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“Which labour migration governance for a more dynamic and inclusive Europe?”

**Labour migration governance in
contemporary Europe.
The UK case**

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Acronyms

BHA - British Hospitality Association
BIS – Business, Innovation and Skills
CBI - Confederation of British Industry
CoS – Certificate of Sponsorship
DH – Department of Health
DE - Department for Education
DWP - Department for Work and Pensions
EEA - European Economic Area
HAC - Home Affairs Committee
HSMP - Highly Skilled Migrant Programme
HO – Home Office
ICT - Intra-company transfer
LFS – Labour force survey
MAC – Migration Advisory Committee
MIF - Migration Impacts Forum
MRN - Migrant Rights Network
NHS - National Health System
NQF - National Qualifications Framework
PBS – Points-based system
RLMT – Resident Labour Market Test
SAWS - Seasonal Agricultural Workers Scheme
SBS – Sector Based Schemes
TUC – Trade Union Congress
UKBA - UK Border Agency
UKCES - UK Commission on Employment and Skills
WRS - Workers Registration Scheme

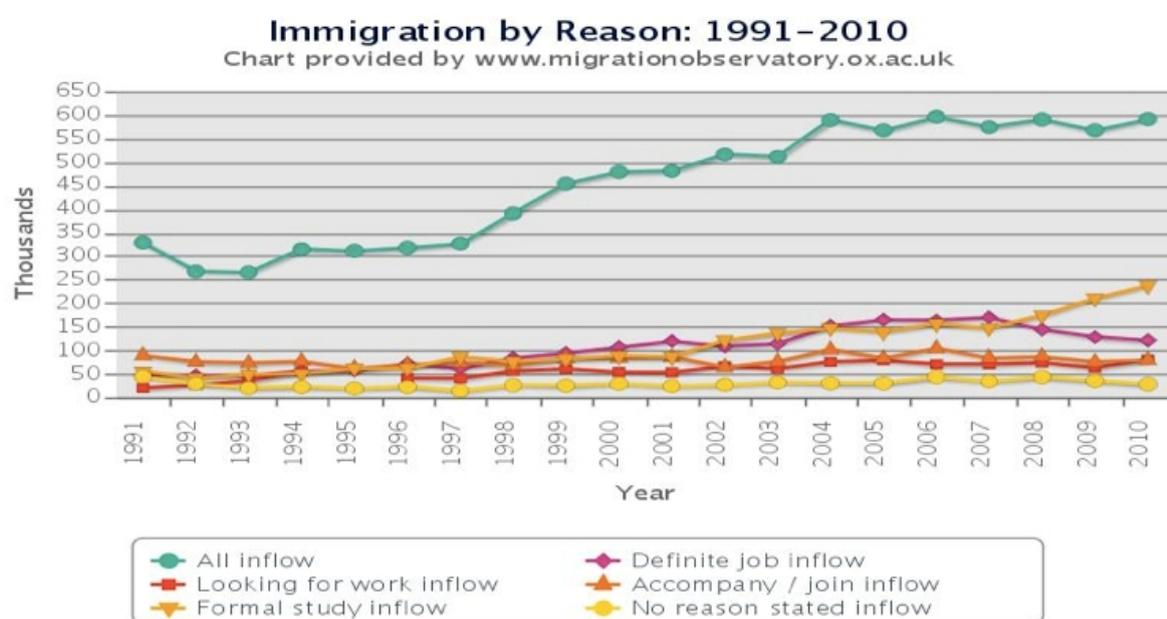
Introduction: labour immigration and the UK labour immigration system

This report on the UK labour immigration system is based on analysis of government documents, academic literature and interviews with policymakers, stakeholders and researchers carried out between September and October 2011 (see annex 1 for a list of interviews).

Due to early industrialisation and the amassing of a large empire between the 16th and 19th centuries, the United Kingdom (UK) has long been a destination for foreign workers. However, somewhat counter intuitively, the country has traditionally exported more people than it has received; only becoming a country of net immigration in the mid 1980s.

During the past decade, the UK received historically high levels of net immigration and a larger proportion of labour immigration, as a result of strong economic growth and a liberal immigration policy. Since the mid-1990s, net immigration has exceeded 100,000 people per year, rising above 200,000 in some years since 2000. The largest inflows came from within the European Union (EU). On the accession of eight Eastern European countries (the A8) to the EU in May 2004, the UK, Ireland and Sweden were the only three member states to give workers from these states immediate unrestricted access to their labour markets. About 1.3 million A8 nationals arrived in the UK between May 2004 and May 2009; though it is estimated that about half left by the end of that period.

Figure 1: Immigration by Reason 1991-2010



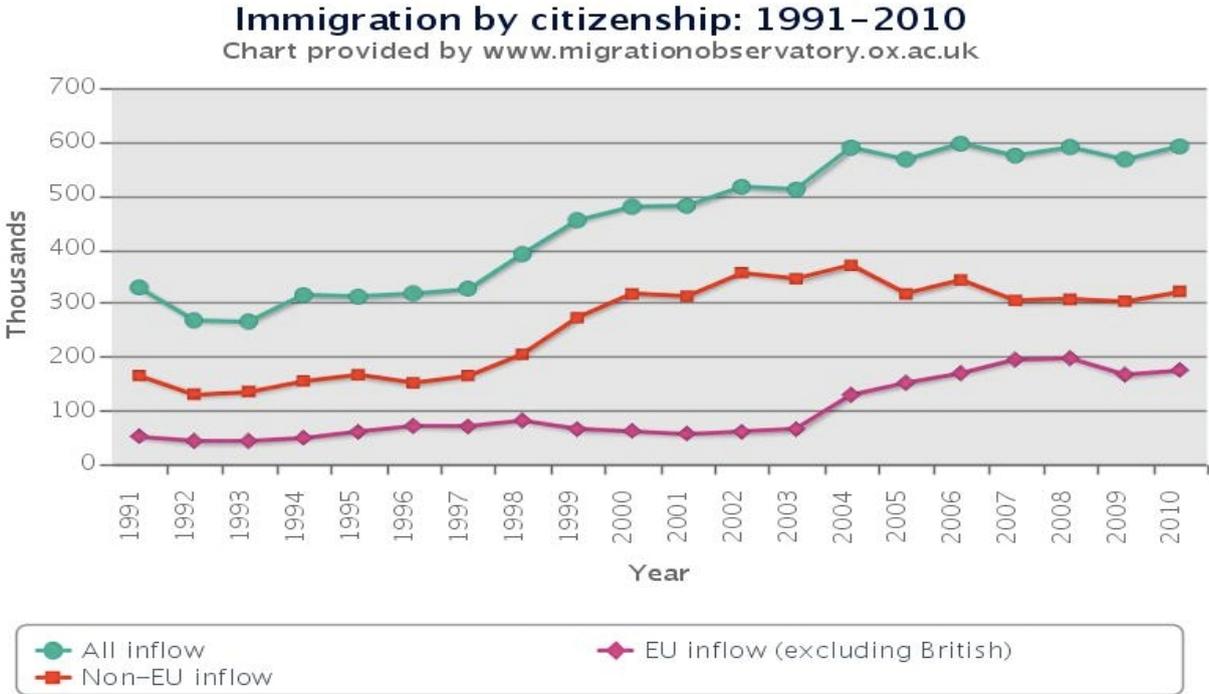
Source : Office for National Statistics, Long-Term International Migration (LTIM)

Source: Migration Observatory, Oxford

The stock of foreign born in the UK rose to about 6.9 million in 2008; 11 per cent of the UK population. The five largest foreign-born nationalities in that year were Indian (639,000), Polish (526,000), Pakistani (436,000), Irish (424,000) and German

(293,000). The immigrant population is increasingly diverse with origins in Europe, former settler countries like Canada and Australia and former colonies in South East Asia, the Caribbean and Africa. Immigrants in the UK are often short-stayers; of 86,300 work permit holders admitted to the UK in 2007, around 42 per cent were for employment of periods less than 12 months.

Figure 2: Immigration by Citizenship 1991-2009



Source : Office for National Statistics, Long-Term International Migration (LTIM)

Source: Migration Observatory, Oxford

The foreign-born rose from 7-8 per cent of the country’s labour force in the early 1980s to 13 per cent in 2009. About 68 per cent of the foreign born in the UK are employed, compared to 74-5 per cent of UK born people, though there is considerable variation by country of birth. For example, 86 per cent of those born in Australia are employed compared to 49 per cent of those born in Pakistan or Bangladesh. Immigrants born outside of the European Economic Area (EEA)¹ tend to be employed in professional and associate professional occupations, but also in elementary occupations. They are furthermore well represented in certain sectors, for example real estate, renting and business activity, and health and social work. Non-EEA immigrants earn more than UK-born individuals on average, which is explained by the former’s concentration in London. A8 migrants are generally employed in low-paid jobs in sectors such as hospitality and catering, administration, and construction; in 2008, only 12 per cent worked in highly skilled occupations. In recent years, the largest proportion of non-EEA immigration has been student inflows. The impact of the international economic downturn on migrant workers in the UK is not as negative

¹ The European Economic Area (EEA) comprises the EU member states together with Norway, Iceland and Liechtenstein.

as one might expect. Employment rates for the foreign-born exhibit smaller declines than for the UK-born (MAC 2009; Somerville, Sriskandarajah et al. 2009).

Labour immigration systems are categorised as demand-led, supply-led or hybrid. In demand-led systems, employers select migrant workers to fill specific vacancies, while in supply-led systems the migrants gain access to the labour market (rather than a specific job) based on criteria set by government. The British system can be described as a hybrid system; it is historically demand-led and while supply-side schemes have been introduced over the past decade, they remain marginal. The work permit system, which granted work permits to a specific employer for a particular skilled foreign national for a specific job and has accounted for the majority of non-EEA workers entering the UK for work purposes, was introduced in the aftermath of the first world war. While it has been subject to many revisions, the basic principals underpinning the system have remained the same, at least until the rolling out of the new points-based system (PBS) in 2008. The 1971 Immigration Act is the basis for current UK immigration policy.

During the Labour governments in office between 1997 and 2010 and the current Coalition government, in office since May 2010, the labour immigration system has been the object of constant reform. It is notable that changes to labour immigration policy are often in the form of amended guidance notes rather than legislative changes.² There have been three main phases of reform: phase 1 (1998-2004) involved liberalising and expanding the existing demand-led system, as well as introducing some new supply-side channels; phase 2 (2005-2008) was one of restructuring and consolidating previous policy innovations into a 'points-based system' (PBS), which aimed at better control of immigration and increased objectivity in admission decisions; and phase 3 (2009-) has involved qualitative adjustments to entry criteria and quantitative restrictions on entry, both with the pronounced aim of reducing levels of non-EEA labour immigration.

1. THE UK DEBATE ON LABOUR IMMIGRATION

1.1 The main actors and their positions in the labour immigration policy process

Stakeholder forums and public policy consultations have become an integral part of UK labour immigration policy-making since the development of the new PBS for the admission of non-EEA labour in 2005. The policy debate on labour immigration has thus become more institutionalised and more public. As a Home Office official maintained in October 2011; "It was always a complaint of employers that policy seemed to be made by civil servants in their ivory towers and that they didn't know what the real world was like; that is not the case now, we don't do anything without talking to stakeholders. Sometimes I think stakeholders have too much influence"(Interview HO).

The most influential actor is the political party/parties in government. British civil servants are in the main extremely disciplined and follow the party line of the elected government. While right and left wing divergences in immigration policy in the UK have traditionally not been very significant (see below), over the past thirty years the Conservative party has been more likely to use the anti-immigrant card than the

² The 1971 Immigration Act gives the Home Secretary extensive rule making powers regarding immigration regulations and many of these changes are not even press released.

Labour party (or the Liberal Democrats). In 1968 the Conservative MP Enoch Powell declared that 'black' immigration would lead to 'rivers of blood', while a little over a decade later, Margaret Thatcher suggested that there was a fear that Britain might be 'swamped' by immigration (Balch 2010).

There are, however, contrasting departmental perspectives on labour immigration. Unlike many other West European states, where labour immigration was under the jurisdiction of Labour Ministries in the post-war period, the UK Home Office (HO) – the equivalent of European Interior ministries - has been responsible for immigration since the 1793 Aliens Act. The Immigration and Nationality Directorate (IND) comprises around 80 per cent of HO staff. In Spring 2007, under Labour government, the IND was transformed into a separate executive agency, the Border and Immigration Agency (BIA), within the HO. This agency was renamed the UK Border Agency (UKBA) in Spring 2008 (Boswell 2008). The current Coalition government has since moved policy staff back into the HO, while operations remain in the UKBA (Interview HO).

The HO is generally argued to have a restrictive control focused approach to immigration. The other main departments involved in the policy arena are Business, Innovation and Skills (BIS),³ the Treasury, the Department of Health (DH), the Department for Education (DE) and the Department for Work and Pensions (DWP). BIS and the Treasury are generally argued to be influential and to have a relatively liberal approach to labour immigration due to respective interests in responding to employers' demands for highly skilled foreign workers and fiscal gains. The DH and DE are primarily interested in ensuring that their sectors, which are heavily reliant on non-EEA migrant workers, are able to continue sourcing foreign workers. The DWP has shifted from a liberal approach to labour immigration during the period of low unemployment between the late 1990s and 2008 to one, which is decidedly restrictive (Interviews HO, BIS, DWP). Since late 2007, a new actor has entered the debate, which has quickly become extremely influential. The Migration Advisory Committee (MAC) is an independent advisory committee of economists, which the government consults on specific questions related to immigration policy.

