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# Scottish and UK Immigration Policy after Brexit: Evaluating Options for a Differentiated Approach



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## Executive Summary

The Scottish Government has long argued that Scotland faces a distinct set of immigration challenges compared to the rest of the UK (rUK), linked to its particular demographic and labour market conditions. Over the past 12 years, inflows of EU nationals to Scotland have helped offset labour shortages and contributed to population growth. With the prospect of a cessation or decrease in EU immigration after the UK leaves the EU, attention has turned to options for sustaining immigration flows to Scotland post-Brexit.

Scotland previously enjoyed some autonomy over immigration policy through the Fresh Talent – Working in Scotland scheme. Under the current UK immigration system, there is a separate shortage occupation list for Scotland. Commentators have explored the viability of a Canadian or Australian style regional points-based system as a possible model for Scotland and the UK.

This report assesses the range of options for a differentiated approach, drawing on examples from across Europe, North America and Australasia. It assesses the options on the basis of three criteria:

1. How well the scheme addresses the economic, demographic and social needs of Scotland in relation to immigration.
2. How far it is practically feasible, in relation to implementation and enforcement.
3. The potential of the scheme to secure political support within Scotland and the UK.

The analysis focused on four main schemes that we considered to be most relevant for Scotland/the UK:

- Human capital points-based systems, drawing on examples from Queensland (Australia) and Quebec (Canada)
- Post-study work schemes, informed by the examples from Scotland and British Columbia (Canada)
- Employer-led schemes, with examples from the Alberta (Canada), Switzerland, and the EU Blue Card
- Occupational shortage lists, drawing on examples from the UK, Canterbury (New Zealand) and Spain

We consider the key features of each of scheme, and assess their merits across our three criteria. We also consider options for recruiting lower-skilled workers to meet gaps in labour supply generated by a reduction in EU immigration.

### *Human capital points-based systems*

Main features: points are weighted to select skills/occupational specialisations that match existing and projected shortages in Scotland. The scheme encourages permanent settlement of skilled migrants, prioritising those who demonstrate good potential to settle in Scotland. Entrants are granted permanent residency status from the outset. As with the Australian state-specific/regional system, such a scheme could require nominees to work in Scotland for the first 2 years.

- This is the most promising of all the schemes in terms of meeting Scotland's longer-term demographic needs, contributing to population growth targets and allowing Scotland/the UK to prioritise recruitment of younger immigrants who are most likely to settle in Scotland.

- The scheme also has good potential to meet skills shortages on the labour market, as points can be weighted to reflect particular occupational or skills gaps. However, it does not impose any requirements about what sorts of jobs nominees must take up, so may lead to moderate deskilling.
- This scheme scores very well in terms of meeting socio-cultural and political goals. Through offering generous conditions to nominees, it enhances the rights, welfare and integration of immigrants, and encourages diversity.
- There are, however, challenges to implementing such a scheme, given the resources and expertise required to design and monitor the system, and the intensive process of selection and screening involved.
- If such a scheme granted access to permanent residence, it would be relatively easy to enforce, as there would be no requirement to enforce restrictions in e.g. access to employment or services, or onward mobility to rUK. Enforcement would be relatively more challenging if a 2-year work/residency in Scotland requirement were imposed.
- However, this scheme scores poorly in terms of political viability: of all the schemes, we consider it the most controversial because of its orientation towards extensive rights and permanent settlement, decoupled from requirements to take up particular jobs. More than the other schemes, it could also raise concerns about retention and onward movement to rUK as stay is not tied to a particular job (in the Canadian system, there is no requirement to stay in the nominating province or territory; in the Australian system, there is a 2-year requirement to stay in the relevant state or region).

#### *Post-study work scheme*

Main features: graduates are permitted to work in Scotland for 2 years following completion of their studies, with no restriction related to skills levels or the jobs they take up. They would have the possibility to switch to another Tier 2 scheme. An alternative variant of this scheme would impose an income and/or skills threshold on the jobs that graduates are entitled to take up. Such schemes can also limit the types of graduate qualified to participate, for example restricting the scheme to graduates of ICT or STEM-related degrees.

- This scheme scores moderately well in terms of meeting demographic needs, as it would help to offset high dependency rates by injecting an on-going supply of labour. However, it does not encourage permanent settlement so would contribute less substantially to population growth targets.
- Post-study work schemes score moderately highly in terms of meeting skills shortages: graduates will be highly skilled, although in the absence of an income/skills threshold there is a risk of deskilling. There is also a risk that graduate skills will not match existing shortages. However, this can be addressed through restricting the degrees or occupations covered by the scheme – although this in turn would imply a smaller pool of graduates to draw on.
- The scheme would contribute to Scotland’s socio-cultural goals, through fostering international mobility and exchange; it would also boost the attractiveness of the higher education sector in Scotland.
- The simplest version of this scheme (which imposes no income/skills threshold) would be relatively straightforward to implement, requiring modest additional resourcing at UK or Scottish Government level. However, more resources would be needed to set and monitor a salary or skills threshold.
- However, the scheme would raise challenges in enforcement, because of issues around ensuring sponsorship (whether by employers or higher education institutions). Enforcement challenges

would be more pronounced were such a scheme to involve a salary or skills threshold for the jobs graduates could take up.

- The scheme scores well in terms of political viability, as temporary programmes for graduates are likely to be less controversial, and the scheme would in effect revive the Fresh Talent scheme (which received widespread support in Scotland); however, there may be concerns about deskilling of immigrants and potential displacement of resident workers if no income/skills threshold is set.

### *Employer-led system*

Main features: employers with sponsor status may recruit foreign nationals to fill vacancies where a number of conditions are met, including specified salary and skills thresholds and a residents labour market test. A differentiated scheme could build on the current Tier 2 scheme, but Scottish employers would be subject to a lower skills threshold/salary than other parts of the UK, and certain elements of the labour market test could be waived. It would involve setting a quota for Scotland, agreed with the Home Office and following consultation with key stakeholders, and the MAC (or a 'MAC Scotland').

- This scheme scores moderately well in terms of meeting demographic needs, as it would help to offset high dependency rates by injecting an on-going supply of labour. However, its contribution to population growth would depend on how easily people could access permanent settlement.
- The scheme would be well placed to meet immediate labour shortages, as employers would have more flexibility in recruiting workers from overseas to fill vacancies; however, smaller firms may face barriers to securing sponsorship status and meeting labour market tests.
- As with other employer-led schemes, it would score less well in terms of meeting longer-term economic needs, as recruitment responds to immediate employer needs rather than projected shortages.
- The scheme would score moderately well in terms of meeting socio-cultural and political goals. It would help foster diversity in the workplace, although its contribution to integration would depend on how expansive conditions of stay are (including pathways to permanent settlement).
- It would be relatively easy to implement, implying fairly limited expansion to the role of Scottish Government in verifying labour market tests and job offers (a task which could potentially be delegated to an agency or advisory body such as a 'MAC Scotland').
- It also scores moderately well in terms of enforcement, as it would not create substantial additional challenges given the current sponsorship system.
- We also consider it to be more politically viable than some of the other schemes, as it builds on current Tier 2 provisions. It would be more controversial if it introduced a lower skills/salary threshold for Scotland.

### *Occupational shortage list system*

Main features: occupational shortage lists imply relaxing the criteria for firms to recruit foreign labour in occupations facing shortages. A differentiated approach could build on current provisions under Tier 2, specifically the already existing Scotland occupational shortage list. However, it would include an extended list of occupations, potentially setting a lower skills threshold. It would also involve adjusting the decision-making criteria to factor in Scotland's particular demographic needs, and would imply an enhanced role for the Scottish Government or a delegated agency in both defining these criteria and in compiling shortage lists. As with the employer-led scheme outlined above, it would involve setting a quota for Scotland, agreed with the Home Office in consultation with stakeholders and the MAC/MAC Scotland.

- This scheme would be moderately well placed to meet demographic needs, as it would help to offset high dependency rates by injecting an on-going supply of labour. However, as with the employer-led scheme, its contribution to overall population growth would depend on how easily people could access permanent settlement.
- In contrast to the employer-led scheme, this approach scores well in terms of meeting immediate *and* projected labour shortages, since government and/or a ‘MAC Scotland’ has a greater role in planning and monitoring.
- As with the employer-led scheme, this approach would score moderately well in terms of meeting socio-cultural and political goals. It would help foster diversity in the workplace, although its contribution to integration would depend on how expansive conditions of stay are (including pathways to permanent settlement).
- The scheme scores moderately well on implementation. It implies an enhanced role for Scottish government/a delegated body in verifying that applicants and job offers meet the required conditions, but this would not entail substantial additional resources.
- It scores moderately well on enforcement, as it builds on the current Tier 2 system, under which entry and leave to remain are contingent on a specific job. However, if such a scheme incorporated lower-skilled occupations, it may raise additional challenges for immigration control (including the risk of potential onward movement to the UK).
- This scheme scores well in terms of political viability, again given that it would require relatively small adjustments to the existing Scotland occupational shortage list. However, it would be more controversial if it introduced a lower skills/salary threshold.

The table below offers a suggested scoring of each of the options across the three criteria. The scores are aggregated from the more fine-tuned grading system set out in the paper, so we suggest readers consult the tables throughout the paper to understand how the scores are derived. It is important to note that this table is an appraisal tool that can be differently applied. Depending on their interpretation of different schemes, readers might give diverging scores across the criteria. Moreover, the criteria might be weighted differently according to one’s perspective, for example attaching more or less importance to the third criterion of political viability.

Recruitment model	Overall assessment			
	Meets Scottish needs (max 12)	Implementation/enforcement (max 6)	Political viability (max 6)	Score (max 24)
<i>Points-based system</i>	11	4	2	17
<i>Post-study work visa</i>	9	4	4	17
<i>Employer-led</i>	8	4	4	16
<i>Occupational shortage</i>	9	4	4	17

Our summary assessment allocates the same score to the human capital points-based system (PBS), post-study work visas and occupational shortage approaches, but arrives at these scores on different grounds. The human capital PBS model is clearly the best suited for addressing Scotland’s demographic needs, but it is the least politically viable.

The post-study work visa and occupational shortage approaches may be less strong in terms of meeting demographic needs, but they are more politically viable, building on existing or previous schemes.

Different approaches can be combined, indeed the current UK PBS includes a range of different programmes, including elements of human capital, employer-led and occupational shortage approaches. Some combination of schemes would probably be best suited to Scotland's needs. We suggest three possible combinations.

1. A human capital PBS could be weighted to address various criteria – for example giving particular credit to graduates of Scottish universities or those with skills in occupations facing shortages.
2. If a human capital PBS proves unfeasible, a future differentiated system could involve a regional quota that combines elements of employer-led and occupational shortage criteria. These schemes could be differentiated to allow lower thresholds for Scottish employers, for example setting lower skills or salary thresholds than for rUK, or waiving elements of labour market tests.
3. Scotland could combine a post-study work scheme with a differentiated occupational shortage list and/or employer-led approach. Under such a system, graduates of Scottish higher education institutions (HEIs) would have initial leave to stay and work for 2 years following their study, with the possibility of switching to an expanded Tier 2 (Scottish) route (see 2 above). This would widen the pool of available skilled migrants already living in Scotland.

Finally, any scheme will need to address labour shortages in lower and unskilled occupations. There are various options for achieving this, through the existing UK points-based system (under Tier 2 or Tier 3), and/or the reintroduction of a seasonal worker scheme across some sectors. Scotland will have an interest in ensuring such schemes offer generous conditions to immigrants: ideally, they should encourage the longer-term residency and integration of workers filling jobs that would otherwise face shortages.

Key to addressing demographic problems are the pathways offered to permanent settlement. This is one of the most difficult challenges facing the design of a future system, given public concerns about the impacts of immigration, and about immigrants' access to welfare and public services. A differentiated system incorporating permanent settlement rights is also likely to raise concerns about retention and onward movement to rUK. However, the virtues of such systems are that they invest in recruiting those who are most likely to integrate and settle; and through offering generous rights, they ensure immigrants can contribute positively to the host society and economy. Arguably, this is a far more foresighted approach to recruitment than a focus on addressing labour market gaps through short-term visas.

If Scotland wants to adopt such a settlement-oriented model, political leaders will need to think carefully about how to make a convincing case for embracing such an expansive approach to immigration.

## Introduction

The Scottish Government has long argued that Scotland faces a distinct set of immigration challenges compared to the rest of the UK (rUK), linked to its particular demographic and labour market conditions. Many commentators have suggested that Scotland's particular needs justify a more expansive approach to immigration, one enabling it to recruit more migrants than is permissible under current UK-wide regulations.

Over the past 12 years, inflows of EU nationals to Scotland have helped offset labour shortages and contributed to population growth. With the prospect of a cessation or decrease in EU immigration after the UK leaves the EU, attention has turned to options for sustaining immigration flows to Scotland post-Brexit.

Scotland enjoyed some autonomy over immigration policy through the Fresh Talent – Working in Scotland scheme, which was in place from 2005 – 2008. In addition, under current UK immigration policy (see Annex 1), there is a separate shortage occupation list for Scotland under Tier 2, although its use has been limited. Commentators have explored the viability of a Canadian or Australian style regional points-based system as a possible model for Scotland and the UK (Kyambi 2009, Sumption 2014, PwC 2016).

This study critically assesses the range of options for a differentiated approach, drawing on examples from across Europe, North America and Australasia. In appraising their suitability for Scotland/the UK, we need to be clear about the criteria that an effective and viable approach would need to meet. We argue that a differentiated approach would need to meet three conditions:

1. The system should be designed to address the economic, demographic and social needs of Scotland in relation to immigration.
2. It would need to be practically feasible, including the capacity to enforce it effectively.
3. Such a system would need to be capable of securing political support within Scotland and the UK.

Part One of this paper – *Scotland and Labour Migration* – explores the first criterion. It provides a brief synopsis of data and research analysing the demographic, economic, and socio-cultural factors that shape Scotland's demand for labour migration. However, the main contribution of the paper is in the following parts, which assess the range of options for differentiated approaches.

Part Two – *The Options* – sets out three main approaches to recruiting labour migration: human capital, employer-led and occupational models. It analyses relevant examples of differentiated approaches under each of the three types, and considers which might be best placed to meet the demographic, economic and social needs objectives set out in Part One.

However, an effective policy will also need to meet the 2<sup>nd</sup> and 3<sup>rd</sup> criteria. Part Three of the paper – *Implementation* - explores the issues around putting the different approaches into practice. It focuses on: the infrastructure (expertise and institutional set-up) required for implementation, and potential challenges around enforcement.

Finally, in Part Four – *Political Context* – we consider the viability of the different approaches in the context of Scottish and UK politics and public opinion.



## Part One - Scotland and Labour Migration

### 1. Demographic Change

Much of the debate on Scotland's labour migration needs has tended to focus on demographic considerations, and especially the concern to meet population growth targets. However, it is important to distinguish between different dimensions of demographic change, which can have distinct implications for labour migration needs. There are at least three dimensions of demographic change that are relevant to the design of immigration systems.

