



FRAGOMEN

SCOTTISH FUTURES
Immigration Policy in Scotland
after Brexit

Russell Hargrave & Fragomen LLP

March 2020

CONTENTS

EXECUTIVE SUMMARY	3
INTRODUCTION: SCOTLAND AND IMMIGRATION AFTER BREXIT	6
KEY FACTS.....	9
CHAPTER ONE: THE CURRENT IMMIGRATION SYSTEM	10
CHAPTER TWO: THE CONTEXT IN SCOTLAND	18
<i>The economic benefits of migration: Scotland.....</i>	<i>19</i>
What Scottish businesses say	21
CHAPTER THREE: THE VIEWS OF SCOTTISH BUSINESS.....	23
Scottish Engineering	26
National Farmers Union Scotland	29
CHAPTER FOUR: MARKET RESEARCH INTO SCOTTISH BUSINESSES	30
CHAPTER FIVE: INTERNATIONAL COMPARISONS.....	33
CHAPTER SIX: POLICY OPTIONS FOR SCOTLAND	47
CHAPTER SEVEN: INTEGRATING SCOTTISH AND UK IMMIGRATION POLICY.....	61
End Notes.....	67

EXECUTIVE SUMMARY

The Scottish government has long argued that Scotland should have specific powers to set its own immigration policies. As a Scottish government paper stated in 2018: “Even with current free movement of people between Scotland and the rest of the EU, it is clear that UK policy on migration does not meet Scotland’s needs.” This view was reinforced in *‘Migration: helping Scotland prosper’* which argued: “Freedom of movement has had a positive impact on Scotland but the current immigration system for international migration is not meeting the needs of Scotland’s communities and employers.”

Following the United Kingdom (UK)’s departure from the European Union (EU) on 31 January 2020, the UK government is set to overhaul the UK immigration system at the end of the transition period on 1 January 2021, when the free movement rights of European citizens come to an end. The new system will inevitably limit Scottish access to European workers and students, while creating barriers to family reunification and other important migrant channels.

This report contains a variety of policy options that could be introduced in a Scottish immigration system to reduce, if not entirely remove, the negative impacts of those reforms and builds on the most recent Scottish government paper. Under the policy proposals outlined in this report, Europeans who subsequently wish to move to other parts of the UK would only be allowed to live or work there having met the particular work, study, or family immigration requirements of that region.

Indeed, it would also be entirely possible to maintain the free movement rights of European citizens in Scotland. Our report proposes a policy framework that would enable the free movement rights of European citizens to continue in Scotland, even after they have been removed for the wider United Kingdom.

We reject arguments that free movement in Scotland, or perhaps any regional flexibilities, would create a back door to the wider UK labour market. There will be no visa requirement for European visitors after Brexit and many will be able to enter the country without even speaking to an immigration officer, creating a risk of illegal working or illegal migration. The government is already relying on in-country controls to prevent any abuse, for instance right to work checks, whether relating to visa free travel from the US and elsewhere, or through the borderless common travel area with Ireland.

The government could rely on those same checks for migrants moving from Scottish free movement to a UK immigration system. Concerns that this will create a back door do not stack up, when the UK’s front door is wide open.

We acknowledge publication of the Migration Advisory Committee (MAC)’s review of a points based system and salary thresholds which was released in January 2020. However, the MAC report specifically acknowledges the desire of the Scottish Government for immigration “to become a devolved rather than a reserved matter” and states that this is a “question on which the MAC takes no position seeing it as a political rather than an economic question.” As the remit of the MAC was necessarily restricted in this regard, the review did not inform the policy proposals outlined in this report.

This report examines: the current and proposed UK-wide immigration rules, and their impact on Scotland; the view of Scottish businesses; the range of policy options available for Scotland to identify and meet its own regional immigration needs; and how new policies for Scotland can be integrated into UK-wide immigration rules.

The report finds:

The UK-wide immigration system is changing

The UK government has proposed substantial immigration reforms to be rolled-out after Brexit. Chapter One looks at how visa controls will be expanded to cover European nationals as well as people from outside Europe once free movement has ended, introducing new rules both for migrants and for companies who need to recruit workers from overseas.

Scotland's society and economy will be more deeply affected by these changes than the rest of the UK

Scotland is more reliant on migration than the rest of the UK to maintain population growth and to support the national economy. Chapter Two analyses the existing evidence regarding the economic impact of Brexit in Scotland, which some estimates suggest could lead to the Scottish economy losing £1.2 billion more each year after 2040 than that suffered by the rest of the UK.

Scottish businesses are worried about the future

Business leaders are particularly concerned about the burdens new immigration rules will place on small and medium-sized companies, uncertainty about the government's plans overall, and the impact of some specific policies. Interviews and market research conducted for this report in Chapters Three and Four with representatives from key Scottish industries – social care, engineering, agriculture, and food and drink – revealed a “significant sense of unease” about the future.

Scotland can look to regional immigration systems around the world

Some countries already allow for substantial regional differentiation in their immigration systems, in recognition that different regions have distinct economic and social needs. Chapter Five looks at how these systems operate in Canada, Australia, New Zealand and Switzerland, with case studies outlining the lessons Scotland and the UK could learn from countries which have adapted regional immigration systems to meet both short-term and long-term needs.

There are a broad range of policy options available for a Scotland-only immigration system

Chapter Six outlines eleven policy options available to the Scottish government to take greater control over regional immigration, from small amendments to Home Office rules to substantial new powers under a reformed UK-wide immigration system. Each would give Scotland more freedom to attract and choose migrants according to their skills and Scotland's distinct needs,

and outlines the considerations which would be needed to implement those policies and where the administrative burden would fall for that implementation.

Scotland can take practical steps to integrate any new policies with existing UK-wide immigration rules

Average annual net migration to Scotland over the last five years is around 13,000. This is an extremely small proportion of the hundreds of thousands of people moving to and from the UK each year. Nonetheless, it is imperative that new immigration systems are shown to work and can prevent misuse. Chapter Seven discusses how new immigration policies in Scotland can be integrated into rules elsewhere in the UK, including how migrants can switch between visas applicable to Scotland and to the rest of the UK.

We are grateful to the SNP Westminster Group for engaging us to undertake this research.

INTRODUCTION: SCOTLAND AND IMMIGRATION AFTER BREXIT

“Even with current free movement of people between Scotland and the rest of the EU, it is clear that UK policy on migration does not meet Scotland’s needs.”

Scottish government, Scotland’s Population Needs and Migration Policy i

“Many commentators have suggested that Scotland’s particular needs justify a more expansive approach to immigration, one enabling it to recruit more migrants than is permissible under current UK-wide regulations.”

University of Edinburgh, Scottish immigration policy after Brexit ii

The Scottish government has long argued that Scotland should have specific powers to set its own immigration policies.

At a time when the country faces a different set of challenges and opportunities compared with the rest of the UK, Scottish ministers argue, such powers would allow the country to identify its own distinct set of economic and social needs and put in place immigration plans which could best help meet them.

In 2018 Fiona Hyslop MSP, the Cabinet Secretary for Culture, Tourism and External Affairs, wrote about the need to “explore how powers over migration could be devolved to the Scottish Parliament,” saying:

*There are distinct needs in Scotland in relation to our population and our demographic sustainability, the skills and positive economic impact people who come to Scotland have, as well as the cultural and community benefits that migration can play an important part in supporting.*ⁱⁱⁱ

At present, though, UK immigration powers remain reserved to Westminster. Immigration policy covering England, Scotland, Wales and Northern Ireland – and through it the ability to determine who is allowed to cross the UK’s borders, what they can do while they are here, how long they can stay, and the skills and talents they bring – is the sole preserve of the Home Office in Whitehall. The Scottish government has found ways to negotiate relatively small, Scotland-only tweaks to the immigration rules since devolution, focused on retaining some overseas students when they graduate from Scottish universities and recruiting to some hard-to-fill jobs, but these are exceptions to the rule and can be short-lived innovations.

However, questions about whether the Scottish government should have greater powers over immigration policy has received renewed attention since the Brexit referendum in June 2016.

The vote exposed a fault-line between Scotland and the rest of the UK. While the UK as a whole backed leaving the European Union (EU) by 52% to 48%, Scottish voters opted for continued EU membership by 62% to 38%. Despite this split, successive Westminster governments, first under Theresa May and then Boris Johnson, have taken the vote as a mandate to toughen immigration controls. This has mainly been expressed through repeated pledges to end the free movement of EU citizens to the UK, and to apply new, stricter rules for all economic migrants from both inside and outside the EU. Advising the Home Office ahead of these reforms, the highly influential Migration Advisory Committee (MAC) stated: “we

were not of the view that Scotland's economic situation is sufficiently different from that of the rest of the UK to justify a very different immigration policy.”^{iv} The MAC has previously noted regional differences in the economic impact of migration, however, a 2018 study not referenced in the later advice, found that the largest positive relationship between migration and productivity by firm was found in Scotland and the north-east of England, with the lowest relationship in London.^v

This has raised considerable concerns. The Scottish government has warned that the proposed new rules would substantially cut migration to Scotland. As one business leader said in the course of this research, referring to the end of free movement, “I’m very, very concerned that [our sector] won’t be able to access the people we need.” This is in addition to projections of populations declining in some parts of rural Scotland, a trend which over the last two decades has largely been off-set by migration, and of Scotland’s population as a whole getting older over the next twenty-five years.^{vi} Looking at how these trends interact in the Scottish Highlands, the Scottish government has noted: “the long-term trend in the Highlands and Islands remains one of an ageing demographic and out-migration of young people in search of educational and employment opportunities. [...] many areas of the Highlands and Islands are projected to decline in population in the near future.”^{vii} The economic implications of these trends are examined further in Chapter Two.

Nonetheless, UK-wide immigration reforms are set to go ahead without formal input from the devolved Scottish government, elected Members of the Scottish Parliament, Scottish businesses, or its civil society.

There is widespread anxiety that the immigration changes being imposed on Scotland are badly suited to Scotland’s future needs. This raises the question: what options are available to Scotland after Brexit?

Once the transition period ends on 1 January 2021, the Scottish government could find itself in a position to negotiate Scotland-only immigration powers. This might involve differentiating the system in Scotland from the rest of the UK by amending some rules set in Westminster. It could mean demanding the devolution of specific new immigration powers, or of striking entirely new policies, cognisant of its implications for our UK and Irish Common Travel Area partners.

In all these scenarios, Scotland could look to comparable international systems. Several countries – most notably Canada, Switzerland, Australia, and New Zealand – have found ways to combine centralised and regional immigration policies, so that regional authorities within those countries have powers to identify, set and implement their own immigration policy goals. This is nearly always in recognition that different regions need flexibility within the immigration system if they are to solve their own economic and population challenges. In some cases, the variation is relatively slight; in others, regions take significant control over their own localised immigration systems. The parallel with the choice facing the UK and Scotland is clear.

In exploring these questions, *Scottish Futures* will complement a range of recent research and analysis of regional immigration policies and their potential implementation in the UK. Influential reports have been published during the last three years by, among others, Edinburgh University, the Migration Observatory at Oxford University, the Scottish government and its advisory boards, the Institute of Public Policy Research (IPPR), the MAC, the Immigration Law Practitioners’ Association, and the All-Party Group on Social Integration in Westminster. This report draws on much of this valuable work.

Scottish Futures will examine:

- ▶ the current immigration system and its implications for Scotland;
- ▶ the distinct demographic and economic challenge in Scotland;
- ▶ what Scottish businesses need from any future immigration policy;
- ▶ what policy makers in Scotland could learn from regional immigration systems already established elsewhere in the world;
- ▶ the policy options available to Scotland; and
- ▶ how any new Scottish immigration system could be integrated into UK-wide rules

This report focuses on economic migration and future routes into Scotland for work. It touches only very lightly on questions of migration and self-employment, an area which is in need of far more empirical research. Other visas and forms of leave in the UK – to reunite with loved ones, for example, or to find safety as a refugee – are beyond its scope, although the research briefly mentions these aspects of migration where lessons might be relevant for the future of economic migration. It does not consider the social impact of migration.

The research was conducted between March and September 2019, and draws on existing analysis, new market research of attitudes among Scottish businesses, original interviews conducted for this project, and expert legal opinion.

KEY FACTS

Scotland today

Scottish population: 5.4 million (2017)

Average annual net migration to Scotland in the last five years: 13,000

Annual contribution to the Scottish economy by citizens born outside the UK: £1.3 billion

Proportion of students in Scottish higher education who were born overseas: 1 in 5

Annual per head net contribution by overseas students to the Scottish economy: £2,500

Future projections for Scotland

Projected immigration changes:

net migration to Scotland to fall “between one third and one half” after 2020 as a result of Brexit reforms.

Industries in Scotland which most rely on immigration:

Overseas-born workers in hospitality: 11.1%

Overseas-born workers in manufacturing: 9.7%

Overseas-born workers in transport & communication: 8.8%

Forecast increase in over-75 population in Scotland over the next 25 years: 79%

Forecast increase in working-age population in Scotland over the next 25 years: 1% (Forecasts for the UK as a whole: 46% and 2-3% respectively)

Deaths forecast to outnumber births in every one of the next 25 years, which could lead to over 18,000 more deaths than births in Scotland in 2043, with research suggesting that Scotland’s sparsely populated areas are set to lose more than a quarter of their population by 2046.

Sources:

Office for National Statistics, ‘Principal Projection – UK Population in Age Groups’ (2016)
Scottish government’s Sustainable Growth Commission (2018) and Scottish government’s ‘Migration: helping Scotland Prosper (2020).

Scottish government’s Expert Advisory Group on Migration and Population (2019)

Centre for Ageing Better, *The State of Ageing in 2019* (2019)

CHAPTER ONE: THE CURRENT IMMIGRATION SYSTEM

This chapter will look at the relationship between immigration policy in Westminster and other policy areas in Scotland, how current immigration policies and procedures work, and the changes proposed by the Home Office for the new post-Brexit immigration system.

How UK immigration policy interacts with Scottish policy

Immigration policy is reserved. The UK government in Westminster sets immigration policy in Whitehall, which is then applied to all four constituent nations: England, Wales, Scotland, and Northern Ireland.

This means that, in practice, the devolved administration in Scotland – in common with its counterparts in Wales and Northern Ireland – has limited direct influence over immigration policy, which is set centrally yet profoundly affects businesses, families and individuals across every part of the UK.

However, the work of the Scottish government does interact indirectly with the national immigration system. This can be described under four broad headings.

Firstly, the Scottish government has worked with the Home Office to adapt parts of the immigration system.

Most notable is the Scotland: Fresh Talent programme established for overseas graduates from certified Scottish universities between 2005 and 2008. It allowed foreign graduates at those institutions to stay on in Scotland for two years after they finished studying and find work with a Scottish business or set up their own business in Scotland, with no restrictions on the sort of work they could do and no need to obtain a separate working visa from the Home Office. It was abolished by the Home Office after three years when Westminster introduced new UK-wide rules for graduates. (Scotland: Fresh Talent is discussed further in Chapter Six).

There is also the Scotland-only Shortage Occupation List (SSOL), the only regional variation of the UK-wide Shortage Occupation List (SOL). The SOL identifies specific high-skilled jobs in industries where a shortage of qualified candidates is thought acute enough to exempt employers from some immigration rules when recruiting to fill those roles (for example, by waiving resident labour market tests and reducing visa fees). The SSOL includes all the jobs on the SOL as well as a limited number of additional occupations applying only to Scotland. Both lists can be updated by the government, and the additional Scotland-only occupations are currently in the fields of chemical science and Gaelic teaching. (The operation of the SOL is discussed in more detail below).

Secondly, decisions taken in some policy areas devolved to Scotland are impacted by – or have an impact on – migrants in the country.

For example, since 2016 the Scottish government has had the power both to set income tax bands and rates and to retain the revenue this raises, as well as retaining a portion of Scottish

VAT receipts. The Scottish government now raises around 40% of its own revenues.^{viii} Therefore the size and economic activity of migrant communities will influence the country's fiscal capabilities.

Health policy is also devolved to the Scottish government, and as a result some rules on access to healthcare in the rest of the UK are not applied in Scotland. For example, people refused asylum face upfront charges for some NHS treatment in England but not in Scotland (although the Equality and Human Rights Commission has warned that many asylum seekers in Scotland are unaware of this distinction: "policy in one nation can affect all three").^{ix} Other relevant devolved policy areas include access to education, the strategy for teaching English to speakers of other languages ('ESOL'), refugee integration, and the right to vote.

Thirdly, the distinct nature of Scotland's economy and demographics means that it is disproportionately affected by some UK-wide policies.