The most influential private actors are employer associations and individual big employers – often multi-national companies (MNCs), who have both formal and informal stakeholder meetings with the HO, the MAC and BIS. The major employers' association, the Confederation of British Industry (CBI), is the government's main source of information regarding the business point of view (Menz 2009). While it has lobbied for a liberal labour immigration policy, in the current context of an economic recession, it has acquiesced to an increase in restrictions on immigration due to the 'reputational risk' of doing otherwise (Interview CBI). Other associations include the Federation of Small Businesses (FSB) and sectoral associations such as the British Hospitality Association (BHA) and Intellect, which represents the technology sector. The trade unions and various non-governmental organisations (NGOs) – the 'migrant rights lobby'⁴ - are also consulted and lobby the government, though they are generally considered to be far less influential than employers. The trade unions have shifted their discourse to a less unequivocally positive take on immigration during the economic recession. The same can be said for think tanks and research organisations with links to the Labour party, such as the Institute for Public Policy Research (IPPR), which is argued to have been instrumental in establishing Labour's

³ Previously Business, Enterprise and Regulatory Reform and before that Trade and Industry.

⁴ Lawyers are also active in policy development, in particular in ensuring that the rights of resident migrants are not negatively impacted by any policy reforms (Interview HO)

liberal approach to labour immigration in the early 2000s. Anti-migrant think tanks and research organisations, notably Migration Watch, exert influence via right wing media outlets, such as the Daily Mail and Daily Telegraph, and Conservative MPs. The sub-national level does not have a formal role in UK labour immigration policy as this area of policy is centralised. However, regional and local governments are consulted and can respond to consultations as can any individual or association in the UK.

When the HO is proposing a policy reform, it is first presented to the Home Affairs Committee (HAC), which includes representatives from various departments with an interest in immigration policy. Once the HAC has come to an agreement, a public consultation is opened and all of the stakeholders – indeed any individual or group – can respond with their view. The HO can receive hundreds of responses and will respond with either amended guidelines or legislative change based on the consultation (Interview HO). The MAC also bases much of its research on public consultations.

Outside of the formal policy process, the media and public opinion wield significant influence over labour immigration policy outputs. While the direction of influence between public opinion, the media and political parties is unclear, it is generally argued that the media, in particular the right wing tabloid media, has a strong influence on British immigration politics and tends to push politicians towards more restrictive approaches to immigration (Interview CBI, TUC). British public opinion has favoured a reduction in immigration for the past half century and this preference has grown since the late 1990s in tandem with an increase in inflows; currently 69 per cent of British favour a reduction in inflows. The British are particularly adverse to low-skilled worker immigration, asylum, unauthorised and permanent immigration (Migration Observatory 2011).

1.2 Evolution of the debate over the past decade

British labour immigration policy saw important shifts over the past decade. The traditionally restrictive stance on labour immigration of British governments saw a dramatic *volte-face* between 1998/9 and 2004. The resulting high level of immigration, and ensuing economic recession, has led to a restrictionist backlash.

However, despite some rhetorical flourishes, British labour immigration policy is relatively consensual. The broad thrusts of policy have reflected a cross-party consensus based on shared views of Britain's rightful place in the global economy, the complexity of 'race relations' and public opinion on immigration. Indeed, a restrictive stance has dominated British labour immigration policy over the past half century and most stakeholders have supported this. The short-lived and much hyped liberalisation of labour immigration policy in the early 2000s was also largely supported by the main parties and stakeholders, including the trade unions, which were historically adverse to inflows of foreign workers (Krings 2009). The return to a more restrictive stance over the past five years is generally accepted by all actors as a necessary response to what are perceived to have been excessive levels of inward migration over the past decade and to the economic downturn and rise in unemployment since 2008. Another aspect of continuity is the restrictive stance towards non-European immigration. Non-European immigration has been heavily restricted since the 1960s, while Irish and, following the UK's accession to the EU⁵ in 1973, nationals of most EU member states have benefitted from free movement

⁵ Then called the European Economic Community (EEC).

(Somerville 2007). UK labour immigration policy has thus long held a European bias, despite the fact that it has stronger linguistic, and one could argue cultural ties, with ex-colonies such as India and Jamaica than it does with the rest of Europe bar Ireland.

Scholars of post-war labour migration to Western Europe generally maintain that unlike other important migrant receiving states such as Germany and Switzerland, Britain did not have an articulated labour immigration policy. Instead, immigration was shaped by (post-) colonial obligations and foreign policy. Indeed, while immigrants from the New Commonwealth, benefitting from inclusive citizenship rights, did fill labour shortages in Britain during this period, there was no explicit policy of labour recruitment. Furthermore, despite low levels of inflows from the Caribbean and Asia compared to those from Europe during this period, 'coloured' immigration was received with a certain level of hostility and the public policy response was to attempt to restrict it.

The dominant discourse revolved around the idea that Britain had a 'race' problem. It is notable that the 1962, 1968 and 1971 Immigration Acts, which at first restricted non-white immigration (1962 and 1968) and subsequently aimed at making Britain a country of 'zero migration' (1971), were passed by both Conservative and Labour governments. Part of the motivation behind restricting new inflows of migrants was a concern about tackling widespread racial discrimination towards those ethnic minorities already resident in Britain. This 'Hattersley equation' saw integration via a 'race relations' approach as being dependent on restricting new immigration and received cross party support (Somerville 2007; Boswell 2008; Balch 2010).

The restrictive bent of immigration policy shifted towards new movements from the 1980s, in particular asylum-seeking. However, perhaps the seeds of a changed approach to economic immigration were sown by the Conservative government in the early 1990s as, despite continuing restrictive rhetoric, the work permit system was eased and numbers of work permits issued rose from 1994. In fact, while labour immigration was further liberalised during subsequent Labour governments (1997-2010), the change in discourse on economic immigration introduced by Labour represented the real – though temporary - shift in British immigration policy.

Since the late 1990s, British labour immigration policy has undergone radical and constant reform. Labour governments decisively broke with the previous policy regime, emphasising the contribution that economic migration can make to the economy. The change in discourse on labour immigration did not feature in the party's election manifesto of 1997 and appears to have originated in departments charged with economic policy. Indeed, references to the need for skilled foreign workers, particularly for the booming ICT sector, emerged in 1998/9 in the Treasury, the Department for Trade and Industry (DTI) and the Cabinet Office, in the context of a general focus on increasing the UK economy's international competitiveness. In the DTI's White Paper "Our Competitive Future: Building the Knowledge Driven Economy" (DTI 1998) it was suggested that immigration restrictions should be reduced for skilled professionals and entrepreneurs and in 1999 the Cabinet Office commissioned a major study on the economic impact of migration, which emphasised the positive effects of migration on productivity and growth (Glover, Gott et al. 2001).

The new policy approach which developed was based around the concept of 'managed migration' as introduced in the 2002 Home Office White Paper 'Secure borders, safe havens: Integration with diversity in modern Britain' (Home Office 2002). Managed migration involves strong controls on unauthorised and non-economic migration, in particular asylum, and the facilitation of economic migration.

This White Paper argued that “developed economies are becoming more and more knowledge-based and more dependent on people with skills and ideas. Migrants bring new experiences and talents that can widen and enrich the knowledge base of the economy” (Home Office 2002 p.11).

This change in approach to labour immigration can be explained by sustained economic growth, labour shortages and international human capital competitiveness concerns. Employers lobbied the government to open up to labour immigration, with high profile campaigns for high skilled foreign workers in sectors like ICT, and the trade unions preferred a managed system of labour immigration than irregular migration and work, which would result from a combination of restrictive policy and labour shortages. There was thus a consensus around opening up to regular labour immigration. Between 2000 and 2004, as I discuss in the next section, the work permit system was eased and new schemes were introduced for high and low skilled workers. The opening up to labour migration resulted in a rise in the number of work permits issued; work permit holders and their dependents increasing from 62,975 in 1997 to 137, 035 in 2005 (Somerville 2007; Boswell 2008; Menz 2009).

Due to strong and sustained economic growth and the pervasive ideology of economic liberalism, introduced by the Conservative party in the late 1970s, the Labour government’s liberalisation of labour immigration to the UK did not immediately have to confront opposition from the political opposition or the media. Indeed, while there was some concern regarding the social impact of opening up to foreign workers, the economic arguments for immigration were accepted by the Conservatives.

The decision not to impose restrictions on the free movement of workers from the new EU member states on their accession on the 1st of May 2004 turned out to be the most significant decision taken by the Labour government in the arena of labour migration governance. In keeping with the traditional bias towards European immigration, the strategy was to fill low skilled labour needs with workers from the A8 and restrict non-EU migration to the highly skilled. Prior to the decision, the debate was focused on how many migrants would come and the potential for an increase in the welfare burden as EU citizens have the same rights to welfare as UK citizens.

The numbers were far greater than expected; between May 2004 and December 2006, 579,000 A8 migrants registered in the UK. The gradual return to a more negative, restrictive approach to labour immigration emerged in the aftermath of the enlargement with concerns regarding the impact of the large inflow of Eastern Europeans on local public services. The Conservative party criticised the government for underestimating the extent of migration from the A8 and for a lack of planning in terms of the impact on public services and local communities and proposed putting an annual cap on immigration. Public opinion polls generally showed an increasingly negative stance on immigration, with a majority preferring a reduction in inflows. Labour received particular criticism from the right wing tabloid press and a technocratic policy debate developed, with government opposition questioning the efficiency of the system and the accuracy of government research. Nevertheless, the main focus of the media has remained on asylum-seekers, the Muslim community and irregular migrants rather than labour migrants (Boswell 2009).

Immigration policy is always a balancing act between opposing interests. The Labour government was under pressure to give the appearance of better control over labour immigration, while at the same time giving employers the certainty that they could continue to source highly skilled migrants. As the government could not control inflows from the A8 – though it decided not to give labour market access to workers

from Romania and Bulgaria, on their accession to the EU on the 1st of January 2007 - the main response to growing concerns regarding labour immigration was to reform the non-EEA labour immigration system. The role of the state was reinforced, while at the same time externalising some of the responsibility for decision-making and implementation in this area to outside experts, employers and agencies.

Labour's third term saw a major consultation on how to manage economic migration, the outcome of which was the PBS, which was rolled out from 2008 and which I discuss below in more detail. The PBS represents an attempt to maximise the economic benefits of immigration and to establish better government control over it by means of clear objective qualitative admission criteria. The new system was relatively well received by opposition parties and the main stakeholders and received relatively little attention in the tabloids.

The creation of the BIA in 2007, a quasi-independent organization responsible for the implementation of policy, may have represented an attempt to remove responsibility for policy outcomes away from elected representatives. Similarly, two independent advisory bodies on immigration policy were created in June 2007: the MAC and the Migration Impacts Forum (MIF). While the MAC was set up to advise government on migrant worker needs, the MIF, composed of representatives of local and central government, the voluntary sector, the CBI and the Trade Union Congress (TUC) and jointly chaired by the minister for immigration and the communities minister, was to focus on the social impact, in particular the impact on public services and local communities.

The approach to labour immigration changed definitively, as the economic crisis set in in 2008. In that year, the House of Lords Select Committee on Economic Affairs published a report on the 'Economic Impact of Immigration', which argued against the positive consensus regarding the benefits of immigration. It maintained that there was a risk that too much migration would reduce incentives for training, and was contributing to the increase in housing prices among other problems (Devitt 2010). The Labour government began to make qualitative adjustments to the PBS in order to reduce inflows, for example strengthening the resident labour market test in 2009.

The far right made significant gains in European and local elections, however, the anti-immigrant British National Party did not achieve its expected breakthrough in the 2010 general election (Murray 2011). Indeed, just as Thatcher's Conservative party won the 1979 elections, the Conservative party, which is now in a Coalition government with the Liberal Democrats, gained votes in 2010 due to its tough line on immigration. In line with the Conservative electoral commitment, the government has introduced an annual cap on some categories of non-EEA economic migrants. In an apparent *quid pro quo*, the Liberal Democrats have accepted the more restrictive stance on numbers in return for an assurance that migrants' rights are to be protected (Interview HL2).

As noted above, there seems to be a general acceptance of the Conservative 'tough line' on immigration among the main parties and stakeholders with little appetite to oppose the general thrust of policy. While the Labour and Liberal Democrat parties did not support the idea of a cap on non-economic labour inflows, qualitative restrictions appear to be less controversial. In any case, as we will see below, the changes introduced by the Conservatives are far less influential than might appear from the party rhetoric. Only a few employer associations, which are affected by the restrictions, in particular the ethnic catering industry, have been vociferously critical of current policy. The trade unions have also tempered their pro-

migrant perspective and have begun to put more emphasis on the need to upskill local workers (Interviews HO, BIS, BHA, TUC).

