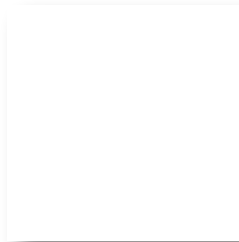
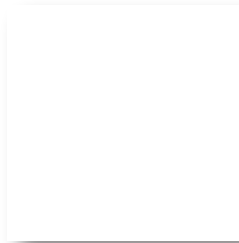


Britain's points based migration system

Alasdair Murray



ABOUT THE AUTHOR

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■ Executive summary

Until the 1990s, Britain was a country of net emigration – more British citizens left than newcomers arrived.

Over the last two decades, however, the UK has experienced substantial net immigration. The type of immigrant coming to the UK has also changed. There has been a decline in migrants from outside Europe while the decision in 2004 to let workers in from the new European Union member states led to a large influx of East European workers. There has also been a big increase in the number of skilled workers and students coming from non-EU countries with the government seeking to admit those immigrants deemed most beneficial to the economy.

The degree of net immigration has sparked a fierce political debate over the perceived economic and social costs and benefits. In the last few years the government has sought to clamp down on migration levels without closing off entry altogether. Since EU immigration is protected by the freedom of movement rules, successive governments have focused efforts on more tightly controlling non-EU economic migration.

The then Labour government created a new 'points based migration system' (PBS) for selecting non-EU economic migrants in 2008. Under the system, potential immigrants can only gain a work (or student) visa if they meet a points test, which considers factors such as income, education level and language skills.

The aim of the PBS is to provide an objective measure of a migrant's potential contribution to the UK economy. By testing each application against a range of fixed criteria, the system is intended to be transparent, fair and invulnerable to potential abuses. In theory the system should also be flexible enough to allow entry to all those with the potential to contribute to the economy.

In some ways the new system has been a success. Non-EU economic migrants have high labour market participation rates and make a net positive contribution to public spending. For example, those migrants

who enter under the Tier 1 general skilled entry route – which does not require a job offer – enjoyed an employment rate of 90 per cent in 2009. Nine out of ten of those migrants in employment were in highly skilled occupations.

However, a number of problems in the operation of the PBS have quickly become apparent. On paper, the reforms have greatly simplified the work permit system. In practice the superficially simple 'tier' system conceals a steadily growing number of sub-routes as the government tries to crow-bar a wide range of different migrant types into the framework. The outgoing Labour government was also unable to resist continually tinkering with the system, a practice that is so far continuing under the new coalition government, with its commitment to a cap on non-EU economic migrants.

In its first year of operation the government asked its expert-led Migration Advisory Committee (MAC) to conduct six reviews of shortage occupations and to consider whether certain entry routes should be closed down altogether. It also rushed through a clampdown on student visas ahead of the 2010 election without the input of the MAC and with little opportunity for users of the system to comment. Many of these changes have needlessly damaged the PBS, making it more complex for users, be they immigrants, employers or educational institutions.

The creation of the MAC made the system more transparent and ensured that some of the migrant selection criteria are rooted in evidence. However, the MAC is hamstrung by the poor quality of much of the migration data making it difficult to reach conclusions on many key subjects. As a consequence, the MAC is not always able to supply answers with the rigour demanded by government and the public. Moreover, the government has sometimes sought to ask the MAC to provide cover for decisions that are inherently political, not economic: most notably the Coalition government's request that the MAC recommend a figure for its proposed cap. In the event, the government chose to ignore the MAC's advice and set its own target level.

By its very nature a points system is bureaucratic – the government, rather than employers or educational establishments, determines what kind of economic migrants are allowed to enter the country. The system struggles with any non-standard qualifications or expertise. This is a particular problem in areas where very specialist skills – such as the arts – or 'soft' skills (like oral presentation, writing or management) are important. One major side effect of the structure of the points based system is that it appears to be admitting far more men than women. In Tier 1, two thirds of applicants are male, a figure rising to 78 per cent in Tier 2 (where applicants require a job offer) even though women now form a small majority in the UK workforce as a whole. This has led to

concerns that it is structured in a manner which is biased against female workers and may not reflect changing UK labour demand.

Businesses, schools and universities that use the new system face an increased regulatory burden. Both businesses (Tier 2) and educational establishments (Tier 4 student visas) have to comply with UK Border Authority (UKBA) regulations in order to gain sponsorship accreditation. This involves setting up an immigrant monitoring system, with regular reporting to UKBA on the worker or student. Businesses complain that they are forced to pay for frequent legal advice, since UKBA can remove sponsorship swiftly and with no recourse to appeal. Employers are liable for even inadvertent transgressions – for example, if their employee changes mobile number and fails to inform them, they may be punished.

The government's cap will further undermine the flexibility of the system. Businesses and universities are increasingly concerned that this approach to non-EU economic migration, which is an important source of staff for both the City and leading universities, is giving the impression that the UK is no longer open for business.

This paper argues that it is impossible to impose a meaningful quota and that the hard cap – set at 21,700 for 2011-12 – will damage the competitiveness of the UK economy. If there must be a cap – and the government is too politically committed to this course of action to back down now – it should be set as flexibly as possible. It would be preferable if the government introduced a target range for the limit on each tier in future years, for example 20,000 to 24,000 in Tier 2. It should then seek to hit the target by adjusting the points system, for example by raising salary or education level requirements. Instead of virtually closing the Tier 1 entry route, the government should award extra points for a job offer. By awarding points for a job offer, the government could provide an incentive for immediately entering the workforce in a highly skilled capacity – reducing the perceived risk of Tier 1 migrants taking less skilled posts. This would also ensure that businesses rather than bureaucrats determine 'the brightest and best' to be admitted up to the cap ceiling.

These reforms would reduce the risk that companies would be unable to recruit much needed migrants, who otherwise meet the basic requirements, simply because the quota had been filled. It would enable non-EU economic migration flows to continue to respond to changing economic circumstances, however imperfectly. And it would ensure the UK's migration policy does not become wholly dictated by meeting crude numerical targets.

The government has, at least, stepped back for the moment from seeking to impose even more draconian restrictions on Tier 2 immigration.

In the autumn of 2010, it proposed combining the Resident Labour Market Test (RLMT) – where employers must advertise a post for a period of four weeks before being allowed to employ a migrant – with the shortage occupation list. This would mean that businesses could only hire non-EU workers if the government had placed their sector on the shortages list and they conducted a RLMT. Such a reform would greatly restrict the ability of employers to hire workers when they needed to, and it would leave the government constantly trying to second guess changes in the labour market.

In the run up to the 2010 election, the main political parties suggested a number of other reforms to the migration system. In theory, the Liberal Democrats' idea of introducing a regional element to the points system could work alongside a cap. It could help ensure that those regions suffering from depopulation could receive more migrants even as the overall intake fell. However, there are significant logistical problems in practice. The evidence from abroad is that regional migration policies have not been successful in directing skilled immigrants to under-developed areas. Above all, economic migrants will (by definition) seek to go to those areas with the best economic opportunity. In the UK, there is a very close link between economic growth rates and inward migration.

The government should be seeking to increase, not reduce, the demand element of the points based system. This would help ensure the PBS has the flexibility to continue to respond to the changing economy. It should start by abolishing the shortage occupation list. The shortage list was created to ensure that a few favoured industries which remain reliant on less skilled migrant labour could have access to foreign workers after the introduction of the PBS. It attracts disproportionate political and media attention despite the small number of migrants that gain entry through it. Workers in these sectors are also most open to abusive employment practices since they cannot change jobs (unless they would otherwise meet normal points requirements). It is also reliant on the government, under the advice of the MAC, being able to make precise calculations about forthcoming labour demand. The government's announcement that it intends to restrict the shortage occupation list to graduate jobs will make its continuing existence even more of an anomaly.

For those sectors that are in reality lower skilled, the government should explore a limited opening of Tier 3, which covers low skilled, seasonal workers if there is a clear economic case for continued access to migrants for these sectors. However, the government should only consider part opening Tier 3 if it is willing to afford migrants the freedom to more jobs – otherwise the sectors benefitting could remain locked into dependency on migrant labour. The government should also look at making a number of other adjustments, for example to ensure the

Britain's points based migration system

system better takes account of the value of 'soft skills' which employers – not least in the public sector – insist they value highly.

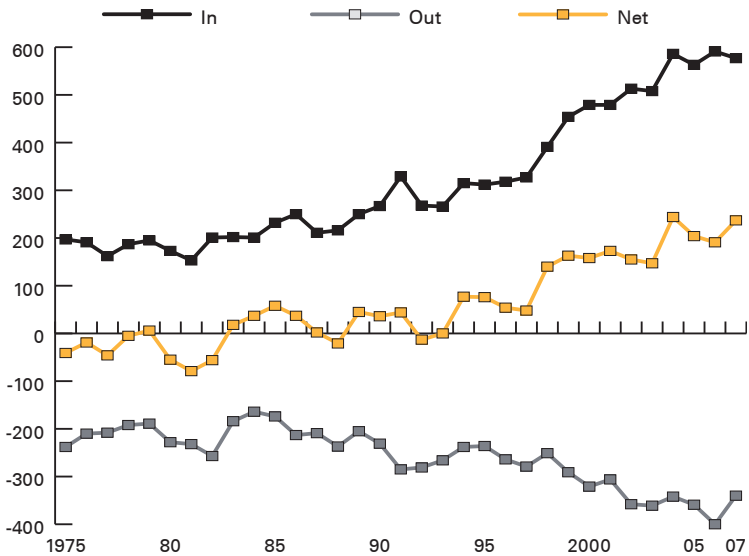
Such reforms would help redress the loss of flexibility caused by the introduction of a cap on non-EU economic migrants, and ensure that employers can still access the migrant labour they value most highly.

1. A new era of mass mobility

The UK has had a long and varied experience of post-war immigration. For the last fifty years Britain has attracted large numbers of immigrants from its former colonies and, more recently, Europe.

However, until the 1990s Britain largely remained a country of net emigration – more Britons left than immigrants arrived (see Chart 1). Successive governments from the early 1970s onwards operated tight controls on immigration in an effort to curb numbers arriving from New Commonwealth countries. As a result, until as recently as the early 1990s, a large proportion of immigrants arrived in Britain seeking asylum or under family reconciliation rules.

CHART 1: MIGRATION TO THE UK 1975-2008

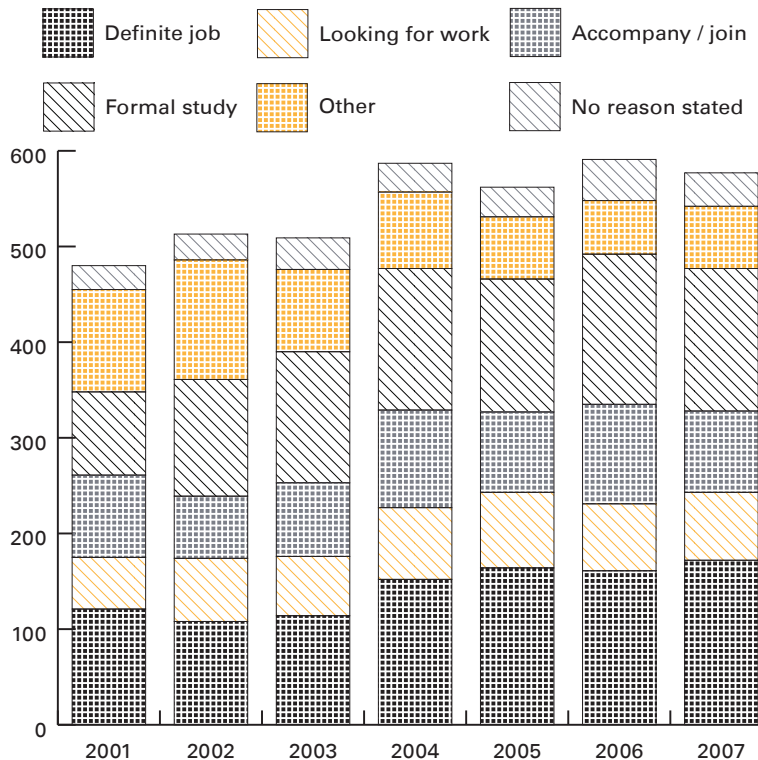


Source: ONS International Passenger Survey

Britain's points based migration system

During the last decade the scale and type of immigration has changed substantially. Britain has moved from being a country of net emigration to one of substantial net immigration. The number of asylum admissions has fallen markedly since the turn of the decade. However the number of economic migrants, which includes all those who have come to Britain to work whether through EU free movement of labour rules or by acquiring work permits has far exceeded expectations.

CHART 2: MIGRATION BY TYPE 1997-2008



Source: ONS International Passenger Survey

The Labour government that took office in 1997 fundamentally changed the UK's approach toward economic migration. Tony Blair promoted the concept of 'managed migration'; the idea that immigration should not simply be controlled, but should be actively managed, in order to select the right workers for the UK economy.

It passed three major pieces of legislation in 1999, 2002 and 2004 which sought to further clamp down on asylum in an effort to assuage public concern. But at the same time the government modified other rules and regulations to encourage labour migration for economic gain.

This more liberal approach to economic migration has resulted in annual immigration numbers rising sharply from 327,000 in 1997 to 577,000 in 2007 (see Chart 1). The greatest jump has been since 2004 when the government opened its doors to workers from the new EU member states (although restrictions remain in place in Romania and Bulgaria). While the government initially predicted the number of arrivals from the new member states would total around 15,000 a year, actual figures have far exceeded this. One recent estimate suggests 1.5 million workers in total arrived from Eastern Europe between 2004 and 2009 with around 700,000 still resident in 2009.¹

The number of non-EU economic migrants has also risen sharply. Unlike EU migration, which is protected by freedom of movement rules, the government has sought to heavily manage non-EU economic migrants. A key element of the new approach to economic migration has been an emphasis on skilled workers. Rather than entry criteria based on race or historic ties to the British Empire, the Blair government developed programmes designed to select groups of highly skilled migrant workers. For example, the Innovators Scheme and Highly Skilled Migrant Programme (HSMP) introduced in 2000 and 2001 aimed to attract entrepreneurs and migrants with post-graduate level qualifications and did not insist on a job offer from a UK employer.

While the government did not initially close off all less skilled migration routes, it did link these more closely with perceived labour shortages. For example, 'Sector Based Schemes' from 2003 were created for industries such as hospitality and food-processing.

