



House of Commons
Home Affairs Committee

Immigration: skill shortages

Fifth Report of Session 2015–16



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Home Affairs Committee

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1 Introduction

1. The Government have two numerical immigration limits. The first is the overall ambition to reduce immigration to the tens of thousands, which serves to focus attention on controlling those aspects of immigration that could contribute to reducing the overall number. The second is the cap on Tier 2 (General) visas—for high skilled workers to come and work in the UK if they have a definite offer of a job.

2. Following the 2010 election, the Coalition Government reviewed the Points Based System for non-EEA migrants. The Coalition Agreement of 2010 committed the then administration to an annual limit on the number of non-EU economic migrants admitted into the UK to live and work. In designing the limit, the Government consulted with employers and sought advice from the Migration Advisory Committee (MAC). Following the publication of the MAC report on this in 2010, in which they advised on a range of options for limiting inflows, the Government introduced an annual limit on Tier 2 (General) of 20,700, applying from 6 April 2011.¹ They also introduced reforms on minimum skill levels, and salary and language requirements.

3. Shortly after the May 2015 general election, the Government asked the MAC to advise on further changes to restrict the numbers of Tier 2 migrants. This followed from a commitment in the 2015 Conservative party manifesto to “Maintain our cap at 20,700 during the next Parliament. This will ensure that we only grant visas to those who have the skills we really need in our economy”.²

Tier 2 and the Points Based System

4. Tier 2 is part of the Points Based System for controlling migration from non-EEA countries. Other routes within the Points Based System available for work reasons are Tier 1 (investors, entrepreneurs and exceptionally talented migrants) and Tier 5 (youth mobility and temporary workers).³ Within Tier 2 there are four routes: Tier 2 (General), Tier 2 (Intra Company Transfer (ICT)), Tier 2 (Minister of religion) and Tier 2 (Sportsperson). The number of visas issued in 2014 for each route were:

Tier 2 category	Number of visas
Tier 2 (General)	15,000
Tier 2 (Intra Company transfers)	36,500
Tier 2 (Ministers of religion)	400
Tier 2 (Sportsperson)	150

1 There had been an interim limit in place from 19 July 2010 to 5 April 2011 set at 5,400 for Tier 1 (General) and 18,700 for Tier 2 (General). The interim limit was introduced to stop a last minute rush of applications while the Government consulted on permanent arrangements.

2 [Conservative Party Manifesto 2015, page 30](#)

3 Tier 3 is for low skilled workers and has never been opened. Tier 4 is for students.

5. The most used option is the Tier 2 (ICT) route. Of the 15,000 Tier 2 (General) visas issued in 2014, only 1,400 were for the shortage occupation route. The Home Office submission said the demand for Tier 2 visas for skilled workers is still rising,⁴ and recent figures show that the number of Skilled Tier 2 visas granted increased by over 9% in the year ending June 2015.⁵

6. There are important exceptions to the 20,700 limit on Tier 2 (General) visas. Of the four Tier 2 work visas only the General category is subject to the cap. Exclusions from the cap include:

- Those who enter on a Tier 2 (General) visa for a job with a salary of more than £155,300
- Dependants of the person on the Tier 2 (General) visa
- In-country applicants applying to switch from a Tier 4 (Student) visa (except where the applicant has been in the UK as a dependant of a Tier 4 migrant and thus is effectively the same as a new applicant).

Nor does the cap relate to EU migration.⁶

Certificates of sponsorship

7. Tier 2 applicants have to be sponsored by an employer, and the employer must have a Certificate of Sponsorship (COS) before bringing in a worker. Migrants with a Tier 2 (General) visa can work for the specific sponsor in the job described in the COS, bring dependants to the UK, and can stay for a maximum of 5 years and 14 days (or the time given on the COS plus one month if shorter). It is possible to apply for an extension to the visa. Someone on a Tier 2 (General) visa cannot start working before they get the visa. If they want to start a second job in a new sector they have to make a new application.

What happens when the cap is reached?

8. The cap operates by restricting the number of Restricted Certificates of Sponsorship to sponsoring employers to an annual limit of 20,700.⁷ The number of certificates issued since 2011 grew in each year until 2014–15 when it reached 20,492—200 below the cap.

Table 2: Number of Restricted Certificates issued in each year

Year	Number of certificates issued
2011–12	10,086
2012–13	11,034
2013–14	14,245
2014–15	20,492

4 Home Office ([ISS0038](#))

5 [UK Government Immigration Statistics, April-June 2015](#); Home Office ([ISS0038](#))

6 Q16

7 Restricted COS are those issued each month for applicants for a specific job under Tier 2 (General)

9. While the cap is for an annual figure, the limit is applied on a monthly basis: 2,550 places are available in the first month of the financial year (April) and 1,650 in each following month. In February 2015, the number of applications was 2,454. The cap did not apply straight away because spare COS had carried over from previous months, but the limit was over-subscribed in June, and again in July and August. The table below shows applications for places over the period April to November 2015. Since June, 3,110 applications for COS have been refused.⁸

Table 3: Restricted Certificates of Sponsorship applications 2015–16				
	Places available	Granted	Refused	Minimum points score
April	2,250	1,888	-	32
May	2,285	2,277	-	32
June	1,609	1,215	1,326	50
July	2,040	1,943	1,201	45
August	2,347	2,418	583	36
September	1,544	1,520	-	39
October	2,111	1,953	-	22
November	2,011	2,100	-	21

Home Office ([ISS0038](#)), [Allocations of restricted certificates of sponsorship](#) 12 Nov 2015.

Note: there may be an element of double counting in the figures as refused applicants may reapply the next month

The Shortage Occupation List and the Resident Labour Market Test

10. When the cap is reached, a points system is used to give priority to certain applications, notably: those for a job that cannot be filled from the domestic UK market and which has therefore passed the Resident Labour Market Test; those on the Shortage Occupation List (SOL); and those for a PhD-level job. Shortage occupations are ones where there are not enough settled workers to fill available jobs in particular sectors. A list is drawn up and reviewed regularly by the Migration Advisory Committee,⁹ with a separate list of shortage occupations in Scotland. If the post is on the SOL, then the sponsor does not have to carry out the Resident Labour Market Test. If the post is not on the SOL, then the employer must advertise the job domestically and be able to show that no suitable settled UK worker could fill the post. For the next six months, the employer can fill the post with someone from outside the EEA. If the post is unfilled after six months, the employer has to re-advertise in the UK.

Minimum salary requirement

11. All applications must be for posts with a minimum salary of £20,800. In addition, there are different minimum salaries according to different occupations, and whether the

⁸ Home Office ([ISS0038](#)), See [PQ 15141](#) on Engineers and Scientists: Visas, answered on 17 November 2015

⁹ [Tier 2 Shortage Occupation List, April 2015](#)

person applying is an experienced worker or a new entrant employee.¹⁰ The pay thresholds in the health and education sectors are based on national pay scales. Points are awarded to the application according to the salary on offer, so applications for occupations with a higher starting salary will stand a better chance of being successful. In June 2015 an applicant needed to score 50 points to be successful, which means a non-PhD occupation that is not on the Shortage Occupation List would need to have had a minimum salary of £46,000.

Table 4: Criteria for points awarded in COS applications			
Type of job	Points	Salary	Points
Shortage occupation	75	£100,000+	30
		£75,000+	25
PhD-level occupation code and job passes RLMT or an exception applies	50	£46,000+	20
		£32,000+	15
		£28,000+	10
		£27,000+	9
Job passes RLMT or an exception applies	30	£26,000+	8
		£25,000+	7
		£24,000+	6
		£23,000+	5
		£22,000+	4
		£21,000+	3
		£20,800 (the minimum threshold for Tier 2 (General))+	2

12. It should be noted that the bar for securing a Tier 2 (Intra Country Transfer (ICT)) visa is higher in terms of the required minimum salary: £24,800 for a short-term ICT and £41,500 for a long-term ICT visa.¹¹ (This compares to £20,800 for a Tier 2 (General) visa). People who come to the UK on Tier 2 (ICT) visas are much less likely to apply for an extension to their visa in the UK than Tier 2 (General) visa holders.

The Migration Advisory Committee (MAC) reviews

13. The Migration Advisory Committee (MAC) is an independent, non-statutory, non-time limited, non-departmental public body that advises the government on migration issues.¹² Since 2008, they have carried out periodic reviews of the Shortage Occupation Lists, most recently in February 2015. In their 2013 review of the Shortage Occupation

10 A new entrant employee is a full time employee who has left full time education within the last three years, or an entrant to a graduate recruitment scheme, or a trainee barrister entering pupillage

11 Q63

12 [Migration Advisory Committee website](#)

List, the MAC noted that many consultees mentioned “consultation fatigue”, and the MAC “tentatively” suggested that the Shortage Occupation List should be reviewed about every two years.¹³

14. As we have mentioned, in June 2015, the Government asked the MAC to advise on changes to restrict the numbers of Tier 2 migrants. The MAC were asked to report on two areas: the possibility of increasing the minimum salary levels for Tier 2 (General) and Tier 2 (ICT) visas, and a wider review of the operation of Tier 2 visas. Their initial report on minimum salary thresholds was published in August 2015 and recommended that the Government should be cautious over raising the minimum salary requirement before the result of the second wider review.¹⁴

15. The wider review of Tier 2 was to look at reforming the Shortage Occupation List to restrict Tier 2 (General) recruitment to genuine skills shortages and particular specialisms, while making allowances for key public service workers; possible changes to the intra-company transfers and the position of those switching from Tier 4; and whether there should be a time limit on how long occupations are on the Shortage Occupation List. The MAC was also asked to consider:

- the implications of a skills levy to fund apprenticeships charged on those businesses which recruit from outside the EEA;
- the implications of restricting the right of the dependants of Tier 2 visa holders to work; and
- the impact of tightening the Tier 2 intra-company transfer (ICT) provisions.