Indeed, as the discourse on labour immigration shifted back to the traditional focus on how to restrict inflows, politicians began to stress their interest in ensuring that British workers had the skills necessary to compete for the available jobs. Faced with growing complaints about the impact of Eastern European migration on domestic workers, in June 2007, Gordon Brown famously called for 'British workers for British jobs' in a speech to the GMB Union. Furthermore, Brown stated that he did not regret making the controversial remark, when his slogan was used by refinery and power station workers on strike against the use of foreign contractors in various parts of the UK in January 2009 (Summers 2009). Unsurprisingly, while the Conservative leader David Cameron accused Brown of pandering to protectionist fears in 2007-9, the Conservatives in government have emphasised the need to ensure that resident workers can compete with migrants, with a particular focus on the British low-skilled. In July 2011, referring to new data that more than half of new jobs in the past year had been taken by foreigners, the Work and Pensions Secretary, Iain Duncan Smith, asserted that the welfare-to-work schemes would fail if immigration were not more strictly controlled. Duncan Smith urged employers to give British workers a 'fair chance' and not to automatically revert to foreign workers (Sparrow 2011).

1.3 Population policy

The openness of the UK to labour migrants is directly related to perceived labour shortages, as well as, more recently, the view that skilled foreign workers can contribute to boosting overall economic growth levels. Migration as a form of population policy has not been the focus of UK immigration policy since the 18th and 19th centuries, when policymakers were concerned with increasing the population size in order to boost national power (Somerville 2007). Nonetheless, the Scottish government has expressed concerns about an ageing population and has actively sought more immigrants. Scotland's population is predicted to increase less rapidly than the UK's as a whole and immigrants account for less than 7 per cent of the working-age population there (nearly half the proportion in the UK as a whole) (MAC 2008). Conversely, the Conservative Party proposal for the introduction of a cap prior to the 2005 election was initially motivated by the aim of controlling population growth, as the British population is projected to reach 70 million by 2029 (Murray 2011). In the 2010 elections, the Liberal Democrats called for a regional labour immigration policy, which would take into account the fact that the South-East of England is over-populated while Scotland has been suffering from de-population. The only regional element in the UK labour immigration system is, however, the Scotland shortage occupation list, which currently only contains a few medical practitioner occupations over and above those on the general UK list (UKBA 2011).

2 LABOUR IMMIGRATION SYSTEM

2.1 Qualitative selectivity

The UK labour migration system has always been based on qualitative selectivity; both the skill of the migrant and the wage of the job being criteria for issuing work permits to foreign workers. This was based on the historic tradition of importing key

skills from the British Empire and Commonwealth, notably for the health and education sectors, and the assumption that skilled well-paid foreign workers were less likely to displace resident workers. The qualitative criteria for admission have been subject to revisions over the years with the aim of easing or increasing restrictions on inflows. More recently, the system has been translated into a points based system in which a minimum threshold of points must be met based on various qualitative criteria including wage, skill, linguistic competence and maintenance funds. Ancestral connections to the UK are a basis for entry within the current Tier 5 Ancestry visa route, however, this route accounts for a small number of annual migrant inflows to the UK.

2.1.1 Work permit system

Prior to the introduction of the PBS in 2008, there were a number of schemes, which granted non-EEA workers temporary permits for employment in the UK; the largest of which was the work permit system. Non-EEA skilled labour migrants were granted work permits for skilled jobs with UK-based employers in particular locations.⁶ The skill level was revised over the years; for example, from October 2000, the Labour government reduced the skills threshold of the work permit system in order to facilitate the entry of skilled migrant workers. By 2008, it was defined as requiring a degree, relevant Higher National Diploma (HND), any HND plus one year's experience, or three years' experience in a job skilled to level 3 of the National Qualifications Framework (NQF). The prospective employer applied for the work permit to Work Permits (UK), which was part of the UKBA. The employer had to attest that the migrant worker would fill a genuine vacancy for an *additional* role being created in the UK, in order to ensure against the displacement of resident workers. Employers had to show that the role could not be filled from within the resident labour market (resident labour market test (RLMT)) and that the migrant would be paid the *going rate* (not just the minimum wage) for the job in the UK. Furthermore, within the work permit system a shortage occupation route allowed employers rapid access to foreign skills identified as being in short supply in the UK (MAC 2008).

2.1.2 Highly skilled migrant programme

While skills have always been important criteria for gaining entry to the UK as a labour migrant, the focus on skills has been further emphasised since the turn of the millennium.

A Labour government policy innovation during the early 2000s, which has received much attention, was the introduction of supply-side points-based schemes. With the Innovator scheme, introduced in the summer of 2000 and the Highly Skilled Migrant Programme (HSMP), introduced in December 2001, migrant workers gained access to the British labour market solely based on their skills.

The HSMP was a scheme for attracting highly skilled migrants without a specific job offer in the UK. Candidates had to reach 75 points based on the following attributes; qualifications; previous earnings; age; prior UK experience; and successful completion of an MBA programme from a specified list. The threshold for entry was eased over the years and numbers gaining entry grew from just over a 1,000 in 2002

⁶ 'Work permits' were granted if an immigrant was abroad and 'first permissions' were granted if the immigrant was already in the UK.

to over 17,000 in 2005. A HSM would be granted a year's leave and a three-year extension if they could show that they had taken all reasonable steps to become economically active in the UK. After four years they would be granted permanent residency if they could show that they were economically active. In the face of evidence of abuse of the programme, in 2006 the Government extended the required period of residence from four to five years and tightened the requirements for an extension of leave (Somerville 2007; MAC 2008).

2.1.3 The points-based system

In 2005, within the framework of the five-year strategy on immigration and asylum, the Labour Government launched a consultation on a more selective points-based system for immigration (Home Office 2005). The government aimed to create a system which would fulfil the following objectives: improve public confidence in the system; fill skills gaps; attract highly productive and highly skilled workers and students; attract investment and increase productivity and flexibility in the labour market; and ensure that people left at the end of their stay. In 2006, the Government published more detailed proposals in 'A Points Based System: Making Migration Work for Britain' (Home Office 2006). Explicitly based on the Australian points-based system, the key outcomes of the new system were to be better identifying and attracting of migrants who have most to contribute to the UK; a more efficient, transparent and objective application process; and improved compliance and reduced scope for abuse. The government also aimed to make the system simpler to use, as it had emerged that many users found the work permit system too complex and bureaucratic.

Between February 2008 and March 2009, the government rolled out the new PBS for admitting non-EEA workers and students, which was said to consolidate over 80 existing work and study routes into five main categories or 'tiers'. The criteria for admission under the various tiers have been the object of almost constant reform. I present the system as it was initially set out as well as the qualitative reforms made to it by the Labour government between 2008-10 and the current Coalition government.

- **Tier 1:** Highly skilled migrants to contribute to growth and productivity. The 'entrepreneurs' category must have at least £200,000 of disposable capital in a regulated financial institution; 'investors' must hold at least £1,000,000; 'graduate students' must have a qualification from a UK institution⁷. The 'general highly-skilled'⁸ are admitted on the basis of points for age, qualifications, previous earnings (weighted to reflect the distribution of salaries around the world) and previous work experience or qualifications gained in the UK, English language ability and maintenance requirements. This category replaced the Highly Skilled Migrants Programme. Entrants under this category have unlimited labour market access, and are allowed to bring dependents with them. After a two-year period, the points will be re-assessed and if the person has high earnings or a highly skilled job they will have their leave extended. For recent reforms to this category, see section 2.2 on quantitative selection below.
- **Tier 2:** medium and highly skilled workers with a job offer. This tier replaces the

⁷ This post-study route will cease to exist from April 2012 (see section 3.1.3).

⁸ This general route has been substituted with an 'exceptional talent' route in 2011 (see section 2.2).

work permit system and covers the majority of skilled migrants entering the UK. See the Tier 2 focus section below for details on this tier.

- **Tier 3:** Quota based low-skilled schemes for filling specific temporary labour shortages. This tier is currently suspended based on the view that A8 nationals currently meet demand. The schemes will only be with countries with which the UK has effective return arrangements. Two low skilled labour schemes, the seasonal agricultural workers scheme (SAWS) and the sector-based schemes (SBS) remain open to Romanian and Bulgarian migrants, who do not yet have unrestricted access to the UK labour market.
- **Tier 4:** Students, covering the period of study at a specified and registered institution in the UK.
- **Tier 5:** Youth mobility and temporary workers, permitted to work for a limited period of time, for primarily non-economic objectives. This covers the previous Working Holiday-Maker scheme, as well as the au pair scheme. These migrants gain entry for cultural, charitable, religious or international development reasons or to satisfy the UK's obligations under certain international treaties.

Employers are requested to meet certain conditions before hiring non-EEA workers. Employers and educational institutions must apply to a register of sponsors to acquire a certificate of sponsorship from the Home Office (except under tier 1, where immigrants do not gain admission for a specific job). Recognized sponsors are attributed either "A-rated" or "B-rated" sponsor status, based on their compliance with various reporting and record-keeping duties. Certificates can be withdrawn based on non-compliance. A-rated sponsors have the "full confidence" of the Home Office, while sponsors are B-rated based on evidence of abusing the system or not putting the correct systems in place. The B-rating is a temporary status while measures are put in place in order to gain full accreditation. Unlike the previous work permit system, the migrant, rather than the UK employer, applies to come to the UK. The sponsor issues the certificate of sponsorship to the migrant worker, who then makes an application via the points-based system.

To qualify for each tier, individuals must earn a given number of points. Points are awarded through different combinations of "attributes tests" such as English language, skills, qualifications, previous salary, age and a "control test" regarding the likelihood of compliance with conditions of leave, such as availability of funds, compliance with immigration conditions, and, for tiers 2-5, a recognized sponsor. For tiers 1 and 2, points are awarded on the basis of attributes and control tests, for tiers 3-5, points are solely based on control tests.

The UK PBS can be described as a hybrid demand-supply-led system. Tier 1 is supply-led, as applicants are not required to have a job offer in the UK. However, Tier 2, the largest route of entry is largely demand-based as a job offer is required and provides the most points. The other tiers are only nominally points-based (Murray 2011).

2.1.3.1 Tier 2

As the majority of non-EEA labour migrants are admitted through Tier 2, we are justified in focusing on it in a little more detail. Tier 2 was opened on the 27th of November 2008. The job had to be at NQF level 3 or equivalent or above and be paid at least the 'appropriate rate' that would be paid to a resident worker doing a similar job. Tier 2 migrants are entitled to three years leave in the UK, which can be

extended by two years if the migrant still meets requirements.

Points, with an overall pass mark of 70, are awarded for a sponsored job offer, prospective earnings (and qualifications or equivalents until April 2011), as well as the maintenance requirement and competence in English.

Before changes introduced in April 2011, Tier 2 had five routes: the shortage occupation route for skilled people coming to the UK for a specific job which is covered by the shortage occupation list; the RLMT; the intra-company transfer (ICT) route; the sportspeople route for elite sportspeople and coaches; and ministers of religion.

Table 1: The PBS Tier 2 before April 2011

PBS Tier 2 (certain routes) (2008 – April 2011)			
Section	Routes	Requirements: Qualifications (or equivalents)	Requirements: Prospective earnings (£)
A (50 points needed)	Offer of job in shortage occupation	No qualifications	17,000–19,999
	(50)	(0)	(5)
	Offer of job that passes RLMT	GCE A-level	20,000–21,999
	(30)	(5)	(10)
	Intra-company transfer	Bachelor's or master's	22,000–23,999
(30)	(10)	(15)	
		PhD	24,000 +
		(15)	(20)
B	Maintenance requirement (mandatory)	(10)	
C	Competence in English (mandatory)	(10)	

Source: MAC 2008

The points were calculated as follows until changes were introduced in April 2011 (see table 1). At least 50 points had to be obtained in part A of the table. Applicants entering by the shortage occupation route gained 50 points and with the 20 points from the mandatory requirements obtained the pass mark of 70 points. Thirty points were obtained for applying via the RLMT and ICT routes and it was necessary to gain another 20 points in part A through a combination of prospective earnings in the job and qualifications.

Both the maintenance and the competence in English requirements (10 points each) are mandatory for all routes within Tier 2. Applicants can prove their maintenance either by showing they have personal savings of £800, or by providing written confirmation that the sponsor will maintain and accommodate them until the end of the first month of their work in the UK.

Some qualitative changes have been made to Tier 2 by the current Coalition government in order to reduce the number of applicants; raising the job skill threshold to National Qualifications Framework (NQF) level 4, raising the language requirement for entry from basic to intermediate English and raising the minimum pay threshold to £20,000. Tier 2 is now divided into four routes: **Tier 2 general**, which includes the

shortage occupation list and the RLMT, **Intra-company transfer**, **Sportspeople** and **Ministers of Religion**. The main change is that the qualifications of the migrant are no longer assessed; only the skill level of the job, which must be at least NQF level 4 (which the government describes as 'graduate level', though graduate level is actually level 6 (Interview MAC)).

