

Scottish Government response to the Migration Advisory Committee Call for Evidence on the Intra-Company Transfer immigration route



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FOREWORD

Foreword from Jenny Gilruth MSP, Minister for Culture, Europe and International Development



Scotland has a proud history as a country which welcomes people of all nationalities, and supporting their integration into our Scottish society. This history takes on even more importance in light of increasingly restrictive immigration policies imposed by the Home Office, that focus on arbitrarily reducing net migration irrespective of the value non-UK citizens may bring, skills shortages they could address, and the impact they could make to our economy and society.

Our previous responses to the Migration Advisory Committee (MAC) highlight the substantive contributions of non-UK citizens who have chosen to make Scotland their home, and we have been consistent in our arguments for the devolution of immigration powers to ensure that we best meet the needs of new Scots and their families. In August 2020, we responded to the MAC's call for a review of the Shortage Occupation List (SOL), despite the challenging deadline and timing of the consultation, during a time of change and uncertainty amidst the Covid-19 pandemic, and plans for a radically changed migration system by January 2021.

I was therefore disappointed that this consultation, on the Intra-Company Transfer route, was again carried out whilst migration levels were largely impacted by the Covid-19 pandemic, and before the full impact of reduced EU mobility could be felt by sectors across Scotland.

This paper provides detailed evidence on needs of businesses and individuals across Scotland, who have potential for use of the ICT route. We have collected evidence from stakeholders with bases in Scotland, and used previous submissions to the MAC and analysis from the independent Expert Advisory Group on Migration and Population, to clarify our position that the ICT route should be retained in order to provide rapid mobilisation of international workers to meet the needs of businesses in Scotland. Any move that limits migration, has the potential to seriously harm Scotland's economy, exacerbated by the fact that the ICT route is crucial for many key industries in Scotland. If anything, in light of the loss of free movement, the route has become more important. Scotland should be a leading destination for

inward investment, and in order to aid this, it is our view that the skills threshold should be lower, to bring it in line with the Skilled Worker route.

As an economy, Scotland needs the inward flow of people, not just to support our businesses and services, but to provide diversity and vibrancy to our communities. Our substantive evidence illustrates Scotland's requirement for the retention of the ICT route, to ensure that we are flexible and responsive to the needs of our stakeholders and our people, regardless of where they have come from.

The Scottish Government continues to believe that the best future for Scotland is as an independent country in the European Union, enjoying the full benefits of membership including freedom of movement. Amongst the many benefits of free movement of people is the opportunity it gives our young people to visit, work and study in other European countries and to engage in mutual exchange with those who come here, and the scope to share ideas and expertise, which promotes innovation and increases productivity.

One of the major gains from independence for Scotland will be responsibility for our own immigration policy. The policy of successive Westminster Governments for the whole of the UK is heavily influenced by conditions in the south east of England. Scotland's differing demographic and migration needs mean that the current UK immigration system has not supported Scotland's migration priorities. Independence would give put Scotland's future in Scotland's hands and allow us to make different choices on immigration.

INTRODUCTION

Our Position

1. Scotland is a welcoming and inclusive nation. We value everyone, no matter where they were born, who has chosen to make Scotland their home; to live, work, study, raise their families and build their lives here and make a positive contribution. Migration is an issue which is crucial for our future economic and social wellbeing. We need an approach that meets Scotland's needs and allows our communities and our economy to flourish.

2. As the world becomes more interconnected people need to move across international boundaries for work and for learning. This includes international students, researchers, artists, performers, people who want to grow their career or indeed just to experience life and work in a different culture. Yet the UK Government's immigration system is a barrier to this.

3. Our previous responses to the Migration Advisory Committee (MAC) have clearly outlined the positive contributions of migrants - to our economy, our public services, our culture and the enrichment of society as a whole. In March 2019 our response to the MAC's review of the Shortage Occupation List set out the vital contributions and positive impact that people from EEA and non-EEA countries make to Scotland, across the economy. Similarly, our response to the most recent call for evidence on the proposed Salary Threshold and Points-Based Immigration System in December 2019 outlined that a salary-selective system would disproportionately negatively affect Scotland. The evidence outlined in these reports is equally applicable to the Intra-Company Transfer route.

4. It should be noted that the Scottish Government has been consistent in arguing for devolution of immigration powers as The UK Government's immigration policy fails to address Scotland's distinct demographic, economic and cultural needs. As outlined in our 2020 policy paper *Migration: Helping Scotland Prosper*, even the devolution of aspects of migration policy within the UK system would start to allow Scotland's most acute needs to be met¹. Shared responsibility for migration would allow additional routes, options and solutions for Scotland, which the Scottish Government would aim to make less restrictive in Scotland than existing UK policy

5. This paper sets out the Scottish Government's response to the call for evidence launched by the UK MAC on Intra-Company Transfers (ICT) and provides evidence on the use of the ICT category by businesses with a base in Scotland as well as outlining how the route could be made more flexible and responsive to the needs of the Scottish economy. Our response draws on evidence from previous submissions to the MAC, analysis from the Independent Expert Advisory Group on Migration and Population (EAG) and qualitative feedback from stakeholders and supplementary evidence from organisations such as the Organisation for Economic Co-operation and Development (OECD).

¹ [Migration: helping Scotland prosper - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/migration-helping-scotland-prosper/pages/1_to_3.aspx)

6. In responding to this call for evidence, the Scottish Government and businesses across Scotland have found the timing of this consultation problematic given that organisations are simultaneously focused on economic recovery in the wake of COVID-19, mitigating the impact of Brexit and adapting to a new immigration system. All of which has limited organisations' capacity to engage with the review at this time. It should also be noted that the majority of stakeholders preferred to not be identifiable by their responses and therefore their feedback presented in this report has been anonymised.

7. It should be noted that this consultation is being carried out whilst migration levels have been limited by the Covid-19 pandemic. This has been demonstrated by the fall in the number of skilled worker visas granted. Therefore, current engagement with stakeholders will not capture the impact of the new UK immigration system post-Brexit.

8. The Scottish Government considers that the ICT route should be retained in order to provide rapid mobilisation of international workers to meet business needs. The agility provided by the route is often required by business but is lacking across the other visa categories of the UK points-based immigration system. ICTs will become an increasingly important for the UK's economic recovery if more restrictive measures are reapplied to the Skilled Worker route.

9. In addition, the UK is currently not experiencing the full impact of reduced EU mobility due to the current COVID-19 international travel restrictions. It is anticipated that there will be an increase in similar organisations looking to the ICT route to meet their short term needs where the UK-EU Trade and Cooperation Agreement (TCA) has failed to meet their needs.

10. It is essential that the route reflects the requirements of Scottish business and is fit for purpose for a 21st century global economy. On the international stage the UK needs to have a workable ICT category and it is hoped that the MAC consultation will assist in updating the criteria to make it more useful for multinational companies.

OVERVIEW OF THE ROUTE

11. Intra-Company Transfer Worker replaced Tier 2 (ICT) on 1 December 2020 and sits alongside the Skilled Worker route (SWR) of the UK points-based immigration system. The route enables organisations to sponsor their existing overseas employees to work in the UK on temporary assignment.

12. The Home Office Register of Sponsors (Worker and Temporary Worker routes), for June 2021, lists 35,090 companies in the UK that are currently licenced to use the ICT route. From this publication 229 of those companies are registered in Scotland². However, it should be noted that the registered offices may be either headquarters or other offices within the estate of individual companies. Therefore the potential impact across Scotland may be more significant.

13. Most employees will need to have been working for the overseas entity for at least 12 months before they are eligible to apply, though there is exemption to this

² [Home Office register of licensed sponsors: workers](#)

rule for high earners. There are currently two types of Intra-Company Transfer Worker visas:

- Intra-Company Transfer: for established workers of multinational companies who are being transferred to the UK;
- Intra-Company Graduate Trainee: for workers taking part in a structured graduate training programme.

14. In order to qualify for an Intra-Company Transfer visa the applicant must be able to meet the standard criteria and sponsors will still need to confirm that they can ensure the role is genuine, meets the relevant skills threshold, and meets the salary requirement. The worker must have a confirmed UK job and a Certificate of Sponsorship (CoS) from their employer, who must hold a valid Intra-Company sponsor licence.