In previous years, as much as 15% of migrants coming to the UK from central and eastern Europe under the old Seasonal Agricultural Workers Scheme (SAWS), a UK-wide government programme designed to help meet demand for low-paid agriculture and farm workers, were admitted to work in Scotland.^x This is slightly higher than the best estimates for today, which put the proportion of seasonal workers in the UK working in Scotland at between 11-13%.^{xi} (A new SAWS programme has been proposed for after Brexit and is discussed later in this chapter).

The concentration of leading universities in Scotland exposes the country to a different pressure.^{xii} If international student numbers drop, Scotland loses a major source of income, future talent, and world standing. As the Scottish Sustainable Growth Commission noted in 2018 as part of its argument for the wider role of universities in the country's future economic success, one in five of all students at Scottish universities are from overseas: "International higher education is becoming an increasingly competitive market, with countries around the globe actively seeking to attract more international students to their own universities."^{xiii}

In addition, around 3,000 asylum seekers entering the UK each year (around one in ten) are housed in Glasgow, the single largest settlement under a 'no choice' scheme agreed between the Home Office, local authorities, and private housing providers. Questions about integration and other related costs are then handled in Scotland.^{xiv} Asylum policy, like all other immigration policy, is reserved to the Home Office, but in response to the number of asylum seekers in the region the Scottish government produced its latest four-year refugee integration strategy in 2018, *New Scots*. The last UK-wide Home Office refugee integration strategy was published in 2009.^{xv}

Fourthly, the Scottish government has taken a public stance in opposition to some UK-wide immigration policies.

This has not altered policy in Scotland or Westminster but does indicate a 'direction of travel' for any future immigration decisions.

For example, ministers in Scotland opposed the 'right to rent' policies, introduced in the Immigration Act 2014 and initially rolled-out only in England, which made it a legal requirement for private landlords and housing associations to conduct checks on the immigration background of prospective tenants. When judges ruled that the scheme was discriminatory in

March 2019 and blocked its expansion to Scotland, the decision was publicly welcomed by the Scottish government.^{xvi}

These four headings provide the context in which the Scottish government has expressed its wish to exercise greater control over its own immigration policies, so that it might find a “tailored solution” suited to the nation’s distinct needs.^{xvii}

The current UK immigration system

Overall goals

Over the last decade, since the Conservative-led coalition government came to power in 2010, new rules and legislation on immigration have been designed to meet a broad set of policy goals related to immigration and the UK economy.

These can be summarised as:

- ▶ reducing annual net migration to the UK – the difference each year between the number of migrants entering and the number leaving – from hundreds of thousands to “tens of thousands”
- ▶ instigating a “hostile environment” to identify and remove illegal migrants and to discourage illegal migration
- ▶ meeting the needs of UK business to compete internationally by attracting “the brightest and the best” workers from overseas

These were complex aims to plan for and navigate, and each posed a serious challenge for the Home Office.

The government under David Cameron and then Theresa May missed its net migration target for 37 successive quarters, and started to refer to reducing “annual net migration to sustainable levels,” with no numerical target.^{xviii} It has now been dropped entirely by Boris Johnson.^{xix} The “hostile environment” policies inadvertently resulted in thousands of British citizens being wrongly detained, denied housing and medical care, and deported. It was subsequently amended in public to the ‘compliant environment,’^{xx} and some of the policy initiatives developed for it were rolled-back.^{xxi}

The Home Office’s record processing visas to help UK businesses employ skilled foreign workers has been praised, however, especially in relation to the performance of comparable departments in other countries. The Institute for Government has noted that “a number of firms in the business world abroad see the UK’s system for business visas as world-leading – reliable, easy to use and fast.”^{xxii}

Rules

UK immigration rules apply very differently to EU and non-EU citizens.

Migration from within the EU

Since 2004, citizens from EU countries have been free to live and work in the UK without any visa restrictions, provided they are economically active within three months of moving. Under

reciprocal free movement rules, UK citizens can exercise the same rights in countries across Europe. As EU citizens can work in the UK with no visa or employment restrictions, there are very limited additional costs for businesses who choose to employ them.

One result has been a significant increase in the number of EU citizens moving to the UK over the last two decades. The Office for National Statistics has recently conceded flaws in its process for measuring net migration,^{xxiii} but based on the most reliable data net migration to the UK from the EU was more than 100,000 in 2013 and 2014 and over 150,000 in 2015 and 2016. It has since fallen back to under 100,000 (see Figure 1).

NET MIGRATION TO THE UK BY NATIONALITY (000S)

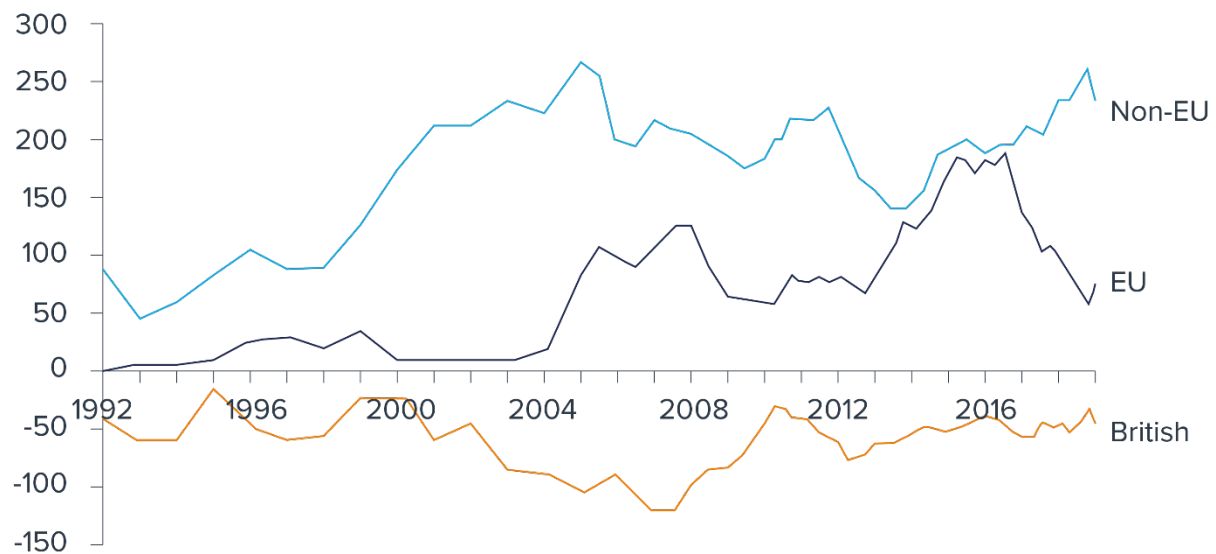


Figure 1
House of Commons Library briefing paper: Migration statistics (June 2019)

Migration from outside the EU

For immigration from outside the EU, the UK government grants working visas under five ‘tiers’:

- ▶ Tier 1. Entrepreneurs and investors, and migrants “with exceptional talents”
- ▶ Tier 2. Skilled workers with temporary assignments or long-term job offers in the UK
- ▶ Tier 3. Low-skilled workers. (This tier has never been used, in the assumption that demand will be met from free movement of workers from the EU)
- ▶ Tier 4. Students at higher-education institutions
- ▶ Tier 5. Temporary workers in government-approved schemes, including the Youth Mobility Scheme

Net migration from outside the EU, which includes people coming to reunite with their families as well as workers, has also been over 100,000 every year since the late 1990s.

The most relevant tier to businesses in Scotland and across the UK is Tier 2. In 2017 more than twice as many visas were issued under Tier 2 (94,247) than any other tier.^{xxiv}

Tier 2 (General) covers skilled workers moving to a new job in the UK or skilled workers who switch to this visa from another eligible category while in the UK. Other categories under Tier 2 include intra-company transfers (for employees transferring to the UK but working for the same international organisation) and sportspeople and religious ministers. There is a cap on the number of Tier 2 (General) visas issued each month, with exemptions for jobs in the NHS, roles with an annual salary of £159,600 or more, and most in-country applications.

Tier 2 (General) places significant responsibilities on businesses.

A company can only sponsor a worker to join them from outside the EU if it has applied for and received a licence as an approved sponsor by the Home Office. The business must show the Home Office that the employee will be paid £30,000 or more, with exceptions for workers under twenty-six or employees in some skilled occupations facing shortages. The business also has to satisfy the Home Office that no EU, EEA or Swiss national, or any settled worker in the UK (including those who hold Indefinite Leave to Remain as well as UK citizens), has the minimum skills required to fill the vacancy, by showing that it has advertised the role at appropriate wages and conditions and that no one could fill the position. If any suitable settled worker applies for the role, they must be offered the job even if they are not the best or most experienced/qualified candidate. This is the resident labour market test (or RLMT). Businesses don't need to conduct an RLMT if the job is on the SOL, would pay over £159,600, or if the applicant is switching from a Tier 4 student visa from within the UK.

Medium and large businesses must also pay upfront a 'skills surcharge' of £1,000 per year (reduced to £500 per year for small and charitable businesses) for every skilled migrant they employ for the duration of that visa, as a contribution towards closing the skills gap with UK workers, along with a one-off fee of £199 for a Certificate of Sponsorship.

Tier 2 (General) applicants must satisfy the Home Office that they have relevant qualifications for the role and can speak English to an appropriate level. The Home Office publishes a list of English-speaking nationalities, and applicants can otherwise demonstrate competence by holding a degree taught in English which is approved by the UK skills agency NARIC or a certificate issued by a company on a list of approved language test centres. They must also demonstrate that they have adequate savings to support themselves in the UK, set at just under £1,000 held for at least ninety days, plus an additional £630 per dependant. In practice, many employers certify that living costs will be covered thus removing the need for an applicant to evidence funds.

The cost of a visa varies according to the immigration category and length of time it grants the applicant to stay in the UK. By way of example, if someone wants to work in the UK for more than three years then a visa costs £1,220, and a further £1,220 for each family dependent. Since 2015, each visa holder must also pay a health surcharge towards the NHS. It is generally charged at £400 for every year of the visa at present, but the 2019 Conservative Manifesto promised to increase the cost of the surcharge.

Tier 2 (General) visas are initially granted for up to five years initially, and applicants can later extend their Tier 2 (General) visa from within the UK, provided that the maximum length of time they remain in the UK on this visa does not exceed 6 years. Someone on a Tier 2 (General) visa can change to a different job once in the UK, provided that job meets the same criteria, but their employer may need to carry out a new RLMT and the migrant may need to submit a new application before switching roles depending on the nature of the new job.

Tier 2 (General) migrants can apply for Indefinite Leave to Remain after five years if eligibility criteria are met. If not, they must leave the UK and a 'cooling off' period of 12 months will then apply, during which time they will not be able to re-enter the UK as a Tier 2 migrant (under either the Tier 2 (General) or Intra-Company Transfer categories). Entry to the UK in another immigration category such as a business visitor or spouse of a British national is permissible during this period.

Future immigration system: The government's 2018 White Paper

In December 2018, the government published an immigration White Paper which outlined plans for establishing a new immigration system to be introduced following a Brexit agreement.

In order to meet the pledges made by then Prime Minister, Theresa May, to end free movement after Brexit, the White Paper sought to bring immigration controls over EU citizens in line with the system applied to migrants from outside the EU.

The White Paper says:

After the UK's exit [from the EU] and following the [fourteen month] Implementation Period, we will end the current free movement system imposed by the EU so that UK Immigration Rules will apply to EU and non-EU migrants alike in a single skills-based system, as opposed to being based on where an individual comes from, where anyone who wants to come to the UK will need permission to do so.^{xxv}

As a result, the White Paper proposed a set of reforms to the immigration system after 2021, including:

- ▶ Ending the reciprocal free movement of EU and UK citizens
- ▶ Engaging with business on requiring EU citizens to demonstrate minimum earnings of £30,000 per year (with exceptions for some younger workers) and skills levels equivalent to A-Level or higher to qualify under Tier 2
- ▶ Removing the monthly Tier 2 cap
- ▶ Removing the RLMT
- ▶ Introducing twelve-month visas for temporary short-term workers during the transition period, with no right to bring in dependent family and no right to re-apply for a visa for another twelve months
- ▶ Piloting a Seasonal Agricultural Workers Scheme (SAWS) under Tier 5 in 2019 and 2020 for migrant workers in key, low-paid industries to work temporarily in the UK
- ▶ Asking the MAC to compile a SOL for Northern Ireland and consider the need for a SOL in Wales

The White Paper's recommendations were closely based on the findings of the MAC, which made its own recommendations to government in late 2018. With the exception of proposals for Northern Irish and Welsh SOLs, it does not allow for any regional variation in how immigration policies are identified and applied. As previously noted, the MAC concluded that Scotland's economy "is not sufficiently different from that of the rest of the UK to justify a very different immigration policy."^{xxvi}

Since the White Paper's publication, the Home Office has commissioned the MAC to look further at where the salary threshold will be set in the future immigration system and to review how an 'Australian points-based system' might be applied to UK immigration rules. The MAC's scope in this work to consider two key regional questions: whether a regional variation of the salary threshold would be appropriate; and whether a migrant's choice to work in a specific region of the UK might gain them points and improve their chances of being issued with a visa.^{xxvii} The MAC's review was published in January 2020 and recommended a single minimum salary threshold of £25,600, down from £30,000 should apply to Tier 2 (General) applicants with some exceptions for new entrants and some sectors. The MAC also recommended that the existing Tier 2 framework continue to apply to applicants who hold a job offer, with a Points-Based System being introduced only for highly skilled applicants without a job offer.

Future immigration system: The government's policy paper (February 2020)

On 19 February 2020, the government published its long awaited policy statement on the UK points-based immigration system which is to be phased in from August 2020 and fully operational from January 2021, when free movement from the European Union comes to an end. The paper confirms the government's intention to implement a single immigration system for both European and non-European migrants from 1 January 2021.

Key details include:

- ▶ A total of 70 points will be required for various characteristics, some of which will be tradeable (such as shortage occupation role or PhD) whilst others (such as English language) will not.
- ▶ A confirmed job offer will be required for the majority of workers. The highest skilled workers will be able to enter the UK without a job offer if endorsed via the Global Talent / Innovator / Start-up visa categories, or via a new unsponsored route which will be introduced in line with MAC recommendations.
- ▶ The Resident Labour Market Test requirement will be removed.
- ▶ There will be no monthly cap on sponsored skilled workers.
- ▶ Skill level will reduce to roles skilled to Regulated Qualifications Framework (RQF) Level 3, which roughly corresponds to A level skills or equivalent in line with the MAC report.
- ▶ The minimum salary will be reduced to £25,600 per year. Skilled workers will be able to trade some characteristics such as an offer in a shortage occupation or PhD qualifications against a lower salary of at least £20,480. Some occupations will be subject to separate pay scales or higher 'going rates', and new entrants to the labour market may also be subject to a lower salary threshold.
- ▶ There is no intention to create a separate route for the self-employed, or to make provisions for lower-skilled roles.
- ▶ There is no intention of introducing regional variations to salary thresholds.

- ▶ The Immigration Skills Charge and the Immigration Health Surcharge will be applicable to all sponsored foreign workers and employers will need to become licensed sponsors and pay all applicable government levies to hire foreign workers.

Other provisions which appeared in the December 2018 White Paper such as the introduction of short term 12 month visas do not appear in the new policy paper, meaning that there will be no visa category that expressly enables low skilled work. Further details on how the new system will operate are likely to become available from August 2020, when the system is intended to be phased in.

CHAPTER TWO: THE CONTEXT IN SCOTLAND

This chapter will look at the size, projected growth, and needs of Scotland's population and economy. It will also examine the projected differential impact of Brexit for Scotland's population and economy relative to the rest of the UK.

Demographic change and migration

The population of Scotland was approximately 5.42 million people in 2017, up 8% from 5.07 million in 2000.

This period of population growth has followed decades of population decline. During the 1950s and 1960s “6% of the population left Scotland in each decade.”^{xxviii} The Scottish population also shrank by 2% in both the 1980s and 1990s,^{xxix} during a period when, by contrast, “the UK as a whole saw almost constant growth in population.”^{xxx} Scotland also saw a “prolonged period of population decline” before the start of the 2000s.^{xxxi} Rural Scotland was especially hard hit.

This trend was reversed, in large part, through the free movement of EU citizens. According to the Scottish government's expert advisory group on migration and population, population growth in Scotland since 2010 “was largely driven by migration.”^{xxxii} Net overseas migration to Scotland over the last five years has been highly variable, but the average figure between 2013 and 2018 is 13,000.^{xxxiii} Expert projections suggest that, in the event that free movement continues, future annual net overseas migration to Scotland would be 15,500.^{xxxiv}

It should be noted that these figures are extremely small, compared to UK net migration as a whole. Net migration to the UK in 2017 was 285,000; at 13,000, Scottish net migration in the same year was just 5% of the UK total.

