

# Immigration Bulletin

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The Law Society

NEWSLETTER OF THE IMMIGRATION LAW COMMITTEE OF THE LAW SOCIETY

## Accreditation Scheme Reviewed

**Maxine Warr of the Law Society's Training and Education Unit examines the review of the accreditation scheme and Chris Handford of the LSC explains the new work restrictions rules.**

The Immigration and Asylum Accreditation Scheme was introduced on 1 April 2004 requiring everyone undertaking legal aid immigration and asylum work to become accredited by 1 April 2005. The scheme was introduced both to increase confidence in the provision of publicly funded immigration advice and ensure that high standards are maintained. Up to March 2006 some 2,350 caseworkers have become accredited including 1270 level 2 caseworkers and 667 supervisors.

When the scheme was introduced, both the Law Society and the Legal Services Commission made a commitment to review the scheme after its first year of operation. During the summer of 2005, meetings were held with key stakeholders, to seek feedback on the operation of the scheme. The key areas discussed at the review meetings were, the compulsory assessments (run on behalf of the Law Society by Central Law Training), the standards for the scheme and the LSC's work restrictions. All these key areas have now been reviewed in light of the feedback received.

### Review of standards

Feedback from practitioners during the review suggested that those taking the assessments would welcome more guidance on the key areas with which they should be familiar prior to attempting the assessments. As a result, the Society, with practitioner input, has produced

detailed guidance to accompany the standards.

The standards themselves are deliberately broad and set out the key knowledge and skills advisers should have at each level of the scheme. Each of the standards is now accompanied by detailed guidance on the statutory, policy and judicial material with which candidates should be familiar. The guidance is intended as a helpful expansion of the standards and is not an exhaustive list of legislation or material. Candidates should be aware that there is no guarantee that they will pass the assessments simply by knowing the material and legislation in the guidance. Candidates do, of course, have to apply their knowledge correctly. Equally, there is no guarantee that the questions in the assessments will be restricted to the material in the guidance. The guidance should, however, provide a useful reference list of the key areas. Candidates should also be aware that, although the guidance will be updated from time to time, it is their responsibility to ensure that they are aware of any changes in legislation and practice.

As well as providing the additional guidance, the Society has also reformatted and represented the standards to assist candidates. The revised standards can now be found on the Law Society's website at <http://www.lawsociety.org.uk/professional/accreditationpanels/lawpanel.law>

### Assessments

The structure and format of the assessments for each level of the scheme will not change although, for clarity, the senior caseworker written assessment has been renamed the 'Drafting and Skills Assessment'. The assessments will continue to be provided by Central Law Training and further details can be found at [www.clt.co.uk](http://www.clt.co.uk)

### Advanced caseworker standard

The criteria for the advanced level of the scheme have also been reviewed and are available on the Law Society's website at: <http://www.lawsociety.org.uk/professional/accreditationpanels/lawpanel.law>. Guidance notes on how to apply for Advanced Caseworker status together with the appropriate forms are also available. Applications for Advanced Level Caseworker status are considered by a panel consisting of representatives from the Law Society, the Legal Services Commission and the judiciary and successful applicants will receive a 5% uplift in fees from the Legal Services Commission. The selection panel held its first meeting at the end of March and granted Advanced Caseworker status to 3 applicants.

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## Work restrictions

The Immigration and Asylum Accreditation Scheme (IAAS) was introduced in April 2004 although did not become mandatory until April 2005 and fully operational until August 2005 for those performing publicly funded work.

Consultation with practitioner groups in relation to the work restrictions began in October 2005. As accreditation has only been fully in operation for a short time, the Commission did not envisage making fundamental changes to the work restrictions. However practitioner groups were asked whether there were any amendments that would make the scheme more flexible without risking the quality of service that will be provided to the client, which remains our primary concern.