15. **Table 1** below outlines the points required to qualify for the ICT route. However, unlike the points-based immigration systems of Canada, New Zealand and Australia, that are effective in promoting migration by allowing applicants to score points across a range of characteristics, the below criteria are effectively mandatory and 'non-tradeable' and therefore individuals cannot acquire points to meet the 60 point threshold through other criteria³.

Table 1: Points required to qualify for the ICT route

Eligibility	Points
Sponsorship with valid Certificate of Sponsorship	20
Job at appropriate skill level (RQF level 6 or above)	20
Salary at required level	20
Total	60

16. The ICT salary threshold is £41,500 or the going rate for the role, whichever is higher. The role must also be at RQF level 6. However, an Intra-Company Transfer applicant can count allowances guaranteed for the duration of their employment in the UK, or paid as a mobility premium to cover the additional cost of living in the UK, toward meeting the general salary threshold of £41,500 and the going rate for their role.

17. If you're applying for an Intra-company Graduate Trainee visa you must be paid at least £23,000 or 70% of the 'going rate' for your job - whichever is higher.

18. Intra-Company Transfer Visa holders are permitted to work for their sponsor in the job described on their Certificate of Sponsorship. They may also do a second job up to 20 hours per week, provided the same is either in the same profession and at

³ [Scottish Government response to call for evidence on salary thresholds and "Australia - style" points-based Immigration System](#)

the same level as the main job or on the Skilled Worker shortage occupation list. They may also undertake a course of study.

19. The Intra-Company Transfer Worker visa does not lead to Indefinite Leave to Remain in the UK. Migrants are subject to a maximum stay in the UK (if they entered the category after 6 April 2011):

- 5 years in any 6 year period if you're paid less than £73,900 a year; and
- 9 years in any 10 year period if you're paid £73,900 a year or more.

20. Applicants may also be eligible to extend their stay until you qualify for settlement on the basis of Long Residence. For both ICT categories, a migrant's dependant family members can accompany them under the 'Point Based System' (PBS) Dependant category and can work with a few restrictions.

ICT VS SKILLED WORKER

21. Unlike the previous Tier 2 (General) category, there is no requirement to conduct a resident labour market test (RLMT) for Skilled Worker applications and the minimum skill and salary thresholds have been reduced. As a result of these improvements to the Skilled Worker route a small number of Scottish stakeholders have stated that they have limited use for ICT at present.

22. ICT visa holders can now switch from within the UK into the Skilled Worker category and then be on a track to indefinite leave to remain after 5 years as a Skilled Worker. There are also routes for dependent partners and children to switch from PBS Dependents to Dependents of Skilled Workers. There is also no longer a specific cooling off period when switching. Previously, the Rules prevented a person re-entering the UK on the Intra-Company Transfer route for 12 months after departing.

23. Under the previous points Based System, ICT migrants were generally unable to switch from inside the country into the Tier 2 (General) category, and were subject to a 12 month cooling off period after leaving the United Kingdom. The Rules have been amended so that applicants are permitted to hold Intra Company Transfer leave for up to five years in any six-year rolling period or up to nine years in any 10-year period for high earners.

24. Unlike the Skilled Worker category, ICT applicants are allowed to include certain allowances towards the required salary threshold – a benefit of using ICTs. Other than this use of allowances, the fees involved, and the application process, there are very few, if any, disadvantages in switching to the Skilled Worker route. For these reasons, along with the fact that the Skilled Worker category can lead to indefinite leave to remain (ILR) after 5 years, it is likely that the ICT category will become less popular with employers over time compared to the old Tier 2 (ICT) category.

25. However, it is important to remember that the Skilled Worker route is primarily intended to be used for overseas nationals who are filling permanent roles in the UK that arise from skills shortages.

26. The concept of ICTs is found in the WTO's General Agreement on Trade in Services⁴. On the international stage the UK needs to have a workable ICT category and it is hoped that the MAC consultation will assist in updating the criteria to make it more useful for multinational companies. As such, some of the requirements for the Skilled Worker category do not necessarily suit the nature of temporary assignments and the route remains important for employers where 'speed to ground' is crucial to their operations. In addition ICTs still have a purpose in some scenarios, including for example where the employee does not speak English (as set out below).

ICT CRITERIA

Salary Threshold

27. One of the policy purposes of a salary threshold is to prevent downward pressure on salary levels through employers recruiting foreign workers at lower wages than the resident workforce would accept⁵. However, this is a fundamental misconception of the way migration interacts with the labour market. The MAC found in their comprehensive analysis of the impact of EEA migration on the UK labour market that there is "overall no evidence that EEA migration has reduced wages for UK-born workers on average"⁶. At the time, there was no selection mechanism in migration from the EU, and no salary threshold those workers had to meet – but nevertheless, EU migration has had, on average, no impact on wages for resident workers. That calls into question the purpose of a salary threshold intended to prevent wage undercutting through migration when the available evidence suggests that does not happen.

28. However, as outlined in our 2020 policy paper, a salary threshold can be an appropriate control measure in an employer-sponsored route for higher-earning skilled workers, if it is set at a point that reflects earnings at the skill level the route is open to and the situation in the wider labour market, and if additional options with different controls are available. It can serve as a lever to ensure migration policies support fair work, protecting workers' rights, pay and access to employment and preventing exploitation and abuse.

29. When Skilled Worker replaced Tier 2 (General), the basic salary threshold was reduced from £30,000 to £25,600 (or the going rate for the role). For ICTs there was not a reduction and so the basic minimum salary threshold still remains high at £41,500 (or the going rate for the role). A salary threshold of £41,500 is too high for this route, well above the minimum of £25,600 and the going rates for most occupation codes for Skilled Workers.

30. Our response to the MAC commission on the salary threshold and a new 'Australian-style' points-based Immigration System in December 2019 expressed concern about the impact of a salary threshold at all, and in particular, that the proposed £30,000 threshold would be actively damaging for Scotland's economic,

⁴ [World Trade Organisation: General Agreement on Trade in Services](#)

⁵ [Migration: helping Scotland prosper \(www.gov.scot\)](#)

⁶ [Migration Advisory Committee - EEA migration in the UK: Final Report](#)

social and demographic prosperity⁷. It would disadvantage women, young people and part-time workers, and our rural and remote communities⁸.

31. The independent Expert Advisory Group on Migration and Population (EAG), in their February 2019 report, analysed differences in income across Scotland⁹. Their analysis shows that 63% of employees in Scotland (both UK and non-UK nationals) earn less than the previous Tier 2 £30,000 requirement and so the £41,500 threshold dramatically constrains Scottish employers' access to skills and the workers they need to deliver and grow.

32. The EAG have since produced an update which considers the lower salary threshold of £25,600 for the Skilled Worker route¹⁰. Taking into account the expansion of the skilled worker route (Tier 2) with the lowered salary threshold and the consideration of inclusion of some Regulated Qualifications Framework (RQF) 3 roles on the Shortage Occupation List (SOL); together with the contrasting steady decline of EEA migration since 2015; the EAG retained their estimates of a reduction in migration of 30-50%.

33. Additionally, the Group note, however, that a key issue is how the changes will affect the occupational, geographic and gender distribution of migration to Scotland. Their analysis of differences in income across Scotland showed that in 2019, 52.5% of employees in Scotland (both UK and non-UK nationals) earn less than £25,600. In contrast, 60.9% of jobs pay less than the original threshold of £30,000: only an additional 8.4% of jobs would therefore be available to migrants. Thus even a salary threshold at the new level of £25,600 would dramatically constrain Scottish employers' access to skills and the workers they need to thrive. There was also a striking divergence in the distribution of salary levels across areas of Scotland. Implementing an excessively high salary threshold would restrict the ability of employers to attract the international talent they need in all sectors of the economy, including new growth industries in creative, digital and fin-tech. Therefore while we welcome the MAC's previous recommendation to reduce the threshold to £25,600, without consideration of differentiated regional thresholds, this will still exclude key roles in Scotland.

