

Investment residence in the UK: past and future

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Investment Migration Policy Briefs

Investment Residence in the UK: Past and Future

Alina Tryfonidou

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Investment Migration Policy Briefs

IMC-RP2017/1

Investment Residence in the UK: Past and Future

Dr. Alina Tryfonidou^{*}

ABSTRACT: In 2008, the UK introduced its (current) golden visa programme, officially known as the ‘Tier 1 (Investor)’ route, replacing the previous ‘Investor Immigrant’ category, firstly introduced in 1994. Despite the fact that golden visa programmes are not as controversial as golden passport programmes, which, at the moment, are operative in a handful of countries, the UK programme has been criticised mainly for its lack of transparency, for its inability to return any benefits to UK residents, and for creating the danger of transforming the UK into a safe haven for money launderers. These criticisms have, in fact, formed the main rationale behind the amendments effected to the programme in recent years, and (possibly) for the proposals for the abolition of this programme, which have been very recently laid on the table. The aim of this article is to trace the development of the UK’s (current) golden visa programme, from the moment of its inception in June 2008 to today. An assessment of the strengths and weaknesses of this programme is also offered, as well as a consideration of the possibilities for its development (or abolition) in the future.

KEYWORDS: United Kingdom; UK Points-based-system; Tier 1 (investor) visa; golden visa; golden passport; money-laundering; transparency; EU law

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Contents

1. Introduction	1
2. The Tier 1 (Investor) Route	1
3. Criticisms of the Programme & Prospects for the Future	10
4. Conclusion	18

1. Introduction

The UK introduced its current golden visa programme, officially known as the ‘Tier 1 (Investor)’ route, in 2008, replacing the previous ‘Investor Immigrant’ category first introduced in 1994. Despite the fact that golden visa programmes are not as controversial as golden passport programmes, which are currently operated in only a handful of countries,¹ the UK programme has been criticised mainly for its lack of transparency, for its inability to return any benefits to UK residents, and for creating the danger of transforming the UK into a safe haven for money launderers. These criticisms have in fact formed the main rationale behind the amendments effected to the programme in recent years, and possibly for the proposals for the programme’s abolition, which have been very recently put on the table.

The aim of this paper is to trace the development of the UK’s current golden visa programme, from the moment of its inception in June 2008 to today. An assessment of the strengths and weaknesses of this programme will be offered, as well as a consideration of the possibilities for its development (or abolition) in the future.

2. The Tier 1 (Investor) Route

In October 1994 the UK introduced a programme which provided for the first time the grant of a residence visa to non-EEA (and non-Swiss) nationals² who invested a significant amount of

¹ Most notably in Cyprus, Malta, Dominica, St Kitts and Nevis, Antigua and Barbuda. For some interesting comments on the ‘legality’ of such programmes see the contributions in A. Shachar and R. Bauböck (eds), *Should Citizenship be for Sale?*, EUI Working Papers RSCAS 2014/1 Robert Schuman Centre for Advanced Studies EUDO Citizenship Observatory, available at http://cadmus.eui.eu/bitstream/handle/1814/29318/RSCAS_2014_01.pdf?sequence=1.

² Since – as long as the UK remains an EU Member State – EEA and Swiss nationals are entitled to the right to move and reside in the UK as a matter of EU law, they do not need to participate in such a programme to gain access to the UK and be allowed to reside in its territory.

money in its territory ('the Investor Immigrant programme').³ Under this programme, investor applicants were required to hold at least GBP 1 million in the UK and to invest GBP 750,000 in UK Government bonds, stocks or corporate bonds. There was also a requirement that the applicants had to make the UK their main home. The 1994 scheme was amended in 2004⁴ to permit the investment funds to be sourced through a loan from a UK regulated financial institution, as long as the applicant had personal assets (minus the liabilities) of at least twice the value of the investment.⁵

In February 2008 – as a response to the determination of the Labour government under the premiership of Gordon Brown to reduce net immigration numbers⁶ – a Points Based System (PBS)⁷ for managed migration from outside the EEA was introduced,⁸ replacing the old work permit system. The PBS currently⁹ consists of five tiers, with Tier 1 currently covering high net worth individuals ('investors'), entrepreneurs, graduate entrepreneurs and exceptionally talented migrants.¹⁰ A migration route such as that provided under Tier 1 is particularly important in the midst of a financial crisis 'as attracting foreign entrepreneurs, investors and individuals of exceptional talent is a way of promoting economic growth'.¹¹

Since the PBS in general is not the focus of this paper, it will not be examined further here. The paper will, rather, aim to analyse the Tier 1 (Investor) programme – introduced on 30 June

³ Introduced by Statement of Changes in Immigration Rules HC395, 23 May 1994, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228895/0395.pdf.

⁴ Statement of Changes HC176, 13 January 2004, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267382/hc176.pdf.

⁵ See <http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040112/wmstext/40112m01.htm>.

⁶ The same approach was followed by subsequent governments. For commentary, see S. Symonds, 'The numbers game' (2012) 26 IANL 138.

⁷ The intent and purposes of the PBS were set out by the then Home Secretary Charles Clarke MP through the document 'A Points-Based System: Making Migration work for Britain' Cm 6741, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/272243/6741.pdf.

⁸ Statement of Changes in Immigration Rules HC321, 6 February 2008, introduced the Points-Based System on 29 February 2008. The Statement is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267788/hc321.pdf.

⁹ The various categories within the tiers were not all introduced at the same time but new categories were introduced from time to time (e.g. Tier 1 (Exceptional Talent), which was introduced in 2011), while some which were initially introduced were later abolished (e.g. Tier 1 (General), which was abolished in 2011, and Tier 1 (Post-Study Work), which was closed in April 2012).

¹⁰ It also covers the Tier 1 (General) category, which was closed to new applicants in April 2011 but remains open for settlement applications.