The key issues raised during consultation relate to:

- a) Specific tasks that Probationers are permitted to undertake prior to passing the Multiple Choice Test
- b) Specific tasks that Accredited Caseworkers and Probationers that have passed the Multiple Choice Test are permitted to perform
- c) The introduction of a probationary period for candidates seeking accreditation at Level 2
- d) Trainee Solicitors and accreditation

The review of the work restrictions has now been concluded and a paper containing full details of the review will shortly be published on the LSC's web-site: [www.legalservices.gov.uk](http://www.legalservices.gov.uk) and the connected amendments to the work restrictions came in to effect on 30 April 2006.



# News from OISC:

## Updated Guidance and new Immigration Services Commissioner

The Law Society works closely with the Office of the Immigration Services Commissioner (OISC) on various aspects relating to the regulation of immigration advisers. Of particular concern both to the OISC and to the Law Society are firstly, so-called 'sham supervision' arrangements, whereby a few solicitors (possibly unintentionally) have lent their names as supervisors of non-solicitor firms which provide immigration advice and services; and secondly, methods by which a few solicitors have attempted to obtain work in breach of their professional obligations.

The Law Society produced guidance on both of these issues in September 2002, and this has recently been updated (January 2006). Immigration practitioners are strongly advised to remind themselves of the terms of the Society's guidance which is can be found at Annex 12 D to Chapter 12 of the Professional Conduct Guide: <http://www.lawsociety.org.uk/professional/conduct/guideonline.law>

Immigration practitioners might also be interested to know that Suzanne McCarthy took over as Immigration Services Commissioner last September, replacing John Scampion CBE. Suzanne has previously held a number of senior



Suzanne McCarthy

positions within the civil service and wider Whitehall environment, most recently as Chief Executive of the Financial Services Compensation Scheme and of the Human Fertilisation and Embryology Authority. She has also practised as a solicitor in both private practice and law centres, and lectured in law at Manchester University.

For more information about the OISC, visit [www.oisc.gov.uk](http://www.oisc.gov.uk). To contact Suzanne directly, please email [commissioner@oisc.gov.uk](mailto:commissioner@oisc.gov.uk)

## Marriage Rules Breach Human Rights Convention

The requirement to obtain a certificate of approval for marriages involving non EU nationals subject to immigration control has been ruled by the High Court as incompatible with the ECHR. In *R v Baiai* Mr Justice Silber found that the certificates of approval required for non-Anglican marriages are in breach of Article 12 (the right to marry) and Article 14 (prohibition of discrimination). Predictably, the Home Office are appealing the decision and in the meantime certificates of approval should still be applied for. Applications that would otherwise be refused will now be put on hold pending

the outcome of the appeal. The same procedure applies to civil partnerships.



# UK REFUSES TO SIGN UP TO COMMON EU RETURNS POLICY

By Julia Bateman

**The question of how to deal with the return of illegal immigrants and failed asylum seekers is a one that is high on the EU's justice and home affairs agenda. Currently the rights of migrants awaiting expulsion vary widely among the Member States and moves are afoot to address this disparity.**

In September 2005 the European Commission published a proposal for a Directive on common standards and procedures in Member States for returning illegally staying third country nationals. Commonly known as the "Returns Directive" this legislative proposal is now the subject of debate both in the European Parliament and between national Ministries of the Interior.

## European Commission: Return rules must be fully compliant with human rights

As part of the second phase of the development of a Common European Asylum policy, this proposal seeks to ensure adequate and similar treatment of illegal residents throughout the EU. It aims to provide clear, transparent and fair common rules concerning return and removal. It examines voluntary return and coercive measures and deals with the question of suspensive returns.

With that in mind the proposal clearly sets out that any rules to be put in place must respect human rights and fully take into account the fundamental freedoms of the persons concerned. As well as reference to humane and dignified conduct in relation to detention and coercive measures there is a provision on procedural safeguards. This states that legal aid shall be made available to those who lack sufficient resources "insofar as such aid is necessary to ensure effective access to justice". This provision will no doubt be the source of much debate!

