sup> See, for example, Home Office, 'The Home Secretary's immigration speech', 5 November 2010

<sup>18</sup> See Library standard note *SN/5922 April 2011 changes to Tier 1 and Tier 2 of the points-based system and indefinite leave*

*domestic workers* was launched.<sup>19</sup> The Home Secretary's foreword to the consultation paper summarised the Government's intentions:

Progression to settlement has become almost automatic for those who choose to stay. I shall break that link and return to a position where Britain will continue to attract the brightest and best workers, who will make a strong contribution to our economy and society during their stay, then return home. A small number of exceptional migrants will be able to stay permanently but for the majority, coming here to work will not lead automatically to settlement in the UK.<sup>20</sup>

The Government cited several reasons in the consultation paper for why it considered changes to migrant workers' permanent settlement entitlements were necessary:<sup>21</sup>

- to tie in with the Government's overall immigration policy strategies of being more selective about which migrants are allowed to come to the UK and why, and reducing net migration levels to "sustainable" levels;
- because "uncontrolled settlement is detrimental to the UK" - it does not deliver the best outcomes for society or the economy, and can place pressure on public services;
- because settlement should be a "privilege" and restricted to migrants who make the biggest contribution to the UK;
- to discourage employers from relying on migrant workers to fill skills gaps;
- to address public concerns about the scale and impact of immigration.

### **3 April 2012 Immigration Rules changes**

The outcome of the summer 2011 public consultation was confirmed in a [Written Ministerial Statement](#) on 29 February 2012.<sup>22</sup> The announcement was accompanied by an analysis of consultation responses, a 'statement of intent', and analysis of Tier 2 migrants' salary and occupation patterns.<sup>23</sup>

The statement of intent includes useful tables comparing the eligibility criteria and conditions attached to Tier 2 and Tier 5 visas before and after the April 2012 Immigration Rules changes, as well as an overview of the outcome of all of the consultation paper proposals.

[Statement of Changes in the Immigration Rules HC1888](#) made the necessary Immigration Rules changes to workers' settlement rights (amongst other things). Most of the changes made by HC 1888 come into effect on 6 April 2012.

#### **3.1 Changes affecting Tier 2 migrants' settlement rights**

The most high-profile changes affect Tier 2 of the points-based system, which is for sponsored skilled workers.

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<sup>19</sup> UKBA, [Employment-related settlement, Tier 5 and Overseas Domestic Workers: A consultation](#), June 2011

<sup>20</sup> Ibid, p.3

<sup>21</sup> See UKBA, [Employment-related settlement, Tier 5 and Overseas Domestic Workers: A consultation](#), June 2011, p.3, paras 1.1 1- 1.12, 4.1, 4.14

<sup>22</sup> [HC Deb 29 February 2012 cc33-36WS](#)

<sup>23</sup> Home Office website, [Publications/Immigration/Changes affecting employment-related settlement, Tier 5 and overseas domestic workers'](#), (accessed on 14 March 2012)

Tier 2 migrants will continue to be eligible for permanent settlement after 5 years in the UK (except for intra-company transfer workers, who have not been eligible for settlement since April 2010). However, in order to be eligible, some types of Tier 2 workers will have to satisfy a new minimum salary threshold.

The 'settlement pay threshold' will affect workers who have Tier 2 (General) or Tier 2 (Sportsperson) visas. They will have to demonstrate at the point of applying that they are being paid at least £35,000 gross per annum, or the 'appropriate rate' for the job (as specified in the Code of Practice for the occupation) - whichever is higher.

The Government took advice from the Migration Advisory Committee (MAC) before setting the pay threshold at £35,000. The MAC advised that the minimum annual salary threshold should be between £31,000 and £49,000.<sup>24</sup> £35,000 is the median pay of UK workers in Tier 2 level jobs.<sup>25</sup>

The settlement pay threshold will not apply to Tier 2 (General) workers who come to do a job on the shortage occupation list; or to those working as scientists or researchers doing 'PhD' level jobs. However, in both cases, the workers will remain subject to a requirement to be paid the 'appropriate rate' for the occupation.

