



BRIEFING

Capping Immigration to the UK

Where next?

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ippr, 4th Floor, 13–14 Buckingham Street, London WC2N 6DF
+44 (0)20 7470 6100 • info@ippr.org • www.ippr.org
Registered charity no. 800065

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Summary

The government's headline objective on immigration is to reduce net immigration 'from the hundreds of thousands to the tens of thousands'. Estimated net immigration to the UK (the surplus of people immigrating over people emigrating) in the year to December 2009 was 196,000. This means that even the most minimal interpretation of the government's objective would require net immigration to the UK to be halved.

This briefing focuses on the proposals and options for capping and reforming the routes which govern immigration for work from outside the EU. Since all routes for low-skilled immigration for work are currently closed, this means Tiers 1 and 2 of the points-based system (PBS), which govern skilled immigration for work.

The Migration Advisory Committee (MAC) will publish their report on the cap on Thursday 18 November. The government has tasked the MAC with advising on the level at which the cap on Tiers 1 and 2 should be set in 2011–12. The indications are that the MAC's advice to the government might include the following key points:

- Given the relatively small proportion of immigration that occurs through Tiers 1 and 2, the government must be realistic about the impact that a cap on these routes can have on overall numbers.
- Reductions in skilled immigration for work have the potential to negatively affect economic growth and productivity, and might also have negative impacts on key public services. The government should therefore tread carefully in introducing the cap on Tiers 1 and 2.
- Where possible, reductions in immigration through Tiers 1 and 2 should ensure that the skilled migrants who can make the greatest contribution to the UK are still able to come.
- The cap will need to be flexible and responsive to economic circumstances. Reductions in skilled migration for work will need to be accompanied by measures to train and equip British workers to fill skills gaps in order to minimise negative impacts on the economy and public services.

There seems to be broad consensus that any cap on Tiers 1 and 2 that is set at too low a level, or implemented too rapidly, could have significant negative impacts on the economy and on public services. But Tiers 1 and 2 account for only around 20 per cent of total immigration to the UK, which means that significant reductions in numbers would be needed in order to deliver meaningful progress towards the government's overall objective. For example, achieving a 5 per cent reduction in overall immigration would require the government to reduce skilled migration through Tiers 1 and 2 by 25 per cent.

The government has put itself in a very difficult position. There is a direct trade-off between setting the cap on Tiers 1 and 2 of the PBS at a level that is low enough to have a substantial effect on total net immigration and setting it in such a way that it doesn't damage businesses, public services, universities and our economy. The government cannot meet the demands of the anti-migration lobby while also responding to the concerns of employers and others.

It therefore faces an unpalatable choice, between introducing a policy that it knows is damaging to the economy and public services or finding a way to abandon or re-define its currently stated policy objectives.

But there are alternatives to the cap. By changing the way points are awarded, or the thresholds for success, in different parts of the PBS (by raising the salary or qualification requirements for intra-company transfers, for instance), the government could reduce numbers without resorting to a cap. Politically, it would do better by predicting and managing migration flows to maximise benefits, minimise costs and reassure the public, rather than by struggling (probably unsuccessfully) to meet arbitrarily imposed limits.

What is the government's objective?

The government's headline objective on immigration, repeated again by Home Secretary Theresa May in her first major speech on the issue,¹ is to reduce net immigration 'from the hundreds of thousands to the tens of thousands'.

Net migration is the difference between immigration and emigration. If immigration is more than emigration, net migration is positive (net immigration); if emigration is more than immigration, net migration is negative (net emigration). Small levels of net migration can occur even with high rates of immigration. It is zero if immigration and emigration are the same, however high those rates might be.

Estimated net immigration to the UK (the surplus of people immigrating over people emigrating) in the year to December 2009 was 196,000 (Office of National Statistics, Migration Statistics Quarterly Report August 2010). This means that even the most minimal interpretation of the government's objective would require net immigration to the UK to be halved. Prominent anti-migration voices (such as MigrationWatch and the Cross-Party Group on Balanced Migration) would like to see net immigration to the UK brought down even further, to around 40,000. The Conservative Party has intimated its support for reductions to this kind of level in the past.