¹¹ Report by John Vine, Independent Chief Inspector of Borders and Immigration, 'An Inspection of applications to enter and remain in the UK under the Tier 1 Investor and Entrepreneur categories of the Points Based System (December 2012 – May 2013)', p. 10, para. 4.1 (available at <http://icinspector.independent.gov.uk/wp-content/uploads/2013/09/An-Inspection-of-Tier-1-PBS-Investor-and-Entrepreneur-Applications.pdf>).

2008¹² and amended on various occasions since then – which offers a route to lawful residence in the UK to persons who make a substantial financial investment to the country;¹³ it is this programme which replaced the original ‘Investor Immigrant’ category introduced in 1994.

The rules for the Tier 1 (Investor) programme are found in paragraphs 245E to 245EF of Part 6A and paragraphs 54-65 of Appendix A of the Immigration Rules.¹⁴ A successful application leads to the grant of an initial period of leave to enter (LTE) the UK of three years and four months (for out-of-country applicants).¹⁵ Persons who have already been granted a visa via this route and for whom the initial period of three years and four months is due to expire, may apply for an extension to the leave to remain (LTR) of two years.¹⁶ Persons who have been lawfully resident in the UK but under another category may apply to switch to this category and, if successful, will be granted a Tier 1 (Investor) residence visa of three years’ duration.¹⁷

Applicants must be at least 18 years old to use this route,¹⁸ and the assets and investment in respect of which they are claiming points in order to satisfy the requirements of the programme must be wholly under their control.¹⁹ Moreover, they must have opened a UK bank account and the funds on which they rely in order to obtain the Tier 1 (Investor) visa must be held in one or more regulated financial institutions and must be free to be spent in the UK.²⁰ Tier 1 (Investor) holders can be joined in the UK by their family members (‘dependants’) (i.e. their spouse or partner and children under 18) who must also have a visa (as family members of a Tier 1 Investor) if they are from outside the EEA or Switzerland. Unlike other categories of applicants under the PBS, Tier 1 (Investor) applicants do not need to show evidence of language

¹² See Statement of Changes to the Immigration Rules HC321, 6 February 2008, available at <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc321-february-2008-corrections>.

¹³ Paragraph 245E Immigration Rules.

¹⁴ For the full, consolidated, version of the Rules go to <https://www.gov.uk/guidance/immigration-rules>.

¹⁵ Paragraph 245EC Immigration Rules.

¹⁶ See paragraphs 245ED and 245EE Immigration Rules.

¹⁷ Paragraph 245EE(a) Immigration Rules. The list of the categories of visa from which applicants can switch to a Tier 1 (Investor) visa can be found at paragraph 245ED(c) Immigration Rules. If someone does not fall within one of these categories but has been lawfully residing in the UK under another category (s)he must leave the UK and make a Tier 1 (Investor) application from abroad (i.e. (s)he cannot ‘switch’).

¹⁸ Paragraph 245EB(d) and Paragraph 245ED(e) Immigration Rules. Prior to April 2015, the requirement was that applicants should be at least 16 years old (from April 2014 until April 2015), and before that there was no minimum age limit.

¹⁹ Paragraph 245EB(d) Immigration Rules (for LTE) and Paragraph 245ED(e) Immigration Rules (for LTR).

²⁰ Paragraph 59 of Appendix A to the Immigration Rules.

proficiency²¹ or the ability to maintain themselves and (where applicable) their dependants who join them.²²

Satisfaction of all the conditions of the Tier 1 (Investor) category does not necessarily mean that the application will be successful. A number of general grounds for refusal are listed in paragraphs 320-322 of the Immigration rules, which are, in essence, criteria relating to criminality and previous immigration history.

Once within the UK, successful applicants will not be able to have recourse to public funds²³ and – depending on their nationality – they may have to register with the police.²⁴ Moreover, although they will be entitled to unrestricted employment and self-employment in the UK, they will not be able to take employment as a medical doctor or dentist in training, except in defined circumstances,²⁵ and they will not be able to take employment as a professional sports person.²⁶ Finally, in situations where the applicant applies for a LTR (as opposed to LTE), the applicant must not be in the UK in breach of immigration laws, except that overstaying for a period of 28 days or less will be disregarded.²⁷

One of the important changes made in 2015 are those which seek to ensure that this route cannot be used for money laundering. Accordingly, paragraph 245EB(e) of the Immigration Rules provides that ‘The entry clearance officer must not have reasonable grounds to believe that’ (i) the applicant is not in control of, and at liberty to freely invest, the money specified in their application for the purposes of meeting the requirements under this route; (ii) any of the money specified in the application has been acquired by means of conduct which is unlawful in the

²¹ The Policy Guidance for this scheme (the version of 6 April 2016) notes that ‘Under this route you will not need to show that you have any English language ability because, while you are allowed to work in the UK if you wish to, you should not need to work’ – see Introduction, Key Principles, point 3. The guidelines are available at <https://www.gov.uk/government/publications/guidance-on-application-for-uk-visa-as-tier-1-investor>. Wray has pointed out that ‘the usual case for language skills, that they are necessary for integration, is weakened here by the exemptions for investors and intra-company transfers’ – see H. Wray, ‘The points based system: a blunt instrument?’ (2009) 23 IANL 231, p. 250.

²² The Policy Guidance for this scheme (the version of 6 April 2016) notes that ‘You will not need to show any maintenance (funds) because if you have the required investment funds you will be able to support yourself in the UK without needing help from public funds’ – see Introduction, Key Principles, point 4. The guidelines are available at <https://www.gov.uk/government/publications/guidance-on-application-for-uk-visa-as-tier-1-investor>.

²³ Paragraph 245EC(a)(i) Immigration Rules.