The Government asked the MAC to complete their broader review of Tier 2 by mid-December 2015 with a view to publication early in the new year.

13 MAC, [Skilled Shortage Sensible](#), 2013, Full review of the recommended shortage occupation lists for the UK and Scotland, a sunset clause and the creative occupations

14 MAC, [Review of Tier 2: An analysis of salary thresholds](#), August 2015

2 The cap on skilled workers

The purpose of the cap

16. By June 2015, the operation of the cap had led to applications for COS being refused. James Brokenshire MP, Minister for Immigration, told us:

I would say that the cap is now taking effect, but that is not necessarily the time to change it because if you have a cap, it has to be envisaged that that cap may be reached and there may be limitations on the number of visas that may be issued.¹⁵

17. Most of the evidence we received was critical of the cap. Jonathan Portes, Principal Research Fellow, National Institute of Economic and Social Research (NIESR), described the cap as “economic masochism” and told us that he saw “no value at all in having a cap on the number of skilled workers.”¹⁶ He said:

The purpose is to reduce the number of people who immigrate to this country, skilled workers who come here under the Tier 2 system, and it is working in the sense that the cap is now binding and therefore people who would otherwise have been able to come to this country to work and to be employed are not. [...] Does that make any sense at all from an economic perspective? In my view, no.

He argued that either the cap would not be binding, in which case it was irrelevant, or if it did bind, then it would do economic damage because it would prevent businesses from employing skilled workers where they have identified skill needs. He continued:

We have set up a system that has a set of rules and criteria. [...] The cap comes in and cuts across all that and says, “Well, despite the fact that you have passed the test and met the threshold, despite the fact that the rules that the MAC has recommended suggests that you would be broadly of benefit to our economy, you cannot come here anyway because we have this number and that is because we want to hit the tens of thousands target”.¹⁷

He commented that the Government’s response to public concern over overall migration appeared to be a further tightening on what are already quite tight restrictions on people who have been determined to be of economic benefit.¹⁸

18. Conversely, Lord Green, Chair of Migration Watch, said the cap was essential and he did not see any need for change just because the cap was biting. He saw the purpose to be two-fold: first, it “focuses the bureaucracy on what the Government want done”, and secondly, it “focuses public opinion in a way that is really quite simple, but at current levels of net migration” and “encapsulated the impact of just sheer numbers”.¹⁹ Lord Green also questioned the scale of any negative impact as a result of the cap being reached:

15 Q180

16 Qq3-4

17 Q3

18 Q20

19 Q23

I saw something from the engineers that said that 66 visas had been refused. [...] my understanding is that there are something like 750,000 engineers in this country and those registered with the Engineering Council are 220,000. So it is very hard to argue that just because a few visas have been turned down that the cap is terrible and the industry is going to collapse.²⁰

19. Neil Carberry, Director, Employment, Skills and Public Services, CBI, said that the issue was not just that the cap had been reached, but the sense that, as the economy grew, the cap could be reached month after month, but even if it did so the Government would continue to bear down on skilled migration because it had to meet the headline target. This had the potential to cause “brand damage” to the UK.²¹ Verity O’Keefe, Senior Employment and Skills Policy Adviser for EEF, the manufacturers’ organisation, also referred to the issue of perception and that, if it is leading to skilled engineers and nurses being turned away, then “it is obviously not fit for purpose to say we need to maintain this cap for the rest of the Parliament”.²² She also raised the point that the number of refusals may not reflect the true scale of impact as many firms start the process but do not get to the end.²³

20. Sir David Metcalf, Chair of the MAC, understood the purpose of the cap was “to demonstrate that you can limit immigration on certain routes.” He conceded the Government could only really control migration for three different routes—non-EEA flows for study, family, and work—and the cap was to help control one of those: the non-EEA inflows for work.²⁴ He said “I don’t think the intention is any longer to reduce it much below 20,700” and pointed out that the Government had invited the MAC to consider some policies that would reduce the numbers while having an “eye to productivity and competitiveness”.²⁵ He also noted that there were probably over 50,000 workers coming in through routes not subject to the cap, compared to only 20,700 subject to the cap.²⁶

The importance of skilled migrants

21. Several submissions to our inquiry commented on the tension between reducing the number of migrants and the impact upon skilled migrants who made a positive contribution. The Institute of Directors said “Almost all IoD members say that migrant workers provide a vital boost to the UK economy.”²⁷ Neil Carberry, CBI, said the message that there is a one size fits all approach to net migration meant that, since the cap had now been hit, there would be people not coming to the UK who would otherwise have been working, making a net contribution and supporting investment in the UK.²⁸ Jonathan Portes said research suggested that immigration is associated with increased innovation, international trade and knowledge transfer. He pointed to recent NIESR research that found industries and sectors with a higher concentration of migrants had higher productivity.²⁹ The Royal Society said:

20 Q24

21 Q79

22 Q95

23 Q102

24 Q133

25 Q134

26 Q125

27 Institute of Directors ([ISS0022](#))

28 Q78

29 Jonathan Portes ([ISS0011](#)); See also Mayor of London ([ISS0041](#))

A system that restricts the UK's ability to access talent from abroad is also likely to restrict the growth and productivity of the economy. [...] The UK needs to have the right policies in place to encourage valuable immigration, and minimise barriers to the flow of talented people.

22. The Embassy of Japan also commented on the contribution of Japanese workers in the UK, and thought it “intrinsically inappropriate to put an annual cap on the number of skilled workers.”³⁰ The Institute of Directors quoted a Department for Business, Innovation and Skills study into the impact of migrant workers that had found that they had brought various benefits to their employers that had led to productivity boosts and company expansion.³¹

23. Lord Green, from Migration Watch, had a different view. He agreed that many immigrants were valuable to the British economy and society, but he went on to say:

If you look at the numbers overall and if you look at GDP per head, or at the fiscal benefit, nowhere is there any significant benefit. No study has ever found significant benefit to GDP per head or significant benefit to the Exchequer—indeed, the opposite.³²

Jonathan Portes contested this view, and said “there is a broad consensus among most economists specialising in the analysis of immigration that immigration is positive for per capita growth and productivity growth in developed economies”. This was more likely to be the case with the contribution of highly skilled migrants. He pointed to two recent pieces of international research which commented on the positive impact of migration to GDP per capita.³³

Displacement from non-EU to EU recruitment

24. The cap is aimed at contributing to an overall reduction in immigration, but it is recognised that the numbers involved are small—the 20,700 Tier 2 (General) visas subject to the cap is a tiny fraction of the inflow in the net migration figures.³⁴ Data for the year ending June 2015 show that 636,000 immigrated to the UK. Of these, 187,000 came for work with the promise of a definite job.³⁵ In addition, if an employer cannot find a particular skilled worker domestically they can seek to recruit from outside the EEA or, as there are restrictions on non-EEA workers, recruit someone from the EU—this had clearly happened with the recruitment of European nurses (See paras 48–50).³⁶ The non-EEA worker would count against the Tier 2 cap, the EU worker would not, yet both would contribute to increasing the overall immigration numbers. Data for the year ending June 2015 show that the number of people immigrating to the UK for work increased both

30 Embassy Of Japan ([ISS0030](#))

31 Institute of Directors ([ISS0022](#)) The [BIS study](#) was commissioned and published under the Coalition Government

32 Q22

33 Jonathan Portes ([ISS0042](#)) The research was by [Jean-Christophe Dumont](#), International Migration Division of the OECD, and by [Francesc Ortega and Giovanni Peri](#)

34 Q137

35 ONS, [Migration Statistics Quarterly Report](#), November 2015

36 Qq 84-85. NHS Employers ([ISS0015](#))

among EU and non-EU citizens.³⁷ When she gave evidence to us in July 2015, the Home Secretary confirmed that she remained committed to the target of reducing net migration to the tens of thousands.³⁸ The latest figures show that net migration is at 336,000 a year.³⁹

25. The aim of the Tier 2 cap is to help deliver the Government’s objective of reducing net migration to the ‘tens of thousands’, despite the significant disparity between the net migration figure, currently 336,000 a year, and the relatively small number of 20,700 possible Tier 2 (General) visas. The Government can only control three routes of migration, one of which is the non-EEA inflow for work. However, the number of people coming to the UK to take up work has not reduced, and the number of people seeking to come to take up a high skilled job in the UK has increased. While the cap may serve a purpose in discouraging recruitment from non-EU countries, it has had a displacement effect in stimulating recruitment from EU countries. If the increase in EU migration compensates for any decrease in non-EU migration, then this will not help the Government reach their target of reducing net migration to the tens of thousands.

