

CONSULTATION BY UK BORDER AGENCY

RESPONSE BY THE EMPLOYMENT LAWYERS' ASSOCIATION

15 SEPTEMBER 2010

INTRODUCTION

The Employment Lawyers Association ("ELA") is a non-political group of specialists in the field of employment law. As such some of our members engage in advising clients on related immigration matters: hence our response to your paper. ELA's role is not to comment on the political merits or otherwise of proposed legislation, but rather to make observations from a legal [and practical] standpoint. ELA's Legislative and Policy Committee is made up of both Barristers and Solicitors who meet regularly for a number of purposes including to consider and respond to proposed new legislation.

A sub-committee was set up by the Legislative and Policy Committee of the ELA under the chairmanship of Richard Fox of Kingsley Napley to consider and comment on the UK Border Agency's consultation paper. Its report is set out below. A full list of the members of the sub-committee is annexed to the report.

ELA has not responded to Questions 7 and 13. We have responded to the balance of the Consultation Paper.

Question 1: Do respondents agree that operating a pool for highly skilled migrants will be the fairest and most effective approach?

ELA understands that the Government has already committed to the introduction of the annual limit on immigration and that the decision to implement the annual limit or to reduce net migration does not form part of the consultation exercise.

However, in the ELA's opinion the fairest and most effective approach to reducing the number of highly skilled migrants able to enter the UK would simply be to recalibrate the required entry points. This has been done on previous occasions and has afforded certainty, objectivity and transparency for legal advisors and applicants alike.

However, if there is to a numerical limit in ELA's view, using a *pool system* for selecting highly skilled migrants would be the fairest and most effective approach and preferable to operating a first come first served system.

First Come First Served

It is proposed in the consultation paper that the first come first served system would operate on the basis that applications that meet the minimum point's requirement would be granted according to the date of their receipt provided that the immigration limit for the relevant period had not yet been reached. This system may have the following disadvantages over the pool system that has been proposed:

- The government's objective as stated in the consultation paper is to attract the "brightest and the best people to the UK". This method of awarding Tier 1 (General) visas to applicants on a first come first served basis would not be based on the merits of the application and would not therefore be effective in implementing the government's objective. Successful applicants may be less skilled and/or have a lower points total than unsuccessful applicants. Instead, the timing of an application being made and the willingness to wait would determine the success or otherwise of an application.
- Those applicants who are able to be flexible in terms of the timing of making their applications would be advantaged over other applicants as they could apply at the start of the relevant period. Highly skilled workers who have a job offer to commence work within a certain period of time are likely to have less flexibility in terms of timing. These are the applicants that the government presumably most wants to attract to the UK and yet they would be disadvantaged by this system.

The advantages of the first come first served system over the pool system are:

- it has the merit of being simple and easy to understand for employers and applicants (albeit that the pool system is not overly complex).
- the success of an application is likely to be more apparent to applicants at the point when they apply as compared to the pool system since it will be clear to applicants that the annual limit has been reached or if it is close to being reached. The ability for applicants to assess the likely outcome of an application in advance of making it was one of the considerable strengths of the PBS which will be diluted by the immigration limit in whichever form it is implemented. The ability to assess the likely success of an application avoids

the applicant wasting time and money in cases when he or she is likely to be unsuccessful. For employers, it avoids wasting resources.

Suggestions

If the first come first served system is to be implemented, ELA suggests:

- Consideration should be given to spreading the allocation evenly over the calendar year. Otherwise, employers, who need to recruit highly skilled individuals at certain points of the calendar year, may no longer have the option of employing a Tier 1 (General) applicant if the annual limit has already been filled at the start of the year.
- Considerations should be given to an “upper threshold” which would allow those scoring the highest number of points immediate entry without delay. This would give priority to the most highly skilled migrants.

Pool System

The pool system would involve applicants being selected based on the highest points scores and would in ELA's view, be the more effective of the two proposed systems, in meeting the government's stated objective of attracting the brightest and the best people to the UK.

The most compelling advantage of the pool system is that applicants are selected based on the merit of their application as compared to other applicants which in ELA's view is most likely to result in the most highly skilled migrants being selected. Therefore although we have highlighted some disadvantages below, on balance, these are outweighed by this advantage overall.