34. **Table 2** highlights the varying median incomes across the UK. At median full-time gross annual pay, Scotland is the fourth highest region in the UK (after London, the South East and the East), with a median of £30,000. However, this masks a degree of variation in salary levels across Scotland and is skewed by increased salaries in Glasgow, Edinburgh and Aberdeen.

35. **Table 3** provides detail of non-UK nationals employment in Scotland during 2019. This highlights that non-UK nationals are concentrated within high and low skill

⁷ [Scottish Government response to call for evidence on salary thresholds and "Australia - style" points-based Immigration System](#)

⁸ [Scottish Government response to the call for Evidence on Salary Thresholds and an 'Australian-Style' points-based Immigration System \(www.gov.scot\)](#)

⁹ [UK immigration policy after leaving the EU: impacts on Scotland's economy, population and society \(www.gov.scot\)](#)

¹⁰ [UK immigration policy after leaving the EU: impacts on Scotland's economy, population and society - July 2020 update \(www.gov.scot\)](#)

jobs within the Scottish economy¹¹. Therefore, the impact of the salary threshold would be to restrict the required numbers of migrants working in Scotland, resulting in Scottish economic growth being hindered. This demonstrates that regional variation should be explored within this route. The impact upon Scotland's economic performance will undermine living standards and the prosperity of the Scottish people.

Table 2: Median full time gross annual pay by region (2019)

Description	Number of jobs ^b (thousand)	Annual percentage change		Percentiles											
		Median	Mean	10	20	25	30	40	60	70	75	80	90		
United Kingdom	16,216	30,353	2.7	37,428	2.3	17,189	20,327	21,870	23,483	26,698	34,583	39,591	42,642	46,485	60,890
North East	615	27,187	3.2	31,852	2.4	16,627	19,137	20,356	21,608	24,308	30,682	34,972	37,380	40,231	49,967
North West	1,771	28,137	2.8	33,479	2.4	16,573	19,273	20,609	21,895	24,895	32,019	36,844	39,693	43,041	53,513
Yorkshire and The Humber East	1,277	27,835	3.5	32,653	2.9	16,521	19,294	20,541	21,949	24,634	31,322	35,823	38,125	41,613	51,615
Midlands West	1,113	28,000	4.8	32,639	3.4	16,477	19,210	20,508	21,848	24,760	31,560	35,962	38,833	41,884	52,507
Midlands East	1,340	28,536	3.1	34,247	3.6	16,597	19,517	20,955	22,503	25,459	32,477	37,345	40,043	43,481	54,339
London	1,399	30,345	4.1	36,143	3.4	17,212	20,475	22,072	23,705	27,000	34,348	39,198	42,127	45,940	59,929
South East	2,595	38,992	2.2	53,100	0.9	20,000	25,000	27,299	29,544	34,145	44,624	52,526	58,082	65,478	93,870
South West	2,207	32,120	4.1	38,715	4.6	17,669	21,168	23,049	24,820	28,220	36,438	41,888	45,123	49,477	64,515
Wales	1,289	28,654	2.5	33,543	2.1	16,869	19,791	21,099	22,513	25,436	32,148	36,540	39,607	42,451	53,659
Scotland	702	27,500	4.4	31,251	3.0	16,638	19,205	20,447	21,762	24,353	31,418	35,871	38,163	40,411	48,426
Northern Ireland	1,394	30,000	2.4	34,916	0.9	17,374	20,431	21,808	23,290	26,479	33,726	37,964	40,452	43,591	54,886
Ireland	515	27,434	1.2	32,083	3.0	16,600	19,208	20,504	21,788	24,677	31,221	35,886	38,202	40,740	49,992

a Employees on adult rates who have been in the same job for more than a year.

b Figures for Number of Jobs are for indicative purposes only and should not be considered an accurate estimate of employee job counts. Estimates in bold are considered reasonably precise, all other estimates are considered precise.

Source: ASHE, 2019 Office for National Statistics

¹¹ [Scottish Government response to the Migration Advisory Committee: Call for Evidence on the Shortage Occupation List \(www.gov.scot\)](https://www.gov.scot/publications/scottish-government-response-to-the-migration-advisory-committee-call-for-evidence-on-the-shortage-occupation-list/pages/11)

Table 3 - Major Occupation Group - Annual pay - Gross (£) - For full-time employee jobs and employment of non-UK Nationals, 2019

Major Occupation Group	Code	Number of jobs ^b (thousand)	Annual percentage		Annual percentage		Percentiles		Number of non-UK nationals in employment (16 years and above) ²
			Median	change	Mean	change	25	75	
SCOTLAND									
Managers, directors and senior officials	1	167	42,381	4.7	51,122	1.5	29,462	61,742	13000
Professional occupations	2	366	37,663	3.8	42,769	-0.1	30,819	47,817	39000
Associate professional and technical occupations	3	230	32,076	1.9	36,962	-0.3	25,571	41,175	17000
Administrative and secretarial occupations	4	132	22,899	1.0	25,683	-0.6	19,218	29,120	13000
Skilled trades occupations	5	143	28,530	3.2	30,437	3.8	22,050	36,298	21000
Caring, leisure and other service occupations	6	98	20,725	-0.1	21,822	-0.2	17,259	24,888	19000
Sales and customer service occupations	7	72	20,240	3.7	22,242	1.2	17,169	25,272	13000
Process, plant and machine operatives	8	94	25,052	-3.5	27,225	-0.4	20,059	32,723	19000
Elementary occupations	9	94	20,060	1.6	21,247	1.7	16,655	25,591	44000
UNITED KINGDOM									
Managers, directors and senior officials	1	2,182	44,597	2.1	61,610	1.6	30,097	69,869	
Professional occupations	2	4,010	39,384	2.3	44,367	0.7	30,928	50,584	
Associate professional and technical occupations	3	2,826	33,051	0.9	39,171	-0.6	25,581	43,722	
Administrative and secretarial occupations	4	1,608	23,487	2.2	26,852	3.9	19,180	30,224	
Skilled trades occupations	5	1,503	28,273	3.4	30,133	2.9	21,782	35,965	
Caring, leisure and other service occupations	6	1,041	19,385	4.4	20,489	4.7	16,041	23,805	
Sales and customer service occupations	7	792	20,402	2.4	22,828	3.9	16,900	25,887	
Process, plant and machine operatives	8	1,118	25,751	2.2	27,805	3.1	20,448	33,068	
Elementary occupations	9	1,138	20,579	3.7	21,976	3.9	17,110	25,985	

36. Previously, the main threshold in Tier 2 was set at the 25th percentile of the range of earnings in roles at the minimum skill level required for the route, currently graduate roles at RQF 6. The qualification threshold for the Skilled Worker route has been reduced from RQF 6 to RQF 3 level roles (equivalent to A-levels or Highers). The MAC previously found that the 25th percentile of the range of earnings in roles at RQF 3 was £20,100.

37. Some stakeholders have previously suggested a salary threshold set at a level that is a multiplier of National Minimum Wage. For example, a full-time salary that is 50% above National Minimum Wage is approximately £23,000. If the goal of a salary threshold is to provide reassurance to resident workers that migration is not undercutting wages, linking the minimum threshold to the Real Living Wage could be an option to explore. This would automatically uprate as changes to minimum wage levels come into place.

38. Many organisations and stakeholders who have made a public statement of their views on the salary threshold to date, with or without an expressed methodology, have clustered in the range of £20,000 to £24,000, approximately. The Russell Group and Universities Scotland suggest £21,000, and the Welsh Centre for Public Policy (commissioned and endorsed by the Welsh Government) proposes £20,000.

39. The Scottish Government has previously highlighted that a points-based approach to selecting migrants can be an effective way to broaden the range of criteria for eligibility, allowing migrants to score points across multiple characteristics¹². It is typically not tied to a migrant having a job offer, although that could be one of the criteria for which points are awarded. **A points-based system should therefore not require a salary threshold.** Points could be awarded for earnings or for skills or experience in a particular sector. An approach focusing on skills or experience in key sectors could also help to address gaps in sectors of high

¹² [Scottish Government response to call for evidence on salary thresholds and "Australia - style" points-based Immigration System](#)

social value but where the qualifications and salary levels would not meet the thresholds set by the previous Tier 2 or current Skilled Worker visa routes. However the Scottish Government is concerned that the UK Government's approach which focuses solely on the economic value of migrants ignores the wider issue of social value and the contribution that people who have moved to Scotland, and the UK as a whole, make to our cultural life and our communities.

