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# Immigration policy - the countdown to Brexit

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This briefing provides an analysis of 'where we are now' on UK immigration policy in the countdown to Brexit, and its implications for Scotland. It gives an overview of the major decisions and reports relating to immigration made since the June 2016 referendum on leaving the EU, and examines proposals to create a new post-Brexit migration policy based on recommendations set out by the Migration Advisory Committee and adopted in the White Paper on Immigration. The briefing also discusses responses to the UK Government's post-Brexit immigration proposals. Finally, it reflects on the implications of the proposed post-Brexit immigration policy for Scotland.



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# Executive Summary

This briefing provides an overview of the main decisions, proposals and reactions relating to the UK's post-Brexit immigration system since the referendum to leave the EU in June 2016.

The UK currently operates two immigration systems: (1) freedom of movement for EEA nationals, guaranteed by the Treaty of Maastricht since 1992; and (2) a five-tier points-based visa system for non-EEA nationals, in operation since 2008.

Within the UK's immigration system, there have been three areas that have created a degree of differentiation for Scotland: (1) the devolved nature of migrant integration, which can be used as a lever to attract and retain migrants; (2) the Scottish-only Shortage Occupation List, which identifies skills gaps in the Scottish labour market; and (3) the now-defunct Fresh Talent initiative, which created a post-study work visa for Scotland.

The UK Government commissioned the Migration Advisory Committee (MAC) to create an evidence base on the impacts of EEA migration on the UK labour market in 2017-18. The MAC's final report, published in September 2018, made a series of recommendations for a new immigration system. These included: ending EU freedom of movement and preferential access for EEA nationals seeking to work in the UK; curbing low-skilled migration; prioritising high-skilled, high-salary migration; retaining international students within the net migration figure; opposing the creation of any sector-based schemes, with the exception of seasonal agricultural workers; opposing the re-introduction of a post-study work visa; and opposing any regional variation in the system.

The UK Government's White Paper on Immigration, published in December 2018, adopted the majority of the MAC proposals, the main exception being a new plan to create temporary low-skilled migration routes to the UK.

The MAC's recommendations, and subsequent White Paper on Immigration, have been criticised by public, private and third-sector organisations in Scotland and across the UK. For instance, the Scottish Government, Scottish Parliament Culture, Tourism and External Affairs (CTEEA) Committee and COSLA have argued that the post-Brexit immigration plans do not take Scotland's demographic, economic or labour market needs into account. The Confederation of British Industry (CBI), Federation of Small Businesses, British Chamber of Commerce and other business organisations have argued that any restrictions on low-skilled labour from the EU will likely lead to job losses and businesses going bankrupt due to labour shortages. Universities Scotland has argued that Scotland is losing out in the recruitment of international students due to the lack of a post-study work visa route and will continue to do so after Brexit.

Scottish actors have coalesced around three proposals to give Scotland more influence over immigration: (1) the re-introduction of a post-study work visa; (2) Scottish influence over MAC decision-making, including greater input into the Scottish Shortage Occupation list; (3) various plans to devolve some aspects of immigration policy to Scotland.

More broadly, it has been argued that the implications of the MAC recommendations and White Paper proposals being implemented would likely be: labour shortages, tax rises, administrative overload, population decline, and increased potential for constitutional conflict.

The UK Government has stated its intention to consult widely on the White Paper on Immigration.

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill was introduced on 20 December 2018. The Bill will end free movement, protect the status of Irish citizens once free movement ends, and amend the existing arrangements of benefit support for EU citizens entering the UK. The future immigration arrangements for EU citizens and their family members will be set out in UK Immigration Rules, as is the case now for non-EU nationals.

# Glossary

## **Common Travel Area (CTA)**

The Common Travel Area is a special travel zone between the Republic of Ireland and the UK, Isle of Man and Channel Islands which dates back to 1922. The CTA allows for nationals of these countries to travel freely without being subject to passport controls.

## **European Economic Area (EEA)**

An area that, since 1994, has united EU Member States and three EFTA States (Iceland, Liechtenstein and Norway) in an Internal Market governed by rules that enable goods, services, capital and services to move freely in an open and competitive environment.

## **European Free Trade Association (EFTA)**

EFTA was created in 1960 as an intergovernmental organisation to promote free trade and economic integration between its members, which currently comprise Iceland, Liechtenstein, Norway and Switzerland.

## **European Union (EU)**

The European Union is a political and economic union of 28 Member States, which grew out of the desire to promote peace and unity after the Second World War ended.

## **Free Movement**

Free movement of workers is a fundamental principle of the Treaty of European Union, which allows EEA nationals to freely live, work and study in any EEA country.

## **Migration Advisory Committee (MAC)**

The MAC is an independent, non-statutory, non-time limited, non-departmental body that advises the government on migration issues.

## **Points-Based System (PBS)**

The points-based system in the UK is a means of regulating immigration from outside of the EEA, which selects migrants on the basis of having certain valued attributes and skills.

## **Seasonal Agricultural Workers' Scheme (SAWS)**

The SAWS is a pilot scheme to run in 2019-20 that will allow non-EEA migrant workers to work in the seasonal horticulture sector for up to a period of 6 months. The UK Government has run similar SAWS schemes in the past to create a seasonal agricultural workforce.

## **Shortage Occupation List (SOL)**

The SOL is an official list of skilled occupations for which there are not enough UK residents to fill vacancies, which is regularly reviewed and updated by the MAC. SOL occupations are subject to less stringent visa criteria, to more quickly fill positions.

### **Third Country Nationals (TCNs)**

TCN is a term used for individuals who are not citizens of the EU and who do not enjoy the right to free movement.

### **Youth Mobility Scheme (YMS)**

The YMS allows young people (aged 18-30) without dependants from a number of eligible countries to live, work and study in the UK for up to two years.

# Introduction

European migration to the United Kingdom was one of the defining issues in the June 2016 referendum campaign for the UK to leave the European Union.<sup>1</sup> Pro-Brexit advocates argued that Europe gave the UK less control over its borders and had resulted in excessive numbers of EEA nationals moving to the UK. Pro-Remain advocates argued that EEA immigration had resulted in net positive effects for the UK's economy and communities. As the 'pros and cons' of EU migration to the UK continued to be debated long after the Brexit referendum, the result inevitably created uncertainty around the rights of many EU citizens living in the UK as well as UK citizens living in the EU27.

One year after the Brexit referendum, the then UK Home Secretary Amber Rudd commissioned the [Migration Advisory Committee](#) (MAC) - an independent, non-departmental public body - to provide research on the impact of EEA migration on the UK to broaden the existing evidence base. The MAC's remit was to provide evidence "for the design of a new migration system." One of the MAC's main recommendations was to end freedom of movement, reflecting the statement to do so by the Home Secretary's commissioning letter to the MAC.<sup>2</sup> The MAC elaborated that this would end any preferential rights of EEA citizens to enter the UK, the effect of which would be to reduce future levels of EEA migration.

Prime Minister Theresa May has regularly stated the UK Government's intention to "end freedom of movement once and for all" after the UK leaves the EU.<sup>3</sup> The Prime Minister has suggested that EEA citizens will face the same rules as non-EU citizens when seeking to live and work in the UK, and UK nationals will likely face restrictions travelling to the EU. Ending freedom of movement and leaving the EU also means that UK nationals will lose their European citizenship, which was established with the Maastricht Treaty (1992).

Since the Brexit referendum in June 2016, there has been a steep fall in the number of EU migrants coming to the UK. The Office for National Statistics (ONS) released data showing that 219,000 EU citizens arrived in the UK between June 2017 and June 2018, but 145,000 EU citizens left the UK, making EU net migration the lowest it has been since 2012.<sup>4</sup> The fall in the number of EU citizens moving to the UK has had an impact on public opinion. According to the Oxford Migration Observatory (2018), immigration was often named as Britain's 'most important issue' between 2001 and mid-2016, but its salience has since declined.<sup>5</sup> Indeed, the MAC has stated that 'the UK may find itself in the position of ending free movement just as public concern falls about the migration flows that result from it.'<sup>6</sup>

Migration is, however, considered to be the 'reddest of Theresa May's red lines', whereby the UK Government has stated that it refuses to consider any future relationship with the EU that permits free movement. Several business organisations – such as the Confederation of British Industry – have argued that ending free movement could harm the UK economy and lead to skills gaps in the labour market.<sup>7</sup> However, the UK Government has argued that British nationals could be trained to fill jobs left open by departing EEA nationals.

This briefing begins by setting out the UK's current immigration system (and Scottish-specific aspects of this system), before going on to explain how the UK Government and MAC propose to change this system once the UK leaves the EU.

The briefing:

- Discusses the MAC recommendations for a post-Brexit immigration system in the UK, including changes to skilled and low-skilled labour, youth and student migration, seasonal workers and regional variation.
- Analyses and compares the UK Government's White Paper on Immigration (December 2018) to the recommendations set out by the MAC.
- Considers the response of public, private and third-sector organisations in Scotland to the MAC recommendations and the UK Government's White Paper.
- Examines the recommendations put forward by the Scottish Government and Parliament to differentiate the UK's post-Brexit immigration system to give Scotland more influence over immigration flows in the future.
- Reflects on the implications of the UK's proposed post-Brexit immigration system on Scotland's economy and society, including the possibility of a No Deal scenario.

The briefing also considers the responses of EU member states to the UK's proposed post-Brexit immigration system, to reflect on what future reciprocal arrangements might look like.

# The UK's Current Immigration System

The UK currently operates two immigration systems: one for nationals of the European Economic Area (EEA) and Switzerland, and one for non-EEA/Swiss nationals.<sup>i</sup> For the former, the UK adheres to the EU's single market rules on free movement of labour, which means that any EEA national can live and work in the UK without the need for a visa. For the latter, the UK operates a points-based system for people wanting to move to the UK from outside the EU ('third-country nationals'), whereby people apply for one of several visas and must meet a 'points score' above a minimum threshold to enter.

## EU Freedom of Movement

Free movement of workers is a fundamental principle of the European Union, which was enshrined in Article 3 of the Treaty on European Union (Maastricht Treaty) in 1992. Free movement is one of the 'four freedoms' (goods, services, capital and persons) that was set out in the Treaty of Rome in 1957 and extended under the 'internal market' rules introduced by the Single European Act (1987) that eventually created the Single Market.

Under the Maastricht Treaty, every national of an EU Member State has the right to move and reside freely within the territory of the European Union. For the UK, that means that any citizen of an EU member state can come to the UK to live and work as part of their European citizenship rights, and any citizen of the UK can live and work in any country in the EU as part of their European rights. These provisions have been fully incorporated into UK law.

Free movement of labour comes with a series of rights and obligations for EU citizens and EU Member States, which are enshrined in Article 45 of the Treaty on the Functioning of the European Union (TFEU) and the Citizens Rights' Directive 2004/38/EC (also known as the Free Movement Directive). For EU citizens, this includes rights to:

- look for a job in another EU country
- work there without needing a work permit and reside there for that purpose
- stay there even after employment has finished
- right to permanent residence after a 5-year period of uninterrupted legal residence
- enjoy equal treatment with nationals in access to employment, working conditions and all other social and tax advantages<sup>8</sup>

EU citizens also have obligations to:

- possess a valid identity document or passport for stays under 3 months
- sufficient resources and sickness insurance to ensure they do not become a burden on the social services of the host Member State for stays over 3 months
- to register with the host Member State authorities if that is required<sup>9</sup>

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<sup>i</sup> Any further references in this paper to 'EEA nationals' will include Swiss nationals.