Intra company transfers

26. There are different ways for a skilled worker to gain a visa to work in the UK. The most popular is the Tier 2 (Intra-Company Transfer) route and business groups were clear to us that they wanted the Tier 2 (ICT) route to be maintained and excluded from the cap. They saw it as highly important for international companies to be able to move their own staff around the world.⁴⁰ A common example is where an IT company needs staff to develop and implement a project for a limited time in another country.⁴¹ They also argued that it is important to recognise that this is not one-way traffic: the UK benefits when firms based in the UK are able to send UK-based employees around the world. A flexible approach to such knowledge transfer is important to help ensure such businesses remain competitive.⁴²

27. The Government commission to the MAC includes consideration of the ICT route. The MAC Chair said “I don’t think anybody is suggesting getting rid of intra-company transfers” but he was aware that the ICT route had changed completely from its original design, and the number of people coming in under the ICT route had gone up in five years from 22,000 to 36,000. Rather than removing the ICT route, Sir David suggested it might be possible to look at increasing the pay thresholds for ICT visas.⁴³

28. We recognise the dramatic rise in those using the Intra Company Transfer route (Tier 2 (ICT)) to come to work in the UK. We note that these are highly paid, highly skilled people who tend to come to the UK for a limited time to work on a particular project. When the cap was introduced on Tier 2 visas, a decision was made to keep the Tier 2 (ICT) visa outside the cap. If the cap is to remain, we would support the continued exclusion from it of Tier 2 (ICT) visas. We may revisit this issue after the MAC has published its findings on how the Tier 2 (ICT) visa might be changed.

37 ONS, [Migration Statistics Quarterly Report](#), November 2015

38 Oral evidence taken on [The Work of the Home Secretary](#), 21 July 2015, HC 299, Qq27-18

39 ONS, [Migration Statistics Quarterly Report](#), November 2015

40 Q96

41 Q17

42 Q92

43 Qq120-125

Occupations and sectors affected

29. Many witnesses commented on the type of employers that had found difficulty in securing a COS and therefore had been unable to bring in certain staff when they wanted to. techUK pointed out that the three largest sectors that contributed to the recent increase in sponsor applications for skilled work were: Information & Communication; Professional, Scientific & Technical activities; and Financial & Insurance activities.⁴⁴ The range of occupations affected included engineers, teachers, lawyers, IT workers, architects, those in technology companies, nurses and healthcare professionals, and those in the creative industries.⁴⁵ Several submissions pointed out that the problem applied to those sectors which have skill shortages and historically lower salary levels.⁴⁶ Certain small businesses, such as IT start-ups, had difficulty securing skilled staff in expanding commercial areas where they had to compete in a global market.⁴⁷ Several commented that it created problems for employers simply in being able to predict what they need to do to be able to bring staff in,⁴⁸ and argued for particular professions to be placed on the SOL.⁴⁹

What to do about the cap?

30. We received submissions which suggested scrapping the cap.⁵⁰ The Immigration Law Practitioners Association said there was no incentive for an employer to go through the cost and bureaucracy of applying for a Tier 2 visa if someone from the resident labour market could do the job, and that a Resident Labour Market Test properly applied and accurate Shortage Occupation Lists would suffice.⁵¹ The cost of sponsorship was also quite prohibitive, particularly for SMEs.⁵²

31. We received several suggestions as to how to improve the system if the cap stayed. “Flexible” was a common word heard in our evidence. The Recruitment and Employment Confederation wanted more flexibility as the 20,700 limit did not take into account increasing demand due to business growth. They recommended a ‘sliding scale’ whereby the cap could be raised to, for example, 30,000 based on up-to-the-minute labour market data. This quota could be reviewed quarterly, taking into account market conditions, number of graduates, migrants from the EU, etc.⁵³ HCL Workforce, a provider of health and social care, also asked for the cap to be raised.⁵⁴ Jonathan Portes suggested allowing parts of the country that struggle to retain skills to offer a lower salary threshold or skill requirements for those willing to commit to a region for an extended period of time.⁵⁵ Neil Carberry of the CBI said that business understood the need to manage skilled migration but wanted the Government to take a more nuanced approach. He suggested the possibility

44 techUK ([ISS0036](#))

45 Immigration Law Practitioners’ Association ([ISS0033](#)) Recruitment and Employment Confederation ([ISS0024](#))

46 Law Society of Scotland ([ISS0014](#))

47 techUK ([ISS0036](#)), [CoadeC submission to the MAC Review](#), and [open letter to the Prime Minister](#) 27 October 2015, See also Daily Telegraph, [Immigration clampdown will hurt UK technology start-ups, warn top entrepreneurs](#), 27 October 2015

48 British Chambers of Commerce ([ISS0031](#))

49 Independent Age ([ISS0044](#)),

50 Campaign for Science and Engineering ([ISS0037](#)), CBI ([ISS0035](#)), techUK ([ISS0036](#)), Q95 (EEF)

51 Immigration Law Practitioners’ Association ([ISS0033](#))

52 Q66

53 Recruitment and Employment Confederation ([ISS0024](#))

54 HCL Workforce Solutions ([ISS0017](#))

55 Q11

of moving to narrower salary bands and also the possibility of exempting some public sector roles, such as nursing, which are considered essential but do not pay high wages.⁵⁶ The British Chamber of Commerce made a plea for stability, saying it was expensive and time consuming for businesses to stay abreast of immigration policy, especially SMEs which are less likely to have dedicated immigration compliance staff.⁵⁷

32. The Tier 2 cap of 20,700 appears to play a very limited role in Government attempts to restrict net migration. There are no immediate consequences if the Government fails to reach its overall target to reduce migration to the tens of thousands. There are real consequences if the cap on Tier 2 visas is reached, as was discovered in June 2015. Reaching the monthly quota of Certificates of Sponsorship means employers, who had done all that was asked of them, and who had fulfilled the same criteria as those applying in the previous month, were unable to bring in skilled workers who had a definite offer of a job. Although this is the corollary of having a cap in place, it makes planning recruitment difficult and can disrupt plans to expand or deliver services. Those refused included engineers, IT professionals, accountants on graduate training schemes, teachers and nurses. We welcome the decision of the Migration Advisory Committee to look again at how the system for Tier 2 skilled worker visas operates which we see as an acknowledgement that the imposition of restrictions has the potential to damage the UK economy.

Unused certificates of sponsorship

33. The Immigration Lawyers Practitioners Association (ILPA) called for more flexibility in what happened to the unused Certificates of Sponsorship. There are also some COS that are not used in full. ILPA gave the example of someone who comes in under sponsorship for five years but returns to their home country after 12 months. The remainder of the COS could go back into the system but this is not possible under the current arrangements.⁵⁸ The Minister said he thought that would be difficult to implement, and he would prefer to focus on making sure that COS that are issued are done so correctly.⁵⁹

34. A successful sponsor has to use any COS within three months and some are allocated but never used. In the year 2014–15, there were 20,492 Restricted COS granted but only 16,158 Tier 2 (General) visas.⁶⁰ There are evidently more COS issued than subsequently used.

35. From September 2015, the Home Office has been recycling back into the system any certificates of sponsorship that have been allocated to an employer but remain unused after three months. On 20 October the Minister told us:

There is a mechanism whereby if certificates of sponsorship for an individual are not used, they can come back into the system. When we look at the situation of nurses, where there were around 600 of those certificates that were not used earlier in the year, they come back into the overall pool.⁶¹

56 Q92

57 British Chambers of Commerce ([ISS0031](#))

58 Q70

59 Q164

60 Home Office ([ISS0038](#))

61 Q164. Home Office ([ISS0038](#))

36. The online data showing how many Certificates of Sponsorship (COS) are available and allocated each month changed in October to include a “Number of certificates reclaimed as not used within three months.”⁶² As explained earlier, the demand and supply of certificates drives the minimum number of points necessary each month to be granted a COS in that month. In October, 456 certificates were reclaimed and put back into the system, and in November 244 certificates were put back into the system. The minimum points total for September was 39. With the help of the reclaimed certificates, the minimum number of points required in October dropped to 22 and in November it was down to 21. The figures for August show that there were 468 certificates returned for the previous month, a separate category to those reclaimed because they were unused. The most returned in any other month since June was 25.

37. The initiative to put unused Certificates of Sponsorship back into the system is the right approach. It is common sense and has helped to reduce the pressure that had been building up in the system. The 456 unused certificates reclaimed in October clearly adds substantially to the 1,650 allocation for that month.

38. The recycling of unused certificates was announced in September 2015, several months after the cap was reached. The Government should, in its response to this Report, explain why it did not implement these measures earlier, and whether the mechanism to put unused certificates back into the system was considered only as a result of the cap being reached.

