



A tailored immigration system for EEA citizens after Brexit

European Union: MW 396



Summary

1. It is clear from the referendum result that the British public wants net migration to be reduced substantially. The best way to do this, following Brexit, would be through a widening of our present work permit system to include European Economic Area (EEA) workers offered highly skilled jobs.¹ There should be continued free movement for European tourists, students, the financially self-sufficient, business visitors and genuine marriage partners. A reform of this kind would reduce EEA migration from its current level of 190,000 a year by about 100,000 annually. This paper outlines how each of the components of the current system could be extended and adapted for the post-Brexit era.

Introduction

2. We propose that EEA migration for work be brought into the UK's existing work permit scheme while other categories would effectively retain free movement. This would minimise economic and social disruption while substantially cutting lower-skilled migration. Around half of current non-British net migration (or around 190,000 in the year to June 2016) comes from Europe² and just over 70% of this is migration for work, of which 80% goes into lower-skilled jobs.

1 The EEA covers the 27 European Union countries plus Iceland, Liechtenstein and Norway. Switzerland is not in the EEA but is part of the Single Market and thus currently participates in the free movement of people.

2 Office for National Statistics, Provisional Long-Term Migration Estimates, published August 2016, URL: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/migrationstatisticsquarterlyreportprovisionallongterminternationalmigrationltimeestimates>

The British immigration system

3. The British system contains five tiers:

- Tier 1 is for highly qualified applicants in very limited circumstances.
- Tier 2 is a route for employers to bring in the skilled personnel that they need.
- Tier 3 is for unskilled workers but was never opened and would remain closed.
- Tier 4 (Study) would not apply to EU students who would have visa-free access.
- Tier 5 (Youth mobility and temporary workers) would need to be expanded.

Tier 1

4. Tier 1 no longer allows migrants to come to the UK to look for work. It has now been focussed on a small number of those with exceptional talent, entrepreneurs and investors. It could easily be expanded to include suitable applicants from the EEA. For more detail, see Annex A.

Tier 2 – General³

5. This is the crux of the issue since achieving a satisfactory level of skilled immigration from the EU will be crucial to the new arrangements. Fortunately, there is no reason why the arrangements in paragraph 6 below should not be adapted to include EEA citizens.

6. Currently, non-EEA nationals wishing to obtain a Tier 2 work permit must have been offered a job at a minimum skill level of National Qualifications Framework Level 6 or the job must appear on the government Shortage Occupation List and pay a minimum annual salary of £20,800. This route is currently capped at 20,700 per year, except for those switching into the category from Tier 4 (Student) visas and there is no limit for those paid above £155,300 per year. Applicants can extend their visa up to a maximum of five years, as long as their total stay is no longer than six years. Dependants can join family members and they also have the right to work. If, after five years, the worker earns £35,000 he or she may be entitled to permanent settlement. All approved employers can recruit from outside the EEA if, after advertising the job locally (including in the EEA), they cannot find a local worker. In March 2016, the government partially acted on recommendations made by the MAC in December the previous year and announced that the minimum salary threshold for experienced workers would be raised from £20,800 to £25,000 in autumn 2016 and to £30,000 in April 2017. The minimum threshold for new entrants would remain at £20,800.⁴

7. It is clear that, in practice, Tier 2 has allowed employers to meet their needs for skilled labour. During the first four and a half years of its operation the annual cap for non-EEA Tier 2 workers of 20,700 did not bite at all. However, for the three months between June and August 2015 the monthly cap was met. Some employers who were denied a Certificate in the month that they applied would have had the opportunity to apply again the following month. By November 2015, the number of applications had fallen back and all applications were granted. Despite there being 20,700 places available annually to businesses, in 2015 only 17,375 visas were granted, 84% of the cap. Thus no employer in the UK has been

3 Gov.uk, Tier 2 (General) Visa, URL: <https://www.gov.uk/tier-2-general>

4 Written parliamentary statement by then-Immigration Minister James Brokenshire, 24th March 2016, URL: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-24/HCWS660/>

denied the right to bring in a worker where there was a requirement due to a skills gap in the domestic workforce.