Member States, including the UK, have rights to:

- require that EU citizens provide evidence of sufficient resources and sickness insurance after stays of over 3 months
- deny EU citizens the right to residence if they become an ‘unreasonable burden’ on their ‘social security system’ (though active jobseekers who demonstrate they have a genuine chance of getting a job cannot be expelled on economic grounds)
- expel EU citizens or their families from the host Member State on grounds of public policy (i.e. criminality), public security or public health
- refuse, terminate or withdraw any right conferred in the event of abuse of rights or fraud, such as marriages of convenience <sup>10</sup>

Free movement has become the cornerstone of European citizenship, which was established with the Treaty of Maastricht. European citizenship is additional to national citizenship in EU Member States, and it allows all EU citizens the rights to live, vote, stand for election and receive consular protection in other EU countries. These rights were intended to enable people living in the EU to consider themselves as citizens of the same political community and were conferred as a personal status in the Amsterdam Treaty.

The free movement of persons is also one of the core rights guaranteed in the European Economic Area – the internal market which unites the 28 EU member states and the three EFTA states (Norway, Iceland and Liechtenstein). It gives citizens of the 31 EEA countries the rights to live, work, study and establish business in any of these countries. These rights are established in the EEA Agreement, which also specifies rules around the recognition of professional qualifications and the coordination of social security systems. <sup>11</sup> The EEA Agreement also includes a safeguard clause which provides for an emergency brake on free movement in circumstances where immigration is causing ‘serious economic, societal or environmental difficulties of a sectoral or regional nature’. However, there are strict requirements for initiating the safeguard cause and it must be done in consultation with EEA members, with the possibility of reciprocal restrictions being implemented. <sup>12</sup>

Swiss nationals have also been granted rights of free movement within the EEA through a bilateral agreement between the EU and Switzerland. The Agreement on the Free Movement of Persons (AFMP) – which was signed in 1999 and subsequently updated to account for EU enlargements – establishes the basic rules of free movement for citizens of Switzerland, the EU and EFTA states, and is complemented by the mutual recognition of professional qualifications, rights to buy property and social insurance coordination. <sup>13</sup> As part of the AFMP, Switzerland is able to unilaterally invoke a safeguard clause to restrict EU/EFTA migration through quotas for a specified period if inflows exceed a certain threshold. The Swiss Federal Council made the decision to invoke this clause in 2017 and introduce quotas for Romanian and Bulgarian nationals until July 2019. <sup>13</sup>

As mentioned above, in addition to the safeguard clause, EEA Member States have rights to implement EU legislation that allows them to control movements of EEA citizens by requiring them to register and provide evidence that they are working, studying or able to support themselves after three months. Many EEA countries have put these controls and sanctions into place. For instance, Belgium requires all foreigners (including EEA nationals) to register any long-term stay of more than 90 days at the local town hall, and

withdraws residency permits from EEA nationals whom it considers to be an 'excessive burden' on its social security system.<sup>12</sup> The UK is one of the few EEA states that has chosen not to implement these existing applicable controls.

## Points-Based System for non-EEA nationals

In 2008, the UK Government created a Points Based System (PBS) for non-EEA migrants wishing to come to the UK to work, study and train. The system, which was introduced by the then Labour Government, replaced a scheme that had over 80 different types of visa category. Under the 2008 PBS system, which was modelled on the Australian system, applicants are allotted symbolic points for possessing characteristics that make them more employable, such as language proficiency, education, technical skills and work experience.

The UK PBS is based on 5 tiers, each of which contains several different visa categories and sub-categories that has different conditions, entitlements and entry requirements.

- Tier 1 applies to business migrants
- Tier 2 is for skilled migrants
- Tier 3 is for unskilled migrants (which has not been used)
- Tier 4 is for students
- Tier 5 is for temporary workers.

### Tier 1

This is the only tier that does not require sponsorship from an employer or educational institution. Tier 1 is designed to attract 'high-value' business migrants (exceptional talent, highly-skilled, high-net-worth-investors and graduate entrepreneurs). The Tier 1 (Investor) sub-category ("Golden Visa") has recently courted controversy due to concerns of money laundering and financial crime, and it was due to be suspended in December 2018.<sup>14</sup>

### Tier 2

The Tier 2 (General) visa is the main UK visa route for skilled workers. Tier 2 migrants must have a job offer and a certificate of sponsorship from a UK employer. There are also minimum salary requirements for entering the UK on a Tier 2 visa, which currently stand at £20,800 per annum for 'new entrants' (i.e. recent graduates) and £30,000 for 'experienced workers.' Tier 2 migrants must also meet educational requirements equivalent to degree-level.[i] There is a quota on the number of skilled migrants accepted through Tier 2, which is currently 20,700 per year (and if the cap is reached, the minimum salary level rises each month, going up to as much as £60,000).<sup>15</sup> Employers recruiting skilled migrants through Tier 2 must also complete a Resident Labour Market Test (RLMT) by advertising the position they wish to fill locally, before offering the position to an employee outside of the EEA.

### Tier 3

This low-skilled visa tier was created ‘in principle’ but has never been operational for non-EEA nationals, due to the assumption that EU free movement of workers (especially following the 2004 and 2007 enlargements of the EU) would provide a sufficient supply of labour to fill any low-skilled gaps in the UK labour market.

#### Tier 4

This is the route for students who have been offered a place on a course in the UK, have enough money to pay for the course and support themselves, and have a high level of proficiency in English. It requires sponsorship from an educational institution.

#### Tier 5

This is the route for temporary workers, and the tier has various sub-categories for charity workers, entertainers, diplomatic staff and sportspeople. The Youth Mobility Scheme (YMS) also falls under Tier 5, which is a reciprocal scheme for young people (aged 18-30) from a limited number of countries (such as Australia, Canada and Hong Kong) who want to live, study or work in the UK for up to two years, and who have no dependants.

#### Shortage Occupation List

The UK also operates a Shortage Occupation List (SOL) to ensure that any shortages in the UK labour market are filled quickly. The SOL is an official list of occupations for which there are not enough resident workers to fill vacancies, and if the skilled migration cap is reached, priority is given to the roles on the list. Non-EEA migrants applying for a SOL job benefit from earning additional points for applying for a SOL listed position, while the benefits for employers include not needing to complete the Resident Labour Market Test for these jobs.

The Migration Advisory Committee (MAC) is responsible for regularly reviewing the list and calling for evidence of which occupations should be added or removed. The MAC also operates a Scotland-only SOL, which is examined below.

In 2010, the UK Government introduced an annual cap on the number of non-EEA migrants entering the UK through the PBS; with the objective of reducing net migration to 100,000 or less per annum. These restrictions were introduced, “in light of increasing public hostility towards migration ... the UK Government reaffirmed its intention to restrict immigration, arguing that migrants adversely affect social cohesion, create pressure on infrastructure, public services, jobs and wages.”<sup>16</sup> However, under the current system, net immigration levels to the UK have regularly exceeded the 100,000 mark since the points-based system was introduced, standing at 248,000 non-EU migrants coming to the UK in 2017-18.<sup>17</sup>

# Scotland-specific Dimensions of Current Immigration Policy

As a devolved jurisdiction, Scotland does not have legislative control over immigration, which is reserved to Westminster. In legal terms, immigration and asylum (which covers selection and admission of migrants) are powers reserved to the UK Government under the Scotland Act 1998 (schedule 5). As such, decisions about levels of migration and access to benefits are managed by the UK Home Office, and devolved legislatures such as Scotland play no significant role in influencing border controls.

However, in the Scotland Act, the UK Government committed itself to ensuring ‘that the interests of those parts of the UK in non-devolved matters are properly represented and considered’.<sup>18</sup> Furthermore, this lack of legislative control over migration has not prevented Scotland from developing its own distinct approach to the integration of migrants. Scotland has also been acknowledged as having distinct labour market needs through the creation of the Scotland-only Shortage Occupation List. Scotland was also granted limited control over immigration through the Fresh Talent scheme that created a post-graduate work visa. These Scotland-specific dimensions of the UK’s current (and recent-past) immigration system are examined below.

## Migration Integration

Migrant integration was not specifically spelled out as a policy area in the legislation that created the devolved Scottish institutions (Scotland Act 1998), nor in subsequent enhancements to devolution, including the Scotland Act 2016. However, because devolution is based on a ‘retainer’ model - whereby anything not specifically reserved to the UK level is devolved to the Scottish level - the majority of policy areas that affect a migrant’s incorporation into their host society (i.e. health, education, housing, children’s services, legal aid) are devolved to the Scottish Parliament. To that end, migrant integration can be understood as a residual devolved competence to Scotland. This is in line with other multi-level devolved or federal states such as Belgium, Spain, Italy, Germany and Canada, where immigrant integration policies are the exclusive competence of sub-state administrations.<sup>19 20</sup> And research has shown that Scotland has pursued an open, multicultural approach to migrant integration that contrasts with the ‘civic integration’ approach adopted in England.<sup>21</sup>

Furthermore, even though the acquisition of nationality and citizenship are reserved to the UK Government under the Scotland Act 1998, this has not prevented the Scottish Government from tailoring certain citizenship requirements to the Scottish milieu, including increasing access to “English for Speakers of Other Languages” (ESOL) courses in Scotland, offering more extensive housing rights to migrants and seeking to embed a Scottish narrative in the ‘Life in the UK’ citizenship test.<sup>21</sup> These small differences may help Scotland to attract and retain migrants – including EU citizens – going forward.

As yet, the Scottish Parliament has not passed any specific legislation outlining a Scottish Migrant Integration Policy. Instead, Scottish actors – in particular COSLA, which has taken the lead in developing migrant integration frameworks in Scotland through its dedicated migration, population and diversity team – have been developing local government

reception and integration policies and resources in collaboration with the Scottish Government, through their Migration Matters Scotland project.<sup>22</sup>

The Scottish Government has also developed a progressive integration strategy for refugees and asylum seekers called *New Scots Refugee Integration Strategy*.<sup>23</sup> However, an equivalent integration strategy for all migrants in Scotland (including economic and family migrants) has not yet been developed.<sup>24</sup>

## Scottish Shortage Occupation List (SOL)

The UK's current Points Based System (PBS) acknowledges the particular needs of Scotland for skilled migration through a Scotland-specific Shortage Occupation List (SOL) for Tier 2 (General, Skilled) migrants. This allows the Migration Advisory Committee, which advises on the PBS, to recommend a different set of shortage occupations for Scotland.

The Scotland-only SOL is designed to enable Scottish employers facing labour shortages to fill these jobs with skilled non-EEA migrants. Employers in Scotland can sponsor workers to fill these vacancies without first advertising the role.

However, the Scottish SOL has been criticised as inadequate in its current form to fully accommodate Scotland's distinct labour-market needs. In particular, the Scottish list is often very short and at one point contained “just two additional occupation fields to the UK-list (physical scientists and medical practitioners).”<sup>16</sup> According to the Migrant Rights Network, “the variations in the Scotland-specific shortage list have been limited to date.” For instance, in 2010 the:

“ additional shortage occupation list for Scotland was restricted to ‘Consultant Radiologists’ only. There is a discrepancy between the claims of Scottish employers and others who claim the Scottish labour market is distinct from the rest of the UK with more shortages, and the limited range of occupations the MAC has to date included in its Scotland specific shortage list. One factor influencing this is that the MAC has found it difficult to get evidence about shortages in Scotland in the format it requires”

Migrants Rights Scotland, 2011<sup>25</sup>

## Fresh Talent

It also worth mentioning here the fact that Scotland once exercised limited control over the selection and admission of some migrants (namely, recent graduates of Scottish universities) through the ‘Fresh Talent Working in Scotland Scheme’ (FTWiss) in 2005-8.