3 Nursing, healthcare and salary thresholds

Nurses and the cap

39. A considerable proportion of the evidence we received related to professions in all parts of healthcare, including from various NHS Trusts and bodies involved in recruitment to the NHS. Many commented on the difficulty in filling nursing vacancies and the need to be able to recruit from outside the EU. The Shelford Group, representing 10 NHS multispecialty academic healthcare centres, said they had over 3,000 nursing vacancies.⁶³ The Royal College of Nursing (RCN) told us that there were about 20,000 registered nursing vacancies currently advertised in England.⁶⁴ In a letter to the Chair of MAC, the Home Secretary advised that “nursing vacancy rates may be as high as 10% across the health and social care sector, which if so would be twice the maximum level recommended by NICE.”⁶⁵ At the same time, NHS Employers said that a large number of Certificates of Sponsorship applications are being rejected for nurses who have already been interviewed and offered posts.⁶⁶

40. If the monthly cap for COS is reached and an application is rejected, the employer has to reapply. As we have noted, the cap was reached for three months in a row in 2015, so the problem carried on being rolled over. NHS Employers, the workforce part of the NHS Confederation, estimated that on top of the rejected applications, a further 1,000 applications would be made in the next few months.⁶⁷ These applications are for vacancies that, in the short term, are filled by asking existing staff to work additional hours or using relatively expensive agency staff. This is at a time when the NHS is under considerable pressure to reduce expenditure on agency staff.⁶⁸

41. Rose Carey of ILPA told us that she had a client who had had 400 applications for nursing roles refused in June and July. She said the problem was huge for public sector roles, in particular nurses, because they are not earning high enough salaries to reach the heightened salary bar.⁶⁹ The starting salary for a nurse is £21,500. The minimum salary to qualify for a COS is £20,800. In June 2015, the minimum salary to qualify for a COS rose to £46,000. Nursing does not therefore pay enough to compete in the market for a COS once the cap is under pressure and salary becomes the determining factor. The RCN said the current mechanism did not prioritise skills that provided the most benefits to the UK, and other factors should be taken into account, such as the contribution to the public good.⁷⁰ As Neil Carberry put it: “We are now in a position where we are heading rapidly towards having to make a choice between nurses for NHS hospitals and engineers to keep our great manufacturing industry on the road. That seems to be a ridiculous position.”⁷¹

63 Shelford Chief Nurses Group ([ISS0026](#)), See also North Tees and Hartlepool NHS Foundation Trust ([ISS0012](#)), South Tees Hospitals NHS Foundation Trust ([ISS0020](#)), HCL Workforce Solutions ([ISS0017](#))

64 Q92

65 [Letter from the Home Secretary to Sir David Metcalf, MAC, re nursing shortages, 15 October 2015](#)

66 NHS Employers ([ISS0015](#))

67 NHS Employers ([ISS0015](#))

68 Royal College of Nursing ([ISS0013](#))

69 Q69

70 HCL Workforce Solutions ([ISS0017](#))

71 Q94

The MAC review and nurses

42. On 15 October, the Home Secretary wrote to Sir David Metcalf on the subject of nursing shortages. She acknowledged that the MAC had looked at nursing as recently as February 2015, and had recommended against adding nurses to the Shortage Occupation List based on the evidence available at the time—provided by the Centre for Workforce Intelligence on behalf of the Department of Health.⁷² Since then, the situation had changed. Increasing numbers of NHS Trusts and other interested organisations had raised concerns about nurse numbers with regard to safe staffing levels within the NHS, rules to reduce the use of agency staff, and the approaching winter. As a result, she “exceptionally agreed to place nurses on the shortage occupation list on a temporary basis pending that full review of the evidence and your subsequent advice.”⁷³ The Home Secretary asked the MAC to report back to her by 15 February 2016.

43. The RCN said they were very pleased with the decision to put nurses on the shortage occupation list, but that the nursing shortage would not be resolved within the next few months because demand still outstripped supply.⁷⁴ The Government’s decision to exempt nurses from the cap released the pressure in the short term.

44. We welcome the recent decision by the Government to put nurses on the Shortage Occupation List. Had this not been done, there would have been thousands of unfilled nursing vacancies going into winter. Potentially, this could have had immense consequences throughout the NHS. We would support a decision for nurses to remain on the Shortage Occupation List.

Changes to the Immigration Rules and nursing

45. The situation for nursing is complicated by changes to Immigration Rules which mean that workers from outside the EEA who were granted Tier 2 visas after 6 April 2011 must earn £35,000 or more after six years, before they can successfully apply for leave to remain. The RCN told us that most nurses affected by this rule change earn between £21,000 and £28,000. Overseas workers on a Tier 2 (General) visa can work in the UK for a maximum of six years. They are entitled to apply for indefinite leave to remain after five years, so they have one year in which to apply and secure leave to remain, leave, or switch into a different category.⁷⁵ The RCN said this may force up to 3,365 nurses currently in the UK to leave the country from 2017, and that forcing them to leave will negatively affect patient care due to the loss of vital skills and experience. Given that the estimated cost of recruiting these nurses from outside the EEA is nearly £21 million it also represented a waste of NHS funds.⁷⁶ Rose Carey of ILPA said the current situation presents the employer with a difficult choice: increase the salary of non-EU nurses above the resident workers, which could create employment law issues, or let that person go.⁷⁷

72 MAC, [Partial review of the Shortage Occupation Lists for the UK and for Scotland](#), February 2015

73 [Letter from the Home Secretary to Sir David Metcalf, MAC, re nursing shortages, 15 October 2015](#)

74 Q81

75 Q62

76 Royal College of Nursing, [RCN report shows immigration rules ‘will cause chaos’ and cost the NHS millions](#), 22 June 2015

77 Q65

46. Lord Green, from Migration Watch, said the issue was predictable and could have been avoided:

The NHS had five years to adjust to it. The people [...] who are going to have to go home are people who are completing their five years. [...] They are not all being thrown out, as it were. They are coming to the end of a five-year term, by which time the health service and its training should have had it sorted and they did not.⁷⁸

47. We are pleased that the decision to put nurses on the Shortage Occupation List means that those nurses subject to the Immigration Rules changes, and who were at risk of having to leave the country if they did not earn £35,000 after five years, will now be able to apply to stay and continue to contribute to the NHS.

Training nurses

48. Many submissions accepted that more could be done to train more nurses in the UK, and so make it easier for the NHS to recruit UK nurses. Howard Catton of the RCN said “The short answer is that we have not trained enough nurses.” Figures from the RCN show that the number of nurse training commissions peaked in recent years at 24,527 in 2004–05 and then broadly fell each year to a low of 17,442 in 2012–13 before again increasing each year to 20,183 in 2015–16.⁷⁹ The RCN also pointed out that between 2009 and 2014, there was a 33% increase in the number of people applying to study nursing in England, but in 2014 only 40% of those who applied were accepted on a course. It takes four years to commission a place and train a nurse.⁸⁰

49. Howard Catton also pointed to the cap resulting in “the likelihood of more aggressive recruitment from Europe” or increased spending on agency staff—which would contradict the Government’s initiative to bring down agency spend.⁸¹ Data from the Nursing and Midwifery Council show that in 2001–02, there were 15,064 initial registrations from people from outside the EEA and only 1,091 from the EEA. By 2014–15, the number of non-EEA registrations had declined to 665, but the number of EEA registrations had increased to 7,518. By comparison, the number of EEA people registered as nurses in 2001–02 was just over 1,000. In 2014–15 it was 7,518. In fact, the number of EEA nurses doubled between 2012–13 and 2014–15.⁸² The Shelford Group, representing 10 academic hospitals in England, said they had experienced some language difficulties with EEA nurses and would prefer to recruit from outside mainland Europe. They also experienced better staff retention rates for non-EEA nurses.⁸³

50. One of the aims of the cap is to incentivise training and recruitment of domestically trained nurses. We ask the Government, in its response to this Report, to set out its plans to increase the number of nurse training places available, and confirm whether nurses will remain on the Shortage Occupation List until such time as the number of domestically trained nurses reaches the Department of Health’s target.

78 Q39

79 Royal College of Nursing supplementary ([ISS0043](#))

80 NHS Employers ([ISS0015](#)) Royal College of Nursing, [Frontline First](#), April 2015

81 Q85 and Q91

82 Royal College of Nursing supplementary ([ISS0043](#))

83 Shelford Chief Nurses Group ([ISS0026](#))

Other healthcare occupations

51. Nursing is not the only occupation within healthcare that struggles as a result of the limit on Tier 2 (General) visa rules.⁸⁴ Submissions from the healthcare sector consistently referred to the difficulty of acquiring COS for lower paid occupations when the monthly allocation becomes oversubscribed and a higher points total is needed to qualify. The BMA reported that Health Education England made nine applications for COS for doctors in training in June, of which eight were rejected.⁸⁵ This applies to training posts, such as for GPs, but also for certain specialities and broader healthcare roles. North Tees and Hartlepool NHS Foundation Trust said they had to look overseas to fill certain specialities, ranging from physiotherapists to radiographers, and for many of which they would not be confident of gaining a Tier 2 visa when demand is high.⁸⁶

52. Vacancy rates in social care and care homes can be higher than 10%.⁸⁷ Independent Age, a support organisation for older people and their families, said that social care had similar concerns to hospital nursing. Nearly one in five care workers are born outside the UK, and the migrant members of the workforce tend to be younger and more highly skilled than their UK born colleagues. They argued that the sector struggles to attract and retain staff, and wanted nurses in social care to be on the Shortage Occupation List.⁸⁸