By 2005, the UK's economic migration system had become so complex that there were a total of 80 different routes by which a non-EEA national could come to the UK for work, study or training. The 1994 Immigration Rules, which still formed the backbone of the system, had been changed 50 times.² The Work Permit system was the main route and it had a complicated two step process for a migrant to gain admittance. An employer needed to apply to the Work Permits UK agency for a permit for a specific migrant. If this was approved the prospective migrant then applied for entry clearance overseas, which might be refused,

1 M Sumption and W Somerville, 'The UK's new Europeans: progress and challenges five years after accession', EHCR, 2010.

2 Home Office, 'A points-based system: making migration work for Britain', 2006.

in which case the employer had to start the process again by recruiting a different migrant worker and applying for a new work permit. This system was highly bureaucratic and time consuming. It subjected both migrant and employer to a high degree of uncertainty.

At the same time, the higher education sector – with the support of the government – was increasingly competing internationally for students. This led to a rapid rise in overseas students, which placed the existing visa scheme under pressure.

The government's response was to develop the Points Based System in order to create a unified selection system, replacing what Tony Blair described as the “out-dated and confusing rules with a clear and modern points system”.³

ECONOMIC SUCCESS BUT POLITICAL FAILURE?

In many ways this wave of economic immigration has been a success. The increase in foreign labour has been lucrative: migration has made the UK economy more flexible, boosted competition and innovation, and provided vital labour for services like residential care which would otherwise face severe staff shortages. Foreign-born workers enjoy higher labour market participation rates than the UK's national average and make a net positive contribution to public spending. There is tentative evidence that even after financial crisis and recession, participation rates are holding up well. Overall, it has been estimated that migration to the UK contributes over £40 billion a year to the UK economy.⁴

However, the political debate around the issue has become increasingly fractious. Immigrants are accused of placing an inordinate burden on public services, especially housing and schools. Although the mainstream parties remain committed to keeping open some level of economic migration, the political rhetoric surrounding the debate is increasingly negative. In the run-up to the 2010 election, the then Prime Minister Gordon Brown, frequently referred to the need to protect “British jobs”. The far right has made gains on a scale not seen since the 1970s in European and local elections, although the anti-immigrant British National Party did not achieve its expected breakthrough in the 2010 general election. A recent opinion poll showed that among the larger EU nations British voters were the most concerned about the impact of immigration, with 66 per cent saying that migrant numbers are a problem.⁵

3 Home Office, ‘Controlling our borders, making migration work for Britain’, 2005.

4 Institute of Community Cohesion and Local Government Association, ‘Estimating the scale and impacts of migration at the local level’, 2007.

5 The German Marshall Fund of the United States, ‘Transatlantic trends: immigration’, 2009.

Furthermore, the economic context has changed radically since 2008. The financial crisis and long lasting recession has resulted in the UK experiencing rising unemployment for the first time in nearly two decades. The overall impact of migrants on the labour market during a period of recession is not clear cut. There is some evidence that immigration rates do decline in line with the economic cycle. However, recent research has suggested that net migration rates may not respond very closely to the cycle as the number of migrants returning to their original country can also decline. In addition some forms of non-economic migration, such as family reconciliation, could proportionally increase.⁶ Moreover, migrants may be prevalent in sectors that are not heavily impacted by the recession. There is little evidence that immigrants displace native workers in an economic downturn, although the perception that migrants damage the prospects of existing workers is widespread and has had a growing impact on the political debate.

In any case, the Labour government sought to use the recession as justification for running a tighter policy. This trend is continuing under the new government which is committed to capping the number of non-EU migrants.

In terms of the scale of its impact, the most important government policy decision in the last decade was the opening of the British labour market to the new EU member states in 2004. However, almost all current policy debate in the UK is focused upon the control of non-EU economic migrant flows through the new points based system. The next chapter examines the mechanics of this new system in more detail, and in particular how it was influenced by existing practice abroad.

6 J Dobson, A Latham and J Salt, 'On the move? Labour migration in times of recession', 2009.

■ 2. The rise of points based migration systems

In high income countries it is now common to operate migration policies with a range of complex economic and social goals. Migration policies often seek to maximise the economic benefits of migration while minimising the cost to public funds. Some countries aim to fill perceived labour shortages by selecting migrants to fill jobs in specific sectors. Many governments are also now trying to choose immigrants on the basis of social cohesion or national security concerns.

Governments are constrained in their approach to migration by international treaties such as those covering refugees or, more recently, trade. A few policymakers are even discussing the possibility of using immigration from developing countries as a form of aid policy by admitting migrants from countries where remittances form an important part of economic development, such as the Philippines, while trying to discourage a 'brain drain'.

As a consequence, targeted migration programmes are now widespread in developed economies – leading to 'competitive immigration' regimes.⁷ A United Nations report in 2005 found that the number of developed countries with policies designed to actively lower migration had fallen from 60 per cent in 1996 to 12 per cent to 2005.⁸ A more recent study which compared 14 countries found that all now favour highly skilled immigration.⁹

Governments have increasingly turned to points based migration systems as a means of achieving many of the diverse policy goals outlined above.

Canada introduced the first points system in the late 1960s. This approach was subsequently adopted by Australia in 1989, New Zealand in 1991, the Czech Republic in 2003, Singapore in 2004, Hong Kong in 2006, Denmark in 2007 and the United Kingdom in 2008. The United States has recently conducted a debate about whether it should also

7 A Shachar, 'The race for talent: highly skilled migrants and competitive immigration regimes', 2006.

8 UN, 'International migration report 2006: a global assessment', 2006.

9 UNDP 'Development Report 2009. Overcoming barriers: Human mobility and development', 2009.

adopt a points element within its migration system. Even the European Union has tentatively sought to push a 'blue' card proposal designed to offer freedom of movement throughout the EU to the most highly skilled non-EU workers. However, as the proposal stands it would not offer permanent residency and is only valid for two years, albeit on a renewable basis.¹⁰ EU member states are now in the process of adopting the new rules although doubts remain about whether it will generate much take-up.¹¹

Governments have found the points system approach attractive for a number of reasons:

■ **Economic**

The core justification for operating a points based migration system is derived from the theory of labour complementarity. This implies that some forms of migrant labour will increase demand for domestic labour, rather than crowding it out: governments can maximise the economic benefits of migration by attracting migrants with skills that are lacking or in short supply within the resident population.

In practice governments have tended to focus on highly skilled immigrants. This is because highly skilled immigrants are more likely to possess complementarities with the skills and capital of existing residents. They also have the potential to generate positive long term growth effects through the 'spillover' of knowledge.

Recent research has provided support for this theory. Skilled immigration increases the incentives for domestic firms to engage in more intensive research and development by supplying labour that can use or create new technology. Migrant entrepreneurs have made a major contribution to the creation of high skilled businesses.¹² One economist has warned that the United States' more restrictive immigration laws since 2001, in conjunction with growing global competition, is endangering that country's competitive edge.¹³

Points systems are designed to maximise the 'immigration surplus', that is the part of the additional output and income generated by immigration that the pre-existing resident receives, net of the fiscal burden imposed on tax payers.¹⁴

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- 10 EurActiv.com, 'An EU 'Blue Card' for high-skilled immigrants?', www.euractiv.com/en/socialeurope/eu-blue-card-high-skilled-immigrants/article-170986, 2008.
- 11 D Papademetriou et al, 'Hybrid immigrant-selection system: the next generation of economic migration selection schemes', Transatlantic Migration Council, 2009.
- 12 V Wadhwa et al, 'Skilled immigration and economic growth', 2008.
- 13 R Florida, 'America's looming creativity crisis', Harvard Business Review, October 2004.
- 14 M Ruhs, 'Economic research and labour market policy', 2008.

In addition, most systems also have, in theory, at least a distributional impact – that is, they aim not to reduce the welfare of lower income workers by driving wages down through migrant competition.

■ **Fiscal**

A key part of the immigration surplus is fiscal. There is good evidence that in countries such as the UK, immigrants as a whole generate more in taxes than they consume in public services – not least because of restrictions in access to the latter.¹⁵ The net fiscal contribution of higher earners is likely to be greater while these migrants are less likely to be seen as a potential burden on public finances.

Not surprisingly the evidence backs this view up: the higher the skills of immigrants, the higher their earnings and labour market participation rates. In turn, the more positive the net fiscal contribution of migrants, the more positive public opinion appears to be about migration.¹⁶ This has provided a further justification for governments to focus on the highly skilled within their points systems.

■ **Political**

However, the most attractive feature of a points system is its power as a political tool. Such a system allows a government to communicate to the public that it is in control of its borders, and is systematically limiting the level of immigration. Points based systems can inspire public confidence by using seemingly clear and measurable criteria for economic and labour market objectives. The inherent flexibility of the system makes it easier for governments to be seen to respond to changing economic or social circumstances. They are especially useful in countries which previously had no means of legal economic immigration, as they help allay concern over opening up to migration while preserving the desire of the bureaucracy to remain in control.¹⁷

The apparently objective, mechanical nature of a points test can also provide a defence against accusations of racism. In Canada and Australia, for example, the 'colour blind' points systems were explicitly introduced to replace previously racially determined immigration systems.

15 C Gott and K Johnston, 'The migrant population in the UK: fiscal effects', Home Office, 2002.

16 M Belot and T Hatton, 'Immigration selection in the OECD', 2008.

17 D Papademetriou, 'Examining points systems as a method for selecting immigrants', US Congress Hearing, 2007.

WHAT IS A POINTS BASED SYSTEM?

Economic migration systems fall into two categories: those in which employers select economic migrants (demand led), and those where the government defines the selection process (supply led).¹⁸

The first approach, which is used for example in Sweden, is guided by the immediate needs of employers. Employers select individual immigrant workers to fill specific vacancies. The latter approach involves the government setting policies designed to mould the overall shape of the workforce rather than benefit specific employers.

What is commonly termed a migration points based system is normally a supply rather than demand led model. There is no precise definition of exactly what constitutes a PBS. At the simplest level, a points based migration system could describe any system that scores entry through a series of criteria. But in general the term is employed to describe migration systems that are loosely modelled on those operating in Canada and Australia over the last few decades.

Points based systems commonly score potential entrants on a number of core criteria including educational qualifications, career history, age, language and either prior work experience or education in the country of proposed immigration. In addition many systems add extra points for: possessing a job offer; applying to work in a high demand sector; for a migrant's partner possessing favourable characteristics, such as high level skills; for previous earnings; and by meeting regional settlement stipulations such as choosing to work in an under-populated area.¹⁹

One of the defining factors of most points based systems is that they are aimed at highly skilled migrants and offer the possibility of citizenship. In Canada and Australia those that meet the points requirements are automatically on the road to citizenship. This is also true of the UK Tier 1 scheme (see Chapter 3). They are effectively "talent for citizenship" programmes, used to gain the net positive effects associated with skilled migration.²⁰

18 D Papademetriou et al, 'Hybrid immigrant-selection system', 2009.

19 M Belot and T Hatton, 'Immigration selection in the OECD', CEPR Discussion Paper, 2008.

20 A Shachar, 'The race for talent', 2006.

TABLE 1: PBS IN AUSTRALIA, CANADA AND THE UK

Criteria	Australia	Canada	UK
Age	Up to 30 points	Up to 10 points	Up to 20 points
Close relatives	-	Up to 5 points*	-
Community language	Up to 5 points	-	-
Education	Prerequisite	Up to 25 Points	Up to 75 points**
Education in the country	Up to 25 points	Up to 5 points*	-
In demand skills	Up to 60 points	-	-
Job offer	-	Up to 10 points	-
Language	Up to 25 points	Up to 24 points	Prerequisite (10 points)
Maintenance funds	-	-	Prerequisite (10 points)
Previous earnings	-	-	Up to 45 points
Settlement stipulations	Up to 5 points	-	-
Spouse/partner characteristics	Up to 5 points	Up to 5 points*	-
Work experience	Up to 10 points	Up to 21 points	-
Work experience in the country	Up to 10 points	Up to 5 points*	-
Pass park	120	67	75
Total points available	175	100	160

*These categories are under the category of 'adaptability' and cannot exceed more than 10 points in total.

** 75 points are awarded to those with MBAs received before August 2008.

Source: Australian Department of Immigration and Citizenship, Canadian Immigration Citizenship and Immigration Canada, UK Borders Agency.

HYBRID SYSTEMS

Supply led points systems, however, normally only make up part of the overall migration system. Countries invariably keep open routes for refugees and family reconciliation. Often, these two entry mechanisms are a more important source of migration than the PBS. Another common route of entry is through inter-governmental agreements which permit immigrants from specific countries to work in certain sectors of the host country's economy. For example, the US has such agreements with Canada, Mexico, Singapore, Chile and Australia.²¹

The evolution of the systems in Canada and Australia also suggest that a points system alone will never be able to meet all of a country's labour market needs. Though both countries operate a system of predicting shortages, they have also maintained temporary routes outside the points system for employers to take on immigrant workers. In Canada, only 22.5 per cent of immigrants in 2003 and 2004 were admitted under the points system. Australia admitted 51 per cent through the points system in 2005-2006.²² In contrast, the US admitted just 11.6 per cent through its high skilled migrants programmes in 2003.

Moreover, there is a growing tendency to blur the line between demand and supply led migration even within the points system itself. Australia has in recent years placed an increased emphasis on a critical skills list and awarded extra points for possessing a job offer.²³ In Canada there is a trend towards allowing employers to hire temporary workers and then moving these migrants toward permanent status. The UK system is a hybrid. Tier 1 is supply led – there is no requirement to have a job, providing the applicant achieves sufficient points. However, while it requires applicants to pass a points threshold, Tier 2 is largely demand based, as the most important element is a job offer. The points mainly act to restrict which industries can take advantage of this system by placing minimum education and salary requirements. Other tiers in the UK system only have a nominal points element. It could be argued that just one in six immigrants entering Britain gain access through a true points system.

POINTS SYSTEMS IN PRACTICE: AN INTERNATIONAL PERSPECTIVE

The UK points based system draws explicitly on those of other countries, especially Canada and Australia. This section examines these systems in detail, as they shed light on the aims and workings of the UK system. It then briefly explores the US system, which does not use points, but is an important point of reference for some aspects of the UK debate – most notably in its use of quotas.