Indeed, it must be kept in mind that the substance of the proposal as presented by the European Commission may not survive the negotiations between EU Ministries of the Interior. National governments will have a close eye on their own political landscape and the impact of the EU proposal on national law and procedures. Indeed the proposal will not actually cover all Member States as the

UK has decided to exercise their right not to be bound by the Directive.

## UK decides not to be bound by Directive

Indeed it appears that the impact on national procedure was one of the reasons for the decision of the United Kingdom government not to opt-in to this Directive. Although there is an opportunity for the UK to decide to be bound by the Directive at the close of negotiations this is unlikely.

In evidence to the House of Lords, Lord Triesman, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, stated that whilst common return procedures were important, the draft directive went too far. Lord Triesman referred to the fact that it would hinder non-suspensive appeals and constrain the Government's ability to expel people on security grounds. The Government is concerned that the directive would involve changes to domestic procedure and policy. Indeed Constitutional Affairs Minister Bridget Prentice Birgit said the Directive did not pass the subsidiarity test.

It is interesting to note that on the other hand the UNHCR is concerned that the draft Directive did not go far enough! Indeed Amnesty International UK and the Refugee Council expressed similar concerns.

The debate continues.

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*If you would like to send up the Law Society's regular EU newsletter the "Brussels Agenda" or the free EU Asylum and Immigration Update published twice a year please send your details to [brussels@lawsociety.org.uk](mailto:brussels@lawsociety.org.uk)*



## UPDATE: EU Directive on Asylum Procedures adopted

The Directive on minimum standards for the procedure for the granting or withdrawing of refugee status was adopted by Ministers on December 1st 2005. Member States now have to transpose these provisions into national law within two years of the official publication of the text.

This Directive provides for a minimum level of procedural safeguards for asylum applicants, specific safeguards for fair procedures for persons with special needs, and lays down minimum requirements in relation to the decision-making authorities. The Directive also provides for the right to an effective remedy before a court or tribunal against negative decisions on the application. <http://register.consilium.eu.int/pdf/en/05/st12/st12983.en05.pdf>



# Legal Aid Update

## CLR Performance Targets

**From July 2006 the LSC will require all immigration suppliers to achieve a 40% success rate on appeals to the AIT. Firms that fail to reach the target will be in breach of contract and will be at risk of not having their contracts renewed next April. Suppliers who fail to achieve a 20% success rate will be deemed to be in fundamental breach and will be served with notices of termination.**

The Law Society and other representative organisations have been sharply critical of the proposals which the LSC intend to implement from July of this year. Whilst we agree that poor quality suppliers should not have legal aid contracts and are not opposed in principle to the setting of targets, we do have serious concerns about the level at which the target has been set, the method of measurement and the draconian nature of the sanctions. The LSC scheme is a blunt instrument which penalises all suppliers and fails to take into account the many variables that determine the outcome of immigration appeals, not least the considerable inconsistency of approach between different immigration judges. This means over some assessment periods even

highly reputable firms may fail to meet the targets. The Society argued that a more suitable approach would be for failure to meet the targets triggering a peer review but this has been dismissed as being too expensive by the LSC. The Commission have stated that firms falling just short of target will not automatically be held in breach and suppliers will have the opportunity to discuss performance with their contract manager. Whilst some flexibility is to be welcomed, reliance on the discretion of contract managers is in itself problematic. Given the month by month decline in the number of legal aid immigration suppliers, the concern is that these new proposals are yet another disincentive to carrying out immigration legal aid work.