40. The MAC previously suggested that a higher threshold for London, with a single lower threshold for other parts of the UK, would be a possible approach to regional salary levels for the Skilled Worker route¹³. The Australian system does include regional flexibilities within its points-based system. The Australian Government works with state and territory governments to offer a range of State Specific and Regional Migration initiatives which include varying criteria that recognise the specific needs of rural and regional areas and are designed inter alia to address regional skill shortages. Previous evidence submitted to the MAC in response to the review of the Skilled Worker salary threshold could be used as a baseline for setting regional levels for ICTs.

41. Given its temporary nature, ineligibility for Indefinite Leave to Remain, and low numbers of applications compared to the Skilled Worker visa, there is a low-risk opportunity to pilot regional salary thresholds within the ICT route to better understand how variations of this lever could help support all regions of the UK, particularly as the UK starts to recover from the economic impact of the pandemic.

42. Our view is that regional variation should be explored within this route. Since the UK Government previously ignored stakeholder concerns and decided to retain a salary threshold for the Skilled Worker route, at the very least the ICT threshold should be lowered to £25,600 for intra-company transfers and £20,480 for intra-company graduate trainees in line with Skilled Worker applications for established workers and new entrants. The cost of an international entity doing business in the UK already includes the maintenance of a sponsor licence and effectively paying a £1,000 per year of the visa tax in the form of the Immigration Skills Charge. Even where sponsors would like to use the ICT category, they may find this minimum salary level prohibitive, compared to the lower Skilled Worker salary threshold.

Allowances

43. Unlike the Skilled Worker category, ICT applicants are allowed to include certain allowances towards the required salary threshold – a benefit of using ICTs. However, the allowances must be guaranteed to be paid for the duration of the UK employment (such as a London weighting) or be paid as a mobility premium to cover the additional cost of living in the UK. Where allowances are solely for the purpose of accommodation, they will only be taken into account up to a value of either:

- 30% of the total salary package, where the applicant is applying on the Intra-Company Transfer route; or

¹³ [Migration Advisory Committee - EEA migration in the UK: Final Report](#)

- 40% of the total salary package, where the applicant is applying on the Intra-Company Graduate Trainee route

44. Other pay and benefits, such as those outlined below, are not considered when calculating allowances¹⁴:

- flexible working where the nature of the job means that hours fluctuate and pay
- payments or allowances that cannot be guaranteed
- additional pay such as shift, overtime or bonus pay, whether or not it is guaranteed
- employer pension and national insurance contributions
- in-kind benefits, such as equity shares, health insurance, school or university fees
- company cars or food
- one-off payments, such as 'golden hellos'
- any payments relating to immigration costs, such as the fee or Immigration Health Charge
- payments to cover business expenses, including (but not limited to) travel to and from the applicant's country of residence, equipment, clothing, travel or subsistence

45. Feedback from stakeholders in the IT & Financial Services sector who rely on talent from India and Eastern Europe is that the ability to use allowances allows them to meet the minimum salary threshold as these countries typically have lower base salaries. This also means for any time when they hold the ICT visa and are not in the UK, the sponsor is not obliged to pay them the minimum rates required for the visa. Stakeholders also indicated that they preferred to use allowances because many workers in the UK undertaking similar roles will not earn £41,500. Employers want to avoid inflating ICT worker base salaries purely to meet the threshold as this will result in wage discrepancies between workers on the ICT route and staff based permanently in the UK.

46. Stakeholders also highlighted that some of the above benefits should be capable of contributing to the salary threshold, particularly if those payments are guaranteed and budgeted for by the employer. **We recommend that guaranteed payments such as shift and overtime allowances, bonus pay, employer pension and national insurance contributions and in-kind benefits, such as equity shares, health insurance, school or university fees are made eligible for inclusion in the salary threshold calculation.**

Skill Level

47. The UK Government has placed a strong focus on 'skilled migration' and uses qualifications and salary as measures to assess skill levels. Many respondents raised concerns that this definition of "skilled work" excluded important skilled professions, vital to Scotland's economy.

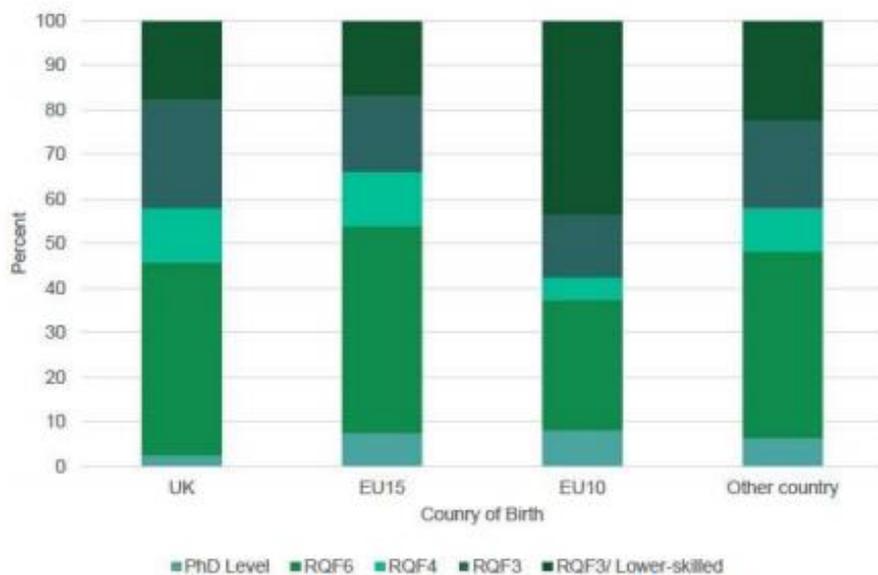
¹⁴ [Home Office: Sponsor an Intra-Company worker](#)

48. In keeping with the salary thresholds, the Tier 2 (General) RQF level 6 threshold was reduced to level 3 for Skilled Worker applications. That has not been the case for ICTs for which the sponsored role must still be at level 6. This is unhelpful for ICTs given many roles considered to be of so called ‘lower skill level’ will not qualify. For example, across all industry sectors there are important roles which the UK Government would define as lower-mid skill level roles that would not currently qualify for an ICT visa.

49. The distribution of RQF levels in Scotland by country of birth is shown in **Figure 1** below. Those born outside the UK are more concentrated at the extremes of the qualification distribution: for example, the proportion of those born in the EU who hold a PhD is more than three times the equivalent UK share. Migrants at this skill level are eligible within the new immigration system.

50. The proportion of labour from the EU-10 countries that falls below the RQF 6 skill level is more than double the UK proportion. This implies that there are likely to be fewer migrants in the middle of the income distribution than there are UK-born. It is this so called ‘low-skilled’ labour as the UK Government defines it from the EU-10 countries which has been impacted the most by the ending of free movement. It demeans these people to class them as ‘low’ or ‘unskilled’. Going forward the UK Government must show a greater appreciation of all contributions and this should be articulated in an inclusive and respectful way. The current global pandemic has powerfully demonstrated that what the UK Government may have previously described as “lower-skilled” jobs are in fact a whole range of absolutely vital roles, filled by dedicated people with valuable skills¹⁵.

Figure 1: Regulated Qualifications Framework (RQF) and Country of Birth



Source: ONS Labour Force Survey 2013-2017

51. **Table 4** shows estimated annual earnings in Scotland by country of birth and level of qualification based on the LFS 2013-2017 dataset. Consistent with the argument above, the range of earnings is wider for those born outside the UK. For

¹⁵ [Coronavirus \(COVID-19\): letter to UK government about future borders and immigration system - gov.scot \(www.gov.scot\)](https://www.gov.scot/Coronavirus-(COVID-19)-letter-to-UK-government-about-future-borders-and-immigration-system)

example, median earnings for those born in the EU-15 with PhD level qualifications exceed £54,200 while their so called “low-skilled” counterparts earn only £14,100. These compare with £35,200 and £18,100 for equivalent levels of skill among the UK-born workforce. This demonstrates the need for regional income thresholds in order to support Scotland’s distinct economic needs to ensure that we have the workforce and skills to deliver our ambitions for Scotland’s post-covid economic recovery.