Some of the disadvantages of the pool arrangement are:

- Any pool arrangement would create some uncertainty for applicants in that it may be less clear to applicants at the point of making their applications, whether their application is likely to be successful as compared to the first come first served system. While applicants will know whether they are eligible to enter the pool, applicants (and their employers in situations where the applicant has a job offer) will not know in advance of making an application, and for a period of 6 months in some cases, whether or not their application to enter the UK will be successful or not as this will depend on the points score of the other applications in the pool. As noted above, under the first come first served system, applicants may in some cases be in a better position to assess their prospects of success of an application e.g. if the cap has been reached or is near to the limit.
- The fact that some applicants will not be removed from the pool until 6 months from the application date will be a considerable disadvantage for some applicants and for their employers in cases where a job offer has been made. Employers may in many cases simply not have the flexibility to wait for 6 months for the outcome of an application and may accordingly withdraw the job offer after a period of time.
- Under the proposed pool system, some applicants will have to pay a fee to enter the pool and they may not eventually be successful in their applications.

This may discourage highly skilled applicants who have less money to apply (which is not effective in implementing the government's stated objective). This may be because they are from a country with a less developed economy (or privileged background) or they have previously worked in a sector which is not highly paid (such as arts and entertainment).

- Timing may have an impact on the success of an application. At certain times of the year where lots of applications are being made, the points required to qualify may be higher than at other times of the year when less applications have been made. The threshold for success may fluctuate.

Suggestions

- In order to meet some of these concerns, the UKBA could consider increasing the points' requirement for entry into the pool which would at least have the effect of narrowing the gap between the number of applicants being placed in the pool and the number of successful applicants. The aim of this would be to minimise the number of unsuccessful applications being made (and hence the wasted time and expense for some applicants). If applicants knew that for example, at least 90% of applicants placed in the pool are likely to qualify, this would increase the level of certainty for applicants at the point of making an application.
- Another option could be to reduce the length of time that applicants may be permitted to remain in the pool. Although such a measure could increase the risk of applicants being turned away ahead of a subsequent stream of applicants with a lower level of scores, 6 months is a considerable time for some applicants to wait to find out the results of their application.

Question 2: Do respondents agree that operating a first come first served system for skilled migrants available to individual sponsor employers will be the fairest and most effective approach?

ELA understands that the Government has already committed to the introduction of the annual limit on immigration and that the decision to implement the annual limit or to reduce net migration does not form part of the consultation exercise.

However, in the ELA's opinion the fairest and most effective approach to reducing the number of skilled migrants able to enter the UK would simply be to recalibrate the required entry points. This would avoid a high proportion of unsuccessful applications being made (which would result in costs for employers and a waste of resources), it would result in those applications with the most merit being successful and it would give employers the benefit of knowing that applications would be likely to be successful.

However, if there is to be a numerical limit, in ELA's view adopting a first come first served system for skilled migrants based on a quarterly quota of visas being released will be the fairest and most effective approach as compared to the pool system described. However, please see our comments below regarding the quota governing visas rather than certificates of sponsorship.

Some of the **advantages** of the first come first served system over the pool system for Tier 2 are as follows:

- *Certainty* - The first come first served system which operates on the basis of a quarterly quota would provide greater certainty for employers and applicants over the pool system. Under the first come first served system, provided that the minimum requirements of the points table had been satisfied, the employer would be better able to assess the likely outcome of an application according to whether the quota has been filled. Although the ability for applicants and employers to assess the likely outcome of an application is important for both Tier 1 and Tier 2 of the PBS, this is most important in the context of Tier 2 when the applicant will, in every case, have a job offer.
- *Timing*- The first come first served system may also allow applications to be decided more quickly in some cases as there would be no need to wait until the end of the relevant quarter to determine the success of an application by comparing it to others (whereas under the pool system the comparison of the applications would presumably take place at the end of the relevant quarter). This delay would be problematic for many employers and for some, it may be unworkable.
- *Clarity* – the first come first served system is clear and simple to understand.

A considerable **disadvantage** of the first come first served system is that once the quota for the relevant period has been filled, employers have no option to sponsor employees despite the fact that they may have critical business needs to fill certain positions which they could not have anticipated at the start of the relevant quarter period. Therefore certain applicants that would have been selected based on business need/ the merits of the application by applying the pool system may fail applying the first come first served system. The pool system described does have the advantage that the success of the applications is based on merit rather than timing.

However, in ELA's view, this disadvantage is outweighed by the fact that the alternative pool system as described is not likely to be workable for many employers given the time delay involved in waiting for the end of the quarter to select applicants based on merit and the lack of certainty that they would face in not knowing whether an applicant is likely to be successful.

The auction system described does not appear to be the fairest or most effective means of achieving the Government's objectives since selection is based on the employer prepared to pay the most.

