



## BRIEFING PAPER

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# The UK's points-based system for immigration

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# Summary

## The UK's "points-based system"

Points-based immigration systems select migrants based on having certain valued attributes, such as qualifications, occupation and language skills.

A "points-based" system for non-EEA national work and study visas was launched in the UK in 2008. Visa eligibility is determined by satisfying a set of mandatory criteria, to which a fixed number of symbolic points are attached. This has arguably resulted in a system which is points-based in name only.

## How the UK's points-based system works in practice

There are five 'tiers' to the points-based system. These cater for high skill/high value migrants; sponsored skilled workers; low-skilled workers; students; and temporary workers. Each tier contains several different visa categories (and some sub-categories), with varying associated conditions and mandatory eligibility requirements. The tier for low-skilled workers has never been used, because it has been assumed that any need for low-skilled workers can be met from within the UK/European Economic Area (EEA) workforce.

## Restrictions on skilled worker visas

Tier 2 (General) is the main visa category for bringing skilled non-EU/EEA workers to the UK. It is designed to incorporate various protections for resident workers, such as by requiring the employer to first try to recruit from within the resident workforce.

In addition, the number of new visa sponsorships available is limited to 20,700 per year (subject to various exceptions). A separate points test is used to determine eligibility for restricted Tier 2 visa sponsorships. This has traditionally favoured shortage occupations and those attracting the highest salary. Demand for permission to sponsor skilled workers has outstripped supply in every month since December 2017. In July 2018 the Government acted to exempt doctor and nursing posts from the limit, in recognition of the difficulties that the limit was causing for NHS employers, and in a bid to free up spaces for other sectors. Stakeholders have broadly welcomed the change, whilst cautioning that it may prove to be a temporary and insufficient fix to a more fundamental problem with the 'cap' on skilled worker visas.

## Stakeholders' criticisms of the system

There have been criticisms that over time, the points-based system has failed to live up to its stated objectives such as simplicity, transparency, objectivity and flexibility. It has come to be widely regarded by individual applicants, sponsors, immigration lawyers and the judiciary as unduly complex, burdensome, costly and ill-suited to the needs of its users.

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For example, the Immigration Rules and policy guidance for each visa category are extremely lengthy and prescriptive, and subject to frequent changes. The emphasis on 'hard' education and professional qualifications and salary thresholds has posed particular difficulties for certain sectors. Various exceptions and workaround solutions have been introduced to accommodate the needs of specific sectors, but arguably at the cost of increasing the complexity of the system.

### **An uncertain future?**

The Government has ruled out introducing a pure points-based system to control EU migration post-Brexit, arguing that it would not give it sufficient control over who was eligible to come to the UK.

The Home Office has also recently suggested that the terminology of 'tiers' and 'points-scoring' is "outdated", raising the possibility that a more fundamental overhaul of the system might be in the pipeline.

The Government has commissioned the Migration Advisory Committee to advise on the labour market implications of the UK leaving the EU and a future immigration system. The Committee is due to report to the Government by September.

A Government White Paper on a post-Brexit immigration system is not expected before the end of this year. In the meantime, there is considerable debate about what specific changes to economic immigration routes could or should result from leaving the EU. It has been suggested, for example, that the system may need to adjust to the ending of free movement rights for EU nationals by increasing some of the visa limits and extending opportunities for low-skilled immigration in certain sectors. July's '[Chequers Agreement](#)' leaves open the possibility of offering some reciprocal preferential work/study arrangements to citizens of EU Member States as well as "other close trading partners" in the future.

# 1. Introduction to points-based systems

## 1.1 What are they, and what are the alternatives?

A June 2016 briefing by the Migration Observatory, based at the University of Oxford, summarises:

A [points system](#) is a way of selecting labour migrants based on their characteristics, such as their educational qualifications, language proficiency, work experience and occupation. The best known examples of points systems are from Canada, Australia and New Zealand. Traditionally, the main feature of a points system has been that it admits migrants based on their qualifications rather than because an employer has selected them to fill a specific job (although some points systems do require or strongly prioritise people with a job lined up).<sup>1</sup>

Points-based systems select migrants based on their characteristics and attributes, whereas employer-led systems give employers greater powers of selection.

Points-based selection systems are most closely associated with economic immigration categories (i.e. work visas).

Canada introduced the idea of a points-based system for economic immigration in the late 1960s, and Australia has had one since the 1970s. Several other countries have applied points-based systems in various forms, including New Zealand, Denmark, Singapore, Hong Kong, and the UK.

A June 2011 paper by the Migration Policy Institute, [Rethinking Points Systems and Employer-Selected Immigration](#), summarises some of the perceived advantages and disadvantages of a traditional points-based approach to selecting economic immigrants:

Points systems appeal to policymakers because they are transparent, flexible and can be adjusted to meet evolving economic needs or respond to evidence on immigrants' integration outcomes. But since employers are not involved in selection, points systems often admit immigrants who are unable to find work at their skill level once they arrive. This undermines both integration and the long-term economic benefits of immigration.

The paper goes on to discuss the alternative approach of employer-led systems:

Employer-driven systems, by contrast, allow employers to select the workers they need, subject to government regulations. Being selected by an employer is evidence that immigrants' skills are needed and thus guarantees that they will have a job when they arrive. However, it also raises concerns that employers may manipulate the system in order to access cheaper labor or that workers will be too dependent on their employers (and hence vulnerable to exploitation).

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<sup>1</sup> Migration Observatory, ['What would UK immigration policy look like after Brexit?'](#), 9 June 2016

## Moving beyond pure points-based systems

Over the years there has been a trend towards adopting “hybrid selection systems”, which seek to combine elements of both selection models, in recognition of their different strengths and weaknesses.