#### 1.1 Population decline

Population decline is the reduction of a country or region's population over time. The threat of population decline hangs over many developed economies. Population projections for the EU-28 place the average population growth at 3% over the period 2014-2039. Within that, England's projected rise is 17%, while Scotland and Wales are projected rises of 7% and 6% respectively (NRS 2016: 20).<sup>2</sup> Population decline is typically identified as the most significant factor necessitating inward migration to Scotland. Scotland's population hovered at around 5 million in the 1980s and 1990s and began rising in the 2000s to 5.2m in 2008. The most recent estimate places Scotland's population at 5,373,000 in June 2015 (NRS 2016).<sup>3</sup> The Scottish Government has a target of matching average EU-15 population growth. Average population growth rates in Scotland for the period 2017-2015 was 0.49% while the EU15 average was 0.39%.

An influential 2001 UN Population Division report investigated whether immigration could be a solution to ageing and declining populations across eight countries covering the period 1995-2050. In relation to the UK, it found that the numbers of migrants required to offset population decline was comparable to recent inflows (2001: 72). This suggests that immigration can indeed counter population decline (although not population ageing – see below).

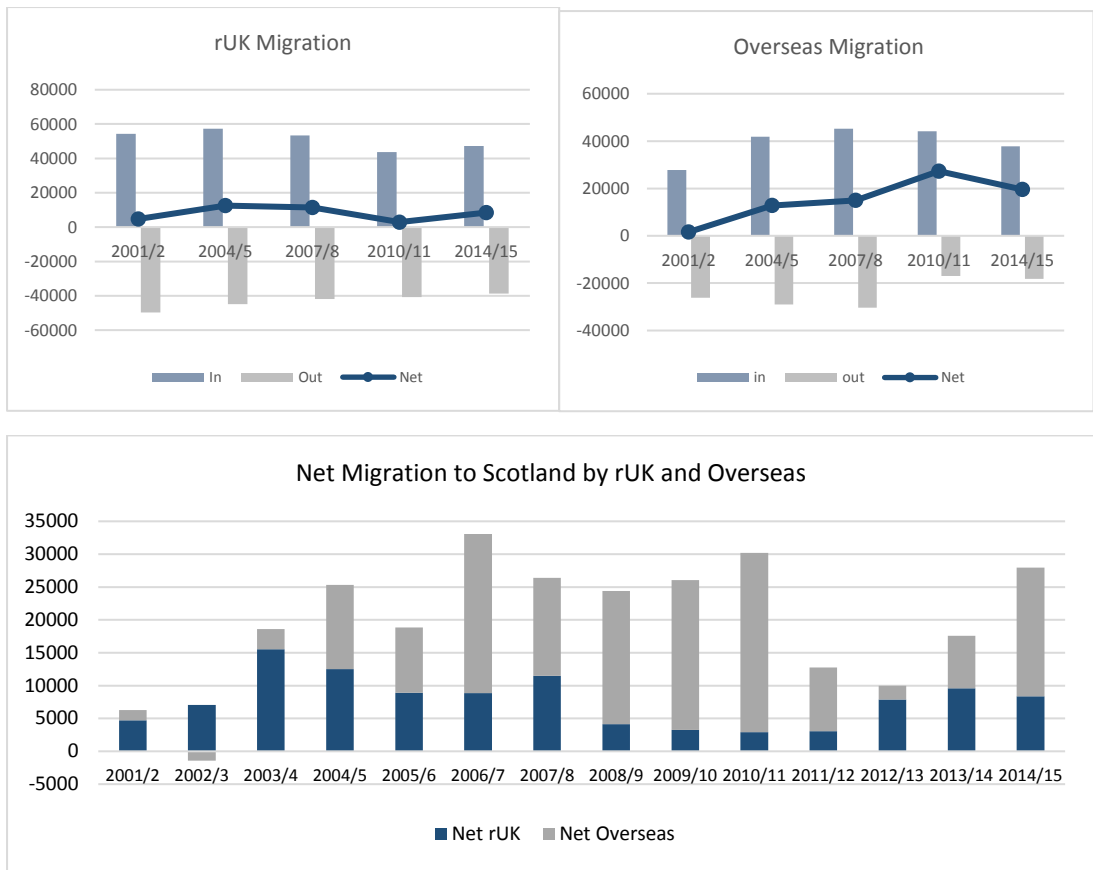
In line with this view, successive Scottish Governments have viewed migration as a key means of achieving the Scottish population growth target. The projected 7% increase in the Scottish population by 2039 is premised on sustaining current levels of immigration. Indeed, 90% of this increase is expected to be composed of inward migration, of which 57% is migration from overseas. This implies continued net migration of around 9,500 per year. If instead one assumes zero net migration, the population is projected to decline by 2%. The difference between these scenarios demonstrates how important net migration is for population growth in Scotland.

Positive net migration is a relatively new trend for Scotland's population, which traditionally was a country of net emigration. However, out-migration declined in the 1960s and 1970s. Since the early 2000s Scotland has consistently had positive net migration from both rUK and overseas. In terms of in-migration the rUK remains the largest source of incomers. However it is also the largest destination for leavers. The result is that net migration between Scotland and rUK usually remains fairly low. In contrast, migration between Scotland and overseas tends to see greater gaps develop between in- and out-migration – particularly since 2004 (see figures 1 and 2 below). Net migration between Scotland and overseas over the period 2001/2 – 2014/15 is therefore larger than net migration to rUK by just under 67,000.

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<sup>2</sup> Based on ONS and Eurostat data.

<sup>3</sup> <https://www.nrscotland.gov.uk/files//statistics/rgar/2015/rgar-2015-corrected.pdf>



Source: NRS<sup>4</sup>

Since 2004 overseas migration has become an increasingly important factor of overall migration in Scotland. As can be seen in the graph above net overseas migration has outstripped net rUK migration for most years in the past decade, and often by a large differential. Of the factors driving increased overseas migration to Scotland in recent times, one of the most prominent is the effect of the liberalisation of labour migration policy under the UK Government after 2002, and in particular its decision to grant immediate labour market access to the nationals of the A-8 Central and East European countries that joined the EU in 2004. This increase in the number of migrants from the new EU member states is well demonstrated in the most recent census. This showed that Polish born people comprise the largest overseas born group by country of origin in the 2011 Census (55,000, up from just 2,505 in 2001). Other countries of origin in the top 15 by size of population are India (23,000), Rep. of Ireland (23,000), Germany (22,000), Pakistan (20,000), USA (16,000) China (15,000), South Africa (11,000), Nigeria (9,000), Canada (9,000), Australia (8,000), Hong Kong (8,000), France (7,000), Italy (6,000), and Spain (5,000). The overseas born population in Scotland is 7% and the percentage of Scotland’s population born overseas or in the rUK is 17% (NRS 2013: 17).

<sup>4</sup> Moves between Scotland and overseas are estimated using Long Term International Migration (LTIM) estimates which is based mainly on the International Passenger Survey (IPS). The estimates include migration of asylum seekers. Data on moves between Scotland and the Rest of the UK are based on the National Health Service Central Register (NHSCR). NRS data accessed March 2017, available here: <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/migration/migration-statistics/migration-between-scotland-and-overseas>

Scotland's immigrant population makes up a smaller proportion of its overall population compared to England and Wales (13% overseas born).<sup>5</sup>

The importance of net migration for meeting population targets, and the substantial contribution that EEA immigration has played in sustaining higher levels of net migration in recent years, implies that a reduction or cessation of flows of EEA nationals following Brexit would have a significant effect on population growth in Scotland that is contrary to the present aims of the Scottish Government. Nonetheless there have also been significant increases in the immigrant populations from China and India (up by around 12,000 each between the 2001-2011 census) indicating alternative source countries for Scotland's migration needs outside the EEA.

It should also be noted that population decline in itself does not necessarily create labour shortages, unless it causes a significant reduction in the economically active population. Thus concerns about population decline are usually closely linked to a second concern: ageing population.

## 1.2 Ageing population

Population ageing is a change in the age structure of a population towards relatively greater proportions in the older age ranges. In common with the UK and many other OECD countries, Scotland has seen declining birth rates and improved life expectancy leading to a change in the age composition of its population. Estimates for the year to 30 June 2015 show that the proportion of the population aged 16 or under is now smaller (17%) than that aged 65 or over (18%). (NRS 2016: 5). The support ratio is calculated as the ratio of people of working age to people of state pension age. ONS figures show 3.21 people of working age per person of state pension age. This figure is projected to fall to 2.74 by mid-2037 allowing for changes in state pension age. This means that less people of working age are available to support those who are of retirement age.

The rate of population ageing varies across the UK nations. Mid-2012, Wales and Scotland have the lowest support ratios at 2.79 and 3.18, by comparison England and Northern Ireland outperform the UK average at 3.23 and 3.66. Projections indicate that by 2037 these continue to diverge, with Wales, Scotland and Northern Ireland all having ratios below the 2037 UK average at 2.44, 2.61 and 2.71 respectively, while England is projected a ratio of 2.77.<sup>6</sup>

EU migration to Scotland has partially offset Scotland's ageing population since around 2004. EU nationals in Scotland have a lower age profile to the Scottish population as a whole: 57% are aged 25-49, compared with 33% of the Scottish population. Moreover, 80% of EU nationals in Scotland are of working age, compared to 65% of the Scottish population as a whole (SPICe 2016). EU free movement provisions are also flexible in allowing for permanent settlement, thus enabling a younger population to settle and build families in the UK. However, while immigration can help mitigate changes to the age composition of the population, it cannot eliminate them. Immigrants themselves will age; and while those from some cultures may initially have a higher birth rate, by the second generation people will tend to assimilate to the average birth rate of the host country. Thus countering population ageing through immigration would require substantial and on-going immigration at a level that may not be feasible (see further UN Population Division 2001).

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<sup>5</sup> 2011 Census data.

<sup>6</sup> ONS data accessed

<http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/guide-method/compendiums/compendium-of-uk-statistics/population-and-migration/find-out-more/index.html>,  
March 2017

The change in the age structure of Scotland is projected to occur across all net migration scenarios, although it would be more acute in the case of low or zero net migration. In other words, even sustaining or moderately increasing current levels of net migration could not counter-act population ageing.

A rise in dependency is associated with various fiscal and labour market challenges. In terms of fiscal effects, it implies higher state spending on pensions, health and social care; but funded from a lower tax base, as a smaller proportion of the population is paying income tax. Rising dependency can also produce aggregate labour shortages, because the share of the population in employment is lower (although it may also lead employers to invest in technologies to increase productivity). And it can generate acute shortfalls in particular sectors and occupations that are needed to support an ageing population. For example, services associated with health and social care are likely to be more in demand, as is demand for labour in areas of leisure and tourism (Boswell, Stiller and Straubhaar 2004), although there may be reduced demand in sectors such as education. This implies the need to attract workers into these professions. Immigration can help offset rising dependency by bringing in more working age people even without settlement. More working age immigrants can alleviate a shrinking workforce and bolster falling higher education enrolment (Tindal, Findlay and Wright, 2014).

Many of the occupations set to face shortages are likely to be relatively low-skilled and low status, including in social care and leisure. Annual Population Survey data shows that non-UK EU nationals have been concentrated in some of these sectors. For example, 28.6% of employed non-UK EU nationals work in distribution, hotels and restaurants making up just under 7% of employees in that sector. This was the largest concentration, followed by 17.1% of all employed non-UK EU nationals in public admin, education and health (of which 10.5% were employed in health and social care amounting to 3% of all employees in health and social care) (Scottish Government 2017). Analysis at UK level has similarly found that the majority of EU citizens currently working in the UK are concentrated in relatively low-skilled occupations in sectors such as social care, hospitality and fruit-picking. If migration from the EU becomes subject to immigration controls similar to those currently in place for third country nationals, this will create severe shortages, particularly in lower skilled or lower paid jobs in these sectors.

### 1.3 Geographical dispersal

A third concern is about population density in different geographical areas of Scotland. Scotland is generally less densely populated than the average rUK. But there is also considerable variation within Scotland. Some areas have experienced a decline in their population over the past decade, notably Inverclyde (-3.8%), Argyll and Bute (-3.8%) and West Dunbartonshire (-2.1%). Other areas have seen a substantial rise – notably East Lothian (+11.1%), the City of Edinburgh (+11%), and Aberdeen City (+10.4%) (NRS 2016). These changes in local population can be produced by both net migration and natural change (births and deaths). For instance, while both Inverclyde and Argyll and Bute have population declines of 3.8% net in Argyll and Bute more of that change can be attributed to natural change (-3.6% compared to -2.3% in Inverclyde). In other council areas migration outweighs natural change as the factor influencing population change. The Scottish borders saw population growth of 3.4% but this was composed of 4.9% from migration and -1.5 from natural change (NRS 2016: 15). Remote and rural areas are also more likely to experience rising dependency ratios and ageing populations, which can create particular problems with labour supply for local businesses and services.

Overseas migration into Scotland is concentrated in the four main cities: Aberdeen, Edinburgh, Glasgow and Dundee.

Stirling also has an overseas born population just over the Scottish average (NRS, 2013). In terms of inflows, the Migration Observatory estimated overseas migrant flows into Scottish council areas and note that Edinburgh, Glasgow and Aberdeen received around 95% of overall overseas inflows over the period 2006/7 -2011/12 (Allen 2013). However, rural and remote areas have also experienced some EU immigration since 2004. A-8 nationals in particular have seen wider dispersal across the UK generally. Commentators note that a relatively large number found employment in rural Scotland (Jentsch, de Lima and MacDonald, 2007). However, it has also been noted that immigrants face more challenges to career progression in rural areas (Kay, Shubin and Laffey 2016), which can also contribute to retention problems in more sparsely populated areas.

## 2. Economic Needs

Economic needs are a prime driver of immigration. Economic needs can be related to demographic change, as changes in the age structure of populations can generate labour shortages in particular sectors (as discussed above). Immigration can boost economic performance in two ways. First, it can aid businesses in meeting existing levels of product demand by reacting to labour shortages. Second, it can help boost demand for products by bringing new skills and contacts into the economy. The sections below discuss each in turn.

### 2.1 Sectoral/occupational shortages

Labour market shortages occur when employers cannot fill vacancies. This can occur when the economy is close to full employment. The UK and Scottish economies are both experiencing historically low rates of unemployment at present, which suggests that vacancies will be increasingly difficult to fill from the domestic labour supply. However, shortages, may also be due to some form of labour market 'mismatch'. This can take a variety of forms:

- Preference mismatch – typically a reluctance to take on jobs with low salary, low status and poor conditions
- Regional mismatch – vacancies are not located in areas where potential workers are available, and there are impediments to relocating
- Skills mismatch – available jobs require skills, qualifications or experience that resident workers do not possess
- Information deficits – potential workers do not acquire information on relevant vacancies, and firms do not have the information necessary for finding suitably qualified applicants

Mismatch can be addressed through various measures. One option is to providing information or incentives to help match domestic supply to demand, for example through better pay or conditions. This of course implies greater costs for employers, including in services such as social care, which are mainly funded by local authorities, implying raising the tax burden (Sumption 2017). Another option is to expand education and training in the occupations concerned – although again, this is costly, and requires forward planning; it can be difficult to project which skills will be in demand in the next 5-10 years (Boswell, Stiller and Straubhaar 2004). Moreover, policies to adjust the supply of labour are unlikely to prevent mismatches entirely. Thus immigration is often seen as a more efficient mode of addressing shortages. This implies a recruitment system that selects immigrants according to their skills/experience to fit with specified labour market needs.

