

Decoding the Government's Five-point plan: **Unravelling the Impact on Net Migration**

When it comes to UK net migration there is a consensus between the Conservative Government and the Labour opposition—both agree it should come down.

Executive Summary

December 2023 saw significant changes to the UK's immigration system. Ministers believe that immigration is 'far too high'. Net migration was provisionally estimated to be 745,000 in the 12 months ending on 31 December 2022. The Government's reforms are aimed at reducing net migration figures and preventing abuse of the system through a 'five-point plan' to reduce immigration. The changes will be phased in over the course of this year.

This paper aims to examine the current immigration landscape, and how this will change with the introduction of new Skilled Worker rules.

We have considered what the effect will be upon employers, and those in the most affected sectors. The Government has also commissioned the Migration Advisory Committee (MAC) to look into specific changes around the Graduate Route, and to review the rebranded Immigration Salary List (ISL)—formerly known as the Shortage Occupation List (SOL)—which we have explored within this report. The MAC has published its interim report on the ISL and the Government has now published the statement of changes based on this report.

We have aimed to provide a summary of the key additional issues for the MAC to consider in its assessment of the Graduate Route, and how the upcoming changes sit alongside wider Government ambitions to address the UK's skills shortage.

Immigration rules are constantly evolving (in 2018, analysis by the Guardian newspaper found that more than 5,700 changes had been made to the UK's immigration rules since 2010) and we will continue to provide updates and analysis on the latest developments.

Deloitte's Immigration Practice strives to remain at the forefront of global immigration developments, and as always, we will continue to actively engage at all levels to assist our clients.



Jurga McCluskey, Partner

Introduction

On 4 December 2023, the Government announced a 'five-point plan' which Home Secretary James Cleverly said would curb immigration abuses and "deliver the biggest ever reduction in net migration". By the Government's calculations these measures, combined with others previously announced, will see net migration—which stood at around 672,000 for the year ending June 2023 according to the Office for National Statistics—fall by approximately 300,000 in future years.

The Government believes that a sizeable proportion of that 300,000 reduction will be dependants of visa holders, the majority of which are not in work and therefore "are drawing on public services

rather than helping to grow the economy". Nevertheless, Mr Cleverly recognised that the proposals would have an impact on the UK workforce. He stated that the plans were possible "because we are building up our domestic workforce and supporting British workers", though there have been loud calls from business and opposition parties for more to be done to address the current skills shortage.

It is clear that the leading parties in the UK expect businesses to recruit less from overseas and more from within the UK. So what do employers need to know about the future landscape and what action, if any, do they need to take?



