

Migration Advisory Committee
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020 7035 1764

17th September 2019

Dear Sir or Madam,

Re: Salary Threshold Call for evidence

I enclose a response in the Annex B format you have requested, and also take this opportunity to provide further answers below, based on your call for evidence at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831404/MAC_Salary_threshold_PBS_Call_for_Evidence_final.pdf

At page 3 I note you cite the 24th June 2019 request by the Home Secretary, and that at page 4 section 1.6 you talk about ‘the impact salary thresholds will have on a range of areas including: • annual net migration’. In the light of the July 2019 change of Prime Minister, and the new PM’s abandoning the ‘tens of thousands’ net migration target and saying he is pro-immigration, I have assumed that the priorities no longer include cutting net migration per se, and are limited to ensuring that the migration that the UK does allow will bring economic benefits.

When it comes to of salary thresholds within the present Tier 2 system, my understanding is that these thresholds serve 2 purposes:

- a) As a ‘Sense check’ that the role really is a RQF Level 6 (Graduate equivalent) role. This may be a bit unfair when it comes to jobs people would be prepared to perform for noneconomic reasons (e.g. working for a charity, or in a glamorous/prestigious role), but probably makes sense.
- b) To ensure that employers are not able to use expat workers as cheap labour. This is a far more complicated area, with policy being, at best, a blunt instrument that cannot cater for the intricacies of individual roles. That policy is needed where the rules prevent ‘price discovery’: i.e. where workers cannot change employers without leaving the UK for 12 months. I enclose detailed feedback in pursuit of the best possible policy, but also ask you to look at the causes of the problem: the fact that Tier 2 (Intra Company Transfer) visa holders are bonded to their employer is not the planned result of the present policy, but is a side effect of

other changes. In many cases the damage could be remedied without undermining the original intent.

At the moment, the only ‘silver bullet’ is the ‘High Earner exemption’ applying to those on at least £159,600pa. This is more than the Prime Minister’s salary. It¹ should be cut to under £100,000pa (which would still put it in the top 3%), and most people would consider that anyone in the top 10% (c£70k pa, and more than double the average UK income) was a high earner, but the RLMT and shareholding exemptions given to high earners are not my focus here. The biggest impact is w.r.t. the 12 month cooling off period.

When the settlement income threshold (now £35,800pa) was introduced, the 12 month cooling off period was introduced to give a clear break in residence, and thereby ensure that below-threshold earners could not sidestep the settlement income threshold by spending 10 years on Tier2, and then becoming eligible for settlement under the long residence concession (a route that is not subject to the settlement income threshold). When the 2010-15 coalition government adopted a net migration target, and, in pursuit of it, placed quotas on bringing Tier 2 (General) staff to the UK, in 2 April 2011 the Home Office created a prohibition on Tier 2 (Intra Company Transfer) visa holders switching in-country to Tier 2 (General) and, on that basis, Tier 2 (Intra Company Transfer) visas were made exempt from quotas. This was convenient for global companies who were given advantages relative to their UK-only competitors, in particular SMEs. The global companies were able to import staff free of the quotas that hit UK employers (including the NHS & schools).

The ban on T2 ICT staff switching in-country, when combined with the 12 month cooling off period, had the effect of turning T2 (ICT) staff into labour bonded to their employer: once a global company had brought someone to the UK, they were immune from the employee being ‘head hunted’: another blow to the UK SMEs who might want to hire expat professionals, and also a blow to the individuals given a ‘Like it or Lump it’ choice when considering their annual pay review (or non review).

Minor changes to the rules would allow the T2 (General) quota to be respected, and settlement to be limited to those on £35,800pa, without banning Tier 2 (Intra Company Visa) holders from getting new jobs. Those changes are:

1. Exempting from the cooling off period, for those returning to the UK into roles paying > £35,800pa
2. Allowing the in-country hiring of Tier 2 (Intra Company Visa) migrants, subject to the new employer obtaining a Restricted CoS.