If migration is excluded, Scotland's population has been shrinking since 2015. Natural change – the number of deaths subtracted from the number of births – has been negative.^{xxxv} The population of some areas of rural Scotland has fallen by nearly 4% over the last ten years even with increased migration.^{xxxvi}

As of June 2017, it is estimated that 355,000 overseas citizens live in Scotland. Of this non-British population, 219,000 people are EU citizens and 135,000 are citizens of non-EU countries. This amounts to around 8% of the Scottish population, compared to around 16% of the UK population as a whole.^{xxxvii}

It is migration which has driven overall Scottish population growth during the last two decades. It should be noted that Scotland's population is still around 16% lower than it would be had it matched the rate of population growth seen in the rest of the UK.^{xxxviii} The National Statistics Office in Scotland projects that Scottish population growth will be accounted for entirely by “inward migration” by 2041, the majority of which will be migration from outside the UK.^{xxxix}

The economic benefits of migration: the UK

It is difficult to measure the exact economic costs and benefits of immigration.

However, looking first at the UK as a whole there is a clear consensus that migration by citizens from countries in the EU and European Economic Area (EEA) boost the national economy. There is a consensus, too, that immigrants overall contribute to the public purse. As the Migration Advisory Committee stated categorically in making their recommendations on a future immigration system to the Home Office: “Our commissioned research found that EEA migrants pay more in taxes than they receive in benefits.”^{xi}

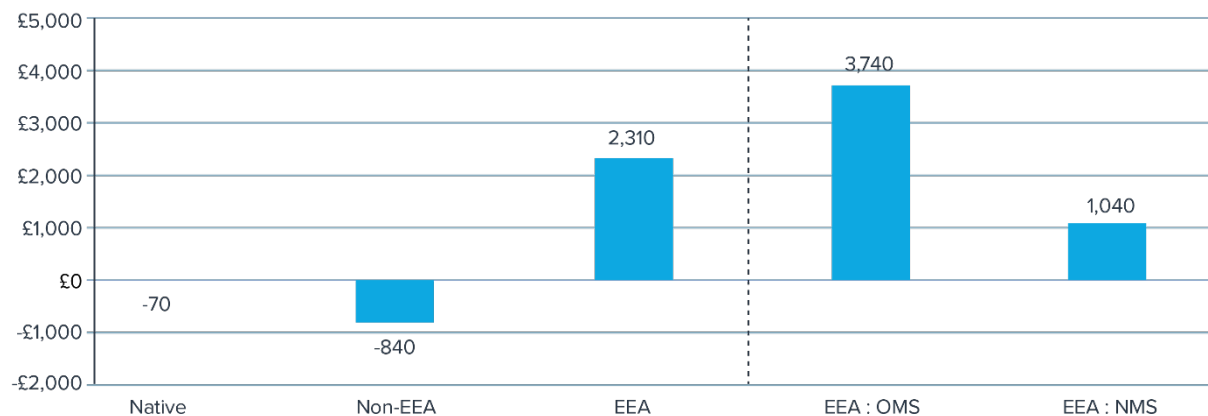
That research was commissioned from the consultants Oxford Economics. Oxford Economics estimated that, taking a snapshot from the financial year 2016/2017, the average adult migrant from an EEA country to the UK contributed approximately £2,300 more to public finances each year than the average adult living in the UK.

Citizens from countries which joined the EEA prior to 2004 contributed approximately £3,740 more to the economy each year than average; citizens from countries which joined the EEA after 2004 contributed approximately £1,040 more than the average. (See Figure 2).

Looking at the cohort of migrants who came to the UK in 2016, both from the EEA and outside the EEA, Oxford Economics also estimated that this group would make a net contribution of £26.9 billion to UK public finances over the lifecycle of their time here, defined as the period from the day they arrived to the day they departed or died.^{xli}

Fig. 1. Average annual net fiscal contribution of each migrant and native, relative to the average UK adult, 2016/17

(£ per ‘accountable adult’)



Source: Oxford Economics

Figure 2: Oxford Economics (2018)

The economic benefits of migration: Scotland

Both the Scottish government and the Scottish Sustainable Growth Commission have tried to estimate the contribution made by migrants to Scotland’s economy, also based on a snapshot of economic activity from 2016.

The government limits itself to deriving “broad conclusions” based on the work of the MAC and other public data, and its 2019 study concludes with the “tentative conclusion” that:

EU migrants to Scotland make a positive fiscal impact. [...] If, as the MAC study implies, migrants are making a positive contribution to the overall UK fiscal balance, increasing the volume of EU migrants to Scotland would boost tax revenues relative to public spending in both Scotland and the UK as a whole. Conversely, introducing the changes proposed in the [Immigration] White Paper would have a negative effect on this balance.^{xiii}

The Sustainable Growth Commission makes a much more detailed projection. It found that workers born outside the UK made an overall net contribution of £1.3 billion to Scotland’s government revenues. The Commission estimates that Polish migrants to Scotland alone made a net contribution of £250 million.^{xiii}

It also found that a higher proportion of working-age migrants to Scotland are in employment relative to the working-age population as a whole in Scotland. In addition, EU migrants in Scotland have the highest average hourly pay in the UK apart from London, suggesting that these migrants “are engaged in higher value-added (more competitive) activities in Scotland compared to many other parts of the UK.”^{xiv}

The study cites evidence from the International Monetary Fund that in attracting a migrant workforce Scotland can boost its productivity. Because migrants are often younger than the resident population, and tend therefore to be more economically active, a 1% increase in the share of migrants in the adult population can increase productivity by 3% in the long term.^{xiv}

The potential economic impact of Brexit on Scotland

The UK government has consistently promised that Brexit will mean the end to the free movement of EU citizens. The immigration White Paper assumes that Brexit will take place in an orderly fashion under the terms of the Withdrawal Agreement struck between the UK and the EU.

Based on this assumption, these changes are likely to have two major effects on the Scottish economy and broader society:

- ▶ the end of a supply of skilled and lower-skilled migrant workers for Scottish businesses, who were previously able to move to and work in Scotland with limited restrictions (mitigated in part by the 11 month ‘transition period’ out of free movement, per the terms of the Withdrawal Agreement.);
- ▶ the challenge for businesses to adapt to the system which replaces free movement (further complicated by uncertainty about what this system will be)

What Scottish businesses say

In 2018, the Scottish government noted that businesses were deeply worried about the effect of Brexit:

Firms have repeatedly told us that any restrictions on the free movement of EU labour could negatively affect their businesses, especially if it were to involve new administrative or bureaucratic requirements that would impose or increase costs. For many smaller businesses, in particular, such restrictions would make the recruitment of essential staff practically impossible.^{xlvi}

This anxiety was reflected in the interviews conducted with Scottish business leaders for this research, in which several participants specifically raised the impact of additional costs on small to medium-sized enterprises (see Chapter Three).

What the Scottish government says

The Scottish government has published two analyses of how the UK leaving the EU and ending free movement might impact on Scotland.

The first is from the government's independent expert advisory group on migration and population in 2019. The group makes two projections on numbers, although it does not try to measure the economic impact of any changes.

'Scenario 1' assumes that the proposals made in the Home Office's 2018 White Paper are passed into law, and argues that this would lead to an 80% reduction in EU net migration. 'Scenario 2' makes the same assumption but also allows for a larger inflow of family members and other dependents. In this case, the group argues that there would be a 50% reduction in EU net migration.

Once these reductions are applied to overall net migration patterns – including migration from outside the EU – the advisory group concludes that total annual net migration to Scotland after Brexit will drop from 13,000 to somewhere between 6,600 and 9,000. This would affect rural Scotland in particular by "limit[ing] labour migration in areas of Scotland that already experience low levels of productivity and face challenges of depopulation."^{xlvii}

The second analysis was made by the Scottish government in 2018 and looks in more detail at both the implications for numbers and Scotland's economic future.

It projects that restrictions resulting from Brexit will reduce annual overseas net migration by a little over 50% by 2022, from 15,500 to 7,000. The paper assumes that this figure will be stable over the next two decades. It calls the difference between these figures the "Brexit-driven reduction in migration."

It also estimates the fiscal costs of this Brexit-driven reduction. According to these estimates, Scottish GDP would be worth 4.5% less by 2040 than if higher immigration trends had continued. This is the equivalent of losing £5 billion per year from the economy from 2040 onwards.

The Scottish government also notes that, while the UK as a whole is projected to see GDP shrink as a result of Brexit, Scotland's reliance on migration to boost its working-age population means it faces a proportionally larger negative impact. That impact on Scotland after 2040 is

estimated at a loss of £1.2 billion more from the public purse each year relative to the rest of the UK.^{xlviii}

CHAPTER THREE: THE VIEWS OF SCOTTISH BUSINESS

This chapter will examine how Scottish businesses view the current UK immigration system and the changes proposed by the government. It is based on broad findings from a roundtable hosted by the Scottish government for business leaders and immigration experts in Summer 2019, and on one-on-one interviews with senior representatives of Scottish business. To guarantee frank and honest discussion, the opinions expressed at the roundtable are anonymised.

Key themes from the roundtable

Changes after the end of the transition period will increase the burden on small businesses

The single largest issue identified by participants was the threat to small and medium-sized enterprises (SMEs), who may have EU staff but don't currently recruit from outside the EU. After the transition period in place until 31 December 2020 ends, employers will need to engage with a complex sponsorship and visa system for the first time to recruit from within the EU.

One representative of the Scottish freight industry said:

My members rely heavily on EU workers and have no experience of the new visa system. [...] Only a handful of our members have any experience of sponsorship. Below that I'm very, very concerned that we won't be able to access the people we need. We have a figure [for EU workers in the industry] but it is probably underestimated. Talking to our members, some have no issues at all, whereas some employ 95% EU nationals. They know they are exposed, and it's a question of whether they can attract those workers back next year.

One immigration lawyer described the conversations he had had with SMEs to try and help employers prepare for new rules after Brexit:

"How many EU nationals do you employ?" We are just met with blank faces. They've never had to think about these questions.

This is in the context of a system which is already expensive and bureaucratic, especially in light of the skills charge attached to Tier 2 visas. The same lawyer said of some clients: "A company could have spent ten thousand pounds in visas and fees before someone has even set foot in the building."

An uncertain future

A second major theme among participants was the uncertainty being caused for Scottish businesses over how Brexit would affect employers' ability to retain staff from overseas and what any post-Brexit system would require from them. As one local government expert said: "We don't know yet who the winners and losers are going to be from any new visa process."

The future of two key sectors in Scotland – higher education and social care – came under particular scrutiny, as well as the impact if those sectors struggle to retain staff.

One higher education expert asked:

Will lecturers want to stay on in Scotland? And it affects the pipeline. You lose academics and skilled migrants. [...] Any post-study offer would be helpful to retaining students. Unless we have some intervention, and soon, who on earth would want to come here [to study]?

On social care, one participant from local government said:

If you restrict the supply of low-paid or low-skilled jobs, you don't know where this will hit the pipeline. Some jobs, like in social care, are thought to be 'sticky' jobs, done by people really committed to their work. But if we are wrong – if they are not as sticky as that after all – that isn't just a crisis for the industry. It is a social crisis.

Concerns about the impact of future policies

Finally, participants raised worries about specific proposals made by the government for the post-Brexit immigration system.

The potential £30,000 cap for EU and non-EU skilled workers, with no account taken for regional variations in earnings, caused particular concerns. One labour market expert argued: "salary is a very arbitrary, very blunt instrument to use when society is built on values as well as earnings."

A representative from the Scottish freight industry added: "There are a significant number of jobs which just aren't going to hit that £30,000 number. [...] Workers might quickly get to earning more, to £30,000 and more. But lots won't start at that point."

The same person added that even those jobs in the industry which did meet the pay cap might not have the Level 3 qualifications required alongside the salary, something which could "really scupper us after Brexit."

One participant also raised concerns about limiting the SAWS scheme to only twelve months: "We could actually find ourselves asking people to leave the country in the very areas where we most need workers."

Industry case studies

Scottish Care

Industry: Adult social care

Scottish workforce: Scottish Care represents 500 public and private organisations in the care home sector, from Europe's largest provider to SMEs all over Scotland. It focuses on work supporting older people.

How many workers come to Scotland from overseas?

Scottish Care estimates that between 6-9% of the country's care staff were born outside the UK. However, there is strong regional variation, with EU-born workers making up 30% of staff in some Highlands businesses and up to 22% in some Edinburgh companies.

How does the industry expect things to change as a result of Brexit?

"The threat of Brexit is destabilising the workforce. We are already, as a sector, struggling to recruit." The sector is not seeing large numbers of staff leave care work, but instead people are shifting from care homes to employment in the NHS.

As a result, the sector is "extremely vulnerable to anything that limits inward migration."

What obstacles do they face in recruiting from overseas?

The £30,000 salary cap is a "nonsensical invention," at a time when the average wage in Scottish social care is £18,000. Scottish Care estimates that "around 90% of existing staff wouldn't be able to come to Scotland under these proposals". Analysis by the Scottish government suggests that no employees in the 'caring personal services occupations' earn £30,000 or more.^{xlix}

"Our essential desire is for freedom of movement, but in the absence of that we would like to see maximum flexibility. [...] It is possible to develop a regionalised system within a single country. We have core demands as a care sector, for a system which is responsive to the uniqueness of the care model."

"And we want something that is cost effective for middle-sized providers. Many of our members don't have an HR department or big administrative resources, especially in rural areas. For smaller businesses, they just don't have the flexibility or resources to deal with a new, complex system. And from everything we hear, the government is proposing a new complex system. Suddenly to have a different way of working thrust upon you – it is unsustainable."

Interview with Donald Macaskill, Chief Executive of Scottish Care (London, August 2019)

Scottish Engineering

Industry: Engineering and manufacturing

Scottish workforce: Scottish Engineering represents approximately 350 organisations, “ranging from the largest international companies present in Scotland through to SMEs.”

How many workers come to Scotland from overseas?

Scottish Engineering estimates that more than ten per cent of engineering employees are from overseas, the majority from the EU. “When I visit our various members I meet people from Japan, from India, from the US and Canada, from all over the world. But the bulk of non-UK employees I meet are from the EU.”

What sort of roles are being done by workers from overseas?

All types of roles, but many are skilled labour like plant operators, machinists and fitters. And these are roles that many companies already struggle to fill: “There is a STEM skills shortage [in Scotland], which is holding a lot of companies back from expanding and growing. Encouraging homegrown talent is fundamental, but the ability to attract high quality talent from overseas is also vital.”

The Scottish government’s strategy on improving STEM education and training was published in 2017, after a consultation which raised similar concerns about employers being forced “to turn to overseas recruitment” for senior roles.

How does the industry expect things to change as a result of Brexit?

There is a “significant sense of unease” about retaining EU staff who have settled in Scotland. “There are a few stories of firms which have lost key people already as they return to EU countries [after the Brexit vote].”

Many businesses just aren’t prepared for engaging with the Tier 2 sponsorship system: “A lot of SMEs simply do not participate in the sponsorship scheme because they see it as complex, expensive and bureaucratic. Many don’t have a significant HR or administrative resource to manage all these processes. The focus is on attracting the best people who can help companies thrive. To rely on a simple extension of the current scheme, with all the bureaucracy and cost – that would be a concern.”

What obstacles do they currently face in recruiting from overseas?

Scottish engineering and manufacturing businesses need access to international talent. But the salary cap proposed in the immigration White Paper, and the costs and delays already associated with sponsorship, are both obstacles for the industry:

We consider the £30,000 [salary threshold] to be too high, not just for Scotland but for parts of the UK such as North-East England. The evidence from Scotland is that most skilled roles fall below this level. £24,000 may be a more appropriate threshold to capture the broad range of jobs that we need to fill. That’s the reality of the market we are in.

Removing as much bureaucracy and administration as possible would also help and the proposal to drop the Resident Labour Markets Test is welcome. But I’ve heard companies say that at times it’s taken more than a year to recruit somebody from overseas, and many simply fall through. These are crucial jobs that need filling. Ideally we should be processing these applications in a matter of weeks.

Role definitions also need to be more flexible and generic in nature because in many modern manufacturing systems, many employees have multiple roles and employers are seeking to skill up individuals.

All in all, we need Government to take these points on board and create a system that is efficient and flexible and gives our industry access to international skills and talents where we cannot meet that demand at home.

Interview with John Campbell, former president of Scottish Engineering (Glasgow, July 2019)

Scotland Food & Drink

Industry: Food and drink

Scottish workforce: Scotland Food & Drink represents around 450 members, mostly SMEs.