Announced Changes

CURRENT POLICY	THE GOVERNMENT CHANGES	
<p>Health and Care Visas: The partner and children of those with Health and Social Care visas can currently apply to come to the UK as “dependants” of the visa holder.</p>	<p>Care workers will not be permitted to bring dependants (partners and children) on their visa</p>	11 March 2024
<p>Immigration Salary List: Circumstances in which a Skilled Worker Visa can be obtained on a reduced salary: You can be paid between 70% and 90% of the usual going rate for your job if your salary is at least £20,960 per year and you meet one of the following criteria:</p> <ul style="list-style-type: none"> • your job is in a shortage occupation • you're under 26, studying or a recent graduate, or in professional training • you have a science, technology, engineering or maths (STEM) PhD level qualification that's relevant to your job (if you have a relevant PhD level qualification in any other subject your salary must be at least £23,580) • you have a postdoctoral position in science or higher education 	<p>The new ISL was published in the Statement of Changes released on 14 March, based on the MAC's interim report. For occupations on the significantly reduced list you can be paid 80% of the general salary threshold - £38,700 down to £30,960.</p>	4 April 2024
<p>The Skilled Worker Visa and Global Business Mobility Routes: For skilled professionals who are sponsored by a UK-based employer. Applicants must have a job offer from a UK employer, must meet the minimum salary threshold for the visa category, which is currently £26,200 per year or the going rate for their occupation, whichever is higher. If the applicant earns less than this amount, they may still be eligible if the job is on the ISL or if they have an appropriate level of education. They must have a Certificate of Sponsorship (CoS) from their employer and meet the relevant points-based requirements. The general salary threshold for Senior or Specialist Workers on the Global Business Mobility Route is currently £45,800.</p>	<p>An increase to the minimum salary for a Skilled Worker visa from £26,200 to £38,700 (this will not apply to those on a Health and Care Worker visa. Global Business Mobility Routes</p> <ul style="list-style-type: none"> • For Senior or Specialist Workers the general salary threshold is being updated to £48,500. • For Graduate Trainees the general salary threshold is being updated from £24,220 to £25,410. <p>For the Skilled Worker Visa and Global Business Mobility Routes going rates are being updated based on the latest ONS data. Transitional arrangements apply to existing sponsored workers.</p>	4 April 2024
<p>Family Visas: The minimum income normally required to sponsor someone for a spouse/partner visa is currently £18,600</p>	<p>The minimum income normally required to sponsor someone for a spouse/partner visa will rise in stages to £29,000 and ultimately around £38,700.</p>	11 April 2024
<p>Graduate Visas: Those in the UK on student visas can apply for Graduate Visas at the end of their studies. It is an unsponsored visa and grants permission to stay in the UK for at least two years.</p>	<p>At the Government's request, the Migration Advisory Committee will be reviewing the Graduate Visa.</p>	MAC TBC

Remaining Visa Options

In addition to the visa routes outlined above and subject to the five-point plan changes, the current immigration rules for workers provide further options for foreign nationals who wish to work in the UK, depending on their skills, experience, and the nature of the work they wish to undertake.

The routes outlined below are not currently subject to change:

Global Talent visa: This visa category is for highly skilled professionals in the fields of science, engineering, medicine, the arts, humanities, and digital technology. The visa is awarded based on endorsement by a recognised UK body and does not require a job offer.

Start-up visa: This visa category is for entrepreneurs who want to set up a business in the UK for the first time. Applicants must be endorsed by an approved endorsing body and meet the relevant eligibility criteria, such as a viable business plan and sufficient funds to support themselves.

Innovator visa: This visa category is for experienced entrepreneurs who want to establish a business in the UK. Applicants must have a business idea that is innovative, scalable, and viable, and must be endorsed by an approved endorsing body.



Temporary Worker (TW) visa: This visa category is for individuals who want to work in the UK for a temporary period, such as entertainers, charity workers, and sportspeople. There are several types of TW visas, such as the Creative and Sporting visa and the Charity Worker visa.

Business Implications

The business implications of the increased Skilled Worker salary threshold

For most businesses outside the health and care sectors, the change that will have stood out in the five-point plan is the significant increase to the salary threshold for skilled workers.

It is a substantial increase, but its impact on employers is expected to vary dramatically.

Analysis of the change by the Migration Observatory concluded that only a minority of long-term Skilled Worker visa recipients—around 30%—would be impacted.

Of the 208,000 Skilled Worker visas issued in the year to September 2023, around half went to care workers—who are exempted from the increase—while around 20% went to workers in health or teaching roles that are unaffected because their salaries are set using nationally agreed pay scales.

Drilling down into the 30% that remains, the Migration Observatory analysis showed that in most cases the foreign nationals working in these roles were already earning in excess of the new £38,700 cap, so would not be impacted by the change.

In total, of the 208,000 Skilled Worker visas issued, only around 8,500 would have fallen foul of the change.

It is analysis that is supported by discussion with many of our clients, who have indicated that in the majority of cases they are already paying in excess of the revised threshold.

The Government's own impact statement, published on 21 December, estimates only around 15,000 people would be impacted by the change in salary threshold. By all estimations, therefore, it seems the increase will go only a small way towards achieving the Government's anticipated 300,000 reduction in net migration.