How does it plan to achieve this?

In her recent speech, Theresa May set out a 'comprehensive package' of proposals to achieve this overall objective:

- A cap on skilled immigration for work from outside the EU, along with changes to Tiers 1 and 2 of the existing points-based system (PBS)
- Further restrictions on student immigration from outside the EU, and on foreign students' (and their dependents') ability to work
- More stringent requirements on those seeking to bring family members to the UK from outside the EU
- Reducing the rights of temporary migrants to settle and remain in the UK permanently.

Policy development is much further advanced on the first of these proposals than on the others, and this briefing focuses on the proposals and options for capping and reforming the routes which govern immigration for work from outside the EU. Since all routes for low-skilled immigration for work are currently closed, this means that this debate is about capping and/or reforming Tiers 1 and 2 of the PBS, which govern skilled immigration for work.

Tiers 1 and 2 of the points-based system

Tiers 1 and 2 of the PBS allow for skilled persons to come to the UK to take up employment. Persons coming under Tier 1 do not require an offer of employment before they come to the UK, whereas those coming under Tier 2 do, and must work for that employer.

Tier 1 currently has four routes.

- The general route is for persons who wish to obtain highly skilled employment in the UK. Unlike 'sponsored' skilled workers (who are covered by Tier 2 of the PBS), applicants do not need a job offer to apply under the Tier 1 General route. Applicants are awarded points based on qualifications, previous earnings, UK experience, age, English language skills and available maintenance funds.
- The post-study work route (PSWR) is for non-EEA international graduates who have studied in the UK.
- The entrepreneur route is for those wishing to invest in the UK by setting up or taking over, and being actively involved in the running of, a business.

¹ www.homeoffice.gov.uk/media-centre/speeches/immigration-speech

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- The investor route is for high net worth individuals making a substantial financial investment in the UK.

Tier 2 is for skilled migrants only. A successful applicant must be coming to fill a job at National Qualification Framework level 3 (or equivalent) or above and be paid at least the 'appropriate rate' that would be paid to a skilled resident worker doing similar work. The three main routes are:

- Shortage occupation: for people coming to the UK to work in a skilled occupation that is deemed to be in shortage and where it is sensible to fill that shortage via migration from outside the EEA.
- Resident labour market test (RLMT): the employer (sponsor) needs to show that there is no suitably qualified worker from the UK or EEA available to fill the specific vacancy. Employers are required to advertise the relevant vacancy through Jobcentre Plus and as agreed in a sector code of practice (for example in a trade magazine) for at least four weeks, at a level of earnings deemed reasonable by the UK Border Agency (UKBA) for that job.
- Intra-company transfer: for employees of multinational companies with at least 12 months' company experience being transferred to a skilled job in a UK-based branch of the organisation.

This explanation is adapted from the Consultation by the Migration Advisory Committee on the level of an annual limit on economic migration to the UK.²

Capping economic immigration: the state of the policy debate

Soon after the general election, the government announced its intention to cap immigration for work from outside the EU. In June 2010, the UKBA launched a consultation on how this might be done, alongside the introduction of an interim cap on Tier 1 and parts of Tier 2 of the PBS. At the same time, the government commissioned the Migration Advisory Committee (MAC) to consult and advise on the level at which a cap might be set – their report will be published on Thursday 18 November. In Parliament, the House of Commons Home Affairs Committee also took evidence on the cap and published its report at the start of November. Announcements from government on the level and operation of the cap are expected before the end of the year, for implementation from April 2011.