During this period, the Scottish Government was able to allow international graduates that had pursued studies at a Scottish university to live and work in Scotland for two years without the need for a work permit directly after graduation. The scheme was designed to promote and encourage inward migration to Scotland, and to address concerns of a pending demographic crisis in Scotland resulting from an ageing population, high levels of emigration, low fertility and low levels of immigration (Scottish Executive, 2004). The FTWiss scheme was also part of the Scottish Government's broader economic strategy,

whereby attraction and retention of highly skilled immigrants was connected with economic growth.

Despite early indications of success however, the FTWiss scheme only lasted from 2005 until 2008, when it was mainstreamed into UK policy with the creation of the Points Based System (PBS) under the Labour Government. At this point, Scotland “lost its competitive edge and other means of attracting highly skilled labour may need to be considered”.<sup>26</sup> Subsequently, the post-study visas for all students in the UK were terminated in 2012.

The Scottish Government has since requested that the UK Government re-introduce the post-study work visa, however these proposals have been turned down.<sup>ii</sup>

Under the devolution settlement, the UK Government is committed to ensuring ‘that the interests of those parts of the UK in non-devolved matters are properly represented and considered’.<sup>18</sup> Notwithstanding the Scottish-only SOL, there are no other mechanisms in the current UK points-based framework for taking Scotland's immigration needs into account. This has led the Scottish Government to request that the UK Government consider differentiating the immigration system to accommodate Scotland's needs after Brexit. These proposals are discussed further below.

Over 8,000 students took advantage of the FTWiss scheme to stay in Scotland from 2005 to 2008.<sup>26</sup>

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ii [iii] See the correspondence between the then Minister for Europe and International Development, Humza Yusuf, and Convener of the Devolution (Further Powers) Committee Bruce Crawford MSP, detailing responses from the UK Home Secretary and the Secretary of State for Scotland, that there were no plans to reintroduce post study work visas in Scotland<sup>27</sup>; see also<sup>28</sup>

# MAC Recommendations for Post-Brexit Immigration Policy

One year after the referendum on EU membership in June 2016, the UK Government commissioned the Migration Advisory Committee to develop an evidence base on current patterns of EEA migration into the UK. The objective was to gather evidence from stakeholders across the UK to assess “the impact of EEA migrants on the economy and society of the UK,”<sup>6</sup> in order to design a new post-Brexit migration system for the UK after the implementation period ends on 31 December 2020.<sup>2</sup>

The MAC began its work in July 2017 and received a total of 417 submissions in response to its Call for Evidence – the highest-ever response rate to a MAC inquiry - from across all sectors of the UK’s economy and society on the impacts of EEA migration.

The MAC summarised these responses along two themes – (1) responses from employers and (2) responses from regions, including Scotland – in an Interim Report on *EEA-Workers in the UK Labour Market*.<sup>29</sup> The MAC also published a separate report on *The Impact of International Students in the UK*.<sup>30</sup>

In its Final Report on *EEA Migration in the UK*,<sup>6</sup> the MAC set out current and future patterns of European Economic Area (EEA) migration into the UK. The report discussed the impacts of EEA migration on wages and unemployment, productivity, innovation, training, prices, public finances, public services, and communities. Of particular note, the MAC found that:

“ migrants have no or little impact on the overall employment and unemployment outcomes of the UK-born workforce ”

“ EEA migrants contribute much more to the health service and the provision of social care... than they consume in services”

“ EEA migrants pay more in taxes than they receive in benefits”

Migration Advisory Committee, 2018<sup>6</sup>

Despite presenting evidence of the positive impact of EEA migrants on the UK’s economy, finances and public services, the MAC’s main recommendation was to end EU freedom of movement in the UK:

“ “there should be a less restrictive regime for higher-skilled workers than for lower-skilled workers in a system where there is no preference for EEA over non-EEA workers” ”

Migration Advisory Committee, 2018<sup>6</sup>

Importantly, the MAC did not propose altering the structures of the UK’s current 5-tier points-based system for non-EEA migrants; instead it suggested that EEA migrants apply for visas through the current tiered migration system, with an emphasis on Tier 2 (Skilled Workers) and Tier 5 (Youth Mobility Scheme).

The following analysis explores some of the key points the MAC has recommended with regard to future flows of skilled and low-skilled workers, the Shortage Occupation List, youth mobility, international students, seasonal workers and regional variation.

## Ending Freedom of Movement

One of the Migration Advisory Committee's principal recommendations in its *EEA Migration in the UK* report was to end free movement.

Currently, any citizen of an EEA member state can come to live and work in the UK, and the UK is one of the few EU members that has chosen not to implement EU legislation that allows member states to control movements of EEA citizens by requiring them to provide evidence that they are working, studying or able to support themselves after three months. The MAC argued that the:

“...price of [free movement is] losing control over both the level and type of immigration into the UK. With free movement, the decision to migrate rests solely with the migrant.”

Migration Advisory Committee, 2018<sup>6</sup>

After the UK leaves the EU, the MAC has proposed that EEA citizens will be given no preference in applying to live and work in the UK. Instead, EEA nationals will have to apply, like all non-EEA 'third-country nationals' (TCNs), through the UK's 5-tiered visa system. In particular, the MAC focussed on extending the Tier 2 (General, Skilled) scheme to include EEA nationals while pursuing “a more restrictive policy on lower-skilled migration.”

## Skilled workers

The MAC has found in its research that “high-skilled migrants [have] a clear benefit to existing residents while the same is not true for lower-skilled migrants” (Final Report, p34). As such, the MAC has proposed a post-Brexit migration policy that “provides greater access for higher-skilled migration”. EEA workers will be able to apply through the Tier 2 (General) route, which has a number of requirements and thresholds. Specifically, the MAC has advised that the salary threshold for Tier 2 migrants should be retained at current levels, which are £30,000pa (or £20,800pa for new entrants).<sup>iii</sup> Further, employers wishing to hire an EEA worker will have to pay a £1000 'Immigration Skills Charge' for each year of the visa.

To offset these restrictions, the MAC has proposed that the cap on Tier 2 migrants – which currently stands at 20,700 high-skilled migrants per year – be abolished. The MAC has also proposed abolishing the Resident Labour Market Test (RLMT) which employers currently have to undertake to ensure that local workers are unable to fill the role. Finally, the MAC has proposed extending Tier 2 to include 'medium-skilled' workers in addition to high-skilled workers. This will involve lowering the qualifications threshold from NQF level 6 (SCQF level 9/10) to NQF level 3 (SCQF level 6)<sup>iv</sup> and adding 142 new occupations to the Tier 2 list. However, medium-skilled workers with lower qualifications will still need to

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<sup>iii</sup> Employers must currently pay the £1000pa Immigration Skills Charge for non-EEA workers.

<sup>iv</sup> National Qualifications Framework (NQF) level 6 or Scottish Credit and Qualifications Framework (SCQF) level 9/10 is the equivalent of degree level. NQF level 3 (SCQF level 6) is equivalent to A-levels/Highers.

meet the £30,000pa salary threshold. This indicates that any medium- or high-skilled EEA worker not making £30,000pa – which some estimates say represents 75% of EEA nationals currently living in the UK<sup>31</sup> – may find it very difficult to come to the UK in the future.

The MAC has said that a review of Tier 2 was not within the scope of its enquiry, but that the “requirements associated with the scheme should be carefully reviewed” if “leaving the EU may significantly change the volumes of applications if free movement is ended.”<sup>6</sup>

## Low-skilled workers

The MAC has stated that low-skilled migration is not as beneficial to the UK as high-skilled migration, due to the smaller positive impact that low-skilled EEA migrants have on public finances and innovation. As such, the MAC does not recommend an “explicit work migration route for low-skilled workers with the possible exception of a seasonal agricultural workers schemes.”

Instead, the MAC’s aim is to reduce low-skilled migration and it acknowledges that “this is likely to be strongly opposed by the affected sectors.”

If the MAC proposals are implemented, there will likely be a significant decline in low-skilled or low pay migration to the UK after the implementation period ends. The MAC made no reference to Tier 3 (the low-skill migration route) in its final or interim report. Instead, the MAC suggested that the expanded Youth Mobility Scheme could be a route for low-skilled migration (though there are severe restrictions on this route, as discussed below).

The MAC also considered in its Interim Report the possibility of UK workers taking up low-skilled, low-pay positions currently undertaken by EEA nationals, which is something Prime Minister Theresa May has suggested.<sup>v</sup>The MAC stated that:

“ Training UK-born workers to fill skills shortages may be a strategy in the longer term but employers stated that in the short-term they needed EEA migrants to fill the gap. This was especially the case in occupations where training takes many years but some employers in lower-skilled sectors also made this argument. Employers were generally at pains to emphasise that the availability of EEA migrants had not reduced the training opportunities to the UK-born. ”

Migration Advisory Committee, 2018<sup>29</sup>

## Shortage Occupation List

The Shortage Occupation List (SOL) identifies occupations where a labour shortage exists in the Tier 2 (skilled migrants) route.

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<sup>v</sup> Prime Minister Theresa May has said “if you look at these low-skilled areas, we hope there will be the ability to train people here in the UK to take jobs.”<sup>32</sup>

The MAC reviews the SOL regularly and calls for evidence on which occupations should be included or removed. At present, only occupations that are RQF 6 (SCQF 9/10) and above may be listed on the SOL – which are equivalent to degree-level or above.

In its EEA report, the MAC has proposed changing this to RQF 3 (SCQF 6) or above – which are equivalent to A-levels or Highers. The Home Secretary has commissioned the MAC to undertake a full review of the SOL and to report in Spring 2019.

## Youth Mobility Scheme

The MAC has suggested that the Youth Mobility Scheme (YMS) may be used as a low-skilled migration route for future EEA workers after the implementation period ends. In its current form, the YMS is part of the Tier 5 (Temporary Workers) route.

The YMS is a cultural exchange scheme for workers aged 18-30 who have no children, £1890 in savings, who wish to live and work in the UK for a maximum of two years. People from the following countries are eligible to apply: Australia, Canada, Japan, Monaco, New Zealand, Hong Kong, Republic of Korea and Taiwan.

The YMS operates on a reciprocal basis, where young Brits have the opportunity to live and work in the exchange countries. Each country has an annual allocation of 1000 places “or an allocation that is equivalent to the last recorded number of visas issued to British nationals under their reciprocal scheme” (Final Report, p118). Tier 5 workers can study or work in any job, although the MAC has admitted that “we have little information on where they currently work.”<sup>6</sup>

The MAC has suggested that an expanded YMS could be open to EEA citizens post-Brexit. The advantages are that:

“younger migrants are more likely to be net fiscal contributors because the scheme does not allow dependants” and “entry for only two years [avoids] permanent increases in the population.”

Migration Advisory Committee, 2018<sup>6</sup>

At present, Tier 5 workers must leave within 24 months, but the MAC has recommended that a path to settlement be introduced to allow a switch to Tier 2.

Critics have argued that the Youth Mobility Scheme is a cultural exchange scheme, not a (low-skilled) labour migration scheme.<sup>33</sup> As the scheme is temporary, this would prevent workers from integrating into British society, having children, increasing their skills, or making a long-term contribution to UK finances. Moreover, as the scheme is limited to 18-30 year olds without dependants, this would block older EEA workers, or those with children.