Salary thresholds

53. Once the monthly cap is reached, the number of points required to gain a COS is pushed up. The MAC report on minimum salary thresholds noted that once the monthly limit had been reached in June and July, applications for the lower-paying occupations not on the Shortage Occupation List were at a greater risk of being refused. The minimum salary started in 2007 at £20,000, for people at NQF3 skill level—or with A-levels. Now it applies to NQF6—graduate level. This would, in itself, appear to justify revisiting it.⁸⁹ Raising the minimum salary, currently at £20,800, could reduce the number of applicants that qualified for a COS. Those coming to the UK for a job with a salary of more than £155,000 are exempt from the cap. Lowering the upper salary threshold would therefore reduce the number of those requiring one of the limited monthly COS.⁹⁰

54. We heard concerns that those applying for many low paying occupations would struggle if the minimum salary was raised. These concerns included some public sector roles, including an example of 27 non-EEA teachers due to start at an academy trust in September, who all had their COS applications rejected.⁹¹ It also included graduate training schemes, and research and non-PhD roles in universities.⁹² The minimum salary

84 NHS Employers ([ISS0015](#))

85 British Medical Association ([ISS0010](#))

86 North Tees and Hartlepool NHS Foundation Trust ([ISS0012](#)); Shelford Chief Nurses Group ([ISS0026](#))

87 Q83

88 Independent Age ([ISS0044](#))

89 Q131

90 Immigration Law Practitioners' Association ([ISS0033](#))

91 Recruitment and Employment Confederation ([ISS0024](#))

92 Research Councils UK ([ISS0016](#))

for graduate recruitment already presents difficulties outside London.⁹³ The MAC has said the Government should consider some health occupations and graduate recruitment schemes separate to the Tier 2 (General) cap.⁹⁴

55. We were told that Small and Medium Enterprises (SMEs) would be disproportionately affected by competition for COS on salary, and have limited resources to manage the immigration system. Verity O’Keefe of EEF said that about 11% of EEF members admit to recruiting from outside Europe, and that figure drops to 6% for members with fewer than 100 employees. She said it was expensive to recruit from outside Europe—between £4,000 to £5,000—and many small businesses perceived this to be too much.⁹⁵

56. There is also a geographical element to the salary thresholds. Scottish Development International pointed out that the median salary in Aberdeen City was £29,237 whereas in Moray it was £23,201.⁹⁶ In June 2015, the minimum salary to secure a COS was £46,000, although it later fell in August to £25,000, then rose again in September to £28,000. The demand for COS is highest in London and the South East—in 2013, 63% of COS went to applicants in London and the South East. Scotland and Northern Ireland only accounted for 6% of COS.⁹⁷ It could therefore be argued that the national minimum salary requirements for a COS are being driven by wage requirements of applicants in the South East of England.

57. Sir David Metcalf told us he had not been supportive of regional differentiation before the cap had been reached. He said it greatly increased the complexity of the system and the starting salary for a particular profession would be lower by virtue of using national average wages. However, he did remark that the wage necessary to secure a COS in July 2015 was £46,000 and that the MAC would look at it again as part of the broader review.⁹⁸ When we asked the Minister about this, he referred to a MAC report from 2011 which did not find a case for differentiation of the income threshold between the regions and countries of the UK, whereas a single figure was viewed as providing clarity.⁹⁹

Public sector roles

58. The Recruitment and Employment Confederation said that there was a clear argument that certain public sector roles, such as nurses and teachers, should be exempt from the cap. The BMA said “If the Tier 2 cap remains in place, provision needs to be made to ensure that employers are not hindered in recruiting to roles that are fundamental to the provision of safe and high quality NHS services.”¹⁰⁰ Sir David Metcalf said he did not favour a sector specific approach because it “takes you into manpower planning, picking winners and so on, and I don’t see how you can do that.”¹⁰¹ He did concede that if the cap

93 [Letter from the Institute of Chartered Accountants in England and Wales](#) (ICAEW), to the Minister for Immigration, 24 August 2015

94 Q142

95 Q103

96 Scottish Development International ([ISS0027](#))

97 PQ from Paul Blomfield

98 Q141

99 Q180

100 British Medical Association ([ISS0010](#))

101 Q138

remained, and the minimum salary threshold was raised, then there may need to be some measures put in place to exempt certain occupations, and these would probably be public sector occupations.¹⁰²

59. The negative consequences to recruitment in the healthcare sector under the cap is representative of a broader issue of how the cap interacts with skilled migrants who work in public sector roles that do not pay a high salary but are considered important for society. It is unfortunate that salary becomes the determining factor when the system for allocating Certificates of Sponsorship comes under pressure.

60. Raising the minimum salary requirements for Tier 2 visas may ease pressure on the cap but it would not meet the needs of those employers who want to bring in particular skills but are unable to pay the higher salary required. The marginal benefit to the Exchequer from increased income tax collected from higher paid employees is of less relevance than filling vacancies in the most pressed sectors on the Shortage Occupation List. We would be concerned if the minimum salary threshold was raised without measures simultaneously built in to mitigate the impact upon public sector roles, such as teaching, and certain low pay sectors, such as social care. It would serve to relieve one problem whilst worsening another. If the MAC recommend raising the minimum salary threshold then they should consider how the impact upon SMEs might be mitigated. We recommend that consideration also be given to exempting certain public sector roles from the cap for Tier 2 (General) visa. We also welcome confirmation that the MAC will look again at regional differentiation, particularly if the cap continues to force up salary requirements, or if raising the minimum salary thresholds is to be considered.

4 International students and retaining talent

Science, Technology, Engineering and Maths (STEM)

61. The Royal Academy of Engineering and Big Innovation Centre estimated that the UK will need an average of 104,000 new Science, Technology, Engineering and Maths graduates and 56,000 STEM new technicians with NQF Level 3 skills and above each year between now and 2020.¹⁰³ The Social Market Foundation estimated that to close the gap between demand and supply needs around 40,000 STEM graduates, or the number of UK STEM graduates has to increase by around a half. The Campaign for Science and Engineering (CaSE) said that 75% of the roles on the SOL are STEM subjects, and a recent survey found that among engineering, science, and hi-tech firms, nearly half (44%) report difficulties in finding experienced recruits with the right STEM skills, particularly high-level STEM skills.¹⁰⁴

62. The Research Councils UK pointed out the importance of research to ensure the UK remains competitive, and how research is linked to economic growth such as through the Government's Industrial Strategy. Part of that strength came from the ability to engage with talented individuals and access an international labour market. This applied to PhD level roles, but also roles such as researchers and technicians. The Research Councils sometimes have problems meeting the national average salary required to secure a Tier 2 visa for such roles. They said raising the minimum salary requirement could prevent them from sponsoring the majority of their existing migrant workers.¹⁰⁵ Organisations such as the Royal Society and Research Councils UK emphasised the need to continue to prioritise PhD level occupations.¹⁰⁶ **We recommend that the priority given to PhD level posts in securing Certificates of Sponsorship is maintained.**

Post Study Work Route

63. Several submissions referred to the need to retain the ability of international students to move from a Tier 4 Study visa to a Tier 2 skilled work visa, as an attraction for international students to choose the UK rather than other competitor countries offering higher education, in English and with the opportunity to work afterwards or as part of the course. Several submissions called for the reintroduction of the Post Study Work Route (PSWR), including the Scottish Government, the Coalition for A Digital Economy, and the Campaign for Science and Engineering.¹⁰⁷ The Tier 1 Post Study Work visa route, which allowed international students two years to seek work after graduating, was closed in 2012. Jonathan Portes suggested reintroducing a form of Post Study Work with a regional element to help stimulate those parts of the country that struggle to retain skilled staff.¹⁰⁸

103 Campaign for Science and Engineering ([ISS0037](#))

104 Campaign for Science and Engineering ([ISS0037](#))

105 Research Councils UK ([ISS0016](#))

106 Royal Society ([ISS0018](#)) Russell Group ([ISS0023](#))

107 Scottish Government ([ISS0028](#)), Campaign for Science and Engineering ([ISS0037](#)), [Coadec](#) submission to the Migration Advisory Committee on Tier 2 visas

108 Q12

64. Lord Green, from Migration Watch, pointed out that the PSWR was abused, with many graduates carrying out multiple jobs, and any job, rather than the skilled one to which they were expected to apply, and that there is still a way to switch from Tier 4 Study visa to a Tier 2 visa.¹⁰⁹ However, PSWR gave the student two years to find a job, whereas the current rules allow four months. This was criticised for not giving the student enough time to graduate, look for a suitable job, and then secure it. For example, the Russell Group said:

The UK should aim to move towards a more competitive position on post-study work for international students, starting by increasing the current 4 month allowance to a minimum of at least 9 months. A more competitive post-study work offer should ideally be available to all students.¹¹⁰

Sir James Dyson wrote to our predecessor Committee about international STEM students, and the barriers to them staying to take up high skilled work. He said:

To be allowed to work in the UK after finishing their studies, international students must have found a graduate job with an employee registered as a licensed sponsor, paying over £24,000. This is a nigh-on impossible task for science and engineering students. In the last, stressful months of their studies they are completely occupied with significant, challenging research projects. [...] As such they are forced to leave, taking the ideas and skills that could turbocharge the UK economy with them.¹¹¹

The Institute of Chartered Accountants in England and Wales (ICAEW) said the timetable for international students to finish their degree course, apply for employment with an accountancy firm, and secure a Tier 2 visa were out of sync. The student can only apply to switch from Tier 4 to Tier 2 once they have completed their degrees. Yet the professional training offers are made when the students are still at university before they know the outcome of their course, which caused considerable logistical and administrative difficulty.¹¹² The CBI suggested a post-study eligibility period of 6 to 12 months. Verity O'Keefe of EEF believed at least 12 months was necessary.¹¹³

65. Many witnesses were concerned that the current time period for people to move from a Tier 4 study visa to a Tier 2 work visa is too short. We recommend that the Government look again at the timetable it allows for graduates to search for and secure posts in graduate level work and training schemes, given the significant benefits of post-study working opportunities to our economy and our universities. In its 2011 report on Student Visas, our predecessor Committee recommended that the Government give consideration to either a) introducing a six month visa to look for work with the possibility of an extension of 18 months if the applicant has received the offer of skilled work or is a director of a company which has two full-time equivalent employees; b) limiting the number of institutions whose qualifications entitle the holder to post

109 Q27

110 Russell Group ([ISS0023](#))

111 Letter from [Sir James Dyson](#), 14 January 2015

112 [Letter from the Institute of Chartered Accountants in England and Wales](#) (ICAEW), to the Minister for Immigration, 24 August 2015

113 Q117

study work; and c) given concerns about maintaining UK competitiveness in STEM research, exempting STEM graduates from new restrictions until the domestic market is sufficiently robust. We repeat that recommendation.