Table 2: PBS Tier 2 general after April 2011 changes

Attribute	Points available
Assigned a certificate of sponsorship, because: <ol style="list-style-type: none"> 1. the job has an annual salary of £150,000 or more; 2. the job is on the shortage occupation list; 3. your sponsor has completed a resident labour market test; 4. you are switching from a post-study category; 5. or you want to extend your stay and continue working in the same job for the same employer 	30
Appropriate salary and allowances: Minimum £20,000	20
English language ability	10
Maintenance (funds)	10

Source: UKBA website

The shortage occupation route is discussed further in section 2.1.3.3. The **RMLT** is the second largest channel within Tier 2 of the PBS after the ICT route. This route already existed under the work permit system. It is notable that the test was more stringent under the work permit system than it is under the PBS. Previously, the RLMT involved providing Work Permits (UK) with documentary evidence that no resident worker could be found for the vacancy, including details of the vacancy, the recruitment methods used to advertise the post, responses to advertisements, an explanation for why the resident workers who applied were deemed inappropriate,⁹ as well as showing how the requested foreign worker had the necessary skills and experience for the job. The job had to be advertised in English and in a publication that was available throughout the EEA, no more than six months before the work permit application was submitted. The process of attempting to recruit an EEA resident worker was to be given four weeks.

Within the PBS RMLT route, employers were initially required to advertise the vacancy for at least two weeks, at earnings levels deemed reasonable by the UKBA for that job. For jobs paying in excess of £40,000 the advertising period was reduced to a single week. In December 2009, the advertising period was increased to four weeks through the public employment services, Jobcentre Plus and through another channel as set out in a sector 'code of practice'. However, the sponsor must simply attest to the UKBA that the test has been conducted and does not need to show evidence unless s/he is the subject of an infrequent spot check.

Unlike under the work permit system, there is no requirement for employers to confirm that the **ICTs** have company-specific knowledge and experience required for the post on offer that could not be provided by a resident worker. The requirement for six months' previous employment with the company is held by the UKBA to be a proxy for this. In response to complaints that the ICT route accounts for most entrants

⁹ Resident workers could only be judged on the basis of the skills requested in the advertisement.

within Tier 2 due to the relatively lax restrictions, the Coalition government has introduced a new minimum salary of £40,000 for firms using ICTs for more than a year. Staff earning at least £24,000 will still be able to come for up to 12 months.

Tier 2 differs from the old work permit system in various ways, in particular the inclusion of English language competence, the role of the MAC in defining shortage occupations and the easing of the ICT and RLMT routes (House of Lords 2008).

2.1.3.2 Setting qualitative criteria

The initial criteria for the PBS were set by the Home Office in 2006 based on informal and formal consultation processes. The formal consultation began in July 2005 and government's detailed proposals came out in March 2006 (Home Office 2006). Under the work permit system; the shortage occupation list was put together by Work Permits (UK) based on evidence from various stakeholders including sector skills councils, trade unions and government departments (MAC 2008).

As noted above, in June 2007, the government established the MAC, an independent advisory committee of five economists headed by Professor David Metcalf, Emeritus Professor of the London School of Economics. The MAC was to some extent modelled on the Low Pay Commission, which makes recommendations to government on the minimum wage level (Interview MAC). The MAC includes a representative from the UK Commission on Employment and Skills (UKCES) and the UKBA and has a permanent secretariat. The MAC was set up to provide 'transparent, independent and evidence-based advice to the Government on where shortages of skilled labour can sensibly be filled by immigration from outside the EEA' (MAC 2008 p.11). Despite the Conservative Party's 'bonfire of the quangos', the remit of the MAC has continued to be expanded by the Coalition government. The MAC's remit is now rather broad; for example, over the past four years, the committee has been asked to assess the economic impact of dependents, whether to abolish the Worker Registration Scheme for A8 migrants and what the limits should be on non-EEA skilled worker inflows.

The MAC is generally given three to six months to respond to government questions and its response is generally based on academic research and a formal consultation process. The government decides whether or not to take on board MAC recommendations; however, the majority have been adopted. The consultation documents and recommendations are all available to the public on line; which makes the process transparent. The economic rationale used by the MAC in making recommendations, makes for clear, apparently unbiased, arguments.

The MAC does not work in isolation, however members underline its independence from political influence. The MAC secretariat is physically based within the Home Office building and informal discussions between Minister, Home Secretary, Home Office officials, MAC economists and officials regularly take place. The House of Commons HAC investigated the independence of the MAC in July 2009. The main focus was on whether the committee came under any political pressure from government to make particular recommendations. Professor Metcalf and the then Minister for Borders and Immigration, Phil Whoolas MP, were adamant that no such political pressure was placed on them (Home Affairs Committee 2009).

The Migration Impacts Forum (MIF) set up by the Labour government to focus on the impact of immigration on local communities and public services, in particular on crime and housing, failed to institutionalise itself. It did not meet after June 2009 and has been disbanded by the Coalition government.

2.1.3.3 Producing the shortage occupation list

The MAC's remit as regards the shortage occupation list is to: "Produce shortage occupation lists for UK and Scotland only (Tier 2 skilled employment). These lists comprise occupations where, in the MAC's view, there are shortages which can sensibly be filled by enabling employers to recruit migrants" (MAC 2008, p.11). While the HO/UKBA lists focused on particular sectors (namely health, engineering and education) the MAC analyses the entire labour market. The first MAC output was a list of occupations to be placed on the shortage occupation list in September 2008. The list is reviewed at six monthly intervals.

The MAC uses a three-stage approach in drawing up the shortage lists. First they determine whether particular occupations or categories of jobs are sufficiently skilled to be included on the lists. Second they assess whether these occupations are experiencing a shortage. Third, they consider whether it is sensible to fill these shortages with non-EEA workers. The MAC uses both 'top-down' quantitative national-level data and qualitative 'bottom-up' evidence relating to particular jobs or sectors from individual employers and sectoral/occupational representatives. The qualitative evidence is based on formal calls for evidence, visits across the UK, working with Sector Skills Councils and Sector Advisory Panels and a formal Stakeholder Panel and larger Stakeholder Forum.

The decision not to produce shortage lists by region and country, apart from the Scotland list, is based on the view that it would not be 'sensible' to fill vacancies with immigrants if there are people in the UK who could fill jobs in another region/country.

There are no universal definitions of 'skill' or 'shortage'. In order to determine whether jobs are skilled to the level required for entry under Tier 2, the MAC looks at qualifications held by people in an occupation, average earnings and the skill level within the UK Standard Occupation Classification (SOC) 2000. Qualitative indicators of skill include on-the-job training and experience and innate ability to carry out a job to the required level. The MAC esteems that an occupation is skilled if at least two 'top down' criteria are satisfied, while the bottom up analysis gives some leeway for specialised skilled jobs in less skilled occupations.

As regards identifying shortages, the MAC bases its method on those used in other English-speaking states: the US, Canada, Australia and New Zealand. Four sets of quantitative indicators are used: employer-based indicators (e.g. reports of shortage from skill surveys); price-based indicators (e.g. Relatively rapid earnings growth); volume-based indicators (e.g. employment or unemployment); and other indicators of imbalance based on administrative data (e.g. vacancies or vacancy/unemployment ratios). If an occupation passes the threshold on 50 per cent or more of the indicators, the MAC considers there to be particularly strong evidence of a shortage. In the first shortage occupation list analysis carried out by the MAC, twenty out of 192 skilled occupations do this. The bottom up evidence considers qualitative evidence on the same indicators (earnings, employment etc.)

Finally, the concept of 'sensible' is based on general government policy objectives, including raising the productivity of the UK economy, improving the skills of the population and ensuring controlled, fair immigration that protects the public and contributes to economic growth. The MAC assert that their approach is to consider each case with reference to four lines of enquiry:

- 1) What are the feasible alternatives to employing immigrants and have employers explored them fully?

- 2) Are there enough UK resident workers in training/education to fill shortages and will bringing in immigrants reduce employers' incentives to invest in upskilling UK workers?
- 3) How will the employment of immigrants affect investment, innovation and productivity growth?
- 4) How will our decision affect the wider UK labour market and economy, in particular, in terms of employment opportunities and conditions of the UK workforce?

As regards the first line of inquiry, the MAC investigates whether employers have looked at other options before resorting to migrant workers in particular, whether they have raised wages and improved working conditions to attract more UK resident workers, whether they have changed production processes to make it more labour intensive and whether they have trained or upskilled the existing/potential workforce. It is underlined that not all options are feasible at all times and that the economic and regulatory environment can make certain responses to labour shortages difficult; for example public budgets can limit wage increases.

As regards the second line of enquiry, the MAC considers three situations: first, it is deemed sensible to bring in migrant workers when employers have invested adequately in training and upskilling for some time and the scope for further training is limited; second, a temporary opening to immigration is justified when an employer may have recently invested in training and upskilling but the skills are not yet out on the market due to long training periods; third, when employers have not invested sufficiently in training or upskilling, the MAC would be 'cautious' about placing an occupation on the list.

Two key assumptions for the third line of inquiry are that: decreased productivity may indicate that it is sensible to bring in immigrants as skilled immigrants bring new ideas, generate dynamic effects, and/or complement the introduction of new technology, but low productivity could imply scope to substitute labour with capital; the employment of immigrants may support international competitiveness of certain sectors through their skills and innovation, but it would not be sensible to bring in immigrants to maintain competitiveness only because of their willingness to accept lower pay. Finally, the fourth line of enquiry includes an investigation into the impact of immigration on wages and employment and the public service impacts of labour shortages.

The analysis of when it is sensible to bring in non-EEA migrant workers mainly relies on bottom up evidence. Quantitative indicators include shares of non-EEA immigrants already employed in an occupation and the percentage of the workforce in receipt of training. The MAC does not look at the implications migration has for immigrants and their countries of origin, the social impacts of immigration and the national security implications of immigrants working in sensitive areas.

The inherent complexity of assessing 'legitimate' demand for migrant workers is manifested by the weaknesses of the MAC method of analysis, as in general it is an extremely well articulated attempt at rigorously examining the question. First, few jobs pass all the quantitative criteria to be placed on the list and as a result the MAC decisions tend to be based on qualitative evidence, as demonstrated by the case of doctors and dentists in the September 2008 recommendations: "Overall, the available data relating to medical professionals and to dental practitioners were of uneven quality and sometimes contradictory. We were concerned that decisions taken on incomplete or partial evidence may be harmful to the health of the nation. We therefore had further discussions with both NHS Employers and the Workforce

Review Team about their evidence, and for some job titles we spoke to the relevant Royal Colleges. As a result of these additional conversations, we accepted some, but not all, of the job titles put to us as being in shortage” (MAC 2008 p.152). Second, the indicators used for the sensible analysis are of varying clarity. The first two lines of inquiry are better articulated and the indicators are more straightforward. Nevertheless, one of the indicators for the first line of inquiry on employers use of alternatives is not very useful; current use of immigrants - ‘High use of immigrants may mean it is difficult to respond to shortage in other ways, but may also mean employers are not doing enough to up-skill UK resident workers’ (MAC 2008 p.142). The MAC does not explain how it decides which is the case in any given study. The indicators used for the second two lines of inquiry appear somewhat *ad hoc* and some of them are questionably simplistic for example; ‘Decreased productivity may indicate that it is sensible to bring in immigrants’ (MAC 2008 p.143). Furthermore, the sensible test is of limited weight; only a handful of occupations are kept off the list if they pass on skill and on shortage (Interview MAC).

Finally, it is notable that despite the PBS emphasis on skill and the fact that Tier 3 has been suspended; relatively low-skilled non-EEA workers have had access to the UK labour market via the shortage occupation route in Tier 2 (Murray 2011). Senior care workers and chefs were on the shortage occupation list until recently (top chefs are still on the list) and moreover they represented a significant share of inflows through that route. The inclusion of care workers on the list was due to the fact that their exclusion may necessitate increasing public expenditure in order to raise wages to attract the resident workforce. Indeed, as the House of Commons HAC asserted in 2009, the shortage occupation list has included occupations, which are in shortage due to structural deficits rather than temporary mismatches (Home Affairs Committee 2009). Furthermore, the minimum wage levels for Tier 2 entry are relatively low (Interview MAC).

2.2 Quantitative limits

The UKBA consultation on the ‘Limits on Non-EU Economic Migration: A Consultation’, published at the end of June 2010 asserted that the government’s aim was to reduce net migration to the “tens of thousands, not hundreds of thousands” during this Parliament. The target of tens of thousands is based on the level of immigration in the 1990s, prior to when Labour were in office. The government has explicitly based its new quantitative approach to immigration on policy in Australia, Canada and the US (Murray 2011).

Restrictions on intra-EU mobility, family and asylum migration as well as ICTs are constrained by EU membership, human rights law and international treaty obligations. Furthermore, non-EEA labour and student inflows are not easily reduced due to influential interests, namely employers and educational institutions. The government is focusing on restricting three inflow channels for non-EEA nationals - work, study and family - and increasing outflows of non-EEA nationals by taking away the automatic right to settle in the UK for those resident for more than five years.