Finally, as the YMS is based on reciprocity, this could negatively impact nationals of EEA countries that Brits are not keen to travel to. For instance, the MAC stated that Brits are less likely to seek to work in New Member States (Central and Eastern European countries) compared to the EU13+ (Western European countries).

If this trend continues and the YSM is extended to EEA nationals, it is likely that workers from New Member States (that have not been popular as a destination country for British

nationals) would have to abide by the 1000 places quota, while citizens from Western European countries that are more popular destinations would be able to exceed the quota (based on reciprocal allocations).

## International Students

The MAC produced a separate report on the *Impact of International Students in the UK*.<sup>30</sup> International students were found to have positive impacts on the UK economy and finances, and there were high levels of compliance with visa requirements. The MAC's main recommendations were:

1. to continue including international students in the net migration count;
2. to introduce short visa extensions for PhD and Masters students (a one year extension for PhD students and a six-month extension for Masters students);
3. to widen the job search window for students switching from a Tier 2 (Student) visa to a Tier 4 (Skilled Worker) visa; and
4. to not introduce a separate post-study work visa.

In the Chair's foreword, Professor Alan Manning writes:

“ we know that the sector will be disappointed by our recommendations on post-study work but demand for UK education should not be based on work rights. ”

Migration Advisory Committee, 2018<sup>30</sup>

The MAC also notes that competition for international students is increasing and the UK's market share has declined. Finally, the report acknowledges the impact of Brexit on students, stating that:

“ We do not, though, see any upside for the sector in leaving the EU: any barriers to student mobility are likely to have a negative impact.”

Migration Advisory Committee, 2018<sup>30</sup>

However, the MAC does not make any proposals for post-Brexit EEA student access to UK universities. Instead, it draws attention to the UK Government's proposal to extend the youth mobility scheme to EEA nationals and its desire to continue the ERASMUS+ scheme.

## Seasonal Agricultural Workers Scheme

The MAC has recommended that there should be no work migration routes for low-skilled workers post-Brexit with the possible exception of a Seasonal Agricultural Workers Scheme (SAWS).

The MAC acknowledges that 99% of seasonal agricultural workers in the UK are from EU countries and that in the case that there was no SAWS scheme, “it is likely that there

would be a contraction and even closure of many businesses in the parts of agriculture in the short-run as they are currently very dependent on this labour.”<sup>6</sup>

The MAC refers to the proposed UK SAWS pilot scheme that will commence in March 2019 for a two-year trial period to alleviate labour shortages during peak production periods. As part of the proposed scheme, the UK Government plans to create 2,500 visas for non-EEA seasonal horticultural workers to work on UK farms for up to six months.<sup>34</sup> The MAC said this pilot scheme needs to be, “properly evaluated to ensure it is not an easy option that allows the agricultural sector access to low-skilled migrant labour on a permanent basis.”<sup>6</sup>

The MAC also indicated that the absence of a seasonal agricultural workers scheme would not be hugely problematic for the UK:

“ While the failure to have some type of SAWS would be bad for the sector it is a small, low-wage, low-productivity sector in the wider UK context so this should not be seen as catastrophic for the economy as a whole.”

Migration Advisory Committee, 2018<sup>6</sup>

The MAC did not recommend sectoral migration schemes for any sectors other than agriculture. One sector that might benefit from a sectoral scheme, which is heavily reliant on low-skilled migrants and facing extreme labour shortages, is social care. The MAC report acknowledged these pressures in social care, stating that, “We are concerned about social care which struggles to recruit and retain workers.”

During an evidence session with the House of Commons Home Affairs Sub-Committee, Professor Manning said that, “the central problem is that the sector does not pay enough and the terms and conditions are not attractive enough. [...] it is not right to think that there is a simple migration fix.”<sup>35</sup>

There is precedent in the UK for creating special schemes for carers and other low-skilled sectors. The UK introduced the Sector Based Scheme (SBS) in 2002 to attract low-skilled migrants to work in the UK for up to 12 months in the food manufacturing, hotels and care sectors. However, the MAC has ruled out creating a similar scheme post-Brexit.

## Regional Variation

The MAC has reflected on demands for regional variation in the UK immigration system coming from the devolved administrations. In particular, the Scottish Government submitted evidence showing that any decrease in net EEA migration would negatively impact population growth, especially in rural and remote communities.<sup>36</sup> Scotland has a lower fertility rate and a more rapidly ageing population than the rest of the UK, and EEA migration since 2004 has helped to boost Scotland’s population.

The Scottish Government also provided estimates of the positive fiscal and economic impacts of EEA migrants in Scotland, focusing on sectors in which EEA migrants have made some of the biggest contributions, such as social care, hospitality, health and food manufacturing.

The MAC, in its Interim Report, responded by arguing that the sectors most dependent on EEA migrants do not vary greatly across regions and nations in the UK: the number one sector across all regions is ‘manufacturing of food and beverages’ while ‘accommodation and hospitality’ ranks highly across regions. The MAC also acknowledges “Scotland’s greater reliance on international migration for future population growth,” but states it is not greatly different to other parts of the UK:

“...the contribution of international migration to population growth in Scotland has been, and is expected to continue to be, broadly similar to the other nations and regions of the UK [...] demography rarely changes sharply at administrative or political borders.”

Migration Advisory Committee, 2018<sup>29</sup>

In response to the Scottish Government’s argument that population growth is the single biggest driver of economic output and growth, the MAC stated that:

“ Migration is much less effective at dealing with a rising old age dependency ratio than increases in the pension age and immigration may not be an effective strategy for sustaining remote communities unless the reasons for locals leaving are addressed.”

Migration Advisory Committee, 2018<sup>6</sup>

In the final report, the MAC states that:

“...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 migration policy”and “any decision on whether or not to introduce different immigration rules in different parts of the UK would be political, rather than economic.”

Migration Advisory Committee, 2018<sup>6</sup>

# The UK Government's White Paper on Immigration

On 19 December 2018, the UK Government published its much-delayed White Paper on Immigration, one week after the House of Commons' 'meaningful vote' on the EU Withdrawal Agreement had been delayed until 2019.

In the Foreword to *The UK's Future Skills-Based Immigration System*, Prime Minister Theresa May stated that the immigration system being proposed in the White Paper "will mean we can reduce the number of people coming to this country" and that "the White Paper answers the call of the British people." Most importantly, the White Paper confirms the UK Government's position of ending freedom of movement from the EU/EEA and its emphasis on skilled labour.<sup>37</sup>

In his own Foreword, the Home Secretary Sajid Javid stated that, "The White Paper is based on the best, independent advice from the Migration Advisory Committee and frank conversations with people and businesses across the United Kingdom." Indeed, the 168-page document refers to the MAC recommendations throughout, stating where it has accepted or 'part-accepted' the MAC recommendations and where it has exceeded them. Notably, the UK Government did not reject any of the MAC recommendations.

Given that this briefing has already analysed the detail of the MAC recommendations that form the basis of the UK Government's White Paper, any identical recommendations do not necessitate a repeated in-depth analysis again here. However, it is useful to distinguish between the MAC recommendations that the White Paper has *accepted*, and areas where the White Paper *diverges* from the MAC recommendations.

To begin with the former, below is a summary of key White Paper proposals for the post-Brexit immigration system, which were all originally recommended by the MAC.

# MAC Recommendations adopted in the White Paper

## Ending Freedom of Movement

- the UK Government will end free movement and create a single immigration system that applies equally to EEA and non-EEA nationals (White Paper, p33)

## Skilled Workers

- the focus will be on skilled workers who are sponsored by an employer (p43)
- the cap on the number of skilled workers admitted will be abolished (p46)
- the skills threshold in Tier 2 will be lowered to include intermediate levels (p47)
- the Resident Labour Market Test (RLMT) will be abolished (P46)
- the salary threshold for skilled workers will remain £30,000 (p48) (however, due to Cabinet divisions on this threshold, we can expect further consultation on this)

## Shortage Occupation List

- the MAC will continue to maintain, and review, a list of occupations that the UK has a shortage of, from level RQF3 upwards (p48)

## Youth Mobility Scheme

- the Youth Mobility Scheme will be expanded to help fill low-skilled routes, specifically through a proposed new UK-EU Youth Mobility Scheme (p55)

## Seasonal Agricultural Workers Scheme

- there will be no sector-based schemes, other than for seasonal agricultural, with only a commitment to the pilot horticulture scheme going ahead in 2019 (p17)

## International Students

- there will be no introduction of a specific work-study visa (p64)
- international students will be allowed 6 months post-study leave to remain after completing a Masters' degree in the UK, and 12 months after completing a PhD in the UK (p18)

## Regional Variation

- there will be no regional variation; only a single system for all of the UK (p24)

Indeed, the adoption of the MAC recommendations in the White Paper is so extensive that the UK Government states that the:

“ MAC’s recommendations have been crucial in the design of the future border and immigration system, and the Government has accepted, in full or in part, all the recommendations made by the MAC... The Government accepts the MAC’s analysis and will seek to give effect to it in the design of the future immigration system.”

UK Government, 2018<sup>37</sup>

However, there are some areas where the White Paper has differed from the MAC recommendations, and these are areas that are worth analysing in detail.

# Differences from MAC recommendations

There are three areas of difference between the MAC *Final Report on EEA Workers* and the UK Government's subsequent White Paper on Immigration. These are:

- [the creation of a new skilled worker visa route.](#)
- [the creation of a temporary low-skilled work route.](#)
- the extension of a post-study work visa for bachelor's students.

## New skilled worker visa route

The UK Government has proposed the creation of a new work route for *skilled* workers, as opposed to *highly skilled* workers who are accommodated under the current Tier 2 route.

“ There is currently a route for workers from outside the EU to come to work in the UK in highly skilled jobs. We want to create a new route in the future immigration system.”

UK Government, 2018<sup>37</sup>

The White Paper does not include extensive detail on what this new work route would look like, or how it would differ from the current Tier 2 (General, Skilled) work route, other than there being a difference in educational requirements.

For instance, as was explained earlier, Tier 2 migrants must have a skills threshold of RQF 6 (graduate-level) or higher. However, the White Paper indicates that a new work route would enable 'skilled migrants' with intermediary skills level from RQF 3-5 (equivalent to A-level or Scottish Highers) to come and work in the UK.

This proposal differs from the MAC recommendation, which, as we saw, was to lower the educational skills requirement for Tier 2 (General, Skilled) migrants to RQF level 4 upwards, and therefore to have one route for all high- and medium-skilled migrants. Instead, the UK Government has proposed the creation of a *new* route for 'skilled' migrants (which the MAC referred to as medium-skilled), separate from the current *highly skilled* Tier 2 route, to enable people with lower qualifications to enter. However, it is important to note that the minimum salary threshold, at £30,000 per year, remains the same for this medium-skilled route.

Please note that this policy may need further clarification, however, as there was also a reference in the White Paper to having a single route for skilled migration above level RQF3:

“ We agree with the MAC that the best way to do this is to have a new single immigration route for skilled workers, from RQF 3 to RQF 7 (post-graduate). Workers in this route, from RQF 3 upwards, will need to be sponsored by their employer; employers will pay an immigration skills charge and individual migrants must pay a health charge.”

UK Government, 2018<sup>37</sup>

This latter statement appears to be inconsistent with its earlier proposal for a new route.