8. Bringing skilled workers into the existing Tier 2 route would substantially reduce EU net migration by perhaps 100,000 a year. This is because the vast majority of EU migration has been into lower-skilled jobs. Only 273,000 (or 22%) of the 1.25 million EU workers working in the UK who have arrived since 2006 would today qualify for a Tier 2 work permit. Whether this route should be capped would be a matter for decision. Our research suggests that skilled EEA migration of around 25,000 to 30,000 a year would be sufficient to ensure business has access to the skills its needs.⁵

Tier 2 – Intra Company Transfer⁶ (ICT)

9. This is a route designed to allow international firms to post their staff in and out of the UK. As it currently operates for non-EEA nationals, the worker must not be filling a role that a UK based worker can fill as the route is not intended to replace settled workers. An ICT can be granted on a short-term basis for those required for less than 12 months, or on a longer term basis for up to a maximum of five years (nine years maximum for staff earning £155,300 or more). (This threshold will be changed in April 2017 to £120,000). Currently, a short-term ICT must have a salary of £24,800 and a long term ICT must be paid at least £41,500. From April 2017, all ICTs will be required to qualify under a single visa category with a minimum salary threshold of £41,500. The exception will be the Graduate Trainee category, where the government is reducing the current salary threshold from £24,800 to £23,000. ICTs can bring their dependants with them but they are not eligible for settlement. There is no cap on the number of ICT visa grants. Short-term ICT workers cannot return to the UK within twelve months. There were 37,000 ICT visas issued for main applicants in 2015, along with 24,000 for dependants. Short-term ICTs made up nearly 60% of the total main applicants in 2015.⁷ The ICT route could be expanded to include EEA nationals without any cap but subject to measures to prevent abuse.

Tier 3

10. This route (for unskilled workers) has been closed and should remain so.

Tier 4 – Students⁸

11. As it stands, non-EEA students must have been accepted on a course, have an acceptable level of English language skills and be able to demonstrate sufficient funds to cover maintenance. Visas are granted for a maximum of five years at bachelor's level and eight years at PhD level. Visas can be extended, provided that the applicant can demonstrate academic progression. Since we propose maintaining visa free access for EEA students, no expansion of this route, which currently applies only to non-EEA students, would be needed.

5 Migration Watch UK briefing paper, September 2016, URL: <https://www.migrationwatchuk.org/briefing-paper/391>

6 Gov.uk, Tier 2 (ICT) Visa, URL: <https://www.gov.uk/tier-2-intracompany-transfer-worker-visa>

7 Home Office statistics for June to September 2016, published December 2016. Visa statistics URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/572365/entry-visas2-q3-2016-tables.ods

8 Gov.uk, Tier 4 (General) Student Visa, URL: <https://www.gov.uk/tier-4-general-visa>

Tier 5 – Youth mobility and temporary workers

12. Tier 5 is for those allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives. Tier 5 visas represented 35% (42,200) of work visas in 2014 while there were 1,800 dependants. In 2013, the majority went to youth mobility schemes (56%, or 23,500 visas), for people not over 30 years of age to stay and work in the UK for at most two years. Most of the rest of Tier 5 visas went to creative and sporting workers (20%), government authorised exchanges (14%), religious workers (5%) and charity workers (5%). These schemes could also be expanded as necessary for EEA nationals.

Business Visitors

13. Britain issued 1.7 million visas for non-EEA business visitors in 2015.⁹ In the same year there were 6.6 million visits to the UK from the EU for the purpose of business.¹⁰ We propose that visa-free access be maintained for all visitors from EEA countries to the UK. Thus the business visitor visa regime would remain applicable only to non-EEA citizens; it is designed for people wishing to come to the UK for work-related reasons for a short period. This includes visitors such as actors and other film crew, overseas media employees, academic visitors, and general business people wishing to attend meetings etc. Business visitor visas are generally granted for a maximum of six months and frequent business visitors can apply for a multiple entry visit visa.

Tourist visas

14. Currently, tourists from countries that require a visa can apply for a general visitor visa valid for up to six months.¹¹ Tourists must show that they intend to leave at the end of their visit and have enough money to cover the costs of their stay and their return home. Around 7.7 million ordinary visitor visas were issued to non-EEA nationals in 2015¹², while Britain received 17.6 million non-business related visits from EU residents in 2015.¹³ It is proposed that visa-free access would be retained for tourists from EEA countries.

