

Is an Australian points-based system right for the UK?

Naomi Hanrahan-Soar discusses what we can learn from the Australian points-based system as the UK begins to rewrite its immigration rules for a post-Brexit era



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For about a decade, UK immigration policy has been focused on reducing net migration. The narrative often referred to how the government was doing all it could but that it was hampered by not being able to 'control' European migration. Now that we are 'taking back control', we have the opportunity to rewrite the immigration rules without focusing solely on net migration figures. The official target has already been dropped and the focus now is on 'skills'-based migration. Boris Johnson has advocated an 'Australian-style points-based system'. The question now is, what should we adopt from the Australian system and what should we not?

Brexit: immediate immigration issues

Brexit itself is still the first hurdle. By now, in-house counsel will have heard the usual advice about immigration and Brexit. It is certainly worthwhile offering both practical and legal support to existing EEA employees to help them navigate the uncertainty. Those already in the UK prior to the date of Brexit should apply under the settled status system to be legally allowed to stay in the UK. The deadline for applying will be 31 December 2020 if we don't have a deal or (probably) 30 June 2021 if there is a deal. For employed EEA nationals, the application process works relatively well, especially if they have access to an Android phone.

There is some uncertainty over what will happen to EEA nationals

wishing to enter the UK immediately after the date of Brexit in the event of a no-deal exit. We can broadly assert that a form of free movement will continue, if only because it is practically necessary. Employers are unlikely to be required to carry out any further or different right-to-work checks on EEA nationals because this would suddenly force all EEA nationals already in the UK into needing settled status much earlier than they have been led to believe until now. However, new entrants to the UK during that period will want to know whether their time in the UK can count toward permanent residence or not, and this is currently not clear.

From 1 January 2021, however, a new UK immigration system will be put in place. This provides a little breathing space to consider what should be introduced by then. The big question is what happens from then on. Brexit has been touted as a great opportunity to revise the immigration system in full. One idea that seems determined to stay is that we should adopt the Australian points-based system.

Is that really the right system for us to emulate and, if so, why?

Where are we starting from?

In fact, we already have a points-based system (PBS) in the UK, in name at least. Introduced in 2008, this covers the work and investment routes to the UK.

In the British PBS, there are various tiers for different categories of economic migration routes.

Tier 1

This originally contained multiple routes, including:

- the investors visa (for those bringing in more than £1m of investment in 2008 or £2m more recently);

skill levels and a minimum salary threshold. It replaced the old work permit system in 2008 and created a more bureaucratic version of that visa by requiring an employer to have a sponsor licence and subject itself to Home Office compliance audits. Fundamentally, this system

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- the entrepreneur visa (for those investing at least £200,000 in their own UK business);
- the highly skilled migrants visa (for those who were deemed to be of higher economic value to the UK based on variable points for youth, previous earnings and level of qualifications); and
- the post-study work visa (which allowed recent UK graduates to stay in the UK to work for up to two years).

However, the highly skilled migrants visa was the first PBS visa to be withdrawn, reportedly because too many people on the visa were working in less skilled roles than the route was intended for. The post-study work visa was later also revoked. Finally, the entrepreneur route was abolished within the last year after accusations of misuse.

Both the highly skilled migrants visa and the entrepreneur visa have equivalents in other developed countries. It is a little baffling that the UK government decided to remove these routes entirely, rather than amend the law or enhance immigration enforcement. The highly skilled migrant visa is the one most similar to the Australian independent skilled worker visa (see below).

Tier 2

This tier is now the most used part of the UK's PBS. Entrants with a Tier 2 visa need to meet minimum

– and the new start-up, innovator and exceptional talent visas – push responsibility onto bodies other than the Home Office for meeting the requirements of the UK immigration legal system. This system is essential to the 'hostile environment' policy which we adopted from the US. The policy accepts that immigration authorities cannot stop all illegal entry to the UK but that by making it very difficult to live in a place if you are there illegally, you would be unlikely to stay or perhaps to come in the first place. It puts a great deal of responsibility onto employers and endorsing bodies, as well as imposing serious penalties for non-compliance. It may also be a theory that is fundamentally more suited to countries with large shared borders than to those that are islands.

Tier 3

There is a Tier 3 for low-skilled migration. However, when the government introduced the PBS, it never opened Tier 3 on the premise that EEA nationals moving to the UK under the EU principle of free movement of labour were meeting the UK's low-skilled migration needs. It could yet be opened as a result of Brexit since there may be a need for lower-skilled workers. Tier 2's minimum skill level is likely to be reduced based on policy recommendations, though, and that may be sufficient, combined with re-opening the working holiday visa and post-study work allowance.

Tier 4

Tier 4 (for students) puts the responsibility for checking the immigration status of foreign students onto their education providers.

Tier 5

Tier 5 has multiple variations. Some require employer or third-party sponsors, others assume sponsorship.

What do the Aussies do differently?

Delegating responsibility for compliance to sponsoring or endorsing bodies is a key feature of the UK PBS. The Australian PBS is quite the opposite. Compliance is led by enforcement bodies and the government has a more active role in adjusting points and priorities according to perceived need. At a federal level, it can adjust the basic requirements while, at a state level, it can address specific regional needs. States can give additional points for working in their region when certain skills are in shortage there.