## Temporary Short-Term Work Route

The most controversial new proposal in the White Paper, and the one that diverges most from the MAC recommendations, is the proposal to create a temporary short-term work route for workers “at all skills level” for migrants “from specified low-risk countries.”

This visa would be time-limited to 12 months and migrants would not be able to bring dependants, access public funds or benefits (such as healthcare, with the exception of emergency healthcare), switch to other visa routes, or extend their stay. At the end of the duration of their visas, migrants would have to depart the UK, and this will be monitored by the exit checks system. In short, it would be very similar to the German *Gastarbeiter* system of the post-war era.

The UK Government stresses in the White Paper that this is *not* a low-skilled migration route, which it believes may ‘depress wages’ or ‘stifle economic innovation.’ However, low-skilled migrants may access this route, alongside skilled migrants. The UK Government’s argument for the creation of this short-term route is that:

“ There are particular difficulties in recruiting staff in certain parts of the UK, particularly more rural and remote areas and regions. We also recognise that some sectors have built up a reliance on lower skilled workers from the EU, often for relatively short periods, such as those which require additional workers in the run up to Christmas. We recognise that employers in these areas require a period of time to change their ways of working once they have certainty about the shape of our future immigration system... Accordingly, the Government proposes that, for a transitional period after the UK’s exit from the EU, there should be a new route for temporary short-term workers at any skill level to come to work in the UK.”

UK Government, 2018<sup>37</sup>

Importantly, this route will not be open to everyone: it will only be available to nationals of specified, “low risk countries with whom the UK negotiates an agreement.” Applicants will also be subject to a criminal records check. The White Paper does not elaborate on what it means by ‘low-risk’ or how eligibility for risk may be determined.

## Post-study visa extension for bachelor's students

The White Paper also builds upon the MAC recommendations for international students, with regard to how long they can remain in the UK after completing their studies. While the UK Government endorsed the MAC recommendation to enable Masters’ students a 6-month visa extension after they graduate, and for PhD students to have a 12-month extension, the White Paper also makes a provision for bachelor's students:

“ The Government will also go further to ensure that all students who have completed an undergraduate degree at an institution with degree awarding powers will be able to stay in the UK for six months after completing their studies.”

UK Government, 2018<sup>37</sup>

The White Paper did not commit, however, to the creation of a specific post-study work visa route open to international students on all degree programmes. The White Paper did, however, propose that students studying at bachelor level or above would be “able to

apply to switch into the skilled workers route up to three months before the end of their course in the UK, and from outside of the UK for two years after their graduation.” (p18)

## Open to negotiation?

The White Paper makes several references to possible changes to the immigration plans contained therein, which are seen to be dependent on negotiations with the European Union, with other countries, and with organisations across the UK.

With regard to future trade negotiations, the White Paper states that:

“ There will no longer be one immigration system for non-Europeans, and another for EU citizens. The future system will apply in the same way to all nationalities – EU and non-EU citizens alike – except where there are objective grounds to differentiate. This could, for example, be in the context of a trade agreement, or on the basis of risk. ”

UK Government, 2018<sup>37</sup>

With regard to short-term EU visitor stays, the White Paper states that:

“ We do not intend to require visitors who are citizens of current EU Member States to obtain a visit visa in advance of travel and we intend to allow them to continue to use e-gates to make entry quick and easy. We propose to make binding commitments to this effect in a future mobility partnership, if the EU reciprocates.”

UK Government, 2018<sup>37</sup>

Although at the same time, the White Paper states that the UK Government:

“ ...intends to introduce a requirement for visitors and transit passengers who do not currently need a visa to come to the UK to obtain an Electronic Travel Authorisation (ETA), as an additional security measure. The EU has proposals for a similar system, called ETIAS, for third country nationals who do not need a visa to travel to the EU. There is every indication that the EU intend to apply their ETIAS system to UK nationals (as third country nationals by default). It is our intention to require EU citizens to obtain an ETA, but we intend to discuss this further with the EU in the next phase of negotiations.”

UK Government, 2018<sup>37</sup>

Finally, the White Paper concludes with a commitment for the UK Government to hold a twelve-month ‘programme of engagement with various sectors across the UK’ on the future immigration system. This programme of engagement will take place throughout 2019, therefore, both before and after the UK exits the EU. This proposal indicates that the UK Government does not intend to pass new immigration legislation until 2020.

# Scottish Responses to Post-Brexit Immigration Proposals

As stated above, neither the MAC recommendations nor the UK Government's White Paper on Immigration advocate any form of regional variation within the proposed system. Both the Prime Minister and the Home Secretary have stressed that immigration policy is a reserved matter and that there will be a single immigration system for the whole of the UK.

However, the White Paper also acknowledges that the UK Government intends to:

“engage with stakeholders across Northern Ireland, Scotland and Wales as well as the Devolved Administrations. We are clear that our future system must work for every nation, region and community in the UK. We will make every effort to understand the individual positions of Scotland, Wales and Northern Ireland.”

UK Government, 2018<sup>37</sup>

The next section of this paper examines how Scottish political actors in the public, private and third sectors have responded to the MAC recommendations for a post-Brexit immigration system, and the White Paper on Immigration.

## Scottish Government

The Scottish Government, which itself submitted evidence to the MAC Call for Evidence,<sup>36</sup> responded to the publication of the MAC's final report in the document *Scotland's Place in Europe: Our Way Forward*.<sup>38</sup>

The report welcomed the MAC's presentation of evidence that EU citizens have a positive impact on the UK's economy, public services and economy. However, it also stated, “given this clear evidence, the Scottish Government cannot accept the recommendations from the MAC to route future EU migration through the current UK system.” In this report, the Scottish Government re-stated its commitment for the UK to retain freedom of movement and European Single Market membership.

Scottish Minister for Europe, Migration and International Development, Ben MacPherson, said that migration was:

“absolutely critical to Scotland's future prosperity [...] However the Mac report does little to consider Scotland's needs and instead suggests that increasing the pension age would be a preferential approach to managing demographic change - a completely unsustainable position and one which we and many across Scotland would reject.”

BBC, 2018<sup>39</sup>

Furthermore, the Minister said that the MAC proposals “completely ignore” sectors such as tourism, agriculture and forestry and, “fails to address their major concerns about current and future access to workforce.”<sup>39</sup>

The Scottish Government has argued that Scotland could see a significant decrease in its population growth if free movement is ended.<sup>40</sup> This is because Scotland – which has a

lower fertility rate and a more rapidly ageing population than the rest of the UK – has been seen to be overly reliant on migrants to grow the population since 2004. The report also noted concerns that slower population growth in Scotland will put pressures on the current workforce to support people of pensionable age, whereby Scotland has a higher dependence ratio than the rest of the UK.

In its follow-up report, *Scotland's Place in Europe: the Way Forward*, the Scottish Government stated that:

“ the Scottish Government cannot accept the recommendations from the MAC to route future EU migration through the current UK immigration system. Such a recommendation would mean that 75% of EU workers currently in the UK – a higher percentage in Scotland – would not have been eligible [...] Given the overwhelming evidence, cited again in this paper, of the economic loss to the UK in leaving the European Single Market and Customs Union, the economic case for the UK to retain free movement and European Single Market membership is equally overwhelming.”

Scottish Government, 2018<sup>38</sup>

Since the publication of the UK Government's White Paper on Immigration, First Minister of Scotland, Nicola Sturgeon, has criticised the new immigration policy for depriving Scotland of “people who make a big and positive contribution to life in Scotland.”<sup>41</sup> She said:

“ The UK Government's immigration blueprint is an act of vandalism on Scotland's economy, communities, NHS and public services. The UK Government's proposals take absolutely no account of Scotland's distinct needs. The White Paper itself suggests that it may result in an 85% reduction in the number of EEA workers to Scotland - this will be catastrophic for communities and businesses across the whole of Scotland, particularly for key sectors such as tourism, hospitality and the care sector. Our modelling estimates that real GDP in Scotland will be around 6.2% lower by 2040 than it would have been otherwise, as a result of Brexit-driven reduction in migration. This is equivalent to a fall of almost £6.8 billion a year in GDP by 2040 and a fall of £2 billion in Government revenue over the period. This is an unacceptable price for Scotland to pay.”

The Scotsman, 2018<sup>42</sup>

In December 2018, the Scottish Government published a summary paper entitled *Scotland's Population Needs and Migration Policy* which sets out its own proposals to adapt the UK immigration system to meet Scotland's most acute needs. These include the creation of a visa that is specific to Scotland, which allows people to come and work in Scotland, that reduced administrative and financial burdens on employers.<sup>43</sup>

## Scottish Parliament

The Scottish Parliament has been active in exploring options for differentiating the UK immigration system to accommodate Scotland's distinct needs, and in analysing and responding to the analysis and recommendations contained in the MAC report.

On 1 November 2018, the Culture, Tourism, Europe and External Affairs (CTEEA) Committee held an evidence session with the Chair of the Migration Advisory Committee

and lead author of the MAC reports on EEA migration, Professor Alan Manning. During this session, CTEEA Committee Members from all political parties questioned Professor Manning about MAC recommendations to end freedom of movement, to reduce low-skilled migration, and to not introduce other sector-based schemes or post-graduate visas.<sup>44</sup>

Following the evidence session, the Chair of the CTEEA Committee, Joan McAlpine MSP, sent a letter raising 'serious concerns' about the implications of the report for Scotland:

“ The Committee is very concerned that the report’s recommendations are not supported by modelling of the likely impact of the proposals on Scotland, or indeed the UK as a whole. For instance, Professor Manning stated in evidence to the Committee that—‘We have not produced estimates of what we think the consequences would be on migration flows in Scotland or in the UK as a whole.’ The Committee is also alarmed by comments made by Professor Manning regarding the potential impact on key sectors to Scotland’s economy, such as tourism and hospitality. Professor Manning explained in this regard— ‘...if we want to move towards a high-wage, high-productivity economy, hospitality, as it runs at the moment, paying really rather low wages, is not a sector in which we would want to encourage growth. Since 2004, the hospitality industry has found it rather easy to grow, but our proposal is that such growth should not be so easy in the future. It is about restricting growth, not getting rid of what is there already.’ The Committee understands why it would be desirable in principle to increase wages in certain sectors, such as tourism and agriculture. However, we are not convinced by the lack of modelling done by the Migration Advisory Committee on its proposals for how this might be realised. The Committee considers that the Migration Advisory Committee’s proposals appear to have been developed without due consideration of their real-world impact on individual businesses and to the economies within the UK. [...] The Committee is also concerned by the impact that the report’s proposals may have on Scotland’s population. We note that the report’s proposals are not supported by any modelling of their demographic impact, as Professor Manning explained when he gave evidence.”

Scottish Parliament Culture, Tourism, Europe and External Affairs Committee, 2018<sup>45</sup>

At the time of writing, Home Secretary Javid has not yet responded to this letter.