The proposal to cap skilled immigration to the UK through Tiers 1 and 2 of the PBS has drawn a significant amount of media interest and comment (both positive and negative) and has also raised concerns from a wide range of affected stakeholders – the UKBA received over 3000 responses to its consultation. Business leaders, economists, and economic departments within government have raised concerns about the impacts of a cap on growth (and on the fiscal position). Unions are worried about the impacts of a cap on growth and public services. Employers (in the public, private and voluntary sectors) have highlighted their fears that they will not be able to recruit the staff they need. Multinational companies have suggested that any limitations on their ability to move staff to the UK from other parts of their operations might lead them to relocate elsewhere. Small businesses have raised concerns that the operation of a cap will favour large employers with specialist legal and human resources capacity. Public sector employers are worried about their ability to recruit key staff at a time of wage restraint. Existing migrant workers are concerned about their ability to renew their visas and stay in the UK. Universities and academics (including a high-profile group of Nobel laureates) are concerned about the UK's status as a global centre of research and teaching.

Concerns about the likely impacts of a cap have also been raised by the immediate effects of the interim cap – many employers (particularly small businesses) have found themselves unable to recruit the staff they need to fill vacancies (or even to renew visas for existing staff).

² www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/mac-consultation-annual-limit/

On the other side, some anti-migration groups and commentators are concerned that the government's proposals do not go far enough. The proposed cap on Tiers 1 and 2 of the PBS affects only around 20 per cent of total immigration to the UK, and suggestions of exemptions and flexibility in the proposed cap have led to accusations that the government is not serious about reducing immigration as promised.³

The Home Affairs Committee (HAC) report looked at both the likely impacts of a cap on Tiers 1 and 2 of the PBS and at how effective such a cap would be in meeting the government's overall immigration policy objective. On the first question, the HAC report concludes – quoting from a range of organisations which made submissions to the committee – that an arbitrary cap, set too low, will be damaging for businesses and the UK economy. The report also emphasises that it is not solely the private sector which will be affected by the cap, and highlights in particular the need for the UK to recruit the most talented scientists into universities, and possible impacts on education and social care.

On the second question, the HAC report raises concerns about the limited impact that the proposed cap is likely to have on total immigration numbers, noting that even if the cap were set at such a level as to reduce numbers at twice the rate set by the current interim measure it would only reduce total immigration by around 2 per cent.

So far, the indications are that the government has listened to at least some of the concerns expressed during these various consultations, with suggestions that the cap may not apply to all parts of Tiers 1 and 2 (see below) and talk of flexibility and exemptions. It is also clear that there are significant tensions within government about this policy, with clear indications that the Treasury, the Department for Business, Innovation and Skills, and key members of the government are concerned about the possible economic impacts.

What might the MAC advise this week?

The MAC will publish its report on the cap on Thursday 18 November. The MAC is a group of independent economists established by the previous government to advise on the operation of the PBS. The government has now tasked the MAC with advising on the level at which the cap on Tiers 1 and 2 should be set in 2011–12, taking the government's overall objective of reducing immigration as a starting point, and taking into account the economic, public service and social impacts of a cap. (Previous MAC analysis has largely focused on economic impacts.) The MAC report will also consider the wider policy implications (such as for employment and training policies) of capping skilled immigration. In effect, the MAC's task is to advise the government on how it can cap Tiers 1 and 2 while minimising negative impacts on the economy, public services and UK society at large.

We cannot, of course, predict what the MAC report will say, but it is worth considering its possible conclusions in light of the positions that the MAC has taken in the past and public comments (including to the HAC) made by the MAC's chair, David Metcalf. The indications are that the MAC's advice to the government might include the following key points:

- Given the relatively small proportion of immigration that occurs through Tiers 1 and 2, the government must be realistic about the impact that a cap on these routes can have on overall numbers. The government should not reduce skilled immigration for work disproportionately in order to meet its overall immigration objectives.
- Reductions in skilled immigration for work have the potential to negatively affect economic growth and productivity, particularly in some sectors, and might also have negative impacts on key public services. The government should therefore tread carefully in introducing the cap on Tiers 1 and 2.
- Where possible, reductions in immigration through Tiers 1 and 2 should ensure that the skilled migrants who can make the greatest contribution to the UK are still able to come. This might mean that reductions in numbers would be best achieved by changing the criteria by which points are awarded (especially in Tier 1), or by applying caps to specific routes or sectors (especially in Tier 2), rather than by a simple numerical cap.