Australia's immigration system for workers is largely based on attracting skills that the country is in need of and it grants permanent residence much more quickly than in the UK (immediately in some cases but usually after only a couple of years compared to a standard of five years in the UK). Australia has an age cap of 50 on new skilled worker visa applicants, whereas the UK has no such limit. Like the UK, it prohibits new migrants from claiming public funds.

The other key difference between the two systems is that the points actually mean something in Australia. In the UK, it is compulsory to get all the points available in each visa route. To be approved, it is necessary to meet each visa requirement with points attached (there are a few exceptions and none of significance to this comparison). By comparison, in the Australian PBS, there are points on offer and more ways to attain them to get the visa. For example, demonstrating that you have a skill that is in high demand could outweigh the fact that you cannot get any points for your age or salary. So what the UK really has is immigration rules which happen to have meaningless points associated with them.

The exception to that was the highly skilled migrants visa outlined above. But, as explained, it was the first one to be revoked, with very little attempt to adjust the requirements to make the route serve its purpose better. Nor was there an enquiry into whether having highly skilled foreign nationals working in roles beneath their skill level was problematic. Perhaps they were just stepping-stone roles in which the individual was working while requalifying or gaining the requisite local experience to step back into a highly skilled position.

How do we assess if this works?

In Australia, the skilled worker visa is generally deemed to serve its purpose and the debate is more about caps and numbers of migrants than type. The system focuses on skilled individuals with good tax-paying potential at an age where they are likely to work long enough to pay for the cost of their retirement. But immigration is not free from controversy and negative PR in Australia any more than in the UK. It is a country just as divided between the key cities and regions in the outback that have less economic and social stimulus, falling populations and generally less favourable views of migration.

In 2018, 29% of Australian residents were born outside the country compared to 14% in the UK. This is, at least in part, down to a migration policy of 'populate or perish' which started after the war. It would be fascinating to study whether Australia's migrant population is more or less integrated than the UK's and whether there are any lessons to be learned from the differences in its approach.

The Migration Advisory Committee (MAC) is the UK's key immigration policy advisory body. It and other bodies have assessed the economic impact of migration in the UK. The impact is generally assessed as pretty negligible. Migrants are not one homogenous body. Different types of immigration have different effects. Broadly speaking, there is highly paid and low-paid work-based migration (software engineers versus fruit pickers, for example). There are those who come to join their partners and

close family members and there are refugees and asylum seekers, investors and entrepreneurs. The total numbers of these last four categories are relatively very small and so is their impact.

Work-based migration has polarising effects: migrants in highly paid roles produce a very

slight uplift in the salaries of local employees in equivalent roles and those at the low-paid end produce a slight decrease in salaries in those roles. Increasing salaries is no bad thing but certainly reducing those at the low end and increasing the polarisation of wealth creates serious social issues. However, there may be ways to minimise the negative impacts (for example, by increasing the minimum wage), which may be better than simply cutting migration and losing its benefits.

How should we reframe the investigation?

What is sorely lacking from the MAC is a broad range of expertise in assessing the value of migration. The MAC is a body of economists, led by an economist. Its aim is to assess the economic impacts of migration on the resident population. Individual satisfaction is not just economic. There is great cultural benefit derived from the richness of diversity in London that makes it such an attractive city to people all around the globe. There are great social and health benefits from the thousands of nurses and doctors from around the world who are not only overcoming worker shortages in the NHS but leading the way with pioneering treatments. A melting pot of exciting, eclectic contributions is both stimulating and uplifting and not to be ignored in assessing the value of migration to a society.

If we are to 'take back control', that does not mean we must shut our

borders. It could pave the way for a fuller discussion on the benefits and the challenges of migration. We can try to assess the social capital that migration contributes to the UK. We can try to discuss how to ensure no one is left behind in our society and left to live in standards that are unacceptable in our developed, wealthy country. How do

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we ensure that all of the UK reaps the benefits of the global hub that London has become?

At a recent roundtable that I attended with the previous immigration minister and a number of recipients of the Tier 1 exceptional talent visa (issued only to truly exceptional worldwide talent), there was a lot of chatter about how exciting it is to come and set up businesses in the UK. Someone then asked, 'Is it the UK you mean or just London?' The answer was a resounding and universal, 'Just London, I wouldn't live anywhere else in the UK.' Here again, we could adopt some element of Australia's PBS to attract skilled workers to less flourishing regions of our country.

One idea might be to reintroduce the Tier 1 entrepreneur category and give points based on how many locals the person intends to employ, how much benefit the business will bring to the local community and whether the business will be in a region that needs it, for whatever reason. With a potential recession breathing down our necks, we need people starting reliable businesses in the UK whether or not they are innovative and exceptional. If the business works, why does it need to be innovative?

It is clear that we can learn some things from the Australian PBS. If nothing else, we can learn that the value of immigration to our society must be considered thoughtfully, based on the specifics of what each part of our country needs, not based on assumptions without analysis. ■