Suggestions

- ELA suggests that consideration is given to operating a monthly rather than a quarterly quota. This would avoid situations where the quota is filled close to the start of the quarter and employers would be faced with waiting for a considerable period for the next quarterly quota to open up.
- ELA notes that the consultation document refers to a cap on the number of visas issued rather than certificates of sponsorship. It is ELA's view that the quota should regulate the number of certificates of sponsorship issued to employers rather than the number of visas issued so that time and fees are not wasted on sponsoring employees who will then be refused leave to remain/ entry clearance. This may already be the Government's intention but this point was unclear in the consultation document.

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Question 3: Do respondents believe that where a quarterly quota is filled applications that have not yet been considered should be rolled over to the following release or not?

In ELA's view there should be an ability to roll over applications to the following release. Applicants who are in a position to wait for the next quota period will have a second opportunity to have their application considered and provided that "they make the cut" in the second period as compared to other applicants, there is no reason why their application should not be successful. [Some [applicants] who cannot wait for a decision to be made will withdraw their applications and the process should facilitate the process of withdrawal.

If an application is rolled over to the next period of consideration, the employer should be informed that they were not successful within the first period and that their request has been rolled to the next consideration and if possible, an indication of their ranking so that the likely prospects of success of the application can be considered.

However, whilst allowing roll over into successive periods is the preferred option, there is a risk that a substantial backlog of applications could build up over a period of time as the limit bites. Eventually the backlog will get so large that the delay itself will discourage further applicants from making new applications. ELA's view expressed in response to the MAC Consultation is that it is preferable to ration on the basis of criteria formed from a combination of need within the UK and personal attributes, rather than on the basis of willingness to wait in a queue.

A practical consequence of any substantial delay is that applicants will be forced to provide their passports and other original supporting documents to the UK Border Agency for indeterminate periods of time which can cause a great deal of inconvenience. If there are to be substantial waiting times then, in ELA's view, the processes must be designed so as to allow applicants to submit copy passport documentation in the first instance.

Question 4: Should we consider raising the minimum criteria for qualification under Tier 1 of the points- based system?

Employers value the ability to hire the best person for a job with as much ease, speed, certainty and flexibility as possible. This is especially acute for employees in professional and managerial positions.

Generally speaking, employers across a variety of industries are seeking a good level of general education in all management level or senior employees together with relevant specialist academic, professional or vocational qualifications. However we believe that employers often give far greater value to practical experience and expertise. Examples drawn from two sectors are:

Gaming industry: this is a relatively small industry in terms of numbers of experienced personnel globally. Beyond a good general education, there are no specific academic requirements and fact of having e.g. a master's degree is irrelevant. Experience and knowledge of the gaming sector are far more desirable attributes.

Financial services industry: possession of the relevant financial qualifications plus ability to comply fully with the requirements of the FSA 'approved persons' regimes (where relevant) are key factors. The desirability of any qualification beyond a bachelor's degree is entirely dependant on the type of role and the institution is often more focussed upon the applicant's track record.

Currently an applicant who earns in excess of £150,000 does not need to have any academic qualification to score the required points for attributes. If there were a minimum requirement for a bachelor's degree then we doubt that this would be a useful filter as we believe that the majority of applicants would be likely to meet these criteria.

If the minimum qualifications requirement was to have a master's degree then we believe that this would be overly restrictive and exclude a number of extremely skilled, experienced, senior and well paid applicants.

Raising the bar for a period in 2009/2010 to a requirement for a master's degree for Tier 1 migrants was certainly unpopular among employers. As many employers pointed out, the effect of raising the bar was that they simply lost out on significant relevant skills and experience which are not expressed by academic qualifications alone, or indeed, at all.

This risk in excluding these individuals is that business will be conducted elsewhere (with resultant effect on the overall economy) and/or they will structure their affairs so as to travel to the UK as business visitors (with resultant loss of tax revenue).

In summary, a blanket raising of the minimum qualification criteria under Tier 1 to a bachelors degree would likely have little effect and raising it to master's degree would be likely to have a serious adverse effect. Employers in sectors where a qualification beyond bachelor's degree level is unnecessary could be prevented from recruiting employees with a high degree of relevant skills and experience.

Question 5: Should we provide for additional points to be scored for: higher level English language ability, skilled dependants; UK experience; shortage skills; health insurance? Are there any other factors that should be recognised through the points system?