## Police Station Telephone Advice Pilot

The LSC are about to launch a telephone advice pilot scheme for providing telephone advice on non - criminal immigration matters for people held in police stations and short term immigration holding centres. Bidding closed on 5 May for a small number of suppliers (2-5) who will operate the scheme for the 6 month pilot which is scheduled to start on 12 June. The pilot will then be evaluated before any further decisions about its future are made. Payment will be at the same rate as the criminal duty scheme; a fixed fee of £30.25. There will also be a standby fee of £4.25 per hour for the lead caseworker although 2 back up caseworkers will also be required during office hours. Interpreters fees will be paid as a disbursement and advisors will be expected to make enquiries of the Home Office where appropriate. However unlike the criminal scheme there is no provision to attend the police station to provide face to face advice and, where casework is required the telephone advisor will be expected to refer the client to a CLS Directory listed supplier.

Although the LSC may be applauded for seeking to address this issue, it remains to be seen how useful such limited telephone advice will be and whether it will be possible to make effective referrals where follow up work is needed. We await the results of the evaluation with interest.

## Home Office Asylum Advice Proposal

The Home Office is currently developing proposals for the possible test of a new approach to legal and other advice within the asylum process. The proposals involve the front loading of resources at the beginning of the process with the intention to improve fairness and efficiency and to reduce overall costs. Applicants would receive initial generic advice about the asylum process, possible outcomes and their rights and responsibilities within the process prior to the screening interview and before being referred on to a specialist legal advisor in their place of dispersal. It is envisaged that legal representatives and the Home Office Case owner would liaise in order to ensure that all the necessary evidence is available before the substantive interview takes place rather than coming fully to light only at the appeal stage. Representatives would be expected to attend the substantive interview and to play a proactive role, including the making of submissions, to ensure that all relevant issues have been raised. The Home Office is in discussion with the LSC over details as to how the service could be provided and is currently seeking informal comments from stakeholders. It is hoped that a detailed proposal will be agreed by mid-June. If this happens, relevant Ministers will be requested to authorise a time-limited test of the new process which will then be evaluated to ensure it fulfils the objectives of fairness, efficiency and cost saving referred to above

## DCA Review of April 2004 Contract Changes

The DCA, working with the LSC is undertaking a review and evaluation of the reforms to asylum and immigration legal aid introduced in April 2004. These included the introduction of financial thresholds for initial legal advice, the Immigration and Asylum Accreditation Scheme, and exclusive contracting for Fast Track processes. The Department is interested in gathering the views of legal aid providers to ascertain the impact of the changes on providers and their clients.

Any providers interested in feeding back their experiences should contact Alan Pitts, alan.pitts@dca.gsi.gov.uk, or Helen Johns, helen.johns@dca.gsi.gov.uk for further details and comments should be submitted by 26 May.

# VAT and Immigration Update

Since we wrote about this issue last year in Issue 8 and, following a meeting between The Law Society, HMRC and the LSC, HMRC have now issued their own guidance in “VAT Information Sheet 07/05 – Clarification of place of supply policy”, which can be viewed on the HMRC website. The main features of the guidance are:

- Individuals in receipt of supplies are treated for VAT purposes as belonging to the country where they have their normal residence.
- Those not granted a right or permission to remain in the UK are to be treated as belonging to their country of origin. This includes asylum seekers no matter how long their claim has been outstanding and, others awaiting determination of their status such as illegal entrants.
- Those granted a right or permission to remain in the UK (except for temporary grants of leave) are treated as belonging to the UK and thus liable for VAT even if their leave has expired or been revoked.
- Those without an identifiable country of origin will be treated as belonging to the UK.
- In an immigration or asylum application, all work done in relation to that application will be on the basis that the client does not belong to the UK including follow up work done after leave is granted. However for non immigration legal services e.g. family work, where the work covers a period both before and after the point where leave has been granted, the place of supply will be treated as that where the client was deemed to be resident for the greater part of the case.
- Counsel’s fees should be treated in the same way as solicitors profit costs.
- In legal aid cases where VAT has been erroneously charged, there is no need to re-visit previous billing. However no VAT should be charged on any bills subsequent to the issue of the guidance.
- For private clients, practitioners may choose to raise a VAT credit provided that this is passed on to the client.