Although Annex B is salary threshold focused, the bigger picture may be the promised ‘Australian Style’ points based system. The UK has had a notionally ‘points based system’

¹ The ‘High Earner exemption’ threshold, rather than the PM’s salary

for over a decade, but, since the Highly Skilled Migrant Programme was abolished, the system has been 'hurdle' based, rather than meaningfully points based: migrants are required to clear several distinct hurdles

Eg: Tier 2: (a) maintenance funds, (b) English language, (c) a CoS
Tier 1 (investor): (a) £2m cash, (b) held in a regulated institution,
(c) transferrable to UK, (d) UK bank has done KYC

In each case, to fail at one hurdle, is for the application to fail. Whereas, genuine points based system would allow strengths/over performance in one area to offset weaknesses in another:

EG: If you have a PhD & 10 years' experience that makes up for your job (perhaps with a charity) only paying £20,000 per year

Or:

While your degree was in Spanish & you don't get points for English Language, you can get enough points to pass if you have a high-paying job (as well as your non-English language degree)

A proper points based system sets a pass mark and lets applicants achieve it in various ways (education, salary, professional work experience, shortage skills, etc.).

I hope that these suggestions are helpful, and would be happy to provide further details on request.

Yours faithfully

James Wallace-Dunlop
J Dunlop & Co

Annex B: MAC Call for Evidence Questions for representative organisations

This document provides the list of questions contained in the MAC Call for Evidence online form. This is to help you gather your responses only, please use the online tool to submit your responses.

The questions below are for representative organisations providing their views on behalf of other organisations.

About you

1. What is the name of your organisation?

J Dunlop & Co

2. What is your email address?

James.Dunlop@jdunlop.com

3. Which of the following options best describe your reason for completing this form?

I am providing evidence of recruitment and salaries in the sector, on behalf of my Clients and other business that I encounter.

The questions that follow in this form are for those that have chosen the second option in question 3.

About your organization

4. Which of the following best describes your organisation?

Private sector

5. How many businesses /organisations do you represent?

5 - 49

About the businesses/organisations you represent

6. How have you engaged the businesses/ organisations you represent to inform this consultation response?

Ongoing dialogue as part of business as usual

7. Thinking of the businesses/organisations you have engaged with, in general are their staff concentrated in specific UK countries/regions or are they nation-wide?

Nation-wide, but most are within the M25 or along the M4 corridor

Question 8 is for only applicable if you have chosen the first option in question 7 (concentrated). For those that chose the second option (nation-wide) please answer question 9 onwards.

8. Following on from the previous question, which regions(s)/country(ies) are staff concentrated?

9. Thinking of the businesses/organisations you engage with, tick all the relevant sectors they cover from the list below: (Please select all that apply)

For more information about the sectors please refer to the link below:

<http://resources.companieshouse.gov.uk/sic/>

Information and communication
Financial and insurance activities
Professional, scientific and technical activities
Human health and social work activities
Other service activities

10. Thinking of the businesses/organisations you engage with and their number of employees, tick all size bands that they cover:

0-9 employees
10-49 employees
50-249 employees
250-499 employees
500+ employees

11. Thinking about the businesses/organisations you engage with, are the majority roughly of a similar size in terms of the number of employees (e.g most SMEs or most large organisations)?

No

Question 12 is only applicable if you have answered yes to question 11, if you have answered no please answer question 13 onwards.

12. Thinking of the businesses/organisations you engage with and their number of employees which size band(s) are they concentrated in?

n/a

Employment of migrant workers

13. To your knowledge, have the organisations you have engaged with recruited any of the following workers in the past 5 years: (Please select all that apply)

[Workers from EEA countries: the EEA includes all European Union (EU) countries plus Iceland, Liechtenstein and Norway. We also include Switzerland as part of our definition. Workers from non-EEA countries: workers from outside of EU countries plus Iceland, Liechtenstein Norway and Switzerland.]