As regards non-EEA labour immigration, the coalition government introduced an interim cap in July 2010 of just over 24,000 until April 2011 - a reduction of 5 per cent on the previous year - and asked the MAC “at what levels should limits on Tier 1 and Tier 2 of the Points Based System be set for their first full year of operation in 2011/12, in order to contribute to achieving the Government’s aim of reducing net migration to an annual level of tens of thousands by the end of this Parliament, and

taking into account social and public service impacts as well as economic impacts?” (MAC 2010 p.7). In their report, published in November 2010, the MAC provided a general analysis of the impact of labour immigration - not Tier 1 and Tier migrants, on which there is no data - on the UK economy, society and public services.¹⁰ This analysis did not appear to be directly related to the calculation of the figure for the cap, which was based on the 'tens of thousands' target. As students accounted for around 60 per cent of non-EEA immigration in 2009 and the work and family routes accounted for approximately 20 per cent each, the MAC recommended a proportionate cut in numbers; for Tier 1 and Tier 2 a limit somewhere in the 37,400 to 43,700 range.

However, government set the cap at 21,700 – 20,700 for Tier 2 and 1,000 for Tier 1 - far below the MAC recommendation. This annual cap on Tier 1 and Tier 2 entries came into operation in April 2011. ICTs are not subject to the cap, despite the MAC recommendation to the contrary, due to the employer lobby, in particular MNCs, and diplomatic pressure from the Indian and Japanese governments (Interview MAC). The government also decided to close Tier 1 (General) category and limit the Tier to investors, entrepreneurs, and people of “exceptional talent.” The exceptional talent route is capped at 1,000, while investors and entrepreneurs will not be capped. Business had made it clear in the UKBA consultation that they were in the main interested in Tier 2 and government further justified the closure of Tier 1 general by referring to a UKBA survey of some Tier 1 migrants applying for family reunion in June 2010, which argued that about a third of Tier 1 migrants are employed in low skilled jobs (Interview HO).¹¹ The Tier 2 limit will not apply those who apply from within the UK (in-country applicants), dependents or to the sportspeople and ministers of religion routes. Those who will earn over £150,000 per annum are also excluded from the cap. Tier 2 permits are issued on a monthly basis. If a month's allocation is oversubscribed, the government will use a ranking system to determine which applicants receive a permit, based around the shortage list, qualifications and prospective earnings.

The cap on Tier 1 and Tier 2 entries is expected to reduce net migration by 6,000 or less than 3 per cent compared with 2010. The cap is thus largely a political message and as we will see below has had a limited impact on labour immigration.

2.3 Duration of stay and employment and seasonal labour schemes

The PBS system is explicitly biased towards skilled migrants as the low skilled (tiers 3 and 5) are only allowed to stay temporarily (a maximum of 12 months for tier 3 and 24 months for tier 5) and cannot switch between tiers. Tier 1 and 2 migrants have immediate rights to family reunion and access to permanent residence or citizenship after 5 years. Tier 3 and 5 migrants have no right to family reunion (with some exceptions under Tier 5). Following five continuous years residence in the UK, an immigrant can apply for permanent residency; a grant of indefinite leave to remain, which secures the right to stay in the UK without being subject to immigration

¹⁰ The analysis took into account the impact on Gross GDP and GDP per capita, inflation, pay, employment, net fiscal contribution, provision and consumption of public services, housing market, crime, congestion, social cohesion and population.

¹¹ A MAC survey of December 2009 found that 90 per cent of entrants via the Tier 1 general route were in employment and 90 per cent of these were in highly skilled work MAC (2009). Analysis of Points Based System Tier 1. Croydon, Migration Advisory Committee.

controls. The same entitlements apply to the dependants of PBS immigrants.

The coalition government has moved to increase migrant outflows by restricting settlement rights. First, settlement rights for those entering via the ICT route were abolished and then the MAC was commissioned in June 2011 to identify economic criteria for determining which Tier 2 migrant workers could settle permanently in the UK and what the economic effects of restricting or removing Tier 1 or Tier 2 settlement rights would be. The MAC published a report on the 4th of November 2011 suggesting a minimum annual pay threshold for settlement between £31,000 and £49,000 per year. The MAC recommended a limited number of exceptions to this rule including some public sector jobs and roles in the technology sector (MAC 2011).

While the Labour government put most rhetorical emphasis on facilitating skilled migration, low-skill routes were expanded during this period. For example, the government expanded the Seasonal Agricultural Workers Scheme (SAWS). This scheme was introduced after the Second World War to bring in additional workers at harvest time. Participants are mainly students who are granted a permit to work on a farm for six months. Numbers are limited by a quota, which grew from 10,000 in the 1990s to a peak of 25,000 in 2003. Following the 2004 EU enlargement, the quota was reduced to 16,250 and the scheme was restricted to Romanian and Bulgarian nationals.

The Labour government also expanded the Working Holidaymakers programme and a new quota based scheme, called Sector Based Schemes (SBS), for temporary workers in specific occupations in the food processing and hospitality sectors, was introduced with the 2003 budget. The SBS has been restricted to Romanian and Bulgarian nationals for employment in the food processing industry (Somerville 2007; MAC 2008).

2.4 Recruitment

Apart from the 1,000 entries under the 'exceptional talent' route of Tier 1, non-EEA labour migrants enter the UK on the basis of a job offer. Recruitment takes place in countries of origin and in the UK. Most migrants are recruited abroad, though over one-third of certificates of sponsorship used under Tier 2 have been for immigrants already in the UK. In-country applicants include those with an existing work permit applying to extend their stay, as well as those who are switching from a post-study category. In country applications (i.e. applications from non-EEA migrants already resident in the UK) are not subject to the constraints of the cap. A high proportion of those applying from abroad are ICTs (MAC 2009). There is no requirement for employers to recruit via public or private intermediaries and agencies cannot act as sponsors. The role of private agencies depends on the sector and occupation. For example, while the recruitment of doctors for the UK's National Health System (NHS) is centrally coordinated by the Department of Health and recruitment specialists play a limited role (as many doctors draw on personal contacts and the examination and registration process is clear), NHS trusts and the private health sector often use recruitment agencies in sourcing nurses (Bach 2008).

2.5 International cooperation in labour immigration management

The UK government is not a member of the Schengen Area and negotiated an “opt in” arrangement for all areas of cooperation on borders, immigration and asylum under the 1997 Amsterdam Treaty. While the UK seeks cooperation in the control of undocumented immigration and asylum system harmonisation, the policy has been to protect national sovereignty in the area of labour immigration management and integration.

UK governments have shown interest in developing FRONTEX, as well as the Rapid Border Intervention Teams and have been involved in maritime patrols in the Mediterranean and schemes to combat trafficking and illegal border crossing. The UK has opted in to the asylum and temporary protection conventions and directives as it is considered that better standards in other countries this will result in a reduction of inflows to the UK. Moreover, multilateral policy learning is evidenced by the simultaneous adoption of control measures such carrier sanctions and safe third country concepts in the UK and other EU member states.

Based on a concern with maintaining control over its borders, the UK has opted out of any measures on legal immigration (Boswell 2008; Menz 2009). As a result, EU policy-making in this area is not on the radar of UK policymakers and stakeholders. The Conservative Party has a strong anti-EU element, which may use the current negative public sentiment towards A8 immigration – which cannot be restricted by the UK government - to further their cause of exiting from the EU (Interview HL1).

UK labour migration policy is in the main not based on bilateral agreements with source countries. However, Tier 3 of the PBS, which is currently suspended, will allow for temporary low-skilled labour migration from source countries which have signed return agreements with the UK; this is a similar policy to the Italian one, which offers labour migration entry quotas to key source countries on the condition that they readmit undocumented migrants. Another programme, which is based on international agreements, is the Youth Mobility Scheme within Tier 5. This scheme replaces the Working Holiday scheme and is for young people from participating countries who would like to come and experience life in the UK. The countries currently involved in the scheme are Australia, Canada, Japan, New Zealand and Monaco; “low risk” countries, with which the UK has return agreements and which offer the UK a similar scheme (Interview HO).

The General Agreement on Trade in Services (GATS) is the first binding multilateral trade agreement to explicitly address the movement of persons. GATS Mode 4 service suppliers gain entry for a specific purpose, are normally confined to one sector and are temporary. Mode 4 commitments have priority in any national labour migration considerations. A EU/India Free Trade Agreement is currently being negotiated, with an agreement expected in December and the key aspect demanded by India is ‘Mode 4’. The UK is expected to be the main recipient of Indian mode 4 migrants, about 25,000 out of a total of about Indian 40,000 ICTs who will be able to come to Europe. This has caused a certain tension between government aims of promoting UK trade interests and reducing levels of immigration (Interviews HO, MAC, TUC).

2.6 Quantitative and qualitative outcomes of labour immigration policy

There are no pre-defined performance indicators for the PBS. In terms of realising the vision of economically useful immigration, first emphatically promoted by the Labour government of Tony Blair in the late 1990s, we can say that effectively, there has been a rise in the proportion of skilled workers and students. The number of work permits and first permissions issued between 1995 and 2005 more than tripled. Work related migration grew from 18.2 per cent in 1995 to 24.7 per cent in 2004 (Somerville 2007). Of course, it is hard to determine the relative influence of labour migration policy reform and strong economic growth levels during this period. Over recent years, the largest proportion of non-EEA inflows enter the UK through the study route (MAC 2010).

As noted above, in a recent survey of Tier 1 entrants, the MAC maintained that it had achieved good returns. At least 90 per cent of them were employed in 2009 and 90 per cent of the jobs were highly skilled. Those using the post-study route (since closed by the coalition government) had less positive labour market outcomes as 7 per cent of them were employed in elementary occupations and 15 per cent in mid-ranking sales jobs. It is of course possible that these were intermediate jobs while the graduates were looking for jobs more suited to their qualifications (MAC 2009).

Management information from the work permit system and PBS provide limited information on trends over time, however, the MAC underlines that as the PBS is a new system, we should be cautious in interpreting data too early. There are two types of management data: information on leave to enter and remain which, however, does not record information on labour market participation; and certificates of sponsorship issued by employers to migrants (which do not record whether applications have been approved), that contain information on the jobs into which migrants are recruited.

ICTs accounted for 60 per cent of applications under Tier 2 between November 2008 and May 2009. The RLMT accounted for 32 per cent, while shortage occupations accounted for just 8 per cent. These proportions are broadly equivalent to those under the previous work permit system. The information and communication sector is the main user of Tier 2 and is particularly dependent on ICTs, largely from India. The health and social work sector is the main user of the RLMT route. The second largest user of the RLMT is the education sector. About 7,500 certificates of sponsorship were used by IT software professionals, over three times the number for nurses, the next highest occupation. The MAC maintains that prospective earnings are “relatively high”. Median earnings under Tier 2 are £35,500 per annum. However, prospective earnings for jobs under the ICT route are considerably higher than those under the RLMT and shortage routes; the latter having a median earnings of £25,000. India has become the main country of origin of non-EEA labour migrants to the UK over the past 15 years. In 1995 about a third of work permits and first permissions went to US citizens, with Japan, India, Australia and New Zealand all under 10 per cent. By 2008, migrant workers from India represented 41.5 per cent of the total and those from the US just 13.7 per cent (Balch 2010). Just under 70 per cent of ICTs are Indian. India is also the largest country of applicants for the RLMT and shortage occupation routes, although it accounts for less than a quarter of immigrants under both. For the RLMT and shortage routes, there are significant numbers from the Philippines, Australia, China, South Africa, Zimbabwe and Pakistan (MAC 2009). In general, nearly half of non-EEA nationals coming to work in the UK

come for periods of less than a year. US nationals predominate among those coming for less than 12 months, while Indians are the most common nationality among those staying for over 12 months (MAC 2008).

The cap on some Tier 1 and Tier 2 routes introduced in April 2011 has been substantially undersubscribed. In the first five months of the cap, which releases Certificates of Sponsorship (CoS) to employers of non-EEA workers on a monthly basis, a total of 10,200 certificates were made available, but only 4,323 were applied for by employers. As the Migration Observatory asserts, it is important to note that the cap for Tier 2 (20,700) is greater than the number of certificates issued under Tier 2 (excluding ICTs) in 2009 as the reductions in numbers were achieved through significantly reducing entry under Tier 1. The under-subscription may be to some extent caused by the increased qualitative restrictions imposed, for example, an increase in English language requirements under Tier 2. The occupations that became ineligible included senior social care workers and most chefs and these were the two occupations that used to take up significant numbers of CoS. The list of occupations on the shortage occupation list was also reduced in September 2011. The lower than expected subscription is apparently not related to the fact that ICTs are exempt from the cap as numbers of out-of-country visas issued for ICTs has been relatively stable since the cap was introduced (Migration Observatory 2011).

An unexpected outcome of the PBS system is that despite the fact that women represent a majority in the UK workforce, a large majority of Tier 1 and Tier 2 entrants are men. In fact, two-thirds of Tier 1 and 78 per cent of Tier 2 applicants are male. This is undoubtedly a reflection of the fact that the main users of the PBS, such as the IT sector, are male dominated (Murray 2011).

3. FUNCTIONAL EQUIVALENTS AND ALTERNATIVES TO FOREIGN MIGRANT LABOUR ADMISSION

3.1 Functional Equivalents

3.1.1 A8 workers

A8 workers have been the main 'functional equivalent' to non-EEA low-skilled labour migrants in the UK since 2004. In the context of sustained economic growth in the early 2000s, it was decided to source low-skilled labour needs from within the expanding EU. This choice was very much in keeping with UK labour immigration policy, which has traditionally favoured European immigration. The UK, Ireland and Sweden were the only EU member states to grant immediate labour market access to nationals of the A8 on their accession to the EU on 1 May 2004. The UK and Ireland received a disproportionate number of A8 migrants, partly due to their flexible labour markets and proliferation of low-paid, low-skilled employment (Tamas and Münz 2006; Devitt 2010).

