

CAP IN HAND

Words: Tim Smedley
Photograph: Panos



Last month, the UK's temporary **immigration cap** was replaced by a **permanent** one. The government claims this will reduce over-reliance on **migrant labour**. But will it allow employers to find the **talent** they'll need as the economic recovery picks up?

The CIPD's *Labour Market Outlook*, published in February, found that demand for migrant workers was on the increase. More than a fifth of 759 employers surveyed were planning to recruit migrant workers in the first quarter of 2011, while over four in 10 reported difficulties filling vacancies with workers from within the UK and EU. Yet one in six had been prevented from recruiting from outside the European Economic Area (made up of EU countries plus Norway and Iceland) by the temporary immigration cap in place since last July. With that temporary cap replaced (from 6 April) with a permanent one, a maximum of 21,700 certificates of sponsorship (CoS) will be issued from April 2011 to April 2012.

The permanent cap still uses the points-based system, but makes it far less flexible, allowing people in by means of an annual quota, rather than in response to employers' needs. There are some business-friendly concessions: intra-company transfers (ICTs) that allow multinationals to move staff between countries for short- and long-term placements will be exempt (with certain restrictions, see overleaf), as will people paid £150,000 or more. But in essence the shift is clear: hiring non-EU labour is now much



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Tier 1 of the points-based system – the “highly skilled worker” route – is closed in its previous form, and reborn within the cap as the “exceptional talent route”: a quota of only 1,000 migrants who have “won international recognition in scientific and cultural fields, or who show sufficient exceptional promise”. It is not yet clear what these definitions will mean in practice.

Tier 2 – for skilled workers with a job offer in the UK – essentially becomes the primary route for entry under the new cap. Tier 2 migrants require a Certificate of Sponsorship (CoS) from a licensed sponsor. For 2011/12 the limit for Tier 2 workers is 20,700, split between those who qualify under:

- The resident labour market test (RLMT), where a vacancy is advertised for a minimum of four weeks to prove an employer is unable to find a suitable UK or EEA worker, or
- The shortage occupation list (see *Links and notes, page 26*).

EXPERT VIEW: David Metcalf, Migration Advisory Committee chair “Tier 2 still has three routes in. The way the government has prioritised entry is through points – you get more points if the job is on the shortage occupation list, the next priority is via the RLMT, and the third is earnings – but you must always be in a skilled occupation. It isn’t the case that you can only come in if you’re on the shortage list, but the RLMT is a lower priority.” ➡➡➡

REASONS FOR MIGRATION SNAPSHOT – 2008

SOURCE: OFFICE FOR NATIONAL STATISTICS

Main reason for migration	All citizenships	British	EEA	Non-EEA
Definite job	137	23	70	44
Looking for work	70	18	29	23
Accompany/join	87	7	19	61
Formal study	172	6	40	126
Other	34	8	6	20
No reason stated	39	19	15	5
All reasons	538	82	178	278

Taken from International Passenger Survey data (2008). Figures are in thousands. homeoffice.gov.uk

harder and, for some, impossible. What effect will that have on the ability of UK organisations to recruit the talent they need and compete in a global marketplace?

A Home Office spokesman offered *PM* this response: “The UK remains open for business. The changes we are making will not restrict access to those who will add the most to our economic recovery. However, we will no longer admit migrant workers to do jobs that could be done by resident workers.” He continued: “Over-reliance on migrant labour has not helped British workers who are unemployed or looking to move into a more skilled job.”

Professor David Metcalf, the chair of the Migration Advisory Committee (MAC), the non-departmental body that advises the government on migration and compiles the shortage occupation list, admits it wasn't asked how “good or sensible” [the cap] was. “We were asked how to get immigration down from 186,000 non-EU to tens of thousands,” he says. “In order to do that the government will have to bear down on all three routes – students, families and work. So work must bear its pro-rata share.” He adds: “In terms of the impact this year, I don't think there will be an issue causing firms problems.”

The problem is that most businesses disagree with Metcalf and the government. “I have never seen employers quite so pessimistic and uncertain,” says Gill Gordon, chair of the Permits Foundation and director of executive compensation at Schlumberger, the oil services company. “A company like Schlumberger hires from all the countries where we do business, and our business is not restricted to the EU. One country cannot stand in isolation in global business these days.” Shortly before April's start date, Gordon attended a meeting of UK employers to discuss the cap. There was a range of opinions, she says, but all were varying shades of negative. The main concern was that employers' abilities to hire top talent would be reduced by an unfriendly UK immigration system putting overseas applicants off or by the cap being too tight and not allowing sufficient numbers in.

In 2009, Tier 1 and Tier 2 combined accounted for 55,270 workers entering the UK, compared with 74,630 in 2008 (see table, facing page). This year's cap of 21,700 admittedly does not include intra-company transfers as do those years' figures, but still appears tight given where we are in the economic cycle. The recession accounts for the fall in numbers in 2009. But as growth picks up, so does demand for skilled migrant labour, as the CIPD's *Labour Market Outlook* clearly highlighted earlier this year. That demand will now not be met if it exceeds the quota of 1,500 work permits per month.