²⁴ Paragraph 245EC(a)(ii) Immigration Rules.

²⁵ Paragraphs 245EC(a)(iii) and 245EE(b) Immigration Rules.

²⁶ Paragraphs 245EC(a)(iv) and 245EE(b) Immigration Rules.

²⁷ Paragraph 245ED(f) Immigration Rules.

UK, or would constitute unlawful conduct if it occurred in the UK; or (iii) where the money specified in the application has been made available by another party, the character, conduct or associations of that party are such that approval of the application would not be conducive to the public good. In addition, the Rules were changed with effect from 1 September 2015, to require that applicants and their dependants must provide an overseas criminal record certificate for any country they have resided in continuously for 12 months or more in the 10 years prior to their application; and the certificate must have been issued within 6 months of the visa application or within the expressed validity period of the document, whichever is the shorter.²⁸ An additional requirement is that if the investment funds have been held for less than 90 consecutive days, the applicant will need to prove their source.²⁹ All the above requirements are also applicable to persons who are already lawfully resident in the UK and who apply under this route to extend their period of residence.³⁰

As is already clear from what has been noted above, two types of application can be made under the programme: initial applications and extension applications. Initial applications are those which are made by persons who have not already entered into or resided in the UK, whereas extension applications are made by persons who have already been granted initial Tier 1 (Investor) entry clearance and who wish to extend their leave as a Tier 1 (Investor) for a further two years, or persons who have already been admitted into the UK under other categories and who wish to switch to the Tier 1 (Investor) category.³¹ The criteria which must be satisfied for initial and extension applications are essentially the same, with the applicants in both cases having to score at least 75 points for ‘attributes’.³² The Policy Guidance (paragraph 25) encourages applicants who apply for an extension to apply at least a month before their initial leave expires, but not much earlier than this since they risk having a shortfall in leave if they choose to apply for settlement.³³

²⁸ Policy Guidance, para. 15, available at <https://www.gov.uk/government/publications/guidance-on-application-for-uk-visa-as-tier-1-investor>.

²⁹ Paragraph 64 of Appendix A to the Immigration Rules.

³⁰ Paragraph 245ED(g) Immigration Rules.

³¹ For a clear summary of the rules regarding ‘switching’ see A. Lam, ‘Switching into Tier 1 (Investor)’, LexisNexis PSL Immigration, available at <https://www.lexisnexis.com/uk/lexispsl/immigration/document/393827/5618-M7F1-F18H-73KH>.

³² Paragraph 245EB(b) (for initial leave to enter) and Paragraph 245ED(b) (for leave to remain) Immigration Rules. The ‘attributes’ are contained in paragraphs 54 to 65-SD of Appendix A to the Immigration Rules.

³³ See <https://www.gov.uk/government/publications/guidance-on-application-for-uk-visa-as-tier-1-investor>.

Applicants for an LTE must a) have money of their own under their control, held in a regulated financial institution, and which is disposable in the UK, amounting to not less than GBP 2 million; and b) have opened an account with a UK regulated bank for the purposes of investing not less than GBP 2 million in the UK.³⁴ It should be noted that the GBP 2 million minimum requirement was only introduced by the amendments to the Rules which took effect on 6 November 2014;³⁵ prior to that, the minimum amount was GBP 1 million.³⁶ Moreover, the same amendments removed the possibility to obtain a loan by a UK regulated financial institution to cover the investment funds.

The rules regarding the criteria which must be satisfied by extension applications are complicated by the fact that different rules apply to applicants who had been granted their *initial* Tier 1 (Investor) visa before 6 November 2014 (i.e. the date when the new GBP 2 million threshold was introduced) and those who have been granted such a visa after that date.

Those falling within the first category (i.e. initial visa granted before November 2014) have to satisfy the following requirements: a) they must have money of their own, under their own control, in the UK amounting to not less than GBP 1 million; *or* (b) (i) have personal assets which, taking into account any liabilities to which they are subject, have a value of not less than GBP 2 million, and (ii) have money under their control and disposable in the UK amounting to not less than GBP 1 million, which has been loaned to them by a UK regulated financial institution; and b) they must have invested not less than GBP 750,000 of their capital in the UK by way of UK Government bonds, share capital or loan capital in active and trading UK registered companies other than those principally engaged in property investment; and have invested the remaining balance of GBP 1 million in the UK by the purchase of assets or by maintaining the money on deposit in a UK regulated financial institution; and c) they must

³⁴ Table 7 of Appendix A to the Immigration Rules. Until November 2014 when the Rules were amended to increase the money available for investment to GBP 2 million, the required amount was GBP 1 million. The Migration Advisory Committee had proposed this increase in the amount in its report published on 25 February 2014, available at <https://www.gov.uk/government/publications/the-investment-limits-and-economic-benefits-of-the-tier-1-investor-route-feb-2014>. The Committee noted that although determining the correct level of the investment threshold would be very difficult, 'as the investment threshold has not changed since 1994, and as the Government regularly increases Tier 2 salary thresholds in line with average earnings, we recommend a similar revision of the Tier 1 (Investor) route. Based on the earnings inflation measure considered in Chapter 5 and the fact that the threshold would probably remain constant for the immediate future (i.e. at least the next five years), we recommend that the minimum £1 million threshold be increased to £2 million' (p. 86, paras. 6.8 and 6.9 of the Report).

³⁵ See Statement of changes to the Immigration Rules: HC693, 16 October 2014, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364371/hc-693.pdf.