How many workers come to Scotland from overseas?

Approximately 40,000 EU citizens work in the industry in Scotland, one third of the total workforce.

How does the industry expect things to change after as a result of Brexit?

Recruiting and retaining staff is “the number one issue” for the food and drink industry. “It was a huge challenge before Brexit, and now this is added pressure.”

What obstacles do they face in recruiting from overseas?

SMEs will face significant issues if they are forced to think about recruitment under any new visa system:

The problem for many SMEs is that they don't have any HR department at all. It can just be the owner or director of the company who is driving things. If this process is going to be more costly and more time consuming, then it's going to have a real negative impact. The fact that SMEs are such a large proportion of the food and drink industry means there will be a big struggle.

Interview with Jennifer McLachlan, Industry Development Manager at Scotland Food & Drink (Glasgow, July 2019)

National Farmers Union Scotland

Industry: Farming and agriculture

Scottish workforce: NFU Scotland represents 8,500 members across all of Scotland, from some of the country's largest farms to a majority of family-run micro businesses.

How many workers come to Scotland from overseas?

Research published last year by Scotland's Rural College provides a "conservative estimate" that 9,225 migrants from overseas were employed in seasonal work on Scottish farms during 2017, the majority from EU countries.

What sort of roles are being done by workers from overseas?

Farms do not only recruit seasonal workers. It is important to "distinguish between seasonal work and full-time work with people who have made Scotland their home."

On dairy farms, for example, permanent labour might include people from overseas working as herdsmen or stockmen. There are more temporary foreign workers on fruit and vegetable farms, where the majority are harvesting crops, "right at the front end." And on a typical farm 89% of temporary workers are returning from a previous year, and some are moving up through the ranks. "If you cut off that temporary route in, you end the ability of people to transfer across to more permanent positions."

How does the industry expect things to change after Brexit?

Only a minority of farms will be affected by these changes, but those which are impacted "will be affected on a big scale."

If it becomes harder to recruit veterinary professionals, for example, the impact on abattoirs and related businesses would be considerable. "90-95% of vets in abattoirs are not from the UK. Without a solution to that, those abattoirs don't exist, and all the downstream and upstream activities associated with that will actually disappear. It is a small number of people, but the impact is massive."

Neither can farms rely on the promise of greater automation to replace temporary jobs. "If you're looking at the short-term it can't be done. If you don't have that seasonal workforce coming in then, in essence, that industry just closes up, shuts up."

What obstacles do they face in recruiting from overseas?

The current system "generally works well," especially for the larger companies, but there are concerns about Scotland's ability to attract the labour businesses need and about the logistics of the proposed SAWS programme for temporary workers:

The big issue with SAWS is the number of permits which will be issued and the cost involved. Under the ideal situation there would be no cooling-off period. As a fall-back we could have six months then another six months [instead of the existing twelve-month visa followed by a twelve-month cooling-off period].

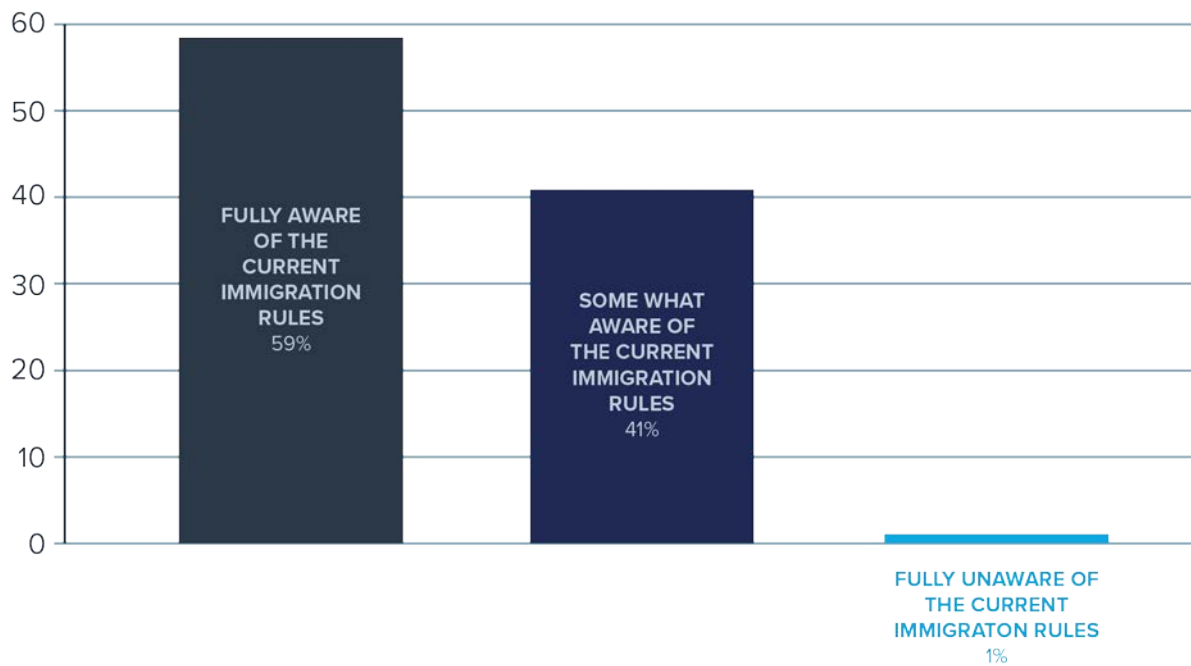
These workers have choices about where they want to go. We've got to sell ourselves here in Scotland, to compete against those other countries. You put a barrier in place such as the cooling-off period and you'll find that people simply won't come here.

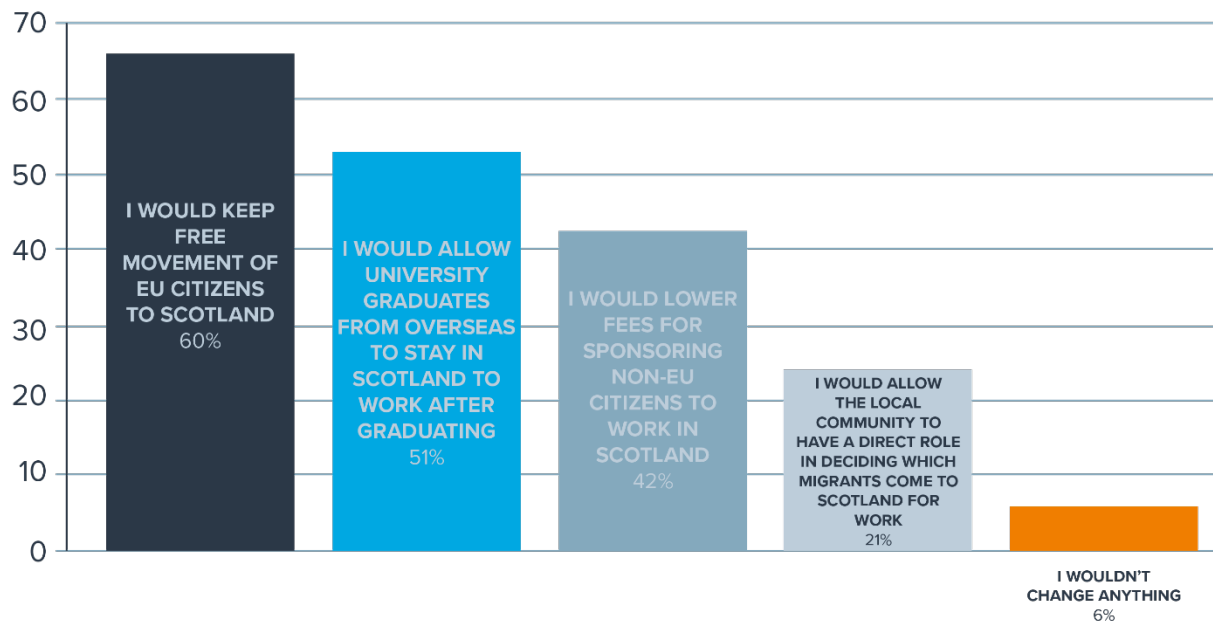
Interview with Scott Walker, Chief Executive Officer of NFU Scotland (Glasgow, July 2019)

CHAPTER FOUR: MARKET RESEARCH INTO SCOTTISH BUSINESSES

We also surveyed Scottish employers, in order to understand the depth of their knowledge of the UK immigration system and how they thought that the immigration system could be adapted to best meet their needs.

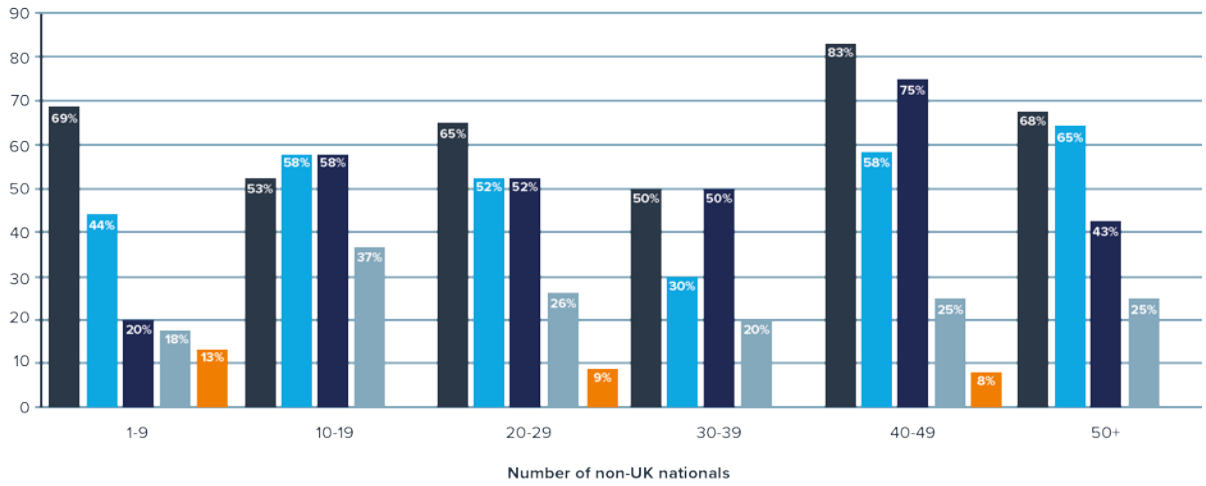
Of 150 employers surveyed, only 59% were satisfied that they fully understand the current immigration regime.



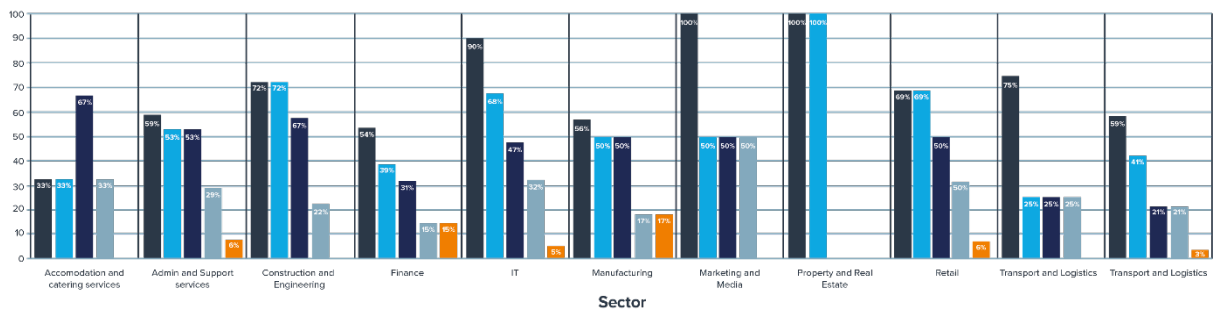


When asked “What would you change about the current immigration rules in Scotland to help your business attract new employees?” two thirds were in favour of retaining free movement rights in Scotland. A little over half of employers surveyed argued that foreign students should be allowed to remain in Scotland after their studies and 40% believed that the cost of the system should be lowered.

These responses were fairly consistent across different sized employers and most sectors.



- I would keep free movement of EU citizens in Scotland
- I would allow university graduates from overseas to stay in Scotland to work after graduating
- I would lower fees for sponsoring non-EU citizens to work in Scotland
- I would allow the local community to have a direct role in deciding which migrants come to Scotland for work
- I wouldn't change anything



- I would keep free movement of EU citizens in Scotland
- I would allow university graduates from overseas to stay in Scotland to work after graduating
- I would lower fees for sponsoring non-EU citizens to work in Scotland
- I would allow the local community to have a direct role in deciding which migrants come to Scotland for work
- I wouldn't change anything

CHAPTER FIVE: INTERNATIONAL COMPARISONS

This chapter will look at international examples of regional immigration systems which could act as a template for future policy in Scotland and the UK. It examines four countries: Canada, Australia, New Zealand and Switzerland.

It combines an overview of how national and regional immigration policy operates in each country with case studies looking at how those countries have addressed some of the questions most relevant to Scotland, including falling population in rural areas, retaining highly-skilled migrants, and amending immigration policy to meet exceptional need.^{lii}

Canada

Overview

Canada is a federal state, split into ten separate provinces (Alberta; British Columbia; Manitoba; New Brunswick; Newfoundland and Labrador; Nova Scotia; Ontario; Prince Edward Island; Quebec; Saskatchewan) and three territories (Northwest Territories; Nunavut; Yukon).

The Canadian government has been increasingly vocal over recent years about the benefits of migration to sustain and boost the country's economy. The government sets targets for immigrant numbers each year, with responsibility for selection and administration, and then splits those between the federal and provincial governments. The federal target is to attract 202,300 economic migrants to Canada in 2021, around 5.6% up on 2019.

The main route for economic migrants to come to Canada is through Canada's Federal Express Entry Program, which is managed by the central government. However, a significant proportion of migration comes via applicants invited to Canada through the Provincial Nominee Programs (PNP), which is managed by each province or territory. Each province has their own allocation or cap on the number of applicants who can be nominated each year.

Each province and territory (apart from Quebec) runs its own PNP, which allows that province to target certain groups according to their own local economic needs and prioritise skills which may not be available through the central Express Entry system. Quebec's system, which is more autonomous and more flexible than PNPs, is discussed in great detail in other studies.^{liii}

How it works: the federal system

Canada's Federal Express Entry program is a points-based immigration system that is run centrally by the Canadian government.

The Federal Express Entry Program offers three routes to people who want to migrate to Canada. They can be summarised as:

- ▶ Federal Skilled Worker Program
(for migrants who can prove they would bring high skill levels and professional experience to the Canadian economy).
- ▶ Federal Skilled Trades Program
(for migrants qualified in an eligible skilled trade in specific industries including agriculture and managing natural resources).
- ▶ Canadian Experience Class
(for migrants who have a previous professional background working in Canada).

Anyone who wants to be assessed under these programs can set up an online Express Entry profile. Their application will be awarded points under a variety of criteria including age, education, and professional background. All applicants must also meet minimum standards of English or French language skills. Applicants qualified under the Federal Skilled Worker category do not need to have a job offer in Canada, but they must be able to show that they have sufficient money to support themselves and their families in Canada while they look for work.

If applicants do not obtain a certain number of points, they are unlikely to be selected to apply. After twelve months their online profile will expire. Applicants with competitive points, however, will receive a formal invitation to apply for permanent residence, and they will then have sixty days to submit their Permanent Residence application.

The federal government selects a number of the most competitive Express Entry applicants and invites them to apply every approximately two weeks, up to a quota set according to its own targets.

How it works: regional differentiation

Canada's provincial governments feel that the needs of their local economies sometimes differ from those prioritised under the Federal Express Entry system. So the PNP allows provinces to work with the federal government on setting their own criteria and sponsor migrants whose skills and experiences are best suited to the local area.

Different provinces have different economic and demographic needs. This is especially acute in rural Canada or provinces without major cities, which may face shrinking populations but have not traditionally been attractive places for migrants to settle. Some of these provinces may have gaps in lower-skilled work, for example, which require a background unlikely to satisfy entry requirements under the Express Entry stream. In both cases, the Canadian system allows for regional differentiation to try and meet this need.

By meeting this need, some experts have referred to PNPs as the “backbone of the Canadian immigration system.”

Provinces have two options:

- ▶ supporting candidates with relevant skills and experiences from the pool of applicants who have applied to the Federal Express Entry Program;
- ▶ recruiting applicants via their own PNP

Provinces can identify applicants who have applied to the Federal Express Entry Program whose skills and experiences would be especially helpful to that local region. For example, an applicant with a background in managing agricultural programs may not obtain the necessary points needed to qualify for selection from the federal program but might have the skills needed by a rural province. The backing of that province would bring additional points to that Express Entry profile and qualify the applicant, provided they were willing to live and work in the area which had selected them.