We believe that there may be merit in exploring additional points scoring criteria. We comment on each proposed criteria below:

- **Higher Level English Language.** Tier 1 applicants (particularly Tier 1 general) often tend to have a relatively high level of English language skill and raising the level of requirement might not assist in filtering and reducing the level of immigration in these categories. It could risk creating unnecessary bureaucracy and work against applicants applying from non-English speaking countries.

Skilled Dependants The ability to bring dependants can often be extremely important for Tier 1 migrants. Although it is likely that Tier 1 migrant dependant partners are highly skilled, consideration should be given to cultural/social patterns of various countries, where dependant partners are not expected to work and, therefore not educated to the level of the Tier 1 migrant.

UK Experience The current Tier 1 (General) scheme allow applicants to claim five points if they have successfully scored points for previous earnings and at least £25,000 of those earnings were made in the UK, or undertaken a period of full-time study in the UK, of at least one full academic year, and have been awarded a qualification at bachelor's degree level or above within the last five years from the date of application. ELA is of the view that UK experience should continue to be recognised, however, the points in this category should recognise the wish to retain the brightest and best graduates from UK universities in conjunction with the existing Post Study Work category. For instance, if students obtain a qualification which is recognised on the shortage occupation list (subject to our comments here below), then additional points should be awarded for this.

Shortage Skills. The current shortage occupations list is viewed as being of little assistance in either expediting or refining migration in many commercial sectors. The list is narrow and updated fairly infrequently. It is regarded as not genuinely reflecting employers' needs across the private sector and as focusing primarily on areas in the public sector, the arts and specialised engineering science. The list tends to work against smaller entrepreneurial businesses, branches of international organisations and those with niche requirements. These businesses are less likely to engage with the Migration Advisory Committee as a result of a lack of specialist internal resources, a possible lack of awareness and having shorter-term staffing requirements. If points are to be awarded for shortage skills, the shortage occupations list must be more responsive, flexible and efforts made to engage with smaller niche employers. It might perhaps be updated monthly and take greater account of a wider range of industries and sectors could be useful as a filter for expediting labour migration in those areas where it is most useful.

- **Health Insurance.** We assume that this is a reference to private medical expenses insurance as distinct from travel insurance which would typically only provide coverage for short term trips. Points for health insurance may not be a useful filter as many Tier 1 migrants (but not all) will already have a job offer from a company where individual and family health insurance is provided as a standard benefit. However it will disadvantage applicants who apply from outside the UK with no job offer.

It may be considered unfair that some migrants near to the point's threshold are essentially required to take out private insurance whilst they are entitled to free NHS care and will be paying taxes to contribute towards that service. Visitors to the UK, who do not pay taxes, are not currently required to maintain travel insurance to insure against healthcare costs.

- **Other Factors.** Whilst Tier 1 (General) is intended for those who do not have a job offer, in practice it is sometimes used as an alternative to Tier 2 by employers for their most highly skilled staff and by smaller employers who wish to avoid the bureaucracy of becoming a licensed sponsor. ELA would therefore advocate the granting of points for those who already have a secured a bona fide job offer from an established employer (including a newly opened branch of a bona fide international company). To act as a meaningful filter points might only be awarded (or additional points awarded) if:
 - the offer were at a defined salary level (recognising the very substantial salary differentials that exist within the UK the salary levels might vary depending on where the employee will be based);

- the employer is willing to pay full relocation costs, and even provide housing (substantial costs the employer will only bear if they genuinely cannot locate resident workers and providing resident workers with an in-built advantage); and/or
- the employer is a subsidiary/branch of an international organisation that has recently set up in the UK.

In summary, there may be some merit in examining raising the points bar in relation to attributes other than qualifications, such as UK experience and an enhanced and refined shortage occupation list.

Question 6: Do respondents agree that Tier 1 (Investors) and Tier 1 (Entrepreneurs) should not be included within the annual limit?

ELA agrees with the government that these two routes should not be included within the annual limit.

With the growth of economies such as India, China and Russia, ELA members have seen an increase in demand for Tier 1 (Investor) and Tier 1 (Entrepreneur) visas. In particular, individuals either looking to set up new businesses in the UK or investors looking to acquire property and place their children at school or university in the UK have found these options useful. Investors and entrepreneurs view the UK as a relatively attractive point of entry for Europe as a whole, as well as solely being attracted to the UK. The central requirement of being able to demonstrate financial resources, without the need to demonstrate qualifications, the maintenance requirement or, for investors' only, English language, creates a straightforward application process and provides certainty to those individuals and their families.