³ <http://conservativehome.blogs.com/platform/2010/11/sir-andrew-green-.html>

- The cap will need to be flexible and responsive to economic circumstances. The government has already indicated that the cap will be reviewed annually, and the MAC might be expected to comment on the possible criteria and methodology for revising the cap in the future.
- Reductions in skilled migration for work will need to be accompanied by measures to train and equip British workers to fill skills gaps in order to minimise negative impacts on the economy and public services. The time this will take might speak to reducing immigration through Tiers 1 and 2 slowly at first, with more reductions to be made towards the end of the Parliament.

The government’s policy options

So what policy options does this leave open to the government? In the next few weeks, the government must answer four questions:

- Should changes be made to the thresholds and points requirements for Tiers 1 or 2?
- Which parts of Tiers 1 and 2 should be included in the cap?
- At what level should the cap be set for each part of Tiers 1 and 2?
- How should the cap be implemented in practice?

The table below sets out some of the options that the government is likely to consider, for each of the main routes within Tiers 1 and 2.⁴

Tier 1		Total visas issued in 2009 (main applicants): 18,780
General route		
<i>Visas issued in 2009 (main applicants)</i>		13,930
<i>Include in cap?</i>	Will definitely be included. Because Tier 1 is used by highly skilled individuals who wish to come to the UK, rather than by employers, there are fewer organised constituencies (such as business groups) calling for the Tier 1 general route to remain open in its current form. The government has been signalling that Tier 1 may face significant reductions under the cap – the release of Home Office research suggesting that some Tier 1 migrants are doing low-skilled jobs ⁵ and comments from the Home Secretary in her recent speech suggest that the government is preparing the ground for major restrictions to the Tier 1 general route.	
<i>Change criteria?</i>	The Tier 1 general route lends itself to the approach of reducing numbers by changes to criteria rather than by a numerical cap. Points are awarded based on qualifications, previous earnings, UK experience, age, English language skills and funds available for maintenance. Adjustments to the way points are awarded, or to the points thresholds required for success, could reduce numbers while ensuring that the most valuable migrants are still able to come to the UK. Management data should allow UKBA to predict the impact of changes in points on migration numbers with some accuracy – a cap on this route could be approached as a target, with the points requirements adjusted up or down to achieve a particular number of successful applications. An alternative is to operate a ‘pool system’ alongside a cap, whereby visas available in a given time period are allocated to the most qualified applicants first.	

4 All data on visas issued is taken from *Control of Immigration: Statistics*, Home Office 2009. <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1510.pdf>

5 Although these findings are not robust – see: <http://www.ippr.org.uk/articles/?id=4197>

Post-study work route

Visas issued in 2009 (main applicants) 4245

Include in cap? Unlikely to be included now, but likely to be limited as part of a review of the student visa regime.

Change criteria? The post-study work route allows qualified foreign students to remain in the UK for up to two years after they graduate, after which time they must qualify for another PBS visa if they wish to stay and work. The government has already indicated that it wishes to weaken the links between temporary migration (like students) and settlement in the UK – it seems likely that access to the post-study work route might be restricted to more highly qualified students, and that the time students are allowed to stay will be reduced. These changes will likely be made as part of a review of the wider student visa regime.

Entrepreneur route

Visas issued in 2009 (main applicants) 120

Include in cap? Almost certain to be excluded – numbers are small, and David Cameron and Theresa May have both expressed support for this route.

Change criteria? Government may take steps to encourage more applicants through this route.

Investor route

Visas issued in 2009 (main applicants) 155

Include in cap? Almost certain to be excluded – numbers are small, and David Cameron and Theresa May have both expressed support for this route.

Change criteria? Government may take steps to encourage more applicants through this route.