A December 2014 MPI briefing [gives some examples](#) of how various countries have experimented with this approach.<sup>2</sup>

### 1.2 Characteristics of the UK's points-based system

The then Labour Government introduced a “points-based system for non-EEA immigration” for the UK in 2008. The UK's system has always combined elements of points-based and sponsor-led approaches.

Although the then Government said that the system was inspired by Australia's model, there have always been some significant differences between the UK's system and those in other countries, including Australia. Calls for the UK to adopt a system closer to the ‘Australian model’ have persisted, although it has not always been obvious what advocates specifically have in mind, particularly since both countries' systems have undergone various reforms.

Some of the significant features of the UK's approach include:

- **The UK's points-based system does not only cover work visas.** For example, student visas, and visas for sportspeople, entrepreneurs and investors also fall within its scope.
- **The ‘points’ assessment for visa eligibility is essentially symbolic.** Each visa category specifies certain mandatory criteria which must all be satisfied to be eligible for a visa. Each of the criteria have a fixed number of points attached. There is no scope for flexibility over the number of points awarded, or the possibility to off-set points accrued in one category against those needed in another. Therefore, a person who satisfies the mandatory eligibility criteria will automatically accrue the number of points required, and a person who cannot satisfy one of the criteria will not have the number of points needed.

The only exception to this is the separate points test for restricted Tier 2 (General) sponsorships (i.e. cases subject to the skilled worker visa ‘cap’). This does allow for differentiation between eligible applications.

- **The main points-based visa categories require the migrant to already have a job/study offer or endorsement from an approved sponsor.**
- **People wishing to come to work in the UK have few alternative visa options to applying for a visa within the points-based system.** There are only a few other niche work visa categories available outside of the points-based system. Neither does the UK have separate entry streams for permanent and

The UK's “points-based system” for non-EEA work and study immigration has always combined elements of both approaches.

Some have suggested that the UK now has a points-based system in name only.

<sup>2</sup> MPI, ‘[Top 10 of 2014 Issue #9: The Points System is Dead, Long Live the Points System](#)’, 10 December 2014

temporary economic immigration. People who enter the UK under the points-based system are given temporary permission to remain initially, and some of them become eligible to stay permanently.

In other countries, points-based categories are often one of several different temporary/permanent work visa categories available.

- **There is no overall central planning for the number of people to be admitted under the points-based system,** although certain visa categories within it are subject to fixed quotas.

A 2015 opinion piece published on politics.co.uk argued that the pursuit since 2010 of a target to reduce annual net migration to the tens of thousands had led to the system becoming far detached from its original design and rationale:

the tinkering with what was a flexible system has culminated in a system which is anything but points based. All supply side logic has dissipated, the admission system is now rigid, high skilled immigration has all but disappeared from Britain's knowledge economy, and far from enhancing tourism as the design of the PBS was intended, the tier five visitor visa has become so convoluted it is labyrinthine in its complexity.<sup>3</sup>

Some commentators have suggested that the UK now has a points-based system in name only. Interestingly, the Home Office has also recently suggested that the terminology of 'tiers' and 'points-scoring' is "outdated", raising the possibility that a more fundamental overhaul of the system might be in the pipeline.<sup>4</sup>

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<sup>3</sup> Politics.co.uk, '[Comment: How the coalition effectively scrapped points-based immigration](#)', 25 March 2015

<sup>4</sup> Home Affairs Committee, [Home Office delivery of Brexit: Immigration Government response to Committee's Third Report of Session 2017-19](#) (HC 1025) 25 May 2018

## 2. Development of the UK's system

### 2.1 When was it introduced, and what did it replace?

Plans for a points-based system for non-EEA immigration were first published in February 2005, as part of the then Labour Government's Five Year Strategy for asylum and immigration, [\*Controlling our Borders: Making migration work for Britain\*](#).<sup>5</sup> The foreword by the then Home Secretary, Charles Clarke, set out the then Government's intentions:

The system we have at present works well but it is complex and difficult to understand. We will bring all our current work schemes and students into a simple points based system designed to ensure that we are only taking migrants for jobs that cannot be filled from our own workforce and focussing on the skilled workers we need most like doctors, engineers, finance experts, nurses and teachers.

(...) We will set up an independent body to advise us on labour market needs. The system will be flexible and employer-led. This is what our economy needs, not a rigid, arbitrary quota.

Annex 3 to the Five Year Strategy set out in broad detail how the points-based system was intended to work. The design was developed through subsequent Home Office papers and consultations.<sup>6</sup>

The points-based system was launched in phases between March 2008 and March 2009, through successive Statements of Changes to the Immigration Rules. Tier 1 (for highly skilled workers) was launched first, in March 2008. Tier 2 (for sponsored skilled workers) and Tier 5 (for special categories of temporary migrant) were launched in November 2008 and Tier 4 (for students) was the last to be launched, in March 2009.

The points-based system replaced a large range of work (and study) visa categories which had evolved over time on an ad hoc and uncoordinated basis. These included the Highly Skilled Migrants' Programme, work permit schemes, and quota-based schemes for certain types of low-skilled work. The Highly Skilled Migrants' Programme was itself an early precursor to the points based system (similar to the post-2008 Tier 1 categories). Applicants were awarded points against six criteria including educational qualifications, work experience and past earnings, and did not need to already have a job offer lined up. Different point thresholds were applied depending on the age of the applicant.

A small number of work and study visa categories remain outside of the points-based system, namely the [short-term study visa](#), [domestic worker](#)

The system was implemented in phases between March 2008 and March 2009, through successive changes to the Immigration Rules.