Table 4: Median Annual Salary by Level of Qualification and Country of Birth

	PhD	RQF6	RQF4	RQF3	Lower-skilled	All
UK	£35,200	£34,400	£25,600	£23,100	£18,100	£14,500
EU-15	£54,200	£30,100	£22,900	£24,100	£14,100	£16,900
EU-10	£40,200	£31,700	N/A	£18,300	£13,300	£14,600
Non-EU	£35,100	£32,700	£23,100	£22,600	£15,700	£14,100
All	£35,200	£34,200	£25,300	£23,100	£17,600	£14,500

Source: ONS Labour Force Survey 2013-2017

52. In the hospitality sector, hotel and accommodation managers and restaurant and catering managers would not qualify. In the scientific sector laboratory technicians do not qualify and in engineering/tech electrical technicians and engineering technicians would not qualify. In IT, operations and user support technicians fall short and in the legal sector it’s the same for legal associate professionals (including paralegals). In finance, financial and accounting technicians, buyers and procurement officers, business sales executives, marketing associate professionals, insurance underwriters and human resources and industrial relations officers all do not qualify

53. Our view is that there is a strong case for lowering the skills threshold to RQF level 3 for ICT applications, bringing it in line with the Skilled Worker route.

English Language Requirement

54. A key advantage of the ICT category is that there is no English language requirement. It is understood that the requirement exists to ensure that individuals eligible for indefinite leave to remain have suitable knowledge of the English language and about life in the United Kingdom in order to settle and fully integrate into communities in the UK¹⁶.

55. Applicants to the Skilled Worker route must evidence that they can read, write, speak and understand English to at least level B1 on the Common European Framework of Reference for Languages (CEFR) scale. Proof of English language capabilities can be achieved by¹⁷:

- passing a Secure English Language Test (SELT) from an [approved provider](#)

¹⁶ [Immigration Rules Appendix KoLL - Immigration Rules - Guidance \(www.gov.uk\)](#)

¹⁷ [Skilled Worker visa: Knowledge of English \(www.gov.uk\)](#)

- having a GCSE, A level, Scottish National Qualification level 4 or 5, Scottish Higher or Advanced Higher in English, gained through study at a UK school that you began when you were under 18
- having a degree-level academic qualification that was taught in English - if you studied abroad, you'll need to [apply through Ecctis \(formerly UK NARIC\)](#) for confirmation that your qualification is equivalent to a UK bachelor's degree, master's degree or PhD
- be a citizen of a designated English majority country.
- already passed an English Language assessment that is accepted by the relevant regulated professional body (doctors, dentists, nurses, midwife or vet).

56. Having to undertake an approved English language test increases overall application costs and delays the visa application process. Individuals may have to wait up to 28 days after booking to take a test. The test must generally be taken in person but may not always be at the nearest location. If there is not an approved test location in the applicant's country, they will have to travel to another country to take the test.

57. Stakeholders have noted that post- Brexit, EEA nationals who now require sponsorship will struggle to meet English language requirements as a large number of European universities are not recognized by NARIC/ENIC as having courses taught in English.

58. In addition, stakeholders have highlighted that 'speed to ground' is crucial for roles where specialist knowledge is required and there is a need to mobilise staff quickly to resolve an issue at their UK entity. The ICT route is preferable because of the English language requirement exemption and therefore suitably agile for seconding specialist IT or engineering staff, particularly from non-majority English speaking countries such as India and South Africa. Employees will generally be coming to the UK for a short period to address a time sensitive issue and are deemed by the employer to have sufficient English language knowledge to carry out the necessary work successfully. Therefore meeting the English language requirement is less important in these circumstances. If workers are required in the UK longer term stakeholders have indicated that they will often use the ICT route to get workers into the UK quickly with plans to then attain the English qualification in-country, allowing them to switch onto the Skilled Worker route.

59. ICTs are crucial for many industries such as IT, Oil and Gas and renewables sectors and the route has arguably become more important in a post-Brexit context. Therefore the route should be retained to continue to provide the responsiveness often required by business but lacking across the other visa categories of the UK points-based immigration system.

Length Of Service With Overseas Group Company

60. Unless the salary for the UK ICT sponsored role is £73,900 or above, the employee must have worked for the overseas group company for at least 12 months. The 12 months work can have been accumulated over any period that the applicant was continuously working for the sponsor group, in or out of the UK. The reasoning behind the 12 month minimum is unclear although it may be based on an

assumption that it takes at least one year of 'acclimation' before an overseas group employee can be considered sufficiently useful for the UK sponsor.

61. Stakeholders have expressed the view that it does not take as long as 12 months for the employee to have developed specialist skills and experience about the products and services and that the length of service requirement could be considerably lower. Employers generally use a probationary period at the commencement of employment during which they can assess the employee's ability and suitability for the role. Whilst there is no legal definition of or requirement for a probationary period, a 3-6 month range is not uncommon. **Based on this feedback, our recommendation is that the time in employment should be halved to 6 months.**

Ability To Apply For Indefinite Leave To Remain (ILR)

62. Unlike Skilled Workers, ICTs do not lead to ILR. Additionally, the current ICT rules only allow the employee to stay for 5 years in a 6-year period, or 9 years in a 10-year period if the UK salary is £73,900 or above. As a result, normally sponsored ICT workers will need to leave the UK after a maximum of 5 years.

63. Stakeholders have expressed a preference for the temporary nature of the ICT route. By bringing an employee into the UK on this route, it allows the employer to clearly demonstrate that the nature of employment in the UK is time-limited and the employee will be expected to return to their country of origin at the end of their secondment.

64. **The Scottish Government view is that the ICT route should not lead to settlement as the primary function of the route is to allow multinational organisations to mobilise their workforce quickly to meet their short-term needs.** If both parties agree that there is a need for the role to be permanently filled in their UK entity the main changes to the ICT category mean that ICT migrants should switch to the Skilled Worker category from within the UK. Whilst the time spent under the ICT category does not count towards the 5 years required to apply for indefinite leave to remain, **the ability to switch to the Skilled Worker category does provide ICT migrants with a path to settlement. However the Scottish Government is clear that the switching process should be quick and flexible to facilitate settlement in the UK.**

GLOBAL 'PARKING'

65. Increased immigration scrutiny, lengthy processing times and a limited number of visas available annually all have created challenges for employers seeking to sponsor foreign employees for U.S. based roles over the past several years. Competition for jobs in the United States and demand for visas to enter the US grows daily. Furthermore, there is a limit on the number of H1B visas granted each year. From 24 June 2020 until 31 March 2021 several visa categories were suspended by the United States Government citing the risks presented to the US