Research on the impact of immigration on the labour market tends to focus on the UK as a whole and it is difficult to differentiate particular challenges faced regionally. Rolfe and Metcalfe (2009) note that, at the macroeconomic level, the evidence from UK-wide studies indicates that increases in net migration have boosted output and employment while keeping prices constant. In general, there is little or no evidence of migration having impacted native labour market outcomes – or insofar as it has been the case, such effects have been confined to younger workers or confined to particular sectors such as agriculture and fisheries (2009: 3.3-3.7). They note a tendency for A8 nationals to be working in lower skilled jobs despite high levels of qualifications.


A more recent review of the impacts of migration to Scotland again acknowledges the economic benefits migration offers and identifies the central question as being:

Whether migrants compete with workers in the host country, or whether they are complementary to them. If they are complementary, migrants will make the host population more productive, by doing work that others do not want to do, or do not have the skills for, or by introducing new ideas or technology. In practice, inevitably some workers will lose out. 'But if immigrants are on average complementary, it makes economic sense to let them in, as it will raise the productivity, and thus the average income of the host population' (Scottish Government 2016, citing Springford 2013)

Analyses of migrants in the Scottish labour market agree that participation in the labour market is U-shaped in terms of distribution for wages or skill levels with migrants concentrated at the top and bottom of the labour market (Vargas-Silva 2013, Springford 2013). The concentration of migrant workers in certain sectors is well documented. The table below shows the overall numbers and proportions of employed non-UK EU nationals in Scotland by industry division.

Industry Division	All Scotland (000s)	Non-UK EU nationals (000s)	% of all EU nationals in employment	% of all in employment in Division
Food and Beverage service activities	112	11	9.1	9.4
Accommodation	46	9	7.9	19.5
Manufacture of food products	26	7	5.7	25.0
Retail trade, except vehicles	226	7	5.7	2.9
Education	230	6	5.0	2.5
Services to building and landscape	51	5	4.8	10.7
Human health activities	198	5	4.5	2.6
Other personal service activities	41	5	4.0	11.3
Residential care activities	92	4	3.8	4.8
Computer programming and consultancy	36	4	3.6	11.5
Wholesale trade, except vehicles	52	4	3.3	7.4
Architectural and engineering	53	3	3.0	6.5

Source: APS Jan –Dec 2015 (Scottish Government 2017)

It is difficult to find evidence of divergence in labour market needs for migrants between Scotland and rUK. However, some commentators note the relatively greater importance and benefits of migrant labour in Scotland compared to rUK due to the greater role of student migration in Scotland and the comparatively higher skill differentials between migrant and local workers in Scotland compared to rUK (Bell et al 2014; Tin  findlay and Wright 2014). However, the potential withdrawal of EU migrant labour may change this.

The importance of EU migration to Scotland is evident when examining the agriculture and food-processing sector. Under the Seasonal Agricultural Workers Scheme (SAWS), UK fruit and vegetable growers were able to recruit students from a number of Central and Eastern European countries to work for a maximum of 6 months, up to a set cap (for 2013, this was 21,250 workers, from Bulgaria and Romania). Figures for 2012 showed that 14.6% of SAWS workers were admitted to work in Scotland, particular in Angus, Perth, Kinross and Aberdeenshire (MAC 2013). The SAWS was gradually phased out from 2005 onwards following the A-8 accession, and finally closed in January 2014 when Bulgarian and Romanian nationals were allowed access to the UK labour market under EU rules governing the free movement of workers. But the data suggests a greater than proportionate demand for such workers in Scotland.

However, claims that Scotland has different labour market needs to rUK in terms of high skilled migration remain contested. The Treasury, for example, has pointed to the fact that the current facility for addressing Scotland-specific shortages via the shortage occupation list for Scotland under Tier 2 remains little used (HM treasury 2014: 42). Data from the employer skills survey also shows that levels of vacancies across the UK constituent nations are broadly similar. Whether these aggregate figures conceal starker difference across particular sectors is unclear. It is notable that Migration Advisory Committee (MAC) reports considering occupations for the shortage occupation list for Scotland frequently discount evidence on shortages from Scottish employers and other representatives as insufficiently persuasive. Therefore it is possible the lack of use of the shortage occupation list for Scotland may be due to an inability of Scotland's relatively smaller economy to make full use of this facility rather than indicating a genuine lack of variance.

## 2.2 Human capital and diversity

It is widely recognised that skilled and talented immigrants can bring substantial benefits to the economy. In many sectors, skilled and specialised human capital is now the most valuable factor of production, creating a 'knowledge-based economy'. In this economy, firms need to ensure a supply of high-skilled labour, generating a global competition for skilled workers (Abella 2006). Certain forms of human capital are valued particularly highly, notably skills in science, technology, engineering and mathematics (STEM), as well as training in information and communications technologies (ICT). Many countries have oriented their labour migration systems to prioritise recruitment in these areas, not just to fill specific labour shortages, but also to gain long-term comparative advantage in high-tech industries and research and development (OECD 2014: 155).

Meanwhile, scholars have also recognised the economic benefits of cultural diversity (Florida and Gates 2003; Ottaviano and Peri 2006). Ensuring a range of people with different language skills, knowledge, culture and experience can have positive effects on economic productivity. There are three main claims associated with this 'economics of diversity' approach. The first is that cultural diversity within a geographical area can increase the range of goods and services on the market, in many cases revitalising local economies, increasing growth and employment in multi-ethnic areas. Second, diversity can generate more dynamic, creative urban environments, with multi-ethnic cities becoming magnets to young, high skilled workers – thus creating a virtuous circle of diversity and innovation. Thirdly, within firms, ethnically diverse staff can promote innovation. A richer set of experiences and perspectives makes for a more creative environment, facilitating innovation and productivity. Indeed, many multinational companies such as Apple, Ford and IBM have recognised this 'diversity advantage'. Of course, diversity can also bring challenges.



The geographical clustering of particular ethnic groups in deprived areas can create tensions, while language barriers and host society discrimination means that immigrants are not always able to realise their potential in the labour market.

The economic benefits of attracting talented workers and entrepreneurs has been recognised by successive UK Governments. In 2002, the Labour Government established the Highly Skilled Migrant Programme; and in 2008 as part of its new multi-tier immigration system it established Tier 1, which allows exceptionally talented people to move to the UK, whether or not there is a specific job or occupational shortage. The importance of attracting high skilled labour was also recognised in the Fresh Talent programme, which allowed graduates of Scottish higher education institutions to work for up to two years following their graduation, with the possibility of transferring to another immigration programme. However, these routes have been severely restricted under the 2010 Coalition Government, in the context of the net migration target. Some entry routes are now capped (see Annex 1) and the Fresh Talent scheme and its UK-wide successor have been abolished altogether.

### 3. Social, cultural and political factors

Immigration does not just bring economic benefits. It may also be valued as promoting a range of other social, cultural and political goals. For example, countries may encourage student or youth mobility as a way of developing closer social and cultural ties with other countries. Working holiday-maker schemes, for example, can raise a country's profile and create good will with international partners (OECD 2014: 157). Countries may encourage mobility to sustain links with national or ethnic diaspora abroad, in some cases offering preferential immigration schemes for those with descendants from the host country.

More generally, migration may be valued as a way of fostering a more outward looking, open society, which celebrates diversity and multiculturalism. In Scotland, both Labour/Liberal Democrat and SNP Governments have been keen to expand the foreign population and encourage diversity, which is seen as a social good. The case for diversity has been strongly made in the context of debates on Brexit and in relation to Scottish Independence. For instance, in a March 2017 speech, First Minister Nicola Sturgeon stated: 'Scotland isn't full up. If you are as appalled as we are at the path this Westminster Government is taking, come and join us. Come here to live, work, invest or study. Come to Scotland and be part of building a modern, progressive, outward-looking, compassionate country.'<sup>7</sup>

There are a number of 'soft' levers that can be used to promote Scotland's goal of attracting migrants. The Scottish Government has sought to promote the country for relocation through online resources such as Talent Scotland. Celebrations such as Homecoming Scotland in 2009 show government interest in connecting with people of Scottish ancestry globally for a variety of purposes including promoting Scotland as a migration destination. However, all such soft levers need to operate within the constraints set by the rules on immigration entry and stay reserved at UK Government level.

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<sup>7</sup> *The Independent*, 18 March 2017: 'Sturgeon urges rest of UK to move to Scotland to escape May's Brexit'



## Summary

This opening section has outlined the different factors influencing Scotland's immigration goals – demographic, economic and social-cultural. These considerations have generated demands for greater differentiation of immigration policy, including Scottish Government proposals for mitigating the impacts on Scotland of the UK leaving the EU (Scottish Government 2016c: 36).

With the prospect of migration from the EU becoming more restricted, we expect the differing stances on immigration across Scotland and other parts of the UK to become more apparent and more salient. At the UK level, the Secretary of State for Exiting the EU David Davis has noted 'the goal of creating a UK immigration policy that will reflect "the needs of every part of the UK"'.<sup>8</sup> Reports promoting regionalised systems have been published by IPPR (Murray and Smith 2017) and the City of London Corporation (PwC 2016). A recent report by the All Party Parliamentary Group on Social Integration similarly proposes an end to a one-size-fits-all immigration policy in favour of an immigration system designed with greater input from devolved and local government indicating increased interest within parliament (APPG 2017). Focusing on Scotland, Eve Hepburn, in a report for the Scottish Parliament, explores the options and identifies 20 ways in which Scotland could differentiate immigration policies to meet its labour and demographic needs (Hepburn 2017).

In the remainder of this report we offer a more systematic review of the options available. The aim of this review is to clarify the differences between types of immigration systems in terms of how they select and recruit immigrants. In reality most immigration systems include a mix of features from across these different types of systems. However, reviewing each scheme systematically allows us to identify the particular strengths and weaknesses of each system. Following this review of the options, the report goes on to consider their feasibility for Scotland and the UK. Our analysis evaluates the options from the perspective of Scotland's particular immigration needs, as well their practical and political viability for the UK. We do not directly address the question of whether these schemes might help address the (potentially diverse) needs of other nations, regions or cities across the UK. However, the options for differentiated approaches assessed in this report may be more or less applicable to other parts of the UK.

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<sup>8</sup> *The Daily Mail*, 9 March 2017: 'Will more immigrants be allowed to move to Scotland after Brexit?'

## Part Two - The Options

In considering options for a differentiated immigration policy, it is useful to distinguish between three main approaches to selecting labour immigrants (O'Neil and Papademetriou 2004).

- (1) Selecting immigrants based on their human capital, whether or not they have a specific job offer or meet an identified shortage.
- (2) Selecting immigrants who have been recruited by employers referred to as employer-led approaches. This is usually done to address hard-to-fill vacancies.
- (3) Selecting people who are qualified in occupations the government has identified as facing shortages, also known as occupation-based approaches.

In practice, most immigration countries employ some combination of these schemes. The current UK system relies predominantly on a combination of employer-led and occupation-based approaches (Tier 2), with a limited human capital points-based scheme (Tier 1). Each of the three approaches can accommodate a differentiated approach, under which different nations, provinces or regions<sup>9</sup> exercise some autonomy in selecting, recruiting and hosting labour migrants. Immigration programmes can decentralise immigration systems by:

- Introducing regional caps or quotas
- Allowing regions to set the criteria for selecting immigrants
- Allowing regions to nominate potential immigrants
- Offering more or less robust conditions for employers in different regions to recruit immigrants
- Varying access to settlement by region

It is possible to identify a range of examples of differentiated immigration policies from across Europe, North America and Australasia. In this section, we draw on some of these examples to illustrate the options available to Scotland/the UK in designing a differentiated approach. However, it should be noted that 'best practice' in one country is not always transferable to another national setting, or to a different region. There is often considerable variation in the problems immigration programmes seek to address, as well as differences in institutions, infrastructure, geography, previous immigration flow patterns, and not least in the political context. We will analyse some of these wider issues in Parts Three and Four. This section focuses on evaluating the merits of each approach solely in view of how adept it is in meeting Scottish needs, as identified in Part One.

### 1. Human Capital-based approaches

Human capital-based systems select migrants based on the characteristics of the migrant. These can include:

- Demographic characteristics, such as age, and family status
- Labour market profile, including skills, qualifications, experience, or salary

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<sup>9</sup> In the text that follows, for ease of comparison we use the term 'regions' to cover various territorial units including nations, provinces and regions.

- Cultural/social characteristics: systems may try to gauge potential for integration and settlement, through factors such as existing ties with the place of destination including family members, previous work or study in the country, and language skills

Such systems tend to be developed to respond to:

(a) demographic concerns about population decline and ageing. In particular, human capital points-based systems can be adjusted to favour younger immigrants, and to encourage permanent settlement. They can also encourage or require settlement in less densely populated areas, or areas with a high dependency ratio; and/or

(b) economic arguments that place a premium on human capital and diversity as a means of boosting productivity and growth (rather than the need to address specific shortages or vacancies). Human capital-based approaches tend to be favoured where there is a general goal of attracting highly skilled immigrants, rather than (or in addition to) addressing specific occupational shortages.

In the analysis that follows, we examine two types of human capital based system: points-based systems and post-study work visas. For each type, we provide examples of differentiated systems, and conclude with an assessment of the pros and cons of such systems and their potential to address Scottish needs.

### 1.1 Human capital points-based systems

Human capital points-based systems involve selecting and admitting immigrants based on criteria linked to their skills and background.<sup>10</sup> The Canadian Federal Skilled Worker Programme is probably the best-known points-based system, but Australia and New Zealand also operate a human capital points-based systems (PBS). Human capital PBS can be weighted to prioritise highly qualified workers and entrepreneurs, filling particular occupational gaps, or selecting those most likely to settle. Indeed, the Canadian system has shifted over the past decade from a scheme designed to fill occupational gaps, to a more general concern to attract those with high skills who are likely to integrate and settle in Canada, including a greater focus on language skills, and previous work or study in Canada. The Australian and New Zealand systems appear to be moving in the opposite direction, towards a shortage-based approach aimed at filling immediate gaps rather than promoting longer-term integration or settlement (Facchini and Lodigiani 2014).

All three systems – the Canadian, Australian, and New Zealand ones – operate a differentiated approach, allowing some or all of their nations, provinces or regions flexibility in setting points and selecting candidates. The following text boxes provide case studies of the Quebecois (Canadian) and Queensland (Australian) differentiated systems.

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<sup>10</sup> Human capital points-based system should be distinguished from PBS that are contingent on a job offer, such as the UK PBS. On the UK system, all migrant workers (with the exception of a small number covered by Tier 1) are admitted conditional on a specific job offer. As such, the UK PBS should properly be classified as employer-led or sectoral/occupational scheme on this typology. To make the distinction clear, throughout the paper we refer to those PBS *not* requiring a job offer as ‘human capital PBS’.

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## CASE STUDY 1 - Quebec: Skilled Worker Programme

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*Context.* Since 1995, all Canadian provinces and territories except Nunavut and Quebec have operated their own Provincial Nominee Programmes (PNP). Under the PNP, each province and territory has its own 'streams' and criteria for selection and recruitment, which target certain groups depending on regional requirements and skills-shortages. Provinces and territories may target students, business people, skilled or semi-skilled workers (see below for an example of the British Columbia graduate stream). Therefore, they may weigh factors differently from federal-level immigration programmes. For example, PNPs often have lower skills thresholds than national work visa streams in order to attract workers to regions that are not typical immigration destinations.