CANADA

Canada was the first country to develop a points system, introducing the new scheme in 1967. It was an attempt to overcome fluctuations in the inflow of migrant workers by linking immigration to the needs of the labour market, and to move away from the previously racist 'whites

22 D Papademetriou, 'Examining points systems', 2007.

23 M Belot and T Hatton, 'Immigration selection in the OECD', 2008.

only' entry criteria.²⁴ The system, in combination with other reforms, has led to a shift in migrants' origin from 85 per cent European in the mid-1950s to around only 15 per cent now.

Canada sets a target range for migration – in 2007 this was 240,000 to 265,000. In 2008 it admitted 247,243 immigrants as permanent residents, which amounted to just over half of all labour migrants. About 43,000 'skilled' workers were selected under the points system. But if spouses and dependants, plus other categories such as investors and entrepreneurs, are also included, this route accounts for 60 per cent of all permanent migration. Family reconciliations make up just over a quarter (26.5 per cent) while asylum accounts for 13 per cent of the total.

The Canadian system prioritises broadly desirable human capital, rather than a specific job offer. Advocates of the system argue well trained flexible individuals who have experience of the labour market should be best able to adapt to rapidly changing economic circumstances. The UK has followed this approach in Tier 1 where there is no immediate need to have a job if a migrant meets the points threshold.

However, a decline in Canadian immigrants' labour force participation rates and income levels have called this approach into question. In 1980 the income of male immigrants was 89 per cent that of Canada-born workers. By 2000 this figure had declined to 77 per cent. The unemployment rate also increased from 7.1 per cent to 12.7 per cent compared with a decline among native born workers from 7.9 per cent in 1980 to 7.4 per cent in 2000.²⁵ More recent data showed that immigrants experienced on average an unemployment rate twice that of native born workers, although this gap closed significantly after ten years living in Canada.²⁶ This gap is blamed on the non-recognition of foreign education and experience by employers, alongside other factors such as weak language skills.

As a result, the Canadian government has recently made a number of reforms. In 2002 it gave extra points to English and French speakers with a view to ensuring immigrants can more quickly enter the job market. In 2008 it gave greater priority to shortage areas in an effort to clear a backlog of applications. Moreover, Canada has made increasing use of temporary foreign workers. The total numbers of temporary workers – primarily from the US and Mexico – reached 113,000 in 2006, the highest level since the 1970s. The Canadian government also introduced

24 The 1952 New Immigration Act allowed refusal of admission on the grounds of nationality, ethnic group, geographical area of origin, peculiar customs, habits and modes of life, unsuitability with regard to the climate etc.

25 G Bouchard, 'The Canadian Immigration system: An overview' www.irpp.org/miscpubs/archive/bouchard_immig.pdf

26 StatCan, 'Canada's immigrant labour market', 2007.

reforms which have extended the maximum duration of stay for care givers and speeded up the hiring process for temporary workers.

AUSTRALIA

More than any other migration system, it is the Australian PBS which has been most influential in the UK debate. The Labour government explicitly referred to the Australian model when it developed its new proposal. In 2008, Labour's migration minister Liam Byrne described the new system as one that sought "to help British business recruit the skills it needs from abroad so we are a global hub of global talent". He added that the UK was "learning from the most effective systems in the world, in this case Australia."²⁷ The Conservative party has also claimed that its planned migration reforms are based on those introduced in Australia, especially the introduction of a quota or cap on overall migrant numbers.²⁸

Like Canada, Australia had conducted major immigration reform in the early 1970s in an effort to phase out its previously racist approach to migration, the 'White Australia Policy'. But Australia only launched a recognisable points system in 1989 called the General Skilled Migrant Program (GSM).²⁹ In the late 1980s inflows to Australia were high and public attitudes were largely negative. Policymakers presented the points system as a means of being able to select migrants "who can quickly make a positive contribution to the... economy, labour market and budget".³⁰

The Australian system differs from Canada to the extent that it places a much greater emphasis on immediate job prospects. John Howard's 1996-2007 government introduced extra points for migrants seeking to work in a sector placed on an 'Occupation in Demand List'. In 2007-8, two thirds of skilled visas came via this list (that is they were not sponsored by employers).

The Howard government also introduced extra points for work experience in the case of students, and if a migrant's partner worked in a labour market sector in demand. The result is that Australian immigrants now achieve a higher labour market participation rate and average wages are also higher than before the reforms.³¹

27 L Byrne, 'Speech to LGA', 2008.

28 BBC, 'Tories want 'best' immigrants', 2009.

29 An earlier system, launched in 1979, the 'Numerical Multifactor Assessment System' used a points assessment but operated in conjunction with an interview process.

30 Australian Department of Immigration and Multicultural Affairs, 'Review of the independent and skilled Australian linked categories', 1999.

31 L Hawthorne, 'The impact of economic selection on labour market outcomes for degree-qualified migrants in Canada and Australia', 2008; D. Cobb-Clark, 'Selection policy and the labour market outcomes of new immigrants', 2004.

In Australia, the GSM has allowed the government to change the balance of the migrant inflow from around 65 per cent family migration in 1996-7 to 65 per cent skilled migration in 2005-6.³² This has also altered the educational profile of new immigrants: of those immigrants who arrived in Australia between 1990 and 2000, 37 per cent had tertiary education, compared to 22 per cent who arrived before 1990.³³

However, the Australian system with occupations lists has not been able to perfectly map labour market changes. For example, the 'occupation in demand list' placed a heavy emphasis on IT skills after 2000. However, a sudden large influx of IT specialists coincided with a sharp rise in unemployment for those working in the sector after the dot com crash – rising from 19 per cent in 2001 to 30 per cent in 2004.³⁴ As one study said, this led to "the oft-cited concern about the highly trained IT specialist who drives a taxi: ... qualifications only assist the Australian labour market if they are used in jobs that migrants are able to get".³⁵

More recently, the Australian government has conducted another fundamental overhaul of the list because of concerns that large numbers of migrants were entering already saturated sectors. In February 2010, Chris Evans, the Australian immigration minister, announced that the government was abolishing the 106-category list because of fears it was encouraging people to apply for courses such as hairdressing and accountancy which were not in demand, leaving other sectors like mining struggling.³⁶ Evans plans to refocus the points system on 'high end' occupations – especially healthcare, but also engineering and mining. The review will also again ask whether there are sufficient points awarded for excellence in English and work experience and will potentially impose caps on certain sectors. In 2009 170,000 applicants applied for 108,000 places.

Politically the Australian PBS has been a huge success; this is probably the main reason it has attracted attention in the UK. The Howard government achieved a series of election victories in part due to its tough stance on migration. It introduced some of the most restrictive asylum policies in the world, most notably defying both global opinion and international treaties to detain asylum seekers off-shore. It also introduced a migration 'target' to cover all forms of permanent migration.

However, throughout this period Australia continued to permit substantial migration. Although the Howard government talked tough,

32 Department of Immigration & Multicultural & Indigenous Affairs, 2009.

33 OECD, 'Chart I.12, Percentage of immigrants and native-born persons aged 15 and above with a tertiary education, circa 2000', in SOPEMI 2007 Edition, 2008.

34 B Kinnaird, 'The impact of the skilled migration program on domestic opportunity in information technology', *People and Place*, 2005.

35 B Birrell et al, 'Evaluation of the General Skilled Migration Categories', 2006.

36 BBC Online, 'Australia to focus immigration policy on skills', 8 February 2010.

permanent migrant numbers increased rapidly from the mid-1990s from 68,000 in 1997-98 to peak at 172,000 in 2008. The government of Kevin Rudd subsequently cut Australia's migration target to 168,000 in light of concerns over the impact of the economic downturn. Julia Gillard, who took office in June 2010 following Rudd's resignation, has indicated that her government wants to further slow the pace of immigration.

TABLE 2: MIGRATION IN AUSTRALIA, CANADA, UK AND US 2008

	Australia	Canada	UK	US
Family	56,477	65,567	51,160	716,244
Skilled permanent economic migrants	118,415	149,072	30,260	166,511
Refugees	474,827	21,860	25,930	1,660,423
Temporary economic migrants	14,854	363,494	20,620	90,030
Total permanent immigration	224,619	247,243	590,000	1,107,126
Population	21,431,800	33,327,300	60,943,912	304,059,724
Permanent immigration as a % of population	1.05%	0.74%	0.97%	0.36%
Net migration rate	6.02%	No data	2.67%	2.9%

Source: Australian Department of Immigration and Citizenship; Citizenship and Immigration Canada; UKBA; United States Department of Homeland Security. UK Statistics Agency, www.statistics.gov.uk/downloads/theme_population/Migration-Statistics-2008-Annual-Report.pdf

Australian Department of Immigration and Citizenship, www.immi.gov.au/media/publications/statistics/immigration-update/update-jun09.pdf

OECD (US figure) www.oecd.org/dataoecd/5/53/45629857.pdf

The Australian government has also permitted growing numbers of temporary migrants. The '457' visa has no cap and is not restricted to shortages; rather, employers can sponsor immigrants for a period of four years, on average. Like Canada, the temporary visas are often a stepping stone to permanent settlement for students, who are granted 12 months in which they can build up sufficient points to remain in the country. In 2005-6 the number of '457' visas granted was 71,150, an increase of 46 per cent on the previous year.

UNITED STATES

The United States remains one of the most important global destinations for migrants, although it no longer holds a near monopoly for skilled migration among developed countries. Unlike the other countries considered in this chapter it does not employ a points system: an attempt to introduce a points element to the migration system in 2007 as part of a more comprehensive immigration law reform failed in Congress.

As a result, most skilled migrants gain entry through a complex variety of different visa regimes and require the sponsorship of an employer. These temporary visas can then be converted to a permanent visa (green card) via an employers' request, although the employer must conduct a labour market test.

The most important highly skilled entry route is the H-1B visa route. However, these permits are frequently subject to political bargaining. In 2004 Congress halved the quota to just 65,000 and the tiny allocation is normally filled within just one day of it opening.³⁷ This has led to some businesses moving highly skilled operations abroad – most notably Microsoft, which moved some of its R&D operations across the border to Vancouver.³⁸

This arbitrary and tight control of highly skilled migration is in contrast to the large numbers – approximately nine times as many – that arrive in the US for non-economic reasons.³⁹ Its porous southern border means that illegal migration is also an important source of labour. It is estimated that there are around 12 million undocumented workers in the US representing around a third of all migration.⁴⁰ In this sense, the US experience is more akin to that of Italy and Spain, where the vast majority of migration in recent decades has been illegal arrivals from African neighbours, or as the result of family reconciliation. It also contrasts with the other 'Anglo-Saxon' economies, which are increasingly trying to target highly skilled migration.

A QUALIFIED SUCCESS?

This chapter has shown the increasing trend towards governments adopting points based systems as a means of permitting skilled migration. The attraction of the system is clear – it seeks to permit entry to those most likely to make a quick economic and fiscal contribution to their new home, thus reducing concerns over immigration and appearing to leave the government in full control of its borders.

37 The quota does not include not for profit organisations including research institutes.

38 Los Angeles Times, 'So long, software jobs', 2007.

39 Office of Immigration Statistics, '2008 Yearbook of immigration statistics', 2009.

40 H Sheinfeld, 'Managing labour immigration during economic growth and recession: International experiences with points-based systems conference', 2009.

The experience of the two longest advocates of this approach, Australia and Canada, is broadly positive. Both countries have admitted large numbers of migrants through a PBS and in general achieved positive labour market outcomes. In both countries, there remains a strong political consensus in favour of high levels of migration, even if the political rhetoric in Australia has sometimes been at odds with the reality of migrant numbers.

However, points based systems also possess a number of weaknesses. They are not typically effective at filling specific roles. Some highly skilled migrants who are admitted do not immediately find work, or initially work in roles for which they are over-qualified. Thus the wealth of human capital being brought into the country is not really capitalised on and is not reflected in the short term benefit to the labour market.

Countries which use points systems have addressed this problem by adjusting the points test to favour skills which are considered transferable, and by employing programmes targeted at highly skilled migrants. For example, the Australian government has adjusted its points test to favour migrants with an English speaking background. English speaking migrants have risen from 20 per cent of all degree qualified arrivals in 1991-96 to 28 per cent in 1996-2001. Migrants from the UK and South Africa in particular make up a significant proportion of skilled category arrivals. The Canadian government launched the 'Internationally Trained Workers Initiative' in 2005, a strategy to address employment barriers for internationally trained workers.⁴¹ They also adjusted the Canadian points system to reflect research on the employment prospects of new migrants by favouring specific work experience and language skills over experience in a skilled occupation.⁴²

However, the few longer term studies are cautious about the effectiveness of such attempts to micro-manage the PBS. While the Australian system appears to have had some success in getting people into work quickly, the benefits disappear after a number of years.⁴³ The research found that even an optimal points system can only explain a small amount of variation in immigrants' lifetime earnings – success was largely determined by other factors. The only two clear important variables were, not surprisingly, educational attainment and language skills. Moreover, as the Australian example shows, it is very difficult for governments to keep up with the market by adding quasi demand-led elements like occupation lists. The chief weakness of the systems then is that government bureaucracies rather than employers are seeking to make the final judgement on which migrant workers are suitable for the economy.

41 Newfoundland and Labrador Association for New Canadians, 'The Integration of immigrants into the Newfoundland and Labrador workforce', April 2007.

42 D Papademetriou et al, 'Hybrid immigrant-selection system', 2009.

43 J McHale and K Rogers, 'Selecting economic Immigrants: an actuarial approach', 2008.

It should also be remembered that points systems only make up a minority of overall migration entry routes. Other means of entry remain important, especially family reconciliation. Both Canada and Australia are also placing increasing emphasis on demand led temporary visas as a stepping stone to permanent migration. The United States has no PBS; instead, channelling highly skilled migration entirely through a demand led system – albeit with an arbitrary quota system to keep down numbers.

BOX 1: The UK PBS

The UK points based system is based on a five tier framework:

Tier 1: Highly skilled migrants, entrepreneurs, investors and graduate students – this replaced the highly skilled migrant programme

Tier 2: Skilled workers with a job offer; this tier replaced the work permit rules

Tier 3: Low skilled workers – restricted to those needed to fill temporary shortages

Tier 4: Students

Tier 5: Youth mobility and other mainly unpaid temporary workers such as interns

The five tiers were phased in between February 2008 and March 2009.⁴⁴

Tiers 1 and 2 can lead to permanent settlement. Migrants in Tiers 1, 2 and 4 can potentially switch between those tiers. Tiers 3 and 5 are temporary routes and migrants cannot move out of these tiers once they are in the UK. Dependants are allowed to come to the United Kingdom with the main applicant but they are not allowed to work if they accompany a student under Tier 4 or a temporary worker under Tier 5 who has less than 12 months' leave to remain in the country.