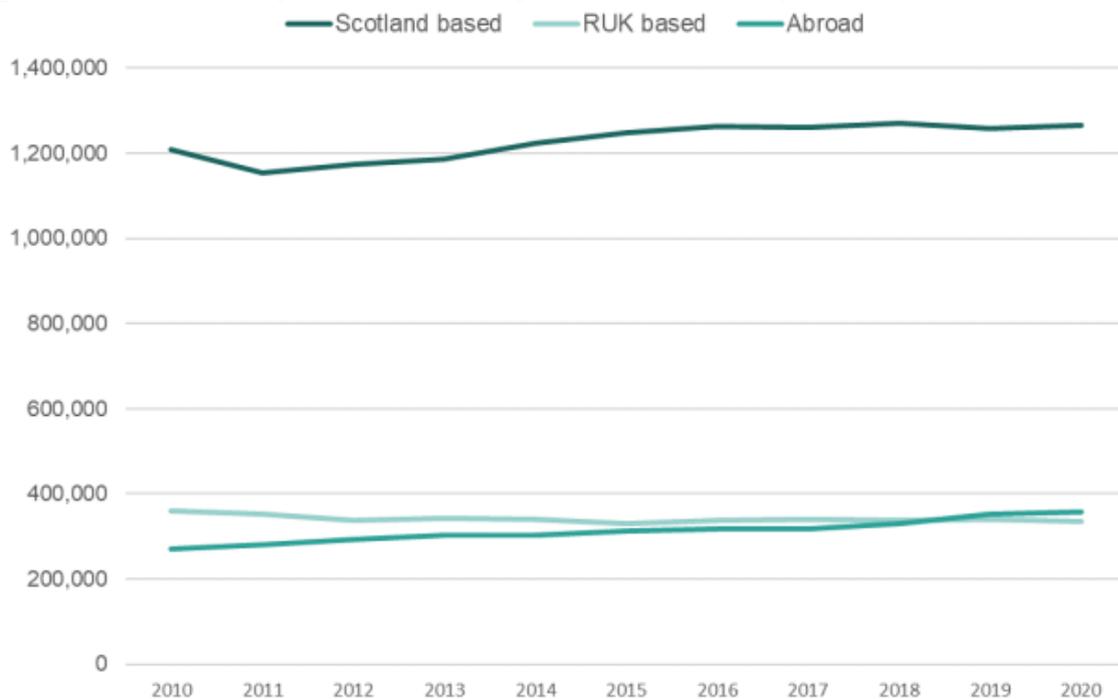
labour pool due to the global coronavirus pandemic¹⁸¹⁹. These included H-1B and H-2B non-immigrants; L-1A executives and managers; L-1B specialized knowledge workers. In light of these conditions, international assignments are growing in use²⁰.

66. Multinational employers are leveraging a strategy known colloquially as global parking to fill key roles within their organisation by temporarily placing or ‘parking’ talent in one of their international entities until they are able to secure an H-1B visa to work in the USA.

67. Global companies from across a broad range of sectors such as JP Morgan, GlaxoSmithKline and Amazon, as well as fast-growing start-ups, are choosing to invest and grow their operations in Scotland. The ICT route provides an opportunity to strengthen existing business relationships and encourage new inward investment by offering Scotland as a European base for large multinationals to ‘park’ skilled workers.

68. Between March 2019 and March 2020, the number of Abroad-owned businesses in Scotland increased from 2,870 to 3,010. As at March 2020, there were more Abroad-owned businesses (3,010) than RUK based businesses (2,935) operating in Scotland²¹. Similarly, as noted in **Figure 2**, there were more Scottish jobs in Abroad-owned businesses than in RUK based businesses in March 2020.

Figure 2: Private sector jobs in Scotland, by business ownership, 2000 to 2020



¹⁸ [Trump Suspends H-1B and Other Visas That Allow Foreigners to Work in the U.S. - The New York Times \(nytimes.com\)](https://www.nytimes.com/2020/03/16/us/politics/trump-h1b-visas.html)

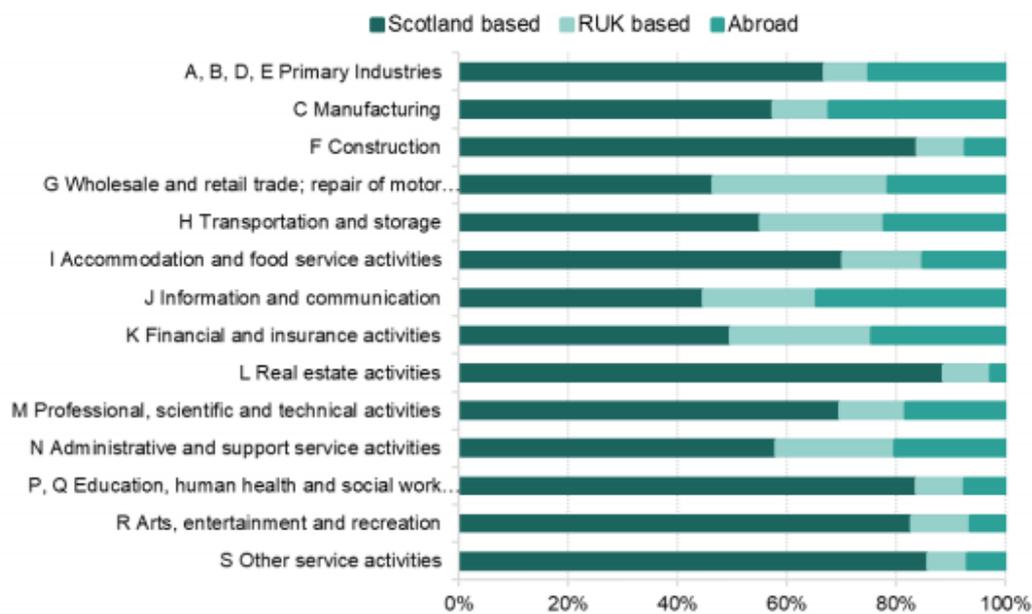
¹⁹ [Update on Presidential Proclamation 10052 \(state.gov\)](https://www.state.gov/update-on-presidential-proclamation-10052/)

²⁰ [H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models | USCIS](https://www.uscis.gov/h1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models)

²¹ [Businesses in Scotland: 2020 \(www.gov.scot\)](https://www.gov.scot/businesses-in-scotland-2020/)

69. As previously stated, 35.4% of private sector employment as at March 2020 was in businesses with their ultimate base outside Scotland. Breaking this down, 17.1% of Scottish private sector employment was in businesses with their ultimate base in the RUK and 18.3% was in businesses with their ultimate ownership Abroad (i.e. outside the UK). As outlined in **Figure 3** the share of employment in Abroad-owned businesses varies by industry sector. For example, 34.5% of Scottish 'Information and communication' employment as at March 2020 was in Abroad-owned businesses, compared to 2.6% of Scottish 'Real estate activities' employment.

Figure 3: Share of employment by ownership and industry sector, as at March 2020



70. As at March 2020, there were 1,265 EU Abroad-owned businesses operating in Scotland – employing 128,780 people and generating a turnover of £35 billion (36.3% of all turnover from Abroad-owned registered businesses in Scotland). In terms of individual countries, USA-owned businesses accounted for the highest share of Scotland's Abroad-owned businesses, Abroad-owned employment and Abroad-owned turnover.

71. As at March 2020, there were 660 USA-owned businesses operating in Scotland – employing 112,740 people and generating a turnover of over £31 billion (32.2% of all turnover from Abroad-owned registered businesses in Scotland). The ICT route will be of particular benefit for these businesses whilst awaiting US work visas for their staff.

72. Individuals 'parked' in Scotland contribute to the Scottish tax base and bring the necessary skills to key growth sectors such as Fintech. With an established and growing fintech sector, a skilled and adaptable workforce, and easy access to the

world's global financial markets Scotland's financial sector is the largest in the UK outside of London, hosting more than 2,000 financial services companies²².

73. Scotland also has an extremely attractive cost of living compared to other leading financial centres²³. Cost of living expenses (excluding accommodation) in Scotland's cities relative to New York City are 31% less expensive in Dundee, 30% less expensive in Scotland's largest city, Glasgow, 26% less expensive in Aberdeen, and 24% less expensive in the capital, Edinburgh²⁴. Along with highly competitive salaries, Scotland's cities offer monthly living costs that are roughly 10% lower than other UK cities such as Cambridge and Oxford and as much as 34% lower than London.

74. Coupled with the above benefits, HSBC, one of the world's largest banking and financial services organisations cited easy access to other global locations, in London, India, North America, and the Far East as a deciding factor in choosing Scotland to establish a UK centre for its global risk and compliance operations²⁵.

75. The ICT route is an important benefit on offer to multinationals wanting to establish a European base and contributes to Scottish Government objectives outlined in our inward investment plan which sets out our ambition for Scotland as a leading destination for inward investment aligned with our values as a nation²⁶. Similarly to the 'digital nomad' visas being promoted by countries such as Romania, Finland, Estonia and Portugal²⁷, **the ICT route is also acts an indirect lever for showcasing the benefits of moving to Scotland and attracting talent to settle here. The route offers a way for international workers to trial living and working in Scotland.** If there is then a desire to remain in the UK, and agreement is reached with their employer, ICT workers can transfer onto the Skilled Worker route with the aim of settling in the UK instead of returning to their country of origin or relocating to the US.