Tier 2 Total visas issued in 2009 (main applicants): 36,490

General (shortage occupation and resident labour market test routes)

Visas issued in 2009 (main applicants) 8555

Include in cap? Almost certain to be included.

Change criteria? Government's consultation raised the possibility of combining the shortage occupation and resident labour market test routes – this would mean that employers would only be able to bring in a worker under Tier 2 if they could demonstrate both that the occupation in question was in national shortage and that they had been unable to recruit from within the UK for the specific post in question. This proposal now seems unlikely to go ahead – the MAC has indicated that it will recommend keeping the two routes separate, and the HAC drew the same conclusion. Other changes to the points criteria are possible however – the government has indicated that it may seek to restrict access to the Tier 2 general route to more highly skilled or highly paid workers, although this could have serious implications for public sector employers in particular.

Intra-company transfers

*Visas issued in 2009
(main applicants)* 22,030

Include in cap? May be included. There has been strong pressure from business groups to exclude intra-company transfers from the cap, and the government has given some indications that it plans to exclude this part of Tier 2 from the cap. However, the numbers involved are so substantial as a proportion of total PBS immigration that it is hard to see how the government could exclude this route from the cap completely. One possibility is that transfers for less than one year would be excluded from the cap.

Change criteria? There may well be changes to the points criteria for this route – there are some concerns about the proportion of migrants coming through this route to work as contractors for multinational IT companies (and Indian companies in particular). The government may seek either to raise the salary thresholds for this route or to distinguish between specific or specialist intra-company transfers (such as a law firm bringing a lawyer from a particular country to their London office to work on international contracts) and large-scale transfers of workers (such as an IT company bringing 200 Indian workers to the UK to staff a general project), perhaps by the application of some modified form of the resident labour market test.

Elite sportspeople

*Visas issued in 2009
(main applicants)* 265

Include in cap? Has already been excluded.

Change criteria? Unlikely

Ministers of religion

*Visas issued in 2009
(main applicants)* 370

Include in cap? Almost certain to be excluded.

Change criteria? Unlikely

At the moment, most Tier 1 and 2 migrants can bring dependents with them to the UK, and dependents then have the right to work. It is almost certain that dependents will be included in the cap for those routes which are capped. The government could also limit the rights of dependents to work, although the MAC has previously advised against this.

The interim cap applies both to new applicants and to migrants already in the UK who are seeking to extend their visa or switch to a different visa category. This has put some employers in the difficult position of having to choose between recruiting new staff and keeping those they already have. Capping extensions and visa switches would reduce net migration by increasing emigration, rather than by reducing immigration. It is not yet clear whether the permanent cap will also apply to extensions and switching, but it does seem certain that the government intends to make it more difficult for migrants who come to the UK to work to settle and remain here for the long term. In her recent speech, Theresa May was clear on this point: ‘Working in Britain for a short period should not give someone the right to settle in Britain ... Settling in Britain should be a cherished right, not an automatic add-on to a temporary way in.’

Impacts of a cap

There seems to be broad consensus that any cap on Tiers 1 and 2 that is set at too low a level, or implemented too rapidly, could have significant negative impacts on the economy and on public services. In some cases, the impacts will be as simple as skilled jobs remaining unfilled (with all the

possible consequences for productivity and wider employment within the affected organisation, sector and connected businesses). In others, an inability to bring international staff to the UK might lead firms to relocate away from the UK (as an illustration, Canada has successfully attracted a number of large employers away from the USA on the basis of its more liberal visa regime for skilled workers) or reduce their investment in the UK. Other effects would be less tangible, such as the possible impacts on science and innovation of limits on the ability of universities to attract the best international talent. More broadly, the government's recent discussions with India underlined the risk that the cap contributes to an impression that the UK is not 'open for business' – the same strong political rhetoric about immigration that may appeal to some domestic constituencies can have real impacts on the migration decisions of individuals and the investment decisions of international firms.