On the day after the White Paper on Immigration was published, the Scottish Parliament’s CTEEA Committee raised the topic of the immigration proposals with Cabinet Secretary for Government Business and Constitutional Relations Michael Russell about the Article 50 negotiations. The CTEEA Committee members were keen to understand the implications of the new immigration system for Scotland and were concerned by the possible wide-ranging effects of the estimated 85% reduction in EEA migrants to Scotland post-Brexit.<sup>46</sup>

## Scottish local government

The Convention of Scottish Local Authorities (COSLA) responded to the MAC Call for Evidence on the impact of EEA nationals on the UK labour market,<sup>47</sup> and in responding to the publication of the MAC reports and recommendations, Councillor Elena Whitham, COSLA Community Wellbeing Spokesperson, said:

“ COSLA is disappointed with the MAC’s report. In the detailed evidence that we provided to them, we raised significant concerns about the implications that a reduction of in-migration to Scotland from EEA countries could have for Scotland’s local authorities and our communities. EEA migration plays a crucial role in counteracting our demographic challenges and addressing local economic and workforce issues. Migrants from the EEA have also greatly enriched Scotland’s communities and our social and cultural life. We note that the MAC has recognised that lower migration could lead to population decline and that this problem does not start and end at the Scottish border. This is exactly why we need a flexible immigration system that considers local requirements across the UK, and why this call has come not just from Scotland, but from across the UK, including from each of the devolved administrations. I’m sorry to say that the MAC’s recommendations certainly do not ease Scottish local authorities’ concerns about the impact that Brexit will have with respect to our population needs.”

COSLA response to the Migration Advisory Committee (MAC ) report. News Release 20/09/2018., 2018<sup>48</sup>

## Private sector

The business sector in Scotland, as in the UK more broadly, has been positive about the decision to remove the Tier 2 cap on skilled migrants, to lower the qualifications requirement to A-levels for medium-skilled migrants, and to abolish the Resident Labour Market Test. However, there have been widespread concerns about other immigration proposals recommended by the MAC and adopted in the White Paper. For instance, the director of the Institute of Directors, Stephen Martin, said that:

“ The white paper gives with one hand and takes away with the other. There are some useful proposals, such as removing the cap for high-skilled visas and lowering the qualifications requirement to A-level or advanced apprenticeship, but the £30,000 salary threshold is still in there for consultation, which could affect around 60% of jobs at intermediate skills levels.”

The Guardian, 2019<sup>49</sup>

Business organisations have been especially critical of proposals to restrict EEA immigration after Brexit and to process EEA nationals through the current points-based system. In their submissions to the MAC, business organisations criticised the functioning of the Tier 2 system for being overly bureaucratic.<sup>50</sup> For instance, the British Retail Consortium argued that putting EEA workers through the Tier 2 system was, “a cause for concern for retailers across the industry [because] the system is costly, burdensome and slow.”<sup>51</sup>

The MAC itself acknowledged in its report that “high-skilled sectors which currently use the Tier 2 system to recruit non-EEA migrant workers expressed mostly negative views of that system. Many felt that it was time consuming, costly and overly complex.” The Confederation of British Industry (CBI) also called the system ‘highly bureaucratic and cannot be extended to EU workers without major reform.’<sup>52</sup>

The business sector has also expressed concerns about reducing low-skilled EEA migration to the UK after Brexit. For instance, the CBI stated that the £30,000 salary threshold and emphasis on skilled workers would “block many essential workers from coming to the UK”. Other business organisations have expressed fears that ending low-

skilled EEA migration<sup>vi</sup> will lead to extensive labour shortages in key sectors of the UK economy, such as social care, hospitality, construction, tourism and health.<sup>50</sup> The British Retail Consortium warned that up to 95% of the retail industry's workforce would not meet the £30,000 salary threshold.<sup>51</sup> Similarly, the Federation of Small Businesses has stated that:

“ Our research shows that 95% of small employers have never made use of the UK’s points-based immigration system to meet their business’ labour and skills needs. This is because of the costs and complexity of the system. Simply expanding the Tier 2 general route to include EEA citizens will hurt small businesses, the wider economy, and productivity. The damage will be worse for those businesses that work in sectors like hospitality, retail, and care that are already facing chronic skills shortages.”

Federation of Small Businesses, 2018<sup>53</sup>

As a result of all these constraints, the CBI Chief Executive Carolyn Fairbairn has argued that measures aimed at restricting EEA migration could mean ‘businesses go under and we would lose jobs rather than create jobs for our population’.<sup>54</sup>

Since the publication of the White Paper, the business sector has been equally critical of the UK Government’s proposals. The Director of CBI Scotland, Tracy Black, said that:

“ A new immigration system must command public confidence and support the economies of all parts of the UK. These proposals would achieve neither. The proposals outlined in the White Paper don’t meet Scotland’s needs or the needs of the UK as a whole, and would be a sucker punch for many firms right across the country. The UK Government’s own analysis suggests people and regions will be poorer as a result of them... The facts are clear. Brexit is cutting off the ability to recruit and retain staff for 9 out of 10 firms.”

Insider, 2018<sup>55</sup>

Similarly, the Federation of Small Businesses (FSB) in Scotland warned that the White Paper proposals would have a disproportionate effect on firms in Scotland. The FSB’s Scotland Policy Chair, Andrew McRae, said:

“ The UK Government’s obstinate approach to immigration is a clear threat to many of Scotland’s businesses and local communities. These proposals will make it nigh impossible for the vast majority of Scottish firms to access any non-UK labour and the skills they need to grow and sustain their operations.”

Insider, 2018<sup>55</sup>

In a similar vein, the Scottish Tourism Alliance Chief Executive, Marc Crothall, said that:

“ The UK Government’s measures on immigration published in today’s white paper could have potentially devastating effects on Scotland’s tourism industry, in particular, a £30,000 minimum salary threshold were this to be passed by legislation following a consultation. There is no doubt that the government’s plans will exacerbate the existing recruitment crisis considerably, placing our tourism industry and what is one of the most important economic drivers for Scotland in severe jeopardy.”

Insider, 2018<sup>55</sup>

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vi With the end of free movement and no explicit EEA low-skilled work migration route.

## Third sector

Various third sector organisations – including unions, professional associations and universities – have responded to the MAC’s immigration proposals and White Paper.

UNISON has expressed concerns about the MAC’s methodology for obtaining evidence on shortages: “evidence of particular shortages is clearly available and the MAC needs to be more flexible on format.”<sup>56</sup> Skills shortages in Scotland have been identified in the IT sector; in Science Technology Engineering and Mathematics (STEM); and in the case that freedom of movement ends, there would likely be shortages in the construction, hospitality, and health and social care sectors, which employ significant numbers of EEA nationals.<sup>57</sup> However, as the latter labour shortages are in low-skilled or low-pay jobs, they are unlikely to meet the skills level/salary threshold required for a Tier 2 (skilled) visa application.

The National Farmers Union (NFU) has criticised the SAWS pilot scheme for not going far enough to solve the agricultural labour crisis.<sup>58</sup> British summer fruit and vegetable growers currently employ 60,000 workers a year, who are mostly EEA workers from New Member States. The NFU argues that “We need more than 11,500 seasonal workers by 2021 to keep pace with a crop that is set to grow. Right now, the pilot permits us to recruit 2,500. This is simply not enough and our growers are already struggling to recruit workers.”<sup>58</sup> Furthermore, the SAWS pilot scheme applies to non-EEA nationals; the MAC has made no recommendations for routes for EEA seasonal agricultural workers after the implementation period ends.

## Universities sector

The universities sector has been disappointed by the MAC’s decision not to create a post-study work visa or to remove international students from the net target.<sup>59</sup> The Fresh Talent: Working in Scotland post-study work visa, which was trialed in Scotland in 2005-8, was seen to have a positive impact on student recruitment and retention.<sup>60</sup> Universities Scotland submitted evidence to the Scottish Parliament’s Devolution (Further Powers) Committee stating:

“ Scotland is losing out in the recruitment of international students to Australia, New Zealand, America and Canada because the UK has one of the least competitive policies on post-study work in the English-speaking world.”

Universities Scotland, 2018<sup>61</sup>

In response to the White Paper, Universities Scotland director Alistair Sim said that:

“ The white paper on immigration highlights many of the benefits that immigration provides across the country. However we remain concerned that UK immigration policy post-Brexit will make it more difficult to attract talent to our nation. A six month entitlement for international graduates to stay in the UK to find work is a step in the right direction but doesn't compare with the post-study work entitlements offered by our competitors. We're also concerned about the proposal for EU students to have to acquire a study visa, putting up another barrier for students who wish to study here in Scotland. Added to that, universities will now have added bureaucracy and cost as EU students will be subject to Home Office sponsorship rules along with other international students. We want to be part of a society that is open, richer culturally and financially. We need to be serious about attracting talent to our nation. It's hard to see how this can be achieved with today's white paper.”

Universities Scotland, 2018<sup>62</sup>

Similarly, in response to the MAC report, Universities Scotland stated that “it's disappointing not to see a recommendation for a visa regime that will enable Scottish universities to compete to attract international student talent to our nation. Business groups support us, political and civic groups across Scotland support us, and the Scottish public support us.”<sup>63</sup>

Indeed, there has been widespread support across Scottish organisations for certain policy changes that would differentiate the UK system to give Scotland some influence over future immigration selection and controls post-Brexit, which is the focus of the next section.

# Scottish Proposals to Increase Immigration Influence

Since the Brexit referendum in June 2016 – and with it the UK Government’s commitment to ending EU freedom of movement – organisations across Scotland have been calling for the differentiation of the UK’s immigration system. The underlying rationale has been the importance of continuing EEA migration flows to Scotland, given Scotland’s dependence on immigration to grow its population and economy.

In 2017, the Scottish Parliament’s Culture, Tourism, Europe and External Affairs (CTEEA) Committee commissioned research on options for differentiating the UK’s immigration system, and subsequently held an inquiry on its report, inviting organisations across Scotland to feedback on each of the proposals to increase Scotland’s influence over migration.

The report, entitled *Options for Differentiating the UK’s Immigration System*, included 20 policy recommendations for differentiating the UK’s immigration system to enable Scotland to have more influence over migration policy.<sup>64</sup> These included:

- the creation of Scottish migration reception and integration policies
- Scottish representation on the MAC
- a revised Scottish Occupation Shortage list
- the creation of a Joint Ministerial Sub-Committee on Immigration
- a Scottish Post-Graduate Work Visa (along the lines of Fresh Talent)
- the creation of ‘European Talent: Working in Scotland’ schemes
- regional visa sponsorship and nomination schemes (like Canada and Australia)
- devolving immigration power to Scotland (like Quebec in Canada)

There have been three policy areas around which civic opinion in Scotland has coalesced, which was evident in responses to the CTEEA Committee inquiry:

1. the re-introduction of post-study work visas;
2. Scottish representation on the MAC/greater input into the Shortage Occupation List; and
3. the devolution of some aspects of immigration control to Scotland.

The following section analyses each of these proposals in turn. It is also worth noting that Scottish organisations responding to the inquiry overwhelmingly endorsed calls to create a Scottish migrant integration policy. However, as integration is separate from immigration controls (which the MAC report addressed), it is not considered here.<sup>vii</sup>

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vii The Scottish Parliament has, however, examined migrant integration strategies through research by SPICe Fellow Dr Paulina Trevana<sup>65</sup> Dr Eve Hepburn<sup>66</sup>

## Re-introduction of Post-Study Visas

There is broad support across the Scottish public, business and university sectors for the re-introduction of a post-study work visa in Scotland. This policy objective has been the subject of a Scottish Government working group, a Scottish Parliament committee inquiry and report, and a House of Commons Scottish Affairs committee inquiry and report.

The Scottish Government's Post-Study Work Working Group (with representation from all the parties in the Scottish Parliament),<sup>67</sup> the Scottish Parliament Devolution (Further Powers) Committee's Inquiry on Post-Study Work Visas,<sup>68</sup> and the Scottish Affairs Committee Inquiry into Post Study Work Schemes<sup>69</sup> all found broad support for reintroducing a post study work scheme in Scotland across a range of business, education and student organisations that gave evidence. The findings from all three were that the UK Government's decision to remove the post-study work visa has resulted in the Scottish education sector falling behind its international competitors in its bid to attract international students, with the recommendation that the scheme be reintroduced as quickly as possible in Scotland.