³⁶ Paragraph 245EE(e) Immigration Rules.

have made the investment referred to above within 3 months of their entry into the UK, if they were granted entry clearance as a Tier 1 (Investor) Migrant and there was evidence to establish their date of arrival in the UK, or within 3 months of the date of the grant of entry clearance or leave to remain as a Tier 1 (Investor) Migrant, or where the investment was made prior to the first grant of leave as a Tier 1 (Investor), no earlier than 12 months before the date of the application which led to the first grant of leave as a Tier 1 (Investor) Migrant, and in each case the level of investment must have been maintained for the whole of the remaining period of that leave, unless their last grant of leave was as an investor under the previous Investor programme (i.e. the Immigration Rules in force prior to 28 June 2008).³⁷

Applicants whose initial Tier 1 (Investor) leave was granted on or after 6 November 2014, have to satisfy the following requirements: a) they must have invested not less than GBP 2 million in the UK by way of UK Government bonds, share capital or loan capital in active and trading UK registered companies and the investment must have been made within 3 months of their entry to the UK, if they were granted entry clearance as a Tier 1 (Investor) Migrant and there was evidence to establish their date of entry to the UK, unless there were exceptionally compelling reasons for the delay in investing, or within 3 months of the date of the grant of entry clearance or leave to remain as a Tier 1 (Investor) Migrant, unless there were exceptionally compelling reasons for the delay in investing or where the investment was made prior to the first grant of leave as a Tier 1 (Investor), no earlier than 12 months before the date of application which led to the first grant of leave as a Tier 1 (Investor) Migrant, and in each case the level of investment must have been maintained for the whole of the remaining period of that leave.³⁸

In most instances, applicants have long-term plans to stay in the UK and may thus wish to ‘settle’ in the UK. In order to do so, they must apply for an indefinite leave to remain (ILR). The criteria for settlement (i.e. ILR) for Tier 1 (Investor) applicants can be found in paragraph 245EF of the Immigration Rules and Table 9A of Appendix A to the Immigration Rules (for investors who initially applied to enter the category on or after 6 November 2014) and in Table 9B of Appendix A to the Immigration Rules (for investors who initially applied to enter the category before 6 November 2014). As noted in paragraph 114 of the Policy Guidance

³⁷ Table 8B of Appendix A of the Immigration Rules.

³⁸ Table 8A of Appendix A to the Immigration Rules.

document, a person can apply for settlement under Tier 1 (Investor) once (s)he has reached five years continuous leave in the UK under the route. However – as noted in paragraph 115 of the Guidance – if they meet additional criteria, they may apply for accelerated ILR after a continuous period of either 2 years or 3 years; a possibility only introduced in April 2011.³⁹ As regards the latter, the criteria are as follows: a person can apply for ILR *after two years* of continuous residence in the UK, if (s)he can demonstrate that (s)he has invested *GBP 10 million* by way of UK Government bonds, share capital or loan capital in active and trading UK registered companies; alternatively, a person can apply for ILR *after three years* of continuous residence in the UK, if (s)he can demonstrate that (s)he has invested *GBP 5 million* by way of UK Government bonds, share capital or loan capital in active and trading UK registered companies. It is important to underline, however, that the fast track to ILR is currently only open to the main applicant and thus, family members must in all circumstances satisfy the five years continuous residence requirement before they can become eligible for ILR.

Unlike in the case of applications for initial entry clearance, extension of Tier 1 (Investor) leave to remain or switching from another category, applicants for ILR must comply with the English language and knowledge of life in the UK requirements.⁴⁰ As Williams and Williams have noted, ‘Given that Tier 1 Investor applicants do not have to meet an English language requirement at the outset of their immigration leave, it is vital to flag the necessity of passing the English language testing process by the time they are ready to apply for ILR’.⁴¹ In order to qualify for ILR, someone must not have been absent for more than 180 days from the UK during each 12 months of the continuous period.⁴²

³⁹ Statement of Changes to the Immigration Rules HC863, 16 March 2011, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268140/hc863.pdf. Table 9A of Appendix A to the Immigration Rules. Anecdotal evidence suggests that Tier 1 investors tend to invest at the lower threshold value of GBP 2 million (or – before 2014 - GBP 1 million) rather than the GBP 5 million and GBP 10 million thresholds – see ‘Tier 1 (Investor) route: Investment thresholds and economic benefits’, Report prepared by the Migration Advisory Committee, 25 February 2014, available at <https://www.gov.uk/government/publications/the-investment-limits-and-economic-benefits-of-the-tier-1-investor-route-feb-2014>, pp. 35 and 56, paras. 3.21 and 4.5.

⁴⁰ Paragraph 245EF(d) Immigration Rules.

⁴¹ N. Williams and G. Williams, ‘Tier 1 (investor) visas’, Westlaw Insight, last updated on 28 April 2016, para. 18.

⁴² Paragraph 245AAA Immigration Rules. It was only in April 2011 that the residence requirement was relaxed in this way, permitting absences of 180 days per year. Prior to this change, only short absences were permitted and absences from the UK had to be for no more than three months at a time totalling no more than six months over the five years.

It should be noted that, unlike under citizenship-for-sale programmes such as those operated in Cyprus and Malta, high net worth individuals who have been granted a residence visa under the Tier 1 (Investor) programme cannot obtain British citizenship through a different route than the normal naturalisation procedure.⁴³ They must therefore apply in accordance with the British Nationality Act 1981.⁴⁴ The Act imposes a requirement of five years lawful residence in the UK, the last 12 months of which must have been spent with no conditions attached to the migrant's leave. Williams and Williams have explained that 'If the applicant has accelerated his/her eligibility for indefinite leave to remain by increasing the levels of investment, so that he/she obtains ILR after 2 or 3 years in the UK, he still has to wait until five years elapse before applying for British citizenship. An important additional consideration is that the residence requirement for British citizenship is more restrictive than for ILR. In the immediate five years before applying for British citizenship, an applicant (either the main Tier 1 Investor applicant or their family dependants) may only be absent for a maximum of 450 days. This equates to approximately 90 days per 12 month period'.⁴⁵

There is no cap on the number of persons who can obtain a leave to enter and reside in the UK under the Tier 1 (Investor) route. This would appear unnecessary given that successful Tier 1 (Investor) applicants are – especially in the past couple of years – a miniscule proportion of all successful applications across all immigration routes.⁴⁶ The vast majority of applicants under this route (accounting for half of the total number of Tier 1 (Investor) visas granted) have been Russian and Chinese (including Hong Kong) nationals.⁴⁷ As of March 2016, the normal application fee (for each applicant and each additional dependent) is GBP 1530 plus a

⁴³ Of course, it should be noted that not all holders of a Tier 1 (Investor) visa will wish to apply for British citizenship. Persons who have benefited from the programme may in particular prefer to apply for ILR instead, if their country of nationality does not permit dual citizenship, meaning that they would have to give up their original nationality if they obtained British citizenship.