UK and/or Irish workers

Workers from EEA countries outside of the UK and/or Ireland

Workers from non-EEA countries

14. In the next 12 months are they likely to recruit: (Please select all that apply)

UK and/or Irish workers

Workers from EEA countries outside of the UK and/or Ireland

Workers from non-EEA countries

Experience of Tier 2 (General) visa

Questions 15- 20 are only applicable if you have answered ‘workers from non-EEA countries outside of the UK and/or Ireland’ to question 13, others should complete question 21 onwards.

15. Following on from the previous question, were these non-EEA workers recruited under the Tier 2 (General) visa system?

Yes some

16. Are the salaries required by the Tier 2 (General) immigration rules generally:

The SOC minimum salaries required under T2 (G) are lower than the salaries actually paid, so I would answer ‘Lower than they what would normally pay’ w.r.t. SOC salaries:

However, the High Earner threshold of £159,600 pa is more than even very senior jobs tend to pay

17. Have the organisations that you represent experienced any issues with Tier 2 (General) visa salary requirements? If so, what were they?

(In 200 words)

The problems arise only with the High Earner threshold, which is relevant when hiring staff currently in the UK on T2 (ICT) visas.

18. Have any of the Tier 2 (General) visa employees employed by your members (or organisations you represent) applied or tried to apply for settlement?

Yes

Question 19 and 20 are only applicable if you have answered 'yes' in question 18, others should complete question 21 onwards.

Experience of Tier 2 continued

Migrants on Tier 2 (General) visas are eligible to apply for settlement (indefinite leave to remain) after 5 years in the UK. Those migrants coming to the UK on or after the 6th April 2011 have also had to meet a minimum salary threshold, currently £35,800, in order to be successful in their application for settlement. There is an exemption to this salary threshold for migrants employed in shortage occupations.

19. In general, was the settlement income threshold (currently £35,800)?

Below their current salary

20. Please provide any additional views of Tier 2 (General) visa settlement

(In 200 words)

The settlement income threshold itself is not a problem. However, the 12 month cooling off period, introduced to ensure that below-threshold earners cannot spend 10 years on Tier 2, and then gain settlement under the long residence concession, is a problem. Tier 2 (ICT) visa holders employed by global firms can't be 'head hunted' by UK employers. This harms UK SMEs and also allows global employers to pay uncompetitive salaries to T2(ICT) staff, safe in the knowledge that (save for the very rare cases where the £159,600pa high earner threshold is met) a UK employer will be deterred from hiring someone who is barred from UK work for their 12 month cooling off period. If the cooling off period is to be retained, there should be an exemption for those returning to the UK into roles paying > £35,800 (or whatever new settlement income threshold, if any, is applied)

The following questions should be answered by everyone.

Salary thresholds

Our commission from the government asks us to consider both the mechanism for setting minimum salary thresholds and the appropriate level.

21. To what extent would the businesses/organisations you have engaged with agree or disagree with the following statements: (strongly agree, agree, neither agree nor disagree, disagree, strongly disagree)

There should not be a minimum salary threshold above the legal requirement (the national minimum wage):

Disagree Strongly.

Having a minimum threshold makes sense for as long as Tier 2 has an RQF Level 6 (or Level 4) threshold. The national minimum wage is almost never paid to experienced workers in graduate level roles.

Were it possible to pay a 'business development manager' £15,000 per year, retail businesses might be tempted to class all shop staff as 'business development managers'.

I am not very keen on restricting the entry of industrious expat workers, but politicians & public opinion think otherwise, and so we must try to find the best system within the parameters they set. If they want to limit entry by restricting Tier 2 to graduate-level roles, then it makes sense to require employers to pay a graduate-level salary.

If there is a salary threshold it should be applied universally across the economy and UK, with a few exceptions to keep the system simple:

Agree

If there are salary thresholds, there need to be a variety to reflect employer needs.