Although some anomalies remain such as long term illegal entrants being treated as not belonging to the UK, this guidance generally offers greater clarity than that previously published by the LSC. The position for non-immigration matters is still unsatisfactory as deciding whether to charge VAT where a client is waiting for an application for status to be determined, can only be a matter of guesswork as to whether the greater proportion of time will elapse before or after the grant of leave. Unfortunately HMRC were not amenable to the Law Society’s proposal that in such cases VAT liability should only be incurred for the latter period. Where the position is uncertain practitioners would be well advised to contact the HMRC National Advice Service on 0845010900.

For Legal Aid cases practitioners should also be aware of the LSC’s revised guidance published in Focus 49 which replaces the previous guidance in Focus 48.

## News On Tribunals

The Council on Tribunals publishes a free quarterly e-newsletter ‘Adjust’, which will be of interest to anyone working within the administrative justice world. To subscribe, email [adjust\\_mailing@cot.gsi.gov.uk](mailto:adjust_mailing@cot.gsi.gov.uk), or visit our website [www.council-on-tribunals.gov.uk](http://www.council-on-tribunals.gov.uk) for further information.



# The role of the Local Government Ombudsman

By Helen Reay

**You may not consider that the Local Government Ombudsman has much of a role to play in immigration issues, but there are some circumstances in which your clients will seek services provided by local authorities. If there are problems, a complaint to the Ombudsman is one of the options available.**

Despite the changes brought about by the Immigration and Asylum Act 1999, asylum seekers retain entitlement to some local authority services. Community care legislation, setting out the responsibilities of local authorities towards people with disabilities, mental health or other health needs, applies to asylum seekers. In addition, under the 'interim rules' local authorities continue to have responsibility, for the time being, for children who are asylum-seekers and without support or accommodation.

In these circumstances asylum seekers are assessed in the same way as any UK resident, based on the level of disability or need. Those who require community care services should be referred to the local authority social services department for a formal community care assessment.

## What we do

We investigate complaints of maladministration causing injustice to individuals, essentially whether the council has done something wrong or failed to do something which has had an adverse effect on an individual. Our remit covers all areas of public law, including housing issues, education, community care.

Where we find the council was at fault we try to find a suitable remedy to rectify the consequences for the complainant. This might mean the council carrying out a new assessment, or providing the services it should have done originally, or where appropriate, paying financial compensation. In many cases we also recommend that the council review its policies and procedures to prevent similar complaints arising in future.

In recent years we have successfully dealt with a number of complaints on behalf of

asylum seekers, particularly in housing and benefits issues where councils have not responded adequately to their immigration status.

Mrs A, Ms B, Mr C and Ms D complained about the council's failure to provide them with support for their housing costs. They were all asylum seekers – at the time of their complaint the council had a duty to assist them. All were in rented accommodation. Asylum and immigration law allowed for the transfer of responsibility for payment of certain benefits from the Benefits section to Social Services where the asylum seeker was destitute. In this case there was a general failure by the council to have in place any system to ensure a timely transition from one support service to the other, even though a dedicated Asylum Seekers Team existed.

There was a delay in payment of benefits which led to the complainants being threatened with repossession and suffering increased stress and anxiety as a result of the rent arrears which accrued. The Ombudsman recommended that the council pay each complainant £500, plus payment of any outstanding arrears. He also recommended that the council carry out a thorough review of its internal procedures.

Once their immigration status has been confirmed, refugees will also be entitled to use local authority services. In such circumstances the Ombudsman expects councils to take into account the



claimants' background when assessing their needs.