Sponsorship

All applicants in Tiers 2 to 5 must submit a certificate of sponsorship when they apply to come to the UK. In order to sponsor migrants, employers and educational institutions must apply to the Home Office for a licence. Sponsors are rated A, if they are able to fully comply with the reporting and monitoring rules for employing or admitting migrants, or B, a temporary status while measures are put in place to reach full accreditation. An employer or educational institution issues a certificate of sponsorship to the migrant they have chosen, the migrant can then make an application for clearance

44

www.bia.homeoffice.gov.uk/employers/points/timetable/

through the points test, and will receive more points if their sponsor is 'A' rated and less if it is 'B' rated. Tier 1 applicants do not require a job offer so therefore do not need a certificate of sponsorship.

Tier 1

Points are awarded differently in each tier. The Labour government introduced several categories for Tier 1: an applicant under the 'entrepreneurs' category must hold at least £200,000 of disposable capital in a regulated financial institution; under the 'investors' category they must hold at least £1 million of disposable funds; applicants under the 'graduate students' category must have a qualification from a UK institution; under the 'general highly skilled' category an applicant is awarded points based on a range of factors including age, qualifications, work experience or education in the UK, and previous earnings (which are weighted to reflect the distribution of salaries around the world). The Coalition government is in the process of revising the rules for entrepreneurs and investors to make them more flexible (and they remain outside the cap).⁴⁵ However, it has closed the general Tier 1 route entirely and placed a cap of 1,000 on entry for a new stream of those with "exceptional talent".

Tier 2

Tier 2 effectively replaced the old work permit system. Applicants must have a job offer and a certificate of sponsorship. The employer must complete a 'resident labour market test' (RLMT), and advertise the job to ensure there are no workers already in the UK with the right qualifications. Once this test is complete, an employer can submit a certificate of sponsorship to the applicant, who must then undergo a points test. Points are awarded under Tier 2 for qualifications and prospective earnings.⁴⁶ All applicants must demonstrate English language competence.

Under Tier 2 extra points can be earned if the job is on a list of 'shortage occupations' identified by the Migration Advisory Committee (MAC). This is a means of allowing certain less highly skilled sectors to recruit labour.

Another important source of Tier 2 entrants are intra-company transfers (ICTs). Applicants must have spent at least six months with the firm (although the MAC has recommended that this is raised to one year). There are also specialist routes for sportspeople and ministers of religion. The Coalition government announced in November 2010 that it would introduce an annual cap of 20,700 in 2011-12 on Tier 2 entrants. However, it is exempting most ICTs from this cap.

45 www.ukba.homeoffice.gov.uk/sitecontent/newsfragments/35-t1-t2-annual-limits

46 Home Office, 'Skilled workers under the Points Based System (Tier 2): statement of intent', 2008.

Tier 3

Tier 3 has been suspended because the UK government maintains that the UK's low skilled seasonal labour needs, which the tier covers, are met by migration from the EU at present. However, two low skilled migration routes, the seasonal agricultural workers scheme (SAWS) and the sector based schemes remain open to temporary Romanian and Bulgarian migrants, who do not yet have unrestricted access to the UK labour market. The quotas allowed under the SAWS from these two countries were increased on the advice of the MAC, which identified shortages in the agricultural industry.⁴⁷

Tier 4

Tier 4 is for students with a certificate of sponsorship from a licensed educational institution (university, language college or school). Previously a student could apply for a visa on the basis of an offer letter from a given institution, but could then choose to study at a different institution. Under the new system, a student's leave to be in the UK is tied to a specific institution.⁴⁸ The government has also cracked down on the number of institutions which are eligible to sponsor students, and has demanded minimum language qualifications even for students attending UK based language schools. At the time of writing (January 2011), the government was consulting on further tightening the student visa system with a strong possibility that it would greatly restrict of close entry to non-degree courses.

Tier 5

Tier 5 is for youth mobility and temporary workers – those who come through working holiday agreements with other countries, for example. There are several categories, but tier 5 roles differ from the rest of the PBS as it primarily has non-economic objectives but seeks to “satisfy cultural, charitable, religious or international objectives”.⁴⁹

47 Home Office, 'Work restrictions will continue for Bulgarians and Romanians', December 2008.

48 Home Office. 'A points-based system: making migration work for Britain', 2006.

49 Home Office, 'A points-based system', 2006.

3. The UK's points based migration system in practice

The UK migration system has faced conflicting demands in recent years. On the one hand, the government has faced considerable pressure to reduce overall migration, as net immigration levels rose from around zero to over 200,000 between 1996 and 2007 (see Chart 1 on page 9). This trend intensified when the government opened up borders to the new EU member states in 2004, which led to an unexpected surge in migrant numbers. On the other hand, there have been strong demands from business and industry to allow them to recruit workers from abroad where necessary. In addition, there is growing competition among developed countries for skilled workers and students.

The government has sought to balance these competing interests through a points system introduced in 2008 – the first major European country to do so. The new points system was presented as part of the government's determination to maximise the economic benefits of immigration while exercising greater control over migrant access to the UK.

The aim of the PBS is to provide an objective measure of a migrant's potential contribution to the UK economy. By testing each application against a range of fixed criteria, the system should be transparent, fair and invulnerable to potential abuses. In theory the system should also be flexible enough to allow entry to all those with the potential to contribute to the economy.

A succession of ministers has emphasised these benefits. Liam Byrne, Minister for Immigration when the policy was launched in 2008, said it would be "simpler, clearer and easier to enforce"⁵⁰ and that it was "characterised by the fairness and firmness that is a great British tradition."⁵¹ Byrne's successor Phil Woolas slightly modified

50 Home Office, 'New points based migration system to start in the new year', April 2007.

51 L Byrne, 'The progressive challenge: can migration benefit the whole nation?', printed in Progress magazine, June 2008.

the government's position, stressing the restrictive potential of the PBS given higher unemployment during the recession. He argued that "it's been too easy to get into this country in the past and it's going to get harder".⁵² Damian Green, the current Conservative immigration minister, has in turn insisted that the PBS will still deliver economic benefits even as the government's new migration cap reduces the downsides of "uncontrolled immigration".⁵³

At its inception, the PBS was broadly welcomed. All three major UK political parties remain committed to maintaining the new system, albeit with different proposals for reform (see next chapter). The business lobby also supported the introduction of the PBS. The Confederation of British Industry (CBI) argued that it made the UK a more attractive place to do business, stressing that firms highly value labour mobility, and multi-national corporations welcome the ability to relocate their employees from one country to another.⁵⁴

However, criticism of the system has grown rapidly in the two years since it was introduced. It is not clear that the PBS has fulfilled the government's desire to make the non-EU migration system simpler, more transparent and more flexible.

HAS THE PBS SIMPLIFIED THE UK'S MIGRATION SYSTEM?

The old work permit system was hugely complicated. There were over 80 different possible entry routes for migrants. For users of the migration system, whether migrants themselves or employers, the new five tier system seemed attractively simple.

On paper, therefore, the reforms should have greatly simplified the migration system. In practice, however, the superficially simple framework conceals a steadily growing range of sub-routes.

The government has also created anomalies throughout the system. For example, the government decided to shut Tier 3 - on the basis that eastern Europeans were already providing a pool of low skilled labour. However, it is not the case that no low skilled non-EU migrants are able to enter the country. Certain occupations such as senior care workers, butchers and, for a time, chefs were covered by the shortages list in Tier 2, because of the government's desire to keep Tier 3 shut. Social care presents a particular dilemma for the government. Any attempt to

52 The Times, 'Phil Woolas: lifelong fight against racism inspired limit on immigration', October 2008.

53 D Green, 'Controlled immigration must be coupled with upskilling and welfare reform, minister warns', Daily Telegraph, 19 July 2010.

54 CBI, 'Selective admission: making migration work for Britain - CBI official response', 2005.

reduce migrant labour in this sector would either result in a shortage of care home workers or force an increase in wages that would ultimately have to be met by extra public funding, some form of compulsory social care levy, or potentially both.

Indeed, the government at times appears to be using the Tier 2 shortage list to cover occupation or skills gaps in other parts of the system. As the House of Commons home affairs select committee has noted, some occupations on the list are due to long term structural shortages, not the temporary shortages that are supposed to determine inclusion. The committee concluded that: "The long term inclusion of occupations, such as 'skilled ballet dancer' for example, appears to be to compensate for poor design elsewhere in the system – namely that it cannot recognise the skills of this occupation through the points criteria."⁵⁵

The committee also noted that there was a special regime for professional sportsmen, but uniquely, footballers were exempt from the English language requirements of the system. It concluded: "We are at a loss to understand why specific exemption from the English language requirement has been made for footballers and not for any other occupation which requires international mobility... we do not consider a basic level of competence in English to be beyond the reach of footballers, either in terms of ability or of time. We therefore conclude this to be a case where money has spoken louder than merit and urge the government to reverse its exemption."

The government's attempt to bring everybody within the new system's remit has also threatened to remove protection for some vulnerable workers. Before the PBS was introduced, domestic workers were permitted to enter with their employers on a specialist visa and have gained some protection from abuse, most crucially by being able to change employer. But with the advent of the new system the government wanted to push domestic workers onto non-renewable business visas, which would have deprived them of protection under employment law. Defending the change, the government argued that domestic workers would still have access to legislation covering people trafficking. However, this legislation does not give victims the right to remain in the country if they leave their employer, so there is a clear disincentive for domestic workers to seek help. The proposed changes provoked a strong campaign from voluntary groups worried about the reduction in rights for vulnerable workers. Ultimately, the government backed down and maintained the specialist visa outside the PBS for most domestic workers although one category – those attached to diplomats' households – was brought within Tier 5. As it stands, however, one category of domestic worker – those attached to diplomats' households

55 Home Affairs Committee, 'Managing migration: The points based system', 13th Report, 2009.

– are covered by the PBS in Tier 5. It is highly questionable whether the desire for uniformity should have been placed above the continued protection of vulnerable workers.

Overall, the system remains more comprehensive than the plethora of routes that prevailed before. However, the constant tinkering is only adding further complexity. Equally, there are some groups of non-EU migrants, such as domestic workers, which would be better served by remaining outside the PBS.

IS THE NEW SYSTEM FULLY TRANSPARENT?

The government charged the Migration Advisory Committee (MAC) with reporting on shortage occupations at six monthly intervals, but also, whenever requested, with investigating the workings of the system and advising the government on suitable reforms. For the first time, migration policy has supposed to be designed on the basis of solid evidence, rather than political expediency. The MAC has the added advantage of providing an opportunity for proper consultation with interested groups ahead of a final report and government action.

In many ways the creation of the MAC has been a success. The reports on Tier 1 and Tier 2 have set out clear and justifiable changes to the system. The MAC has also shown a degree of independence, rejecting government requests that it should close off the resident labour market test and intra-company transfer routes for Tier 2. It has even criticised the government for its incessant tinkering with the system.

A separate Migration Impacts Forum (MIF) has proven far less influential. It was designed to look at the human and social cost of migration. Unlike the MAC, however, it has not been especially visible, reflecting the lack of clarity in the Forum's remit. The MIF sought to build up an evidence base on the effects of migration on communities and public services, specifically looking at crime and housing. However, it has not met since June 2009 and the new government has given no indication that it intends to revive it.

There are some major concerns about the transparency of the new system, despite the welcome creation of the MAC. The first is that the government cannot resist the temptation to keep changing it. In its first full year of operation the government asked the Migration Advisory Committee to conduct six reviews of shortage occupations; to consider whether the resident labour market tests and intra-company transfer routes of entry in Tier 2 should be closed down; and to examine the functioning of Tier 1. The Tier 4 review of student visas was rushed through ahead of the 2010 election without the input of the MAC and with little opportunity for users of the system to comment. There was

only cursory analysis of the likely impact on the decision to restrict entry for some students on the vast majority of legitimate language schools and colleges.

While the MAC has so far rejected wholesale reform – and indeed made the point to the government that to function effectively the system should be allowed to bed in – it has proposed a number of changes to restrict economic migration under the PBS.

The second problem is that the quality of the migration data makes it difficult for the MAC to reach conclusions on many key subjects. The MAC has repeatedly cautioned that it is reliant on patchy internal government management data for much of its evidence base, not national statistics which have external quality assurance. In a new system there is the inevitable difficulty of not having any time data to compare likely outcomes. However, the quality of migration data in general remains poor.⁵⁶ This is compounded by the absence of exit checks which not only prevents comprehensive analysis of migrant movements, but also hinders effective enforcement of existing migration rules. In short, the MAC is not always able to supply answers with the rigour demanded by government and the public.

Even where data is available, the MAC sometimes lacks a clear methodology to reach its conclusions. The shortage occupation list is a case in point. The MAC is tasked with deciding whether a job is sufficiently skilled and requires non-EU labour. For this it uses national pay data in combination with a series of economic indicators alongside specific evidence from the sectors concerned. But as the MAC has itself recognised, the difficulty in applying the data means that few jobs pass all its objective requirements to qualify for the list. As a consequence it is forced to apply a more qualitative approach to deciding which jobs make the list and which do not.

In some cases, it passes judgement on extremely specialist occupations where they can be little meaningful evidence for consideration. For example, there is a reported shortage of nuclear station planning officers – not surprisingly given that no new plant has been built in the UK since 1995. Similarly, some firms have sought to gain inclusion for apparently relatively low skilled posts. For example, some fish factories claim they need specially trained fish filleters from Asia to ensure their produce is suitably prepared for overseas markets.

It is hoped that reforms already under way, intended to advance the availability, collection and collation of migration statistics, will improve the quality of the data. There is clearly a need for longitudinal studies – which follow the same group of participants over a long period of

56 A Murray, 'Population politics', CentreForum, January 2008.

time – to ensure that in the longer term it is possible to closely monitor the outcomes of the PBS (as already happens in Canada and Australia). However, it is highly questionable whether the MAC can ever offer a truly rigorous answer to which sectors should be included on the shortage list and which not.

IS THE PBS A MORE FLEXIBLE MIGRATION SYSTEM?

One of the chief attractions of a points based migration system is its inherent flexibility. Governments can choose to amend the points systems to tighten or loosen entry requirements on economic and/or political grounds.