EU-UK TRADE AND COOPERATION AGREEMENT

76. The UK Government did not seek an extensive mobility framework with the EU which has created barriers to cross-border mobility and exchanges in both directions. As outlined in our submission to the MAC on the contribution of EEA citizens to Scotland²⁸, and our discussion paper Scotland's Place in Europe: People, Jobs & Investment²⁹, the UK Government's drastic migration reduction strategies have the potential to seriously harm Scotland's prosperity. The contribution of migration to Scotland's economy and demographic profile is crucial, and relatively more important than it is to other parts of the UK. Data published by the National Records of Scotland (NRS) shows that 7% of Scotland's population is made up of

²² [Scotland's financial services and fintech industries \(sdi.co.uk\)](https://www.sdi.co.uk/financial-services-and-fintech-industries)

²³ https://www.numbeo.com/cost-of-living/rankings_current.jsp

²⁴ [Cost of living for businesses locating in Scotland \(sdi.co.uk\)](https://www.sdi.co.uk/cost-of-living-for-businesses-locating-in-scotland)

²⁵ [HSBC on growing its centre of excellence in Scotland \(sdi.co.uk\)](https://www.sdi.co.uk/hsbc-on-growing-its-centre-of-excellence-in-scotland)

²⁶ [Shaping Scotland's economy: inward investment plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/shaping-scotland-s-economy-inward-investment-plan)

²⁷ [Digital Nomad Visas in EU Countries \(etiasvisa.com\)](https://etiasvisa.com/digital-nomad-visas-in-eu-countries)

²⁸ [The contribution of EEA citizens to Scotland: response to the Migration Advisory Committee call for evidence \(www.gov.scot\)](https://www.gov.scot/the-contribution-of-eea-citizens-to-scotland-response-to-the-migration-advisory-committee-call-for-evidence)

²⁹ [Scotland's place in Europe: people, jobs and investment \(www.gov.scot\)](https://www.gov.scot/scotland-s-place-in-europe-people-jobs-and-investment)

non- UK nationals, many of whom fulfil vital roles in sectors integral to Scotland's economy, including the NHS³⁰.

77. Already, the impact of Brexit is evident in the low number of work-related visas being applied for by EEA nationals. Recent UK Government Immigration statistics relating to the year ending March 2021 highlight that approximately 3,600 visas were granted to EEA nationals, 30% of which were under the Skilled Worker category.³¹ Sponsorship is expensive with onerous compliance requirements and could have acted as a deterrent to some employers creating problems for UK employers in hiring the best European talent.

78. Frontier Worker and Skilled Worker routes made up 80% of all EEA granted work visas. The Frontier Worker category was created as a result of Brexit. It allows EEA nationals who regularly worked in the UK before 11pm on 31 December 2020 but live outside the UK to apply for a document certifying their rights³². As this route is particularly attractive for cross border arrangements and flexible working patterns, it is expected to grow in prominence in the next quarter.

79. The mobility provisions outlined in the EU-UK Trade and Cooperation Agreement (TCA)³³ only allow for short term business visits limited to 90 days in any 180-day period (trips for leisure purposes also count towards this total).

80. UK businesses and individuals can continue to undertake some business activity and deliver some services in the EU (and vice versa) albeit subject to greater restrictions than when the UK was a member state. The activities permitted and applicable visa requirements will also vary between EU states. The list of activities permitted on visa-free short term business trips is limited as are the contractual service supplier/independent professional categories of Mode 4 of the General Agreement on Trade in Services (GATS); some professionals such as musicians, artists, performers and journalists do not benefit from either arrangement³⁴.

81. GATS 4 applies to all 164 WTO members with a focus on trade in services—applies to all services supplied on a commercial basis. Generally, GATS mode 4 is seen as covering:

82. persons providing services where a foreign service supplier obtains a contract to supply services to the host country company and sends its employees to provide the services;

83. independent service providers abroad: an individual selling services to a host country company or to an individual;

84. persons employed abroad by foreign companies established in the host country (but excluding nationals of the host country).

³⁰ [Non-British population of Scotland continues to increase | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/news/2021/04/20/non-british-population-of-scotland-continues-to-increase)

³¹ [Immigration statistics, year ending March 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/immigration-statistics-year-ending-march-2021)

³² [Frontier Worker permit - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/visas/frontier-worker-permit)

³³ [The EU-UK Trade and Cooperation Agreement | European Commission \(europa.eu\)](https://ec.europa.eu/eu-uk-trade-cooperation-agreement/)

³⁴ [World Trade Organisation: Movement of natural persons](https://www.wto.org/press/pr/2017/17-04-01-natural-persons.htm)

85. Companies commented that there are groups of individuals who do not qualify for the Skilled Worker Route. It is common practice for law firms to rotate their trainee solicitors – for example European nationals, with a six month to one year stay in the UK. Following Brexit, EEA nationals no longer have the right of freedom of movement within the UK and this type of quick mobilisation for firms is no longer an option.

86. Often ICTs are about providing a service to a client in the UK, for example to work on the integration of software and tech. Stakeholders have suggested that this could be done through a new service provision model, without the need for a UK sponsor. The EU-UK Trade and Cooperation Agreement represents a missed opportunity for a beneficial services provision across the EU in the form of the Contractual Service Providers option which in the UK still requires a UK sponsor. The UK-EU TCA does however have a review clause for both parties to revisit the list of permitted activities for short-term business visitors.

87. One positive outcome from the EU-UK negotiations is that certain fees such as the Immigration Skills Charge may no longer be levied for ICT applicants transferring to the UK from a European entity from 2022. For a 5-year visa, this could potentially be a saving of £5,000 and we would welcome this development.

88. Engagement with Scottish stakeholders highlighted that the route can be used by sponsors to assist in completing third party client contracts in the UK. This is useful for businesses in the IT, construction and manufacturing sectors for short-term assignments to cover shortages. As many contracts last for less than six months, the company are not subject to the Immigration Health Surcharge or the Immigration Skills Charge.

89. The UK is currently not experiencing the full impact of reduced EU mobility due to the current COVID-19 international travel restrictions. It is anticipated that there will be an increase in similar organisations looking to the ICT route to meet their short term needs where the UK-EU TCA has failed them.

90. The UK Government should reopen discussions with the EU to develop a new comprehensive service provision model, without the need for a UK sponsor. At a minimum list of permitted activities within the visitor route should be reviewed and expanded to meet the short term needs of business and compensate for mobility gaps in the TCA.

GLOBAL BUSINESS MOBILITY VISA

91. In the 2021 Budget speech Chancellor of the Exchequer, Rishi Sunak, announced “reforms to the immigration system [to] help ambitious UK businesses attract the brightest and best international talent” including a commitment to launching a new Global Business Mobility visa by spring 2022 for overseas businesses to establish a presence or transfer staff to the UK³⁵.

³⁵ [Budget Speech 2021 \(www.gov.uk\)](https://www.gov.uk/government/speeches/budget-2021)

92. The new route will incorporate Intra-Company Transfers, Sole Representatives, contractual service providers and import/export related secondments. **Our view is that if the intra-company visa is not retained as a separate route the benefits of the visa outlined in this paper should be incorporated into the new global mobility visa.**

93. Stakeholders also have communicated that **the new Global Business Mobility visa should expand on the provisions of the Sole Representative category and allow a small team of personnel to move to the UK to establish an office.** They would welcome this move as they believe it would make the UK a more competitive place to do business.

94. For example, companies looking to penetrate the UK market need to have a UK entity in order to be able to apply for a Sponsor Licence, with at least one senior person based in the UK who can act as the Authorising Officer. The organisation can choose to employ someone locally, or alternatively the Sole Representative category is a useful solution as it allows a senior level employee of the overseas company to come to the UK to set up operations. Once the UK entity is established any staff of the organisation based outside the UK can transfer to the UK using the Skilled Worker or ICT route.