As stated by the UK Border Agency, Tier 1 of the points-based system exists to enable those who will contribute most to the UK's economy to come to the UK without a job offer. Applicants under the investor and entrepreneur categories should be considered highly desirable for the UK economy and ELA's view is that their inclusion in an annual limit is likely to act as a deterrent when such individuals are considering relocating to the UK. The result may be that serious investors are then likely to look elsewhere other than the UK for entry into Europe.

Question 8: Do respondents agree that the Intra-Company transfer route should be included within the annual limits?

ELA's experience of this as a very popular route across a wide range of sectors is in accord with the UK Border Agency's statistics showing that this has been the most popular Tier 2 route. However, the UK Border Agency's suggestion that this is one route potentially to be reduced is of concern to ELA and clients of its membership.

ELA is aware of many examples where overseas companies have set up UK operations, several of which have been very substantial and some which have gone on to form the head of EMEA operations for multinational companies. The government has always expressed the view that they welcome this kind of inward investment; however, ELA is of the view that a cap on numbers who may enter the UK through the intra-company transfer route may deter such companies from setting up in the UK.

The ease with which an overseas company can transfer experienced staff from its home country to assist with setting up a new branch, subsidiary or other operation is

a significant factor when a company is considering expanding into a new geographic location. In most cases where significant investment into the UK is proposed by an overseas company, the sole representative category is insufficient to transfer the necessary employees to the UK to organise and facilitate the formation of a UK branch or subsidiary. These companies are therefore required to look to Tiers 1 and 2, for which the Tier 2 intra-company transfer route is the obvious option where the individuals concerned would not qualify under Tier 1 general.

A restriction on the number of migrants permitted to enter the UK through the intra-company transfer route, either by way of a cap or pooling system, is likely to cause delays and uncertainty about when individuals might gain entry clearance for the UK. If such restrictions were to be introduced, ELA is concerned that overseas companies would re-evaluate decisions to open in the UK and consider investing elsewhere where they can be more certain about the timing of when it could transfer staff to facilitate the opening of a new operation.

The flexibility of the intra-company transfer route is useful for a wide range of companies, for example, where a company headquartered in Europe decides to send a US national working in a group company and resident in Switzerland to the UK office to work for a few days each month or for a specific period of time. This would not be a situation where a UK resident worker could easily be recruited to carry out the work, but such large multinational companies and the individuals transferred contribute widely to the UK economy. Flexibility is important for many companies who want their skilled staff to be mobile and able to carry out work in a number of locations. Companies with a subsidiary in the UK often value the ability to transfer key staff on a temporary or permanent basis to carry out work in the UK.

The imposition of a cap on numbers of applicants in this area (in addition to restrictions placed on the number of certificates of sponsorship available to licensed sponsors) would lead to delays and uncertainty, thereby removing the beneficial effects of this route. A significant blanket cap on the Tier 2 intra-company transfer route would not be attractive for companies who have a presence in more than one country including the UK and could lead such companies to avoid the UK for business and trading purposes.

Question 9

Do respondents agree that dependants should be accounted towards the limit?

ELA agrees that skilled workers greatly value the ability to be accompanied by their dependants and any restrictions on the ability of migrant workers to be accompanied by dependants will make the UK a far less attractive destination. However, as this question relates to the manner which the limit is to be calculated, ELA are not able to express a view.

If dependants are to be included within the limit then it is important that the rules are designed to avoid unfairness and uncertainty where a PBS migrant and their dependants do not apply at the same time. There may be situations where the limit does not apply at the time the PBS migrant applies but is reached before the dependent applies.

Question 10: Do respondents believe that the Shortage Occupation and Resident Labour Market Test routes should be merged in this way? What

would be the advantages and disadvantages of doing so? Over what timescale might the change be implemented? What consideration should be given to advertising requirements?

In ELA's view, the existing relationship between the Shortage Occupation and Resident Labour Market Test (RLMT) routes should remain in its current shape, as together they form a cohesive mechanism of enabling UK based employers to recruit needed workers. Although connected, each route serves a very distinct purpose, and to merge the two routes would result in unnecessary restriction on employers who cannot fill job vacancies with UK/EEA nationals.

It is important firstly to note that ELA is concerned with the UKBA's premise that there may be British workers available locally to fill Shortage Occupation lists, nor that British applicants are disadvantaged by Tier 2 candidates. ELA considers that current recruitment requirements allow UK/EEA workers clear opportunity to fill vacancies in the UK job market. Employers have to show substantial proof of reasons why they cannot fill vacancies with UK/EEA workers before offering positions to non UK/EEA worker under current Tier 2 procedures. This includes advertising positions through JobCentre Plus. ELA seeks the UKBA's evidence to substantiate its conclusion that British workers are disadvantaged by the current Tier 2 RLMT/Shortage Occupation routes.