Quebec's immigration system parallels the PNPs in most respects, but predates this system (it was set up as early as 1978). The Quebec Skilled Worker Programme offers a good example of a province aiming to attract and retain immigrants in order to address demographic and labour market goals. It therefore offers an especially instructive example for informing Scottish/UK approaches. While the programme builds in criteria linked to employer demand and skills shortages, it selects immigrants based on their skills, experience and other characteristics, and admits them to the scheme whether or not they have a job offer. Thus it is an example of a human capital-based scheme, rather than an employer-led or occupational programme.

*What is the rationale for the policy?* The objective of the programme is two-fold. First, it seeks to address demographic concerns (an ageing population and declining birth rate) by attracting immigrants who have good prospects of settling in Quebec. This is realised through giving particular weight to demographic factors (age, family), as well as factors implying a propensity to settle in Quebec (language proficiency, family links or previous stay in Quebec). Second, the scheme aims to address skills shortages in the Quebec economy by attracting skilled migrants, although there is no requirement that applicants have a job offer and selection is not restricted to particular occupations or skills.

*Who is allowed to enter and work?* Immigrants need to accrue a certain number of points, linked to their education, training, experience and skills, as well as their links to Quebec, their age and family status. The main factors are listed in the table below. A single (unmarried) applicant must score at least 49 points, while an applicant with a spouse/partner must score at least 57 points. A high priority is placed on language proficiency as can be seen in the scoring table below:

Factors	Points
Education	Up to 14 points
Area of training	Up to 16 points
Validated Employment Offer	Up to 10 points
Work Experience	Up to 8 points
Age	Up to 16 points
Language Proficiency	Up to 22 points
Stay and family in Quebec	Up to 8 points
Characteristics of spouse/ partner	Up to 17 points
Presence of accompanying children	Up to 8 points
Financial self-sufficiency	1 point

*What conditions have to be met?* Candidates need to apply for a Quebec Selection Certificate (CSQ) through an online system. Candidates are then evaluated on each of the factors, according to a range of credentials.

Once granted a CSQ, successful applicants and their families become eligible to apply for a Canadian Permanent Resident (Immigration) Visa.

The federal government then issues permanent residence visas to all successful applicants, subject to medical and criminal background checks. There are two intake periods every year, each of which sets a limit on the number accepted. For example, during the period of April 2016 – March 2017 an intake limit of 10,000 applicants applied. However, candidates who have an employment offer or are temporary residents of Quebec are exempt from the cap. This implies that the scheme incorporates an employer-led dimension, prioritising applicants who already have a job.

*What rights/status are offered to immigrants?* The rights offered to those selected are very generous. Selected nominees, together with their spouse/common-law partner and dependent children (under the age of 19), are eligible from the outset to apply for permanent residence with the department of Immigration, Refugees and Citizenship Canada (IRCC), subject to criminal background and medical checks. Once granted, this status confers the same rights as those enjoyed by all Canadian citizens, including access to social benefits and health care coverage, and the right to live, work or study anywhere in Canada. The only exceptions are the rights to vote, stand for political office and obtain a passport, as well as full protection from deportation. After three years of permanent residence, these rights can be obtained by applying for Canadian citizenship. Once immigrants have permanent residency, there is no requirement to reside and work in Quebec.

*How is it differentiated?* Canada operates points-based systems at different levels. The federal government has a Canada-wide points-based system, known as the Federal Skilled Worker Programme. Most of the territories and provinces operate their own PNPs (see above), which include a combination of entry schemes for low- or high-skilled workers, students or entrepreneurs. Quebec's unique provincial scheme is regulated by the Canada-Quebec Accord, which specifies that the province of Quebec is solely responsible for the selection and integration of applicants destined to the province of Quebec. The Quebec Government can decide which criteria apply and how they are weighted in the points system. Quebec also selects applicants who apply for a Quebec Selection Certificate under the scheme, and nominates them to the federal government. However, the federal government is responsible for assessing an applicant's admissibility and issuing permanent resident visas. Under the accord, Quebec receives an annual grant of approximately 345 million Canadian dollars to provide settlement and integration services in the province, comparable to services provided across the rest of Canada.

*Does it work?* Currently Quebec admits around 50,000 immigrants each year. In 2015, around 23,370 new permanent residents were admitted through the Quebec Skilled Worker scheme, and a further 5,417 under the Quebec-selected business scheme. Thus the scheme accounts for more than half of all new immigrants to Quebec, so can be considered as successful in attracting skilled workers.

However, some concerns have been raised about how far Quebec is able to retain immigrants after their initial period of stay. Immigrants entering under the Skilled Worker Programme are not required to live and work in Quebec – although in practice, most entering under the scheme have already studied or worked in the province, signalling a greater likelihood that they will stay. Some studies have suggested that a substantial proportion of immigrants relocate to other areas of Canada. Fan, for example, found that over the period 2000-2006, 10% of skilled labour migrants and 64% of business immigrants left Quebec for other provinces. He notes that immigrants also tended to relocate away from smaller towns towards larger cities, because of more favourable job opportunities, as well as the existence of co-ethnic migrant communities (Fan 2016: 45-6). A similar problem with retention is highlighted by DeVoretz (2007), who reported various studies suggesting that the number of immigrant residents in Quebec had declined by nearly 30% between 1991-2000, including around 17% of skilled workers who had been admitted under the Skilled Worker Programme. Edmonston (2002) locates this retention issue in a longer historical trend of out-migration from Quebec, especially towards Ontario.

## CASE STUDY 2 - Australia: Queensland Regional Skilled Nomination Programme

*Context:* The Australian Government has implemented a range of state specific and regional migration programmes over the past 15 years, and such programmes now account for around 31.2% of immigrants admitted through all skilled streams (40,101 in 2015-16) (Dept. of Immigration and Border Protection 2016). State specific and regional migration (SSRM) programmes involve two main streams. First, states and territories can nominate prospective immigrants who narrowly missed the criteria for entering via the federal-level points-based scheme. Second, the federal employer-led programme facilitates recruitment for employers based in areas which are not typical destinations for workers, through offering applicants lower fees and exceptions from skills, age and language requirements. This section looks at the first type of programme, using the case of Queensland.

*What is the rationale for the policy?* SSRM programmes are designed to encourage the settlement of skilled migrants across different parts of the country, counteracting a concern that immigrants are too heavily concentrated in New South Wales (Sumption 2014: 10). By doing so, the programmes help states and territories address skills shortages in their jurisdiction, including those linked to ageing population and low population growth. The programmes typically have flexible criteria to meet state/territory skills needs, development objectives and support local labour markets.

*Who is allowed to enter and work?* The regional skilled nominated visa (subclass 190) is a permanent residence visa for skilled workers who want to work and live in a particular state or territory. Each state or territory develops a State Migration Plan, which lists which occupations are in need of workers and specifies the number of visas that may be issued. In order to be eligible for the Queensland scheme, applicants must have an occupation listed on one of the Skilled Occupation Lists. The Queensland skilled occupation lists include a broad range of occupations from engineers, agricultural and hospitality workers, to professional positions and managers.<sup>11</sup> Thus, it is an example of a human capital based approach, with an occupational element built into it.

Applicants must score at least 60 points in the federal points test to be eligible to be invited to apply for this visa. If invited, they must achieve at least the score specified in the letter of invitation. Factors in the points test are weighted as follows:

Factors	Points
Age	Up to 30 points
English language ability	Up to 20 point
Skilled employment in nominated occupation or closely related	Up to 20 points (in Australia)/up to 15 points (outwith Australia)
Qualifications	Up to 20 points
Australian study requirement	Up to 5 points
Specialist education qualification (post-grad by research in specific subjects from Australian institution)	Up to 5 points
Credentialed community language qualifications	Up to 5 points
Study in regional Australia or a low population growth metropolitan area	Up to 5 points
Partner skill qualifications	Up to 5 points
Professional year in Australia for at least 12 months in the four years before invited to apply	Up to 5 points
Nomination by state or territory	Up to 5 points

<sup>11</sup> See the Queensland Skilled Occupation Lists (QSOL) website: <http://migration.qld.gov.au/skilled-occupation-lists/>

*What conditions have to be met?* In addition to being nominated by the relevant state or territory government agency, applicants also need to nominate an occupation that is on the relevant skilled occupation list, obtain a suitable skills assessment for that occupation, achieve the score specified in their letter of invitation based on the factors in the federal points test, meet minimum English language requirements and be under the age of 50. In some cases, they may be required to have a job offer or local work experience (Sumption 2014: 10). They are also subject to health and character checks. Spouse or common-law partners and dependent children can also be included in the visa application, though financial requirements increase with the number of individuals on the application. In contrast to the Quebec and PNP schemes, applicants nominated by the Queensland Government agree to live and work in the state of Queensland for a period of two years and must advise the issuing agency of their contact and employment details once settled in Queensland.

*What rights/status are offered to immigrants?* This is a permanent residence visa, which grants the holder and their family members (partner and dependent children) the same work rights as an Australian citizen. After a minimum period of two years, visa holders are allowed to live and study anywhere in Australia.

*How is it differentiated?* The administration of the points-based programme is much more centralised than the Quebec system. The weighting of criteria on the points-based system is centrally calibrated, rather than set at regional level. However, the Queensland Government (and other states/territories) develops the occupation lists, tailored to its specific demographic and labour market needs. Business and Skilled Migration Queensland (BSMQ) is the state nominating body responsible for compiling and updating these lists, on behalf of the Queensland Government. Applicants apply to a central online federal system, but they can express an interest in a particular state or territory. The Queensland Government can view expressions of interest and decide whom to nominate for a visa. The federal government then needs to approve and screen applicants.

*Does it work?* Queensland attracted 21,860 migrants in 2015-2016 (11.5% of total immigration to Australia)(Dept. of Immigration and Border Protection 2016). However, SSRM programmes have been the object of two main critiques. First, because of the residency requirement (2 years) imposed for regional programmes, more skilled migrants who can enter through the federal scheme have limited incentives to apply for state/territory-level schemes. This means that the SSRM programmes are likely to attract less skilled workers (compared to the federal scheme), limiting the scope for promoting a more even geographical spread of highly skilled candidates. Second, in common with the PNP and Quebec schemes, the programme has also been criticised for problems with retaining immigrants after the initial 2-year period, although data on this is very limited (Sumption 2014: 13). Moreover, there have been challenges in encouraging skilled workers to settle in areas of Queensland outside of greater Brisbane, reflecting a typical retention problem for smaller towns and rural areas.

## Assessment

*Advantages:* Human capital points-based systems are almost certainly the best equipped to address demographic concerns. Points can be adjusted to reward younger people, and can be adjusted to select those with more affinity to particular regions, thereby facilitating permanent settlement, including in less densely populated regions that do not have a history of immigration. Such systems can also select those with high skills, thus contributing to the economy through injecting human capital and promoting diversity in the workforce. And they can be weighted to prioritise those with particular occupational skills, so partially addressing shortages (although they do not require workers to take up jobs in those sectors).

Because of their flexible and generous terms, they offer an attractive package to potential migrants, and thus may help attract people to areas that might not otherwise be their first choice destination. In terms of integration and social goals, they offer excellent prospects for integration because of their flexibility and generous conditions.

*Drawbacks:* The drawbacks of human capital PBS relate mainly to their flexibility. They do not require those recruited to work in a particular sector, so are not necessarily the most efficient in addressing skills or occupational shortages. And they can lead to deskilling, especially in the case of those arriving in the country without knowledge of the labour market or local recruitment practices. Immigrants who arrive without a job offer may find it difficult to find employment at the appropriate skills level (Chaloff and Lemaitre 2009: 2). However, given that such schemes offer permanent residence, issues around deskilling and discrimination on the labour market are likely to decline over time, as immigrants integrate into the recipient society.

Schemes that aim to attract immigrants to less established regions or places of destination can face problems with retention. Moreover, since immigrants are not bound to particular occupations or employers, there may be a stronger tendency to cluster in urban hubs, with the result that such schemes fail to address labour shortages in remoter areas. Thus human capital PBS may redirect immigration to less populated regions, but within these regions there is limited scope to ensure immigrants do not cluster in the major cities.

Human capital PBS need continual monitoring and adjustment to ensure points are recalibrated in response to changing circumstances. They also require considerable investment in administrative capacity to verify the skills and profile of applicants.

*A good model for Scotland?* The Quebec Skilled Worker Programme is frequently identified as a promising model for a differentiated system in Scotland. It has broadly similar goals in terms of encouraging settlement migration, and targeting high-skilled migrants in particular. However, Scotland may face similar challenges with retention, especially if it is relying on a pool of nominees who have not already established strong ties with Scotland. Moreover, the issue of retention is likely to be more politically sensitive in the UK than in Canada (see discussion in Part Four of this paper).

The Australian model may partially address issues of retention, by imposing a two-year residency requirement. After this time, immigrants may be more likely to have put down roots in their place of destination.



However, the Quebec model aims to encourage settlement through selecting immigrants with existing links and affinity to the place of destination. More research would be needed to ascertain which of these models is more likely to promote retention.

The Australian model may also be more relevant to Scotland because of its focus on attracting skilled migrants for occupations facing labour shortages. This aspect features more strongly in the selection criteria under the Regional Skilled Nomination Programmes than it does in the Quebec programme. Finally, the Australian model implies more centralised control, as the federal government retains competence over setting the criteria and weighting for the PBS. This is in contrast to the Quebec system, under which the provincial government is responsible for defining and weighting the different criteria.

Human capital points-based systems				
Rationale for immigration	Demographic	Skills shortage	Human capital/ diversity	Social/ cultural
Assessment	Strong performance, as they can select younger migrants and encourage permanent settlement in less populated areas	Can select based on occupation, but no occupational requirement is imposed, nor do immigrants have a specific job to take up. Can lead to moderate deskilling	Injects human capital and promotes diversity, also allowing flexibility to realise career goals	Encourages cultural exchange and integration
Rating (Max ***)	***	**	***	***

## 1.2 Post-study work schemes

Facilitating labour market access for foreign graduates is an increasingly popular recruitment strategy in OECD countries. In a special report on labour migration systems in 2014, the OECD noted that 19 of its member countries had such a scheme in place (OECD 2014: 185). Findlay, McCollum and Packwood (2017) found that of these countries, Australia and the UK had the highest ratios of international to domestic students. The UK/ Scotland, Canada and Australia have experience of differentiated post-study work schemes, in which sub-national administrations can adopt a separate scheme applying to their particular jurisdiction.

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## CASE STUDY 3 - *Scotland: Fresh Talent – Working in Scotland Scheme*

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*What was the rationale for the policy?* The Fresh Talent scheme, which was in operation between 2005-8, had two sets of objectives. First, it aimed to address concerns about population ageing and decline in Scotland, and skills shortages in the Scottish economy. These goals were to be met by enabling graduates to work in Scotland after completion of their studies. The Scottish Government was also keen to encourage those under the scheme to switch to other immigration routes, as a route to permanent settlement (although this was not a goal embraced by the Home Office – see below). Second, by offering graduates the possibility of staying on and working after their studies, it aimed to enhance the appeal of Scotland as a place to study, thus attracting international students.

*Who was allowed to enter and work?* Graduates of certified Scottish higher education institutions were allowed to apply for an extension of their (study) leave, or for leave to enter up to a year after their graduation, for the purpose of living and work in Scotland for up to two years. This covered paid or unpaid employment and self-employment in any sector and at any skill level.