95. The drawback to the Sole Representative route is that companies are limited to just one person transferring to the UK. Stakeholders in the tech sector in particular have stated that this is problematic the ability to only send a single team member does not allow them to react quickly enough to market fluctuations by the time the sponsor licence is obtained and the necessary visa applications submitted in order to mobilise a team onto a client site.

96. However, feedback from stakeholders is that **any new mobility offerings should not be arbitrarily restricted to overseas businesses coming to the UK to fulfil high value contracts as this disregards the contribution and growth potential of SMEs to the UK economy.**

97. As at March 2020, there were an estimated 364,310 private sector businesses operating in Scotland³⁶. Almost all of these businesses (98.2%) were small (0 to 49 employees); 4,055 (1.1%) were medium-sized (50 to 249 employees) and 2,435 (0.7%) were large (250 or more employees). Small (0 to 49 employees) businesses alone accounted for 98.2% of all private sector businesses, 42.7% of private sector employment and 27.3% of private sector turnover as at March 2020. The 2,435 large (250+ employees) businesses operating in Scotland as at March 2020 accounted for 44.3% of private sector employment and 58.8% of private sector turnover.

98. As SMEs dominate the Scottish economy and account for 99.3% of all private sector businesses, 55.7% of private sector employment and 41.2% of private sector turnover in Scotland, the Scottish Government view is that the criteria on sending organisations such as size of company, value of investment and potential job creation should also be broad enough to ensure smaller organisations are eligible for the route. The Global Mobility visa on the whole is a welcome addition to the package of talent attraction routes. However, it should be noted that under the

³⁶ [Businesses in Scotland: 2020 \(www.gov.scot\)](http://www.gov.scot)

'points-based system' the main visa routes are for high earners, with almost no route at all for so-called 'low-skilled' workers. Or more accurately workers who do not earn a salary at a level to qualify for a visa. Scotland needs people to contribute at all levels of the economy, in vital, challenging roles in care, construction, food production and elsewhere.

99. It should be noted that 53% of roles in Scotland earn less than £25,000, and up to 90% in the care sector, according to analysis from the Expert Advisory Group on Migration and Population³⁷. The continued focused on so called 'highly skilled' workers and the UK Government decision to delay the implementation of the majority of RQF 3-5 roles eligible for the Shortage Occupation List will be disastrous for our economy and society and will risk acute labour shortages. This approach by the UK Government also ignores the wider issue of social value and the contribution that people who have moved to Scotland make to our cultural life and to our communities.

IMPACT OF THE PANDEMIC

100. The Covid-19 pandemic has fundamentally altered global human mobility and many labour migration programmes have been suspended. The International Organization for Migration (IOM) has been tracking the progressive restriction of global mobility pathways throughout the pandemic and, although many migration routes will reopen after the threat of COVID-19 subsides, there is a risk that Governments will use the current restrictions to reinforce broader longer-term limitations on inward migration³⁸.

101. The impact of Covid-19 pandemic on the UK immigration system is highlighted by a 33% fall in the skilled work visas granted, in the year ending March 2021, to 76,638³⁹. There were 122,512 work-related visas granted to foreign nationals so they could work in the UK in the year ending March 2021 (including dependants), 37% lower than in the previous year, new government figures show⁴⁰. The steepest decline was in intra-company transfer visas which dropped 72% to 13,700 until 31 March this year.

102. The utilisation of the ICT route has partly reduced since the introduction of the new UK immigration system which removed the cap and cooling off period for the Skilled Worker route as well as abolishing the resident labour market test (RLMT). The suspension of the immigration cap avoids uncertainty for employers that applied at times where the cap has been reached. The cap was previously set at 20,700 per year for Tier 2 (General) which was split into monthly allocations and the number of applications regularly exceed the monthly allocation of available places throughout 2018⁴¹.

³⁷ [UK immigration policy after leaving the EU: impacts on Scotland's economy, population and society - July 2020 update - gov.scot \(www.gov.scot\)](#)

³⁸ [UN Flow monitoring \(iom.int\)](#)

³⁹ [Home Office Immigration Statistics May 2021](#)

⁴⁰ [Home Office Immigration Statistics May 2021](#)

⁴¹ [Doctors and nurses to be taken out of Tier 2 visa cap \(www.gov.uk\)](#)

103. Given the UK Governments well established hostile approach to migration Home Office Ministers may use the pandemic as a tool to curtail immigration. It is not inconceivable that the UK Government would consider reintroducing the cap or the RLMT to ensure that settled workers in the UK have the opportunity to apply for roles before allowing employers to offer positions to migrant workers. Both migration levers did not previously apply to the ICT route thus making it a more attractive option to employers.

104. It is the Scottish Government's view that, whilst usage of the visa has declined in recent months, **the ICT route should be retained in order to provide rapid mobilisation of international workers to meet business needs**. This will become increasingly important for our economic recovery if more restrictive measures are reapplied to the Skilled Worker route in order to 'protect' the domestic workforce. It is essential for Scotland's economic recovery to be able to attract talented and committed people from Europe and across the world to work here without excessive barriers. Migration policy should support mobility, collaboration and innovation.

CONCLUSION

105. The ICT route should be retained in order to provide rapid mobilisation of international workers to meet business needs. Brexit has already had a damaging impact on our economy and the Scottish Government believe that the loss of freedom of movement will significantly undermine the Scottish economy over coming years and decades. Without freedom of movement, the UK immigration system should be as close to replicating it as possible. The valuable role that migrants play in our society has been highlighted by the current COVID-19 crisis.

106. It is the Scottish Government's view that, whilst usage of the visa has declined in recent months, the ICT route should be retained in order to provide rapid mobilisation of international workers to meet business needs. The evidence from Scottish stakeholders is that the ICT route has been underutilised during the Covid-19 pandemic, which has stymied the requirement for this route. Additionally, we have not seen the impact of Brexit upon Scotland's labour market during the pandemic. Once the economy begins to open up, we will begin to see the detrimental impact of the loss of freedom of movement upon Scotland's businesses. ICTs are crucial for many industries such as IT, Oil and Gas and renewables sectors and the route has arguably become more important in a post-Brexit context. Therefore the route should be retained to continue to provide the responsiveness often required by business but lacking across the other visa categories of the UK points-based immigration system.

107. The ICT route is an important benefit on offer to multinationals wanting to establish a European base and contributes to Scottish Government objectives for Scotland to be a leading destination for inward investment aligned with our values as a nation. Our view is that regional variation should be explored within this route. At the very least, the salary threshold should be lowered to £25,600 for intra-company transfers and £20,480 for intra-company graduate trainees in line with Skilled Worker applications for established workers and new entrants

108. Feedback from stakeholders in the IT & Financial Services sector who rely on talent from India and Eastern Europe is that the ability to use allowances allows them to meet the minimum salary threshold as these countries typically have lower base

salaries. This also means for any time when they hold the ICT visa and are not in the UK, the sponsor is not obliged to pay them the minimum rates required for the visa. Stakeholders also indicated that they preferred to use allowances because many workers in the UK undertaking similar roles will not earn £41,500. Employers want to avoid inflating ICT worker base salaries purely to meet the threshold as this will result in wage discrepancies between workers on the ICT route and staff based permanently in the UK. We recommend that guaranteed payments such as shift and overtime allowances, bonus pay, employer pension and national insurance contributions and in-kind benefits, such as equity shares, health insurance, school or university fees are made eligible for inclusion in the salary threshold calculation.

109. Additionally, it is the Scottish Government's view is that there is a strong case for lowering the skills threshold to RQF level 3 for ICT applications, bringing it in line with the Skilled Worker route.

110. We need people to settle in Scotland, to make their homes here, to bring their families, and to contribute to our long term future prosperity. The UK is currently not experiencing the full impact of reduced EU mobility due to the current COVID-19 international travel restrictions. It is anticipated that there will be an increase in similar organisations looking to the ICT route to meet their short term needs where the UK-EU TCA has failed them. The UK Government should reopen discussions with the EU to develop a new comprehensive service provision model, without the need for a UK sponsor. At a minimum list of permitted activities within the visitor route should be reviewed and expanded to meet the short term needs of business and compensate for mobility gaps in the TCA.



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