⁴⁴ A consolidated version of the British Nationality Act 1981 can be found here <http://www.legislation.gov.uk/ukpga/1981/61>.

⁴⁵ N. Williams and G. Williams, 'Tier 1 (investor) visas', Westlaw Insight, last updated on 28 April 2016, paras. 22 and 23.

⁴⁶ For some commentary on the numbers see 'Tier 1 (Investor) route: Investment thresholds and economic benefits', Report prepared by the Migration Advisory Committee, 25 February 2014, available at <https://www.gov.uk/government/publications/the-investment-limits-and-economic-benefits-of-the-tier-1-investor-route-feb-2014>, pp. 18-27, paras. 2.37-2.57.

⁴⁷ See the Government Migration Statistics available here <https://www.gov.uk/government/collections/migration-statistics>.

healthcare surcharge, which is much higher than the normal fee charged for applications under other routes.⁴⁸

3. Criticisms of the Programme & Prospects for the Future

Overall, the current programme and its predecessor appear to have worked smoothly for a period of over twenty years, without any major problems, this being obvious from a simple internet search, which does not yield any ‘horror stories’.

However, some NGOs and government advisory bodies have been critical of some aspects of the programme. The aim of this section of the paper is, therefore, to consider those criticisms. The first important question is whether the scheme benefits UK residents. The answer to this question depends on what the UK seeks to achieve by opening this route. As the Migration Advisory Committee – the Government’s key advisory body on immigration – has noted, ‘If the purpose of the route is to attract investment to the UK, then it follows that the main economic benefit must arise from the direct financial contribution of users of the route through the investment sum. If, however, the purpose is to attract high net worth individuals to settle, reside and, crucially, spend money in the UK, the benefits must lie in the indirect financial contribution made by Tier 1 investors’.⁴⁹

Having done some research on the benefits of the Tier 1 (Investor) route for the UK economy, the Committee concluded that the direct investment itself (i.e. the one required by the programme) is not of great benefit to the UK, and the benefits from the programme appear rather to lie in the indirect consumption by the investor and associated taxation.⁵⁰ This is because investors predominantly invest in Government bonds, which are simply a loan to the UK Government. However, since – according to the Report – the Government is already able to access the finance it requires from capital markets, particularly at a time when UK gilt

⁴⁸ The Immigration and Nationality (Fees) Regulations 226/2016 available at http://www.legislation.gov.uk/ukxi/2016/226/pdfs/ukxi_20160226_en.pdf. For comments on the rising fees charged for immigration applications see A. Chatterji, ‘Immigration Control: Fees and Charges’, Westlaw Inside, last updated 13 October 2015.

⁴⁹ ‘Tier 1 (Investor) route: Investment thresholds and economic benefits’, Report prepared by the Migration Advisory Committee, 25 February 2014, available at <https://www.gov.uk/government/publications/the-investment-limits-and-economic-benefits-of-the-tier-1-investor-route-feb-2014>, para. 3.2.

⁵⁰ *Ibid.*, Chapter 3.

auctions are typically oversubscribed, it does not need the additional funding provided by the Tier 1 (Investor) route.⁵¹ In particular, the Committee noted that it is not convinced that investment in UK gilts provides significant economic benefits for the UK as investment in gilts is simply a loan to the Government and is thus not a gift and the investor will likely sell the gilt once they obtain settlement, whilst the Government will pay a coupon to the holder of the gilt each year until the gilt matures, effectively meaning that the Government is paying the investor for their application.⁵² Moreover, the Committee noted that even when Tier 1 investors invest in shares or equity in FTSE 100 companies (as opposed to gilts), this provides little benefit for the UK as it is likely that equities are purchased on the secondary market, which does not provide an injection of capital into the relevant company in the way that a new share issue would.⁵³

Yet, despite the fact that the direct investment made under the Tier 1 (Investor) route is not of great benefit to the UK, the Committee concluded that the route does benefit the UK economy, but through indirect consumption by the investor, mainly the purchase of professional services (namely, accountancy and legal services), as well as associated taxation (primarily value added tax).⁵⁴

Accordingly, it seems unlikely that the UK maintains the programme as a way of raising funds through the direct investment made. Rather, it is more likely that it offers this route as a way of attracting high net worth individuals and their families to reside in the UK and settle, in order to obtain their contribution to its economy either through indirect consumption or more broadly, by setting up a business in its territory, with the resultant benefits that this can offer to its economy.

The Migration Advisory Committee in the same report also pointed out that a number of the persons it had consulted noted that the requirement that a Tier 1 investor spends a minimum of 185 days per year in the UK in order to qualify for settlement is too onerous, as investors have

⁵¹ 'Tier 1 (Investor) route: Investment thresholds and economic benefits', Report prepared by the Migration Advisory Committee, 25 February 2014, available at <https://www.gov.uk/government/publications/the-investment-limits-and-economic-benefits-of-the-tier-1-investor-route-feb-2014>, p. 73, para. 5.2.