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Nevertheless, some employers are worried that the impact on them will be significant.

Businesses in typically lower paying sectors—such as hospitality, catering, marketing, tourism and retail—will face the choice of either raising salaries to meet the new threshold or looking to recruit from within the UK resident workforce—unless the occupations feature on the revised ISL.

It has been suggested that the Government policies favour sectors like banking, legal services and accountancy at the expense of industries with serious shortages.

Examples raised during the Commons debate on 4 December included the tourism, food, fishing and manufacturing industries. Concerns were also expressed that the policies failed to consider the needs of very specialist industries who have narrow fields to recruit from due to the very specific skill set required.

The Government has provided assurances that there has been extensive consultation with business, that this dialogue will continue and that “key industries” will not be undermined, but this will remain to be seen.

Sectoral Overview

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The Recruitment and Employment Confederation (REC)—who work with more than 3,300 recruitment businesses in the UK—say that their members are concerned.

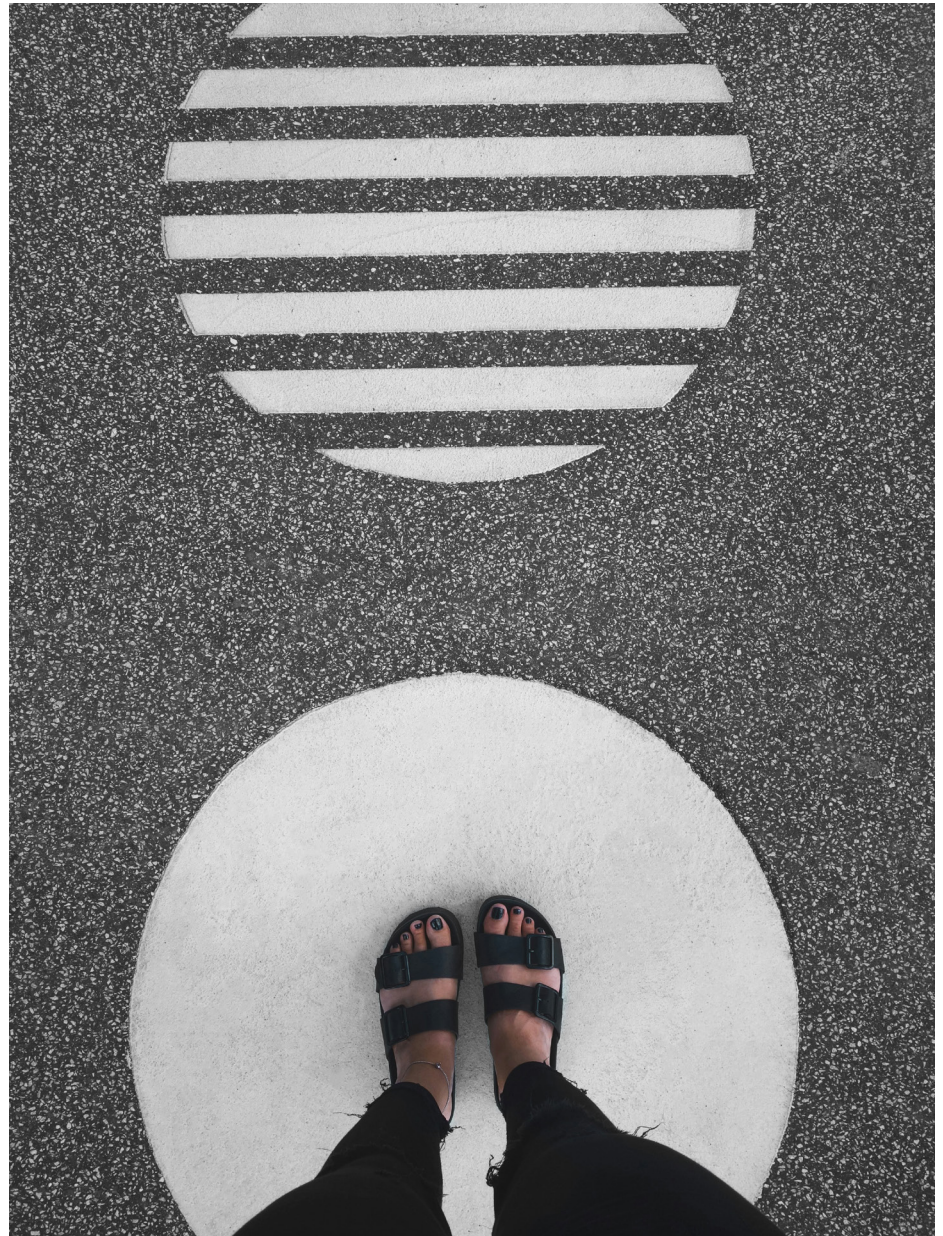
The REC has made three recommendations on the back of the five-point plan, including calling for the Government to conduct a full impact assessment on the measures.