66. Our predecessor Committee also said it was not persuaded that students are in fact migrants, and that only if a student or former student seeks settlement—or the length of time they have spent in the country is excessive—should their status in the UK be regarded as that of a migrant rather than a student visitor. While recognising that students are not migrants, we consider it essential that the number of students on visas should be recorded and published alongside migration figures, to ensure transparency. We note the renewed debate around the contribution international students make to the UK's exports. We urge the Government to look again at the value of international students to the UK, economically, intellectually and culturally, and consider how it might devise policies that reduce the barriers for international students to stay in the UK and take up high skilled employment.

5 Balance between training a UK workforce and importing skills

67. Part of the objective in restricting the number and types of people migrating to the UK for work, even in highly skilled areas, is that the UK should be able to produce its own skilled workforce. The intention is that jobs on the Shortage Occupation List should not remain forever on the list, but rather serve as a prompt to training. The Home Office told us:

The Government believes that in the past it has been too easy for some businesses to bring in workers from overseas rather than to take the long-term decision to train the workforce here at home. We need to do more to change that, which means reducing the demand for migrant labour—the creation of three million high quality apprenticeships during the lifetime of this Parliament will help with this and will boost the skill level of the UK’s workforce.¹¹⁴

Migration Watch said:

It should also be pointed out that net migration is at record levels, yet business lobby groups still complain that they want more people. For some, there seems to no upper level of annual migration which will prove satisfactory for their own interests.¹¹⁵

68. Migration Watch also argued that employers needed to do more training as an alternative to importing foreign workers. They referred to a Social Market Foundation study that found that “there has been a steady decline in employers’ training expenditure and activity over the last 20 years.¹¹⁶ At the same time, the cap seemed not to have had a strong impact. Migration Watch said:

What is interesting is that in the last five years it has not improved either, so even though those caps have been in place for the last five years, we have seen no evidence that there has been a pickup in training in response.¹¹⁷

69. Conversely, organisations representing business and employers said their members were already investing in training. EEF told us that two-thirds of their members were recruiting apprentices. In its 2012 Skills Survey more than half of respondents said their training spend had increased in the past two years, and six in 10 said that their training spend would increase in the next two years.¹¹⁸ EEF also pointed out that some of the skills their members need can take up to 10 years of training.¹¹⁹ Research Councils UK said it can take eight to 12 years’ training for some positions.¹²⁰

114 Home Office ([ISS0038](#))

115 Migration Watch UK ([ISS0019](#))

116 Migration Watch UK ([ISS0019](#)). Social Market Foundation, [Fixing a Broken Training System: The case for an apprenticeship levy](#), July 2015

117 Q34

118 EEF The Manufacturers’ Organisation ([ISS0004](#)), see Q82

119 EEF The Manufacturers’ Organisation ([ISS0004](#))

120 Research Councils UK ([ISS0016](#))

70. Jonathan Portes pointed to NIESR research which found a correlation between employers of highly skilled migrants and investment in training UK workers.¹²¹ He said many firms, particularly those in high skilled sectors, are located in the UK in part because it is open to immigration, and that generates more opportunities for skilled Britons rather than fewer.¹²²

71. A 2013 survey by the UK Commission for Employment and Skills (UKCES) on employer investment in skills in the UK provided some support for both views. It said:

[...] total employer investment in training decreased by five per cent in the period 2011 to 2013 (from £45.3bn to £42.9bn). Training investment per person trained fell by 17 per cent, from around £3,075 in 2011 to £2,550 in 2013 although this was in the context of a large increase in the number of staff being trained. [...] Although training spend and the numbers of days spent training are slightly down across the UK as a whole, this has been achieved in combination with an increase in the number of staff trained, an increase in the ratio of off-the-job to on-the-job training (a crude measure of the quality of training) and an increase in the proportion of training that leads to a recognised qualification. This could suggest a more efficient allocation of resource to partially offset a relatively modest cut in the level of overall spend.¹²³

The UKCES survey asked employers what actions they took to fill skills gaps. The most popular response was to increase training activity and or spend, and the number giving that response had increased between 2011 and 2013. Recruiting workers who are non-UK nationals was the eighth most popular response.¹²⁴

72. The argument is sometimes made that employing migrant labour militates against training UK domestic workers, particularly in high-skilled sectors. However, the evidence given to us suggested that UK employers who employ skilled foreign workers also train their own workforce, rather than simply relying on employing non-UK workers. The UK Commission on Employment and Skills 2013 survey found that employers would be more likely to choose to train their own workforce to fill skills gaps than recruit non-UK nationals. It is difficult to demonstrate causation, but we found little evidence that the Tier 2 cap was the lever that incentivised improvements in training to meet UK skill needs. The motivation to recruit from abroad seemed to be more a desire to get the best person for the job, and the need to respond flexibly to the needs of the economy within the appropriate timescale.

Immigration Skills Charge and the Apprenticeship Levy

73. Several submissions commented on the Government's proposals to charge employers to pay for skills training and apprenticeships. There are two such charges proposed—the Immigration Skills Charge and the Apprenticeship Levy—and employers were concerned that they might be subject to one or both schemes.¹²⁵ The first, introduced in the current Immigration Bill, is for a skills charge levied upon employers for each non-

121 Jonathan Portes ([ISS0011](#))

122 Q6

123 UKCES, [UK Commission's Employer Skills Survey 2013: UK Results](#), Evidence Report 81, January 2014

124 UKCES, [UK Commission's Employer Skills Survey 2013: UK Results](#), Evidence Report 81, January 2014. See also CIPD, [Labour Market Outlook](#), Autumn 2015

125 Q96

EEA skilled worker they sponsor. The purpose of the skills charge is to increase funding for apprenticeships in the UK and address the current skills gaps in the UK workforce.¹²⁶ The MAC are considering the implications of the skills charge and the Department of Business, Innovation and Skills is expected to issue a consultation paper separately.¹²⁷ The second, the Apprenticeship Levy, will be in place from April 2017. All employers with a payroll of £3 million or more will have 0.5% deducted from their payroll for a fund to pay exclusively for apprenticeships. This is intended to provide £3 billion to fund 3 million apprenticeships by 2020.¹²⁸

74. Unsurprisingly, employer representative groups were not supportive of a change which they saw as an extra tax. The British Chamber of Commerce said:

The BCC is against introducing a skills levy, as this is essentially seen as a tax on employing people from abroad. However, if introduced the levy would need to expand to incorporate wider training not just apprenticeships. Moreover, apprenticeships cannot address the needs of businesses right now. Rather it will take a significant amount of time before the benefits can be reaped in the labour market.

75. There were also concerns as to how either charge would be used specifically to address the skills gaps as represented by the Shortage Occupation List. Migration Watch were supportive of a levy on top of the visa fee to fund apprenticeships and believed that this would be a way for employers to contribute to the training needs of their sector.¹²⁹ However, Matthew Pollard, Executive Director, did acknowledge that the Government's current proposals might not match the skills needed by employers:

What we are seeing is that the Government have expanded the number of apprenticeships that it wants to offer, but because it has been driven by targeting numbers it has gone for quite quick, low-skilled apprenticeships rather than the one or two years' engineering apprenticeships that employers say they need.¹³⁰

76. One of the reasons why the Migration Advisory Committee advised against raising minimum salary thresholds too soon was because they had to consider how it might interact with the Immigration Skills Charge. It believed that both had potential to raise the cost of labour.¹³¹

77. The Government needs to provide more clarity on its plans for an Apprenticeship Levy and an Immigration Skills Charge. In particular, it needs to clarify whether employers who recruit from abroad will be subject to both, and whether employers who already carry out training will still be subject to both. The Government has said that the Apprenticeship Levy will only be charged upon businesses with a payroll of £3 million. Similarly, the Government needs to be clear about what allowances will be made for small and medium enterprises, which might be subject to the Immigration

126 Immigration Bill, [Explanatory Notes](#), HCB 74-EN

127 [Immigration Bill 2015-16](#), Factsheet fees and charges

128 Financial Times, [Autumn Statement: apprenticeship levy will hit wages](#), OBR warns, 25 November 2015

129 Q40

130 Q35

131 Q131

Skills Charge. In response to our Report, the Government also needs to make clear how the Immigration Skills Charge will contribute to filling the high level skills gaps such as those exhibited by the Shortage Occupation List.