This is superficially attractive, but support is only appropriate if we can find a simple to understand and implement system. No such system has yet been identified

If you have an alternative model you wish to describe, please explain it here (in 200 words):

Minimum salaries exist to prevent employers using expats as cheap labour. However, the most effective way to prevent expats being used as cheap labour is to ensure that there is a competitive market for that labour: i.e. that an expat, once in the UK, can be hired by another company. When an employer's expat workers are not free to change companies, there may be a tendency among some employers to treat expats as bonded staff, and, when it comes to an annual pay review round, a manager dealing with a team of both expats and locals, presented with a fixed budget, may try to 'save money' when reviewing the expats (perceived as facing a 'Like it or lump it' choice) in order to be more generous with the local staff (who are free to change employers if they feel undervalued).

Solving the problem of Tier 2 (ICT) staff being used as cheap labour / underpaid, by letting them get a better job is easy. If the easy option is not available, we will end up with necessarily blunt top-down solutions,

For the above reasons, salary thresholds are very important (and should rise) in areas like Tier 2 (ICT) which prevent sponsored staff from moving to a new employer. For

other staff, the issue is far less important.

22. If there were tailored salary thresholds, to what extent would the businesses/organisations you have engaged with agree that they should be varied by: (strongly agree, agree, neither agree nor disagree, disagree, strongly disagree)

Sector:

Agree.

While individual occupations are subject to the problems detailed below, a whole-sector approach could work, although it would not be perfect or entirely objective: does one count a person implementing a new financial system / reports as being in the technology sector (as most system implementation / customisation work would be) or in the finance sector? If the role requires so much financial expertise that an accounting qualification or finance-based MBA is needed, that might make it easier to say that it is a finance role which also requires technological competence, but the lines between sectors are often blurred, and crossovers occur in the most unexpected places. I encountered an investment banker who was re-training to be a Doctor, and made the mistake of saying 'that must be very different', only to be told that the roles were remarkably similar: both involved eliciting information from people, evaluating it (possibly triage), and coming up with a plan to manage down the risks that had been identified.

Region/country:

Strongly Disagree.

We do not have internal border controls and, once someone has been hired, they may spend time at various places in the UK, whether client sites or other sites owned by their employer. I am all for boosting Cornwall's economy, but do not think that any purpose would be served by having a scheme in which an expat working on a client site in London might have a different salary threshold depending on whether they were originally hired by KPMG's Plymouth office or KPMG in London. London. Nor could one ban KPMG Plymouth from sending staff to a site in London. Nor would it be straightforward to say 'if an employee is working in London, the London threshold must apply': assignments are likely to be temporary, but when does one draw the line: after a quarter, a month, a week, a day? What does one do if someone spends 2 days a week in London, 1 day a week in Edinburgh, and 2 days in Sheffield? Asking employers to make month-by-month calculations based on the location of work would be a nightmare to implement. And what happens when a job requires someone to go to Bangalore for a week? Does their minimum salary during that week depend on where in the UK the worker was based before they left the country?

New entrants/young workers:

Agree.

Occupation:

Disagree.

Were implementation to be straightforward, I would support using occupation, as we do now with the SOC codes. Unfortunately, many roles have elements from different SOC codes, so one ends up having to make a subjective 'best guess'. Some might put a Scrum Master into SOC 2134 due to the Project Management / mentoring element of their role, while others would argue that, when a majority of the Scrum Master's time is spent on Development, or Analysis, the role should be put into SOC 2136, or SOC 2135.

Using sector-based rather than occupation based categorisation would reduce (although not eliminate) the subjectivity involved in choosing where a particular role fits.

23. Do you think jobs judged to be in shortage (such as those on the Shortage Occupation List) should have:

The same salary thresholds compared to those not in shortage.