The Government has indicated that it recognises work needs to be done to meet skills shortages, though it has placed a significant onus for that work on the industries themselves.

The Home Secretary wants businesses to invest in technology and “in the people they employ”, while Tom Pursglove, the Minister for Legal Migration, has called on employers to “see what more they can do” to fill their skills shortages through the UK’s domestic population.

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The REC want rather stronger commitments from the Government, with their two other recommendations being the creation of an industrial strategy—a joint venture between business and government—clearly detailing skills and labour market requirements and, where occupations have been identified in the SOL/ISL process, to build a more



aligned immigration and skills ecosystem to ensure a robust, high-quality domestic talent pipeline to tackle labour shortages.

For the REC, what is clear, is that immigration and skills policy making needs to be more joined up because any work to tackle skills shortages will take time and in the interim, employers will need to have greater freedom to recruit from abroad.

Graduate Visas

There was a lot of content in the Government's five-point plan, but also much that remains subject to change or yet to be determined.

This was demonstrated by clarifications issued in the days after the Home Secretary's policy announcement on 4 December that the family visa threshold would increase in stages rather than all at once in the Spring.

The biggest uncertainty, however, is around the Graduate visa which the Government has commissioned the MAC to review, with a report due by 14 May. Although the outcome remains to be seen, the Home Secretary gave a clear indication on his own thinking: "Higher education should be a route to study and education, rather than a visa route by the back door."

It is also instructive for businesses to be aware of the MAC's own previous statements on Graduate visas.

In 2018, the MAC advised against the introduction of a Graduate visa and in its most recent annual report, published on December 5, the MAC stated the "graduate route may not be attracting the global talent anticipated".

The current system gives employers the greatest possible flexibility. The Graduate visa has no salary requirements and does not require a sponsor, meaning businesses considering recruitment from universities have the widest possible field to draw from.

This is clearly an appealing position for businesses and, in the short term, employers wanting to maintain the status quo should be preparing evidence to provide to the MAC demonstrating the importance of recruitment under the graduate route. However, employers should also be mindful that if they want to keep these graduates on at the end of the two-year period, they will likely need to be sponsored under the Skilled Worker visa and this might necessitate a salary increase in order to meet the new salary thresholds.

At the same time, given the MAC's previous statements, it would be sensible for businesses to prepare for a change and to monitor the situation very closely.



Employment Law Implications

Discrimination factors:

Businesses also need to consider employment law issues when devising and implementing their immigration and recruitment policies and practices, particularly in relation to discrimination. If these policies are not rolled out with due consideration, they can lead to the exclusion or marginalization of certain groups of individuals. This could potentially violate anti-discrimination laws, which carry legal and reputational risks for the employer. It is crucial for companies to ensure that their policies and practices are fair, transparent, and do not violate employment laws that prohibit discrimination on the basis of any of the eight 'protected characteristics' under UK law, such as national origin or nationality (including citizenship status).