<sup>5</sup> Cm 6472

<sup>6</sup> Home Office, *Selective Admission: Making Migration Work for Britain*, July 2005; *A Points-Based System: Making Migration Work for Britain*, Cm 6471, March 2006; *A Consultation on Establishing a Migration Advisory Committee*, November 2006

[in a private household visa](#), [Turkish worker visa](#), [Turkish businessperson visa](#), and [representative of an overseas business visa](#).

## 2.2 The policy rationale

From the outset, the points-based system was presented as a simplified system which was nevertheless more stringent and objective than its predecessors. Successive Ministers were also keen to draw parallels with the Australian points-based system. A 2007 Written Ministerial Statement by the then Home Secretary, Jacqui Smith, contended:

One of the key changes to reform migration will include a firmer, faster and fairer Australian-style points system. The new system will be simpler and more transparent, ensuring that only those migrants Britain needs can come to work or study in the UK.

(...)The points system replaces subjective decision making with an objective transparent process that is more robust against abuse. Highly skilled applicants will need to show they have enough points to qualify to enter or remain in the UK. Highly skilled applicants will earn points for their skills and potential for economic success, competence in English language and ability to support themselves and their dependents. The points pass mark for the highly skilled tier of the points system will be informed by the work of the Migration Advisory Committee on economic needs and that of the migration impacts forum on the wider effects of migration.<sup>7</sup>

### Box 1: The role of the Migration Advisory Committee

The independent [Migration Advisory Committee](#) (MAC) is a non-departmental public body which was established at the same time as the points-based system. Its purpose is to provide independent and evidence-based advice to government on migration issues. The MAC works on commissions from the Government and it is up to Ministers to decide whether or not to accept its recommendations. The numerous pieces of MAC research and consultations are available from the MAC pages on the GOV.UK website.

## 2.3 How has the system changed over time?

By the time that it was launched in 2008/09, the points-based system differed to the outline in the Five Year Plan in some respects. For example, the initial plan had not envisaged a two-stage process in which the sponsor (e.g. employer) and applicant (e.g. worker) were both required to apply for immigration permission, but in fact this is the case for many categories. Also, although the system includes a category for low-skilled workers, in practice this has never been used.

There have been many amendments to the rules and guidance underpinning the system since it was launched. Changes over the whole lifespan of the system have included:

- Introducing more targeted visa sub-categories in Tier 1 and Tier 2, such as for graduates, entrepreneurs, and people with exceptional talents in certain fields.
- Strengthening the resident labour market test and successive updates to the Shortage Occupation List.

There have been many significant changes to the system, rules and guidance since its first inception.

<sup>7</sup> [HC Deb 5 December 2007 c72-75WMS](#)

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- A succession of changes to eligibility criteria and conditions attached to Tier 2 (Intra-Company Transfer) visas and Tier 4 (General) visas (mostly becoming more restrictive).
- Raising the minimum skill and salary levels for Tier 2 visas.
- Reintroducing some scope for officials to exercise discretion when determining applications (“evidential flexibility”).
- Changes to sponsor licensing requirements and entitlements – generally speaking, introducing more demanding criteria for sponsorship licenses, and restricting certain sponsorship rights to the most trusted sponsors.

Most of the lifespan of the points-based system has been under the Coalition and Conservative Governments. Significant changes made since 2010 include:

- Closure of the Tier 1 (General) sub-category, which was arguably the closest example of a ‘pure’ points-based UK visa category, in December 2010. It enabled highly skilled workers to come to the UK without a job offer. The Coalition Government considered that it had not been effective in attracting highly skilled workers (Home Office sampling indicated that “a sizeable proportion” (29%) were working in unskilled employment).
- Closure of the Tier 1 (Post-Study Work) visa in April 2012, for similar reasons. It has been replaced by some new visa options for international graduates which are more narrowly focussed: Tier 1 (Graduate Entrepreneur); Tier 1 (Exceptional Talent) and Tier 4 (General - Doctorate extension scheme).
- Introducing limits on the number of visas available in certain categories.
- Changes to the eligibility criteria and associated conditions for Tier 1 (Investor) and Tier 1 (Entrepreneur) visas, such as by providing for faster eligibility for permanent settlement and allowing for longer periods of absence from the UK during the qualifying residence period.
- Restricting eligibility for skilled worker visas (Tier 2 General) to ‘graduate level’ jobs and raising the minimum salary requirement.
- New restrictions on eligibility to stay permanently in the UK, notably [a £35,000 minimum salary requirement](#) for settlement for sponsored skilled workers (Tier 2 General), with exceptions for scientists and researchers doing PhD level jobs, and workers filling vacancies on the shortage occupation list.
- Introducing new maximum lengths of stay and out of country “cooling off” periods for some categories of skilled worker.
- Limiting international students’ entitlements to work, bring dependent family members to the UK, extend their stay, and ‘switch’ into a work visa category.
- A further package of reforms to Tier 2 visas, implemented between autumn 2016 and spring 2017, intended to reduce non-EU economic migration. Notably: increasing the minimum salary threshold for experienced staff (to £30,000), adjustments to the

points test for 'restricted' Tier 2 visas, streamlining the intra-company transfer route, and introduction of Immigration Skills Charge for employers.<sup>8</sup>

## 2.4 Some common stakeholder criticisms

There have been criticisms that over time, the points-based system has failed to live up to its stated objectives such as simplicity, transparency, objectivity and flexibility.

The system has come to be widely regarded by individual applicants, sponsors, immigration lawyers and the judiciary as unduly complex, burdensome and costly.<sup>9</sup> It has been criticised for being particularly ill-suited to the needs of small and medium-sized businesses, to the point that some do not see it as a viable means for filling a vacancy. Critics point out that the Immigration Rules, application forms and associated guidance for each visa category run to hundreds of pages, and that the difficulties of keeping up to date with the requirements are exacerbated by the frequency of changes. There are very prescriptive evidential requirements, significant penalties for non-compliance, and limited opportunities to correct errors or challenge refusal decisions through reviews or appeals.