*What conditions had to be met?* The applicant, and any dependents with them, needed to show they could maintain themselves without recourse to public funds. Once admitted onto the scheme, applicants did not need to obtain a work permit or any other permission from the Home Office. Applicants could apply for the scheme while in Scotland following completion of their studies, or from outside of the UK for up to 12 months following completion of their studies. Employers did not need to apply for any form of sponsor status (the scheme predated the current sponsorship system), they simply had to check that employees had the relevant leave under the scheme.

*What rights/status are offered to immigrants?* Students under the scheme were entitled to apply to bring their spouse/partner and any children under the age of 18, provided they had funds to maintain them (see above). They were entitled to switch to another immigration scheme. However, Home Office guidance on the scheme stressed that the programme was not intended to lead to permanent settlement, and residence in the UK under the fresh talent scheme did not count towards the qualifying period for permanent residence status under other routes (i.e. 5 years).

*How was it differentiated?* The scheme was differentiated in terms of the criteria for granting leave: only graduates of recognised Scottish educational organizations could participate in the scheme, and graduates needed to have resided in Scotland for an ‘appropriate’ period of their studies. They were required to work in Scotland, so only employers based in Scotland were entitled to recruit them. The Scottish Government launched a Relocation Advisory Service in 2005, to provide advice to participants (and others moving to Scotland) on immigration leave, employment, setting up business, schools, housing and transport. The Scottish Government was responsible for monitoring the scheme, including evaluating its effectiveness.

However, the scheme was managed by the Home Office/UK Border Agency, which issued leave to remain or enter, and oversaw entry clearance for applicants who applied from abroad. It should also be noted that the Home Office had a rather different interpretation of the goals of the scheme. Home Office instructions to case workers explicitly stated that the scheme was ‘not a category which leads to settlement. There are no provisions for participants to be granted settlement on the basis of the scheme’ (Home Office 2007).

*Did it work?* The scheme was generally seen as a success by employers and higher education institutions in Scotland. Between 2005-2008, 7,620 non-EEA students were granted visa extensions under the scheme. It was also considered to have contributed to a more than 3,000 rise in the number of foreign students coming to Scotland in 2005/6 and 2006/7 (Scottish Government 2008: 49), although there is no evidence of a causal link. There is limited data on the proportion of students that stayed in Scotland beyond 2 years. A Scottish Government (2008: 43) survey suggested that around 50% of those participating intended to stay on beyond 3 years, but there is no follow-up data to verify if these intentions were acted upon.

However, the scheme was also criticised by the UK Government as resulting in graduates taking up jobs below their skills level (UK Border Agency 2010). Indeed, a survey carried out by Scottish Government found that around 50% of participants did not consider their employment as appropriate to their level of qualifications (Scottish Government 2008). Moreover, many graduates on the scheme expressed frustration at the lack of support in navigating the Scottish job market (Scottish Government 2008).

In 2007 the UK Government rolled out the scheme across the UK through the International Graduate Scheme (a one-year scheme), and in 2008 it was incorporated into Tier 1 of the points-based system (see Annex 1). After May 2010 the scheme was criticised by the UK Government as encouraging the view that studying in the UK was a route to longer-term immigration. Moreover, the UK Government expressed concerns about poor language skills among participants, as well as deskilling. For this reason, the current more limited post-study work visa offered under Tier 2 builds in conditions about minimum salary and skills level of the job.

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## *CASE STUDY 4 - British Columbia's International Post-Graduate Category*

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*Context:* Nearly all provinces and territories in Canada offer differentiated post-study work visas, tailored to their particular jurisdiction. Foreign graduate and post-graduate schemes are in most cases included under 'skilled worker' categories. However, five Canadian provinces/territories offer post-study visas that do not require a job offer in advance of application: Quebec, Ontario, British Columbia, Nova Scotia and New Brunswick. British Columbia is of particular interest as a potential model for Scotland, with a population of approximately 4.6 million and a vibrant and reputable higher education landscape.

*What is the rationale for the policy?* The rationale behind this scheme is based on two considerations: addressing a declining and ageing population, and meeting skills shortages in the British Columbia (BC) economy. BC's labour market strategy projects that there will be 1.1 million job openings resulting from economic growth and retirement for the period 2009 - 2019, and new immigrants will be needed to fill one-third of all job openings (Ministry of Regional Economic and Skills Development 2010). There are particular shortages in occupations requiring natural, applied and health science qualifications, so the scheme is limited to science graduates. The scheme encourages these graduates to settle permanently in BC.

*Who is allowed to enter and work?* In contrast to the Fresh Talent Scheme in Scotland, this programme targets foreign post-graduates with specific qualifications and expertise needed by BC employers. Foreign graduates are eligible for this scheme if they have graduated from a BC post-secondary institution in the past three years with a master's or doctoral degree in the natural, applied or health sciences (including agriculture related sciences, biology and biomedicine, computer and information sciences, engineering and related fields, health professions, mathematics and statistics, natural resource consideration, and physical sciences).

*What conditions have to be met?* There is no requirement for an applicant to have received a job offer from a BC employer prior to application. However, they do have to meet some of the general requirements under the BC Skills Immigration and Express Entry streams, such as minimum language proficiency, and to provide evidence that they, a spouse or common-law partner and any dependents, have the means and intention to live and work in BC. Since a job offer is not required, employers do not need to apply for any form of sponsor status, simply to check that employees have the relevant visa to work.

Moreover, there are no requirements for applicants to obtain employment at a particular skill level or within a sector related to their post-graduate degree programme. Applicants can apply for the scheme whilst still studying or within three years of completion of their programme of studies, from within or outwith Canada.

*What rights/status are offered to immigrants?* Once nominated under this scheme the applicant, together with their partner and dependent children (under the age of 19), are eligible to apply for permanent residence with the department of Immigration, Refugees and Citizenship Canada (IRCC), subject to criminal background and medical checks. Once granted this status confers the same rights as those enjoyed by all Canadian citizens including access to social benefits, health care coverage, and the right to live, work or study anywhere in Canada. The only exceptions are the rights to vote, stand for political office and obtain a passport. After three years of permanent residence, these rights can be obtained by applying for Canadian citizenship.

*How is it differentiated?* As part of the Provincial Nominee Programme (PNP), BC has considerable autonomy in adjusting the scheme to target the particular skills/qualifications and demographic profile that best addresses its demographic and labour market needs. However, the federal government imposes an annual cap on the number of immigrants that can be recruited through the PNP schemes (see below). It is also differentiated in that only post-graduates from an eligible BC post-secondary institution in a relevant programme of study are eligible for this stream. Moreover, applicants must provide evidence that they have the ability and intention to live and work in BC through providing information on connections to BC such as work, family, a place to live, community involvement and employment search details.

*Does it work?* The scheme has been successful in attracting international graduates, although it should be noted that it is just one channel for recruiting skilled migrants to BC. Indeed, data from 2005-2010 suggests it accounted for just 9% of immigrants nominated through BC's strategic occupations stream (Minister for Jobs Tourism and Innovation 2011). One important measure of the success of the scheme is its capacity to retain immigrants in BC. While there is limited data on this particular programme, BC has in general been very successful in retaining immigrants entering under its provincial programmes. Longitudinal Immigration Database (IMDB) data reveals that in 2008, 96.4% of provincial nominees to BC who arrived between 2000 and 2008 continued to reside in BC (Citizenship and Immigration Canada 2011). This was the highest retention rate of all provincial nominees by region.

Nonetheless, some challenges with the BC PNPs have been identified. The federal government sets a cap on the number of immigrants a province can nominate in a year (in 2015, the cap was 5,500 principal applicants). This was seen as constraining BC's capacity to meet labour market needs, including in lower- and semi-skilled occupations, which are not adequately covered by the federal level scheme. Another issue is that programmes are not effectively facilitating immigration in regions outside of the Lower Mainland (Vancouver and the surrounding area), where labour market shortages are most acute. According to the Labour Market Outlook for 2010-2020, 65% of all job openings are in the Mainland Southwest region. However, 91% of economic class immigrants are settling in the Lower Mainland (British Columbia Immigration Task Force 2012).

Finally, representatives from the education sector have indicated that many students are not aware of the mechanisms to stay when they begin their studies (British Columbia Immigration Task Force 2012). This information is often obtained towards the end of their study or work permit, and many are unable to remain in Canada while their applications for permanent resident visas are being processed.

## Assessment

**Advantages:** Post-study work visas provide a relatively efficient tool for businesses to recruit workers who are often already resident, are likely to be highly skilled, and generally have good knowledge of the host country/region and language. They can therefore boost the economy through an injection of skilled labour. Restricting post-study work visas to selected degrees can promote and support particular industries needing those skills.

Such schemes may offer an attractive route for skilled immigrants, as it allows them flexibility in selecting their employer/sector. Post-study work visas can also boost the attractiveness of higher education in the host country, as would-be students find the prospect of a post-study visa appealing.

Providing an immigration route that focuses predominantly on young people (recent graduates) can help address population ageing by reducing dependency ratios. Where there are opportunities for longer-term residence or settlement (e.g. through permanent residence or flexibility in switching to other programmes), such schemes can also play a more significant role in addressing demographic concerns.

*Drawbacks:* Post-study work visas that allow graduates to take up any job they choose may result in the deskilling of immigrants. There is no guarantee that immigrants will take up jobs at their skills level, especially where they find it difficult to navigate the labour market or experience discrimination. Neither do the schemes imply migrants will possess the skills or preferences required to fill acute skills shortages.

Where opportunities are strictly time-limited, such schemes will not play a substantial role in meeting population growth targets although they can offset population ageing. OECD data suggests that most post-study work schemes allow immigrants to switch to other high skilled schemes – but very few offer permanent residency from the outset (for an exception, see the example of Canada/BC above).

*Is it a good model for Scotland?* The two schemes examined both aim to attract skilled graduates to address demographic challenges and skills shortages in particular regions. However, they differ substantially in their approach. The Fresh Talent scheme was generous in terms of initial access, but longer-term residency more challenging to access; while the Canadian scheme is restrictive in terms of initial access, but strongly supports the permanent settlement of those admitted.

The suitability of the BC approach in Scotland would depend partly on whether there was a wide enough pool of (e.g. science) graduates, or whether restricting eligibility to certain degrees would excessively limit the pool of applicants. It should also be noted that the BC scheme is part of a wider set of programmes that encourage permanent settlement to Canada and its provinces. We discuss the political viability of such approaches in Part Four.

In terms of addressing problems of retention, the Scottish scheme required graduates to work in Scotland. The BC scheme had no such requirement, but aimed to encourage settlement in BC through building in criteria linked to motivation to settle in BC (previous links, family ties, and so on). As with the human capital PBS schemes discussed above, more analysis would be needed to ascertain which approach to retention is more effective.

The summary assessment below assumes a scheme with a limited duration visa (e.g. 2 years), along the lines proposed by the Scottish Government Post-Study Work Working Group (2015). Were it to assess a scheme offering permanent residency from the outset, the scheme would score higher on demographic and human capital/diversity criteria.

Post-Study Work Scheme				
	Demographic	Skills shortage	Human capital/ diversity	Social/ cultural
Assessment	Ongoing supply of younger workforce can offset dependency ratios. However, visa is short-term	Selects skilled workers, but no requirement to work in occupations facing shortages and can lead to deskilling	Injects human capital and promotes diversity, but visa is short-term	Encourages cultural exchange through immigration as well as enhancing attractiveness of study
Rating (Max ***)	**	**	**	***

## 2. Employer-led approaches

Employer-led labour migration schemes base selection on the labour needs identified by employers. They rely on employers to recruit migrants, and to justify why they are necessary for filling vacancies. Employers generally need to demonstrate that they have carried out a domestic or residents' labour market test to justify recruiting immigrant workers. Typically this involves submitting proof that they have advertised the post domestically, that any domestic candidates for the job failed to possess relevant qualifications or skills, and that the salary and conditions being offered conform to certain standards.

Employer-led models are the most widely used method of recruitment in OECD countries. A 'pure' version of an employer-led approach is found in Swedish immigration policy, which allows employers to recruit workers for any job regardless of sector, skills level or salary, provided they meet a labour market test. However, most schemes build in further conditions linked to skills level or salary. Some schemes are restricted to particular types of jobs, incorporating an element of occupational approaches. In most cases, numbers of immigrants are restricted by annual quotas or caps.

Differentiated employer-led schemes may involve:

- Setting caps or quotas for particular regions
- Varying the criteria and conditions attached to recruitment across regions, for example through varying income or skills thresholds, or relaxing labour market tests for employers in particular regions
- Giving regional authorities a greater role in analysing, verifying or monitoring labour market shortages and employer needs.

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### *Case study 5 - Canada: Alberta Immigration Nominee Programme - Employer-Driven Stream*

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*Context:* The Alberta Immigration Nominee Programme (AINP) is part of the Provincial Nominee System (see above), and it includes an example of a differentiated employer-led stream that might potentially be relevant to Scotland. We classify it as an employer-led scheme in that for most of the categories (excepting the Semi-Skilled Worker Category) there are no limits on the occupations that qualify under the scheme. Thus the scheme is primarily driven by needs identified by the employer, rather than an analysis of sectors or occupations facing shortages (although these categories are subject to skills requirements).

*What is the rationale for the policy?* The AINP stream seeks to address skills and labour shortages across a range of industries and sectors. The scheme supports Alberta employers who wish to retain a foreign worker on a full-time or permanent basis, in cases where they have been unable to find a Canadian to fill the position. It also promotes the permanent settlement of workers who have a permanent or full-time job offer from an Alberta employer.

*Who is allowed to enter and work?* In order to be eligible for this stream a candidate must have received a permanent, full-time job offer under one of following three categories: Semi-Skilled Worker Category, Skilled Worker Category or International Graduate Category. Under all three categories the candidate must receive the job offer from an Alberta employer that is registered and operating in Alberta.

*What conditions have to be met?* The conditions guiding the scheme vary across the three categories as follows:

(1) **Semi-Skilled Worker Category:** The employer must be a business based in Alberta, operating in one of five eligible industries (including Food and Beverage Processing, Hotel and Lodging, Manufacturing, Trucking and Foodservices). Eligible occupations within these industries, such as Room Attendant and Kitchen Helper, are also specified. As such, this component of the stream has a strong occupational element built into it, in contrast to the other schemes, which are more strongly employer-led. The employer must provide a job offer for permanent, full-time employment to a candidate that is currently in an eligible semi-skilled occupation, meets all the job requirements and AINP criteria. Further industry specific criteria also apply, such as satisfactory recruitment strategies, employment policies and maximum allocations per year. Employers must also have a Labour Market Impact Assessment (LMIA) confirmation for the candidate. This document shows that no Canadian worker is available to fill the post. The employer also needs to complete a 'Settlement and Retention Plan', which outlines their approach to accommodation, settlement and retention, including provision of language training, benefit plans, opportunities for further training and progression and work/life balance.

(2) **Skilled Worker Category:** The employer must provide a job offer to the candidate in a 'skilled occupation', as determined under the Canadian National Occupational Classification system. The employer needs to provide either a Labour Market Impact Assessment (LMIA – see above) or evidence of LMIA exemption. If the candidate is not already working in Alberta, the employer also needs to provide evidence that they have made significant effort to hire a Canadian or permanent resident of Canada for the position. A candidate needs to clearly demonstrate that they intend and are able to permanently live in Alberta. They also need to have related education, work experience or training to meet the requirement of the position and AINP criteria. Notably, candidates for this stream are not required to meet language proficiency requirements.