Changes in Employment/Immigration policies & recruitment practices

We recognise that the Home Office's "five-point plan" will cause companies and organisations to rethink their recruitment/immigration practices and policies to adhere to the changes in the immigration landscape. Factors such as cost efficiencies, business requirements, and talent needs will primarily influence these reviews.

The position on discrimination in an immigration context has shifted significantly since the removal of the Resident Labour Market Test (the "RLMT") following the UK's exit from the EU on 31 December 2020. The RLMT required employers to prioritise job applications from UK/EU nationals over those from non-UK/EU nationals. Effectively, the

RLMT was a law that permitted a form of discrimination based on nationality.

Moreover, in its Equality Impact Assessment in 2022, the Home Office recognised that its policy around minimum salary thresholds may potentially trigger indirect discrimination. In this Equality Impact Assessment, the Home Office puts forward its view that salary thresholds are 'proportionate and justified to protect sponsored workers from being unfairly exploited and underpaid by sponsors'. However, unlike the RLMT, this Equality Impact Assessment is not law and does not supersede the need to navigate existing equality laws on this issue.

Given the rising cost of immigration sponsorship, some companies may be interested to explore the scope to restrict their candidate pools to individuals who already hold the legal right to work in the UK. There are two key employment law risks here that companies should be aware of: direct and indirect discrimination.

The key difference between the two is that direct discrimination (e.g. discriminating on the grounds of national origin or nationality, such as by saying that only candidates of certain nationalities will be considered for roles) is unlawful and cannot be "justified" under law, whereas indirect discrimination (see below) can be "objectively justified" under law.

Indirect discrimination is where a business implements a provision, criterion or practice 'PCP' that on the face of it applies to all individuals, but in fact puts people who share a protected characteristic at

a particular disadvantage compared to others. This could include a recruitment policy under which only candidates who have a pre-existing right to work would be considered for roles. Provided an employer can show that it has a legitimate aim in putting forward a PCP and that the PCP is a proportionate means of achieving the legitimate aim, any such indirect discrimination would be objectively justified and would be lawful.

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The extent to which the saving or avoidance of cost can amount to a legitimate aim has been considered by Employment Tribunals, leading to the development of the so-called "cost-plus" approach. Under the cost-plus approach, cost can be a legitimate aim provided it is not the only legitimate aim. In other words, it can be weighed in the balance along with other factors. Its effect is summarised in the Equality and Human Rights Commission (EHRC) Codes, which state that respondents "cannot simply argue that to discriminate is cheaper than avoiding discrimination."



Therefore, it is critical that any businesses rolling out new or revised recruitment or immigration policies in light of the Home Office's "five-point plan" take steps to ensure they do not fall foul of anti-discrimination laws. Otherwise, a company may expose itself to risks such as lawsuits, fines, and reputational damage.

A pay differential between local vs overseas talent

Whilst the increase in the minimum salary threshold for a Skilled Worker may deter some employers from recruiting overseas talent, we acknowledge that certain sectors will continue to face skill shortages and will need to recruit from abroad. This may result in sponsored workers being paid a higher salary than non-sponsored domestic workers (e.g. – British nationals, or non-British-nationals with settled status) potentially creating a pay gap between locally recruited talent and talent recruited from overseas. This may bring up complex issues and considerations around gender-based discrimination under equal pay laws, and potentially discrimination connected to nationality, national origin or ethnicity. From gender based equal pay perspective, companies should closely monitor any salary discrepancies between their male and female employees that may arise due to the minimum salary thresholds rising significantly for sponsored workers.

The UK government confirmed in its July 2023 response to a 2018 consultation on mandatory ethnicity pay gap reporting that it has no plans to legislate to make ethnicity pay gap reporting mandatory, whilst the opposition Labour party has suggested that it would introduce mandatory ethnicity pay gap reporting for employers with 250+ employees if elected. Therefore, pay inequality based on nationality, national origin or ethnicity does not currently trigger equal pay laws in the UK, but would be expected to give rise to claims under current UK discrimination laws.

