

## Employment

January 2010

### Immigration Update –Recommended Changes To Tier One

#### Introduction

In our immigration update bulletin in September 2009, we highlighted certain changes to Tier Two of the Immigration System. These changes resulted from recommendations by the Migration Advisory Committee (**MAC**). The MAC is a non-departmental public body set up to advise the Government on immigration matters. Some of these changes have already been implemented (such as the more onerous advertising requirements now needed to satisfy the Resident Labour Market Test).

The MAC has now recommended further changes to the Immigration System - this time impacting Tier One. These changes were published in December 2009. Tier One enables the most highly skilled workers to come to the UK to work. These changes are significant and we outline them below. The Government has yet to confirm if it will adopt these changes. However, based on the Government's approach to introducing the MAC's recommended changes in relation to Tier Two (which was to accept all of them) it would seem likely that the changes to Tier One will be made.

In addition to commenting on these changes, we also provide an update on the changes to Tier Two.

#### Key Recommended Changes to Tier One (General)

In its report the MAC commented that overall, Tier One (General) was operating well and should be retained. However, the MAC recommended a number changes. Most of the changes to Tier One are likely to be welcomed by employers as they will in the main, introduce greater flexibility into Tier One. The removal of the minimum requirement to have a Master's degree is likely to be the most significant change and this will open the door to many applicants who would otherwise have been excluded from Tier One. However, the reduction in points for certain lower earnings thresholds will make it more difficult for some individuals to qualify.

- **Bachelor's Degree To Be Restored As Minimum Qualification:**

Although Tier One (General) was initially open to applicants with a bachelor's degree, the rules were tightened up from 31 March 2009 so that anyone applying under this category had to have at least a Masters' degree in order to be eligible. This requirement has been criticised as being too strict and too crude with certain industry sectors (such as the financial services sector) reporting that many of its skilled workers could not satisfy this requirement. The MAC has now recommended that a bachelor's degree should be restored as the minimum qualification provided that the candidate has substantial prior earnings. These earnings requirements will be more stringent than before. This change will be welcomed by employers and will allow more flexibility in terms of who can apply under Tier One. The points for qualification are recommended to be as follows (note that points for a PhD will be reduced to 45 points from 50).

| Qualifications    | Points |
|-------------------|--------|
| Bachelor's degree | 30     |
| Master's degree   | 35     |
| PhD               | 45     |

- **Certain Professional Qualifications To Be Equivalent To A Master's degree:**

The MAC has recommended that certain professional qualifications that are held in addition to certain undergraduate degrees, should be recognised as being equivalent to a master's degree. They have also advised that consideration should be given to claims that certain undergraduate degrees are in themselves equivalent to a Master's degree and that additional points may be awarded for these, subject to an appropriate earnings threshold.

- **Changes to Points For Age**

It has been recommended that points for age should be amended as follows. This provides additional points for certain age groups not currently eligible for points (at the moment, anyone over 31 will not qualify for points for age):

| <b>Age</b>   | <b>New Points</b> |
|--------------|-------------------|
| 29 and under | 20                |
| 30 to 34     | 10                |
| 35 to 39     | 5                 |
| 40 and over  | 0                 |

- **Pay Thresholds To Be Increased:**

The MAC has recommended that pay thresholds for points for previous earnings should be more difficult to satisfy and that no points should be awarded for earnings less than £25,000. Currently, earnings of £20,000-22,999 qualify for 15 points, and earnings of £23,000 to £25,999 qualify for 20 points). The revised points are likely to be as follows:

| <b>Previous Earnings</b> | <b>Points</b> |
|--------------------------|---------------|
| £150,000+                | 75            |
| £75,000-149,999          | 45            |
| £65,000-£74,999          | 40            |
| £55,000-£64,999          | 35            |
| £50,000-£54,999          | 30            |
| £40,000-£49,999          | 25            |
| £35,000-£39,999          | 20            |
| £30,000-£34,999          | 15            |
| £25,000-£29,999          | 5             |

- **Earners Over £150,000 Will Qualify Regardless of Qualifications:**

The MAC has recommended that high earners who can demonstrate prior earnings

of £150,000 or above should not have to have points for educational qualifications (and would not therefore need a bachelor's degree to qualify), age or UK experience. Points would still be required for English language and for maintenance.