In a recent case a complainant applied to the council as homeless after being given indefinite leave to remain. He had no friends or relatives in the UK and spoke very little English. He had been the victim of torture and suffered from epilepsy, clinical depression and post traumatic stress disorder. The council failed to provide him with suitable temporary accommodation while his application was being processed. As a result he slept rough in bus stations and shelters. The council failed to take proper account of his past experiences and medical history when assessing his vulnerability. The Ombudsman criticised the council for not using an interpreter in interviews with the complainant, for failing to provide him with suitable temporary accommodation and for not giving adequate reasons for rejecting the medical evidence. The Ombudsman recommended that the council pay the complainant £7,200 and send him a letter of apology in his own language. In addition the council should provide staff with advice and information on the special needs of victims of torture.

Our website [www.lgo.org.uk](http://www.lgo.org.uk) contains more information about submitting complaints and the Guide for Advisers goes into some detail about the process. Alternatively, call our consultancy line 0845 602 1983 to discuss the issues.

*Helen Reay is an Investigator for the Local Government Ombudsman.*

# Failure to comply with Directions of the Immigration Appellate Authority

**This complaint was submitted by the Acting Chief Adjudicator of the IAA.**

**On 30 July the solicitor concerned was unable to attend Court to represent his client due to ill health. The Adjudicator was notified by fax on the morning of the hearing. In the circumstances the Immigration Adjudicator Directed that the solicitor should provide a sick note by 24 August and adjourned the hearing to 10 September.**

No sick note was provided and at the subsequent hearing the solicitor told the Court that the production of a Doctor's note had been overlooked.

The Adjudicator further Directed that a note should be produced by 15 September. However, no sick note was filed with the Court.

The IAA wrote three letters to the solicitor on 7 October, 28 October and 8 November requesting an explanation. The Court's letters went unanswered.

The Law Society raised the allegations with the solicitor and he responded stating that although he was unable to attend Court on 30 July due to ill health he did not in fact see a Doctor. He stated that he did not give a detailed explanation to the Adjudicator on the adjourned date as the circumstances of his ill health were personal. He apologised for having not provided the explanation earlier and stated that should expert evidence be required to confirm the ill health then



this would be obtained. He went on to explain that the failure to respond to the three letters was due to an administrative oversight.

The Law Society's Adjudicator found the solicitor had compromised his duty to

the Court in breach of Practice Rule 1(f) and Principle 21.14 of the Guide to the Professional Conduct of Solicitors (8th Edition) 1999.

He commented that he found the solicitor's explanation in relation to his failure to comply with the original Direction and the failure to respond to the Court's correspondence to be wholly unconvincing. He was satisfied that the solicitor had failed, without reasonable excuse, to comply with an Order of a Court.

The Adjudicator decided to severely reprimand the solicitor in respect of the findings of professional misconduct.

The solicitor was also ordered to pay £829.53 to The Law Society for the costs of the investigation. (Section 44C of the Solicitors Act 1974 ).

Tasneem Dhanji  
Senior Advisor  
Conduct Assessment and Investigation Unit

## Stage Billing

The Law Society has been contacted by a number of legal aid firms who are experiencing difficulties because of the limited opportunities for stage billing in immigration and asylum cases. The option to submit stage claims for controlled work at six monthly intervals was ended in April 2004. A few months later the LSC partially backtracked and introduced a more limited form of stage billing requiring suppliers to submit bills at the Home Office decision stage for Legal Help and at the tribunal determination stage for CLR.

The current arrangements are unsatisfactory for a number of suppliers who report that the value of un-billable work in progress has escalated considerably since the 2004 changes resulting in cash flow problems for already hard-pressed immigration

departments. The Law Society, LAPG and some individual firms have written to LSC urging them to re-introduce 6 monthly stage billing in order to address this difficulty. However the LSC's response is to point to the Home Office statistics showing the high proportion of asylum cases determined within 6 months combined with a sharp fall in the number

of asylum claims, as indicators that the factors of high volumes of asylum claims and long delays which gave rise to the original stage billing provisions no longer apply. Whilst the LSC accept that there may be a problem for a few specific firms due to the particular nature of their case profile, they suggest that these problems can be resolved by individual arrangements with contract managers rather a general revision of the rules.