“All in all it's a complete disaster,” says Sarah Dixon, dean of Bradford University School of Management. Higher education is doubly affected by the new limits – not only do institutions teaching global issues require global staff and the most exceptional talent available, they also require international students. “It's completely contradictory,” says Dixon. “In a situation where the budget is severely stretched and there is cost-cutting everywhere, we need to really maximise our income from external sources, not be cutting it off.”



The counter argument is that the exemptions for ICTs and people earning at least £150,000, combined with the 21,700 allowed in under the cap, will give businesses all the overseas talent they need. Iain McLaughlin, head of recruitment for KPMG UK, disagrees. “From a recruitment perspective, our focus is on getting the best talent that we can to service our clients' needs,” he says. “Ideally those skills are in the UK – where they're not, we need to find them.” The new ICT minimum salary levels will cause issues too, he says. “We wouldn't necessarily pay those levels at the moment. For example, when bringing people over for a short-term assignment from our Indian office, not that many staff will be earning £40,000.”

If smaller employers are priced out of hiring top global talent, then in that sense little has changed, says Claire Morley-Jones, MD of HR180, an HR consultancy specialising in SMEs. “You don't bring somebody in from another country lightly, it is a big decision and it is exceedingly costly. From an SME perspective, I don't think they are at any more of a disadvantage because of this legislation.” This is a view at odds with the Home Office's assertion that employers need weaning off their “over-reliance” on migrant workers. Indeed, the immigration minister Damian Green released a statement in February saying the cap would put an end to immigration being “the first resort” of employers. But no one interviewed for this article believed it ever was the first resort. Kate Holt, UK HR director at KPMG,

Off campus: One effect of the cap may be to deter students from coming to the UK to study medicine or other specialties, since they may have no right to work here after qualifying



NON-EEA MIGRANT VISAS ISSUED, 2007-2009



Source: Home Office Control of Immigration: Statistics United Kingdom 2009, Bulletin 15/10, August 2010. Entry Clearance Visas to the UK, by category. homeoffice.gov.uk

THE CAP IN DETAIL (CONTINUED)

Tier 3 – for lower skilled workers – is closed and there are no plans to reopen it. **Tier 4**, the student tier, has also been severely curbed (with an indirect impact on employment). **Tier 5** – for temporary migrant workers – remains open but will be reviewed “in due course”, says the Home Office. At present, Tier 5 “government authorised exchanges” can be a useful category to consider for interns.

Monthly quotas

If you successfully recruited a Tier 2 migrant in April and found it relatively easy, be warned – the cap was “front loaded” for the first month with 4,200 places available. From now until April 2012, only 1,500 places are available each month. The UK Border Agency’s belief is that while different sectors see some seasonal fluctuations in demand for certificates of sponsorship (CoS), this tends to balance out over time. The monthly allocation can be exceeded by up to 100, but in that event the allocation for the following month will be reduced accordingly. For example, if June’s allocation of 1,500 is exceeded by 80 CoS, then July’s allocation will be reduced to 1,420.

Intra-company transfers (Tier 2)

Tier 2 intra-company transfers (ICTs) – for existing company employees transferred to the UK – now, as for all Tier 2 jobs, have to be in what is defined as a graduate occupation (see *Links and notes*, page 26). Those paid between £24,000 and £40,000 can stay no longer than 12 months, at which point they must leave the UK and cannot re-apply for an ICT until 12 months after their last transfer (with an exception for those previously paid under £40,000 for a short-term transfer and now offered £40,000 or more). Those paid £40,000 or more will be granted leave for up to three years with the possibility of extending for a further two; they will not be able to extend beyond five years.



EXPERT VIEW: Kate Holt, UK HR director KPMG

“The [ICTs] regulations are limiting. For example, it could cause retention problems with our Indian office. Staff there like working for a global firm so they can travel worldwide, and historically we have included rotations for our busy seasons to the UK as part of their career development. If, having been to the UK, even for only a few months, they cannot return for another 12 months, it’s much more limiting to the flexibility of our business model.”

Exemptions

The following are exempt from the cap:

- Tier 2 migrants already in the UK extending their stay with their original employer;
- Tier 2 migrants already in the UK switching to a new employer;
- Those already in the UK admitted in another category of stay and applying to switch into Tier 2;
- Dependants of Tier 2 migrants;
- Applicants who are filling a vacancy with a salary of at least £150,000;
- Tier 2 “sportsperson” applicants;
- Tier 2 minister of religion applicants.



EXPERT VIEW: Caroline Waterfield, deputy head of employment services, NHS employers


“This year we have the ability to extend people already in post and award visas to those coming into new posts if they are already in the UK. Some people will stay, some people will go. But as people start to leave and the number coming in reduces, that is where we’ll start to feel the pinch – in the longer term.”

says: “We work really closely with universities and with inner city schools. We have a desire for fair access for a diverse group of people in the UK. But we want the flexibility to recruit the best people with the right skills and that occasionally means recruiting people from outside Europe.”