Nor will it apply to persons in the Tier 2 (Minister of Religion) sub-category.

Tier 2 migrants will be allowed to stay in the UK for a maximum of 6 years if they do not settle permanently. After this time they will have to leave the UK or switch into a different immigration category. Those who leave the UK will have to complete a 12-month 'cooling off' period before being eligible to return to the UK as a Tier 2 worker.

The changes will affect Tier 2 migrants who obtained their visa under the Immigration Rules in force since April 2011. In effect, therefore, the settlement pay threshold of £35,000 will affect persons applying for permanent settlement after April 2016. To provide certainty for applicants and employers, the Government has committed to keeping the salary threshold at that level until 2018. It will announce the threshold for 2018/19 in 2013, and then review it annually.<sup>26</sup>

### **3.2 Other categories of work visa affected by the changes**

Some new restrictions on the maximum length of stay will be introduced for Tier 5 visa holders in the Creative and Sporting, Government Authorised Exchange and International Agreement categories.

Private servants in diplomatic households, who come under the Tier 5 (Temporary Worker - International Agreement) category, were the only type of Tier 5 visa holder previously eligible to settle in the UK (after 5 years). However in the future they will not be allowed to stay in the UK for longer than 5 years.

Significant changes to visas for migrant domestic workers in private households are also being made, most notably removing their right to change employer or settle permanently in the UK. These are discussed in Library standard note [SN/04786 Immigration: migrant domestic workers](#).

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<sup>24</sup> MAC, *Analysis of the Points Bas System Settlement rights of migrants in Tier 1 and Tier 2*, November 2011

<sup>25</sup> HC Deb 29 February 2012 c34WS

<sup>26</sup> HC Deb 29 February 2012 c34WS

There are no changes to Tier 1 migrants' settlement rights. Tier 1 Investors, Entrepreneurs and 'Exceptional Talent' migrants will continue to be eligible for unlimited extensions of temporary leave, or permanent settlement (after varying lengths of residence), as previously.<sup>27</sup>

#### **4 What difference will the changes make? Impact assessments**

The Government commissioned the Migration Advisory Committee (MAC) to consider, amongst other things, what the economic effects of restricting or removing Tier 1 and Tier 2 settlement rights would be.

The MAC concluded that preventing all Tier 1 and Tier 2 migrants from settling in the UK would have "notable economic consequences in the long-term", and did not recommend this option. It found that restricting Tier 1 and Tier 2 migrants' rights to settlement would have less significant economic impacts.<sup>28</sup>

The MAC set out some thoughts on the possible economic impact of these changes, and the importance of investing in training the resident population to counteract these effects:

34. Restricting or removing the rights of such migrants to remain in the UK beyond five years may have a negative impact on GDP and, to a lesser extent, GDP per head. In the short term the economic impacts of removing rights to remain in the UK beyond five years for Tier 1 and Tier 2 migrants would be relatively small, but in the longer term they would be larger due to an accumulation of static economic effects, and possibly dynamic effects on factors such as trade and investment.

35. In the latter case, many employers believe "dynamic effects" to be highly significant, although actual estimation of the magnitudes is subject to very high margins of uncertainty. Furthermore, to some extent, shorter average migrant durations in the UK should be counteracted by increased churn of Tier 1 or Tier 2 or other migrants. The economy will also adjust in response to a net reduction in the supply of migrants: for instance, employers will have stronger incentives to train UK workers. Additionally, use of economic criteria can ensure that those migrants who make the biggest contribution to the UK economy can still stay.

36. It is also clear that some Tier 1 and Tier 2 migrants who currently stay in the UK beyond five years help to alleviate skill shortages in key public service areas such as health and education. The extent to which curtailment of, or restrictions on, such leave will affect the provision of those services in the long-term will be contingent on the level of appropriate and successful training within the resident population.