As mentioned above, in reality the government has frequently tried to change the rules of the system, rather than points awarded. This pace of change is set to continue: the new government's cap means further changes to the rules. The MAC has expressed concern about this constant upheaval, arguing that: "The PBS should act as an automatic stabiliser and not be constantly adjusted in response to the economic cycle... [because] too frequent changes create uncertainty and thus difficulties for employers and employees."⁵⁷

Bureaucratic inflexibility

It is important to distinguish between this political flexibility and a high degree of inflexibility within the system itself. By its very nature a points system is bureaucratic – the government, rather than employers or educational establishments, determines which economic migrants are allowed to enter the country.

The success of the scheme therefore rides on the government's ability to assess what workers are required for which industries. This bureaucratic approach struggles to respond effectively to a fast moving and unpredictable labour market.

In its first year of operation, there were a number of cases where bureaucratic inflexibility has clearly operated against the overall spirit of the rules. The first is a result of the arbitrary nature of the points themselves. The government has naturally opted for easy to score (and prove) measures such as degrees. However, highly skilled degree level qualifications, most notably professional qualifications such as law or accountancy, were initially excluded.

57 Migration Advisory Committee, 'Analysis of the points based system, Tier 2 and dependants', 2009.

The UKBA has struggled with other forms of evidence, for example the necessary information for wage levels. Chinese wage slips took up to six months to translate.

The legal sector, among others, has faced problems due to the failure of UKBA to recognise partners – the rules required those entering the UK on intra-company transfers to be employees. The graduate training schemes of global firms have also been hit. Typically law firms seek to recruit graduates during the second year of college. But this precludes conducting a resident labour market test or meeting the minimum of six months pre-employment for intra-company transfers.⁵⁸ The MAC has subsequently recommended the introduction of a new graduate scheme, although it still requires trainees to have spent three months with the company before being able to enter the UK.

Put simply, the system struggles with any non-standard qualifications or expertise. This is a particular problem in areas where very specialist skills – such as the arts – or ‘soft’ skills are important. The government has faced criticism for abolishing the special artists’ visa, demanding instead that they meet sponsorship and the financial requirements of Tier 4 or have sufficient points to enter on a Tier 1 visa.⁵⁹

Many employers argue that soft skills – experience, interpersonal communication skills, team work, network building – are as valuable as formal qualifications. The House of Commons select committee found that the government focuses on ‘hard’ measures in the points systems, while employers regard skills, including soft skills and English language as the most important factors and were much less concerned about age and previous salary.⁶⁰

The government’s dilemma is that there is no easy way of measuring soft skills. It has decided not to place much emphasis on previous job experience, which could be used as a proxy measure (as they are in Australia and Canada). This focus on hard rather than soft skills within the PBS has a particular impact on the public sector labour market. Many sectors including social care and nursing, which place a high value on ‘soft’ skills, could have been negatively impacted by the introduction of the PBS despite facing labour shortages during recent years. Hence, as a short term fix, the government decided to award extra points for a job offer in key public services.⁶¹

There have also been complaints about the inflexibility of the language requirement. However, the government’s decision to require good

58 Home Affairs Committee, ‘Managing migration: The points based system’, 2009.

59 M Govinda, ‘The UK Home Office: unwelcome arbiters of culture’, Open Democracy, 17 January 2010.

60 Home Office, ‘A points-based system: making migration work for Britain’, 2006.

61 Migration Advisory Committee, ‘Analysis of the points based system, Tier 2 and dependants’, 2009.

language skills for entry under Tier 1 and 2 is supported by evidence from elsewhere. Research in Australia and Canada has shown that language skills are the key to good labour market outcomes.⁶² Except in rare incidences, such as a kitchen operating in a foreign language where English is unnecessary, there remains a strong case for insisting on English proficiency so workers can find employment elsewhere and integrate quickly. The government has undermined this objective, however, with its opt out for footballers.

A HEAVY REGULATORY BURDEN

Those who use the new system face a further inflexibility – it represents an increased regulatory burden. Both businesses (Tier 2) and educational establishments (Tier 4) have to comply with UKBA regulations in order to gain sponsorship accreditation.

This involves setting up an immigrant monitoring system, with firms reporting to UKBA on the worker or student. Businesses complain that, since UKBA can remove sponsorship swiftly and with no recourse to appeal, they are forced to pay for legal advice at every stage. Employers are liable for even inadvertent transgressions – for example, if their employee changes mobile number and fails to inform them, they may be punished.⁶³

The CBI estimates that it costs £500,000 to meet sponsorship rules, which is clearly beyond the reach of most small and mid-sized firms. The House of Commons home affairs select committee concurs with this view, claiming that only large firms with dedicated human resources departments can afford to become Tier 2 sponsors.⁶⁴

Universities have also expressed concern about the monitoring requirements. In an open letter to the government in May 2009, academics complained that they were now being forced to take registers even at non-compulsory lectures and report any non-attendance. They are also required to seek proof of identification from colleagues acting as external examiners.⁶⁵ At the same time, universities are coming under increasing pressure to monitor students for signs of 'radicalisation'. This scrutiny was heightened following the case of former University College London student Umar Farouk Abdulmutallab, who was arrested after trying to bring down an aeroplane at Detroit airport in December 2009.

62 B Chiswick and P Miller, 'The complementarity of language and other human capital: immigrant earnings in Canada', 2003; C Dustmann and A van Soest, 'The language and earnings of immigrants', 2003.

63 Home Office, 'A Points-Based System', 2006.

64 HSMP Forum, 'Submission to the Home Affairs Committee's inquiry – Managing migration: The points based system', 2008.

65 A Singleton et al, 'We won't collude with efforts to use the academy to police immigration', Letter in The Times Higher Education Supplement, 7 May 2009.

However, some academic establishments complain that while they are being forced to intrusively and expensively monitor their students, UKBA is failing in its own enforcement tasks. Language schools feel especially aggrieved. They were hit in February 2010 by the outgoing Labour government's decision to tighten the minimum English language requirements to gain access to a residential course. This change effectively banned basic English courses for non-EU students, and was prompted by fears about students using the visa to work illegally. Yet it was introduced after the tough new sponsorship rules had already led to a large decline in the numbers of accredited colleges from around 10,000 to 2,006.⁶⁶ Some language schools complained that they were being made to suffer because UKBA was not doing its job: when they did report non-attendance or even expelled a student, they claimed the UKBA failed to follow up promptly. This left the person free to work or even disappear if they so desired.⁶⁷

HAS THE PBS ATTRACTED THE DESIRED MIGRANTS?

The most important test of the success of the new system is whether it is attracting the 'right' kind of migrants judged on its own terms. The available evidence is tentative, of course, after less than two full years of operation. However, by certain measures, discussed below, the new system does appear to be successful.

a. Labour market outcomes

The best evidence to date on the labour market outcomes for those entering Tiers 1 and 2 are contained in the MAC's reports. In its analysis of Tier 1, the MAC concluded that it has been highly effective and achieved good returns.⁶⁸

Tier 1 entrants are achieving very high employment rates. Those who entered via the main general route achieved at least 90 per cent employment rates in 2009 and in turn 90 per cent of these were in highly skilled occupations.

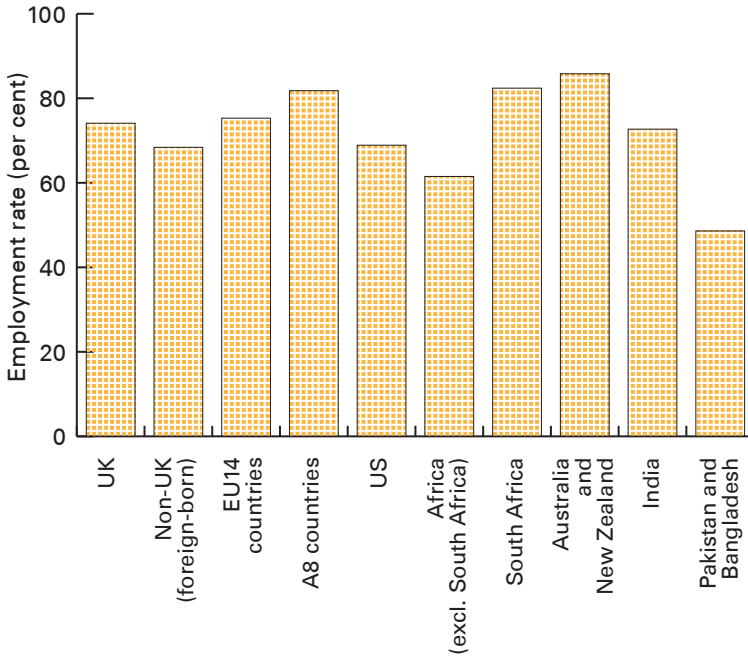
The labour market outcomes for those gaining entry through the post-study route are slightly less impressive. Around seven per cent of these migrants end up in 'elementary' occupations (lower skilled jobs in agriculture, factories etc) and 15 per cent in mid-ranking sales jobs. Since 39,000 migrants in total came through this route in 2009, it implies that only around 3,000 ended up in less skilled jobs. Furthermore,

66 UKTI, 'Register of education and training providers', 2005; UKBA 'Register of sponsors', 2009.

67 Author's private interview with language school owner.

68 Migration Advisory Committee, 'Analysis of the points based system, Tier 1', 2009.

CHART 3: UK EMPLOYMENT RATES BY COUNTRY OF ORIGIN 2009



Source: ONS

it is not surprising that immigrant graduates may not immediately find a job suited to their skills – this is a common experience for all UK resident graduates. The MAC in any case concluded that there was no evidence of the post-study work route leading to the undercutting of UK graduates.

The labour market participation rate is not relevant in Tier 2, since by definition migrants need a job offer to gain the visa. However, the system is designed for predominately skilled workers. Lower than average wage rates would provide evidence that companies were seeking to exploit certain routes, such as intra-company transfers to import cheap labour. The median for all workers in Tier 2 is £35,000. The median for intra-company transfers is higher than this, at £39,800, suggesting that this route is not being widely abused. Wage levels are lower for those who come through the shortage sector: the median level is £25,000 – although this is still comfortably above the average wage.

b. Tier 4 a key fiscal contribution

The students who come in under Tier 4 make a significant fiscal contribution. According to Universities UK, the number of non-EEA students has almost doubled since 1998.⁶⁹ The net direct cash benefit from fees and living costs now amounts to £3.3 billion a year. Those who remain (through the post-study work route) contribute a net £100 million in taxes as well as £1 billion a year to the overall economy.

Non-EEA fees amount to 37 per cent of total university fee income and 8 per cent of all university income. Universities employ this contribution as a cross-subsidy for domestic fee income and any curb on overseas numbers would either reduce university spending, reduce university access for British students or force an increase in fees.

The government's reforms to Tier 1 mean the post-study work route is now closed. This leaves the UK at a competitive disadvantage to other English-speaking institutions elsewhere – most notably Australia, Canada and the US. The potential for a period of work after graduation, even if not taken up, is a powerful incentive to study in a certain country. The MAC has estimated that closing off the post-study work route would reduce fee income by between 3 and 10 per cent with a mid range estimate of 7 per cent.

Universities are not the only sector feeling the pinch from the rule changes. Private schools have also seen a drop in numbers applying. As one educational organisation put it: "Its main effect for us is to make it very difficult for Chinese children to come to our schools."⁷⁰

It is worth noting that the overseas students' contribution is not only economic: hosting international students is good for Britain's global presence. The vast majority of students should return home with a positive experience and knowledge of the UK. This has the potential to yield improved business, cultural and political relations for the UK in the future, especially with major developing economies such as China and India.

c. Is the PBS creating a gender problem?

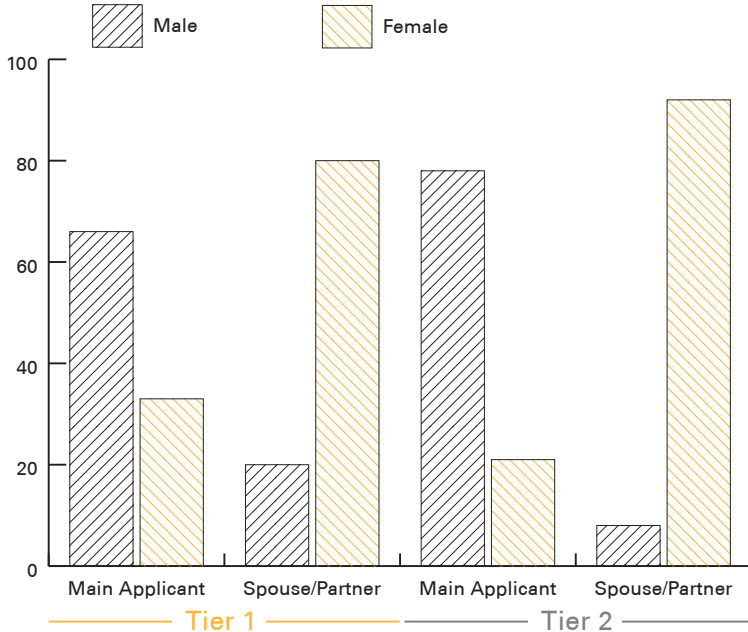
One major side effect of the structure of the points based system is that it appears to be admitting far more men than women. In Tier 1, two thirds of applicants are male, a figure rising to 78 per cent in Tier 2 – even though women now form a small majority in the UK workforce as a whole.

69 Universities UK, 'The impact of universities on the UK economy', 2009.

70 David Lyscom of the Independent Schools Council, quoted in BBC, 'Visa warning from private schools', 2 June 2009.

This has led to concerns that it is structured in a manner which is biased against female workers and may not reflect changing domestic labour demand. There are a number of reasons this has happened. First, the focus on hard educational qualifications and failure to find an adequate way of taking into account the value of 'soft' skills favours male entrants. Second, the minimum salary requirement tends to count against female applicants, because women earn less even when participating in the same sector. For example, the House of Commons home affairs select committee report found that in India women earned on average 40 per cent less than men (although the gap was smaller at 25 per cent in urban areas).⁷¹ Finally, many of those sectors that make the most use of the PBS, such as IT, remain heavily male dominated.

CHART 4: OUT OF COUNTRY VISAS BY GENDER 2009



Source: UKBA Management Information data

71 ILO, 'Trends in wages and earning in India: increasing wage differentials in a segmented labour market', 2008.

CURBING PBS MIGRANT NUMBERS

The Labour government never made a reduction in migrant numbers an explicit goal for the PBS. But the government's rhetoric and repeated attempts to further tighten the new system suggest it was an implicit aim.