The structure and design of the system have sometimes struggled to accommodate the needs of certain employment sectors, and efforts to remedy this have in turn added to the complexity of the system.

For example, the emphasis on "hard" education and professional qualifications, as opposed to "soft" skills and experience, has posed particular difficulties for certain sectors, such as the creative industries. A different set of criteria were introduced for employers wishing to recruit in certain creative occupations (e.g. dancers, performers, TV and film workers), in recognition of the fact that the standard Tier 2 "graduate level" skill and salary requirements were inappropriate.

The catering industry (particularly the ethnic cuisine sector) has been voicing concerns about its difficulties operating within the context of the points-based system since its inception. For many years the sector has been warning of a "curry crisis", which it has in part attributed to the immigration system. It has argued that it has difficulties in filling vacancies with resident workers due to a shortage of suitably skilled workers and lack of interest in working in the industry, but also struggles to satisfy the eligibility criteria for work visas for chefs (e.g. qualifications and salary thresholds), which they say do not reflect the sector's circumstances. Skilled chefs are on the Shortage Occupation List, but subject to a number of conditions, including a minimum salary of £29,570 after deductions, that the job requires five or more years' relevant experience at the equivalent level, and that the job is not in an outlet which provides a fast food or take away service.

The system has been criticised for being unduly complex, burdensome and costly, and failing to meet the needs of its users.

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<sup>8</sup> [HCWS660, 24 March 2016](#)

<sup>9</sup> See, for example, Free Movement Blog, '[Court of Appeal condemns complexity of Points Based System](#)', 16 March 2015; Institute of Directors, '[Post-Brexit Immigration Policy](#)', October 2016

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A particularly topical criticism of the system is the emphasis on salary as a means of choosing between applicants for Tier 2 (General) visas, in the context of a limited number of visas being available. This has had a significant impact on certain public sector occupations, such as nursing and teaching.<sup>10</sup> Again, some exemptions and workaround solutions have been introduced, such as by prioritising some of these occupations over other visa requests. This has led to further criticisms, such as that applications in other sectors are unfairly and irrationally penalised as a result, and has revived debate about the whole rationale for the 'cap' on skilled visas.

Concerns have also been raised that the system favours male applicants over females. Again, this is partly attributed to the emphasis on hard qualifications. Centre Forum has contended that the minimum salary requirement is another relevant factor, in light of gender pay differences. It also noted that many of the employment sectors making most use of the points-based system, such as IT, are heavily male dominated.<sup>11</sup>

There has also been some debate over whether the system has proved to be sufficiently robust against fraudulent applications. Some have argued that the strong emphasis on objective evidence and paper-based application processes left Home Office caseworkers powerless to prevent visas being issued to fraudulent applications (e.g. where there are doubts about credibility). Governments have identified particular causes for concern over the years in certain visa categories, such as Tier 4 (students) and Tier 1 (Investor/Entrepreneur). This has led to some changes, for example the introduction of "genuine entrepreneur" and "genuine student" tests, arguably resulting in an uneasy compromise between objectivity, transparency and firmness.

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<sup>10</sup> Home Affairs Committee, *Immigration: Skills shortages*, 18 December 2015, HC 429

<sup>11</sup> Centre Forum, *Britain's points-based migration system*, 2011 p.40

## 3. How does the system work in practice?

### 3.1 The five 'tiers', and associated visa categories

There are [five 'tiers' to the points-based system](#). Each tier contains several different visa sub-categories (and some sub-sub-categories), with varying associated conditions and eligibility requirements:

- **Tier 1: for high value migrants.** Categories for [entrepreneurs](#); [investors](#); [graduate entrepreneurs](#); and [migrants with exceptional talents](#) in science, humanities, engineering, medicine, digital technology, TV and film, fashion or the arts.
- **Tier 2: for sponsored skilled workers with a long-term job offer.** Categories for [general skilled workers](#); [Ministers of religion](#); [sportspeople](#); and [intra-company transfers](#) (which is split into two sub-categories).
- **Tier 3: for low skilled workers.** This tier has never been used because it has been assumed that any need for low skilled workers can be met from within the resident/EEA workforce.
- **Tier 4: for students.** Categories for [child students](#) (age 4-17) and [adult students](#) (age 16 or over). Eligibility to work as a Tier 4 student depends on the circumstances of the case.
- **Tier 5: for temporary workers.** Categories for [Youth mobility](#) (limited to certain nationalities) and five sub-categories for classes of [temporary worker](#) with job offer/sponsor (generally staying for two years or less).

Of these categories, Tier 2 (General) is the main visa route for bringing skilled non-EU/EEA workers to the UK.

Visas are also available for [dependant family members of points-based system migrants](#). The eligibility criteria and associated conditions, including permission to work, vary depending on the sponsoring family member's visa category.

A few niche work and study visa categories available to non-EEA nationals remain outside of the points-based system.<sup>12</sup>

### 3.2 Applying for entry to the UK under the points-based system: an overview

[Practical information about applying for a visa](#) under the points-based system is available from the 'visas and immigration' section on the GOV.UK website. More detailed information is available in the Home Office's policy guidance to applicants and [sponsors](#), and its [Modernised Guidance](#) for officials and members of the public.

The system comprises of five 'tiers', which each contain several different visa categories.

Of these, Tier 2 (General) is the main visa route for bringing skilled non-EEA workers to the UK.