Conclusion

15. Extending the UK's current immigration system to cover migration for work from the EEA would cut annual net migration by around 100,000 a year. Stakeholders are already familiar with this system and it works reasonably well in ensuring that work migration is driven by employers needs and benefits the UK. Meanwhile, retaining visa-free access for tourists, students, the self-sufficient and genuine marriage partners, alongside the continuation of skilled EEA migration, would help Britain to maintain her rich cultural, academic and commercial ties with Europe.

7th December 2016

9 Home Office visa statistics, Admissions, data for June to September 2016, published December 2016, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/572370/admissions-q3-2016-tables.ods

10 ONS, Overseas Residents Visits to the UK, published: May 2016, URL: <http://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/leisureandtourism/datasets/overseasresidentsvisitsstotheuk/2015/section4overseasvisitsstotheuk2015corrected.xls>

11 Visa Nationals can be found here: <http://www.ukba.homeoffice.gov.uk/visas-immigration/visiting/general/visa/> Non-visa nationals can be granted leave to enter as a tourist upon arrival in the UK.

12 Home Office visa statistics, Admissions, data for June to September 2016.

13 ONS, Overseas Residents Visits to the UK, published: May 2016.

Annex A

The tier 1 route for non-EU migrants nowadays involves only small numbers. It could easily be expanded to include suitable applicants from the EU.

Table 1: Tier 1 visas by category for the year to September 2016. Home Office visas and extensions data, published December 2016.¹⁴

Tier 1 visas in year to September 2016	Main applicants	Dependants	In-country extensions	Dependant extensions
Entrepreneur	814	1,727	1,347	1,272
Graduate Entrepreneur	162	22	540	165
Investor	200	353	554	1,001
Exceptional talent	253	107	142	86

a) Tier 1 – Entrepreneur¹⁵

This category is designed to allow people to invest in the UK by taking over or setting up a business. The route is open to entrepreneurs with at least £50,000 in capital from a registered venture capital firm, seed-funding competition or government department or £200,000 of personal wealth which can include third party backing to invest in a business that they will be actively involved in running.

Applicants are granted leave to reside in the UK for three years and four months and can switch into this category while already here in the UK. The visa can be extended for an additional two years if the applicant is already in this category and for three years if they are switching into it from another category. Applicants can gain settlement after having been in the UK for five years.¹⁶ Crucially there is no annual limit. Family members can also come as dependants. Applicants may need to meet an English language requirement if they are not from the USA, Canada, New Zealand, Australia or one of 12 English-speaking Caribbean nations.¹⁷ Migrants can apply for accelerated settlement in the UK after three years continuous residence if their business has created at least ten new full-time jobs for persons settled in the UK, or if it has achieved an income of at least £5 million. Also eligible are those who have taken over or invested in an existing UK business, and their services or investment have resulted in a net increase of £5 million in that business' income.

The MAC conducted a review of this route in 2015 and made several recommendations on how to improve it, to which the government has yet to publish a detailed response.¹⁸ Such changes could be incorporated into any relaunch of the system to include EEA nationals.

14 Home Office statistics for June to September 2016, published December 2016. Visa statistics URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/572365/entry-visas2-q3-2016-tables.ods and Extension statistics, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/572371/extensions-q3-2016-tables.ods

15 Gov.uk, Tier 1 (Entrepreneur) Visa, URL: <https://www.gov.uk/tier-1-entrepreneur/overview>

16 UKBA, Immigration Directorate Instructions, Chapter 6A, Settlement Tier 1.

17 Gov.uk, Tier 1 (Entrepreneurs) Knowledge of English, URL: <https://www.gov.uk/tier-1-entrepreneur/knowledge-of-english>

18 Review by Migration Advisory Committee of Tier 1 Entrepreneur and Graduate Entrepreneur route, September 2015, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472236/Report_Tier_1_Entrepreneurs.pdf

