

UK Immigration Rules—discriminatory against women?

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Immigration analysis: Joanna Hunt, managing associate at Lewis Silkin, discusses the extent to which the UK Immigration Rules can be seen as discriminatory against women. In particular, Hunt considers how the rules could be changed to provide ‘migrant female workers a better chance of building a long-term career in the UK’.

To what extent do the UK Immigration Rules indirectly prevent women from building their careers in the UK?

The Immigration Rules, which allow workers from beyond the EU to find jobs in the UK, are mainly contained within Part 6A of the Immigration Rules, referred to as ‘the points based system’. Tier 2 is the principal visa route which enables businesses and other organisations to employ foreign talent, provided they have a sponsor licence in place.

To be clear, the Tier 2 rules do not differ according to the gender of the applicant. There are, however, a number of provisions of Tier 2 that indirectly discriminate towards women, as the consequences of the rules place female workers at a disadvantage compared with their male counterparts and may hinder their ability to build careers in the UK.

The existence of the gender pay gap, which shows that women are generally paid less than men across most industries, is generally accepted even though the reasons for it and how to address it are disputed to an extent. It is irrefutable though that the government wants employers to take active steps to bring levels of pay in line between genders, and to raise levels of pay and work opportunities for women in particular.

With this in mind, we have to consider whether restricting access to Tier 2 by a series of salary levels that a job has to meet is indirectly discriminatory towards women. Women on average earn less than men across most industries, so limiting access to a visa route by using a salary threshold will make it harder for them to find work and build a career in the UK.

Furthermore, there are a number of provisions within Tier 2 which require a person’s salary to increase while they are in the UK in order to qualify for an extension or a subsequent indefinite leave to remain (ILR) application. Studies have shown that women’s pay rises slower than men’s pay, meaning it will be more difficult for them to sustain long term careers in the UK.

Access to Tier 2 is also restricted by skill level, so that only ‘degree level’ roles will be eligible for sponsorship under Tier 2. As women are under-represented in senior roles, this will impact women more than men.

Do the Immigration Rules cater to changes in the workplace such as flexible working or shorter working weeks and if not, what is the effect this has on women?

Not explicitly, no. The minimum salary levels that applicants have to meet to be granted a Tier 2 visa cannot be pro-rated. This means that only Tier 2 visa holders who are paid significantly above the salary threshold can work part-time and meet the conditions of their visa, as their salary will remain above the threshold despite working a shorter week.

The fact that Tier 2 does not cater for part-time work means that many Tier 2 visa holders, particularly those earning from £30K–£45k, are prevented from working flexibly, and having the work life balance most settled workers take for granted. Statistics show that female workers are more likely to ask for flexible working

arrangements and far more women work in part-time roles, so this will impact them more than men. This will deter many women from coming to the UK to work or will force them to curtail careers and find jobs in countries where better working conditions are offered.

How does the review of the Shortage Occupation List play a part in this?

The Migration Advisory Committee (MAC)'s [review](#) of the shortage occupation list concluded that the list should be extended to include a wider range of health, IT and engineering occupations. This means that a greater range of occupations will not need to meet the resident labour market test in the future if the government adopts their recommendations. The resident labour market test is due to be abolished if the new government proceeds with the changes suggested by the [immigration White Paper](#) which was released in December 2018. It is therefore unlikely that this will make much difference in terms of the barriers that Tier 2 presents to women wanting to work in the UK. In my view, the MAC's forthcoming review of the salary levels for Tier 2 offers a better chance of improving access to Tier 2 for women.

Is the position likely to change post-Brexit?

We have some idea about what the post-Brexit immigration system will look like, thanks to the government's [immigration White Paper](#). This recommends widening the Tier 2 route to incorporate EU nationals who want to work in the UK in the future. The White Paper suggested that the current salary thresholds should be maintained, but the level they will be set at is still to be decided. I am keen to see the conclusions of the review by the MAC as these are likely to influence what the government finally put into law.

The government's White Paper did suggest reducing the minimum skill level for Tier 2 to 'A-level' roles, which is a positive step forward. However, if the salary levels are kept at a similar level to what they are now, this will have little practical effect in opening up Tier 2. I hope that the MAC take this opportunity to look critically at the use of salary levels as the main marker of a visa applicant's worth, and the negative impact this has on women in particular.

How would you recommend changing the Immigration Rules and do you see this happening in the future?

A key function of an immigration system is to filter applicants to exert control over migration flows, in a way that best benefits the economy or meets other political aims. The strict adherence that the Tier 2 system has to salary levels as a method of control has, though, significant adverse consequences for women and part-time workers in particular which the government has, thus far, ignored. I would like to see the current salary thresholds for Tier 2 reduced, opening up the visa route to more women. I also think it is crucial that Tier 2 is reformulated to allow part-time and other flexible working arrangements. This will bring the Tier 2 system in line with modern working practices, providing migrant female workers a better chance of building a long-term career in the UK.

Interviewed by Varsha Patel.

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