<sup>12</sup> Namely, the [short-term study visa](#), [domestic worker in a private household visa](#), [Turkish worker visa](#), [Turkish businessperson visa](#), and [representative of an overseas business visa](#).

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The application process, eligibility criteria, and conditions attached to leave to remain, [vary between different points-based visa categories](#).

For jobs that come within Tier 2 or Tier 5, separate applications must be made to UK Visas and Immigration (UKVI) by the visa sponsor (typically, the employer) and prospective worker. A similar process applies for Tier 4 applications, involving the education provider and the student:

- **Firstly, the sponsor (for example the employer) must apply for a licence to sponsor migrants under the relevant tier, and be put on the register of licensed sponsors.** To obtain a sponsor licence, the sponsor must agree to perform certain duties and responsibilities, such as monitoring sponsored migrants' attendance and informing UKVI of relevant changes of conditions. Failure to comply with the sponsorship duties can lead to the sponsor's rating being downgraded, or the suspension or withdrawal of their licence (this can have consequences for their continued ability to sponsor further applications, and for the immigration status of migrants they have already sponsored).
- **Secondly, the migrant must apply to UKVI for a visa to come to the UK in the relevant immigration category.** To [qualify for a visa](#), they must demonstrate that they possess the range of skills and attributes specified for the visa category they fall under (such as qualifications, salary and English language ability). Each of these qualities attract a fixed number of 'points'. People who do not have the correct combination of attributes will be unable to obtain the overall level of points needed – there is no scope to award extra points for certain requirements and offset these against others.

Applicants must also demonstrate that they already have a job offer from a licensed sponsor in the UK – again, this attracts a set number of points. They must do this by quoting the unique reference number for the 'Certificate of Sponsorship' ('CoS') issued to them by their sponsoring employer/education provider.

Other visa categories in the points-based system only require the individual migrant to apply to UKVI for a visa, although the talent-based categories require them to first obtain an 'endorsement' from a specified designated body.

The sponsor and visa applicant are each liable for [several fees](#) in the course of applying under the points-based system (in addition to any legal fees they may incur):

### **Sponsor's costs:**

- initial applications for a sponsor licence
- applying to renew an existing sponsor licence
- applying to extend the scope of an existing licence
- assigning each certificate of sponsorship (CoS)
- Immigration Skills Charge (where applicable)

Tier 2, Tier 4 and Tier 5 require separate applications to be made by the visa sponsor and the individual applicant.

**Visa applicant's costs:**

- the visa application fee
- the Immigration Health Surcharge
- (where applicable) proof of knowledge of English language, tuberculosis test, criminal record certificate

### 3.3 Which visa categories are subject to quotas?

There is a 'cap' on Tier 2 (General) visas (discussed in the following section). Limits also apply to the number of visa sponsorships available in some of the other categories within the points-based system, although these do not operate in the same way as the Tier 2 (General) cap:

There are limits ('caps') on the number of visa sponsorships available for certain visa categories.

**Tier 1 (Exceptional Talent)**

2,000 visa endorsements are available in the current financial year. The various organisations ('Designated Competent Bodies') who are authorised to issue endorsements to individual applicants are each given an initial allocation of endorsements:

- Arts Council England - 250 places;
- The Royal Society - 250 places;
- The Royal Academy of Engineering - 150 places;
- The British Academy - 150 places;
- Tech City UK - 200 places.

Once an organisation has used up its allocation, it can issue further endorsements from the remaining pool of 1,000 endorsements. The organisations can also reallocate endorsements between themselves.

[Changes to the eligibility criteria](#), in effect from July 2018, are intended to open up the visa to a wider pool of applicants from TV, film and fashion.

**Tier 1 (Graduate Entrepreneur)**

2,000 visa endorsements are available in the current financial year:

- 1,900 can be issued by [authorised Higher Education Institutions](#)
- 100 can be issued by the Department for International Trade

## 4. The Tier 2 (General) visa category

Tier 2 (General) is the main visa route available to employers wishing to recruit a skilled non-EU/EEA worker. Generally speaking, this visa category only caters for jobs that are classed at 'graduate level' (RQF level 6) or above and which pay a minimum of £30,000 per year,<sup>13</sup> and for jobs which are on the official Shortage Occupation List.

A [Tier 2 \(General\) visa](#) initially gives the worker three or five years' leave to remain (depending on the circumstances). The migrant worker can apply for an extension, but they cannot stay in the UK in this category for more than six years in total.

After five years' continuous lawful residence the worker can apply for permanent residence in the UK, [subject to eligibility criteria](#). These include a requirement to be earning at least £35,500 (subject to certain exceptions, such as for jobs on the Shortage Occupation List).

Otherwise, after six years, they must either switch into a different immigration category (if eligible) or leave the UK (in which case, they must usually complete a one year 'cooling off' period overseas before being eligible for a new Tier 2 visa).

In general, work visas are only available for shortage occupations, or graduate level jobs paying at least £30,000 per year which cannot be filled by a resident worker.

### 4.1 Protections for resident workers

Tier 2 is intended to incorporate various protections for resident workers, chiefly, to ensure that they have the first opportunity to fill a vacancy, and to prevent them being undercut by foreign workers.

Before recruiting a skilled worker from outside the EEA, the licensed employer must first seek to fill the vacancy with a resident worker (defined as an EEA national or person legally settled in the UK with permission to work). They must do this by advertising the vacancy for a specified length of time and in accordance with the terms of the [resident labour market test](#) and the relevant [occupational code of practice](#).

The occupational code of practice also specifies the skill level and **appropriate minimum salary** for the job). The appropriate minimum salary varies according to the occupation, but as a general rule is not less than £30,000.