Each federal and provincial immigration program applies different criteria for prospective applicants, but generally once the applicants obtain permanent residence, they have the right to live and work anywhere in Canada.

Lessons from Canada (1): Alberta and semi-skilled workers

One programme introduced by the province of Alberta is the Alberta Immigration Nominee Programme (AINP). It aims to help industries and individual employers in the province by attracting workers who can fill labour shortages where resident Canadians are not available to do the job.

An applicant must be sponsored by an employer in Alberta in one of three categories: semi-skilled worker; skilled worker; or international graduate. In the first two, the employer must have conducted a Labour Market Impact Assessment (equivalent to RLMT) to demonstrate that no Canadian is available to fill the vacancy.

Semi-skilled workers are likely to miss out under a Federal Express Entry programme which prioritises migrants with higher-skilled experience. However, the AINP allows Alberta to define and recruit semi-skilled workers for their own needs.

Semi-skilled workers can qualify if they work in particular jobs in five eligible industries: food and drink processing; hospitality; manufacturing; long-haul trucking; and food service. This brings additional flexibility to industries in the province, by allowing them to meet occupational demand, rather than simply leaving it to employers to fill individual job vacancies.

In addition to the RLMT, the employer must prove that the jobs they are offering are permanent and full-time positions. They must also satisfy the provincial authorities that they have a plan to help new migrants settle and integrate into the local area.

Since November 2018, Alberta has made its AINP even more flexible on skills and will now consider “people working in a wider range of jobs, including jobs that ask for lower skill levels.” The changes will “help industry and employers develop their workforce, and support a diversified Alberta economy.”

The number of nominations Alberta can make under its PNP is capped by the federal government. Around half of the 5,000 nominations certificates issued by Alberta each year are under the AINP. Migrants under the AINP can apply for permanent residence, and the right to live and work anywhere in Canada, as soon as they arrive in the country.

Alberta appears to have an excellent record retaining migrants who come to the province under its PNP. Boswell *et al.* cite figures from 2016 showing that 88.5% of those admitted under the PNP were still living in Alberta twelve months after obtaining permanent residency there, with retention rates as high as 95% according to data from 2011.

Source: Alberta immigration

Lessons from Canada (2): Filling rural jobs

From Autumn 2019, the Canadian government is piloting a new scheme for bringing skilled migrants to rural areas of the country which have previously struggled to attract new workers.

Under the Federal Rural and Northern Immigration Pilot, local communities in rural Canada will take a lead role identifying the gaps which need filling in their economies as well as endorsing specific individual migrants who could help fill those gaps.

One framework for the pilot might come from the Regional Pilot for Entrepreneurs, a programme already established to attract more highly-skilled professionals to British Columbia. This scheme is limited to communities with a population under 75,000. Applicants from outside Canada contact those communities directly, pitch their ideas, and conduct an exploratory visit to the area to discuss their plans. If the process is successful then the individual is then invited to apply directly to the province.

At the same time Ontario – home to the major cities of Toronto and Ottawa in the south, but rural and sparsely populated in the north – is running its own complementary pilot from 2020: the Ontario Regional Immigration Pilot.

The provincial authorities say the regional pilot, in its earliest phase of consultation, will provide a “made-in-Ontario” solution for small and rural communities of between 20,000 and 200,000 people which otherwise struggle to attract the workers they need. Rural Ontario faces population challenges based on the number of younger people who leave to live elsewhere in the region or Canada.

In common with the other pilots above, local communities are promised a central role in identifying and planning for potential migrants to the region, although responsibility for processing visas will still fall to the federal and local governments.

Source: Canada Immigration

Australia

Overview

Australia is a federation divided into six states – New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia – and two territories: Northern Territory and Australia's Capital Territory.

Annual net migration to Australia is more than 200,000. Partly in response to political pressure over immigration numbers, the federal government sets a yearly cap on permanent migrants for the whole country. Economic migration and humanitarian resettlement for refugees are both included in this annual quota, although visas for people coming to Australia to reunite with their partners are not.

There is a strong focus on attracting high-skilled migrants through a points-based General Skilled Migration program, which consists of three visas for applicants without a job offer, including one independent route (Skilled Independent Visa) and two State/Territory nominated programs (the Skilled Nominated Visa and the Skilled Work Regional (Provisional) Visa).

Migrants with job offers generally apply under Australia's temporary and permanent employer sponsored visa programs, which are not points-based.

The three main points-based visas under the General Skilled Migration program are:

1. **The Skilled Independent visa.** This is a points-based independent pathway which does not require employer sponsorship or nomination by a State/Territory or relative. The occupation must be on the Medium to Long Term Strategic Skills List (MLTSSL), which is a national list of occupations identified as being in high demand, with a high value to Australia's economic development and with a relatively long lead time for the development of occupational skills. This list applies nationally with no regional variation
2. **The Skilled Nominated visa.** Applicants must be nominated by a State or Territory government. The occupation must be on the relevant Skilled Occupation List (SOL) for that State or Territory. For example, in New South Wales, the SOL list is 'NSW 190 Priority Skilled Occupation List.' The applicant identified as holding the skills identified in the list will then need to live and find work in that region.
3. **The Skilled Work Regional (Provisional) Visa.** Applicants can either be nominated by the relevant State or Territory government, which covers the regional area *or* by an eligible relative (for example a parent, child or step-child, a sibling or step-sibling, etc) residing in that region (in which case, the occupation must also be on the MLTSSL).

How it works: The overall system

The General Skilled Migration program is federally based like all of Australia's immigration programs. The various States and Territory governments play a key role in nominating specific skilled migrants for the Skilled Nominated and Skilled Work Regional (Provisional) visas, but the Commonwealth Department of Home Affairs retains the power to decide whether to grant or refuse the visa to the relevant skilled migrants under these State/Territory programs.

The annual cap on permanent visas to Australia is currently 160,000, covering both applicants outside the country and foreign workers lodging their applications while already in Australia.

This was reduced from 190,000 after an announcement from the federal government in summer 2019. About two-thirds of the visas are dedicated to economic migrants.

States and Territories have had a long-established role working with the federal government to make sure migration meets the needs of regional Australia. This includes the State/Territory nominated programmes listed above, which allow States and Territories to sponsor applicants directly to live and work in the local region or to make regional offers to people who have applied under the Skilled Independent route.

The federal government has established a set of criteria against which applicants must score a minimum number of points to qualify for a visa. Migrants express their interest in working in Australia online and are invited to apply so long as they meet minimum criteria on age and the quality of their spoken English. They will then receive a visa only if they score enough points.

The system is weighted heavily towards workers under 45 who speak proficient or excellent English, have higher education qualifications and professional backgrounds, and are qualified for a job on the MLTSSL or a regional Skilled Occupation List.

In previous years the federal government has also directly targeted the recruitment of workers in specific industries – including childcare and management consultants – which has pushed up the points needed in other occupations.^{liv}

How it works: regional differentiation

State/Territory nominated programs operate by allowing States and Territories to nominate applicants for a Skilled Nominated visa or a Skilled Work Regional (Provisional) visa where the person has an occupation on their relevant State/Territory occupation list and meets any other specific requirements the State/Territory may have.

State and Territory authorities will identify the skills they need in the local economy. Where applicants to the Skilled Independent visa could meet these needs, but have narrowly missed getting enough points, the State/Territory can nominate the applicant to come and work in that region of Australia. State and Territory nominations bring additional points to the applicant, which make it more likely that the applicant then qualifies for a visa.

The State or Territory also works with local employers and the federal government to create its own Skilled Occupation List, in recognition that different regions in Australia will benefit from different types of immigration.

In Western Australia, for example, there may be demand for professionals in the petroleum industry which won't be demanded elsewhere in the country. The regional occupation list will reflect this. If it is a local business which has sponsored the migrant, a regional certifying body in that state will provide guidance to ensure that the sponsored migrant will receive the right pay and conditions.

All Australian States and Territories participate in the Skilled Nominated visa and the Skilled Work Regional (Provisional) visa, so there are regional occupation lists in each State and Territory. Regions therefore use both nominated federal candidates and their own Skilled Occupation List (SOL). One example of this is in Tasmania (see below).

Lessons from Australia: Meetings regional demographic and skills needs

Tasmania is by far the smallest of the country's six states. It covers the lowest land mass and hosts a population sixteen times smaller than New South Wales.

It also faces an ageing population, and with it pressure to find working-age residents who can help grow the economy. Its regional migration system, applied through the Tasmanian Skilled Occupation List (TSOL), is one way to try and address this.

Migrants can apply for a Skilled Regional (Provisional) Visa, which will allow them to live and work in Tasmania for an initial four years. This is a two-step process.

1. The applicant must first apply to the Tasmanian authorities for state nomination. To qualify, they must meet minimum standards similar to those required at a federal level on age and language ability, and their skills in a named occupation must have been verified by a relevant body. They do not need to have a job offer. There must also be places available under the overall migration cap.
2. The TSOL includes a long list of qualifying occupations, from the most highly skilled work (like aeronautical engineers and cardiologists) to jobs traditionally seen as lower-skilled (like roof tilers). The state has identified construction, agriculture and public health as industries in which it is most interested in new labour.

Once approved for nomination by the Tasmanian authorities, the applicant must apply to the Department for Home Affairs. The state nomination adds an extra ten points to their application.

Once in the region, migrants are required to live and work in Tasmania for at least two years. They can also start to apply for permanent residency after the first two years, provided they have been in employment for at least one of those years. Anyone with permanent residency can live and work anywhere in Australia.

In addition, applicants to the Tasmanian authorities are more likely to win nomination if they had previously studied in the region, which creates an incentive for migrants to pursue their education in the area and bring their skills back to Tasmania later.

Source: Department for State Growth, Tasmania

New Zealand

Overview

New Zealand is a constitutional monarchy split into fifteen regions: Auckland; Bay of Plenty; Gisborne, Hawke's Bay; Northland, Taranaki, Waikato, Wellington, and Whanganui-Manawatu (on the North Island), Canterbury, Marlborough, Nelson-Tasman, Otago, Southland and West Coast (on the South Island).

There is no quota or cap on how many migrants can move to New Zealand each year.

New Zealand operates a points-based system comparable to that used in Australia. A job offer will make a substantial contribution to helping applicants score the points they need to get a visa and will therefore be required in most circumstances. Other factors towards getting enough points are English language proficiency, age, professional experience, filling a role on national shortage occupation lists, and educational qualifications. There is a national Long Term Skill Shortage List (LTSSL) as well as Regional Skills Shortage Lists (RSSL).

The points-based system is applied alongside two national Skilled Occupation Lists, as well as regional Skilled Occupation Lists which adapt the national lists for local needs.

How the system works: The federal system

There are three main federal visa categories open to migrants who want to live and work in New Zealand:

- ▶ **Essential Skills Work Visa**
(visas are issued on three broad tiers according to the skills of the applicant – lower, mid and high – and the duration of visas and the right to extend them is varied according to skill level. A job offer is required and is evidenced by a supplementary form from the employer, or an offer letter or contract.
- ▶ **Specific Purpose or Event Work Visa**
(applicants can enter New Zealand for work on a specific project or event, sponsored by the employer, and can normally stay for either one year (with the right to renew for a further year) or three years.
- ▶ **Work to Residence (Talent) Visa**
(applicants are higher earners who have been sponsored by a business to bring their skills to New Zealand and are granted a longer initial right to stay in the country).

Employers are required to conduct RLMTs before recruiting under an Essential Skills Work Visa, to demonstrate that no one resident in New Zealand could fill that role. This applies to jobs at all skills levels, unless it is on a national or regional shortage list, in which case the RLMT is waived.

Employers must also register and be accredited before employing migrants under the Specific Purpose and Work to Residence visas, but not for Essential Work Skills. For the Essential Skilled Work visa, the employer must carry out a labour market test in which they advertise the role on two websites and provide evidence of their advertising, as well as a list of candidates and reasons these were rejected. Employers do not need to become a sponsor in order to carry out this process.

Since 2016, applicants have been required to demonstrate an appropriate quality of spoken English to qualify for an Essential Skills Work visa. This is not a requirement under the other two streams.

How the system works: regional differentiation

The federal government retains control of issuing visas and checking potential migrants to New Zealand, but central and local governments have used shortage occupation lists in a number of ways to try and address regional immigration needs. In each case, employers can recruit people into jobs on the shortage lists without conducting any RLMT.

In May 2019 a Regional Skill Shortage List (RSSL) replaced the Immediate Skill Shortage List (ISSL). The ISSL had introduced a partial regional scheme by dividing New Zealand's regions into six parts and identifying occupations in each part where there was an urgent need for temporary labour from overseas.^{iv} The RSSL is divided into fifteen so that every region now gets its own shortage list.

There is also a Construction and Infrastructure Skill Shortage List, which covers immediate short-term shortages in these industries. It is also divided across all fifteen regions.

Finally there is the Canterbury Skill Shortage List, which was established after natural disasters hit the region in 2010/2011 to address that specific crisis (see below).

Successful applicants to the RSSL are issued with an Essential Work Skills visa, with the conditions attached to their skill level. Skilled workers can apply to transfer to a 'work to residence' visa after two years, which is a path to permanent residence and the right to live and work anywhere in New Zealand, Low-skilled workers on Essential Work Skills visas are not expected to settle permanently in New Zealand.

Lessons from New Zealand: Responding to a crisis

In the years after a devastating natural disaster, the New Zealand government agreed to new regional immigration rules to try and address an economic crisis in Christchurch, the country's third largest city.

Christchurch, in the region of Canterbury on the South Island, was hit by a succession of strong earthquakes in 2010 and 2011. One hundred and eighty-five people were killed, and thousands of buildings were destroyed. Enormous damage was done to the city's infrastructure.

Plans were made to try and make sure Christchurch had the skilled labour force it needed to rebuild and grow. A local body, the Canterbury Skills and Employment Hub, was established in 2012 to help regional employers find the staff they needed from elsewhere in the country. Where there was no one available, the Hub would help them navigate the immigration process and bring in labour from overseas.

The Canterbury shortage list is based on the national shortage occupation lists but identifies local labour needs in the region in the aftermath of the earthquake. It allows migrants to apply for either temporary or permanent settlement as they helped the region rebuild. Migrants on temporary visas are required to work only in Canterbury, although people granted permanent residency can live and work anywhere in the country in common with all other New Zealand visas.

The most recent version of the Canterbury Skilled Shortage List lists occupations in four key industries for infrastructure: construction, engineering, trades, and telecommunications experts.

There are no specific migration figures for Christchurch, but according to Boswell *et al.* net migration to Canterbury was around 7,000 in 2015/2016, and it saw more temporary migrants than any other region after Auckland. However there are also concerns that, as the rebuilding work reaches its completion almost a decade after the disaster, it will prove harder to retain skilled workers in the region, with an associated risk for the local economy.

Source: Immigration New Zealand / Boswell *et al.*

Switzerland

Overview

Switzerland is a federal state, divided into twenty-six semi-independent regions (called *cantons*). The twenty-six cantons are: Aargau, Appenzell Ausserrhoden, Appenzell Innerrhoden, Basel Land, Basel Stadt, Bern, Freiburg, Genève, Glarus, Graubünden, Jura, Luzern, Neuchâtel, Nidwalden, Obwalden, Schaffhausen, Schwyz, Solothurn, St. Gallen, Thurgau, Ticino, Uri, Valais, Vaud, Zug and Zürich.

Local governments in each canton have responsibility over a number of key policies, including how residents can access education, healthcare and welfare benefits. Cantons also work alongside the federal government on some immigration decisions, so that local areas have a say in attracting the specific skills and expertise they need from overseas.

Questions around immigration and the number of foreign nationals living in Switzerland have taken on political significance in recent years, with high-profile referendums calling for more restrictions on migration. Partly in response to this, the Swiss government caps the number of work permits it issues each year to EEA nationals transferring to Switzerland through their existing employer. In addition to permits issued by the federal government, some permits for non-EEA nationals are also issued by cantons on behalf of local employers, although the numbers available vary from canton to canton and are also capped at a regional level. This has been called “a two-level quota system.”^{vi}

How it works: the federal system

Switzerland has strict immigration policies relative to other European countries, with different restrictions placed on citizens from inside and outside the EEA (the EEA is the relevant membership as Switzerland is not part of the EU or the EEA but is in the single market).

The two main forms of work authorisation visas for foreign nationals are:

- ▶ the L Permit (for someone working in Switzerland for between one day and a year).
- ▶ the B Permit (for someone working in Switzerland for between one and five years).