- **Salary Conversion Model To Be Overhauled:**

The MAC has recommended that a full review of the salary conversion model used to convert previous earnings outside the UK to a UK equivalent should be undertaken prior to introducing the other changes to Tier One. The MAC considers that the current system is blunt and out of date in some respects.

- **Changes To Initial Grant Of Leave**

The MAC has recommended that Tier One General applicants are initially entitled to two years' leave (rather than three as at present). An application could then be made for a three year extension which would be conditional on the person providing evidence he or she is in highly skilled employment.

- **Employers Guaranteeing Maintenance Under Tier One**

At the moment, employers can agree to maintain an employee under Tier Two if they are unable to provide evidence that they can support themselves financially during the initial period of their employment. However, this has not been possible under Tier One which requires the employee to provide evidence of sufficient funds. This requirement can delay applications in situations where the employee cannot show a sufficient bank balance for the 3 month period prior to the application being made. It is proposed that in some cases an employer may be able to guarantee the maintenance requirements under Tier One also and the MAC has recommended that the UKBA consider the feasibility of this proposal.

- **Will the changes impact workers already in the UK?**

It is important to note that the MAC has commented that where individuals have already entered the UK based on the existing rules, there is a case for transitional arrangements to be implemented to ensure that there is not a sudden "raising of the bar" for that person. Therefore it appears that these new rules would only apply to new applicants under Tier One.

## Key Recommended Changes to Tier One (Post Study Work)

The MAC also made a number of recommendations in relation to Tier One (Post Study Work) which is the category that permits international students who have studied in the UK, to stay and look for work for a period of up to 2 years, after they graduate. The MAC considered that this route should remain open and that the period of leave should remain at 2 years with the following recommendation:

- The Government should undertake a detailed review into whether all institutions and all degree subjects should be eligible. The MAC considered that insufficient data was available about the extent to which UK graduates may be displaced from jobs.

The Government intends to confirm whether it accepts any of the MAC's recommendations early this year but in their report, the MAC believe that the recommendations can be implemented quickly if approved given the flexible nature of the points based system.

The full report of the Migration Advisory Committee is available at the following link: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/pbsanalysis-09/041209/mac-december-09?view=Binary>

## Resident Labour Market Test – Tier Two

In our previous bulletin, we highlighted the Key Resident Labour Market Test (RLMT) Route Changes that the Government had agreed would be implemented. From 14 December 2009, the RLMT advertisement periods have now been extended as follows:

- all vacancies must now be advertised to settled workers for **four weeks** (instead of two weeks or one week where the salary was £40,000 or more).

The vacancies must be advertised in one of two ways:

- A single continuous period of 28 calendar days from the date the advertisement was posted; or
- In two stages where each stage lasts no less than 7 calendar days and both stages together equal a minimum of 28 calendar days.

## Intra-Company Transfers

We reported in our bulletin in September that the Government had approved the MAC's recommendation to tighten up the rules on Intra-company transfers. This route enables employers to bring in employees from their overseas operations work in the UK. These changes will be introduced with effect from **Spring 2010**. The changes that are being introduced are:

- Requiring employees to have 12 months service working for the overseas operation (rather than 6 months which is the current requirement); and
- Changing the rules so that this immigration category does not lead to permanent settlement.

D&W's immigration team are always on hand to assist with any employer related immigration queries.

This Bulletin is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

© January 2010, Dundas & Wilson CS LLP and Dundas & Wilson LLP. All rights reserved.

If you would like any further information on this Bulletin, or any other Immigration or Employment issues, please call the person at D&W with whom you normally liaise, or one of the following specialists:

|               |  |               |
|---------------|--|---------------|
| Graham Paul   | <a href="mailto:graham.paul@dundas-wilson.com">graham.paul@dundas-wilson.com</a>       | 020 7759 9916 |
| David Walker  | <a href="mailto:david.walker@dundas-wilson.com">david.walker@dundas-wilson.com</a>     | 0141 304 6039 |
| Elaine Mclroy | <a href="mailto:elaine.mcilroy@dundas-wilson.com">elaine.mcilroy@dundas-wilson.com</a> | 020 7759 3511 |
| Gordon Barr   | <a href="mailto:gordon.barr@dundas-wilson.com">gordon.barr@dundas-wilson.com</a>       | 0141 304 6280 |

[www.dundas-wilson.com](http://www.dundas-wilson.com)