As long as sponsored staff are able to change employers (subject to re-sponsorship), competition among employers for shortage skills will work to bid up salaries to the right level

24. For a full-time employee, the occupation specific salary threshold is currently set at the 25th percentile of the full-time pay distribution in that occupation. Do you think the occupation specific salary threshold is:

[25th percentile: 75% of full-time employees in an occupation earn the threshold amount or more, and 25% earn less]

Too low (for T2 ICT)

About right (for T2 General)

Please explain your answer (in 200 words)

The current system works well with Tier 2 (General) staff as, although an expat can be hired & sponsored with a 25th percentile salary, if the person has a lot of experience, they will soon get other job offers and the existing employer will have to pay the market rate or lose the expat to someone else who will pay that rate. The problem is with Tier 2 (Intra Company Transfer) where the April 2011 rule change preventing them from switching employers in-country, combined with the cooling off period once they leave, means that the price mechanism is unable to function. It would be best to solve that problem by allowing T2(ICT) staff to change employers, but, if that is ruled out, the T2(ICT) salary thresholds should be set at least at the 50th percentile, so that only roles paying more than average would qualify. Why should an expat be hired on a below-

average salary & be unable to change employers?

The complicating factor here is the level of experience, if one looks across a sector (or even just an occupation), the pay distribution will range from new entrants to greybeards who have spent with 50+ years mastering their profession. A 27 year old being paid at the 25th percentile may be doing very well, while a 57 year old who has worked in the sector all their adult life would reasonably expect rather more.

25. Do you think the minimum salary requirement of £30,000 for most occupations is:

Too high

About right

Too low

Don't know

Please explain your answer (in 200 words)

The £30,000pa minimum is probably about right for experienced professionals in graduate-level roles.

26. What do you think should be counted towards the salary for assessing whether an individual meets the threshold? (Please select all that apply)

Company car/ travel allowance:

Pension contributions: if beyond the statutory minimum of 3% of qualifying earnings

Employee equity ownership schemes: this is a good idea, but finding a practical way to implement it is not simple.

Equity-grant schemes involve highly subjective valuations: if there is an eventual exit or arms-length-third-party funding round, there will be an objective number that can be used, but that is likely to be looking back after the event. In advance this is not knowable.

Share option plans: are also almost impossible to value ex-ante.

The textbook Black-Scholes-Merton option valuation model (even if not deemed rather discredited by the fact that Myron Scholes' LTCM managed to blow up and need a bailout in 1998 as they had mispriced risk) asks one to input volatility and current asset price, and meaningful numbers for either of them are difficult when dealing with illiquid privately held (and possibly never traded) securities

Part-time working patterns: This should certainly be factored in, unless we want to discourage job sharing, and/or complicate the return to work after maternity/parental leave

Commission:

If commission is not guaranteed, what are we talking about? On a forward looking

basis, it is not pay, it is only what might happen. On a backward-looking basis, it would make sense to include bonuses/commissions towards the settlement income threshold.

Housing allowances:

Some housing allowances are a clear benefit to the employee and are taxed as such. They tend to be used by larger companies that have relatively rigid bands/structure for remuneration, who want to defray an expats legitimate extra costs of living in the UK, without simply paying a larger salary that would disrupt its normal pay scales. As at present, this should be treated as salary for T2 purposes. However, Where an employee gets an allowance that is tax-free, because HMRC deems it necessary for the worker to be posted to a temporary workplace, it is difficult to see why the Tier 2 rules should treat this untaxed cost-reimbursement (classed by HMRC as spent wholly, necessarily & exclusively for business purposes) as if it were a personal reward.

Other cash/non-cash remuneration please specify (in 200 words):

27. Following on from the previous question, please list your responses in order of importance with 1 being the most important and 6/7 being the least.
28. Are there any other issues we should consider? (in 200 words)
29. Please attach any additional evidence you would like us to consider
 Australian Points Based System
30. The Government is considering adopting an Australian type Points Based System. In your opinion, please tell us the relative importance of the following characteristics typically used to award points to migrants by ranking them where 1 is the most important and 8/9 is the least important.

Language proficiency	
Having studied in the UK	3
Work experience	4
Age	
Education attainment	6
Having a job offer	1
Salary	2
Priority occupations	5

Other, please specify

Please see covering letter

MAC stakeholder database

31. Would you like to be added to our stakeholder database for future research purposes

and updates on MAC work?

Yes

32. We may require follow-up to clarify or supplement your responses to the online form, or for follow-up research.

Do you consent to be contacted to clarify or supplement your responses?

Yes