Disadvantages likely to transpire if the two routes are merged:

- As stated in question 5 the Shortage Occupation list is narrow and does not reflect the reality of the UK job market. The list of included occupations is carefully produced by the Migration Advisory Committee (MAC), whose evidence to support inclusion on the list is drawn from a variety of sources, both academic and commercial. In effect, the Shortage Occupation list already sits within the SOC codes, but the different treatment afforded candidates under the Shortage route acknowledges that there are not sufficient numbers of UK/EEA nationals to fulfil the employer needs in the Shortage Occupation sectors.

It may be that UKBA, by posing this question, is inferring that occupations included in the Shortage Occupation list, are not being properly vetted. If this is the case, then perhaps it is a question of addressing MAC criteria directly, rather than altering the Shortage Occupation route.

- If the UKBA intends to reduce the RLMT route occupations to those included on the Shortage Occupation route, ELA considers that UK employers would face greater uncertainty by inability to satisfy vacancies, due to shortages of available UK/EEA nationals. If, as is currently the case, a UK employer has not been able to find a UK/EEA national via the RLMT route, ELA is concerned what would happen to employers if the ability to recruit non EEA nationals was removed.

ELA considers the results of the current interim measures limiting Certificates of Sponsorship (CoS) to be indicative of how employers will react if ability to recruit needed non EEA workers is restricted- they will take their operations elsewhere. When advising employer clients on potential options in face of reduced CoS, employers are uniformly considering relocating away from the UK.

- If the RLMT route was reduced to Shortage Occupations only, ELA anticipates that there would be increased pressure placed on MAC to increase the types of jobs included on the Shortage Occupation list, which would have the opposite result of the government's intentions in restricting the jobs available to non EEA nationals and would work against smaller entrepreneurial businesses, branches of international organisations and those with niche requirements

Timescales of implementing changes to the two routes

Businesses and organisations will be greatly affected by any changes to the Shortage Occupation or RLMT route. As their recruitment practices rely on forward based business planning they would need a lengthy timeframe to absorb intended changes to the routes. ELA suggests that any amendments to the two routes would require lengthier consultation with business and industry to ensure that any changes do not have unforeseen consequences which could damage UK economic activity.

What consideration should be given to advertising requirements?

ELA considers the current advertising requirements for Tier 2 (general) sufficient to ensure that UK/EEA nationals are given due preference in filling UK vacancies. It would be unwieldy and impossible for businesses to have a longer minimum time for advertising a job and/or to extend the time for which a job has to be advertised. Businesses compete in a different (more reactive) environment than for example, government departments, so therefore need to be more fluid and responsive in their recruitment activities.

Question 11: Do respondents believe there is merit in extending sponsor responsibilities in these ways?

ELA considers it unduly onerous on employers to impose a commitment on Tier 2 (general) sponsors to upskill British workers (more than they currently do) or to absorb the cost of private health insurance for their employees. Tier 2 (general) Sponsors have had sufficient challenges in adapting to the sponsorship requirements under the Points Based System and further bureaucracy is not to be welcomed.

With regards to private health insurance, employers would have to consider measures of providing insurance carefully in view of potential discrimination claims if they were to only make it available to non EEA workers.

ELA wishes to note that some applicants under Tier 2 may already need to have health insurance in their country of origin and therefore this may not be a new concept for them. However, to insist that they, instead of employers, take out private health insurance prior to arrival in the UK would seem to be an arbitrarily way of narrowing down the group of people eligible to apply for Tier 2 (general) as not every applicant would be able to afford private health insurance.

[Whilst ELA is not supportive of these measures it considers that extensions to sponsor responsibilities are preferable to an absolute limit.]

Question 12: Do respondents believe that there is merit in raising the English language requirement for Tier 2? If so, to what level?

It is ELA's view that there is no purpose served by raising English language requirements for Tier 2 (general) workers. All jobs listed in the SOC are by their very nature skilled and at a relatively senior if not mid ranking level of seniority. In order to

fulfil their job requirements, they would have to be able to engage with other English speaking professionals in their sector so they would have the necessary motivation to ensure their language abilities were sufficiently sophisticated.

Annex

Members of the ELA Sub-Committee which prepared this response are:

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