EEA citizens can enter Switzerland without a job and try to find employment. However, the number of work visas available for EEA citizens transferring into Switzerland through their existing employer is capped: in 2020 the quarterly quota is 3,000 L Permits and 500 B Permits (the same quota applied in 2019).

Migrants from outside the EEA will only be granted a permit if an employer has sponsored them to come to Switzerland for a specific job. The system is designed to prioritise highly skilled migrants, although there are some limited exceptions in industries facing acute shortages like engineering, construction, and hospitality.

To qualify, a migrant must prove they have either relevant academic qualifications and a professional background or specialist training and significant experience, usually amounting to a minimum of 10 years' work experience in practice.

In addition to these requirements for migrants, Swiss businesses can only sponsor an employee from outside the EEA once they have conducted a RLMT to prove that no Swiss or

EEA citizens could fill the job (the less skilled the job, the more stringent the testing must be). Exemptions to this rule apply to some very senior employees in roles such as Vice President, Chief Executive Officer, etc. Businesses must also satisfy the local government in that canton that the role comes with the same pay and conditions as offered to any other comparable employee.

In 2020, the quota for the number of work permits available for non-EEA workers is 4,000 L Permits and 4,500 B Permits per year (the same quota applied in 2019).

How it works: regional differentiation

The annual quota of L permits is split equally between the federal government and across the cantons. B work permits are currently split 3,250 for the federal government and 1,250 across the cantons. The regional authorities have the right to “interpret” the federal immigration rules, which in practice allows them to adjust the sort of skills and experience a business requires to become a sponsor. The intention is to give different regions of Switzerland some flexibility in response to the needs of the local labour market, while operating under a national cap.

However, different cantons get a different quota of permits. That decision is made by the federal government with reference to the economic strength of each canton, so the most successful regions hosting the highest number of businesses get more permits than smaller cantons where there is less economic activity (see the example of Zürich, below).

Once a canton has exhausted its regional quota, it can apply to issue further permits from the federal quota. These are normally issued on a first-come first-served basis. One consequence is that smaller cantons, with smaller permit quotas, rely disproportionately on the federal list.

In both situations, the canton processes the permit requests made by local businesses. It is the local government in that canton which conducts RLMT, although the federal government carries out its own checks and validations before issuing a permit. Some experts believe that the federal government is getting stricter on checking the RLMT in particular.

All permits are linked to the canton and company where the applicant will work, as well as to the position for which it was granted. So if a migrant chooses to change to a similar job in the same region they might need to re-apply for a permit; but if they want to move to a job based in another canton they will need to apply for permission to change jobs and cantons.

Migrants can generally apply for permanent residence in Switzerland after ten years living and working in the country.

**Lessons from Switzerland:
Helping the most vibrant local economies**

In 2019 the canton of Zürich received its annual quota of non-EU work permits: 392 L Permits (for short-term work) and 245 B Permits (for long-term work). This was the largest quota of any canton.

If it exhausts these permits in the course of the year, the local authority can apply to the federal government for access to some of the L Permits and B Permits held in reserve.

The canton is the biggest in the country, with a population of over 1.5 million. It is also home to the city of Zürich, one of the world's major centres of commerce and research. The region's economic influence is reflected in the high proportion of permits issued to the local government: nearly 1 in 5 of the 3,000 permits issued to Swiss cantons in total went to Zürich. By contrast some other cantons, where economic activity is weaker, received just a handful of permits in 2019.

Zürich, in common with other cantons, also has the power to issue some permits outside of its regional quota. The region prioritises the most highly-qualified academics, with a stated preference for students about to pursue doctoral studies at a local university or by recruiting migrants pursuing post-doctoral studies.

Source: Canton of Zürich, Department for Economic Affairs (2019)

CHAPTER SIX: POLICY OPTIONS FOR SCOTLAND

This chapter will outline eleven policy options for the Scottish government as it considers how it could apply greater controls over regional immigration policy after the end of the transition period which is in place until 31 December 2020. The policies work within the framework of existing and projected Home Office policy, but it should be noted that none of the recommendations below can replicate the economic benefits of building an immigration system around retained free movement of EU citizens.

None of these options are to be considered in isolation, but as a range of measures which could be adapted or combined, according to the requirements of Scotland's economy and population and the willingness of the UK government to grant those devolved powers.

The policy options are split into three categories. We begin by setting out why and how it is possible to maintain the free movement rights of EU nationals in Scotland. The next six policy proposals assume that Scotland has some powers to differentiate its immigration system while still being closely bound to Home Office rules. These options therefore amend or supplement policies which are already in place or are part of the reforms proposed in the 2018 Immigration White Paper. The final four proposals assume that Scotland has greater powers to implement a Scotland-only immigration system which interacts with Westminster but is more independent from it.

The options draw on the analysis in this report of the existing UK-wide immigration system, the specific needs of Scottish society and its economy, and the precedents provided by regional systems operating elsewhere in the world. In keeping with preferences for immigration compliance already stated by the Scottish government (see Chapter Seven) all the options assume an ongoing role for the Home Office, especially in enforcing the terms of new immigration policies in Scotland. In each case, this chapter discusses the things the Scottish government would need to take into consideration to implement those policies, the restrictions on migrants' rights to live and work attached to new policies, and which bodies will bear any additional burden associated with their implementation.

The policy options in this chapter are ordered roughly according to the level of new powers the Scottish government would need to implement the changes required.

Policy options: amending or supplementing existing rules

1. Maintain free movement of EU citizens
2. Differential regional salaries
3. Remove additional visa fees
4. A quicker route to settlement
5. An overseas graduate scheme for Scottish universities
6. Expand the Scotland-only Shortage Occupation List (SSOL)
7. Create a Migration Advisory Committee Scotland (MACS)

Policy options: exercising greater devolved powers

8. Introduce flexible visas quotas for Scotland
9. Boost the highest-performing areas of the economy
10. Introduce emergency visa measures to deal with Brexit
11. Give communities a direct role in deciding who moves to Scotland

Policy options: free movement in Scotland

1. Maintain free movement of EU citizens

Our paper has covered the benefits of migration to Scotland at length, along with the particular needs of Scotland's economy. We have also set out how those needs are not being met even with free movement in place. Those issues seem likely to increase in the event that free movement ends for Scotland.

Below we set out a variety of ways that the UK's immigration system could be adjusted to meet the particular needs of Scotland. While this may reduce some of the impact of removing free movement, they would never entirely remove them. Given this, the question becomes whether free movement could feasibly continue after the transition period ends?

In policy terms it would be entirely possible.

- ▶ Free movement is currently given effect through the Immigration Act 1971. The Act is likely to be amended by the Immigration Bill 2020 to remove free movement for the UK as a whole. A more limited amendment could potentially allow free movement to continue in Scotland.
- ▶ As now, Europeans would be free to travel to Scotland and start work without an immigration document, relying instead on their European passport or other acceptable document. While an immigration status would not be needed in this model, a registration could be encouraged through an updated version of the EU Residence Permit model.
- ▶ As is the case elsewhere in the immigration system, Indefinite Leave to Remain (ILR) could be awarded after five years. Those who subsequently wish to move to another part of the UK could benefit from ILR, although many will have set down deep roots during the five year period.
- ▶ Those who wish to move to another part of the UK before they have secured ILR would need to qualify for an immigration permission, for instance a Tier 2 work permission.
- ▶ It would be reasonable to allow time spent in Scotland to count towards the qualifying period for ILR elsewhere in the UK.
- ▶ Those who do not qualify for a work visa would be subject to existing immigration controls, for instance right to work and right to rent checks.

We recognise but do not accept concerns that maintaining free movement in Scotland, or indeed any regional policy variations could open a back door for illegal migration to other parts of the UK. After Brexit European nationals will not require a visa to visit the UK, for instance

as a tourist, and will be able to utilise e-gates, meaning that they do not speak to an immigration officer. It may also be that having entered as a tourist they are able to move to a work visa from within the UK. Visa free entry inevitably creates a risk of overstaying or other non-compliant behaviour but the government is willing to accept that risk, as it does with US, Australian and other visa exempt visitors. There would be no perverse incentive to treat Scottish free movement as a backdoor to enter the UK, when the front door is entirely open.

The principle of regional migration systems is well established and works well in other parts of the world. The policies described below show how sensible policy adjustments could mitigate the impact of Brexit on Scotland's economy. However, it is essential to remember that retained free movement in Scotland could be one such adjustment, and could be part of a practical, effective regional migration system for the UK.

We have also discussed how those needs are not fully met even with free movement.

Policy options: amending or supplementing existing rules

2. Differential regional salaries

Salary requirements for Tier 2 (General) visas could be lower in Scotland than in the rest of the UK.

What does Scotland get?

Improved access to skilled migrants at minimum salaries better suited to the Scottish economy.

Considerations

There are opportunities to effect this change through the Home Office's ongoing 'engagement' on salary proposals, and changing the £30,000 cap would make it easier to recruit skilled workers to Scotland. The Scottish government could use existing rules or market trends to guide the choice of an appropriate salary threshold, potentially drawing on minimum wage earnings or salaries suggested by different industry leaders, which have ranged from £20,155 to £24,000. Any such approach would bring thousands more workers into scope.

Nonetheless, any salary requirement above national minimum wage would exclude some workers, and this policy will not match the access to labour allowed through free movement. In addition, a focus on skilled Tier 2 migrants is unlikely to address the need for low and mid-skilled work or population needs in rural Scotland, where a different set of policy solutions would be necessary.

Restrictions

Migrants would receive five years leave to remain in Scotland, with their visa tied to a business with an address in Scotland. They could apply to renew that visa for one further year, or apply for settlement and the right to live anywhere in the UK after five years of continuous residence.

What would be required?

- ▶ The Scottish government would need to research, advise on and implement its own salary requirements. A new regional body might have to be established to achieve this, such as a Scottish MAC (see below).
- ▶ The Home Office would need to work with the Scottish government to design the system. The ongoing MAC review of applying a points-based immigration system in the UK may be a way to consider how applications might get extra points if migrants committed to live in different parts of the UK and earn different salaries.
- ▶ Businesses in Scotland would find it easier to recruit the skills they needed, although thousands of SMEs would be brought into the visa system for the first time. A differentiated salary threshold would not overcome the burden of conducting a RLMT, at least until that requirement is removed in 2021.

3. Remove additional visa fees

NHS and skills surcharges could be waived for Tier 2 (General) migrants to Scotland.

What does Scotland get?

Improved access to skilled migrants as a result of a more generous immigration offer, and a better chance to retain businesses in Scotland amid rising costs associated with Brexit.

Considerations

This would reduce costs both for individual migrants and Scottish businesses, making recruitment cheaper and incentivising migrants to come to Scotland. This is especially important in light of the concerns raised about new costs incurred by SMEs.

Scotland would lose its share of the additional funding for national healthcare and training which is currently funded in part through these fees, although this is likely to be a small cost to incur relative to the importance of stronger recruitment opportunities. A focus on skilled Tier 2 migrants is unlikely to address the need for low and mid-skilled work or population needs in rural Scotland, where a different set of policy solutions would be necessary.

Restrictions

Migrants would receive five years leave to remain in Scotland, with their visa tied to a business with an address in Scotland. They could apply to renew that visa for one further year, or apply for settlement and the right to live anywhere in the UK after five years of continuous residence.

What would be required?

- ▶ The Scottish government would need to negotiate the change with the Home Office, and potentially find alternative resources for the share of the NHS and skills funding currently spent in Scotland.
- ▶ The Home Office and the Scottish government would need to work together to amend Tier 2 rules so that fees were varied according to the location of the sponsor. There is

already a precedent for varying fees when a job is on the SOL, which could guide any changes.

Businesses would have a more generous offer to make to potential migrant employees relative to the rest of the UK.

4. A quicker route to settlement

Migrants would get a quicker route to settle in Scotland, compared to elsewhere in the UK.

What does Scotland get?

Potentially improved access to migrants looking to come to Scotland, stay long-term, and then settle

Considerations

Policies which attract long-term migrants and their families is in line with Scotland's existing integration strategy. This would also reduce bureaucracy for individual migrants, who would have to make fewer applications to the Home Office. Scottish businesses may find it easier to plan if settled migrants replace a 'churn' of workers who either stay in Scotland for short periods before returning home or leave Scotland for other parts of the UK – although it is unlikely this effect would be felt for many years.

Policies encouraging settlement in Scotland would reverse the trend over the last decade to make settlement harder for migrants, as shown in disagreements over the Fresh Talent (Working in Scotland) scheme (see below). Longer-term migration will need to be complemented by policies to meet the most immediate needs of key occupations in agriculture and hospitality, which have traditionally relied on a continued supply of short-term workers rather than long-term migration.

Restrictions

The existing Tier 2 system – of five years leave to remain in Scotland with the right to apply to renew that visa for one further year or to apply for settlement and the right to live anywhere in the UK after five years of continuous residence – would be replaced with the right to apply for settlement after three years of continuous residence. Three years is based on the expectation that, having put down roots over such a period, migrants and their families will be more likely to stay in Scotland beyond their initial visa. The initial visa would be tied to a business with an address in Scotland.

What would be required?

- ▶ The Scottish government would need to negotiate the change with the Home Office.
- ▶ The Home Office and the Scottish government would need to work together to amend Tier 2 rules so that rights to settlement were applied according to the location of the sponsor. The burden on the Home Office would be reduced overall, as people migrating to Scotland on a new regional system would move away from immigration control and into settlement more quickly.

- ▶ Businesses would not have any new burdens based on this change, and could benefit from a more settled, better integrated labour force.

5. An overseas graduate scheme for Scottish universities

A new version of Scotland: Fresh Talent (which ran from 2005 to 2008) could incentivise skilled overseas graduates from Scottish universities to stay and work in Scotland.

What does Scotland get?

Improved access to thousands of overseas graduates from Scottish universities, who are already in Scotland, are often highly skilled and well qualified, and are looking for work. It would also give Scottish universities a competitive advantage over universities elsewhere in the UK when attracting students from overseas.

Considerations

This is in line with changes in Home Office policy announced in 2019, and the re-introduction of post-work visas for all the UK from 2020. However, the Scottish government could still choose to build incentives into a Scotland-only system which, for example, would allow students from Scottish universities to stay in the UK for three years after graduating instead of two if they worked in Scotland, or would allow those years to count towards a migrants' settlement application if they worked in Scotland. Fresh Talent showed that such schemes can attract more overseas students to Scotland and can keep thousands more skilled workers in the Scottish economy. An attractive offer to international students in Scotland would boost a successful sector on which policy makers are already focused, as well as enhancing Scotland's international reputation and competitiveness.

A focus on graduate skills is unlikely to address the need for low and mid-skilled work or population needs in rural Scotland, so complementary policies would be needed to meet those requirements.

Restrictions

Overseas students would qualify for two or three years leave to remain in Scotland after graduating, without needing a new visa. They could work for any Scottish company or could set up their own business in Scotland. After two or three years they could apply for a new visa which would bring the right to live and work anywhere in the UK. Provided they had lived and worked in Scotland, those years would count towards any future application to settle in the UK.

What would be required?

- ▶ The Scottish government would need to replicate the advisory service for overseas students set up in 2005 to boost Fresh Talent, as well as evaluating the new scheme.
- ▶ The Home Office is already planning for the new post-study work system. The Scottish government would need to work with them to design a system which differentiated

postgraduate visa requirements in Scotland from the rest of the UK, possibly borrowing from the learning from Fresh Talent. This previous scheme was administered without further Home Office involvement apart from compliance where necessary.

- ▶ Businesses would face a much smaller administrative burden for recruiting highly-qualified staff relative to the current system or proposed reforms. They would be able to recruit overseas graduates without needing to become sponsors or contacting the Home Office.

6. Expand the Scotland-only Shortage Occupation List (SSOL)

The SSOL only includes two occupations which aren't already on the UK-wide SOL, chemical scientists and Gaelic teachers. The Scottish Government's 'Migration: helping Scotland prosper' paper states that this list 'is underused, insufficiently responsive to need, and has no formal input from either the Scottish government or the Scottish Parliament.' (pg 20). An expanded SSOL with more input from Scottish government and the Scottish Parliament could give employers a better chance of recruiting workers for more hard-to-fill jobs.

What does Scotland get?

Improved access to workers in a wider pool of key jobs and industries facing skills shortages.

Considerations

A better-designed SSOL would have the potential to give Scottish businesses greater 'bottom up' powers to identify specialist needs within the immigration system, including shortages for lower-skilled work, something already pursued in other international regional policies. There are opportunities to effect this change through the MAC's semi-regular reviews of the SSOL, however more must be done to make this process easier for employers to engage with.