The Labour government sought to achieve this goal in two ways. First, there were frequent reports of deliberately over zealous enforcement by the UKBA. The rejection rate for student visas jumped considerably at the point of introduction, even though the new enforcement mechanisms, especially the accreditation and monitoring requirements, were supposed to have weeded out dubious applications at a much earlier stage. UKBA was also slow in processing applications, leading to concerns that students would miss the start of their courses.⁷² Universities and schools warned that this increased zeal was having a major impact on future applications.

Similarly, there were also widespread complaints about the operation of schemes covered by Tier 5, such as working holidaymakers, interns and au pairs. Many large firms found their intern schemes were now outside the system. All participants, including many small organisations, were required to include extensive sponsor duties including reporting regular absence from work. One US university with a longstanding internship programme in the UK was forced to cancel the majority of its students' placements because of difficulties in meeting the new rules.

Second, the government made repeated requests to the MAC to consider tightening the system. This led the MAC to make a number of changes before the system had even operated for a full year.

However, the MAC has stopped short of recommending drastic action. It has resisted government calls for the closing down of both the resident labour market test (RLMT) and intra-company transfer (ICT) routes. This would have resulted in reducing Tier 2 to a small rump, mostly comprised of the shortage occupation list. ICTs have become the most important part of Tier 2 totalling around 60 per cent of all applications.⁷³ Entries under the RLMT amount to 32 per cent and the shortage occupation list just 8 per cent.

But as the CBI said in its evidence to the MAC, the RLMT allows firms to test the market themselves and ensures employers can hire with flexibility and speed. The CBI conducted its own survey which found that 84 per cent of its members believed that shutting down this entry route

72 The Guardian, 'Thousands of overseas students unable to enter the UK', 14 October 2009.

73 Migration Advisory Committee, 'Analysis of the points based system, Tier 2 and dependants', 2009.

would cause recruitment problems. The OECD has also stressed the benefit of this route.⁷⁴ The public sector makes use of the RLMT and was opposed to its abolition. In the end MAC recommended a compromise which increased the period an employer must advertise a post from two to four weeks before it can consider employing a migrant. Furthermore, all vacancies must now be advertised through Jobcentre Plus as well as normal industry routes (although very senior positions were subsequently exempted). The new government subsequently reopened the debate around the RLMT by suggesting in its consultation on the migration cap that it wants to combine the shortage occupation list with the RLMT.⁷⁵ However, under pressure from business the government has, for the moment at least, chosen to shy away from such a drastic reform.

Similarly, the MAC's proposed changes to Tier 1 were relatively modest. The MAC recommended reducing the 'leave to remain' entitlement from three years to two years, but an extension is permitted subject to evidence that the applicant is in highly skilled employment. The MAC also recommended loosening the post-graduate degree requirement following business concern that it was restricting their ability to attract talent. Now, high earners with bachelor degrees and even businessmen with no degree who earn more than £150,000 can gain entry through Tier 1.⁷⁶

However, the government made a series of changes to Tier 4 in early 2010, which would considerably reduce the scope of language schools and many private higher education institutions to recruit students. This was in response to a jump in the numbers of students entering the UK from 209,000 in 2008 to 273,500 in 2009 according to Home Office figures. For example, applicants now have to be able to speak English to around GCSE level, thus preventing language schools offering residential beginners' courses. There are also added restrictions on bringing in dependants for the duration of the course and the number of hours that students can work. A new register – a highly trusted sponsors list – was created for those institutions offering the perceived most at risk courses, those non-degree courses which contain vocational training elements.

It is too soon to make a full assessment of what impact the system has had on migration flows. It is difficult to determine whether it is the new rules, their application or simply shifting labour market demand due to the radically changed economic circumstances of the last couple of years that are the main cause of fluctuating entry rates. In any case, the government is yet to supply fully comparable figures between the old and new systems. Any conclusions should, at this stage, be regarded as tentative.

74 OECD, 'International Migration Outlook: SOPEMI', 2009.

75 UKBA, 'Limits on non-EU economic migration: a consultation', June 2010.

76 Migration Advisory Committee, 'Analysis of the points based system, Tier 1', 2009.

However, Home Office statistics suggest there has been a sharp decline in the numbers coming in under Tier 2 compared with the last full year of old work permit system in 2007 (see table 3).⁷⁷ There were 36,490 Tier 2 permits issued in 2009 compared with 68,355 in 2007. On the other hand, the early evidence is that the volumes of entries under the Tier 1 general route have risen compared with the old Highly Skilled Migrants Programme. But overall the number of out of country employment visas (covering both Tier 1 and Tier 2) fell to 55,275 in 2009 from 78,410 in 2007.

TABLE 3: OUT OF COUNTRY ENTRY CLEARANCE EMPLOYMENT VISAS 2007-2009

	2007	2008	2009
Tier 1	10,055	15,515	18,785
Tier 2	68,355	59,115	36,490
Total	78,410	74,630	55,275
Dependants	36,440	30,260	42,005

Source: Home Office Control of immigration statistics, 2010

IS THE NEW SYSTEM CAUSING ECONOMIC DAMAGE?

To date, the changes to the PBS system have only had a modest impact in terms of numbers (although the proposed cap should make a larger difference, depending on the exact level at which it is fixed). But there is still growing concern that the government is causing potentially lasting economic damage.

Businesses and universities have warned that specific aspects of the new system, especially the cost of the increased bureaucracy and the UKBA's over zealous application of some rules, are making it more difficult to recruit the right people. They are concerned that the system, when coupled with the government's tough anti-migration rhetoric, is giving the impression that the UK is no longer open for business.

In interviews conducted by the author with City of London firms, the repeated message was that an economy based around openness was under threat. Similarly universities report that educational advisers in the Far East, for example, are suggesting that students avoid applying to UK universities.⁷⁸

77 Migration Advisory Committee, 'Analysis of the points based system, Tier 2 and dependants', 2009.

78 Times Higher Education Supplement, 'Hong Kong students abandon UK study plans', 2009.

Yet, as the previous section shows, the actual policy changes until the introduction of the cap only tightened the system to a limited extent. In this sense, the government's position appears contradictory; talking tough but maintaining a relative degree of openness.

But this hints at a more fundamental structural difficulty lying at the heart of the migration system, which the new government is struggling to reconcile as it places its cap on non-EU economic migrants. On the one hand, the government is determined to maintain high skilled migration as part of the open British economy – and as we shall see in the next chapter this desire is unlikely to disappear. On the other, it wants to be seen to be not just preserving control but actively discouraging migration – and in the current political climate reducing the overall numbers of migrants.

As a consequence there are tensions within the existing system, which is still not fully adapted to the reality of a global labour market in certain key ways. The ICT route is a clear case in point. ICTs have grown dramatically over the last decade to become the most important source of Tier 2 workers. ICT numbers rose by 47 per cent between 2004 and 2008 to reach 48,000 applications.⁷⁹

This has prompted concerns that the ICT route is being abused and led to some calls for it to be closed (and a MAC investigation as previously discussed).⁸⁰ Yet many firms argue that this is a mobility route vital to their business models. The UKTI has described the posts covered by the ICT as “global jobs” which a company may decide to locate in the UK in support of the specific project.⁸¹ Britain has a disproportionate number of head offices and attracted the second largest quantity of FDI behind the US. But such capital is by definition highly mobile. The CBI for example suggests both “company specific knowledge and knowledge transfers”, not just skills shortages, as reasons why they might want to bring in a non-EU worker.⁸² Nor is this a one way street. Many British workers take advantage of intra-company transfers to work abroad.

IBM, for example, has 1,000 people running global projects from the UK. It argues that it is imperative to bring in workers for skills transfer – consultants spend a year in the UK working alongside their client before returning to Bangalore or elsewhere. As one senior IBM executive said: “The government is fixated on frontiers... But IBM has no frontiers, it is globally integrated. Jobs in Britain are not British jobs. Prosperity is based on jobs that can go with no one noticing.”⁸³

79 Home Affairs Committee 13th Report, ‘Managing migration: The points based system’, 2009.

80 Amicus, ‘Amicus is saying Home Office is breaking its own rules’, 2007.

81 Migration Advisory Committee, ‘Analysis of the points based system, Tier 2 and dependants’, 2009.

82 CBI, ‘Selective Admission: Making Migration Work for Britain – CBI official response’, 2005.

83 Private interview with author.

In addition, any crackdown on the ICT entry route could fall foul of the UK's international treaty obligations. ICTs are protected by the World Trade Organisation's General Agreement on Trade in Services (GATS), which permits immigration for up to 3 years for managers or specialists who have had a minimum of one year with the company. In the case of ICTs the desire of the government to maintain strict control of national borders is in sharp contradiction with not just the structure of the global economy but also increasingly international law.

In the end, the Labour government shied away from major reform. The MAC, in its review of Tier 2 found little evidence of abuse of the system, arguing that on average it was more expensive to bring people in through this route than recruit a domestic worker.⁸⁴ However, the MAC did recommend doubling the length of time an employee must have spent with the company before being eligible for a Tier 2 visa under the ICT (from 6 months to a year). The new government has also struggled with this problem: that if it exempted ICT workers from its migration cap, it would face difficulties in meeting its political target of reducing overall migration levels to 'tens of thousands'. Huge pressure from business to not impose a cap on ICTs has resulted in the government exempting those of duration up to a year, or up to five years if the salary level is over £40,000.

This tension between the need to clamp down on migration and the desire to support the UK's traditionally open economy continues to play out within the government. Peter Mandelson, the Secretary of State for Business, set up a migration advisory council in his final months in office in an attempt to make sure that business concerns were listened to by the Home Office. The new government has also faced tensions as it implements the proposed migration cap. Senior Conservatives such as Michael Gove and David Willetts joined Vince Cable, the Liberal Democrat Business Secretary, in warning about the economic dangers of an inflexible cap and scored some modest successes over the Home Office's desire for a drastic curb in numbers.

84 Migration Advisory Committee, 'Analysis of the points based system, Tier 2 and dependants', 2009.

■ 4. The future evolution of the PBS

All of the UK's political parties have hardened their rhetoric over migration in response to public disquiet about the size of migration flows over the last decade. However, the mainstream parties remain constrained to the extent to which they can clamp down on migration flows by international treaty obligations and EU labour market rules. Thus, no party is committed to making changes that would in themselves lead to a major cut in either EU or family reconciliation migration flows.

As a result, British politicians have placed a disproportionate level of focus on the one element of the migration system they can change – the PBS. This chapter explores three important proposals which are likely to shape future policy: the introduction of quotas or caps for some kinds of migrants; a regional migration strategy; and restricting access to citizenship.

QUOTA OR TARGETS

The coalition government made the introduction of a cap on non-EU migration policy a key part of its platform. At the time of writing (January 2011) the government had already introduced an interim cap which should result in a small fall in the numbers of work permits issued in the current year. At the same time it has outlined details of a permanent cap of 21,700 to come into operation from April 2011.

The Conservative Party's commitment to introducing a cap dates back to before the 2005 election. Proponents of a cap, including the Prime Minister David Cameron, have sought to justify the policy in terms of controlling Britain's population growth.⁸⁵ Recent projections have suggested that Britain's population could reach 70 million by 2029 if present trends continue – with migration one of the main sources of this growth.⁸⁶

85 The Times, 'David Cameron calls for immigration curbs to keep population below 70 million', 2010.

86 ONS, 'UK population expected to grow by 4 million over the next decade', 2009.

In the run-up to the 2010 election, the Conservative party was vague about how it intended to apply the policy. In addition, it was unclear as to how much it wanted to reduce migration levels. For example, David Cameron stressed several times the need to reduce overall migration levels to those seen in the "1980s or 1990s".⁸⁷ But this would imply reducing net migration from a figure of 148,000 in 2009, down from a record high of 244,000 in 2004, to around 42,000 to reach the average between 1990 and 1997 or as little as 2,000 a year if the reference was the 1980s.

The government has subsequently backed away a little from such swingeing cuts in net migration levels. The consultation paper published at the end of June 2010 refers to reducing net migration to the "tens of thousands, not hundreds of thousands" leaving a little more flexibility than the earlier rhetoric implied.⁸⁸

But this would still mean halving net migration from its level in 2009. Moreover, the government is reliant on a cut in non-EU economic migration to achieve this goal. Yet non-EU economic migration only represents around a third of all migration to the UK: asylum, EU migration and family reconciliation are all excluded from the cap.

In fact, the government's initial cap is even further restricted covering just Tiers 1 and 2. As table 3 (page 47) shows these two tiers accounted for 97,000 new permits (including dependants) in 2009. All things being equal, a surge in net migration rates through other entry routes, such as family reconciliation or from other EU countries, would force the government to completely shut Tiers 1 and 2 to meet its target. Such a move would provoke an even fiercer backlash from the UK business sector, especially the still powerful City of London which remains heavily reliant on skilled international labour.

The government asked the Migration Advisory Committee to provide a figure for its cap. As the MAC noted its task was complicated not only by the limited scope for action but also by the time frame it had to work within.⁸⁹ The government has to reach its migrant numbers goal by 2013 (from the starting point of 2011) as this will be the latest available data at the election scheduled for May 2015.

The government has also called on experience from abroad, especially Australia, Canada and the US, in justifying its approach to the target. But there is little evidence that it can use a cap to substantially curb migration flows without harming economic competitiveness.

87 D Cameron , BBC Radio 5 Live, 15 February 2009 quoted at <http://www.migrationwatch.org/briefingpaper/documents/161>.

88 UKBA, Immigration Group, 'Limits on Non-EU Economic Migration: A Consultation', June 2010.

89 UKBA, 'Consultation by the Migration Advisory Committee on the level of an annual limit on economic migration to the UK', June 2010.

For example, Damian Green, the immigration minister, has claimed that quotas introduced in America and Australia showed that "limiting numbers worked well".⁹⁰

The evidence from these two countries, as well as Canada, does not support the Conservatives' confidence. Both Canada and Australia operate targets that have the ultimate goal of steadily increasing their overall population, not reducing migration flows, and thus it is questionable that they provide useful comparisons. The Canadian Parliament sets a broad target for overall population growth – currently 1 per cent each year, rather than seeking to impose a 'hard' cap or quota on entry visas.