(3) **International Graduate Category.** Similarly to the Skilled Worker Category, the international graduate category requires employers to provide a permanent, full-time job offer to a candidate in a skilled occupation according to the National Occupation Classification. However, in addition to the skills levels outlined, this category also includes 'occupations that usually require specific training and/or secondary education'. Candidates that fall under this fourth skills level are required to meet language proficiency requirements.

*What rights/status are offered to immigrants?* As with the other PNPs, once nominated by Alberta, candidates, their spouse or common-law partner and dependent children become eligible to apply for permanent residence, with the possibility of applying for Canadian citizenship after 3 years of permanent residence.

*How is it differentiated?* As with other streams within the PNP, the provincial government has autonomy to set its own selection criteria for immigrants, to select candidates under the scheme, and to nominate candidates to the federal government for permanent residence. However, the federal government sets overall targets for the number of nomination certificates permitted: for example, the cap was reduced in 2013/14 at a time of economic downturn. The federal government is also responsible for assessing an applicant's admissibility and issuing permanent resident visas.

*Does it work?* Alberta issues more than 5,000 nomination certificates per year under the PNP, of which more than half are under the employer-driven schemes (figures from 2010 suggest these schemes accounted for 60% of the PNP intake). The scheme is often oversubscribed, for example in 2015 when Alberta reached its federal allocation of 5,500 certificates. According to Alberta Government analysis, 88.5% of those admitted under the PNP were still living and working in Alberta one year after obtaining permanent residency (Alberta Government 2016). National-level figures from 2011 put the retention rate even higher: according to an evaluation of PNPs, 95.3% of provisional nominees who arrived in Alberta between 2000-08 were still residing in Alberta in 2008 – the third highest retention rate after Ontario and BC (Citizenship and Immigration Canada 2011).

Like other employer-led schemes, however, it has been criticized for allowing employers to draw on relatively cheaper or more flexible foreign labour, without making more robust efforts to make jobs more appealing to Canadian candidates. It has also been suggested that some firms find the financial and administrative burden of participating in the scheme too onerous (Sumption 2014). However, these are criticisms common to employer-led schemes more generally.



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## CASE STUDY 6 - Switzerland: Cantonal Quotas

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*Context:* Switzerland operates a two-level quota system, setting caps on the recruitment of non-EEA workers at both federal and cantonal level. Each of the 26 cantons is allocated a maximum number of permits per year, which can be supplemented by drawing on the federal quota.

*What is the rationale for the policy?* The purpose of the cantonal quotas is to cater for variation in labour market needs and employer demand across cantons. In particular, cantons hosting large multinational companies may be under particular pressure to ensure the labour needs of firms are met. The setting of quotas has also enabled the federal government to address public concerns about immigration control, through demonstrating that it is limiting non-EEA labour migration.

*Who is allowed to enter and work?* Non-EEA immigrants with a job offer can enter under two types of permit: residence permits (B), which are for 1-5 years (usually 12 month, renewable permits); and short-term (L) permits, for up to 12 months. Immigrants entering under the scheme must reach a certain level of qualification: a degree from a university and several years of professional experience; or for some fields, specialist training and several years of experience. The applicant must also fulfil criteria linked to their potential for 'long-term professional and social integration', including language knowledge, age and 'professional and social adaptability'.<sup>12</sup>

*What conditions have to be met?* Employers must submit proof  they have been unable to recruit a suitable Swiss/EEA worker. Vacant positions must be registered with the Regional Employment Offices and the European Employment System. If a suitable EEA candidate is turned down, the employer must justify the reasons for not hiring them, submitting documentation about how the post was advertised, and a justification of why candidates lacked the required qualifications. In addition, the employer must demonstrate that the salary and terms of employment for the worker are in accordance with the conditions customary to the region and sector. Exceptions to these requirements can be made for occupations facing acute shortages, which are deemed to be of particular economic significance.

*What rights/status are offered to immigrants?* Immigrants entering on B and L permits are entitled to bring their spouse and children under the age of 19. Family members of those with a B permit (valid for 1 year or more) may work; those with an L permit may not, unless granted a special authorisation. After 5-10 years of continual residence (depending partly on the country of origin), immigrants with B permits may apply for a settlement permit, which grants permanent residency rights, and removes restrictions on employment or place of residence.

*How is it differentiated?* Every year, each canton is allocated an annual quota of permits based on its population size and labour market needs. In 2015 there was a total of 2,000 L permits and 1,250 B permits available to the cantons (half of the total number available; the other 3,250 were federal level permits). The cantons with the highest quotas were Zurich (403 L and 252 B) and Bern (252 L and 157 B). Once these quotas are exhausted, cantonal authorities can apply for visas from the reserve quota at the federal level. Cantons process employer requests for permits, but the federal State Secretariat for Migration must validate these decisions.

*Does it work?* The cantonal quota system is designed to keep a cap on overall levels of immigration, whilst building in some flexibility to respond to employers' needs. In particular, some cantons are keen to respond to the labour needs of large firms located in their region through ensuring they meet demand for foreign labour; in other cantons, there is very limited demand for labour. The cantonal system allows for a more active role of cantonal authorities in securing permits and verifying employer claims about shortages. However, the system has also been criticised on a number of grounds. Some cantons quickly exhaust their allocation, and draw heavily on the federal quota – in some cases using 4-6 times the number permitted through the cantonal quota. Moreover, the quota system accounts for just 4.1% of long-term immigration to Switzerland. So the cantonal quotas are only a small fraction of total immigration to Switzerland. For these reasons, some critics have accused the quota system of being largely symbolic, designed to reassure the public that the government is limiting immigration (Sandoz 2016: 42). The system has also been criticised as lacking flexibility and imposing onerous bureaucratic procedures (Sandoz 2016: 420).

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<sup>12</sup> State Secretariat for Migration 2017 website



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## CASE STUDY 7 - EU Blue Card

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*Context:* The EU provides a different example to the federal states in other case studies. Within this supranational union the Blue Card scheme is an example of a differentiated employer-led system that attempts to harmonise divergent national policies, rather than devolve competence to sub-national regions. However, it is interesting as it represents a move towards a multilevel structure in which a superordinate authority provides framework guidelines, which are differentially implemented by member state sub-units.

*What is the rationale for the policy?* The EU introduced the Blue Card in 2009 with the explicit goal of making Europe a more attractive destination for high-skilled foreign workers from outside of the EEA. By building in opportunities for mobility across EU member states, it was designed to enhance labour market flexibility and expand the employment and residency opportunities of those entering under the programme. The European Commission also promoted the policy as a step towards harmonising national policies on the admission of labour migrants.

*Who is allowed to enter and work?* The scheme allows highly-skilled non-EEA nationals with a job offer to work in an EU country (excepting Denmark, Ireland and the UK which opted out of the scheme) for a maximum of 4 years. Applicants must be in possession of a recognised diploma or at least 5 years' relevant professional experience, and be offered a salary above a set threshold (usually 1.5 times the average gross annual salary for that occupation, or 1.2 times for occupations facing shortages). Some EU countries have applied more generous terms. For example, Germany, by far the biggest user of the Blue Card, has lowered the income threshold, and operates an especially low threshold for certain occupations facing shortages (e.g. scientists, mathematicians, doctors, engineers, ICT workers). EU countries may set an upper limit on how many people are admitted through this scheme, but again, this is a national prerogative.

*What conditions have to be met?* The Blue Card is conditional on a job offer of at least one year, as well as meeting the salary and qualification thresholds mentioned above. These thresholds are set by each member state. Most member states impose a labour market test to ensure that employers have been unable to recruit EEA nationals for the vacancy. The type of test, and the process of verification, varies from country to country, but most include evidence that the job has been widely advertised, that available EEA candidates lack the required qualifications, and that the conditions of employment are comparable with those of domestic employees.

*What rights/status are offered to immigrants?* The employee is obliged to stay with the same employer for the first 2 years (and to reside in the initial Member State for the first 18 months). After 5 years, the person is granted permanent EU residency status. Again, some EU countries offer more generous provisions, for example Germany allows permanent residency after 3 years, or 2 years if the candidate demonstrates good knowledge of German. Immigrants admitted under the scheme can bring their spouse/partner and dependent children, and the partner is entitled to work. The scheme builds in a possibility of relocating to another EU country. However, in practice the procedures for moving are cumbersome, with workers required to apply separately to the other member state for a new Blue Card.

*How is it differentiated?* The Blue Card Directive specifies certain minimum standards that govern how the scheme should be implemented in Member States. These cover conditions for recruitment, employment and stay, as well as the possibilities for relocating to another EU country under the scheme. However, Member States retain considerable autonomy in how they operate the scheme, including how they set skills and income thresholds. Indeed, there is considerable divergence in how EU countries have interpreted and applied the scheme (Cerna 2013).

*Does it work?* Germany is the biggest user of the scheme, issuing over 12,000 permits so far.<sup>13</sup> However, take-up in other EU countries has been very limited. This is partly because some member states are highly selective in their recruitment under the scheme, setting the skills and income thresholds relatively high (Cerna 2013). Lack of take-up may also be because the scheme is failing to attract skilled workers, if they do not have language skills/ties with the country of destination. EU mobility rights under the scheme are limited, so arguably this aspect provides limited incentives to applicants over and beyond national schemes.

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<sup>13</sup> See the European Commission website: [http://ec.europa.eu/immigration/bluecard\\_en](http://ec.europa.eu/immigration/bluecard_en)

## Assessment

*Advantages:* Employer-led schemes are well equipped to meet employers' demand for labour, through giving them the autonomy to select the workers they need (within certain constraints). There are advantages to relying on markets to select workers. It takes some of the burden of selection away from public authorities. And it allows governments to be more responsive to the particular concerns of business.

*Drawbacks:* There are considerable disadvantages associated with employer-led schemes, which can be divided into four types. First, the reliance on employers to identify shortages carries a number of economic risks. Employer-led systems can disincentivise firms from adjusting wages and conditions to attract domestic workers, or from investing in training domestic workers. Thus while such schemes may help moderate wage demands in areas facing shortages, they may also slow salary adjustment processes that would boost the supply of workers in such occupations (Chaloff and Lemaitre 2009: 32). While labour market and other tests are designed to prevent this from happening, such tests are frequently seen as insufficiently rigorous.

Secondly, such procedures can be onerous for employers. Processing applications on a case-by-case basis can be costly and bureaucratic, especially for smaller firms. Such systems tend to favour larger firms, which have the resources to verify they have met the relevant criteria.

Thirdly, employer-led systems are not necessarily appealing to immigrants, in comparison to human capital points-based systems. They rely on immigrants already procuring a job offer, thus implying the existence of contacts, agencies or prior knowledge of the labour market. And they are strictly tied to particular jobs, limiting mobility across jobs, occupations or locations.

Finally, such schemes are driven by relatively short-term employer needs, and fail to take into account wider socio-cultural or political considerations. Thus there is limited potential of such schemes to promote wider goals of diversity or inter-cultural exchange, or to promote integration and long-term settlement.

*Is it a good model for Scotland?* The three approaches outlined above all aim to attract (primarily skilled) immigrants to fill labour market shortages, and this is clearly relevant to the Scottish context. However, the schemes diverge in how this is delivered. As with other Canadian schemes, the Alberta AINP Employer Driven Scheme combines fairly robust selection criteria and procedures with generous conditions for those entering, including immediate access to permanent settlement for certain of the categories. By contrast, both the Swiss cantonal model and the EU Blue Card are premised on shorter-term stay to address immediate labour shortage (although under the Blue Card scheme member states may offer more generous routes to settlement). This is in line with a more general tendency in European immigration systems to view immigrants as a short-term resource to address labour market gaps, rather than as prospective citizens.

Given its focus on permanent settlement, the Alberta approach may be more relevant to Scotland as a means of addressing longer-term demographic challenges.

The Alberta scheme also allows for the recruitment of lower-skilled workers through its Semi-Skilled Worker Category (although this effectively combines an employer-led and an occupational approach). It is therefore a good example of varying conditions of entry and stay across skills levels.

A differentiated model could also involve Scotland negotiating a separate quota for admitting immigrants via an employer-led scheme. The approaches we outlined above vary in how they view quotas and targets. While the Canadian PNP system does build in quotas, there is generally less concern about restricting levels of immigration. By contrast, the use of quotas in the Swiss cantonal system is very much oriented towards demonstrating that the government is limiting immigration. In this respect, the Swiss example may be more pertinent to UK concerns. Such a scheme could potentially allow Scottish authorities to make the case for a higher regional quota than other parts of the UK, for example based on particular labour market or employer needs. At the same time, the UK Government would be able to combine a relatively more expansive approach in particular regions, with the maintenance of a generally restrictive and tightly managed approach. However, it should be noted that the Swiss scheme is criticised for its rigidity, and only accounts for a very small proportion of long-term immigration.

Finally, we should note that the EU Blue Card scheme is guided by a different rationale from that informing Scotland’s approach to labour migration. It is oriented towards harmonising different systems, rather than differentiating them. However, there are some features of the scheme that are relevant to Scotland/the UK. It offers a model of a multilevel system comprising one general framework differentially applied across sub-units. The respective sub-units may vary dimensions such as the income threshold, qualification levels or length of stay; and they may impose caps.

The summary assessment below assumes an employer-led scheme along the lines of the European models discussed, under which work permits are of fixed duration visa, but immigrants are eligible for permanent residence after 5 years.

	Employer-led systems			
Rationale for immigration	Demographic	Skills shortage	Human capital/ diversity	Social/ cultural
Assessment	Designed to meet immediate labour shortages rather than population growth.	Can meet shortages based on employer assessment. May be cumbersome and less viable for SMEs; may lead to wage depreciation and displacement effects.	Injects human capital and promotes diversity in firms, but only if meets immediate interests of employer.	Encourages cultural exchange and integration
Rating (Max ***)	**	**	**	**

### 3. Occupational approaches

Occupation-based schemes involve recruiting immigrants to fill identified shortages in particular sectors, occupations or skills profiles. These may be low-skilled occupations, such as seasonal labour in agriculture or hospitality, which are difficult to fill because they are unattractive to native workers. Or they may be higher-skilled occupations that face shortages because the native workforce lacks the relevant skills. Sectoral schemes may involve a variety of modes of recruitment. However, most are combined with an employer-led scheme, whereby the worker needs to have a job offer before they can enter. One advantage of these schemes is that they obviate the need for a case-by-case justification of each recruitment decision, as labour market or other tests are waived for those on the list. Moreover, by giving the state a more active role in identifying or verifying shortages, they can avoid some of the distortions that can be produced by employer-led systems (see above).

There are numerous examples of differentiated occupational schemes, and in many cases regions or provinces play an important role in identifying occupations to be included in national lists. There are also examples of separate shortage lists operating for particular regions. However, occupational schemes can also address regional differences in demand *indirectly*, through including shortages that only affect particular regions. Two main types of sectoral shortage schemes can be identified: occupational shortage lists, and seasonal worker schemes.