The SSOL has been relatively under-used, although data is unclear about why this is.^{lvii} If there are deeper problems with the existing SSOL then any expansion may have limited impact, although it brings specific benefits to businesses in the form of waiving fees and salary thresholds. SOLs in general cannot respond quickly to short-term recruitment crises, which is why some countries with regional immigration systems have an 'immediate shortage' list as well. As the 'Migration: helping Scotland prosper' paper concludes, 'feedback from stakeholders the Scottish Government has received is that the shortage occupation lists as they stand were felt not to be an adequate mechanism for responding to labour market demands. It was generally agreed that the shortage lists need to be independent, to be reviewed more frequently, with increased stakeholder input and must incorporate a way of reacting to regional labour shortages.' (pg 40).

Restrictions

Migrants would receive five years leave to remain in Scotland, with their visa tied to a business with an address in Scotland. They could apply to renew that visa one further year, or apply for settlement and the right to live anywhere in the UK after five continuous years.

What would be required?

- ▶ The Scottish government would need to look into why the current SSOL is relatively under-used. It would then take on extra responsibilities in designing and monitoring a new SSOL, or direct a body like MACS to do this.
- ▶ The Home Office could choose to work closely with the Scottish government, or could give powers to Scotland to develop a SSOL largely independent of the UK-wide SOL.
- ▶ Businesses would need to lead the work identifying shortages, communicating to government, and provide the data which would help evaluate the effectiveness of the SSOL. This is a small burden on business relative to the potential benefits of a well-functioning, expanded SSOL.

7. Create a Migration Advisory Committee Scotland (MACS)

The Home Office receives advice from the MAC, which looks at regional issues only when instructed by the department. A MACS could copy this model to provide expert regional immigration advice as directed by the Scottish government.

What does Scotland get?

The opportunity to commission high-quality, independent regional immigration advice from experts in Scotland.

Considerations

In the event that Scotland received new powers over immigration policy, the government could commission the MACS for Scotland-only advice suited to those new powers, including for example an expanded SSOL or a differentiated salary requirement for skilled migrants (see above). One template could be the expert advisory group on migration and population, established by the Scottish government in 2018.

Independent expert advice would be a helpful or even essential resource for decision-making in Scotland, but serves no practical purpose unless Scotland has additional devolved immigration powers to deliver on that advice.

Restrictions

This policy option is unrelated to the terms of migrants' visas and rights.

What would be required?

- ▶ The Scottish government would lead in recruitment and commissioning of a MACS but could then refer analysis on topics like shortage occupations and further education rules to them.
- ▶ The Home Office may help advise on the establishment of a MACS but would face few overall responsibilities.

- ▶ Businesses would need to feed information to the MACS, via formal consultation processes similar to those which already exist for the MAC. This would probably be a small requirement relative to the economic benefits of policy changes informed by regional expertise.

Policy options: exercising greater devolved powers

8. Introduce flexible visas quotas for Scotland

The Scottish government could sponsor migrants to come to Scotland using an annual quota of visas granted by the UK government. This would be over and above migrants with a job offer, who would be sponsored by employers in Scotland and for whom there would be no quota.

What is it modelled on?

The Swiss canton system and Canada's PNPs, where regions have access to capped visa quotas but are relatively free to make decisions differentiating the skills they need and the length of the visas they issue.

How would it work?

In the event that the UK introduced a points-based immigration system, Scotland could work with regional businesses to identify the specific skills most needed in the Scottish economy. The Scotland-only points system could be based on the UK-wide system but amended to weight more points for a job offer from a Scottish business, sponsorship by the Scottish government, age, different levels of earnings, or professional background matched to shortages in key Scottish industries.

Applicants would not have to have a job offer in Scotland. In common with Canada and New Zealand, both the Scottish government and Scottish businesses could sponsor applicants. Following the international examples, the number of visas available for Scottish sponsorship would be capped, with the cap negotiated between Westminster and the Scottish government.

International precedent for how long someone must live in the region varies. Following the New Zealand example, the Scottish government could taper resident rights according to skills levels, with higher-skilled migrants or migrants filling key shortages – for example, engineers or social care workers – given visas entitling them to a longer period in Scotland than lower-skilled migrants.

Considerations

A points-based system is already being explored by the UK government. Adapting this for Scottish needs could potentially give the government and businesses in Scotland substantial flexibility to recruit workers, across both high and lower-skilled work. By maintaining a regional cap, Scotland could provide political reassurance about controlling migrant numbers, especially in the early days of a new UK-wide points-based scheme.

Any system weighted favourably for younger workers would increase chances of a knock-on effect for addressing population decline, although this problem does not affect Scotland's regions evenly.

Aside from rural employers sponsoring applicants directly, points-based schemes by precedent favour highly-skilled migrants moving to business in big cities. Therefore it would be less effective at meeting the shortages of some lower-paid jobs and needs of rural Scotland.

Restrictions

Migrants could come with or without a job offer. If they arrived without a job, they could only seek work in Scotland. They would have to live and work in Scotland for as long as their visa required, with the visa tied to a company with an address in Scotland. The length of visas issued under the scheme would be variable. After that visa ran out, migrants could apply for an extension of that visa or for a different visa which entitled them to the right to live and work anywhere in the UK.

What would be required?

- ▶ The Scottish government would need to adapt the UK points-based system, possibly by directing the MACS to identify the skills and shortages in the economy. It would also need to develop its own sponsorship system.
- ▶ The Home Office would redesign the UK points-based system to incorporate a regional cap for Scotland, work with the Scottish government on its adaptation, and retain compliance powers. Visas would be issued by the Home Office.
- ▶ Businesses would need to work with the Scottish government to identify skills and shortages. They would also retain sponsorship responsibilities similar to those under Tier 2 (General).

9. Boost the highest-performing areas of the economy

The Scottish government could focus efforts on attracting high-skilled migrants, by attracting skilled workers to the most vibrant economies in Scotland.

What is it modelled on?

The Switzerland regional system, and specifically its application in Zürich.

What does Scotland get?

A visa system weighted towards attracting “the brightest and the best” overseas employees to work in innovative sectors as identified by the Scottish Growth Commission, such as higher education, finance, and tech.

How would it work?

The Scottish government and Home Office would agree an annual cap of Scotland-only visas, under a similar system to (8), above. The policy priority would be to use immigration to boost

the most successful areas of the Scottish economy and maintain the momentum these industries give to economic growth in Scotland as well as its international reputation. The visa choices would be based on the standing of some Scottish industries, not on skills shortages, with relevant businesses acting as sponsors.

In Switzerland, this means the federal government giving Zürich the largest share of regional visas, so that it can recruit for its powerful finance sector in particular. For Scotland, this would mean focusing its use of visas on sponsoring high-skilled professionals in the sectors above, with some scope for including lower-skilled essential workers in high-emplying industries like tourism and food and drink.

Considerations

This policy would maintain Scotland's global competitiveness in successful industries, with a potential knock-on effect for tourism (although recruitment into the tourism sector would fill high-skilled rather than lower-skilled vacancies). It also has the potential to give Scotland a competitive advantage over the UK in recruiting talented overseas workers in these industries, through a dedicated visa system and more open public position on immigration. However, the level of the proposed salary cap means any advantage would be relatively small. It would target further economic growth and innovation in successful, high-emplying sectors, and help maintain tax revenues for the Scottish government.

There is a danger it could exacerbate existing uneven population distribution to the major towns and cities.

Restrictions

Migrants would receive five years leave to remain in Scotland, with their visa tied to a business with an address in Scotland. They could then apply for Indefinite Leave to Remain. This would come with the right to live anywhere in the UK, although evidence from Boswell *et al.* suggests that the best-designed regional immigration systems have a strong record in incentivising migrants to stay in the local area where they have put down roots.

What would be required?

- ▶ The Scottish government would need to work with businesses to design the system for identifying and attracting highly-skilled migrants. It is unlikely that a SOL would capture these industries, and it might better suit a system targeting graduates around the world.
- ▶ The Home Office would negotiate and devolve the relevant powers to Scotland and retain compliance powers.
- ▶ Businesses would work with the Scottish government to identify the appropriate skills and salary requirements under the scheme, which may be very different from those used under Tier 2 (General).

10. Introduce emergency visa measures to address immediate economic threat associated with Brexit

Scotland could introduce short-term regional migration reforms to address the economic dangers posed by Brexit.

What does Scotland get?

Fast-tracked migrants on long and short-term visas to fill the most urgent gaps in the economy.

What is it modelled on?

The Canterbury Shortage List in New Zealand. This is not to draw parallels with the tragic loss of life after natural disasters in Christchurch, but to suggest a framework for reacting swiftly to a regional economic threat.

How would it work?

In recognition of the economic threat Brexit poses to Scotland, and the potential knock-on effect for the rest of the UK, the Scottish government could negotiate a time-limited regional visa arrangement with the Home Office. It would be an extraordinary measure to meet exceptional need.

A local body could be established to co-ordinate between the devolved government and businesses, and identify both immediate and longer-term needs for the local economy. It would help businesses find the skills they need, both in the UK and overseas. For overseas recruitment, the Scottish government could use a much-expanded SSOL or for short-term urgent work adapt a Scotland-only version of the twelve-month visa proposed by the Home Office. Short-term visas would be offered in industries coming under the most immediate pressure like hospitality and agriculture.

To maximise flexibility, the scheme would not be capped.

Considerations

Generous short-term visa measures would be the quickest way to allow key industries to recruit and fill essential roles, averting the immediate economic dangers identified by business. This could be achieved through an expanded SSOL or by adapting twelve-month visas, although the Home Office twelve-month visa is itself proposed in the 2018 White Paper as a temporary measure during the Brexit transition period. If the SSOL is not an efficient way to identify shortages, it could be combined with some aspects of the New Zealand Immediate Shortage List to resolve shortages more quickly.

There is a risk that this could replicate some of the provisions in the SAWS Pilot, although that pilot is not regionally targeted.

Temporary work permits could undermine Scotland's aims on migrant integration. This is a policy which could save the economy from immediate damage but is not designed to build it for the future.

Restrictions

Migrants would be required to live and work in Scotland, with their visa tied to a business with an address in Scotland. Short-term workers would have the right to extend their visas until an end date for the scheme, which would be identified by the Scottish government and Home Office in advance, but would be required to leave the UK after that date. Migrants on long-term visas would be entitled to apply after the scheme's end date for the right to live anywhere in the UK.

What would be required?

- ▶ The Scottish government would need to negotiate these powers from the Home Office and establish the regional body which would advise on the system. This could be suitable for the MACS.
- ▶ The Home Office would negotiate the terms of the urgent system with the Scottish government. It would also face new compliance responsibilities through the differentiated status of short-term and long-term migrants under a single scheme.
- ▶ Businesses would need to work with the Scottish government to identify skills and shortages, but through accelerated processes which they will not have been asked to use before.

11. Give communities a direct role in deciding who moves to Scotland

The Scottish government could give communities a direct say over the selection of migrants, focused on areas where Scotland faces population decline and skills shortages.

What does Scotland get?

Improved access to migrants at different skill levels, selected with direct input from the communities where they will live and work. Migration would be helping address population challenges in those towns.

What is it modelled on?

Canada's Federal Rural and Northern Immigration Pilot, and the Ontario Regional Immigration Pilot.

How would it work?

Small towns in Scotland, up to a certain size of population, would be invited to work directly with potential migrants to that area on identifying opportunities and jointly developing business plans. Migrants who have expressed an interest in moving to that area would have the opportunity to visit, meet the community, and discuss their proposals. Local civil society, in the form of local authorities, charities and community leaders, could facilitate this process.

Migrants could be high or lower-skilled according to local needs. They would be selected if they met criteria on an expanded SSOL (sponsored by a Scottish company) or brought relevant, sought-after or entrepreneurial skills (sponsored by the Scottish government).

Responsibility for processing and issuing visas would still lie with the Home Office.

Considerations

Local communities interacting in advance with prospective migrants could aid integration, complementing existing Scottish integration plans. Other community-led approaches around the world have been shown to bring integration benefits in other areas of international immigration policy, such as Canada's refugee selection programme and refugee community sponsorship in the UK (although the latter remains very new).^{lviii} Flexibility around skill levels and salaries would help repopulate small towns in Scotland at the same time as filling gaps in the local economy.

The Ontario Pilot is itself in a very early phase of consultation, so it is a relatively untested and unevaluated programme.

Restrictions

Migrants sponsored by a company would receive five years leave to remain in Scotland with their visa tied to a business with an address in Scotland (but would not need an address in the specific community they have engaged with). They could apply to renew that visa for one further year, or apply for settlement and the right to live anywhere in the UK after five years of continuous residence.

Entrepreneurs would receive just under three and a half years leave to remain, in line with current Tier 1 visa rules, with the right to extend that visa and after that apply for residency and the right to live and work anywhere in the UK after five continuous years. Under the current UK rules, the most successful applicants would be eligible for an accelerated route to settlement after three years if they can demonstrate they have created ten more full-time jobs or a business income of £5 million or more. The Scottish government may wish to consider amending these requirements to match the regional economy.

As above, the best-designed regional systems have been shown to retain migrants in the region even after they have moved to a less restrictive visa.

What would be required?

- ▶ The Scottish government, or a regional body appointed to this purpose, would need to identify and invite participation from areas of Scotland in greatest need of immigration and best equipped to manage interest and visits from potential applicants. It would potentially act as sponsor for entrepreneurial visas.
- ▶ The Home Office would retain its compliance powers. To avoid another layer of complexity there would be no requirement to link the visa to a business address in a specific part of Scotland.
- ▶ Businesses, as one part of local communities, would need to work with the Scottish government to identify localised skills shortages, consult on the development of a new programme, and engage with potential applicants. This could use considerable resources.

CHAPTER SEVEN: INTEGRATING SCOTTISH AND UK IMMIGRATION POLICY

This chapter will look at the policy options available for integrating any new Scotland-only immigration system into UK-wide immigration rules. This is approached under two broad headings: how to make sure applicants can move as easily and efficiently as possible between the two systems; and how to ensure that enforcement rules applied under a UK-wide system can be applied fairly and effectively to a Scotland-only immigration system.

How the systems would work together

Contact with immigration control

Katja is Polish, and she plans to live in Aberdeen. This is how her journey through the UK and Scottish immigration systems might work, taking as an example free movement rules operating in Scotland but not in the rest of the UK.

Action	Options	Conditions
Arriving and settling in	Arrives at a UK airport	<p>There will be no visa requirement for Europeans coming to the UK, unless planning to stay for a long time to work or study. Katja would be able to just get on a plane and on arrival explain that she will live in Scotland.</p> <p>Once in Scotland, Katja would be able to work on the strength of her European passport or ID card, in line with current rules.</p> <p>As right of rent doesn't apply, no practical consideration for renting.</p>
	Rents a home	
	Begins work	
	Makes new friends and sets down roots	
Setting down roots	Spends five years and gains settlement to stay permanently	<p>Some people will only stay for a short time. However, evidence from regional Canada shows that a large majority of people who stay in a region for twelve months may decide to settle long-term (see Chapter Five).</p> <p>If Katja moved elsewhere in the UK, she would need a visa allowing her to work and rent a home. She and her employer could face severe sanctions if she was caught working illegally outside Scotland.</p>
	Moves to England, Wales or Northern Island in under 5 years	
	Gets Indefinite Leave to Remain and then moves	
UK Mobility	Decides to live in England and commute to Scotland for work	She could only live in England and commute to Scotland with an English visa, as controlled by right to rent rules.
	Visits England, Wales and Scotland regularly for work	Regular business visits on behalf of a Scottish company would be fine, however.

		This would be no different to working visits from Poland. Katja would need a visa to work in England.
--	--	---

Switching between systems

Apart from continued free movement in Scotland, the policies outlined in Chapter Six all introduce new rules for EU and non-EU migrants moving to Scotland. These are different from the rules which will be applied in the rest of the UK.

In practice, many migrants are likely to move between a UK-wide and Scotland-only scheme. Therefore, the two systems will need to be able to dovetail.

This may happen when an applicant switches between visa categories once in the UK (in common with more than 50,000 migrants each year),^{lix} and moves in or out of Scotland in the process. Or they may apply to change the terms of their visa, again moving in or out of Scotland as they do so (for example, by moving between an English sponsor and a Scottish sponsor when they change jobs). Finally, any migrant in Scotland who decides to apply to settle permanently in the UK will move from Scottish visa rules to UK-wide settlement rules.

With cooperation between the Home Office and the Scottish government, there is no reason why this would be an arduous or complex process for individuals, businesses, or officials. Implications for enforcing immigration rules are discussed later in this chapter.