Meanwhile, Australia uses a processing target rather than a cap. This means that once the allocation is full successful applicants need to wait until the next year to gain entry (rather than having to start the process again from scratch). Both Australia and Canada are maintaining net migration rates that are substantially higher than that of the UK, approximately 0.8 per cent of the total population each year, compared with 0.27 per cent in the UK in 2008.

The US system employs a hard cap in the form of the 65,000 cut off for highly skilled visas (HB1). This is set by Congress, subject to repeated political wrangling, and bears no resemblance to business needs or the ability of the US to absorb migration. The allocation is normally filled within a day and has led to some companies seeking to relocate to more migration favourable countries, most notably Microsoft, which has moved some of its R&D operations across the border to Vancouver in Canada.

Businesses strongly oppose the system. For example, Craig Bartel, chairman of Intel, has attacked the caps for "undercutting business's ability to hire and retain highly educated people in the fields where we needed to maintain our leading position." Bartel adds that: "Instead of arbitrary caps, a market based approach that responds to demand is needed. Only then will the US be competitive and have the ability to hire the best and the brightest".⁹¹ Yet reform of the highly skilled migration system does not appear high on the agenda. Barack Obama has pledged to deal with the problem of illegal migration but has proposed further restrictions on HB1 visas for financial institutions, supposedly to prevent banks replacing laid off workers with overseas recruits.

The US cap also makes little overall difference to migration flows. Migrants coming in under HB1 represent just 6 per cent of the total

90 C Grayling, Parliamentary speech during the reading of Borders, Citizenship and Immigration Bill, 2 June 2009.

91 G Brown, Speech in Ealing, 12 November 2009, www.number10.gov.uk/page21298, 2009.

migration to the US each year. Some 1.3 million workers enter each year through temporary worker or trainee schemes and intra-company transfers. Meanwhile, illegal immigrants make up around a third of all entrants into the US. The US experience suggests a hard cap does little to control overall migration flows and may damage economic competitiveness.

The underlying problem for the UK government remains that its target is arbitrary. There is limited empirical evidence to base a decision upon 'externalities' both negative – such as the short term negative impact on public services and housing – or positive through enhanced productivity and income levels. The Migration Advisory Committee's recommendations, which were published in November 2010, provide no more than a fig leaf of respectability for the government's cap. In the event the government's chosen limit bears all the hall-marks of a messy political compromise. On the one hand, the draconian curb on Tier 1 while in line with the overall policy of reducing migration has led to major complaints from science and research based firms and institutions about damaging Britain's long term competitiveness. On the other hand, the government has exempted Intra-Company Transfers from the cap meaning numbers could rise and apparently undermining its aim of curbing overall migration levels.

Not only is there no economic or social justification for introducing the cap, there is very little likelihood it will achieve the government's desired goal of substantially reducing net migration. The new limit on Tier 1 and Tier 2 entries should reduce net migration by 6,000 or less than 3 per cent compared with 2010 – and this is assuming there is no surge in ICT numbers. This decline is greatly outweighed by other factors such as changes in the movements of British citizens or the ebb and flow of EU migration. Net emigration of British citizens, for example, has fallen from a high of 130,000 in the year to March 2007 to just 30,000 in the year to March 2010. This is one of the key reasons why net migration has risen in 2010 despite the tightening of immigration policy. Even a drastic cut in student numbers is likely only to cause a short term decline in net migration figures, as the vast majority leave the country at the end of their courses (and hence outflows closely match inflows over a period of five years).⁹²

In addition, the government's determination to introduce a migration cap appears in direct contradiction to its purported desire to reduce "top down" state intervention in the economy and society.⁹³ As Cameron claimed in a speech in 2009: "When a new problem arises and there is

92 IPPR, 'Migration Review: 2010/2011', December 2010.

93 David Cameron, Speech 'Age of Austerity', www.conservatives.com/News/Speeches/2009/04/The_age_of_austerity_speech_to_the_2009_Spring_Forum.aspx, 26 April 2009.

the need for a government response, I want to make sure the system doesn't automatically reach for the levers of top-down central control – the initiative, the task force, the target."⁹⁴

Despite the compelling arguments against imposing a crude target, the political commitment made by the government means it will become law in April 2011. The government will also shortly introduce further restrictions on student visa numbers. Rather than seeking to implement a coherent cap across the PBS, the government has chosen to treat each tier differently in an effort to reconcile its political goal of curbing numbers while meeting some of the concerns of businesses and higher education institutions over lost competitiveness.

1. Closing Tier 1

The government is drastically reducing the numbers able to enter under Tier 1. In future only those entering the as yet not fully defined entrepreneur and investors routes will be exempt from the cap of 1,000 in Tier 1. The government is closing down the main general route entirely. Only those deemed by an expert panel to be of "exceptional talent" will be able to enter under Tier 1 up to the 1,000 limit. This compares with 19,000 entries in 2009.

The government has justified its plans on the basis of data apparently showing that around a third of migrants entering under Tier 1 are in low skilled employment.⁹⁵ The figures, however, are highly questionable. They suffer from a number of methodological flaws, which are only briefly mentioned in the published report. It represents neither a weighted survey nor a comprehensive overview of Tier 1 migrants. Rather it is based on the partial returns from those Tier 1 visa holders wishing to have a dependant join them at a particular point in time (June 2010). As such it suffers from the fundamental problem of excluding single people who make up a significant proportion of those entering through the Tier 1 route. The figures are also reliant on applicants providing accurate information – which was not a legal requirement of the application. Much of the job information provided was vague and many did not provide an answer at all. This is why nearly half (46 per cent) of applicants have been excluded from the final totals entirely.

In addition, the government has failed to differentiate in its use of the headline figure between the Tier 1 General Route and the Tier 1 Post Study Work Route (PSWR). The published figures show that only

94 David Cameron Speech, 'Making progressive conservatism a reality', www.conservatives.com/News/Speeches/2009/01/David_Cameron_making_progressive_conservatism_a_reality.aspx, January 2009.

95 www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/pbs-tier-1/pbs-ter-1/

around 20 per cent of those on Tier 1 general route are definitely in unskilled work compared with 60 per cent of those on the PSWR. What is not clear is the time frame for the PSWR applicants. Many could only recently have left university so it would not be that surprising that they had taken on low skilled work in the short term while looking for a better job – after all this is the experience of many UK graduates.

While it is possible that the Tier 1 outcomes have changed radically in the last year, the Migration Advisory Committee only published its own comprehensive investigation into the workings of Tier 1 in December 2009. As we saw in Chapter 3, its properly weighted survey found that 90 per cent of entrants via the Tier 1 general route were in employment and 90 per cent of these were in highly skilled work (see Chapter 3). This suggests just 9 per cent were in low skilled occupations.

The real advantage for the government of introducing this draconian cap on Tier 1 is that unlike Tier 2 it does not immediately impact employers – and hence has not generated as fierce opposition. However, the strong employment rates of previous entrants suggest some employers may eventually begin to suffer. In particular, smaller firms are far less likely to be able to meet the regulatory requirements and costs of becoming a Tier 2 sponsor and thus have made greater use of Tier 1 labour in the past. In addition, many of the starting salaries for research fellows at universities are below the cut off threshold for Tier 2. Universities will now be entirely reliant on entry through the capped 'exceptional talent' route.

2. Tweaking Tier 2

In contrast to Tier 1, the new cap will have a much more modest impact on Tier 2. The government appears to have bowed to intense business pressure – and opposition from a number of senior ministers – to not just keep Tier 2 open but exempt Intra-Company Transfers and those earning more than £150,000 a year from the limit entirely.

The new annual limit of 20,700 does represent a small decline from previous years, although the overall impact will depend on the non-capped ICT numbers. The government is also planning some other minor rule tightening, including raising the language requirement for entry from basic to intermediate English and amending the shortage occupation list to exclude non-graduate jobs.

However, the new cap will still cause businesses problems not least by increasing uncertainty about whether and when they will be able to hire non-EU staff. Tier 2 permits are to be issued on a monthly basis. If that month's allocation is oversubscribed, the government will use a ranking system to determine which applicants receive a permit (based around the shortage list, academic qualifications and the salary level).

3. Cutting the number of students entering under Tier 4

The government has begun a review of the student visa system and indicated it wants to tighten the rules. The government has indicated that it is most likely to clamp down on non-degree courses in an effort to stop abuse and reduce numbers. Students are a tempting target for the government as it could secure a seemingly large reduction in net migration numbers in the short term. The government claims that students represented nearly three quarters of net migration in 2009.⁹⁶ It would also be relatively easy to impose a quota on Tier 4 visas.

However, as we saw in Chapter 4 it is highly debatable whether a clampdown on students will have much impact on overall population numbers. Students after all have to return to their country of origin at the end of their course or move into Tier 1 (although the post-study work route is now closed). Hence the increase in numbers of Tier 4 entrants in recent years has had the effect of boosting relatively short to medium term net migration numbers – but it will not have an impact on long term population growth, unless the numbers were to continue rising indefinitely. A reduction in student numbers would also reduce student fee income at a time when higher education establishments are already facing a public spending squeeze.

The government's new measures expose a clear tension between the commitment to curb numbers coming through the PBS and the desire to maintain Britain's competitiveness. Before the election the then shadow chancellor George Osborne made openness a key test of the Conservatives' economic policy in power.⁹⁷ He has subsequently proposed a series of 'benchmarks', including ensuring that Britain is "open for business" by improving Britain's international ranking for tax competitiveness and business regulation.

Similarly, Damian Green has intimated that the government would "want to attract more than our fair share of the brightest and the best".⁹⁸ He has even suggested that: "We should have a target that we have as many of those [highly skilled] people as possible every year".⁹⁹ In the measures announced so far, the government has introduced a number of loopholes to appease business, for example by exempting ICTs or, under pressure from its own backbench MPs, providing an effective opt out of new Tier 4 restrictions for English language courses of up to a year. While not entirely incompatible with a quota system, such rhetoric and actions send out a very different message.

96 UKBA, 'The student immigration: a consultation', December 2010.

97 Conservative Party, 'A new economic model: eight benchmarks for Britain', 2010.

98 D Green, 'Tories want 'best' migrants in UK' BBC News, 6 October 2009.

99 D Green, 'Skilled migrant entry criteria will not be cut under Conservatives', Personnel Today, 8 October 2009.

If there must be a cap – and the political capital expended on the subject means that the government will have to deliver on its promise – it should be set in as flexible manner as possible. The government should use a 'soft target' incorporating a target range for each tier – for example between 20,000 to 24,000 for Tier 2.

The government should then use already available policy tools to try to meet the lower target. It should aim to influence overall numbers by adjusting the points system, for example by increasing or decreasing the required salary or education levels, rather than trying to impose an arbitrary quota.

This approach would thus enshrine some flexibility through allowing a margin of error. It would have the benefit of reducing the risk that businesses would be unable to recruit much needed migrants, who otherwise meet the basic requirements, simply because the quota had been filled. It would also enable non-EU economic migration flows to continue to respond, at least partially, to changing economic circumstances.

In addition, the government could make clear that if the upper ceiling is reached, successful applications would be rolled over until the beginning of the next year (in line with the Australian system). This would ensure that businesses would be confident of eventually being able to recruit the required skilled staff even if they were forced to delay their plans by some months due to hitting the upper ceiling.

BOX 2: COULD AN AUCTION MECHANISM PROVIDE AN ALTERNATIVE?

One mechanism for regulating migration that has as yet received little serious consideration is an auction system. Gary Becker, the American economist, has recently sought to popularise the idea arguing that it could be used to control economic migration while increasing the demand led element of the system. In theory, a government could sell off permits to enter the country – either directly to the migrant or to employers. The money generated would then be used to compensate residents. The auction could be conducted in two ways: either by setting a price and allowing this to control the number of migrants or by setting a quota and allowing migrants or their employers to bid for the permits.

To date governments have shied away from seriously exploring an auction approach, although the UK government did mention the idea in passing in its consultation document on the migration cap. There are a series of practical problems with the introduction of an auction system, not least that unless other countries follow suit the most highly skilled and mobile workers are likely to opt for

cheaper options elsewhere. If a country set a high auction price, then there is the question of how it would be repaid. Becker has suggested that employers could loan the sum but this is tantamount to bonded labour with workers tied to a firm until they have worked off the payment. There is also a sense that, since migration remains inextricably linked with sovereignty and identity, policymakers are unwilling to consider a monetary mechanism.

However, many countries are seeking to more closely link the price paid for immigration permits with the perceived cost of migration. For example, Singapore imposes a tax which is supposed to reflect the marginal external cost per migrant worker – its foreign workers levies are payable by the employer and vary according to skills and sector. The levy starts at S\$150 for skilled construction workers, and rises to S\$470 for an unskilled worker, which represents around 20 per cent of average wages.¹⁰⁰

In the UK there are some monetary elements to the PBS – for example those entering Tier 1 under the investors route must bring a certain amount of capital (the government is exempting this entry route from its proposed cap). The government has also introduced a flat rate tax designed to mitigate the impact of new arrivals on public services. Non-EU migrants must pay £50 to offset their impact on public services, although the amount raised at £70 million is far below the £250 million the Local Government Association has claimed is needed.¹⁰¹

A REGIONAL APPROACH

The Conservative manifesto commitment to introduce a cap on non-EU economic migration is becoming law. But the key demand of their coalition partners, the Liberal Democrats – that Britain adopt a regional element to the PBS – is not on the government's immediate agenda. However, there are reasons to believe the government may seek to adopt a regional element to the PBS in the future.

While the population has risen steadily in some parts of the country, most notably the east and south-east of England, other parts of the country have faced a static or even declining population. The Scottish government, for example, has indicated that it is actively seeking more migrants – Scotland having suffered depopulation in the early part of the last decade.

This has led to suggestions that the UK should adopt a regional migration policy – funnelling migrants to those parts of the country that want them while allowing other parts to opt out. During the election campaign of

100 M Ruhs, 'Economic research and labour market policy', 2008.

101 The Guardian, 'Ministers impose £50 levy on economic migrants to pay for public services', 19 March 2009.

2010, the Liberal Democrats argued that population pressure is placing a strain on public services in the south east, while other areas, such as the Borders in Scotland, are “crying out” for more labour including migrants to fill shortages.¹⁰²

There is a hint of a regional element within the UK system already. Scotland has its own version of the shortage occupation list, although this at present this only extends to the inclusion of consultant radiologists in addition to the other sectors on the main list.