It is not necessary to conduct a resident labour market test if the vacancy is on UKVI's [Shortage Occupation List](#), although the conditions specified in the relevant code of practice (e.g. minimum salary and qualifications) must still be met.<sup>14</sup>

<sup>13</sup> Subject to certain exceptions (e.g. RQF level 4 for jobs in the creative sector or on the SOL; £20,800 salary threshold for less experienced workers and certain professions)

<sup>14</sup> There are exemptions to the resident labour market test requirement in various other scenarios, as detailed in chapter 28 of the [Tier 2 sponsor policy guidance](#).

### Box 2: Shortage Occupation List

The shortage occupation list details the occupations which the Government considers cannot be filled by the resident workforce alone. One part of the list covers the whole of the UK, and the other cites some additional shortage occupations in Scotland. The lists are based on recommendations by the Migration Advisory Committee, at the invitation of the Home Secretary.

Furthermore, an **Immigration Skills Charge** came into effect on 6 April 2017.<sup>15</sup> This is intended to boost employers' investment in training and upskilling of the resident workforce and reduce reliance on migrant workers.

The charge, which must be paid by the sponsoring employer, applies in respect of workers coming from overseas for six months or more as a Tier 2 (General) or Tier 2 (Intra-Company Transfer) worker. It also applies to 'in-country' applications for Tier 2 (General) or Tier 2 (Intra-Company Transfer) workers, regardless of the length of stay. The charge doesn't apply in respect of:

- workers switching from a Tier 4 (Student) visa to a Tier 2 (General) visa;
- workers who have a Tier 2 (Intra-company Transfer) Graduate Trainee visa; and
- workers coming to do a job with a [PhD-level standard occupational classification \(SOC\) code](#).

The charge becomes payable at the point when the Certificate of Sponsorship is issued to a prospective worker.

The amount charged depends on the size of the employer's organisation and length of the prospective worker's employment. [The charge is](#) set at £1,000 per worker per year (£364 for small or charitable organisations). A medium or large sponsor would therefore have to pay £5,000 if seeking to sponsor a worker for five years.

Money raised by the charge is used to address UK skills shortages.

## 4.2 The 'cap' on sponsorships for skilled workers

Since 2011, the number of new Certificates of Sponsorship ('CoS') that licensed employers can issue for prospective Tier 2 (General) workers has been 'capped' at 20,700 per financial year. However, only certain types of Tier 2 (General) application, known as 'restricted CoS', count towards the annual limit:<sup>16</sup>

- New hires coming from overseas to take up a job paying less than £159,600; and
- People applying from within the UK to 'switch' into the Tier 2 (General) category from the Tier 4 (Dependent) category (i.e.

Since 2011, the number of new skilled worker visa sponsorships has been limited to 20,700 per year; subject to various exceptions.

<sup>15</sup> [Immigration Skills Charge Regulations 2017. SI 2017/499](#)

<sup>16</sup> Until July 2018 CoS issued to Croatian nationals also counted towards the limit, because of transitional restrictions on their employment rights post-EU accession.

## 18 The UK's points-based system for immigration

family members of international students), if earning less than £159,600.

The following ('unrestricted CoS') do not count towards the limit:

- New hires coming from overseas to take up a job paying over £159,600;
- "High value inward investment posts", where the person is coming to work in support of a posting from an overseas firm to the licensed sponsor in connection with the relocation of a high value business to the UK or a significant new inward investment project which involves new capital expenditure of £27 million or the creation of at least 21 new UK jobs; and
- People applying from within the UK to 'switch' into the Tier 2 (General) category from other immigration categories, and applications from existing Tier 2 (General) visa holders to extend their visa or change employer (apart from Tier 4 dependents as above).

Furthermore,

- From 6 July 2018, CoS for doctors and nurses no longer count towards the limit (regardless of whether they are on the Shortage Occupation List).

The Tier 2 'cap' takes effect after the employer has identified a suitable candidate. It applies at the point when they require a CoS from UKVI to issue to the prospective employee, before the migrant worker applies for a visa.

If a job offer does not count towards the annual limit, the licensed employer can allocate an 'unrestricted CoS' to a prospective employee without first obtaining permission from UKVI. Licensed employers are given an allocation of 'unrestricted CoS' when they successfully apply for a sponsorship licence. The exact quantity is determined by UKVI.

If a restricted CoS is required, licensed sponsors must apply to UKVI for it as and when needed. Only sponsors with the higher compliance rating can apply for restricted CoS.

### How are restricted sponsorships allocated? The additional points test

The annual allocation of restricted CoS is unevenly split into monthly allocations. The provisional monthly allocations for each of the first six months of the financial year are greater than those for the remaining months. Unused allocations from the previous month can be carried over to the following month's allocation.

On the 11<sup>th</sup> day of each month, applications received in the previous month (up to the fifth day of the same month) [are considered for that month's allocation](#).

Applications are ranked according to [a points test](#) (which is different to the points test used to determine the prospective worker's eligibility for a Tier 2 visa). Unlike the main points-based system, points for restricted CoS are awarded on a sliding scale, to facilitate differentiation between eligible applications.

Restricted visa sponsorships are allocated according to a separate points test, which is applied after the employer has identified a suitable candidate for the job.

The points table gives points for 'job type' and 'salary' – applications must attract points from each of these columns to succeed.

The 'job type' column favours applications to fill shortage occupations, followed by PhD level jobs, over other resident labour market vacancies:

Type of job	Points
Shortage occupation	130
PhD level occupation code listed in Table 1 of Appendix J of Immigration Rules	75
Resident labour market test met by 'milkround' provisions and the individual being sponsored meets the post study work provisions, other than they will applying for entry clearance rather than leave to remain	30
Job passes resident labour market test or an exception applies	20

Priority is given to jobs that are in recognised shortage occupations or at PhD level, and those paying the highest salary.