The Law Society does not consider this approach which relies upon the discretion of contract managers to be satisfactory, and we suspect that the problem is greater than the LSC are prepared to admit. We would like to hear from suppliers who are experiencing difficulties with the current arrangements. Please contact Simon Cliff in the Legal Aid and Costs Team:  
simon.cliff@lawsociety.org.uk.

## Revised Professional Conduct Guidance

The Law Society's revised guidance on professional conduct in immigration matters is now published at Annex 12C of the Guide. New guidance on dealing with retrospective funding for onward appeals also appears at Annex 12F. The Guide Online can be found at [www.lawsociety.org.uk](http://www.lawsociety.org.uk).

Immigration Bulletin is edited on behalf of the Immigration Law Committee by Simon Cliff, Law Reform and Legal Policy, The Law Society. Unless stated to be so, views expressed in articles are those of the authors and not necessarily the views of the Law Society. The contents of "Immigration Bulletin" are provided as an information guide only. No responsibility is accepted by or on behalf of the Law Society for any errors, omissions or misleading statements.

# New Immigration Act Becomes Law.

**The Immigration Asylum and Nationality Act 2006 received royal assent on 30 March although none of its provisions are yet in force and will require separate commencement orders. The Act includes a number of controversial provisions including the curtailment of rights of appeal against decisions by Entry Clearance Officers except for family visit and settlement applications, and powers to deport British born citizens who hold dual nationality if their presence is deemed not to be “conducive to the public good”. The Act also creates a statutory framework for the government’s recently published points based “managed migration” proposals for applicants seeking to work or study in the UK and, imposes more stringent penalties for employing illegal workers.**

During the passage of the bill some important concessions were made by the government in response to lobbying by The Law Society, ILPA and other organisations. These included assurances that administrative review will be available to deal with applications for reconsideration of refusals by Entry Clearance Officers. Proposals to abolish in-country appeals against refusals to vary leave and to terminate leave on issue of a refusal were dropped in favour of an in-country one stop appeal against both the refusal decision and removal directions. Leave will continue pending the determination of the appeal. The Act will be implemented in stages from June 2006.

## Managed Migration

The Government’s managed migration proposals” A Points Based System: Making Migration Work for Britain were published in March. The document sets out a scheme for a points based entry scheme for workers and students. Points will be awarded on the basis of objective criteria such as salary and qualifications. There will be no right of appeal against refusal but an administrative review process will be put in place. The system proposes 5 tiers of migrant:

Tier 1 for Highly Skilled Migrants – similar to the current scheme and intended to attract highly skilled workers who will contribute to the development of the economy.

Tier 2 for skilled workers.

Tier 3 for low skilled workers required to fill temporary positions. This tier will be subject to a quota system.

Tier 4 for students.

Tier 5 for “Youth Mobility and Temporary Workers”. This will include what is currently the working holiday visa and aims to satisfy what are essentially non economic objectives.

Only tiers 1 and 2 will be capable of leading to settlement and sponsors will be required for all tiers except tier 1. Applicants will need to provide a certificate of sponsorship from their prospective employer or educational institute and sponsors themselves will require approval from the Home Office. In addition sponsors will be rated by the Home Office and that rating will affect the number of points awarded to applicants.

Whilst the aim of objective assessment of applications has much to commend it there must be concerns that ECOs who will determine all applications, will still be making subjective assessments as to the risk posed by applicants in terms of compliance with the immigration rules. In the absence of a right of appeal to the Tribunal it is important that the administrative review procedure is fair and transparent although it is difficult to see how credible this process can be. Furthermore the proposed system which reduces over 80 current categories to 5 tiers may be too simplistic to take account of the circumstances of specific individuals who would currently obtain entry clearance but may not fit into the new system.

The new system will be implemented in stages and it is unlikely that the points based system will be introduced before 2008.