Graduate training schemes

78. The three month period of June to August 2015, when the cap was reached every month, coincided with an important time in the cycle for graduate training schemes. We were told that candidates for accountancy training schemes had been through an extensive selection process, at considerable cost, only to be unable to take up offers for training posts in the UK.¹³² The Embassy of Japan said there were Japanese banks and accountancy firms which had not been able to secure COS for new graduates to join their training programmes in the UK.¹³³ The British Medical Association said that one in five trainee GP posts in England went unfilled in 2015, and that any non-EEA doctor applying to a place on a GP training programme would not have been allocated a COS in June or July once the cap had been reached.¹³⁴

79. The CBI said that when the cap is reached, “the salary requirements extend significance well beyond graduate schemes” and that the UK’s reputation for being open for business would be put at risk if the cap is reached consistently or regularly.¹³⁵ Neil Carberry told us:

You get more graduates on these Europe-wide graduate trainee schemes if the scheme is in the United Kingdom. If you have to run your Europe-wide graduate scheme out of Paris or Frankfurt because you can’t get people into the UK, the risk is that there are fewer British graduates taken on.¹³⁶

80. The MAC Chair told us that the MAC had commented on graduate training in its interim report. He said “I think there is a strong case for just exempting the graduate trainee schemes. If you were to include them, you would have to have a much lower threshold.”¹³⁷

81. The Government should be very concerned that international firms feel restricted in their ability to operate graduate training schemes in the UK. This is not just about whether those firms bring in non-EU candidates for those schemes, but whether the barriers created would incentivise those schemes to be operated in other countries instead of the UK. Whilst this would reduce the number of non-EU candidates coming in to the UK, it would also reduce the opportunities for UK graduates to find training opportunities in their chosen field without moving abroad. We do not agree that this meets the criteria of an immigration system that provides control while attracting the brightest and the best. We agree with the Migration Advisory Committee and recommend that the Government exempts Certificates of Sponsorship for graduate training schemes from the cap.

¹³² [Letter from the Institute of Chartered Accountants in England and Wales \(ICAEW\)](#), to the Minister for Immigration, 24 August 2015

¹³³ Embassy Of Japan ([ISS0030](#))

¹³⁴ British Medical Association ([ISS0010](#))

¹³⁵ CBI ([ISS0035](#))

¹³⁶ Q106

¹³⁷ Q142

6 Improving the audit process

82. A desire for flexibility also applied to the way in which the Home Office operated the system for non-EEA skilled workers. Rose Carey of ILPA said the Home Office appeared to be less helpful than they had previously been, and she wanted it to be pro-business rather than entirely enforcement driven.¹³⁸ She put this down to it being under-resourced and under pressure, which led to mistakes which take time to rectify, and described the system as “struggling”.¹³⁹ EEF told us that the Home Office was becoming more “heavy-handed” in how they carried out their auditing of sponsors.¹⁴⁰ Rose Carey said the “auditing officers do not seem to understand the system that they are meant to be implementing, so when they are conducting an audit, they do not understand how the system operates.”¹⁴¹ This led to employers being found at fault when they had not done anything wrong. This was compounded by there being no right of appeal on Tier 2 visa decisions.¹⁴²

83. Sarah Rapson, Director General of UK Visas and Immigration, told us that there had been investment in staff training, leading to an improvement in the professionalism of the auditing team, and she thought that a sponsor would notice the difference between a visit a few years ago and a visit now.¹⁴³ She said, “I think the decision quality genuinely [...] is high. The visits are getting better. I think this is a system that is working well.”¹⁴⁴ With regard to the lack of appeal, Sarah Rapson believed that the system was operating effectively, and that the number of cases resorting to litigation were very small. Two staff are involved in any initial decision and the system has periods of reflection built in—the process allowed 20 days for an organisation to give information in the event of a suspension or a revocation of a licence.¹⁴⁵

84. We were told that there were problems with the audit process for employers with a Tier 2 sponsor licence. Sarah Rapson, Director General of UK Visas and Immigration, believes that the audit system is working better now than previously and told us there has been increased investment in staff training. We welcome the tacit acknowledgment that the system needed improvement. We identified a difference in quality of decision-making in the audit and casework parts of the process. A decision made following an audit visit can have devastating consequences for an employer. The review process of the audit decision needs to be publicly available, and subject to a clear timetable, for it to gain confidence among those who are subject to the licence regime.

85. The Home Office itself does not have an exceptional record at producing information successfully to short deadlines. With this in mind, we do not consider that the period of time allowed for an organisation to give further information in the event of a suspension or revocation of a licence is long enough, and we recommend that this is increased to at least 40 working days. It is also unsatisfactory that there is currently no appeal process and we recommend that the Home Office introduces the right to appeal a decision to suspend or revoke a sponsor’s licence rather than requiring sponsors to resort to costly and time-consuming judicial review claims.

138 Q109, Q55

139 Q72

140 Q104

141 Q55

142 Qq56-58

143 Qq170-171

144 Q176

145 Q177

Conclusions and recommendations

The cap on skilled workers

1. The aim of the Tier 2 cap is to help deliver the Government's objective of reducing net migration to the 'tens of thousands', despite the significant disparity between the net migration figure, currently 336,000 a year, and the relatively small number of 20,700 possible Tier 2 (General) visas. The Government can only control three routes of migration, one of which is the non-EEA inflow for work. However, the number of people coming to the UK to take up work has not reduced, and the number of people seeking to come to take up a high skilled job in the UK has increased. While the cap may serve a purpose in discouraging recruitment from non-EU countries, it has had a displacement effect in stimulating recruitment from EU countries. If the increase in EU migration compensates for any decrease in non-EU migration, then this will not help the Government reach their target of reducing net migration to the tens of thousands. (Paragraph 25)
2. We recognise the dramatic rise in those using the Intra Company Transfer route (Tier 2 (ICT)) to come to work in the UK. We note that these are highly paid, highly skilled people who tend to come to the UK for a limited time to work on a particular project. When the cap was introduced on Tier 2 visas, a decision was made to keep the Tier 2 (ICT) visa outside the cap. If the cap is to remain, we would support the continued exclusion from it of Tier 2 (ICT) visas. We may revisit this issue after the MAC has published its findings on how the Tier 2 (ICT) visa might be changed. (Paragraph 28)
3. The Tier 2 cap of 20,700 appears to play a very limited role in Government attempts to restrict net migration. There are no immediate consequences if the Government fails to reach its overall target to reduce migration to the tens of thousands. There are real consequences if the cap on Tier 2 visas is reached, as was discovered in June 2015. Reaching the monthly quota of Certificates of Sponsorship means employers, who had done all that was asked of them, and who had fulfilled the same criteria as those applying in the previous month, were unable to bring in skilled workers who had a definite offer of a job. Although this is the corollary of having a cap in place, it makes planning recruitment difficult and can disrupt plans to expand or deliver services. Those refused included engineers, IT professionals, accountants on graduate training schemes, teachers and nurses. We welcome the decision of the Migration Advisory Committee to look again at how the system for Tier 2 skilled worker visas operates which we see as an acknowledgement that the imposition of restrictions has the potential to damage the UK economy. (Paragraph 32)
4. The initiative to put unused Certificates of Sponsorship back into the system is the right approach. It is common sense and has helped to reduce the pressure that had been building up in the system. The 456 unused certificates reclaimed in October clearly adds substantially to the 1,650 allocation for that month. (Paragraph 37)
5. The recycling of unused certificates was announced in September 2015, several months after the cap was reached. The Government should, in its response to this Report, explain why it did not implement these measures earlier, and whether the

mechanism to put unused certificates back into the system was considered only as a result of the cap being reached. (Paragraph 38)

Nursing, healthcare and salary thresholds

6. We welcome the recent decision by the Government to put nurses on the Shortage Occupation List. Had this not been done, there would have been thousands of unfilled nursing vacancies going into winter. Potentially, this could have had immense consequences throughout the NHS. We would support a decision for nurses to remain on the Shortage Occupation List. (Paragraph 44)
7. We are pleased that the decision to put nurses on the Shortage Occupation List means that those nurses subject to the Immigration Rules changes, and who were at risk of having to leave the country if they did not earn £35,000 after five years, will now be able to apply to stay and continue to contribute to the NHS. (Paragraph 47)
8. One of the aims of the cap is to incentivise training and recruitment of domestically trained nurses. We ask the Government, in its response to this Report, to set out its plans to increase the number of nurse training places available, and confirm whether nurses will remain on the Shortage Occupation List until such time as the number of domestically trained nurses reaches the Department of Health's target. (Paragraph 50)
9. The negative consequences to recruitment in the healthcare sector under the cap is representative of a broader issue of how the cap interacts with skilled migrants who work in public sector roles that do not pay a high salary but are considered important for society. It is unfortunate that salary becomes the determining factor when the system for allocating Certificates of Sponsorship comes under pressure. (Paragraph 59)
10. Raising the minimum salary requirements for Tier 2 visas may ease pressure on the cap but it would not meet the needs of those employers who want to bring in particular skills but are unable to pay the higher salary required. The marginal benefit to the Exchequer from increased income tax collected from higher paid employees is of less relevance than filling vacancies in the most pressed sectors on the Shortage Occupation List. We would be concerned if the minimum salary threshold was raised without measures simultaneously built in to mitigate the impact upon public sector roles, such as teaching, and certain low pay sectors, such as social care. It would serve to relieve one problem whilst worsening another. If the MAC recommend raising the minimum salary threshold then they should consider how the impact upon SMEs might be mitigated. We recommend that consideration also be given to exempting certain public sector roles from the cap for Tier 2 (General) visa. We also welcome confirmation that the MAC will look again at regional differentiation, particularly if the cap continues to force up salary requirements, or if raising the minimum salary thresholds is to be considered. (Paragraph 60)