⁵² *Ibid.*, para. 3.14.

⁵³ *Ibid.*, para. 3.20.

⁵⁴ *Ibid.*, Chapter 3.

business interests overseas which require their attendance.⁵⁵ As Williams and Williams have explained, ‘Concerns over residence restrictions governing the main applicant’s movements, and ensuing financial/business considerations, may result in the family electing for the spouse/partner with less need to travel etc. to stand as the Tier 1 Investor applicant’.⁵⁶ To date, no proposals for the amendment or abolition of this requirement have been made. It is questionable, however, whether such a change should be made, as it would make the grant of a leave to reside in such circumstances purely artificial, as the aim of the applicant would obviously not be to reside effectively in the UK. Moreover, since – as noted earlier – the main aim of the programme appears to be to attract high net worth individuals and their families to reside in the UK and settle in order to contribute to the UK’s economy either through indirect consumption or more broadly, by setting up a business in its territory, such a change would defeat the whole purpose of the programme.

Another criticism has been made regarding the possibility to invest at the higher levels (of GBP 5 million and GBP 10 million). Research conducted by the Migration Advisory Committee has suggested that potential investors are not incentivised to invest at these higher levels. This is for two reasons: a) there is a discrepancy between the acquisition of accelerated settlement for the main applicant, who can obtain settlement in two or three years, and their dependants, who must wait five years before obtaining settlement; and b) an investor may obtain settlement within two or three years rather than the usual five, but he can only benefit from a 12-month reduction in the qualifying period for citizenship, meaning that he will still have to wait for 5 years before he can apply for British citizenship.⁵⁷ Indeed, I would agree with the argument that it would make sense for the applicant’s dependants to be able to obtain accelerated settlement under the same terms as those imposed on the main applicant. However, I would not support the view that investors who get accelerated ILR should be considered as satisfying the residence requirement for applying for British citizenship (i.e. after residing in the UK only for 2 or 3 years), as this would mean that persons who are unlikely to have established any real

⁵⁵ Ibid., p. 78, para. 5.18.

⁵⁶ N. Williams and G. Williams, ‘Tier 1 (investor) visas’, Westlaw Insight, last updated on 28 April 2016, para. 29.

⁵⁷ ‘Tier 1 (Investor) route: Investment thresholds and economic benefits’, Report prepared by the Migration Advisory Committee, 25 February 2014, available at <https://www.gov.uk/government/publications/the-investment-limits-and-economic-benefits-of-the-tier-1-investor-route-feb-2014>, pp. 80-81, paras. 5.25 and 5.26. Note that there remains a requirement for persons who have acquired an ILR (whether accelerated or not) to make a separate application for British citizenship (as everyone else needs to do), and the current scheme is thus not a ‘golden passport’ programme.

links with UK society in that short period will be allowed to apply for citizenship. If the UK does indeed wish to go down the route of introducing a golden passport programme which would allow people who do not satisfy the normal citizenship requirements to acquire British citizenship by paying a hefty sum of money, it should design such a programme taking into account *ab initio* what is on offer in other countries in order to design the most competitive package, rather than hastily introducing it simply as an add-on to its existing golden visa programme.

Another problematic aspect of this route is that the whole application process is complicated and this is compounded by the fact that the terms and conditions that must be satisfied are continually shifting, as a result of changes in the law.⁵⁸ Moreover, the programme is opaque, as the names of those who have applied and/or have been successful under this route are not published, making it difficult to establish any links with money laundering.⁵⁹ Clearly, both of these criticisms should be taken into account in future amendments.

Despite the significant steps taken by the UK Government in 2015 to respond to concerns that the programme can be used for money laundering purposes, the criticisms remain. Transparency International UK⁶⁰ considered in a Report published in 2015 that ‘there is still no adequate and transparent system of upfront money laundering checks’,⁶¹ and pointed out that part of the problem is the fact that the current safeguards against money laundering do not appear sufficient. This is because the scheme (and at a wider level, UK law enforcement operations against international corruption) since 2015 have relied on a system of anti-money laundering checks in the private sector to lead to reports of money laundering suspicions and these checks are not fit for purpose.⁶² In addition, before the current safeguards were introduced, the scheme relied on a ‘blind faith’ approach to assurance that effective checks were being carried out,⁶³ and the current system does not offer a solution to the problem that

⁵⁸ Y. Dubal, ‘Changing times complicate tier 1 investor visa’, published on 14 August 2015, available at <http://www.lexology.com/library/detail.aspx?g=acb6593b-da92-45a8-bf65-445b9c443867>.

⁵⁹ Transparency International UK Report ‘Paradise Lost: Ending the UK’s role as a safe haven for corrupt individuals, their allies and assets’, April 2016, available at <http://www.transparency.org.uk/publications/paradise-lost/>, p. 11.

⁶⁰ Transparency International UK is an anti-corruption NGO with more than 100 chapters worldwide.

⁶¹ See section 4 of the Transparency International UK Report ‘Gold Rush: Investment Visas and Corrupt Capital Flows into the UK’, October 2015, available at <http://www.transparency.org.uk/publications/gold-rush-investment-visas-and-corrupt-capital-flows-into-the-uk/>.

⁶² *Ibid.*, section 4.2.

