On 8 September the Migration Advisory Committee (“MAC”) published its report on the likely impact of Brexit on the UK labour market. The report includes recommendations to Home Office policy makers regarding changes to the UK immigration system to facilitate future EU immigration.

What is the significance of this report?

The Home Office take a strong lead on policy from the MAC which has previously advised on the introduction of minimum salaries for non-EU partners of British citizens, increases in salary thresholds for Tier 2 and capital requirements for Tier 1 as well as the introduction of the Immigration Health Surcharge and Immigration Skills Charge.

Not all recommendations made by the MAC have been adopted and so we should not regard the content of its report as ‘policy-in-waiting’. That said, cabinet ministers have endorsed the report and so it does seem likely that most, if not all, of the recommendations will be followed.

What happens next?

This report has been handed to the Home Office, whose policy makers will use it to help them prepare a white paper which we expect to be published this Autumn.
Summary of key recommendations:

1. **No preference for EU nationals over non-EU nationals**
   The MAC is clearly not recommending the need for a different type of visa. A like-for-like replacement for the current free-movement residence card is not being advocated, neither is the opening of Tier 3 of the Points Based System for lower-skilled occupations nor sector-based visa schemes (with the exception of that previously declared for agricultural workers).
   Therefore, this report largely becomes an examination of the current Tier 2 visa system and how it can be adjusted to incorporate a much greater volume of global applicants. Interestingly, the MAC also use the opportunity to critique certain areas of Tier 2.

2. **Abolish the cap on the number of Tier 2 (General) migrants**
   From December 2017 to May 2018, a lot of companies would have felt the pain of the annual quota of 20,700 restricted certificates of sponsorship that are allocated every month. Given that each application for a certificate was on behalf of a highly-skilled individual being offered a salary above the national average on conclusion of searching for a suitable candidate from within the UK's domestic labour market, the MAC rightfully question the logic in limiting these numbers and their recommendation is to abolish this cap. Not many will argue with this, unless the spectre of the 'tens of thousands' migration pledge raises its head again, in which case a higher cap might be introduced.

3. **The Skill Level for Tier 2 (General) should be reduced from NQF Level 6 to NQF Level 3 whilst minimum salary thresholds for Tier 2 should remain the same.**
   Since a lot of occupations undertaken by EU27 nationals at present are considered 'low-skilled', and given that there is no preference for EU nationals to be undertaking this work over non-EU nationals, the recommendation is that these occupations should be included within Tier 2 (General).
   Whilst the spirit of opening up the visa category to a broader range of jobs is welcome, it is unclear just how aligned the lower NQF codes are to the jobs currently being undertaken by EU27 nationals and whether employers will be able to meet the minimum salary thresholds for each SOC code, especially for indefinite to remain applications which require a minimum salary of £35,000 per annum.
   With the new lower skilled occupations in mind, the MAC also recommend reviewing the Shortage Occupation List (“SOL”) to see if any occupations can be added from NQF3 and above.

4. **Consider abolition of the Resident Labour Market Test or lower the high earner threshold to exempt more workers.**
   Positioned as a device to appease voters, the MAC sees little economic benefit in the test as it stands given the subjectivity of deducing the best candidate against less appropriate workers from the domestic labour market. However, at the same time, the MAC suggest that the RLMT could be retained but with more applicants exempted through a lowering of the high earner threshold, currently set at £159,600 per annum.
   The MAC advocate using the current working visa routes, but suggest making them much more accessible to a wider range of occupations by removing many of the obstacles that unnecessarily hinder the process whilst also expanding the programmes to enable the Home Office and employers to handle the resulting increase in the number of Tier 2 (General) applications.

5. **Extend Tier 5 (Youth Mobility) to the EU27**
   A welcome suggestion particularly for the service and hospitality sector is the expansion of a 2-year 'working holiday maker' type visa that is currently available for young people from Australia, New Zealand and Canada. Tier 5 (Youth Mobility) is an easy visa to apply for and would provide a solution for employers who rely heavily on transient migrants from the EU.

6. **No recommendations for self-employed EU nationals**
   The MAC do not omit self-employed people from their report, but instead specify that they do not know enough about the current Tier 1 (Entrepreneur), Tier 1 (Exceptional Talent) visa routes, or the proposed ‘start up’ visa, which seems a strange conclusion to make having previously assessed the first two routes and recommended the latter.
   The suggestion of not otherwise creating a visa type that allows EU27 nationals to work as sole-traders or company owners would immediately shoe horn them into the Entrepreneur route. This is in keeping with the direction of that visa category to be an option for entrepreneurs offering innovation rather than pre-existing business types.
Our team

Our team of experienced professionals includes experts in international reward, employment law, pay and benefits, change management, international tax and social security, immigration and HR.

For more information on how to prepare your business for the likely changes to the UK immigration system post-brexit, please feel free to contact:

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