(...)

38. It is critically important that policy on skills and migration is used to mitigate any adverse impacts that would otherwise occur in relation to applying economic criteria to deciding which migrants stay in the UK beyond five years, particularly in relation to those sectors or occupations most affected. Because the introduction of criteria will not have direct effect until 2016, there is some time for employers and policymakers to plan ahead.

The MAC also noted that even if migrant workers' settlement rights were left unchanged, there would be fewer work-related grants of settlement in the coming years, due to recent

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<sup>27</sup> The new Tier 1 (Graduate Entrepreneur) category, to be launched in 2012, will not lead on to settlement.

<sup>28</sup> MAC, *Analysis of the Points Bas System Settlement rights of migrants in Tier 1 and Tier 2*, November 2011, para 37

immigration patterns and previously-implemented Immigration Rules changes. It estimated that as a result of these, even if the Government did not introduce any new restrictions on workers' settlement rights, from 2016 onwards settlement grants to Tier 1 and Tier 2 migrants and their dependants would fall to between 10,000 and 38,000 per year. This compares with approximately 60,000 grants made in the year until the second quarter of 2011.<sup>29</sup>

The Government's own impact assessment also considered the impact of the changes to Tier 2 settlement rules on settlement figures:

It is estimated that around 35% of current Tier 2 migrants would not qualify for settlement at a salary threshold of £35k. However, by exempting Ministers of Religion, shortage occupations and PHD-level occupations, and holding the threshold at £35k until April 2018, it is estimated that overall only around 16% of Tier 2 migrants would no longer qualify.

Applying this impact assumption against the baseline volumes, it is therefore estimated that the combined policy package will reduce total Tier 1 and Tier 2 settlement in 2016-17 to a range of 8,000 to 33,000 compared to around 60,000 in the 12 months to June.<sup>30</sup>

Based on management information, it calculated that 82% of Tier 2 (General) workers in non-shortage occupation list occupations would continue to qualify for settlement. The group most affected by the salary threshold would be Tier 2 (Sportspersons), of whom 55% may qualify for settlement in the future.

The impact assessment also considered how the £35,000 salary threshold requirement might affect workers in different occupation sectors. The effect on nurses is expected to be significant. However, the Government does not anticipate that any sector will be significantly affected overall, due to the size of their labour forces:

**Table 9: Impact of option 2 on top ten Tier 2 Occupations (April to September 2011)**

Top Ten Occupations Tier 2 General (4-digit SOC code job title)	Option 2 – % of Tier 2 migrants that will not qualify for settlement across occupation groups
Finance/Investment Analyst	4%
Medical practitioners	5%
IT, software professionals	35%
Consultants	8%
Scientific researchers	0%
Nurses	48%
Directors	0%
Researchers	0%
Teachers HE	0%
Managers, marketing	20%

Source – Analysis of UKBA Management Information

We can see that the most significant impact will be on migrant nurses, where many earn less than £35,000 and will not be able to qualify for settlement in the UK from 2016 onwards. Those in shortage occupation jobs will not be affected. There is also expected to be a significant impact on migrant IT and software professionals. There are also expected to be moderate negative impacts on marketing managers and

<sup>29</sup> MAC, *Analysis of the Points Bas System Settlement rights of migrants in Tier 1 and Tier 2*, November 2011, p.1-2

<sup>30</sup> Home Office, *Impact Assessment: Changes to Tier 2 settlement rules*, 1 January 2012, p.13-14

medical practitioners from outside the European Union. There should be no impact on scientific researchers, researchers or teachers in higher education as these are PHD-level occupations that will be exempt from the settlement salary threshold.