Switching visas (study to work)

The new post-study work visa, set for roll-out by the Home Office in 2020, should reduce complexity and friction for overseas students across the UK. Students at Scottish universities who want to stay on and work in Scotland or any other part of the UK for two years can do so under the UK-wide scheme. If a Scotland-only scheme offered three years before someone needed to apply to the Home Office for another visa (one policy proposal in Chapter Six), the Home Office would only need to ensure that the right to an extra year was recognised under the Tier 2 application before processing the application in the normal way.

Changing circumstances (moving between companies)

Tier 2 migrants are already allowed to move jobs and change sponsor, provided they apply for permission and show that the new role reflects the terms under which the original visa was granted.

In the event that a migrant was granted a UK-wide Tier 2 visa and then wanted to move to a job in Scotland where the salary paid at least the differentiated threshold under the Scotland-only system, the Home Office would only need to register the migrant's new address and job, and move them to the Scotland-only system where any distinct rights would start to accrue from the date they moved to Scotland (for example, the years spent working in Scotland before having the right to apply for settlement). Similarly, if a migrant came to Scotland under a differentiated salary scheme and then wished to move to a new job elsewhere in the UK on a

salary which met UK-wide thresholds, that application would simply be moved into the UK-wide system, with any new rights or responsibilities accruing from that date.

Where a new job did not meet the salary thresholds, for someone moving into or out of a Scotland-only system, that application would be refused by the Home Office, in line with refusing any application to switch to a job which did not reflect the terms on which a visa would normally be granted. It would not require any new Home Office rules or processes.

Incentives

There are also policy options around fees and settlement rights which would allow the Scottish government to incentivise migrants to live and work in Scotland.

For example, the fee for switching from a student visa to a work visa is even higher than it is when applying to Tier 2 from overseas. The Scottish government may choose to apply lower fees for someone switching into the Scotland-only system, giving Scottish businesses a small competitive advantage in recruitment over their counterparts elsewhere in the UK.

Alternatively, the Scottish government could explore the option of attaching a quicker route to settlement to some Scotland-only visas, as discussed in detail in Chapter Six. This may act less as an incentive for people switching from UK-wide visas into Scotland but as an encouragement for people coming to Scotland to remain in the Scotland-only system.

Integrating the immigration rules

The possible misuse of regional immigration systems is a political question as much as a policy challenge. The potential for people to knowingly break the terms of their visas to the UK and work illegally can sometimes dominate discussions about immigration, although it has proved extremely difficult to estimate the scale of the issue.^{lx}

The Migration Observatory said in 2017:

Perhaps the most common practical question about subnational visa proposals is whether they are feasible. That is, whether they would be difficult to enforce because a region with more liberal policies could create a 'back door' into the rest of the country.

[...] In other words, people might apply to migrate to one region but then live or work in another.^{lxi}

However, the same report argues that the practical risks associated with a regional system are relatively low. The existence of some simpler visa routes for non-EU citizens, especially as a tourist, offer a more frictionless way for someone to come to the UK, overstay a visa and try to work illegally. The Migration Observatory concludes that it is comparatively unlikely that migrants would choose instead to navigate and exploit a more complex regional visa system.^{lxii}

It is also worth repeating that, as noted in Chapter Two, the proportion of net migration each year into Scotland is a very small fraction indeed of overall new migration to the UK, which also reduces the risks associated with Scotland-only reforms. In addition to the small proportions, the likelihood of expert workers recruited to key Scottish industries leaving Scotland against the rules – for example, oil engineers working at the Scottish headquarters of an international company – is extremely low.

The view of the Scottish government

The Scottish government has outlined its broad view of how rules might be implemented under a regional system. In a discussion paper in 2018, officials said:

Scotland wants migrants to live in Scotland, with the ability to visit the rest of the UK within the Common Travel Area; and the rest of the UK might also expect those migrants to stay in Scotland. Therefore, whatever the nature of devolution or differentiation, a central feature of Scotland migration policy would be to restrict migrants to living in Scotland as a condition of entry for the duration of the time they are under immigration control. How a residence restriction is defined and enforced would need to be agreed with the UK government, but there are existing frameworks (for example, the arrangements that govern eligibility for higher education support) that could prove instructive and demonstrate the feasibility of such an approach.^{lxiii}

The Scottish government also made clear its preference that “border control and enforcement remain the responsibility of the UK government, through Border Force and Home Office immigration enforcement.”^{lxiv} The following options will try and maintain these provisions.

In common with the international examples in Chapter Five, these preferences don’t assume that migrants would be tied to Scotland indefinitely but that visas allowing access to Scotland would tie migrants to the region for a variable period of time. After that, migrants may choose to apply for other visas which could come with greater freedom to move around the UK and work elsewhere. It is worth noting that the five-year renewable Scotland-only visas proposed in many of the options in Chapter Six represent stricter rules than in many of the comparable international systems.

The four policy options outlined in this section are:

1. Adapt Tier 4 rules to prevent working some hours outside Scotland
2. Expand Tier 2 rules to cover Scotland
3. Extra checks via HMRC’s ‘Scotland’ coding
4. Sector-specific checks

Policy options

The Scottish government has already ruled out some policies which could help enforce regional immigration rules. There will not be passport checks on the Scottish border with England and the Scottish government has opposed through the courts so-called ‘right-to-rent’ policies, which require private landlords in England to demand immigration paperwork from potential tenants (see Chapter One).

The compliance policies below could operate independently, or some version of each could be applied collectively.

1. Adapt Tier 4 rules to prevent working some hours outside Scotland

One area of the UK immigration rules where there is already limited regional differentiation is Tier 4 for students, which distinguishes between students in London (who must possess

higher level of maintenance funds) and students outside London. Home Office guidance also provides a definition of when a student is considered to be studying in London (they must be studying at a site or sites situated within the area comprising the City of London and the Greater London Area for half the year or more). The Tier 4 definitions could be adapted for a Scotland-only visa, using a framework with existing regional variations to clarify the rules for working inside Scotland. Employers and applicants would be jointly responsible for declaring and meeting this requirement.

2. Expand Tier 2 rules to cover Scotland

Tier 2 visas are already valid only for a particular job with a certified employer. Employers currently face sanctions if they do not notify the Home Office when a sponsored employee leaves their position.

If regional visas were linked to specific jobs and employers in Scotland, the same rules could be applied. Any worker who tried to move to a job elsewhere in the UK, or to a job in Scotland for which they were not qualified under Tier 2 rules or the equivalent, would be liable to be reported to the responsible authority in Scotland and to the Home Office for potential enforcement action.

This would maintain an existing burden on Scottish businesses but would not introduce any additional administrative requirements.

3. Extra checks via HMRC's 'Scotland' coding

Scotland and the UK Visas and Immigration service already co-operate over collection and sharing of income tax receipts, and these processes could be applied to help enforce a regional immigration system.

Stronger data-sharing between the Home Office, HMRC and responsible authorities in Scotland could identify when someone in the UK on a Scotland-only visa was no longer working for a Scottish company as coded by HMRC. This would act as an early warning system that further enquiries were needed to identify where that worker had moved to and whether they were working outside Scotland. There is precedent here: it is not uncommon for employers to receive letters from government when a sponsored worker ceases to pay tax ahead of the end of their Tier 2 sponsorship.

In addition to looking at income tax, officials could learn from how the settled status scheme for EU citizens has used information from other government databases to cross-check status.

4. Sector-specific checks

Intelligence on international immigration systems suggest that many countries identify and focus compliance checks on industries thought to be at highest risk of rules breaches, formally or informally.^{lxv}

The Scottish government could work with the Home Office to conduct checks on prioritised industries where concerns are highest. This could include businesses in Scotland to ensure the wages and conditions of the visa are being honoured, and elsewhere in the UK to check on people working in high-risk industries who may have entered on a Scotland-only visa.

End Notes

- ⁱ Scottish government (2018) *Scotland's Population Needs and Migration Policy: Discussion Paper on Evidence, Policy and Powers for the Scottish Parliament*, p. 7.
- ⁱⁱ Boswell, C, Kyambi, S, Smellie, S (2017) *Scottish Immigration Policy After Brexit: Evaluating Options for a Differentiated Approach* (University of Edinburgh), p. 7.
- ⁱⁱⁱ Foreword to Scottish government, *Scotland's Population Needs and Migration Policy*, p. 3.
- ^{iv} Migration Advisory Committee (2018) *EEA Migration in the UK: Final report*, p. 123.
- ^v Smith, J (2018) *Migration, Productivity and Firm Performance: A Report for the Migration Advisory Committee*.
- ^{vi} See National Records of Scotland (2017), *Projected Population of Scotland (2016-based)*.
- ^{vii} Scottish government, *Scotland's Population Needs and Migration Policy*, p. 18.
- ^{viii} Scottish government (2019) *UK Immigration Policy After Leaving the EU: Impacts on Scotland's Economy, Population and Society*, p. 51.
- ^{ix} Nellums, L, Rustage, K, Hargreaves, S, Friedland, J, Miller, A, Hiam, L, Le Deaut, D (2018) *The Lived Experiences of Access to Healthcare for People Seeking and Refused Asylum*, p. 12.
- ^x Scottish government (2018), *Farm Workers in Scottish Agriculture: Case Studies in the International Seasonal Migrant Labour Market*, p. 13.
- ^{xi} There are estimated to be around 9,000 seasonal workers in Scotland, from a UK total of between 70,000 and 80,000. See Thomson, S (2018), *Migrant Labour in Scottish agriculture*, p. 15.
- ^{xii} The Universities of Edinburgh, Glasgow, Aberdeen and St Andrews are all in the top twenty-five universities in the UK as compiled by the *Times Higher Education Supplement*. See 'Best Universities in the UK 2019' in *Times Higher Education Supplement*
- ^{xiii} The Sustainable Growth Commission (2018) *Raising the Potential of the Scottish Economy*, pp. 84, 86.
- ^{xiv} See Home Affairs Select Committee, *Asylum Accommodation* (2017). According to figures from 2016, in that year Glasgow hosted 3,176 of approximately 35,000 people who asked for asylum in the UK.
- ^{xv} All Party Parliamentary Group on Refugees (2017), *Refugees Welcome? The Experiences of New Refugees in the UK*, pp. 12, 60.
- ^{xvi} Scottish government (2019) 'Court ruling raises concerns over proposed roll-out of Right to Rent'.
- ^{xvii} Foreword to Scottish government (2018) *Scotland's Population Needs and Migration Policy*, p. 4.
- ^{xviii} HM Government (2018) *The UK's Future Skills-Based Immigration System*, p. 8.
- ^{xix} See Tolhurst, A (5th July 2019), 'Boris Johnson Axes Theresa May's Vow to Lower Immigration to 'Tens of Thousands'', PoliticsHome
- ^{xx} For example see Heffer, G (1st May 2018), 'New Home Secretary Sajid Javid Disowns PM's "Hostile Environment"', Sky News.

-
- ^{xxi} For example, the NHS is no longer sharing data with the Home Office for the purposes of immigration enforcement. See Coulter, M (2018), 'NHS Will No Longer Have to Share Immigrants' Data With the Home Office in Government U-Turn on "Hostile Environment" Policy', *Evening Standard* <https://www.standard.co.uk/news/uk/nhs-will-no-longer-have-to-share-immigrants-data-with-home-office-in-government-uturn-on-hostile-a3834921.html>
- ^{xxii} Owen, J, Thimont Jack, M, Iacobov, A, Christensen, E (2019), *Managing Migration After Brexit*, p. 13.
- ^{xxiii} See Casciani, D (2019), 'Migration Data: Why is it So Hard to Count People?' BBC <https://www.bbc.co.uk/news/uk-49427824>
- ^{xxiv} See the government's immigration data released in March 2018: <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2017/summary-of-latest-statistics>
- ^{xxv} HM Government (2018) *The UK's Future Skills-Based Immigration System*, p. 12.
- ^{xxvi} MAC, *EEA Migration in the UK: Final report*, p. 123.
- ^{xxvii} See <https://www.gov.uk/government/publications/home-secretary-tasks-mac-on-australian-style-points-based-immigration-system>
- ^{xxviii} Scottish government, *Scotland's Population Needs*, p. 5.
- ^{xxix} Sustainable Growth Commission, *Raising the Potential of the Scottish Economy*, p. 9.
- ^{xxx} Scottish government, *Scotland's Population Needs*, p. 5.
- ^{xxxi} Scottish government, *UK Immigration Policy After Leaving the EU*, p. 5.
- ^{xxxii} *Ibid.*, p. 5.
- ^{xxxiii} *Ibid.*, p. 2.
- ^{xxxiv} Scottish government, *Scotland's Population Needs*, p. 42.
- ^{xxxv} Scottish government, *UK Immigration Policy After Leaving the EU*, p. 5.
- ^{xxxvi} Boswell *et al.*, *Scottish Immigration Policy After Brexit*, pp. 11-12.
- ^{xxxvii} Scottish government, *Scotland's Population Needs*, p. 7; Scottish government, *UK Immigration Policy After Leaving the EU*, p. 48. The Sustainable Growth Commission estimates the overseas population at 429,000, but uses older data (see *Raising the Potential of the Scottish Economy*, p. 83).
- ^{xxxviii} The Sustainable Growth Commission estimates that Scotland's population would now be 5.8 million if it had grown at the same rate as the rest of the UK since the 1980s. See *Raising the Potential of the Scottish Economy*, p. 9.
- ^{xxxix} National Records of Scotland, *Projected Population of Scotland*, pp. 9-10.
- ^{xl} MAC, *EEA Migration: Final report*, p. 3.
- ^{xli} Oxford Economics (2018) *The Fiscal Impact of Immigration on the UK: A Report for the Migration Advisory Committee*, pp. 1-6, 21, 34. It should be noted that the report defines a migrant as someone born overseas but living in the UK during this period, rather than as someone who has lived in the UK for at least twelve months. Oxford Economics were not asked to disaggregate their analysis by region.
- ^{xlii} Scottish government, *UK Immigration Policy After Leaving the EU*, p. 52.
- ^{xliii} Sustainable Growth Commission, *Raising the Potential of the Scottish Economy*, pp. 77-78, 84. The Commission also estimates the total annual Gross Value Added from migrants in Scotland of around £12 billion.
- ^{xliv} *Ibid.*, p. 77.

xlv *Ibid.*, p. 72.

xlvi Scottish government, *Scotland's Population Needs*, p. 23.

xlvii Scottish government, *UK Immigration Policy After Leaving the EU*, pp. 2, 3.

xlviii Scottish government, *Scotland's Population Needs*

xlix Scottish government, *UK Immigration Policy After Leaving the EU*, p. 3.

^l See Scottish government (2017), *Science, Technology, Engineering and Mathematics (STEM) Evidence Base*, p. 13.

^{li} Scottish government, *Farm Workers in Scottish Agriculture*, p. 21.

^{lii} The information in this chapter is drawn from interviews with immigration law experts in the relevant countries, legal guidance drawn up for those countries, and information in the public domain. There has been great interest in international comparisons over recent years, and this chapter draws in particular on analysis from *Bowell et al.*

^{liii} PNPs have existed since 1995. Quebec has had its own Skilled Worker Programme since 1978 which, unlike PNPs, is completely independent from the federal authorities and is regulated by the Canada-Quebec accord. *Boswell et al* note that some studies show the scheme has performed poorly in retaining workers in Quebec after they have the right to move to other parts of Canada.

^{liv} Sumption, M (2019) *The Australian Points-Based System: What Is It and What Would Its Impact Be In the UK?*, pp. 3-4.

^{lv} See 'Skills Shortages: Essential Skills In Demand Lists', published May 2019 <https://www.immigration.govt.nz/employ-migrants/explore-your-options/before-you-start-hiring-migrants/skill-shortages>

^{lvi} *Boswell et al.*, *Scottish Immigration Policy After Brexit*, p. 37.

^{lvii} HM Government (2014), *Scotland Analysis: Borders and Citizenship*, p. 42.

^{lviii} See for example University of Birmingham (2019) *Community Sponsorship in the UK: From Application to Integration*

^{lix} The Home Office does not disaggregate figures by region of the UK, but 52,712 people in the UK switched visa category between March 2018 and March 2019. See <https://www.gov.uk/government/publications/immigration-statistics-year-ending-march-2019/how-many-people-continue-their-stay-in-the-uk>

^{lx} The most robust estimate of the UK's irregular migrant population is from 2005 and puts the number at a range anywhere between 310,000 and 570,000. See http://news.bbc.co.uk/1/hi/uk_politics/4989874.stm

^{lxi} Sumption, *Location, Location, Location*, pp. 2, 5.

^{lxii} *Ibid.*, pp. 5-6.

^{lxiii} Scottish government, *Scotland's Population Needs*, p. 36.

^{lxiv} *Ibid.*, p. 37.

^{lxv} Fragomen internal country reports.