A8 nationals can work in any occupation in the UK. They are simply requested to register with the Workers Registration Scheme (WRS), which was introduced in the UK as a transitional measure, which monitors A8 nationals' access to the UK labour market. The registration scheme collects information about A8 migrants' employment in the UK until 12 months of continuous employment have elapsed. The A8 migrant must pay a one-off registration fee.

As noted above, the numbers of A8 migrants entering the UK following accession was far greater than expected. A total of 1.24 million National Insurance

numbers were allocated to A8 nationals between April 2004 and September 2008. The evidence tends to suggest that A8 migrants often stay in the UK for a temporary period before returning home. They are generally young, educated and are gainfully employed in the UK. Indeed, they have higher employment rates than UK-born workers.

A8 workers have filled low-skilled labour shortages (as well as taking up newly created jobs in the expanding economy) and are often over-qualified for the work they engage in. Over three-quarters of A8 migrants are employed in lower skill occupations, compared to less than half of UK born workers and other immigrants. They are mainly employed in elementary occupations and process, plant and machine operative occupations. The main sectors of employment for workers registering with the WRS in 2008 were hospitality and catering, agriculture, manufacturing and food processing. A8 migrants are distributed across the country in both urban and rural settings; they are disproportionately resident in areas like Wash and Herefordshire (Anderson, Ruhs et al. 2006).

Member states could only maintain transitional measures beyond the 1st of May 2009 (five years following the 2004 accession) if they could demonstrate that their removal could generate or exacerbate a serious disturbance to the domestic labour market. On the basis of a MAC recommendation, the UK government chose to retain the Workers' Registration Scheme (MAC 2009). Labour Force Survey (LFS) data suggests that the stock of A8 citizens decreased slightly towards the end of 2009, but began to increase again during the second quarter of 2010 (Vargas-Silva 2011).

UK governments took a different stance on the accession of Romania and Bulgaria to the EU in 2007; transitional arrangements were placed on the access of nationals from these states to the UK labour market, based on the fact that larger than expected numbers had arrived from the A8 and a decline in demand for low-skilled labour (Interview MAC). Romanian and Bulgarian nationals are, however, prioritised in terms of sourcing additional temporary low-skilled labour in the agricultural and food-processing sectors as discussed above in section 2.1.4.

3.1.2 Family migrants

The number of work permit holders given leave to enter the UK in 2006 was 97,000. The total number of National Insurance numbers issued to foreign nationals from outside the EEA in the same year was 289,000. The difference between the work permit numbers and National Insurance numbers is explained by the fact that the latter covers workers on the Highly Skilled Migrant Programme (new Tier 1), the self-employed, working holidaymakers, students working part-time and dependants of migrants eligible to work without a permit, among other non-economic migrant categories (MAC 2008). This data shows the importance of 'functional equivalents' to labour migrants in the UK, indeed, a larger number of non-EEA migrant workers enter via non-labour migrant routes than the work permit channel.

An important source of functional equivalents to non-EEA labour immigrants are non-EEA labour migrants' spouses/partners. Allowing the employment of PBS migrants' spouses/partners provides employers with additional labour and reduces demand for an opening of Tier 3 of the PBS for temporary low-skilled workers.

Dependants (children, spouses, civil partners, same-sex partners, and unmarried partners) can participate in the labour market provided that the PBS

immigrant has been granted more than 12 months' permission to stay in the UK. However, there is a prohibition on undertaking employment as a doctor in training and family members of Tier 4 immigrants granted less than 12 months' leave to enter or remain are not allowed to work.

There is a lack of data on dependants' participation in the UK labour market. According to Control of Immigration statistics, in 2007, 37,700 dependants of work permit holders were admitted to the UK, while 86,300 entered with a work permit. The majority of dependants were connected to permit holders from wealthier countries. Most dependants have come through Tier 1 and 2 of the PBS, in particular Tier 1 general and Tier 2. According to the 2008 Q1 ad hoc LFS module, in the second quarter of 2008, 27.3 per cent of the total immigrant stock had entered the UK in the previous five years to join a family or spouse; a larger percentage than those entering for work or study or any other reason. Between 80 per cent and 92 per cent of Tier 1 and Tier 2 dependent spouses/partners are female.

The MAC maintains that LFS data on qualifications held by immigrants are highly unreliable. Based on this data, it appears that 17 per cent of spouses/partners have a bachelor's degree and over 50 per cent of spouses/partners maintain that they have 'other qualifications' (i.e. Not phd, master's, bachelor's, A levels, NVQ3). Equally, the evidence on spouses/partners' jobs is weak. It appears that the employment rates of spouses/partners falls following migration to the UK. LFS data record that 59 per cent of spouses/ partners were employed, while 33 per cent of spouses/partners were inactive and 9 per cent were seeking work. 81 per cent of spouses/partners were employed in unskilled occupations, compared with 38 per cent of principal immigrants and 26.8 per cent were employed in personal service jobs.

In the context of rising concern regarding unemployment and displacement of resident workers with migrant workers, the MAC was asked to assess the economic contribution made by the dependants of PBS migrants and their role in the labour market in February 2009. In its report in August of that year, the MAC maintained that there was no reason to conclude that greater restrictions on working rights for dependants would lead to improved outcomes, either for UK workers or for the UK economy (MAC 2009).

3.1.3 Foreign students

Since around 2007, student migration has constituted the largest category of migration to the UK. Foreign students are another source of labour in the UK, which is effectively a functional equivalent to labour migrants. However, a smaller proportion of them participate in the labour market than family migrants. Note that asylum-seekers do not have access to the labour market in the UK.

According to LFS data, only about 1 in 4 foreign-born students (both EU and non-EU nationals) have paid employment. This percentage has not increased over the past 15 years; the figure has been between 22 per cent and 29 per cent since 1995 (observatory on students). It is important to note, however, that LFS data probably undercount students, especially those living in dormitories and other communal dwellings.

In 2009, 75 per cent (156,000) of student inflows were from outside the EU and over the past few years there have been sharp increases in inflows from the Indian sub-continent and the Middle-East and rest of Asia. Just over half are male. Over half are in universities with another 40 per cent in Higher Education or Further

Education institutions. Only 7 per cent are in English language schools (Blinder 2011).

Concerns over abuse of the system prompted the Labour Government to introduce a number of changes, including restricting the work rights of students on courses below degree level and raising the minimum level of English language study permitted under Tier 4. Without seeking the approval of UKBA, students on a course at or above NQF 6/QCF 6/SCQF 9 at a UK higher education institution, or a short-term study abroad degree programme at an overseas higher education institution, are allowed to work for up to 20 hours per week during term time and work full-time during vacations, while those on a course below this level at a UK higher education institution or publicly funded further education college are allowed to work for up to 10 hours per week during term time and work full-time during vacations. Students are not allowed to work in the UK if they are studying with an education provider that is not a UK higher education institution or a publicly funded further education college (unless they are on a short-term study abroad degree programme at an overseas higher education institution). However, the 2009 LFS suggests that there is significant working in breach. For those studying below degree level, 53 per cent reported working more than 21 hours per week (UKBA 2010).

In March 2011, following a public consultation on the student immigration system, the Government announced that the Tier 1 (Post-study Work) visa category would close from April 2012. The Post-study Work visa enables foreign students to remain in the UK for up to two years after obtaining a UK degree. If they find skilled or highly skilled work during the two years they can 'switch' into Tier 1 or Tier 2 of the points-based system, which can lead to permanent settlement. After April 2012 international graduates will only be able to remain in the UK by 'switching' into Tier 2 of the points-based system or if they have a strong business proposition (under new provisions for 'student entrepreneurs').

3.1.4 Undocumented foreign labour

Estimates for the irregular migrant population in the UK range between 417,000 and 863,000; comparatively high figures in terms of Western Europe. London is argued to be home to a large proportion of the total (Somerville, Sriskandarajah et al. 2009; Vollmer 2011). Migration scholars often argue that irregular foreign workers are a functional substitute to legal labour immigration as they represent cheap, vulnerable labour and allow governments to give the impression of an apparently restrictive labour immigration policy (Guiraudon and Joppke 2001). However, the political attitude towards undocumented migrant labour has become less tolerant over the past decade in response to security and human rights concerns. Regarding the latter, the death of twenty-three Chinese cockle pickers in Morecambe Bay in February 2004 was a key focusing event which emphasised the need to create channels for safe legal labour immigration – namely providing access to workers from the A8 – and to enforce controls on undocumented immigration. Indeed, the level of interest in contrasting undocumented immigration and the employment of undocumented migrants is in stark contrast to attempts to reduce illegal work in general (Scott 2007; Ruhs and Anderson 2008).

Despite the fact that the majority of irregular migrants in the UK are visa overstayers, the UK has traditionally emphasised border control in contrasting undocumented immigration, as opposed to internal controls. In the general context of an increasing focus on security threats in the aftermath of September the 11th 2001,

there has been significant investment in 'smarter' border controls, which attempt to identify suspect entrants without disrupting the travel of tourists and business visitors. New e-borders and biometric technologies have been put in place to detect risky prospective entrants as early as possible. This 'smart' control has influenced internal control. Biometric identity cards for non-EEA nationals working in the UK for six months or more have been rolled out from 2008 onwards in order to aid employers and the authorities in checking residence and work status (Boswell 2008). Indeed, the new internal control policies include the new enforcement role for employers within the PBS. As sponsors, employers are obliged to keep records of their migrant workers and inform the UKBA if the latter do not turn up for work or even if they change their mobile number. The UK has also increased the penalties for employing undocumented migrants; with fines of £5,000 per illegal employee. Enforcement appears to have been reinforced. Between 2001-2005 there were court proceedings against just 43 employers, of which only 24 were found guilty, while 91 firms received civil penalties in the six months up to September 2008 (Somerville, Sriskandarajah et al. 2009).

NGOS such as the Joint Council for the Welfare of Immigrants have campaigned for an amnesty for irregular migrants in the UK, however, UK governments do not support the idea of regularising undocumented migrants, based on the assumption that amnesties incentivise further undocumented immigration (Interview HO). In 2003 Labour Home Secretary David Blunkett briefly discussed introducing a form of "earned regularization", whereby immigrants could be regularised if they met certain conditions on length of stay, contribution to the economy and absence of any criminal offences or welfare abuse. In the main, however, the Conservative and Labour parties are against the idea of regularisation while the Liberal Democrat Party is generally the most open to it. At the same time, the government has regularized between 60,000 to 100,000 people over the past decade by means of administrative changes and ad hoc decisions. Those regularized have tended to be in the country for 13 years or more (seven if in a family), and are often failed asylum seekers (Boswell 2008; Somerville, Sriskandarajah et al. 2009).

3.2 Functional Alternatives

The main functional alternative to labour immigration discussed in the UK is the training and up skilling of the resident labour force in order to provide employers with the skills they need and reduce demand for foreign skills. Other alternatives, in particular raising wages and improving working conditions, are less emphasised in the public debate. The focus on skills can be explained by growing concern about human capital competitiveness in the UK over the past thirty years. The relative unattractiveness of the alternative of improving employment conditions is due to the fear that doing so would reduce profits, employment growth and competitiveness; an unappealing idea to the economic liberals who dominate the UK political arena.

From the late 1970s, British governments have stressed the key role for vocational education and training in securing the country's competitiveness. Public investment in education had traditionally been limited and general education was long favoured over vocational. The focus on human capital competitiveness has grown since the turn of the millennium; manifested by historic increases in expenditure (Devitt 2010). Since the late 1990s, within the broad consensus on the need to improve human capital competitiveness lay a growing focus on competing for the 'best and brightest' migrant workers. However, as numbers of migrant workers

grew over the past decade, concern about a reduction in opportunities for the resident labour force led to a political emphasis on producing the skills needed by employers within the UK rather than importing them. This emphasis developed as the approach to immigration shifted from positive to negative from around 2007-8. The restrictions imposed on recruiting non-EEA foreign workers from 2010 have given further impulse to efforts to produce skills domestically.

The UK has among the highest proportions of foreign-born among employed professionals and associate professionals across sectors in Western Europe (OECD 2007). As noted above, despite a positive consensus regarding labour immigration, in particular skilled labour immigration, among most relevant actors in the context of low unemployment rates between the late 1990s and 2004, concerns were catalyzed by the size of migrant worker inflows, particularly following the 2004 EU enlargement. Negative media attention to immigration was an important impetus for the creation of the MAC – an external authority on labour immigration, charged with ascertaining when it is ‘sensible’ to open up to migrant workers - by the Labour government in 2007. Subsequently, the House of Lords Select Committee on Economic Affairs published a report on the ‘Economic Impact of Immigration’ (House of Lords Select Committee on Economic Affairs 2008), which notoriously argued against the consensus on the benefits of immigration. Symbolising a shift away from the unequivocally positive approach to immigration, it was maintained that there is a risk that too much migration would reduce the incentives for training, and was contributing to the increase in housing prices among other problems.