Conclusion

Employers seeking to review their immigration policies and recruitment practices must be mindful of the intricate link between a company's immigration policy and employment law compliance. Achieving the right balance is crucial to mitigate legal complications, as well as potential reputational damage, in the face of recruitment objectives and not being left behind in the war on talent. By carefully navigating this intersection, organizations can leverage the advantages of a diverse workforce while safeguarding their legal standing.



Questions for the MAC

2024 MAC Commission

The MAC was set two tasks under the five-point plan, firstly to review the SOL and devise a new, reduced, list of occupations under a rebranded ISL and secondly to review the Graduate visa route

An interim ISL review was published on 23 February.

And on 14 March the Government published a statement of changes based on the review, including a revised and reduced ISL.

Roles that were removed include all those where the median salary was already above the revised SW salary threshold of £38,700.

Due to the tight timeline set by the Government, no stakeholder engagement was undertaken for the interim review, but the MAC state that “extensive” consultation is planned for a more substantive review of the ISL anticipated to start later in 2024.

The MAC also make clear that “further clarity” is required from the Government on the purpose of the ISL before the full review can take place.

Employers wanting to contribute to that wider review—and potentially get a role added—will therefore need to pay close attention to further communications from the Government around its vision for the ISL and tailor their submissions accordingly.

The terms of the review of the Graduate Visa route were set by the Home Secretary on 11 March and he has asked for a report by 14 May with a view to implementing any changes in “due course”. This leaves a narrow window for any businesses wanting to make a case to the MAC for the retention of the Graduate Visa.

Mr Cleverly identified five areas that the MAC may like to include in their review, specifically, any evidence of abuse of the route, who is using the route and where they are graduating from, demographics and trends for those accessing the labour market via a Graduate Visa, what individuals do during and after their time on the graduate route and analysis of whether the route is undermining the integrity and quality of the UK higher education system.

Key additional questions the MAC will need to consider are:

- 1

What purpose does the Graduate visa route fulfil? For example, does it increase the UK’s appeal as a place to study, by offering a route to remain in the UK post graduation, or does it attract talented students who will subsequently work in high-skilled graduate jobs?
- 2

If the Graduate visa is removed altogether, what anticipated impact, if any, will that have on the number of people arriving via student visas?
- 3

Is the Government ready to accept a potential drop in the number of foreign students and if so, how much of a drop?
- 4

At what point does a reduction in foreign students lead to a wider increase in university fees?

Just as with the ISL review, stakeholders that value the Graduate visa route will need to make a robust case to the MAC.

Conclusion

Time is of the essence for employers.

The first raft of changes under the five-point plan (the new salary threshold for Skilled Worker visas and the revised ISL) are due to kick in in April, so businesses will need to move fast in order to get applications in that make use of the present system.

While employers did not have an opportunity to contribute to the interim ISL review published on 23 February, the MAC has indicated that there will be significant stakeholder engagement as part of a more comprehensive review anticipated for later this year. Businesses wanting to influence the make up of any revised ISL should therefore look out for further announcements around this piece of work.

Looking further ahead, businesses should be reviewing their immigration policies to take the new Skilled Worker and the Global Business Mobility Senior or Specialist visa salary threshold into account and ensure they are considering the potential employment law implications.

Supporters of the Graduate visa route should also be gathering evidence to submit now that the MAC review has been formally commissioned.

Note also that from a mobility tax perspective, changes to the Health and Care visa route (no dependants allowed to accompany from 14 March), could potentially mean an impact to residence/treaty residence positions, which in turn could increase the risk of dual residence tax implications. Such potential impact will also need to be considered.








Finally, employers should continue to monitor for further information from the Home Office on how the rules will be implemented, or for any amendments or further announcements.



Deloitte will be doing exactly that and will provide further updates as more detail becomes available.

Anyone who would like advice on how the five-point-plan affects them can contact a member of our immigration or employment team.

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