b) Tier 1 – Graduate Entrepreneur¹⁹

This route is designed for graduates in the UK to stay on in order to develop their business ideas. An individual must have been identified and endorsed by an approved Higher Education (HE) institution or UK Trade and Investment (UKTI) as having a genuine and credible business idea. There is a limit of 2,000 places for the year 2015/16, 1,900 for UK HE institutions to endorse graduates and 100 for UKTI to endorse overseas graduates.²⁰ Visas are granted for an initial period of one year and can be extended for a further year. Visa holders are allowed to participate in outside work. Applicants must prove that they have £945 in savings if applying from inside the UK, or £1,890 if applying from outside the UK and that they meet an English language requirement. Dependants can also apply to remain with family members. The graduate entrepreneur visa does not lead to settlement and time spent in the route does not count towards settlement through another route. Visa holders may be also able to switch into a Tier 1 (Entrepreneur) Visa (see above) at the end of two years if their business is successful (they need only show £50,000 of investment funds) or they can switch into Tier 2 (Skilled Work). The MAC reported in 2015 that the Tier 1 Graduate Entrepreneur scheme works well but has made several recommendations to improve it further.²¹ The government has yet to publish a detailed response to the MAC's recommendations. Again this could be expanded to accommodate applications from EEA nationals.

c) Tier 1 – Investor²²

Introduced in 2008, this category was designed to allow the entry of high net worth individuals wishing to make a substantial financial investment in the UK. The route is open to people with £2 million of funding. The applicant does not have to meet English language requirements nor show evidence of maintenance funds. The visa can be granted for three years and four months and individuals can switch into this category while already legally present in the UK. The visa can be extended and the applicant is entitled to settle after two, three or five years depending on the amount of their investment and on condition that they continue to have no recourse to public funds.²³ Again, there is no limit on numbers and applicants can also bring their dependants.

19 Gov.uk, Tier 1 (Graduate Entrepreneur) Visa, URL: <https://www.gov.uk/tier-1-graduate-entrepreneur-visa>

20 Home Office, Tier 1 (Graduate Entrepreneur) Guidance, July 2014, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342863/Tier_1__Graduate_entrepreneur__v8.0_EXT.pdf

21 Review by Migration Advisory Committee of Tier 1 Entrepreneur and Graduate Entrepreneur route, September 2015, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472236/Report_Tier_1_Entrepreneurs.pdf

22 Gov.uk, Tier 1 (Investor) Visa, URL: <https://www.gov.uk/tier-1-investor>

23 UKBA, Immigration Directorate Instructions, Chapter 6A, Settlement Tier 1 and Home Office, Indefinite leave to remain – Calculating continuous period in the UK, August 2013, URL: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/cross-cut/ilr-calculating-continuous/ilr-calculating-continuous.pdf?view=Binary>

The total of 200 for the year to September 2016 was a sharp fall from the 1,172 issued in 2014. This was probably the result of changes which came into effect on 6th November 2014 following recommendations made by the MAC in February that year.²⁴ The investment requirement was raised from £1 million to £2 million. Prospective grantees must also open a UK bank account before making the application.²⁵ Investors are also no longer required to “top-up” investments if the market value of the portfolio falls below £2 million, provided that the purchase price was £2 million. A 2015 immigration rule change requires extensive due diligence to be undertaken on the source and origin of funds by UK banks.

d) Tier 1 – Exceptional Talent²⁶

This category is designed for exceptionally talented people who are recognised in the fields of the arts, sciences and technology as world leaders or promising leaders in their individual fields. The government has made available 1,000 places which have been allocated to five competent bodies, The Royal Society (250 places), The Arts Council (250 places), The British Academy (150 places) The Royal Academy of Engineering (150 places) and Tech City UK (200). Each body is able to endorse applicants to enter the country for a period of up to five years and four months. To ensure that places are available across the year the endorsements occur in two phases.

There is no minimum income. The visa can be extended for an additional five years and applicants are entitled to settle after five years if they continue to work in their expert field and demonstrate knowledge of language and life in the UK.²⁷ Applicants can change jobs without telling the Home Office and can also bring their dependants with them for the duration of their visa.

24 MAC, Review of Tier 1 Investor route, February 2014, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/285220/Tier1investmentRoute.pdf

25 UK Visas and Immigration, Guidance for applications for Tier 1 (Investor) Visa, April 2016, URL: <https://www.gov.uk/government/publications/guidance-on-application-for-uk-visa-as-tier-1-investor>

26 Gov.uk, Tier 1 (Exceptional Talent) Visa, URL: <https://www.gov.uk/tier-1-exceptional-talent>

27 UKBA, Immigration Directorate Instructions, Chapter 6A, Settlement Tier 19th November 2015, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477960/IDI_Settlement_Ch_6a_01_Tier_1_19_11_2015.pdf