A number of other countries operate a more extensive regional migration system. In Australia there are several schemes, including the skilled independent regional (provisional SIR) visa, regional sponsored migration schemes and the state and Territory nominated Independent scheme. These allow migrants who have not met the points requirement of the main route to enter for at least three years. The regional governments set their own points criteria based on specific shortage occupations, attending a university in the region or family links. However, these regional programmes only amount to a small part of overall migration – around 8 per cent on average have state sponsorship in 2008-9.

In Canada, a provincial nomination arrangement allows the provinces to sponsor some migrants. Migrants apply to the state for sponsorship before seeking admittance through the main Federal programme. States set their own criteria of acceptance including support for having a job offer, supplying a skill in demand, setting up a business or family links. Quebec has had full responsibility for admitting economic immigrants since 1991.¹⁰³ These regional schemes have been growing in recent years but migrants admitted in this fashion remain only a small proportion of the total.

Some countries which do not operate a PBS as such have also adopted a regional element. The US, for example, has defined a number of ‘regional centres’ and set aside a specific number of visas for categories of migrants to move to such areas. Germany has proposed a new law to limit and manage migration which was expected to provide that access to the labour market will be closely aligned to “regional requirements and integration capacity”.

It would be relatively straightforward to add a regional dimension to the UK's points systems, by awarding extra points for those applicants who are taking jobs or show some other kind of willingness to work in the nominated areas. Nick Clegg, the Liberal Democrat leader, has argued that this system could be enforced by obliging migrant workers to

102 N Clegg interview on ‘The Andrew Marr Show’, BBC1, 17 January 2010.

103 G Bouchard, ‘The Canadian immigration system: an overview’ www.irpp.org/miscpubs/archive/bouchard_immig.pdf, 2009.

register with local authorities so that they know who is working where. He said: "It is plausible. It works in other countries."¹⁰⁴

The big question, however, is the extent to which it is desirable or realistic to allocate migrants to particular areas. One means of enforcement would be to make a visa contingent on remaining with a particular employer or area. The former route is only applicable for Tier 2 and raises the risk of abuse – if the migrant cannot change employment for fear of losing the right to work they are clearly hugely disadvantaged in terms of negotiations over wages and conditions, for example. This in turn could inadvertently make migrants more attractive to employers at the expense of locals in the labour market.

There are significant logistical problems with trying to impose an area restriction on migrant workers. How would the government define the regions? Would it be fair to expect a worker to remain in an area if they lost their job but worked in a sector with few local opportunities? Given that migrants would not be going to areas of highest economic demand but those facing depopulation this scenario could prove quite common. Furthermore, how many years would the government seek to restrict a migrant's freedom of movement?

The evidence from abroad is that regional migration policies have not been successful in directing skilled immigrants to under-developed areas. The lower points threshold means that there is a higher likelihood that migrants take lower paid jobs. They also achieve worse labour market outcomes. There is plenty of anecdotal evidence that suggests many migrants take the first opportunity available to move to cities where economic and cultural diversity are greater.

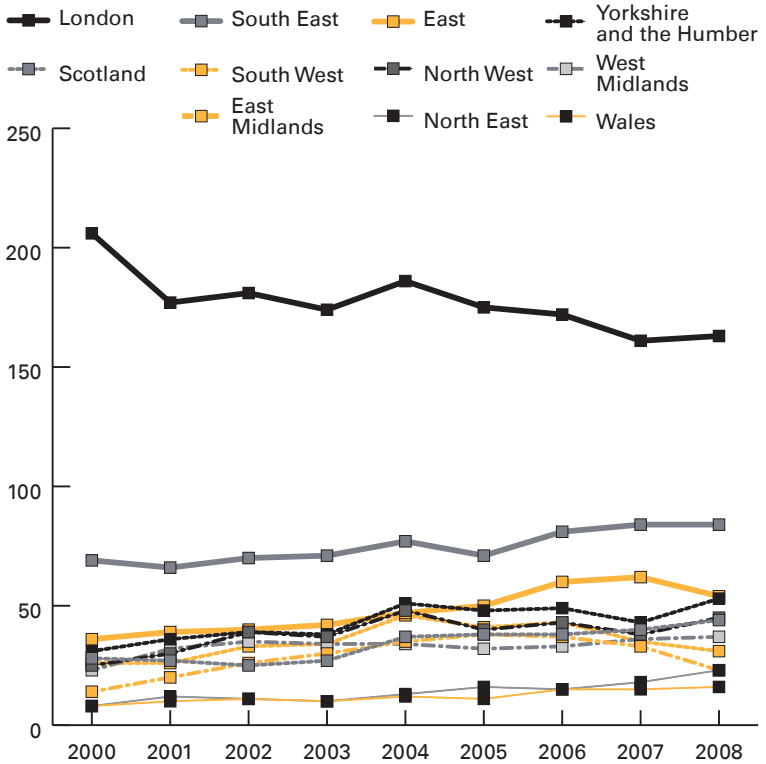
Above all, economic migrants will (by definition) seek to go those areas with the best economic opportunity. As Chart 5 (opposite) shows, in the UK, there is a very close link between economic growth rates and inward migration. A regional migration policy conceived as a means of population control works against this reality and is doomed to failure.

CITIZENSHIP RULES

The outgoing Labour government opposed the introduction of cap on migrants. However, before leaving office it had begun an overhaul of citizenship rules which sought to end the perceived automatic right for migrants to become citizens. This reform created an alternative way to seek to control long term immigration and even introduce a cap or quota on numbers.

104 N Clegg interview on 'The Andrew Marr Show', BBC1, 17 January 2010.

CHART 5: MIGRATION DESTINATION BY REGION



Source: ONS

The Labour government in 2009 passed the Borders, Citizenship and Immigration Act which substantially reformed the path to acquiring citizenship. The new Act established: “The principle that British citizenship is a privilege which must be earned, providing mechanisms to speed up or slow down the journey towards settlement”.¹⁰⁵ The government aimed to challenge “what has been perceived as an automatic right to move from temporary resident to permanent settlement” giving it the “flexibility to raise or lower the threshold for settlement based on the needs of the country”. This new phrasing opens up the possibility of government using citizenship as a means of controlling population growth.

The previous system allowed a migrant to apply for indefinite leave to remain after two years for those granted family leave and after

105 P Woolas, ‘Earning the right to stay: a new points test for citizenship’, UKBA, 2009.

five years for economic migrants. Indefinite leave to remain (ILR) permits immigrants unlimited access to the labour market, no further time restrictions on their residency and enables them to claim non-contributory benefits or attend higher education at home student rates. After one year of ILR they then had the right to apply for full citizenship. However, only 60 per cent of those with ILR who have lived here for more than six years apply.¹⁰⁶

The new Act meant it would now take eight years, rather than the current minimum of five, for economic migrants to acquire citizenship and five years for spouses of citizens or permanent residents, rather than three. It also introduced a new 'probationary citizenship' category during this period which restricted access to non-contributory benefits. Immigrants would need to show 'continuous employment' and that they have not left the country for more than 90 days in any one year in order to reach full citizenship. Employers would have to certify the employment record. Apart from these requirements the Act also required migrants to meet a points test to acquire citizenship.

The Coalition has decided not to implement Labour's reforms arguing that they were "too complicated, bureaucratic, and, in the end, ineffective".¹⁰⁷ However, the government continues to stress its aim is to better manage those allowed to settle permanently in the UK. In particular, it hints it wants to clamp down on immigrants moving from temporary residence to permanent settlement. It opens the question of whether the Coalition will seek to further micro-manage immigrant numbers by adding a cap or quota on the numbers acquiring citizenship to the one being introduced for non-EU economic migrants. The previous Labour government indicated it wanted to use its 'earned citizenship' approach to move in this direction claiming it would: "Allow... decisions to raise or lower the threshold for settlement depending on the current interest of the country and the economy."¹⁰⁸

It might be tempting for a government to seek to 'control' migration through citizenship. However, the numbers that could be captured by new measures would be small. Over half of all immigration is for less than five years, and many who can stay longer – EU citizens for example – have no real incentive to become citizens. Moreover, it is unfair to seek to control migration through applying citizenship quotas on those who have already spent a number of years within the country and fulfilled the basic criteria. It is right to reserve the right to refuse citizenship in exceptional cases but the allocation should not be governed by numerical targets or the aim simply to reduce numbers.

106 A Rogers, 'Recession, vulnerable workers, and immigration: a background report', Compass, 2009.

107 www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2010/nov/15-settlement-reforms

108 P Woolas, 'Earning the right to stay: a new points test for citizenship', UKBA, 2009.

■ Conclusion: a viable points based system for the new decade

In many ways, the new points based migration system is an improvement on its predecessor. It is, on paper at least, a more transparent and evidence-based system and seeks to select migrants who are most likely to succeed in the labour market.

The evidence to date suggests that arrivals through the system are achieving high labour force participation rates. While the number of arrivals remain high by historical standards (although down from their peak), there is little evidence that PBS migrants are displacing existing UK workers.

However, the government has been unable to resist tinkering with the system. Many of these changes have needlessly damaged the PBS, making it more complex for users, both immigrants and employers or educational institutions. The government's tough rhetoric also appears to have caused applications to some schools and universities to decline.

The new government is further tightening the PBS through the introduction of a cap. This paper argues that it is impossible to impose a meaningful quota, and that a hard cap damages the openness and competitiveness of the UK economy while yielding only limited reductions in migrant numbers.

Ideally, the PBS would benefit from a period of evolution, not revolution. This means the government should resist the temptation to tamper with the system at every sign of political pressure. However, there are a number of reforms which should ensure the system functions more effectively, reduces the opportunity for abuse and becomes more flexible and responsive to the needs of migrants and employers.

This paper suggests eight areas where the government should consider further developing the system in the future. These reforms seek to increase the demand element of the system. This will help ensure

the system has the flexibility to continue to respond to the changing economy. Such reforms would also help partly redress the inevitable loss of flexibility caused by the introduction of a cap on non-EU economic migrants.

1. Introduce a target range for the cap and use the points system to control numbers

This paper has argued that the government should set a target range, rather than a single ceiling, for the migration limit. This would allow some flexibility and decrease the risk of businesses being unable to hire vitally-needed staff because the quota had been reached. The government should seek to adjust the points system to reach the cap – for example, by raising salary or education requirements. This would provide greater transparency and certainty for businesses than relying on a cap alone.

2. Place greater emphasis on a job offer in Tier 1 points

The best evidence available shows Tier 1 has worked well. The government's decision to all but close Tier 1 is political rather than based on hard evidence. In any case, there is an alternative approach that would reduce the risk of Tier 1 entrants taking low paid work while maintaining much of the flexibility and attractiveness of this route. Migrants under Tier 1 do not need a job offer, and so may not start highly skilled work quickly. By awarding points for a job offer, the government could provide an incentive for immediately entering the workforce. While not closing off the route for the very highly skilled to enter without the need for a job, this reform would help ensure that Tier 1 entrants remain in tune with the needs of the British job market.

3. Phase out the shortage list

The shortage list is an anomaly that was created to ensure that a few favoured industries, which remain reliant on lesser skilled migrant labour, could have access to foreign workers after the introduction of the PBS. It attracts disproportionate political and media attention despite the small numbers actually gaining entry via this route. Workers in these sectors are also most open to abuse since there is no opportunity to change jobs (unless they would otherwise meet normal points requirements). It is also reliant on the government, under the advice of the MAC, being able to make precise calculations about forthcoming labour demand.

The government has indicated it will further restrict the shortage list to graduate jobs. But it should go further and abolish the list entirely, giving the relevant sectors a short period of grace to adjust. Where the sectors are on the list because the main PBS system fails to take account of their training (ballet dancers, for example) the government should explore how to broaden the acceptable qualifications. For those sectors that are in reality lower skilled, the government should explore opening Tier 3 if there is evidence that an absence of non-EU migrants would cause real economic harm, even after a period of adjustment.

4. Include a measure of soft skills in the PBS

Including soft skills would help to alleviate the need for shortage occupations, reduce gender imbalances and make the system more responsive to employer demand. The government has not included a measure to date because soft skills are not easy to define and UKBA wants measures that are easy to verify. However, other countries do award points for job experience, which appears a reasonable proxy for acquiring these skills. As records of past employment are not as easy to check as educational qualifications or most recent salary, job experience would not in itself be sufficient to gain entry.

5. Consider measures to redress the gender imbalance

This paper has shown that the new system has inadvertently created a large gender imbalance. The government should seek to understand exactly why this has occurred and consider whether there are ways of mitigating the outcomes – for example by using higher wage multiples for women coming from a developing country.

6. Public sector workers

Another major anomaly in the current PBS system is the inclusion of certain less skilled public sector posts, most notably social care. There is a clear choice for the government – it either needs to accept that the public sector is always likely to need migrant labour and frame the PBS system accordingly or start fundamental reform of funding of social care which will enable care providers to change their business model.

7. Consider opening up Tier 3

This paper has paid little attention to Tier 3, because it is mostly closed. The government has refused to open up Tier 3, arguing that EU migrant flows make it unnecessary.

The new government should review the closure of Tier 3, despite the inherent political difficulties of any re-opening, for a number of reasons. First, it would be preferable if the government allowed some access through Tier 3 rather than continue with the shortage occupation list (see above). If the shortage list is phased out as proposed, there may still be some sectors which have a strong economic case for access to non-EU migrant labour. Second, migrant flows from the poorer EU member states have peaked and may in the future decline significantly. Finally, there is a strong case for some immigration as part of the UK's development policy. Remittances are an increasingly important source of development financing across the world and less skilled workers benefit most.

However, the government should only consider a limited opening of Tier 3 if it is willing to permit the same freedoms as available to those migrants who come through Tier 2 – in particular the freedom to move employers. Migrants need the chance to change employers freely to avoid exploitation. Furthermore, without the freedom to move they cannot take advantage of wage differentials. This in turn can continue to make certain sectors locked into dependency on migrant labour.

8. Focus on the enforcement of the accreditation system in Tier 4

The government's decision to restrict entry to some language students was a kneejerk reaction to fears about bogus migrants, which was not based on any reliable evidence. Rather than place further restrictions on students – with the inevitable direct and indirect (in the form of lost applications) damage to UK educational establishments – the state should focus on making the enforcement system work. UKBA already requires educational establishments to be properly accredited. They should ensure that universities, schools and colleges are regularly inspected. This would quickly eradicate any bogus colleges. The reintroduction of exit checks scheduled for 2011 will also help.