⁶³ *Ibid.*, section 5.

corrupt money may have entered the UK during that period of ‘blind faith’, even though the overwhelming majority of persons who have been issued with a Tier 1 Investor visa during that period come from high corruption-risk countries (i.e. China and Russia), and it is thus highly probable that some of the money introduced into the UK through the scheme were the proceeds of corrupt activities.⁶⁴

In another Report published in 2016, Transparency International UK recommended that ‘The Home Office should bring full transparency to the Tier 1 (Investor) visa system, with public disclosures of who is investing, how much they are investing, what they are investing in and their financial interests and assets. Upfront declarations should be required for Politically Exposed Persons and public officials who should expect to meet a high level of transparency, even after they have left office. Retrospective checks should be undertaken on historical Tier 1 (Investor) visas that were granted in the ‘blind faith’ period and consideration given to publishing their details’.⁶⁵ Although it is clear that such declarations would indeed prevent the scheme from being used for money laundering purposes, full public disclosure of all such details would be likely to amount to an invasion of the privacy of everyone seeking to benefit from the scheme, including those investors who genuinely wish to reside in the UK in search of a better life. Finally, commenting on the introduction of the criminal records requirement – which is viewed as a way of preventing the use of the route for money laundering purposes – Transparency International UK has noted in its 2015 Report that ‘[w]hile this is a welcome development for mitigating against some types of criminals, it will have no effect on individuals involved in grand corruption, where the highest levels of government are complicit and where no prior conviction may exist’.⁶⁶

Accordingly, and despite significant changes made in recent years to prevent the use of the programme for money laundering purposes, there continue to appear to be serious concerns for

⁶⁴ Transparency International UK Report ‘Paradise Lost: Ending the UK’s role as a safe haven for corrupt individuals, their allies and assets’, April 2016, available at <http://www.transparency.org.uk/publications/paradise-lost/>, p. 11.

⁶⁵ Transparency International UK Report ‘Paradise Lost: Ending the UK’s role as a safe haven for corrupt individuals, their allies and assets’, Recommendation 8, April 2016, available at <http://www.transparency.org.uk/publications/paradise-lost/>.

⁶⁶ Section 4.1 of the Transparency International UK Report ‘Gold Rush: Investment Visas and Corrupt Capital Flows into the UK’ (published in October 2015). The Report is available here: <http://www.transparency.org.uk/publications/gold-rush-investment-visas-and-corrupt-capital-flows-into-the-uk/>.

its transparency and for the safeguards in place to prevent its use by individuals involved in corruption.

The Tier 1 (Investor) route is not a golden passport route. It does not give access to British citizenship in exchange for money but instead, investors who have obtained a visa under this route need to apply for British citizenship separately, and in the majority of cases (i.e. all cases apart from those where an applicant got accelerated ILR under the scheme), satisfy the same requirements which need to be satisfied by everyone else. This may be partly the reason – along with what is now on offer in other Member States – for the recent plummeting in numbers choosing to take this route. Although the UK is a very attractive destination for wealthy individuals and their families who wish to build a life in a new country (it offers an attractive business environment for investors and entrepreneurs, a stable political environment, security of assets, an excellent education system, and is English speaking),⁶⁷ all that it offers to high net worth individuals in exchange for their money is a residence visa. The latter, however, does not offer the stability and security provided by acquiring nationality. Moreover, it does not lead to the acquisition of EU citizenship (with the benefits which flow from that, mainly, free movement within the EU and free access to the EU internal market), which is the case when someone acquires British citizenship, until the UK ceases to be an EU Member State. Accordingly, although London is without a doubt a global, influential city and one of the most preferred locations for high net worth individuals and their families to move to, non-EEA/Swiss nationals wishing to reside in London may choose to relocate to it not as Tier 1 investors but rather as Union citizens, who acquired the citizenship of another Member State (e.g. Malta or Cyprus) much more quickly than they would be able to acquire British citizenship, and more cheaply.⁶⁸

Nevertheless, this will continue only for as long as the UK remains an EU Member State. As is well known, the Brexit referendum in June 2016 yielded a negative result, meaning that the majority of British voters were in favour of the UK leaving the EU. At the moment it is uncertain when, exactly, the UK will cease to be an EU Member State and what the relationship

⁶⁷ ‘Tier 1 (Investor) route: Investment thresholds and economic benefits’, Report prepared by the Migration Advisory Committee, 25 February 2014, available at <https://www.gov.uk/government/publications/the-investment-limits-and-economic-benefits-of-the-tier-1-investor-route-feb-2014>, pp. 60-62, paras. 4.21-4.31.

⁶⁸ See also the comments made in D. Waldron and S. Ali, ‘UK Tier 1 investor visa applications decline by 82%’, published on 13 October 2015, available at <http://www.workpermit.com/news/2015-10-13/uk-tier-1-investor-visa-applications-decline-by-82-percent>.

between the UK and the EU will be, particularly whether the UK will remain part of the internal market by signing an agreement with the EU to that effect. If, however, the ensuing agreement does not provide for free movement of persons between the UK and the EU Member States, the UK golden visa programme will no longer be in direct competition with similar programmes (or even golden passport programmes) offered by EU Member States: non-EEA/Swiss nationals wishing to reside in the UK will have to apply through the UK Tier 1 (Investor) scheme as their only option.

The latest Immigration Statistics (April 2016 to June 2016) published by the Home Office in August 2016,⁶⁹ demonstrate a significant decrease (78%) in the number of Tier 1 (Investor) visas granted in the year ending June 2016 (i.e. 1710 visas).⁷⁰ Steve Goodrich – Transparency International UK’s Open Governance Researcher – reflecting on the fall in numbers as recorded in the Immigration Statistics published in February 2016 and has attributed this contraction to the introduction in April 2015 of the new anti-money laundering controls and checks on applicants,⁷¹ while others have been of the view that the drop is attributable to the increase in the minimum investment threshold in 2014, from GBP 1 million to GBP 2 million, the sociopolitical struggles in the two main countries of origin (China and Russia),⁷² as well as the recent steps taken by the UK to increase taxes.⁷³ The fall in numbers may also be due to the fact that other more appealing programmes which offer golden citizenship (as opposed to merely residence) more cheaply have been introduced in other EU Member States in recent years, through which third-country nationals can gain access to residence in the UK, as long as the latter remains an EU Member State.