There is not expected to be a significant impact on any of the labour forces in the affected sectors as the volumes prevented from settling are low relative to the size of the sectoral labour forces. For example, for nurses, the most affected occupational group, assuming of those that enter Tier 2 initially, only 29% to 40% will reach settlement, the likely reduction due to the settlement salary threshold is likely to lie in the hundreds or low thousands, when there are an estimated 698,000 nurses working in the UK (based on ASHE 2011). Similarly, for IT software professionals, the likely reduction is likely to be in the hundreds, when there are an estimated 309,000 IT software professionals working in the UK (based on ASHE 2011).<sup>31</sup>

## 5 Commentary on restricting settlement rights

The Cross-Party Group on Balanced Migration has been advocating for changes to non-EEA migrant workers' settlement rights and for an annual limit on the number of persons granted settlement since it was established in 2008. It has previously welcomed indications of the Government's plans.<sup>32</sup>

On the other hand, the Migration Observatory has highlighted some potential difficulties with restricting migrant workers' settlement rights.<sup>33</sup> These include: the challenges of ensuring that temporary migrants leave the UK at the end of their visa, the relationship between settlement rights and integration and social cohesion objectives, and the delayed impact that changes to settlement rights are likely to have on net migration figures.

Some of these difficulties were echoed by the IPPR think-tank in its critique of the summer 2011 consultation document. Although it acknowledged that "Shifting the balance from permanent towards temporary migration, and further tightening the criteria for settlement, are legitimate policy objectives", it noted that the Government's policy was at odds with those being pursued in competitor countries:

It is significant that no other major country is moving in this direction. Indeed, countries whose skilled migration policies are widely praised, such as Canada or New Zealand, are taking precisely the opposite approach: they may be fairly selective about who is allowed to enter, but they assume that those who do enter will settle, and have integration policies designed to make that work. Australia too has recently started to reverse its restrictions on longer stays by foreign students, encouraging them to stay on to work and potentially settle.<sup>34</sup>

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<sup>31</sup> Home Office, *Impact Assessment: Changes to Tier 2 settlement rules*, 1 January 2012, p.20-21

<sup>32</sup> Cross Party Group on Balanced Migration, 'Cross Party Group on Balanced Migration response to Prime Minister's speech', 14 April 2011

<sup>33</sup> Migration Observatory, *Unsettling? Challenges with using changes in settlement policy to reduce net-migration*, 23 May 2011

<sup>34</sup> IPPR, *Guest workers Settlement, temporary economic migration and a critique of the Government's plans*, October 2011

## Annex: 'Earned citizenship' - Labour Government proposals for change

Towards the end of its time in office, the previous government began to develop ideas for measures to break the link between temporary and permanent immigration and to restrict migrants' opportunities for settling in the UK, through its 'earned citizenship' policy.<sup>35</sup>

Consultation proposals published in 2008 indicated a desire to make a clearer distinction between temporary and permanent immigration categories, and to encourage more migrants to naturalise as British citizens rather than simply to remain in the UK with settled status.<sup>36</sup> Then in 2009 there was a consultation into introducing a points test (but no numerical limit) for deciding which migrants would be granted permanent residence in the UK.<sup>37</sup>

Put briefly, under Labour's plans, eligibility to settle permanently in the UK or to naturalise as a British citizen was to be restricted to three categories of migrant – skilled economic migrants, refugees and family members of persons present and settled in the UK. Permanent residence (i.e. 'settlement') would become an alternative to naturalising as a British citizen, rather than a status that migrants were required to obtain before applying for British citizenship.

There would have been three stages for acquiring permanent settlement or British citizenship. Migrants would have been required to 'earn' their permanent residence/British citizenship, by meeting specific requirements at each stage of the path from temporary to permanent residence.

- **Stage 1: Temporary residence** - five years for workers and refugees, two years for persons who entered as family members of British citizens/persons settled in the UK. Only these categories of temporary residence would give a person a route to naturalisation or permanent residence. Persons with other types of temporary residence, such as students, unskilled workers and visitors, would not be able to progress beyond temporary residence.

In order to progress to stage 2, eligible individuals would have had to satisfy certain other requirements (depending on which 'route' they fell under) and meet knowledge of English language requirements.

- **Stage 2: Probationary citizenship** - a further form of temporary leave.