All this underlines the difficulty of setting a cap that has a meaningful impact on total immigration numbers. This trade-off could be managed, to some extent, by implementing the cap over a longer timeframe (that is, by reducing numbers gradually). However, this would require an accompanying strategy of investing in skills and training in the UK workforce, something which will be difficult to achieve in the current economic and fiscal climate.

Political risks

Public concerns about immigration are real – polling consistently shows that people in the UK are worried about the issue.⁶ But a promise to cap immigration will not necessarily prove to be the easy political win that it might appear to be. While it is legitimate for the government to take a view on the total level of immigration to the UK, a specific target to reduce net immigration risks being a hostage to fortune. Significant migration flows (of British people and EU migrants) cannot be limited by government (for example, recent increases in net immigration were driven largely by reduced net emigration by British nationals) and key elements of the remainder (such as asylum) are governed by international, European or UK legal frameworks that are difficult to change. Net immigration is also a rather esoteric measure – the government could succeed in reducing net immigration to zero and the public might still be very concerned by high levels of gross immigration (if a million people arrived while a million others left).

Specifically, the proposed cap on Tiers 1 and 2 of the PBS is based on a misunderstanding of what the public wants. Our research has looked in detail at the views of those who are worried about immigration. This research found that, when they are given the space to discuss the issues in detail, self-declared sceptics often have nuanced and moderate views on the issue. They are concerned about the scale of recent immigration, but they can also see the benefits for the UK – they respect the hard work of migrants and the contribution they make. In particular, the public can see the value of highly skilled migration – by capping these immigration flows, the government is limiting a flow that the public do not generally perceive to be a problem.

People want the government to be in control of immigration and to be honest with them about the numbers. Neither of these would be achieved by a cap that is held up as an important part of the 'solution' to mass immigration but then fails to deliver. The risk is that a key policy is then perceived either as a failure or as spin. Neither would go down at all well with the public.

Where next for the government's immigration policy?

The government has put itself in a very difficult position. There is a direct trade-off between setting the cap on Tiers 1 and 2 of the PBS at a level that is low enough to have a substantial effect on total net immigration and setting it in such a way that it doesn't damage businesses, public services, universities and our economy. No amount of expert advice from the MAC will get around this trade-off.

There is no way in which any reasonable cap on Tiers 1 and 2 of the PBS can make a significant contribution to meeting the government's desired reductions in total net immigration. Even achieving a 5 per cent reduction in overall immigration – a reduction probably not large enough to register on the public's radar, and certainly nowhere close to the reduction that the government is seeking – would mean reducing skilled migration through Tiers 1 and 2 by 25 per cent. The government cannot meet the demands of the anti-migration lobby while also responding to the concerns of employers and others.

6 <http://www.ipsos-mori.com/researchpublications/researcharchive/poll.aspx?oItemId=53&view=wide>

It therefore faces an unpalatable choice, between introducing a policy that it knows is damaging to the economy and public services or finding a way to abandon or re-define its currently stated policy objectives.

If the reduction of net immigration to the UK is to be maintained as an explicit policy objective, it would make more sense to think about a target than a cap. This would be a very different approach. Rather than limiting immigration numbers by fiat in certain categories, a target-based approach would allow a government to 'raise or lower the bar' in different parts of the immigration system in order to achieve a certain (desirable or promised) level of immigration. The PBS, as currently structured, provides clear mechanisms for taking such an approach, without a cap. By changing the way points are awarded, or the thresholds for success, in different parts of the PBS (for example, by raising the salary or qualification requirements for intra-company transfers), the government could reduce numbers without resorting to a numerical cap.

Being in control of immigration does not require setting a limit or a cap. It is perfectly possible for the government to be in control of an immigration system that is flexible and responsive to the needs of the country. Politically, the government would do better by predicting and managing migration flows to maximise benefits, minimise costs and reassure the public, rather than by struggling (probably unsuccessfully) to meet arbitrarily imposed limits.

For more information, please contact Sarah Mulley, ippr Associate Director, at s.mulley@ippr.org