This sharp decline in popularity of the programme, combined with the various criticisms levelled above, should prompt the UK to consider, firstly, whether it does indeed wish to

⁶⁹ Available <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2016/summary>.

⁷⁰ For a consideration of the possible reasons behind this see, inter alia, <http://www.workpermit.com/news/2015-10-13/uk-tier-1-investor-visa-applications-decline-by-82-percent>.

⁷¹ S. Goodrich, ‘Plummet in Number of Golden Visas Granted After “Blind Faith” Period Ends’ (25 February 2016), available at <http://www.transparency.org.uk/plummet-in-number-of-golden-visas-granted-after-blind-faith-period-ends/>. See also, section 4.1 of the Transparency International UK Report ‘Gold Rush: Investment Visas and Corrupt Capital Flows into the UK’ (published in October 2015). The Report is available at <http://www.transparency.org.uk/publications/gold-rush-investment-visas-and-corrupt-capital-flows-into-the-uk/>.

⁷² See for instance, the comments in <http://csglobalpartners.com/united-kingdoms-tier-1-investor-programme-option-future/>.

⁷³ D. Waldron and S. Ali, ‘UK Tier 1 investor visa applications decline by 82%’, published on 13 October 2015, available at <http://www.workpermit.com/news/2015-10-13/uk-tier-1-investor-visa-applications-decline-by-82-percent>.

continue offering this route and, secondly, how best it can reform it in order to achieve the aims it has set for it (e.g. if it aims for the programme to contribute to the UK economy not only through indirect consumption but also through the direct investment required, it must diversify the types of investment which can be made to ensure that this is possible). Moreover, in reforming the programme, Brexit should be taken into account, especially if the post-Brexit agreement between the UK and the EU will not provide for free movement of persons between the EU and the UK. This is because the UK will no longer compete with EU Member States in situations where the main aim of the investor is to reside in the UK, since the option of obtaining citizenship and/or a residence visa from another Member State, from which to move to reside in the UK will no longer be available. Accordingly, high net worth individuals who have as their main aim to reside, settle and even to obtain British citizenship in the longer term, will need to obtain a UK residence visa in order to do so. At the same time, once Brexit is completed, British passports will lose part of their appeal, as they will no longer grant EU citizenship to their holders. Hence, high net worth individuals who are not so interested in obtaining residence and settlement in the UK and British citizenship in the longer term, but whose main aim is to obtain an EU passport, will probably no longer be interested in this route.

In any event, the future of this route is now in question. Baroness Hamwee and Lord Wallace of Saltaire, two members of the House of Lords belonging to the Liberal Democrat party, in February 2016 tabled an amendment to the 2015 Immigration Bill, proposing the abolition of the Tier 1 (Investor) route. In particular, they proposed that after Clause 55 of the Immigration Bill, the following new Clause should be inserted: ‘Tier 1 (Investor) visa (1): The Secretary of State must make rules which shall come into force no later than 1 January 2017 – (a) to close the Tier 1 (Investor) route; (b) to close applications to extend leave under Tier 1 (Investor) to applicants in the United Kingdom before 1 January 2017. (2) Nothing in this section shall affect leave to enter or remain of the holder of a Tier 1 (Investor) visa granted before that date in accordance with that leave’.⁷⁴ If the proposal becomes law, it would mean that the route would close as of 1 January 2017, both to new Tier 1 (Investor) applicants and to those switching their visas to the Tier 1 (Investor) route. The two proposers have not explained the reasons behind their proposal, but some have speculated that it could be due to concerns about the investor visa being used by criminals and continuing doubts about the economic benefit of the route to

⁷⁴ The proposed amendment can be seen here: <http://www.publications.parliament.uk/pa/bills/lbill/2015-2016/0079/amend/su079-II-c.htm>.

the UK.⁷⁵ Some commentators (mainly practitioners specialising in such visa applications) are against the closure of this route and consider instead that what the UK should do in the future is ‘to think about how to attract a greater numbers [sic] of investors and to put their investments to work in the UK economy and in wider UK society’.⁷⁶ There has been no information as to whether this proposal has gone through (or even whether it has been rejected), and it thus seems to be currently in a state of limbo.

4. Conclusion

The UK first introduced its investment residence route in 1994 and the programme has operated smoothly since then. Nonetheless, a number of criticisms have been levelled against it, the main ones being that it is opaque, it is open to abuse and can be used by money launderers, and its actual benefit for UK residents appears questionable, at least when judged from the perspective of the direct investment made through it. Accordingly, it is not surprising that the continued existence of the programme has recently been called into question as a result of the proposal from two members of the House of Lords for its abolition. At the time of writing, the proposal has not yet been discussed. Moreover, the significant drop in application numbers in the last couple of years is indeed problematic, if the UK considers the route to be a significant way for attracting wealthy investors into its economy and, thus, wishes to continue offering a successful investor residence programme. Hence, if the UK wishes to continue offering this route, it has to consider more clearly what the actual aim or aims of the programme are and to amend it in a way which will ensure that these aims are achieved. In addition, the impact that Brexit will have on the programme and the popularity of this route will have to be taken into account in the reform process.

⁷⁵ See, for instance, N. Rollason, ‘Lords propose closure of the Tier 1 (Investor) visa’, 26 January 2016, available at <https://www.kingsleynapley.co.uk/news-and-events/blogs/immigration-law-blog/lords-propose-closure-of-the-tier-1-investor-visa>; R. James, ‘Will Britain Terminate Tier 1 Golden Visa Investment?’, 8 February 2016, available at https://www.propertyshowrooms.com/united-kingdom/property/news/will-britain-terminate-tier-1-golden-visa-investment_313568.html.

⁷⁶ N. Rollason, ‘Lords propose closure of the Tier 1 (Investor) visa’.

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