A person would spend a shorter period of time (minimum one year) with 'probationary citizenship' status if they intended to naturalise as a British citizen rather than just acquire permanent residence status, and if they participated in an 'active citizenship' activity (e.g. volunteering). Persons who wished to acquire permanent residence status would have had to spend at least three years as probationary citizens (possibly longer in some cases, such as those involving some criminality).

It was intended that a person would not be able to spend longer than five years with probationary citizenship status,<sup>38</sup> although there was some potential for discretion.<sup>39</sup>

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<sup>35</sup> Some of these are reflected in sections 39 – 41 of the *Borders, Citizenship and Immigration Act 2009* made changes to the provisions set out in the *British Nationality Act 1981* (which have not commenced).

<sup>36</sup> UK Border Agency, *The Path to Citizenship: Next steps in reforming the immigration system*, February 2008

<sup>37</sup> UK Border Agency, *Earning the Right to Stay: A new points test for citizenship*, 3 August 2009

<sup>38</sup> UK Border Agency, *The Path to Citizenship: Next steps in reforming the immigration system*, February 2008 Figure 2, p.31

<sup>39</sup> [HC Deb 14 July 2009 c231-2](#)

Individuals with probationary citizenship would have had to meet specified requirements in order to qualify for British citizenship or permanent residence, such as remaining in employment or a subsisting family relationship (depending on which 'route' they were in).

- **Stage 3: British citizenship or permanent residence** (for persons unwilling or unable to naturalise as a British citizen, including those whose other nationality does not allow dual citizenship).

Persons on the 'work' and 'family' routes would have had restricted access to public funds and services until they had naturalised as a British citizen or obtained permanent residence status.

### ***A points test for citizenship***

During passage of what became the *Borders, Citizenship and Immigration Act 2009*, the Labour Government announced a further proposal: a points test for migrants who wished to settle in the UK permanently.<sup>40</sup> Further details of how such a test might work were provided in an August 2009 consultation document.<sup>41</sup> The consultation paper stated that stronger mechanisms to control who was allowed into the UK on a permanent or temporary basis were needed so that the Government could manage population growth.<sup>42</sup> It argued that a points test for citizenship would deliver the benefit of

“breaking the automatic link between coming to the UK to work and gaining the right to remain permanently, by giving the Government the ability to take a clear, enforceable decision about who should be allowed to stay early on in the process.”<sup>43</sup>

The consultation paper suggested that a points test for citizenship would be most appropriate “at the point of entry to the probationary citizenship stage.”<sup>44</sup> It was suggested that migrant workers could be awarded points for a range of attributes including earning potential; qualifications gained in the UK; special artistic, scientific or literary merit; English language skills; and having spent time living in a part of the UK in need of further immigration (such as Scotland). The level of points required in order to be eligible for British citizenship could be raised or lowered, depending on the interests of the UK at the time. Certain actions, including criminal or anti-social behaviour, and a “failure to integrate into the British way of life” could have resulted in a deduction of points, or some other penalty.<sup>45</sup>

A points test would have been applied in addition to the other requirements for progression to 'probationary citizen' stage (such as knowledge of English and life in the UK).<sup>46</sup>

Little further progress was made in developing these ideas before the 2010 general election. In November 2010 the current Government confirmed that it did not intend to continue with the 'earned citizenship' agenda, and would instead develop its own proposals.<sup>47</sup>

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<sup>40</sup> [HC Deb 2 June 2009 c175-6](#)

<sup>41</sup> UK Border Agency, *Earning the Right to Stay: A new points test for citizenship*, 3 August 2009

<sup>42</sup> *Ibid*, p.6

<sup>43</sup> *Ibid*, p.14-15

<sup>44</sup> *Ibid*, p.14

<sup>45</sup> *Ibid*, p.17

<sup>46</sup> *Ibid*, p.18

<sup>47</sup> Home Office, 'The Home Secretary's immigration speech', 5 November 2010