Concerns regarding the impact of immigration on the employment of the resident labour force can be seen in public analyses of skilled foreign workers in the construction sector. A MAC commissioned report on the UK construction industry produced between April and May 2008 concluded that the industry should limit the importation of skills: “The high education level . . . of many migrants [is] throwing into relief the . . . nature of construction skills . . . and . . . qualifications in Britain. In this regard, their employment can be of positive benefit for the industry, while at the same time disadvantaging further those trained in Britain and seeking to work in the industry, including women and those from BAME (Black, Asian and Minority Ethnic) groups . . . There are far more women and women from BAME groups in Further Education colleges than on actual sites”(Chan, Clarke et al. 2008 p.24-6). Subsequently, the MAC recommended excluding many construction occupations from the Tier 2 shortage list in September 2008 (MAC 2008).

In late 2008, Prime Minister Gordon Brown announced that when an occupation was put on the shortage occupation list, the government would review whether and how more training of resident workers could reduce the need for migrants (Martin and Ruhs 2010). However, it is notable that despite repeated proposals from the MAC, it was not until November 2009 within the framework of the *Skills for growth: the National skills strategy* report that there were signs of coordination between immigration and education and training policy; “Critically, we need to join up their (the MAC’s) work with the remit we are giving the UK Commission to turn intelligence about shortages into national training priorities in the skills system... Over time, we will ensure that there is less need to fill skills gaps through migration, because we are better at equipping our own people with the right skills. The Gibson review is considering how we could pursue this goal within the specific area of engineering construction” (BIS 2009 p.11). This can be understood in the context of a deepening economic recession, the rise of the extreme right BNP party and upcoming national elections.

According to an official from BIS, it was not until 2010 that a coordinated policy on immigration and skills development was formalised and that this was in large part a reaction to the limits to be imposed on immigration and a concern with ensuring that employers would be able to source skills in a context of a more restrictive immigration policy; “The skills strategy 2010 was the first time we set out formally what we would do; because of the introduction of the cap and the need for some kind of response in that space” (Interview BIS skills). Indeed, new qualifications had been designed for ethnic catering at the end of Labour’s period in office in order to attempt to fill chef skill shortages – which accounted for a large proportion of inflows through the shortage occupation route - with resident workers. However, this policy has been further strengthened since all but the most highly qualified chefs have been taken off the shortage list in 2011. Furthermore, it is notable that BIS are focused on increasing the production of ethnic catering skills and give less emphasis to reinforcing the production of other skills, such as IT, which can still be imported via Tier 2. In the most recent shortage occupation list recommendations, the MAC published a list of occupations which have been on the list since the first report of 2008 in order to impress on BIS and the sectors skills councils the need to focus on producing skills in these areas (Interview MAC).

Nevertheless, demand for foreign skilled workers is not simply a question of a lack of training courses or suitably qualified candidates in the UK. It is also determined by wages and working conditions in particular occupations and sectors which are unattractive to the resident labour force. For example, unlike ethnic catering, there have been courses for social care managers – the other occupation accounting for a large proportion of applications via the shortage occupation list route, until it was taken off the list in 2011 - but the numbers applying are inadequate as the working conditions are seen as unattractive by the resident labour force. This is emphasised by those responsible for skills development in the UK, who may also wish to discharge some of the responsibility for reducing levels of immigration. As a BIS official maintained in October 2011; “What we said in the Skills Strategy last year was that the migration issue cannot be a skills issue alone, the skills system will not solve the problem, we’ve got the courses there, we can advertise them, fund them when people come forward, but it’s the people coming forward that is the issue and you’ve got the situation in the restaurants where the culture is different, the language is different, some of the working conditions are not great and what we are saying is unless its a multi-pronged approach in which you provide the courses but you also make the working environment one in which local people would want to work...you need to improve conditions and wages; that will take a long time and that is where the change will come so while skills are important in and of themselves they are not important” (Interview BIS skills). However, the MAC assumes that a rapid increase in wages is a signal of a labour shortage, but is less minded to recommend raising wages in order to attract the resident labour force. This is considered to be most likely to occur in the public sector, where there is a dilemma between government aims to reduce expenditure and immigration (Interview MAC).

Finally, it is notable, that although A8 immigration has been much larger than non-EEA immigration since 2004 and cannot be controlled via labour immigration regulations, UK governments have not proposed strengthening active labour market policy in order to incentivise or oblige unemployed or inactive resident workers to participate in the labour market and thus reduce demand for A8 workers in low-skilled occupations. This is partly explained by the fact that it is considered that many A8 workers have left the UK during the recession (Interview HO, DWP, HL1).

4. SUMMARY AND ASSESSMENT

4.1 Brief summary of UK regime

While it has been in constant evolution, UK labour migration policy has solidified over the past decade into a highly articulated policy, the aims of which are more constant than may appear if one focuses on shifts in political rhetoric.

The UK regime aims to bring in foreign skills from outside of the EEA, some of which are lacking in the UK, in order to ensure economic growth and international competitiveness. More particularly, UK governments want to facilitate employers experiencing skills shortages and ensure that the UK is an attractive location for foreign investors by means of having a relatively open policy on skilled worker immigration. While UK labour immigration policy has traditionally been biased towards skilled foreign workers, this basic aim has become more emphasised over the past fifteen years and this position has not wavered greatly during the current economic recession.

Policy on the employment of foreign workers in low-skilled jobs is less unambiguous. While there are no clear messages that the UK is open to low-skilled migrant workers, foreign workers have long found employment in low-skilled occupations in the UK. However, apart from within the framework of a few quota-based seasonal worker schemes in the agriculture, hospitality and food processing sectors, their entry has not mainly been through formal channels for labour immigration. Indeed, in the post-war period migrants from the Commonwealth, coming to the UK on the basis of expansive citizenship rights, filled labour (and skills) shortages. Irish migrants have benefitted from free movement, just as nationals of the EU have since the UK acceded to the EEC in 1973. Indeed, the massive movement of A8 nationals after the 2004 enlargement and their employment in low-skilled work is the most recent example of the sourcing of workers for low-skilled jobs outside the formal labour immigration regime. Other examples of non-labour migrants who have traditionally worked in the UK low-skilled labour market are foreign students and the spouses/partners of labour migrants. In this sense, it is only if one focuses on labour immigration policy, rather than *de facto* labour immigration policy, that we can assert that the UK labour immigration regime heavily prioritises non-EEA skilled foreign workers.

The UK regime is further defined by the following features: it is demand-driven; and it is increasingly based on objective criteria and scientific evidence. Much has been made of the introduction of supply-side schemes within the UK labour migration regime since the early 2000s. In supply-side schemes such as the Highly Skilled Migration Scheme (2002-8) and Tier 1 of the PBS, migrants enter the UK based on their attributes (skills, age etc.) rather than a specific job offer, based on the assumption that such talented individuals will find employment and will contribute to the UK economy. However, these schemes appear in retrospect to be largely pilot projects, which have failed the test of time. In the context of the current economic recession and the Coalition government's aim of reducing inflows of migrants, Tier 1 general has been closed and a new extremely limited route, 'exceptional talent', opened, which only provides 1,000 entries for 2011-12.

While Martin and Ruhs assert that the PBS and establishment of the MAC represented an attempt to "move from an employer-led migration model to a migration policy that maximized the benefits of migration for the entire British

economy” (Martin and Ruhs 2010 p.8), the UK labour immigration regime remains a demand-led one, in which the primary criterion for entry is a job offer. Indeed, it could be said that the system is best described as employer-led, rather than demand-led, as employer demands appear to hold more weight than local labour market conditions. The most used route of the system is the ICT route in Tier 2; this route is the only one, which does not necessitate an assessment of whether there are suitable candidates in the resident labour force. It is in some sense ironic that the shortage occupation route is the least used route of Tier 2 (about 8 per cent of inflows), as the occupations on the shortage occupation list, which are open to foreign workers without the necessity of carrying out a RLMT, should in theory be those for which there are shortages of resident workers. Indeed, the MAC carries out a highly articulated analysis of the labour market in order to arrive at a list of shortage occupations.

The PBS, introduced between 2008-9, represents an attempt to objectify decisions on the entry of foreign workers. The PBS is made up of 5 Tiers, four of which are for labour immigrants. Tier 1 is a supply-side channel for the highly skilled; Tier two, the most used channel of entry is for skilled workers with a job offer; Tier 3, which is currently suspended, is for low-skilled temporary workers; and Tier 5 is for youth mobility and temporary workers. Migrant workers gain entry if they reach the required threshold of points, which are based on various criteria, depending on the particular route through which the migrant is applying. For example, in the new Tier 2 general, prospective immigrants gain points for a ‘graduate’ job offer with a licensed ‘sponsor’ (employer), prospective earnings, English language ability and maintenance funds. The PBS was introduced by a Labour government and has been retained by the current Coalition government, which is generally extremely critical of Labour’s management of immigration; it is thus likely to be maintained over the coming decades.

Evidence-based policy has become the byword of UK policymaking since Labour came into office in 1997. Reforms to labour immigration policy, which have been both dramatic and evolutionary, over the past fifteen years, have been based on publicly available research, either carried out by or commissioned by government. The historic opening to labour immigration in the early 2000s, the creation of the PBS and the current re-introduction of restrictions on immigration are all ostensibly based on publicly available scientific evidence. Whether this evidence is the basis of policy or a way of legitimising decisions is of course an extremely interesting question (Boswell 2009). A particularly interesting example of what appears to be the use of evidence to support a preferred policy was the decision to close Tier 1 general and limit supply-side labour immigration to 1,000 ‘exceptional talent’ entries in April 2011. The government referred to Home Office research, which found that a significant proportion of Tier 1 general migrants were employed in low-skilled work. A year before the MAC had conducted an analysis of the employment outcomes of Tier 1 general migrants, using a different methodology, and found that they had extremely positive employment outcomes; 90 per cent employed and employed in highly skilled occupations. The establishment of the MAC in late 2007 is key to this discussion of the growing importance of evidence-based policy. In general, we can say that the MAC is the ‘brain’ behind labour immigration policy over the past four years. In a public process the MAC, which is a small group of economists, responds to government questions regarding how to regulate immigration and intra-EU mobility and most of their recommendations are translated into policy.

4.2. Assessing the debate

The debate on labour immigration and its regulation in the UK is at times apparently extremely conflictual. However, in reality, the main political parties and stakeholders are generally in agreement regarding the basic aims and structure of the regime.

The debate on immigration in the UK has become increasingly technocratic as policymakers have begun to use evidence as a basis and support for their policy decisions. It is notable that during the Labour governments in office between 1997-2010, the right wing opposition encompassing a coalition of the Conservative Party, the right wing tabloid media and think tanks like Migration watch criticised Labour policies using their own evidence on the size of migrant inflows and stocks, government activity and the impact of immigration on the economy and society. The debate on immigration in the UK is thus a relatively developed one. However, the system for admitting non-EEA labour migrants is not a 'hot topic' for the media; in fact the PBS is largely accepted, as are the recommendations of the MAC and its very role as an independent advisory committee.

Since the Conservatives and Liberal Democrats are in government (from May 2010), opposition to their aim of restricting levels of immigration has not been strong. While the imposition of a cap on non-EEA labour immigrants was opposed in the abstract, its introduction has not inspired huge protest, largely because it is a partial cap, which excludes ICTs and in-country applications, among other categories and represents a small reduction on the numbers of actual inflows in 2009. There is also an unspoken understanding that the Coalition government is unlikely to do anything, which will threaten the UK's economic recovery; the cap will undoubtedly rise once the economy picks up. As a HO official asserted in October 2011; "We've brought in the limit but if you are going to train up the UK population it takes time, and what nobody wanted - and the Treasury and BIS were very concerned when we did introduce the limit - was for this to have a negative impact on the economy if employers were no longer able to bring in people they needed and there was an element of 'we've got to try this and see' and so far, 6 months down the line, it seems to be ok. There are places available" (Interview HO). Furthermore, the aim of reducing inflows is at least accepted and at most shared by the majority of influential stakeholders, though it may not be openly expressed. In a climate of economic recession and a rise in unemployment, political and social organisations are unlikely to call for an open policy on labour immigration. That said, the CBI maintains that members are concerned about what the government might do next in order to reduce net immigration as well as the 'reputational risk'; the new restrictions are potentially damaging in terms of perceptions of the UK as a place to invest (Interview CBI).

The evidence used in the extended public debate and to support policymaking is however of limited strength. For example, the data used by the MAC in its analyses of the outcomes of the PBS is UKBA management information data collected from the PBS and the previous work permit system, which is not quality-assured to national statistics standards (MAC 2009). Moreover, the MAC found no specific data, which could help them answer the question of how a specific group of migrants - Tier 1 and 2 migrants - impact the UK economy and society (MAC 2010).

4.3. Assessing the UK labour immigration system

In order to measure the effectiveness of labour immigration governance systems, we can attempt to assess whether they are in meeting set goals. These goals include responding to the needs of clients –employers, migrants and the resident labour force as well as public opinion – ensuring compliance with immigration regulations and responding to broader socio-economic goals, such as increasing productivity and investment levels. In the case of labour immigration policy, different clients' interests are often in complete opposition (i.e. employers and the resident labour force). Furthermore, the meeting of some objectives (e.g. migrants' contribution to increasing productivity) is harder to assess than others (e.g. the objectivity of the admission system).