In July 2016, the Home Office launched a Tier 4 visa pilot for one-year Masters degree students studying at the universities of Oxford, Cambridge, Bath and Imperial College London. The pilot visa allowed participants to stay on for six months after the end of the course and to submit fewer evidential documents with their visa application. In December 2017, the UK Government announced that the Tier 4 pilot would be extended to a further 23 HEIs, including the University of Edinburgh and University of Glasgow, however, the pilot only applied to Masters students for a period of 6 months. Since then, the MAC has advised creating short visa extensions of 1-year for PhD students and 6-months for Masters students, but this is less than the minimum two-year post-study work visa recommended by the Scottish Parliament, and does not apply to all students.

Universities Scotland is particularly concerned with the immigration status of students post-withdrawal, arguing, 'The immigration system should recognise fully the distinct status of a student and take this out of consideration of any policy for the control of the overall volume of migrants.'<sup>70</sup> Universities Scotland has also argued strongly for a post-study work visa:

“ Since 2015 we have seen our competitors in other countries recruit significantly more international students. This is helped by government policy in these countries. The status quo for the UK means we're stagnating when the rest of the world actively seeks these immensely talented, smart and motivated people.... We will continue to argue and demonstrate that international students bring value to our nation, and that we need a competitive post-study work visa to attract them to Scotland.”

Universities Scotland, 2018<sup>63</sup>

## Representation on the MAC

There have been calls from across Scottish public, private and third sector organisations for greater Scottish influence over MAC decision-making, especially with regard to the operation of the Scottish-only Shortage Occupation List (SOL).

In its evidence to the Scottish Parliament CTEEA Inquiry on Immigration, COSLA explained that it has been engaging with the MAC for many years and, "...to date [has] had little success in influencing the Shortage Occupation List for Scotland and the rest of the UK." <sup>71</sup>

UNISON also felt this was problematic, as the Tier 2 salary thresholds set by the MAC were considered to be too high for Scotland; instead the high thresholds "...have served to effectively remove the social care sector from the Scottish Occupation List." <sup>56</sup> UNISON also noted that an issue with influencing changes to the Shortage Occupation List for Scotland has been the format of the supporting evidence that is presented to MAC:

"The MAC has argued that it found it difficult to get evidence about shortages in Scotland in the format it requires. While we accept that labour market data in Scotland has many shortcomings, evidence of particular shortages is clearly available and the MAC needs to be more flexible on format."

UNISON Scotland, 2017<sup>56</sup>

Similarly, the Law Society of Scotland and Scotland IS/Technology Scotland argued that existing salary thresholds for many types of high-skilled employment are set at a level <sup>72</sup> above the average graduate salaries in Scotland. The Law Society of Scotland explained that its "recommended salary for a first year trainee solicitor is £18,000 and is £21,500 for a second year trainee solicitor. A foreign national hoping to enter the Scottish legal profession is likely to face difficulty finding a training contract with a salary of at least £24,700." <sup>73</sup>

In this regard, many respondents to the parliamentary inquiry raised similar concerns about the lack of Scottish influence on the MAC, considered there to be merit in reviewing and revising the Shortage Occupation List for Scotland, and made the case that any salary thresholds should be developed in broad conjunction with relevant sectors and stakeholders in Scotland to reflect regional differences and demands. <sup>74</sup>

The Scottish Government has also expressed concerns that the Scottish SOL has been restricted to a few specialist occupations. Former Minister for International Development and Europe, Dr Alasdair Allan, argued that there has been, "a great deal of disappointment" amongst Scottish business stakeholders, who have "put forward very good cases to the Migration Advisory Committee as to why more jobs should be on the shortage occupation list in Scotland and that that evidence has not been used to put those vacancies on." Dr Alasdair Allan continued that the SOL: "has been useful up to a point... I think we would probably be a bit more ambitious in terms of the number of professions that have been listed there. Scotland does have quite a number of skills shortages." <sup>75</sup>

Finally, the Chair of the House of Commons Scottish Affairs Committee, Pete Wishart MP, put forward a request for a Scottish Government official to be given a seat on the MAC (alongside the Home Office), however this was rejected by the Immigration Minister. <sup>76</sup>

## Devolution of Immigration Powers

The SNP-led Scottish Government has long called for the devolution of immigration powers to Scotland, which it made clear in its discussion paper on *Scotland's Population*

*Needs and Migration Policy* (February 2018).<sup>43</sup> Here, the Scottish Government identified specific differences in the migration needs of Scotland and the UK, including the value of inward migration to rural Scotland and the importance of migration to help grow the working age population, to justify Scotland having the power ‘to tailor its own migration policy.’ Specifically, the Scottish Government recommended the devolution of immigration powers and the creation of new migration routes to Scotland that promote long-term settlement rather than short-term work visas, to help support demographic sustainability.

Other organisations in Scotland – including the Scottish Parliament CTEEA committee, UNISON, Universities Scotland and SOLACE Scotland – have also supported calls for the UK Government to consider proposals to devolve specific immigration powers to Scotland.

For instance, Universities Scotland has supported the creation of Scottish visa sponsorship schemes. It considered that the Australian and Canadian models presented in the CTEEA report, “address the same economic challenges facing Scotland.” Universities Scotland also viewed the option to set additional criteria positively and considered that Scotland should focus on young, highly qualified individuals.<sup>70</sup>

UNISON has argued that the UK should adopt the ‘Quebec model’ by devolving exclusive legislative competencies over immigration to Scotland.<sup>56</sup> UNISON explained that any concerns about the perceived difficulty in retaining migrants in Scotland under a devolved scheme are unfounded, citing the high retention rates in Quebec. The European Movement in Scotland also supports the devolution of powers on immigration to Scotland. In its view, devolving powers on immigration, “will be of particular value to industries dependent on EU labour such as food and drink, hospitality and technology.”<sup>77</sup>

In contrast, the Scottish business sector has been divided on the proposal to devolve immigration powers to Scotland. For instance, the Scottish Chambers of Commerce stated that it, “...does not believe that devolution of immigration powers to Scotland is necessary to achieve a business solution to migration targets.”<sup>78</sup> Similarly, the Food and Drink Federation Scotland argued that devolving immigration powers could increase processing time, which could limit a migrant’s ability to relocate within the UK and could potentially increase costs due to a two-stage process.<sup>79</sup> And at the UK level, the Confederation of British Industry has argued that the time is ‘not right’ for devolving immigration, and that businesses wanted an integrated immigration system for the whole of the UK rather than a regional one.<sup>80</sup>

However, since the publication of the UK Government’s White Paper on Immigration, the Scottish Tourism Alliance has stated that,

“ the STA supports the Scottish Government’s proposals for a tailored migration system for Scotland, as outlined in the discussion paper ‘Scotland’s Population Needs and Migration Policy’, including proposals for a Scottish visa that would remove barriers caused by the introduction of the recommended Tier 2 salary cap of a £30,000 threshold as proposed by the MAC.”

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Also, in response to the White Paper, the Federation of Small Businesses (FSB) in Scotland has called for the UK Government to introduce a more flexible immigration system that, “accommodates the skills needs of Scottish firms and the demographic demands of Scottish communities.”<sup>55</sup>

Interestingly, Scottish public opinion has moved in favour of devolving legislative control over immigration. A recent survey by ICM for the National Conversation of Immigration (the largest-ever public consultation on immigration in the UK, coordinated by British Future and HOPE not Hate in 2018) found that 64% of respondents in Scotland 'agreed that the governments in Scotland, Wales and Northern Ireland should have powers to decide how many visas are issued to people who might want to work in these parts of the UK' (which is similar to the Quebec model). This devolution of immigration powers was also supported by a majority of *all* respondents across the UK (55%).<sup>81</sup>

# EU Responses to the UK's Immigration Proposals

Having considered the responses of Scottish actors to the proposed UK immigration proposals, it is also useful to reflect on how EU actors have reacted to proposals to end freedom of movement and remove any preferential treatment for EEA nationals in the UK, as this will be a key area of discussion in future UK-EU trade talks.

After the publication of the MAC report and recommendations, the Brexit negotiator for the European Parliament, Guy Verhofstadt, raised concerns about the effects of discriminating against EEA workers based on skills and nationality.<sup>82</sup> His comments likely refer to the differential impact of the MAC proposals on workers from different parts of the EU. For instance, the MAC stated that prior to the 2004 EU enlargement, EU nationals from the old Member States of western Europe tended to fill highly skilled positions; and since 2004, EU migrants from the New Member States have filled in low-skilled positions, even though they are often overqualified. These migrant flows indicate that any decision to remove routes to low-skilled EEA migration will have a disproportionately negative effect on workers from Central and Eastern Europe who have tended to fill gaps in low-skilled or low-pay sectors.

In response, Guy Verhofstadt said earlier this year that any discrimination among EU nationals on the basis of nationality or employment, “would apply reciprocally to UK citizens moving to the EU 26.” By EU26, he meant the remaining EU member states excluding the Republic of Ireland, which has a common travel area (CTA) with the UK. He continued, “the [European Parliament’s Brexit steering group’s] initial thinking on this was that while we would be open to a variety of different mobility arrangements, it would be difficult for the parliament to agree to arrangements that were discriminatory in terms of nationality or type of employment.” The *Guardian* reports that this view, “is understood to be supported by EU officials and diplomats representing the member states.”<sup>82</sup> This indicates that, in a ‘tit-for-tat’ scenario, UK nationals seeking to live and work in the EU in the future after Brexit – especially low-skilled or low-salary workers – will find it more difficult to do so.

The EU’s position on short-term migration from the UK to the EU after Brexit has been much clearer. In November 2018, the European Commission announced that it would grant UK citizens visa-free travel to the EU Schengen area for short stays of up to 90 days, as long as the UK also grants ‘reciprocal and non-discriminatory’ visa-free travel for all EU Member States.<sup>83</sup> Reciprocal visa-free travel for short stays has been suggested as a possibility, dependent on reciprocal arrangements, in the UK Government’s Immigration White Paper.<sup>37</sup>

Decisions on short stays are presumably easier to agree upon, as short-term visitors are unlikely to be working (i.e. providing services). However, the issue of longer-term migration beyond 90 days (where people on visas are more likely to be working) has so far not been discussed by any of the EU26 leaders, with the assumption that these decisions will be made once the Withdrawal Agreement has been approved and future trade talks can begin.

The decisions of EU Member States on how to treat UK citizens seeking to live and work in the Schengen Area post-Brexit on a longer-term basis will undoubtedly be complex. According to a report by UK in a Changing Europe (2018), this is because:

“ it is up to individual Member States how they implement EU legislation, which partly regulates the legal status of non-EU citizens, in domestic law. Even with this common legal framework, there is much variation in how EEA countries treat UK nationals now, and this divergence would be likely to widen considerably after Brexit... UK nationals travelling to the EU would presumably be subject to the same requirements as third countries...”

Free Movement, 2018<sup>84</sup>

The EU had not yet commented on the Immigration White Paper at the time of writing.

# Implications of post-Brexit policy for Scotland

Now that the White Paper on Immigration has been published, what are the main implications of the proposed new immigration system for Scotland's economy and society? The next section considers the possible impacts of introducing a high-skilled, high-salary post-Brexit immigration system that removes preferential access for EEA nationals on the following areas:

- [labour market](#),
- [taxation](#),
- [administrative capacity of the Home Office](#),
- [population change](#),
- [constitutional relations](#),
- [possible No Deal scenarios](#).