The 'salary' column favours jobs with higher salaries. Points for salary are awarded on a sliding scale, from a maximum of 60 (for jobs paying £100,000 to £159,599.99) to 1 point (for jobs paying £20,800 to £21,999.99).

The base number of points required for a restricted CoS is 21. But in practice the minimum number of points required can vary each month, depending on the number and credentials of the other applications received. If the monthly allocation is oversubscribed, the highest scoring applications are prioritised (and consequently, some lower scoring applications miss out on a CoS, even if they score over 21).

In the event of a 'tie' (i.e. there are more applications with the same number of points than available CoS), they will all be issued with a CoS if the monthly limit would not be exceeded by more than 100; otherwise they are all refused, and the following month's allocation adjusted accordingly.

### Recent controversy associated with the 'cap', and Government's response

For the first few years of its operation, the monthly allocation of restricted CoS was consistently undersubscribed, and therefore the cap had no direct impact on the number of Tier 2 (General) visas issued (or on the overall net migration target).

Eligible demand for restricted CoS exceeded supply for the first time in June 2015. Lower paying public sector jobs, such as nursing, were particularly affected as they were no longer able to satisfy the higher points/salary threshold for eligibility. In response, the then Government added nurses to the Shortage Occupation List – in effect this gave nursing jobs higher priority in the points allocation table, thereby boosting their prospects of securing a restricted CoS. After three

Demand for restricted sponsorships currently outstrips supply and there is concern that Brexit will exacerbate the problem.

months demand for restricted CoS returned to levels below the monthly allocations.

Since December 2017 the monthly allocations of restricted CoS have been consistently oversubscribed. There have been various explanations for the recent increase in demand, including fallout from the EU referendum (notably a reduction in EU immigration), and growth in demand for certain skilled workers, including healthcare workers. Repeat applications from previously unsuccessful applicants may also have become a factor.

The greater level of demand for restricted CoS has increased employers' uncertainty about the prospects for a successful application. For example, the minimum number of points required for a successful application jumped from 21 in November 2017 to 55 the following month. It has not been less than 46 in any month since.

The 'cap' has also been criticised for its impact on certain professions, notably those not on the Shortage Occupation List or in the higher end of the salary table. For example, in May 2018 an application required a minimum of 51 points to succeed. A job that acquired 20 points for passing the resident labour market test would therefore have needed a salary of £55-£60,000 to be granted a restricted CoS.

A recent FOI request submitted by the law firm Eversheds reportedly established that, between November 2017 and April 2018, 90 out of 97 applications for Tier 2 visas for consultant doctors were approved but only 733 out of 2,341 applications for junior registrars were granted. Overall, 2,360 applications for doctors and 1,946 applications from IT professionals were unsuccessful during the period, and none of the 103 applications from pharmacists were granted.<sup>17</sup>

Stakeholders' suggestions for reform of the cap have included:

- Increasing the annual allocation of restricted CoS, or making setting of the limit more responsive to changes in employment data.
- Introducing more exemptions to the cap – e.g. shortage occupation jobs, public sector/'public benefit' jobs.
- Introducing more flexibility, such as by allowing for regional salary thresholds, or adjusting the points table to enable more differentiation.
- Abolishing it completely.<sup>18</sup>

### **Recent Government action: Immigration Rules changes July 2018**

The Government's response to the recent controversy has been to exempt doctors and nurses from the cap.<sup>19</sup> With effect from July 2018,

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<sup>17</sup> Financial Times, 'More than 2,300 doctors refused visas in five months', 12 June 2018

<sup>18</sup> See, for example, CaSE, '[Cap on visas for skilled workers doesn't work for anyone](#)', 7 March 2018; BMJ, '[Scrap the Cap](#)' campaign (undated); British Future, 'ONS migration stats: Government must adapt, 22 February 2018

<sup>19</sup> [Statement of Changes to the Immigration Rules HC1154, 15 June 2018](#)

sponsoring employers will not require a 'restricted CoS' for these workers.

As well as facilitating the timely entry of skilled healthcare workers, this change is intended to free up more places for workers in other sectors. Just over 8,000 restricted CoS were issued to doctors and nurses in 2017-18.

The exemption has been broadly welcomed, although commentators have cautioned that it may only provide a temporary fix to recruiters' difficulties. The Migration Observatory [observes](#):

Because doctors and nurses have made up a significant share of certificates of sponsorship, exempting them from the cap could turn out to have a significant impact by making several thousand places available for those in other occupations over the course of a year. This would be expected to reduce the effective salary requirement relative to what it would otherwise have been—bringing it closer to the £30,000 baseline amount that has consistently operated in 'normal' times.

Whether the doctor and nurse exemption means that the cap is no longer binding in future will depend on future demand for Tier 2. (...) . For example, if high demand for CoS in 2018 has been fuelled largely by repeated re-applications by the same employers following refusals in the previous month, we might expect the pool of refused applicants to be gradually reduced as more spaces are made available. On the other hand, if demand in Tier 2 is substantively higher due factors such as lower net migration of EU citizens encouraging employers to look outside of the EU for new recruits—something that is plausible but difficult to confirm empirically—one might expect application levels to remain high. If that is the case, cap-related controversy is probably not over.<sup>20</sup>

A comment piece on an immigration law blog by Joanna Hunt, a Managing Associate at Lewis Silkin LLP, goes further:

... taking doctors and nurses out of the equation provides nothing more than a temporary fix for a problem which will continue to fester. With Brexit on the horizon, there is still potential for the cap to cause further mayhem as businesses look to non-EU workers to plug the inevitable gap in labour. Tier 2 is the only realistic immigration visa route left for workers from beyond Europe, so it is going to bear the brunt of any Brexit related overflow. It is therefore foreseeable that the cap will be hit again in the future.