The PBS is widely viewed as an efficient system for admitting non-EEA labour migrants. A HO survey of PBS users published in January 2011 found that satisfaction was high among both applicants and sponsors; around 8 out of 10 applicants and sponsors were very or fairly satisfied with the process. The same proportion maintained that the PBS was meeting its objectives of being easy to understand, open/ transparent, user-friendly, efficient and fair. Of those applicants and sponsors who had experience of previous immigration systems, they generally believed the PBS was an improvement on those systems (Home Office 2011). A HO official maintained in October 2011 that after a natural teething period, employers have come to prefer the PBS to the previous system, due to its objectivity; "Nobody likes change so its taken a while but I think employers prefer the PBS, it's more objective so you don't have a person in Sheffield saying 'hum I don't like you and I don't see why you should come here', which is what could happen in the work permit system. Under this system the employer issues the potential employee with a certificate of sponsorship, which contains all the information on the job, the applicant submits supporting evidence and if everything is in order and if the person doesn't have a poor immigration history, then that person is in" (Interview HO). A BIS official was equally positive about the system; "What's clear to me is there is no such thing as a perfect system because of the variety of needs in terms of business, the variety of skills and salary levels, there is such a range of them that the PBS seems to go a considerable way to addressing the disparities between for example research where you've got high skills but perhaps salaries which don't compare at all to the private sector. No, it's not perfect and we're always working with different areas of business to make sure that their specific areas are not damaged by the fact that it's not nuanced enough without creating a system which becomes so complex because we have to balance the system with UKBA's focus on controlling borders" (Interview BIS). A recent House of Commons Public Accounts Committee report also maintained that decisions are reached more quickly than under the work permit system (Public Accounts Committee 2011). However, in the above mentioned HO survey, applicants were evenly split over whether the PBS was faster or slower than pre-PBS routes.

Furthermore, according to the same Public Accounts Committee, applicants to the PBS have needed more support than expected in understanding how the system works, with half of them using the helplines. Moreover, the policy of 'evidential flexibility' whereby caseworkers can request additional information rather than simply rejecting applications is not used consistently.

Employers also complain about the cost of fulfilling sponsor obligations. Since UKBA can remove sponsorship with no recourse to appeal, employers are obliged to

pay for legal advice throughout the process. As the House of Commons HAC asserted in July 2009 'There is clearly great nervousness amongst sponsors over the possible penalties attached to any failure, even unwitting, to report changes in circumstance of their migrants'. The CBI estimates that it costs £500,000 to meet sponsorship rules, which may make Tier 2 route unfeasible for small and medium sized firms (Home Affairs Committee 2009).

In general, the establishment of the MAC has elicited positive responses from the main stakeholders. Employers present a rosy picture of the MAC, which is contrasted with UKBA and the Conservative Party's restrictive tendencies; "The complaints we hear from members are about delays and a slightly 'wrong door no door' approach that UKBA takes occasionally, like if there is a problem and somebody doesn't fit the criteria, there is a tendency to say 'no', not 'how can we work around this'. But on the positive, I think the involvement of the MAC is really important, we are very supportive of their role; members really value a sound economic evidence base for policy; this is a political commitment that's been taken as regards the cap but the economic recovery has to take priority, so for us the role of the MAC is important" (Interview CBI). In its 2009 report on the PBS, the HAC found that most interested parties considered the MAC to be doing a good job; including witnesses with preferences as diverse as Sir Andrew Green of Migration Watch and Jabez Lam of the Chinese Immigration Concern Committee. The latter did suggest that the MAC should include a social policy expert, however, in order to ensure that the social aspects of migration were explored adequately.

The system can be said to be rather efficient as regards facilitating the entry of skilled foreign workers. Numbers of work permits increased steadily since the late 1990s, which reflects sustained economic growth and skill shortages. It has been emphasised, however, that the PBS overemphasises quantifiable skills and does not give due emphasis to ability or work experience. Indeed, as in Australia and Canada, previous professional experience could be used as a proxy measure (Murray 2011). In terms of ensuring that the needs of another client group, the resident labour force, are met, the system is supposed to ensure that the latter have a chance to take up the available jobs before employers request non-EEA migrant workers.¹² The UK employment rate has declined since 2003, while those of other countries such as the Netherlands and some Scandinavian countries, with relatively high employment rates, continued to rise. The fall in employment appears to involve the low qualified as the gap between the employment rate of the low qualified and the average working age population is continuing to widen; only 46 per cent of those without qualifications are in work compared to 86 per cent of people with a degree or equivalent (UKCES 2009).

There is no evidence that there is any relationship between non-EEA labour immigration and the declining UK employment rate, indeed, most non-EEA labour migrants are employed in skilled jobs and thus would not be directly competing with low qualified resident workers. Nevertheless, the PBS system imposes relatively weak employer obligations in terms of attempts to fill vacancies with resident labour before requesting workers from outside of the EEA. Furthermore, it is notable that such requirements for the RLMT and ICT routes were relaxed in the PBS and have

¹² Furthermore, a high employment rate is not only a question of responding to the labour force's need for paid work, it also contributes to economic growth; according to UKCES, a one-percentage point increase in the employment rate adds between £8–11 billion to GDP UKCES (2009). *Ambition 2020: World Class Skills and Jobs for the UK*. London, UKCES.

not been made more stringent by the current Coalition government, despite its restrictive rhetoric.

Regarding the RLMT, in the UK employers are expected to attest that they have advertised the job in the UK for the required amount of time (currently four weeks) in two outlets, JobsCentrePlus and a sector outlet. However, there is no public certification of the process or pre-admission checks and post-admission checks on employers are infrequent. In 2009, the MAC asserted that there may be a case for introducing certification; however, governments have not done so due to the cost it would entail and a political antipathy towards red tape and regulation (Interview MAC). As noted above, the ICT route, through which about 60 per cent of Tier 2 applications are made, does not require any form of RLMT. Moreover, while in many countries, ICTs are required to have worked for 12 months in the company abroad; the requirement in the UK is 6 months (MAC 2009). The size of this route can partly be explained by the fact that the UK is the location of a large number of MNCs; in fact, it is the second largest destination for foreign direct investment after the US. However, despite the fact that the MAC found that it was, in the main, more expensive to bring in people via the ICT route than hire a local worker, the Public Accounts Committee has expressed concern that ICT migrants may be displacing resident workers with IT skills; also because the number is not capped (Public Accounts Committee 2011). The HAC had voiced similar concerns in July 2009: "We were presented with conflicting evidence on the requirements of the information and communications sector in the UK and internationally. On the one hand, the global businesses we met in India argued persuasively for the need to allow skilled workers to transfer between their different international offices... On the other hand...the Sector Skills Council for IT denied the existence of any serious shortage, and the Professional Contractors' Group suggested to us that the use of intra-company transfers was removing jobs from the UK workforce"(Home Affairs Committee 2009).

Public opinion in the UK is generally for a reduction in levels of immigration, which is to some degree reflected in the Conservative Party's electoral commitment to reduce inflows from hundreds of thousands to tens of thousands. On the other hand, employers have expressed concern about shortages of skilled labour in the recovery due to the cap. The business community has also voiced concern that the cap on some Tier 1 and 2 routes and more restrictive migration rhetoric may give the impression that the UK is closed for business. In this sense, responding to clients' needs in terms of labour immigration is always a delicate balancing act. Is the coalition government's attempt to reduce inflows over the course of this Parliament expected to be effective? According to most commentators, this is unlikely. This is largely due to the fact that the government cannot control UK/EU mobility and the reductions made to non-EEA immigration and settlement will not achieve the targeted reduction. Indeed, net emigration of British citizens fell from 130,000 in the year to March 2007 to just 30,000 in the year to March 2010, which is one of the main reasons net migration rose in 2010 (Murray 2011). The Migration Observatory estimates that in order to achieve the target of tens of thousands net migration would have to be cut by 142,000. This means cutting non-EEA labour, family and student migration by this figure at a minimum. However, the government's forecasted reductions in work, student and family inflows only constitute about half of the reduction in non-EU net migration required to meet their target by 2015 (Migration Observatory 2011).

In terms of compliance with immigration regulations, the House of Commons Public Accounts Committee 2011 report on the PBS work routes highlighted the

concern that the UKBA is not adequately ensuring that migrant workers and employers comply with immigration rules. It argued that the Agency does not monitor whether migrant workers leave when they are supposed to (and estimates that there are 181,000 migrants in the UK whose permission to remain expired in December 2008). Furthermore, the UKBA visits less than a fifth of employers before granting licences. Finally, the UKBA does not have adequate management information to manage inflows and ensure compliance and the committee welcomed plans to introduce an integrated casework system by 2013 (Public Accounts Committee 2011).

The contribution of skilled non-EEA labour migrants to the UK economy, for example as regards productivity growth, is of course rather difficult to determine. Whilst the level of UK productivity is relatively moderate, its growth has been relatively strong in recent years, at least up to the current economic recession. In 2009, productivity had increased by more than the OECD average in 10 of the past 14 years, and had increased by more than the Euro Area average in 12 of those years (UKCES 2009). We could correlate increased levels of productivity with rising inflows of skilled non-EEA labour immigrants, but a causal relationship and its direction is hard to assess. The difficulty of generating any overwhelmingly positive or negative conclusion regarding the impact of labour migrants, in particular certain categories of labour migrants, on the economy and society is exemplified by the MAC's response to the government's request of a numerical limit to be placed on Tier 1 and Tier 2 labour immigration. The MAC reviewed the data and academic literature on economic, public service and social impacts of migration and took evidence from stakeholders. In terms of economic impacts, it was maintained that it is likely that Tier 1 and 2 migrants, on average, have a positive impact on GDP per-head and that they are less likely to exert downward pressure on wages than low-skilled migrant workers. While they assert that these skilled migrant workers are unlikely to reduce the employment of resident workers in general, there is some anecdotal evidence of negative effects in certain sectors and occupations. Tier 1 and 2 migrants are expected to make a positive net fiscal contribution, especially in the short-term, while they are young. They are argued to contribute to public services by filling skill shortages, particularly in health and education and to be light consumers of health services. In terms of social impacts, they are expected to contribute to higher rents and as they settle, housing prices. Their impact on crime is expected to be negligible, however, they are expected to generate more congestion as they tend to live in London. It is considered that the fact that Tier 1 and 2 migrants are skilled, have good English skills and are often employed in the public sector tends to make it more likely that they will have less problems integrating into UK society (MAC 2010).

4.4. *De facto* labour immigration and functional alternatives

UK labour migration policy has traditionally sourced low-skilled foreign workers outside of the formal labour migration policy arena. Since the 1960s, the country's low-skilled foreign labour needs have largely been met by Irish and EU nationals, as well as non-EEA family, student and undocumented immigrants.

Currently, labour demand is limited by the economic recession. In the recovery, the UK will source labour from the ranks of the unemployed resident labour force and from within the EU, particularly as transitional arrangements on labour movement from Romania and Bulgaria will have to be removed in 2013. In the current economic downturn, the government chose to restrict non-EEA student part-

time work, however, the majority of non-EEA students are still allowed to work part-time during the academic year and full-time during their holidays and the employment of spouses/partners of non-EEA labour migrants has not been restricted and will remain an important source of low-skilled labour.

It is generally argued that non-EEA highly skilled migrants cannot be substituted with EEA workers. This is to some degree related to English language ability and a history of exporting professionals from ex-colonies. However, there is no discussion of the probable need to source labour from outside the EU in the near future (Interview MAC). The EU will not be self-sufficient in low-skilled labour for long as push factors for migration from new member states diminish and restrictions on intra-EU labour mobility are removed across the Union. An opening of the PBS Tier 3 is foreseeable, though it is not on the policy agenda.

The policy of upskilling the resident population in order to increase the UK's international human capital competitiveness and reduce dependency on skilled foreign workers is likely to remain on the agenda in the context of an economic recovery. The UK has traditionally under-invested in education and training compared to other Western European economies and the current relative economic strength of Germany, a country with a strong tradition of vocational training, will undoubtedly reinforce the competitive motivation behind UK skills policy. Complete self-sufficiency in skills is of course unlikely, however, the UK has succeeded in reducing demand for some non-EEA skills, for example, doctors and nurses. This policy has been understandably unpopular in countries, such as India, which have a history of exporting skills to the UK.

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Annex: List of interviews with policymakers, stakeholders and researchers (September-October 2011)

No. of interview	Organisation	Place of interview
1	Home Office (HO)	Croydon
2	Migration Advisory Committee (MAC)	London
3	Business Innovation and Skills (BIS) Skills and migration division	London
4	Business Innovation and Skills (BIS) Migration division	London
5	Department for Work and Pensions (DWP)	London
6	Department of Health (DH)	Telephone
7	Confederation of British Industry (CBI)	London
8	British Hospitality Association (BHA)	London
9	Engineering UK	London
10	Intellect	London
11	Trade Union Congress (TUC)	London
12	Migrant Rights Network (MRN)	London
13	Conservative MP (HL1)	London
14	Liberal Democrat MP (HL2)	London
15	Dr. Georg Menz (Menz)	London