## Labour Market

Business organisations have warned that the proposed post-Brexit immigration system will likely result in extensive labour shortages in key sectors of the UK economy. In particular, proposals to curb low-salary and low-skilled EEA migration will drastically reduce the number of workers able to do these jobs. Industries that will be particularly hard hit are the social care sector, hospitality, construction and health, which employ significant numbers of EEA nationals.<sup>57</sup> As these sectors involve low-skilled or low-pay jobs, they are unlikely to meet the skills level/salary threshold required for a Tier 2 (skilled) visa application.

Recent surveys have shown that there are already job shortages in these areas due to high numbers of EEA nationals leaving the UK. For instance, the Chartered Institute of Personnel Development's (CIPD) quarterly Labour Market Outlook in November 2018 revealed that UK employers have been struggling to fill vacancies due to the decline in EEA migration.<sup>85</sup>

According to the CIPD report, 70% of employers currently have vacancies and are reporting hiring difficulties, one-third of employers said Brexit had caused EEA workers to leave the UK, and almost half said Brexit had led to an increase in EU citizens' concerns about job stability.<sup>86</sup> Similarly, ManpowerGroup's latest Employment Outlook Survey, published in December 2018, found that there is evidence of a 'leaking bucket', whereby "employers are hiring to plug leaks in the workforce rather than to grow."<sup>87</sup>

This tallies with ONS statistics, which have revealed a significant decrease in the number of EEA nationals coming to work in the UK since the 2016 referendum, and an increase in the number of EEA nationals leaving the UK.<sup>88</sup> Furthermore, a lack of clarity around the status of EEA citizens in the UK since the Brexit referendum, and delays to publishing the

new post-Brexit immigration white paper, have arguably created more uncertainty for EEA workers.<sup>89</sup> As the Director General of the British Chamber of Commerce argues:

“ With a tightening labour market, and over 70% of businesses struggling to fill job vacancies, access to migrant labour remains a genuine necessity... And we don’t just need the “best and brightest”.... We also need the fruit pickers, machinists, lorry drivers, sales representatives and hospitality staff...Where’s the sense in closing the door to lower-skilled people – meaning that food rots on farms, or that struggling restaurants, hotels and other high street stalwarts are forced to close? It would be an unmitigated disaster if European workers were simply lumped into the complex, costly and loathed work permit system that presently faces firms who attempt to recruit from outside the EU.”

The Guardian, 2018<sup>89</sup>

The effects of labour shortages in these key sectors are difficult to imagine, but the Chief Executive of the CBI Carolyn Fairbairn has said that greater restrictions on EEA immigration would see, “businesses go under and we would lose jobs rather than create jobs for our population...Some have equated it to the oil price shock of the 1970s.”<sup>54</sup>

## Taxation

Other organisations have raised the possibility of tax rises as the number of EEA workers in the UK decline. Oxford Economics carried out an assessment showing that EU migrant workers contribute £2300 more per head to the UK purse than the average British citizen, which has eased the tax burden on UK tax payers.<sup>90</sup> The Lead Researcher at Oxford Economics argued that, “this strongly positive average contribution persists over a lifetime: most migrants arrive fully educated, and many leave before the costs of retirement start to weigh on the public finances.”<sup>91</sup> As such, if there is a reduction in EEA workers - who are prevented from coming to the UK due to the lack of a low-skilled migration route and a £30,000 income threshold - the tax burden on others may have to rise.

## Administrative capacity of the Home Office

There are widespread concerns about the capacity of the Home Office to process EEA migrants through the 5-tier points-based system, given evidence that the system is already suffering from strain and backlogs, with some visa applicants having to wait over 1000 days for a decision.<sup>92</sup> The Home Office has been criticised for procedural errors and poor decision-making on visa applications which has resulted, for instance, in the destruction of landing cards of Windrush migrants in 2010.<sup>93</sup> Adding EEA nationals to the Tier 2 system without significantly expanding the capacity of the Home Office may cause further delays in processing applications, affecting firms’ ability to attract and sponsor migrants. If processing visas for EEA nationals through the current system takes too long, it is possible that they will make the decision to move somewhere within the single market with a less bureaucratic system.

The MAC has proposed that a review of Tier 2 should take place to evaluate its impact and address the concerns of business organisations about the overly complex, costly and

bureaucratic system for processing Third Country Nationals. However, this review will likely take place after a White Paper on Immigration is published, even though the effectiveness of the proposed post-Brexit immigration system hinges on the effectiveness of the Tier 2 scheme to process a large number of EEA visa applications alongside current applications.

## Population change

In the longer term, the Immigration White Paper estimates that there will be an 80% reduction in inflows of long-term EEA migrants to the UK,<sup>37</sup> which could lead to a decrease in the demographic growth of some regions and nations that are reliant on EEA nationals to maintain their current population rates, including Scotland,<sup>43</sup> but also potentially Wales, Northern Ireland and the North-east of England. For instance, Scotland's population growth since 2004 has been driven by an increase in net in-migration (with 50% of net population growth being accounted for by EU-born individuals.<sup>94</sup> yet the White Paper has estimated that its proposals would lead to an 85% decline in the number of EEA workers to Scotland.

If Scotland is unable to attract comparable levels of future immigration, then it will likely be difficult to sustain population growth. For instance, the National Records of Scotland (NRS) estimates that if Scotland were to have zero net migration from the EU, the working age population of Scotland is estimated to fall by 3% by 2024.<sup>95</sup>

Linked to this, any significant decrease in immigration would have an impact on Scotland's working population, which already has a disproportionately high dependency ratio (of dependents to worker), as a result of Scotland's low fertility rates, lower-than-average levels of net in-migration, and increasingly ageing population.<sup>95</sup>

Slower population growth will put pressure on the current workforce, especially young people (which is already a shrinking demographic) to support people of pensionable age, which will, in turn, negatively affect economic growth.<sup>96</sup>

## Constitutional relations

Another implication of the adoption of the UK Government's proposed post-Brexit immigration system is the increased likelihood of further constitutional tensions between Scotland and the UK. The Scottish Government has repeatedly called for any post-Brexit immigration system to take Scotland's distinct needs into account; however, the UK Government has objected to creating any form of regional variation in its proposed system, or for devolving any immigration powers to Scotland.

The Home Secretary, Sajid Javid, and Prime Minister Theresa May, have both declined the Scottish Government's request to introduce a degree of flexibility in the migration system to account for Scotland's labour market and demographic needs.<sup>36 66</sup> The Home Secretary has spoken about implementing a 'single system' for the UK, despite criticism from public, private and third-sector organisations in Scotland, as discussed above. Given that Scotland voted in favour of remaining within the EU, a drastic restriction of EEA

workers coming to Scotland – who have been largely responsible for Scotland’s recent population increase will likely meet with strong opposition from the Scottish Government.

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## No-deal scenario

Finally, it is useful to consider the implications of a No Deal Brexit for immigration to the UK/Scotland. A No Deal scenario means that the UK and EU are unable to reach a withdrawal agreement. The UK Home Secretary has outlined some possible post-Brexit immigration scenarios in the case of a No Deal. He has said that freedom of movement will come to an end 'deal or no deal,'<sup>97</sup> but that this will not be immediately – instead he said he will introduce a 30-month grace period in the event of a 'no deal':

“ the right of EEA citizens (including those from non-EU countries, like Norway, and from Switzerland) to live and work here – and the legality of employers continuing to employ them, hospitals and schools continuing to treat and educate them, and so on – would broadly continue unless and until the UK Government or Parliament changes the rules.”

Free Movement, 2018<sup>84</sup>

This grace period would give EEA nationals a temporary right to live in the UK, and would allow time for a new post-Brexit immigration system to be in. <sup>98</sup>

The European Commission has similarly proposed:

“ ...to grant UK citizens visa-free travel to the EU after the United Kingdom's withdrawal from the European Union. It would mean that UK citizens would not need a visa when travelling to the Schengen area for short stays of up to 90 days in any 180-day period. In the scenario where the UK leaves the EU without a deal, this would apply as of 30 March 2019... This proposal is entirely conditional upon the UK also granting reciprocal and non-discriminatory visa-free travel for all EU Member States, in line with the principle of visa reciprocity.”

European Commission, 2018<sup>99</sup>

However, recently there has been indication that the UK Government wishes to impose some restrictions on EEA citizen rights in the event of a No Deal, which would likely contravene the European Commission's requirement for 'reciprocal and non-discriminatory visa-free access.'<sup>100</sup>

The Department for Exiting the European Union issued a paper in December 2018 stating that, in the event the UK left the EU without a deal, only EU citizens who can prove residency in the UK on Brexit Day (29 March 2019) would be able to apply for settled status. This differs from the UK Government's 'settled status' policy, whereby EU citizens (including those arriving after 'Brexit Day') have until the end of December 2020 to apply for settled or pre-settled status. This new UK Government position on citizens' rights in the event of a No Deal prompted Guy Verhofstadt, the European Parliament's Brexit negotiator, to complain that EU citizens should not be used as bargaining chips, and the "citizens' rights deal shouldn't be watered down."<sup>101</sup> There is still uncertainty, then, around the rights of EEA citizens in the event of a No Deal.

## Next steps

In closing, it is important to note that these post-Brexit immigration proposals have been designed during a period when the UK Government's Brexit negotiations with the

European Union on the withdrawal agreement were still ongoing. This has presented a constraint for the actionable nature of some of the immigration proposals. For instance, the MAC was not privy to any final decisions about future UK relations with the EU with regard to immigration, and the UK Government has yet to enter negotiations with the EU about its future political and trading relations. This means that any future decision-making on the UK's immigration relations with the EU may change, depending on future negotiations.

The MAC originally sought to get round this dilemma by stating that it would recommend an immigration system for the UK based on the hypothetical scenario that there would be a 'blank slate' on immigration policy after Brexit, based on the assumption that EU legislation on free movement of people would no longer apply in the UK and there would be no special provisions or preferential systems for EU-UK migration in future. The MAC stated:

“ most of our discussion focuses on what we think might be a desirable migration system for the UK if it was to be set in isolation. This should not be taken as a MAC recommendation that migration should be excluded from negotiations with the EU.”

Migration Advisory Committee, 2018<sup>6</sup>

Likewise, the White Paper on Immigration stated several times that certain policies (such as mobility arrangements, electronic travel authorisation, UK-EU youth mobility) were subject to the outcome of future negotiations with the European Union.

Discussions on the future relationship between the UK and EU are due to begin once the Withdrawal Agreement has been approved. However, at the time of writing, Prime Minister Theresa May has postponed the House of Commons' 'meaningful vote' on the Withdrawal Agreement that the UK Government has spent 18 months negotiating with the EU, with the new date being set in mid-January 2019. It is also likely to be around this time that the UK Government begins its twelve-month 'programme of engagement' on the White Paper proposals, with a view to proposing the new legislation in early 2020. This would then take effect in late 2020 when the transition period mandated in the Withdrawal Agreement ends.

However, it is not yet clear that negotiations on the UK-EU future relationship (which may include mutual concessions or reciprocal agreements on migration) will be finalised by the start of 2020; indeed, in the shorter term, it is not clear if the proposed Withdrawal Agreement will be approved by Parliament. This may mean that the proposed immigration legislation is delayed further. At the time of writing, any consensus around future UK-EU relations, or as part of this, the post-Brexit immigration system, seems a long way off.

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