International students and retaining talent

11. We recommend that the priority given to PhD level posts in securing Certificates of Sponsorship is maintained. (Paragraph 62)

12. Many witnesses were concerned that the current time period for people to move from a Tier 4 study visa to a Tier 2 work visa is too short. We recommend that the Government look again at the timetable it allows for graduates to search for and secure posts in graduate level work and training schemes, given the significant benefits of post-study working opportunities to our economy and our universities. In its 2011 report on Student Visas, our predecessor Committee recommended that the Government give consideration to either a) introducing a six month visa to look for work with the possibility of an extension of 18 months if the applicant has received the offer of skilled work or is a director of a company which has two full-time equivalent employees; b) limiting the number of institutions whose qualifications entitle the holder to post study work; and c) given concerns about maintaining UK competitiveness in STEM research, exempting STEM graduates from new restrictions until the domestic market is sufficiently robust. We repeat that recommendation. (Paragraph 65)
13. Our predecessor Committee also said it was not persuaded that students are in fact migrants, and that only if a student or former student seeks settlement—or the length of time they have spent in the country is excessive—should their status in the UK be regarded as that of a migrant rather than a student visitor. While recognising that students are not migrants, we consider it essential that the number of students on visas should be recorded and published alongside migration figures, to ensure transparency. We note the renewed debate around the contribution international students make to the UK's exports. We urge the Government to look again at the value of international students to the UK, economically, intellectually and culturally, and consider how it might devise policies that reduce the barriers for international students to stay in the UK and take up high skilled employment. (Paragraph 66)

Balance between training a UK workforce and importing skills

14. The argument is sometimes made that employing migrant labour militates against training UK domestic workers, particularly in high-skilled sectors. However, the evidence given to us suggested that UK employers who employ skilled foreign workers also train their own workforce, rather than simply relying on employing non-UK workers. The UK Commission on Employment and Skills 2013 survey found that employers would be more likely to choose to train their own workforce to fill skills gaps than recruit non-UK nationals. It is difficult to demonstrate causation, but we found little evidence that the Tier 2 cap was the lever that incentivised improvements in training to meet UK skill needs. The motivation to recruit from abroad seemed to be more a desire to get the best person for the job, and the need to respond flexibly to the needs of the economy within the appropriate timescale. (Paragraph 72)
15. The Government needs to provide more clarity on its plans for an Apprenticeship Levy and an Immigration Skills Charge. In particular, it needs to clarify whether employers who recruit from abroad will be subject to both, and whether employers who already carry out training will still be subject to both. The Government has said that the Apprenticeship Levy will only be charged upon businesses with a payroll of £3 million. Similarly, the Government needs to be clear about what allowances will be made for small and medium enterprises, which might be subject to the Immigration Skills Charge. In response to our Report, the Government also needs

to make clear how the Immigration Skills Charge will contribute to filling the high level skills gaps such as those exhibited by the Shortage Occupation List. (Paragraph 77)

16. The Government should be very concerned that international firms feel restricted in their ability to operate graduate training schemes in the UK. This is not just about whether those firms bring in non-EU candidates for those schemes, but whether the barriers created would incentivise those schemes to be operated in other countries instead of the UK. Whilst this would reduce the number of non-EU candidates coming in to the UK, it would also reduce the opportunities for UK graduates to find training opportunities in their chosen field without moving abroad. We do not agree that this meets the criteria of an immigration system that provides control while attracting the brightest and the best. We agree with the Migration Advisory Committee and recommend that the Government exempts Certificates of Sponsorship for graduate training schemes from the cap. (Paragraph 81)

Improving the audit process

17. We were told that there were problems with the audit process for employers with a Tier 2 sponsor licence. Sarah Rapson, Director General of UK Visas and Immigration, believes that the audit system is working better now than previously and told us there has been increased investment in staff training. We welcome the tacit acknowledgment that the system needed improvement. We identified a difference in quality of decision-making in the audit and casework parts of the process. A decision made following an audit visit can have devastating consequences for an employer. The review process of the audit decision needs to be publicly available, and subject to a clear timetable, for it to gain confidence among those who are subject to the licence regime. (Paragraph 84)
18. The Home Office itself does not have an exceptional record at producing information successfully to short deadlines. With this in mind, we do not consider that the period of time allowed for an organisation to give further information in the event of a suspension or revocation of a licence is long enough, and we recommend that this is increased to at least 40 working days. It is also unsatisfactory that there is currently no appeal process and we recommend that the Home Office introduces the right to appeal a decision to suspend or revoke a sponsor's licence rather than requiring sponsors to resort to costly and time-consuming judicial review claims. (Paragraph 85)

Formal Minutes

Wednesday 9 December 2015

Members present:

Keith Vaz, in the Chair

James Berry

Tim Loughton

Mr David Burrowes

Stuart C. McDonald

Mr Ranil Jayawardena

Mr David Winnick

Draft Report (*Immigration: Skill Shortages*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 85 read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 16 December at 2.30 pm.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry page](#) of the Committee's website.

Tuesday 13 October 2015

Question number

Jonathan Portes , Principal Research Fellow, National Institute of Economic and Social Research	Q1–21
Lord Green , Chair, and Matthew Pollard , Executive Director, Migration Watch UK	Q22–52
Rose Carey , Immigration Law Practitioners' Association	Q53–75

Tuesday 20 October 2015

Neil Carberry , Director, Employment, Skills & Public Services, CBI, Howard Catton , Head of Policy and International, Royal College of Nursing, and Verity O'Keefe , Employment and Skills Policy Adviser, EEF, the manufacturers' organisation	Q76–117
Professor Sir David Metcalf CBE , Chair, and Tim Harrison , Head of Secretariat, Migration Advisory Committee	Q118–147
Rt Hon James Brokenshire MP , Minister for Immigration, and Sarah Rapson , Director General, UK Visas and Immigration Directorate	Q148–190

Published written evidence

The following written evidence was received and can be viewed on the [inquiry page](#) of the Committee's website. ISS numbers are generated by the evidence processing system and so may not be complete.

- 1 British Chambers of Commerce ([ISS0031](#))
- 2 British Medical Association ([ISS0010](#))
- 3 Campaign for Science and Engineering ([ISS0037](#))
- 4 CBI ([ISS0035](#))
- 5 City of London Corporation ([ISS0040](#))
- 6 EEF, the manufacturers' organisation ([ISS0004](#))
- 7 Embassy of Japan ([ISS0030](#))
- 8 HCL Workforce Solutions ([ISS0017](#))
- 9 Home Office ([ISS0038](#))
- 10 Immigration Law Practitioners' Association ([ISS0033](#))
- 11 Independent Age ([ISS0044](#))
- 12 Institute of Directors ([ISS0022](#))
- 13 Jonathan Portes ([ISS0011](#)), Jonathan Portes supplementary ([ISS0042](#))
- 14 Law Society of Scotland ([ISS0014](#))
- 15 London Chamber of Commerce and Industry ([ISS0021](#))
- 16 Mayor of London ([ISS0041](#))
- 17 Migration Watch UK ([ISS0019](#))
- 18 Million+ ([ISS0025](#))
- 19 NHS Employers ([ISS0015](#))
- 20 North Tees and Hartlepool NHS Foundation Trust ([ISS0012](#))
- 21 Recruitment and Employment Confederation ([ISS0024](#))
- 22 Research Councils UK ([ISS0016](#))
- 23 Royal College of Nursing ([ISS0013](#)), Royal College of Nursing supplementary ([ISS0043](#))
- 24 Royal Society ([ISS0018](#))
- 25 Russell Group ([ISS0023](#))
- 26 Scottish Development International ([ISS0027](#))
- 27 Scottish Government ([ISS0028](#))
- 28 Shelford Chief Nurses Group ([ISS0026](#))
- 29 South Tees Hospitals NHS Foundation Trust ([ISS0020](#))
- 30 techUK ([ISS0036](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/homeaffairscom.

Session 2015–16

First Report	Psychoactive substances	HC 361
Second Report	The work of the Immigration Directorates (Q2 2015)	HC 512
Third Report	Police investigations and the role of the Crown Prosecution Service	HC 534
Fourth Report	Reform of the Police Funding Formula	HC 476
First Special Report	The work of the Immigration Directorates: Calais: Government Response to the Committee's Eighteenth Report of Session 2014–15	HC 380
Second Special Report	Out-of-court Disposals: Government Response to the Committee's Fourteenth Report of Session 2014–15	HC 379