Many believe the cap could leave UK employers fighting a domestic war for talent in the backwaters of a global marketplace. Robert Potter, chair of the City HR Association and an HRD within the City, says with some exasperation: “There are a number of global companies who have headquarters outside the UK who find it completely incomprehensible that the global finance hub of London would try to restrict the type of mobility that international companies are able to seek in other countries.” Outside the Square Mile, says Gill Gordon, “while we have started to reduce the attractiveness of the UK, countries like France have done a lot in recent years to improve their attractiveness to international investment. The UK has no guarantee that it can keep its privileged position as a top global player; there are many more countries out there today vying for that position.”

No one yet knows which sectors will be favoured if the cap is over-subscribed with equally strong applicants. The NHS doesn't expect any special favours, says Caroline Waterfield, deputy head of employment services at NHS employers. “These rules apply to everyone. Put very crudely, those with the best skills and highest pay will stand a better chance than those who are coming in on lower paid work such as nursing and radiography. Unless they are on the shortage occupation list, we feel we might now struggle to appoint those people.” In that sense, the shortage occupation list is a misnomer – any position deemed below NVQ level 4 cannot be filled by a non-EEA migrant, whether the skills are in short supply or not. Public-sector employers, not being multinational, are also at a disadvantage to their private-sector counterparts because they cannot take advantage of the ICT exemptions.

CIPD public policy adviser Gerwyn Davies says: “I'm not sure the government, despite useful concessions, has fully appreciated the value that employers place on these workers and the productivity improvement that they bring.”

Giving employers reduced recruitment options at the same time as espousing growth is bitter medicine to swallow. But in the long term, the government believes its remedy will have the desired effect. As the Home Office spokesman says: “The longer our limit exists the more the UK's economy will benefit. The very existence of the limit will encourage British businesses to do more to recruit and train UK workers. This will strengthen the UK's workforce and reduce business reliance on migrant labour.” In the long term he might be right. In the meantime, says Davies, “these hard to fill vacancies are heavily concentrated in highly skilled occupations which require several years of training. Unfortunately, there's a legacy that we don't have enough engineers, we don't have enough doctors, and it will take a few years before we are in a position to do what the government appears to want to happen now.” 



No ceiling?
The cap applies only to non-EEA immigration rather than to members of the EU

THE CAP IN DETAIL (CONTINUED)

Post-study work

The Tier 1 post-study work route allows international graduates the right to remain in the UK and look for work for up to two years after their studies end. This route will remain open until April 2012, after which graduates must apply for a sponsored job under Tier 2 (but forgo the RLMT). They will only be able to switch directly into Tier 2 if they are in the UK before their student visa expires. They will be exempt from the 20,700 Tier 2 cap if they hold a UK degree, PGCE, or PGDE from a recognised body and the offer of a job paying at least £20,000 with a UK Border Agency licensed Tier 2 sponsor.



EXPERT VIEW: Sarah Dixon, dean, Bradford University School of Management

“Removing the right to work puts students off, because many are attracted to the UK for that. International students are good for the country, their expertise contributes to UK companies and forges links that remain when they go back home again... Business schools on the continent are rubbing their hands with glee.”

NVQ skills level

Previously, shortage occupations were defined at a base skills level of NVQ level 3 and above. That has now been ratcheted up to NVQ level 4 and above, defined as “graduate level”. Alongside the shortage occupation list there is now a graduate occupation list, recommended by the Migration Advisory Committee (MAC), which a job vacancy must correspond to in order to be eligible. The Tier 2 migrant does not necessarily need to hold a graduate qualification, but the job does need to be deemed at graduate level.



EXPERT VIEW: Professor David Metcalf, chair of the MAC

“Some of the most difficult [to categorise] are certainly those skilled occupations such as chefs and senior care workers, who are on the cusp of level 3 to 4. We actually go out and meet people and look at the jobs. The reason that skilled meat cutters, for example, were on the list and have just been taken off, was that I went round factories in Northern Ireland and I thought, yes, they are at NVQ 3, but not graduate level.”

LINKS & NOTES

▶ Additional wording to “The cap in detail” by Alex Paterson, Partner, Fragomen LLP london-info@fragomen.com

▶ How to apply for a certificate of sponsorship: bit.ly/howtosponsor

▶ Shortage occupation list: bit.ly/shortagelist

▶ The shortage occupation and graduate occupation lists are currently under review, and the Migration Advisory Committee (MAC) welcomes your views. The MAC is considering the following question: *In which occupation(s) or job title(s) skilled to NQF level 4 or above is there a shortage of labour that it would be sensible to fill using labour from outside the EEA?* The call for evidence closes on 10 June 2011: bit.ly/MACevidence