Which profession will be lucky enough to be exempted from the cap to solve the problem that time? Simply taking industries out of scope of the cap in response to a political and media backlash is not a sustainable way to manage a system of immigration controls.

... The Home Secretary should have been bolder: instead of just tinkering with who the cap applies to, he could have addressed whether the justification for having a Tier 2 cap still exists. Most businesses would argue [that it does not](#).<sup>21</sup>

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<sup>20</sup> Migration Observatory, 'Accident and Emergency? The move to exempt doctors and nurses from the Tier 2 cap', 20 June 2018

<sup>21</sup> Free Movement Blog, 'Comment: An NHS exemption will help, but the Tier 2 visa cap should go', 18 June 2018 [paywall]

## 5. How might the system change post-Brexit?

Questions are being asked about what specific changes leaving the EU might provoke for the UK's immigration system.

For work visas in particular, the nature of the UK's future relationship with the EU/EEA, and whether EU/EEA nationals continue to have any privileged access to the UK, is a relevant consideration.

### 5.1 Future controls on EU/EEA immigration

#### Vote Leave's proposal for a 'genuine' points-based system

Vote Leave [issued a statement on immigration](#) during the EU referendum campaign, which called for the introduction of "a genuine Australian-style points-based system". Rather than identifying specific elements of the Australian approach, the statement simply referred to a system in which EU citizens would be subject to the same immigration rules as non-EU citizens.<sup>22</sup>

Comments made by Theresa May in September 2016 appeared to rule out the idea of applying a pure points-based system to EU/EEA migrants, arguing that it would not enable the Government to exercise sufficient 'control' over who is able to come to the UK.<sup>23</sup>

#### Ending free movement: the Government's view

The Prime Minister's [Mansion House speech](#) of March 2018 explicitly ruled out maintaining free movement of persons rights post-Brexit, but recognised that some alternative arrangements will be needed:

We are clear that as we leave the EU, free movement of people will come to an end and we will control the number of people who come to live in our country.

But UK citizens will still want to work and study in EU countries – just as EU citizens will want to do the same here, helping to shape and drive growth, innovation and enterprise.

Indeed, businesses across the EU and the UK must be able to attract and employ the people they need. And we are open to discussing how to facilitate these valuable links.

A few sector-specific ideas were alluded to later in the speech, notably:

- "an appropriate labour mobility framework that enables UK businesses and self-employed professionals to travel to the EU to provide services to clients in person and that allows UK businesses to provide services to the EU ..." (and vice versa);

The Government appears to have rejected the idea of a pure points-based system for post-Brexit EU and non-EU economic immigration.

<sup>22</sup> ['Restoring public trust in immigration policy – a points-based non-discriminatory immigration system'](#), 1 June 2016 (accessed via Vote Leave website, 20 June 2018)

<sup>23</sup> The Guardian, ['No. 10 rules out points-based immigration system for UK'](#), 5 September 2016

- “a far-reaching science and innovation pact with the EU, facilitating the exchange of ideas and researchers”; and
- “a similar approach to educational and cultural programmes”.

The [July 2018 ‘Chequers Agreement’](#) similarly raised the idea of replacing free movement with a ‘mobility framework’.

## 5.2 The Government’s timetable for developing a post-Brexit immigration system

In July 2017 the Government [commissioned](#) the Migration Advisory Committee (MAC) to advise on the labour market implications of the UK leaving the EU and a future immigration system. An [interim update](#) reporting on the MAC’s work and submissions received thus far was published in late March 2018.

The Government has said that it will not publish its own proposals until after it has considered the MAC’s final report and recommendations.

The timeframe for developing and legislating for a post-Brexit immigration policy stretches into next year, based on the following sequence of events:

- Final report and recommendations from MAC – due in September 2018.
- White Paper – expected to be published by the end of 2018. It is not known if it will be followed by a formal consultation period.
- Immigration Bill – expected in early 2019. It will cover immigration controls for EU nationals following the end of the transition period in 2020.

## 5.3 Some issues to consider

### Might some of the visa limits be adjusted?

If EU/EEA nationals became subject to similar controls as non-EU/EEA nationals, it is possible that there would be pressure to relax some visa restrictions or expand certain categories, depending on the needs of the economy.<sup>24</sup>

EU free movement law has ensured that UK employers have had easy access to labour from EU/EEA states. This has offset some of the obstacles to non-EU/EEA economic immigration imposed by the points-based system. For example, it has been assumed that any need for lower-skilled labour can be met by workers from within the UK and EU/EEA, and therefore there is no visa category for low-skilled work. Certain sectors would be particularly affected if EU/EEA workers became subject to similar skill level requirements as non-EU/EEA workers, hence

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<sup>24</sup> See, for example, Migration Watch UK, [UK immigration policy outside the EU](#), 27 January 2016, Annex A.

recent calls for a revived Seasonal Agricultural Workers visa scheme, and for a new 'barista visa', for example.

### **Might preferential access for certain nationalities be maintained/extended?**

There are different views as to whether it is feasible or desirable to aim for a universal immigration system in which all nationalities have equal access to work visas. Whilst some have argued that free movement rights for EU/EEA workers mean that other nationalities are unfairly discriminated against under the UK's current system, it is likely that other states would be similarly keen to secure some preferential immigration rights as part of any future trade deal negotiations with the UK in any case.

The '[Chequers Agreement](#)' leaves open the possibility of offering some reciprocal preferential work/study arrangements to citizens of EU Member States as well as "other close trading partners" in the future.

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