#### 3.1 Occupational shortage lists

Occupational shortage lists involve compiling lists of occupations that face labour shortages, either in the immediate/short-term, or based on projections of longer-term needs. The methodology for developing the lists can vary. Where they are addressing immediate shortages they may rely on analysing existing vacancies and the qualifications/occupations of job seekers; where they are responding to longer-term shortages they require more complex models for projecting future labour demand and supply.

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## CASE STUDY 8 - Scotland: Occupational Shortage List for Scotland

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*Context:* Tier 2 of the UK points-based system includes provisions for employers to recruit skilled non-EEA immigrants where they are needed to fill vacancies in recognised 'shortage occupations'. When recruiting for jobs on the shortage occupation list employers are exempted from the resident labour market test. Within this system Scotland has its own shortage list – this details additional shortage occupations identified for Scotland specifically. The Migration Advisory Commission (MAC) is tasked with devising both shortage occupation lists. Three criteria are used for identifying the occupations to be included on the lists. These ask whether the occupations are: (a) skilled, (b) in shortage, and, (c) sensible to fill with immigrant workers. There are other routes for skilled workers under Tier 2, allowing for recruitment from outside the EEA for intra-company transfers and employer-led hiring of skilled workers, subject to the resident labour market test.

*What is the rationale for the policy?* Early consultations on developing the points based system and the MAC showed a clear demand that the new system be capable of accommodating regional variations in labour market shortages and economic performance across the UK.

The Scotland-specific shortage occupation list developed as a response to these demands – at the time the MAC was established there was discussion of further review of the operation of the shortage lists to incorporate other regional variations.

*Who is allowed to enter and work?* The shortage occupation list for Scotland includes the UK shortage occupation list with some additional variations. To date these variations have encompassed only a few additional occupations. For example, the recommended Scotland shortage occupation list for 2013 was: medical practitioners limited to specified roles in paediatrics, anaesthetics, and obstetrics and gynaecology; and physical scientists working in diagnostic radiology. The first recommendations for the shortage occupation list for Scotland in 2008 were restricted to food, drink and tobacco processing operatives in specified occupations, nurses working in care of the elderly units at band 5 or above, and, speech and language therapists.

*What conditions have to be met?* The Migration Advisory Committee (MAC) provides expert input into setting labour migration policy and makes the recommendations for the shortage lists based on current shortages. For an occupation to be included in the UK-wide or Scotland shortage occupation list, it needs to: be skilled, be in shortage and the recruitment of immigrants to fill these vacancies needs to be 'sensible' (MAC 2008). The MAC uses top-down and bottom up approaches in determining whether occupations meet these criteria. Top down measures include national level data while bottom up information is gathered from consultations with employers, and sectoral and occupational bodies. There are several challenges in developing these recommendations. For example, there is no objective definition of what constitutes a shortage. The MAC has developed, and updated, a methodology that draws on a range of indicators but determining when an occupation is in shortage remains a judgement. Similarly, as MAC reports acknowledge, determining whether it is sensible to fill jobs using immigration depends on underlying policy objectives such as sustaining wage levels or particular sectors. How a government approaches immigration will impact on the point at which it becomes sensible to allow immigrant access to labour markets.

*What rights/status are offered to immigrants?* Immigrants who come to the UK under the shortage list route of Tier 2 can apply for permanent settlement after 5 years residence. They are exempt from the minimum earnings threshold for Tier 2 migrants to access permanent settlement. Within this route migrants can be accompanied by their immediate family (spouse and dependent children) but will need to demonstrate sufficient resources to support their family.

*How is it differentiated?* The shortage occupation list for Scotland differentiates by adding specific shortage occupations recognised by the MAC for Scotland only. This allows employers in Scotland to recruit migrants from outside the EEA into those skilled occupations without the need to undergo a resident labour market test. Providing Scotland with an additional occupational shortage list should allow some additional flexibility for Scotland in recruiting skilled immigrant labour within the current immigration system. However, that flexibility has, to date, been little used with the number of additional shortage occupations listed on the Scotland-only list not exceeding four since the system was implemented in 2008. This would appear to indicate that there is little variation in labour market needs for skilled labour between Scotland and rUK. However, it is also possible that the current system for determining the shortage occupation list for Scotland is insufficiently sensitive to variations in needs. This could be because the skill threshold is set too high, how shortages are determined or how the question of when it is sensible to recruit labour migrants is approached.

*Does it work?* Immigrants admitted under the shortage lists constitute the smallest inflow under Tier 2, accounting for only 1,400 Certificates of Sponsorship in the year ending 2012, compared to 7,500 for employers using the labour market test, and almost 25,000 for intra-company transfers. Over time the shortage list has also been more narrowly defined with the skill threshold revised upward to National Qualifications Framework (NQF) level 6+ in 2012. All of Tier 2 has been subject to a cap since 2011 but applicants under the shortage lists are given priority over those in the resident labour market test route. The UK government has argued that Scotland is a relatively low user of Tier 2 (skilled workers) route (HM Treasury 2014: 41). It is difficult to ascertain the reasons for the lack of uptake in Scotland of the skilled worker route. It could be that skill levels are set too high or that most such demand is met from within the EU. The degree of differentiation between the UK and the Scotland shortage lists has been quite limited.

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## CASE STUDY 9 - New Zealand: Canterbury shortage list

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*Context:* New Zealand operates a human capital points-based system similar to that of Australia. Since 2003 it has increasingly focused on labour market needs and the employment background of immigrants, rather than qualifications. The government makes use of three skill shortage lists of occupations that employers find challenging to recruit for: the Long Term Skill Shortage List, an Immediate Skill Shortage List and the Canterbury Skill Shortage List, a regional list that will be focused on here.

Canterbury is a region on New Zealand's South Island with a population of approximately 600,000 and New Zealand's second most populated region, after Auckland. Canterbury's capital is the city of Christchurch, which is New Zealand's third largest urban area. In September 2010 and February 2011, the region experienced uncharacteristically strong earthquakes that decimated Christchurch and the surrounding area. Following this natural disaster, plans were put in place to rebuild and regenerate Christchurch and the region.

*What is the rationale for the policy?* The Canterbury Skill Shortage List is a regional skills shortage list that contains occupations that are in critical shortage in Canterbury. It draws on the occupations on the Immediate and Long Term Skill Shortage Lists (LTSSL) relevant to the Canterbury rebuild. The main rationale is rebuilding infrastructure and strengthening the local economy through importing skills and labour, with a view to fostering economic growth in the region. The initiative also addresses concerns regarding the ageing population in the region and more general local labour shortages, as well as the retention and attraction of business (Canterbury Development Corporation 2014).

*Who is allowed to enter and work?* There are two routes to admission. (1) Temporary work visa. An applicant is eligible for a work visa under Essential Skills Instructions if they have a full-time job offer and they have the qualifications and/or experience for that occupation. The Essential Skills work visa enables the entry of skilled workers to fill skill shortages on a temporary basis. (2) Permanent residence. If the applicant's occupation is also on the Long Term Skills Shortage List, they may also be able to apply for permanent residence. In this case, applicants who meet the minimum requirements in the points test submit an 'expression of interest' and are entered into a 'pool' of applicants for up to six months. Those with the highest points scores may be invited to apply for residency under the Skilled Migrant Category.

*What conditions have to be met?* For an occupation to be added to the shortage list, it has to require highly skilled workers and for there to be an obvious shortage of these workers in Canterbury. The employer must have carried out a labour market test to show that sufficient effort was invested in attracting and recruiting New Zealand based candidates for the position, prior to making the offer. When reviewing the list, a forecast of demand for skilled workers is ascertained, industry representatives in Canterbury are consulted and an analysis is carried out of how many beneficiaries, trainees or people from other parts of New Zealand could fill the vacancies.

All applicants under the New Zealand Skilled Migration Category must undergo checks on health and character, English language proficiency, be under the age of 56 and have a high test score, with bonus points for work experience or education gained in-country.

*What rights/status are offered to immigrants?* An Essential Skills work visa is for a minimum of 1 year and maximum of 5 years, depending of the skills level of the job offer. However, there is no restriction on the number of visas one can obtain, and renewal is relatively straightforward where the applicant continues to work in the same job. Under the temporary work visa, the applicant must work in Canterbury. Spouse/common law partner and dependent children cannot be included on the application for a work visa and must apply separately for the appropriate visa. If granted a visa, the principal applicant can support visa applications for family members and dependents. By contrast, those entering through the permanent residence stream gain access to all the normal work, business, education, property, and health privileges available to New Zealanders.

*How is it differentiated?* The occupational shortlist is compiled based on the labour market needs of Canterbury, and recruitment under the scheme is restricted to this region. The list is compiled at the regional level, through a process of consultation involving local industry.

The Canterbury Skills and Employment Hub, established in 2012, assists employers in matching trainees and job seekers from across New Zealand with employment opportunities in the region. If employees with the necessary skills cannot be found, the Hub assists employers to access migrant labour through the immigration process. However, the New Zealand Government retains responsibility for carrying out relevant entry checks and issues visas.

*Does it work?* In 2015/16, 31,766 Essential Skills visas were issued in New Zealand, and Canterbury authorities reported net migration of 7,000. The main occupations recruited included nurses, carpenters and joiners and civil engineers. This makes Canterbury the second largest recipient of Essential Skills temporary workers, after Auckland (Ministry of Business, Innovation & Employment 2016a). In 2015/16, 52,052 residence permits were issued, 80% of which were approved within the country, suggesting a high degree of migrants transitioning from temporary visas to permanent status (Ministry of Business, Innovation & Employment 2016b). In fact, 18% of temporary workers gained permanent residence within 3 years of being issued their first work visa.

However, analyses of the region suggest that the regional rebuild may have reached capacity (Ministry of Business, Innovation & Employment 2016b) and it is acknowledged that the slowdown of the rebuild will create challenges in retaining skilled migrants. Available and affordable housing, career opportunities in Christchurch and retention strategies adopted by businesses and organisations are seen as important factors shaping the supply of labour to the region (Resilient Organisations 2016).

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## CASE STUDY 10 - Spain: provincial Catalogue of Hard-to-Fill Positions

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*Context:* Spain experienced a period of rapid economic growth between the 1990s – late 2000s, generating substantial labour market shortages and large-scale inflows of irregular migrants (Arango 2013). In 2004, the government established a Catalogue of Hard-to-Fill positions to facilitate the recruitment of foreign workers, by exempting employers from a labour market test for certain occupations listed on a Catalogue of Hard-to-Fill Positions.

*What is the rationale for the policy?* The scheme was the result of a tripartite agreement between the government, the employers' confederations and the major trade unions. Its main goal was to facilitate and expedite immigrants' access to the labour market, at a time when the demand for foreign labour was large and increasing, and in so doing to curtail irregular migration. There was a shared assumption that many employers were hiring undocumented workers because the legal channels for recruiting foreign workers before 2004 were constrained, cumbersome and slow. Unlike many other occupational list schemes, the catalogue is designed to address immediate shortages, and does not take into account medium or longer-term projections or goals, e.g. linked to efforts to promote a better match between domestic labour supply and demand.

*Who is allowed to enter and work?* The Catalogue of Hard-to-Fill Positions is a list of positions that cannot be filled by EEA workers, typically for low-skilled jobs. It is drawn up by each autonomous community every three months based on the ratio of vacancies to registered unemployment, and in consultation with regional Tripartite Labour Commissions (the employment office and representatives of local employers and trade unions). There is wide variation in the number of occupations across different regions. For example, Madrid and Asturias listed 20 occupations on their list in 2014, while some regions had none (OECD 2014: 229). The list is dominated by workers in labour intensive and seasonal sectors such as agriculture and tourism, and many are at lower skills levels.

*What conditions have to be met?* In order to recruit a non-EEA worker on the catalogue, the employer needs to provide the immigrant with a formal recruitment offer, on the basis of which the immigrant applies for an entry visa to Spain in her/his country of origin.

Residence and work permits can only be issued by the state administration. Once in Spain, the immigrant has to apply for a residence permit from the Ministry of the Interior and a work permit from the Ministry of Labour (Arango and Finotelli 2009).

*What rights/status are offered to immigrants?* Immigrants under this scheme are given a one-year visa that can be renewed for two more years, and then for an additional two. After five years workers under the scheme can apply for a long-term residence permit. After the first year they are entitled to bring their family to Spain, switch to other schemes, change jobs, or relocate to other provinces.

*Does it work?* Since it was adopted in 2004 the catalogue has become the main gateway for entering the Spanish labour market. The catalogue has generally been seen as successful, although the start of the global financial crisis in 2007-2008 made evaluation difficult, as the latter brought about a drastic fall in the demand for labour, and with it the number of occupations quarterly listed. However, the catalogue has generally been welcomed as an effective tool for managing migration, and the current conservative government (which has been in power since the end of 2011) has kept it unchanged.

## Assessment

*Advantages.* Occupational approaches can be an effective way of filling particular shortages. Such schemes avoid some of the discretionary elements of employer-led systems, although they also require some judgement in determining where shortages exist. By including specialised committees, agencies, employers and trade unions in verifying shortages, they reduce the risk that employers can recruit foreign workers as a strategy for sustaining lower wages or working conditions. And by setting recruitment conditions around occupations rather than requiring case-by-case consideration, they can reduce the potential for larger firms to benefit disproportionately. They can also enable more efficient procedures for recruitment, since quotas for particular occupations can be set in advance, and recruitment for these categories is relatively swift (compared to either human capital PBS which require a complex selection and screening process, or employer-led approaches which require individual verification linked to labour market tests).

Occupational schemes can also build-in longer-term planning, for example they can be complemented by programmes on training, education and workforce planning (OECD 2014). They also offer a degree of certainty that can enable better planning on the part of participants – for example for employers aiming to recruit workers, and students considering particular courses.

Regional occupational lists can be a good tool for filling shortages specific to regions. However, if well designed, national-level occupational approaches can also be flexible in accommodating regional variations in labour demand. So they can in practice operate as a differentiated approach, even if their primary goal is addressing shortages at national level.

*Drawbacks:* As a form of state intervention in markets, such schemes can impede the efficient matching of supply and demand. Arguably, introducing a layer of bureaucracy in identifying shortage lists creates rigidity and can be sluggish in reacting to immediate shortages as they arise. This is why some immediate shortage lists, such as the Spanish Catalogue, involve updating the list as frequently as every three months.

As with employer-led schemes, such schemes lack flexibility from the perspective of immigrants. They generally do not allow employees to switch jobs without reapplying for a visa. This can increase the chances of exploitation and limit opportunities for career advancement, since workers are effectively tied to particular jobs.

Finally, by focusing on labour market needs such schemes do not cater for longer-term demographic or social goals. Such schemes typically offer only temporary permits (although they may allow holders to switch to other programmes), and their selection criteria are focused on skills and qualifications rather than a wider set of factors that might facilitate integration or permanent residence.




As such, while they may offer an effective tool for meeting immediate or anticipated labour shortages, their contribution to addressing demographic goals is limited.

*Are they a good model for Scotland?* UK immigration policy already incorporates an occupational shortage list for Scotland. However, its suitability for addressing Scottish immigration needs is restricted in a number of ways. The minimum wage thresholds are set at UK level and do not include regional variations, and the methodology for identifying occupational shortages is likely to privilege larger companies. The limited availability of data on shortages disaggregated at regional levels is a further constraint. These factors potentially favour employers in London/the Southeast. More generally, as we saw, the interpretation of ‘sensible’ in determining when to include occupations on the shortage list is likely to depend on how policy objectives are framed. UK Government interpretations take into account current labour market needs, but not the sorts of demographic considerations that are central to Scottish immigration policy goals.

More generally, as with other occupational shortage lists, the onus of the scheme is on filling immediate shortages rather than meeting a broader set of demographic and social goals, and such programmes are therefore not designed to select immigrants based on their potential to integrate and settle. In this respect, the Canterbury shortage list offers an interesting model. The Canterbury list offers two routes for admission: a temporary work visa for immediate shortages, and a permanent residency route for long-term shortages. Thus it accepts that those meeting longer-term shortages should be supported and encouraged to stay. Moreover, there is a high degree of flexibility in switching between these two statuses, which is likely to make the scheme more attractive to prospective applicants.

The Spanish catalogue offers a good example of how regional administrations can be involved in identifying occupational shortages, in consultation with social partners. It offers a very dynamic tool, with quarterly revisions and simple procedures allowing a high degree of flexibility in adjusting the list to changing labour market conditions. The scheme covers low-skilled labour, which may be pertinent to Scotland in the event of the cessation of free movement. However, the scheme also needs to be understood in the context of Spain’s particular immigration challenges. Notably, the catalogue aimed to limit the prevalence of irregular migration and labour, through making it easier for employers to recruit low-skilled workers through legal channels. Moreover, there was a high level of political acceptance of low-skilled immigration to Spain from the 1990s until 2007. It is questionable whether a scheme admitting large numbers of low-skilled immigrants would gain widespread acceptance in Scotland or the UK (as discussed further in Part Four). However, given that lower skilled jobs are currently being filled through free movement from EEA countries with no entry routes for third country nationals, the issue of how to fill jobs at the lower end of the labour market is likely to be of increasing importance after Brexit.

Occupational shortage lists				
Rationale for immigration	Demographic	Skills shortage	Human capital/ diversity	Social/ cultural
Assessment	Can offset high dependency ratios but designed to meet labour shortages rather than population goals.	Can meet shortages based in particular sectors, across the skills spectrum	Injects human capital and promotes diversity, but only if it meets sectoral shortages	Encourages cultural exchange and integration, but no immediate access to permanent settlement
	**	***	**	**

#### 4. Seasonal worker schemes

Seasonal worker schemes are designed to recruit low-skilled or unskilled workers to meet labour market shortages in particular sectors on a strictly temporary basis (e.g. 3 or 6 months) with a requirement that immigrants return to their country of origin at the end of the period. Such schemes typically involve a central role for government agencies in regulating the selection and stay of workers. Indeed, most countries operate such schemes through bilateral agreements with source countries. This is partly because the selection of workers for such schemes is considered to require less input from employers. A stronger governmental role is also designed to prevent problems of abuse often associated with such schemes, through allowing more robust regulatory and inspection mechanisms (O'Neill and Papademetriou 2004: 21).

While most seasonal worker schemes are regulated through bilateral agreements, the UK offers an exception: its previous Seasonal Agricultural Workers Scheme (SAWS), which closed in 2013, was not regulated through such an agreement, although it was restricted to workers who were nationals or particular Central and East European Countries. However, the UK Government closely monitored compliance with the scheme through a system of operators approved by the UK Border Agency (MAC 2013). It therefore conforms to the general pattern of centralised government regulation and oversight of such schemes.

We could not identify an example of a differentiated seasonal worker scheme. Seasonal schemes are administered by central governments, often through bilateral agreements with other national authorities. They aim to respond to more specific and local needs through offering possibilities to recruit workers to different sectors (notably, agriculture). Thus they may indirectly cater for regional needs, as indeed was the case with SAWS in relation to agricultural needs in the east of Scotland. However, they do not build in opportunities for regional involvement in the design and operation of immigration programmes.

##### Assessment

*Advantages:* Seasonal worker programmes can offer an efficient and flexible tool for recruiting (non-skilled or semi-skilled) workers to fill gaps, especially in occupations that are unappealing to domestic workers. They often involve more robust regulation and oversight, to prevent various forms of abuse often associated with the recruitment of large numbers of low-skilled, temporary workers.

*Drawbacks:* Seasonal schemes have been criticised as producing unintended adverse effects, including encouraging overstay and irregular employment. They can also contribute to the depreciation of salaries in low-skilled occupations, encourage dependence on low-cost labour, and discourage investment in new technologies to increase productivity.

Moreover, such schemes are not well suited to addressing the range of needs identified in relation to Scotland in Part One. They are explicitly designed to channel temporary migration, actively discouraging integration and settlement, so they would not contribute substantially to meeting demographic goals. Such schemes are likely to make only a limited contribution to social and cultural goals, as they are premised on short-term stay and return at the end of the contract. The one exception is where such schemes are part of a bilateral arrangement aimed at providing economic opportunities for less developed countries, as for example in the case of Italian bilateral agreements with Albania, Morocco and Tunisia (which include broader arrangements for cooperation e.g. on development and migration control).

Seasonal worker schemes				
Rationale for immigration	Demographic	Skills shortage	Human capital/ diversity	Social/ cultural
Assessment	Can offset dependency ratio but discourages long-term stay and settlement.  *	Can meet shortages based in particular sectors, especially low-skilled  ***	Workers given little opportunity to tap cultural capital  -	Discourages social integration. Can however be used as part of bilateral scheme promoting cooperation and development.  *

## Summary of 1<sup>st</sup> Criterion: Meeting Scotland's Needs

Drawing together the assessment of differentiated schemes so far, we summarise the case for the various options considered, based on the rationale for immigration set out in Part One.

### *Human Capital PBS*

- Clearly the strongest in meeting demographic shortages
- Raises issues about retention, deskilling, and addressing specific shortages
- However, points can be calibrated to address these issues, so such schemes can be tailored to meet occupational shortages
- Makes a strong contribution to diversity and socio-cultural goals

### *Post-study work schemes*

- Benefit higher education and can help fill gaps in labour supply
- Raise issues about deskilling, and addressing specific shortages
- Contribute to demographic goals by easing dependency ratios, but more limited contribution to population growth
- Contribute to socio-cultural goals (through cultural exchange, internationalisation of higher education)

### *Employer-led programmes*

- Strongest in meeting immediate needs of employers, although labour market and other tests are cumbersome
- Less suited for planning for longer-term shortage and smaller businesses
- Contribute to demographic goals by easing dependency ratios, but more limited contribution to population growth
- Less strong contribution to socio-cultural goals

### *Occupational shortage schemes*

- Good for addressing particular shortages
- Can factor in labour market planning
- Contribute to demographic goals by easing dependency ratios, but more limited contribution to population growth
- Less strong contribution to socio-cultural goals

### Seasonal worker schemes

- Good for addressing particular shortages in low-skilled occupations
- Can factor in labour market planning
- Limited contribution to demographic goals
- Typically offer limited rights for workers
- Can contribute to socio-cultural goals as part of wider bilateral cooperation

The table below translates this assessment into a quantified rating. We group the demographic arguments together; within the economic argument, however, we distinguish between skills shortages and human capital/diversity arguments, as they are typically associated with different recruitment models. Note that the star ratings are open to interpretation – and, moreover, that the rationales can be differently weighted. For example, it might be argued that demographic and economic rationales are more important than others. The weighted score reflects this.<sup>14</sup>

It should be noted that a migration system is likely to include elements of more than one model. So where a model scores poorly it may be because it only addresses one aspect of the problem (e.g. seasonal worker schemes). Of course, this scoring system only reflects our first criteria: suitability in terms of meeting Scotland’s immigration needs. We now turn to an analysis of how well the different models fair in terms of meeting the other criteria: practical feasibility, and political viability.

		Rationale for immigration				Score (Max 12)	Weighted score (Max 18)
Recruitment model	Examples	Demo-graphic	Skills shortage	Human capital/diversity	Social/cultural		
Human Capital	<i>Points-based system</i>	***	**	***	***	11	16
	<i>Post-study work scheme</i>	**	**	**	***	9	13
Employer-led	<i>Employer-led</i>	**	**	**	**	8	12
Occupational	<i>Occupational shortage list</i>	**	***	**	**	9	14
	<i>Seasonal workers</i>	*	***	-	*	5	9

In the analysis that follows, we focus on four schemes, which we have ‘short-listed’ as the most promising options for addressing Scottish needs, according to the score system above. These are:

1. Human capital points-based system. We largely base this model on the Australian and Canadian PBS, which grant permanent residency status.
2. Post-study work visas. We largely base this model on schemes (such as Fresh Talent) that are time-limited, but allow holders to switch to other immigration channels.
3. Employer-led schemes. Here, we focus on skilled programmes, though we also explore the viability of expanding such schemes to lower skills levels or salary thresholds.
4. Occupational shortage lists. The discussion focuses mainly on skilled shortage lists, but again we explore the viability of expanding such schemes to occupations with lower skills levels.

<sup>14</sup> Weighted score double weights demographic and economic factors.

## Part Three - Implementation and Enforcement

Part Two concluded by suggesting a ‘short list’ of differentiated models that might be equipped to address Scotland’s priorities and needs in relation to immigration: human capital points-based systems, post-study work visas, employer-led models with a labour-market test, and occupational shortage lists. Each model raises different challenges when it comes to implementation and enforcement. The following discussion offers a brief overview of some of these issues.

We start by looking at the sort of infrastructure that would need to be in place at regional level to organise the selection, admission and stay of immigrants under each of the approaches. In the second section, we look at some of the challenges around enforcing each of the schemes. The discussion is not exhaustive, but provides an indication of the types of issues raised.

### 1. Implementation: Managing selection and admission

#### *Human capital points-based system*

The UK currently operates only very limited human capital based immigration recruitment – despite the increased focus on attracting ‘the brightest and the best’. The only scheme currently recruiting immigrants based on human capital (without a job offer) is under Tier 1 of the PBS (see Annex 1). Scotland/the UK would therefore need to conduct extensive analysis to determine how to calibrate a human capital PBS, and would require additional resources to administer such a programme at both the UK and Scottish levels.

The OECD (2014) points out that calibrating, monitoring and adjusting points-based schemes requires considerable expertise and resources. The differentiated Canadian and Australian systems require regional administrations to carry out a number of tasks. First, under the Quebec and PNP systems (although not the Australian one) regional authorities must calibrate the points system so that it selects the right number and type of applicants to meet demographic and labour market needs, and is tailored to admit those most likely to integrate and settle in the place of destination. Such systems require close monitoring and on-going adjustment to ensure they are aligned to local needs. Second, the regional administration must establish methods and documentation for ascertaining how far applicants meet these specified criteria. Thirdly, the regional administrations can field applications, select and forward nominations for approval by the federal government.

The Scottish Government could delegate aspects of this role (for example calibrating the points and monitoring the effectiveness of the system) to a specialised body, perhaps akin to the current UK Migration Advisory Committee (MAC). A quasi-independent advisory body would have the advantage of being able to draw on external expertise, and may be seen as more technocratic and non-partisan.

A points-based system that allows people to enter without an existing job offer would need to be accompanied by effective support for those arriving. This might include career advice, support in finding accommodation, schooling, and accessing health and other services. This implies a role for local authorities, potentially working with dedicated agencies or voluntary sector organisations. Such support would also be important for promoting permanent settlement and minimising onward movement out of Scotland (discussed in the following section).

### *Post-study work schemes*

Scotland already has experience of administering a post-study work scheme, under the Fresh Talent scheme. The administration of such a scheme would be more complex were it to include additional eligibility conditions, for example a salary threshold or minimum skills level for jobs. The Scottish Government Post-Study Work Working Group has also suggested adopting a sponsor model, whereby educational organizations would sponsor graduates under Tier 4 (Scottish Government, 2015). This would clearly require additional resources for such organizations and potentially onerous monitoring responsibilities. It may be challenging for HEIs to monitor former students who have moved on to jobs outwith the HEI and may have relocated to another part of Scotland.

Post-study visa programmes should ideally provide support to graduates in navigating the labour market, which would enable a more efficient matching of skills to jobs. Since immigration through such schemes is not premised on a job offer, it would make sense to put in place specialised career advice for graduates. This might best be offered by HEIs, again raising resource issues for HEIs in Scotland.

### *Employer-led systems*

Employer-led systems are by their nature decentralised, placing the onus on employers to select immigrants. However, such systems are invariably accompanied by a range of checks and labour market tests, and may also involve setting skills or salary thresholds. Thus immigration authorities need to ensure these requirements and thresholds are set at the right level, and that employers and workers are complying with the relevant conditions.

Depending on what type of differentiation is adopted, local or regional bodies may have a more or less extensive role in administering such schemes. As discussed in Part Two, differentiation at regional level could involve varying skill or salary thresholds by region, or waiving certain labour market tests or conditions for employers in particular regions. Where these conditions need to be set, monitored or implemented at regional level, this will clearly impose additional responsibilities on regional bodies. Such tasks could in principle be carried out by the Scottish Government, or a delegated body, and possibly in consultation with local employer groups, trade unions and local authorities. It should be noted, though, that employment law and regulation are currently a reserved matter, so this option would imply granting more powers to the Scottish Government. A recent study commissioned for the City of London Corporation proposed a regionalised employer-led system, which would be implemented through regional bodies or regional offices of the UKVI (PWC 2016).

### *Occupational shortage systems*

Occupational shortage schemes can be varied to address regional concerns either by incorporating regional development plans and priorities, or by using regionally disaggregated data and other information on shortages and job vacancies. In both cases, there may be a case for delegating analysis and some decision-making to regional authorities or their delegated bodies.

In terms of regional planning, regional governments or local authorities may be better placed to integrate planning on occupational shortages with policies on education and training, industrial strategy, regeneration and development plans. As noted above, the current criteria for identifying occupations for the Scotland shortage list are based on UK-wide immigration policy goals.

A differentiated system could factor in Scotland-specific considerations more fully, including regional/local economic and education planning and development strategies, as well as demographic goals.

In terms of methodologies for identifying shortages, again the regional level may be better placed to liaise with local employer groups, trade unions and other stakeholders to compile information and prioritise different occupations (as is the case with the Swiss cantonal system). Moreover, if a regional system were to involve setting different salary or skills thresholds, a regional specialist body might be best placed to recommend where these thresholds should be set, and monitor the labour market and wider socio-economic impacts of such a scheme.

This might imply the desirability of something akin to a 'MAC Scotland', which would not only be responsible for compiling shortage lists, but might also advise the Scottish Government on criteria for prioritising certain shortages and salary/skills thresholds, taking into account wider regional conditions.

## 2. Enforcement: Ensuring compliance

Immigration control encompasses entry controls at ports and airports, pre-entry screening and visa issuance, in-country immigration controls and immigration removals. The dynamics of immigration control and enforcement vary across countries, with some European countries relying predominantly on internal checks through rigorous systems of registration, databases and identity cards. The UK has traditionally relied on border control as its main means of enforcement, partly because of its geographical position, but also because of a long history of limited state monitoring and documentation of UK residents.

In terms of the UK's capacity to control the *entry* of immigrants, we do not consider that a differentiated system would have a material effect on enforcement. Under current arrangements, UKVI officials control non-EEA nationals on arrival at ports and airports. Pre-entry controls have also been rolled out to preclude the arrival of passengers deemed to pose a risk to national security, border security or public health. This involves increased information collected on potential passengers, broadening visa requirements and more extensive security and health screening. It can be assumed that under each of the four differentiated systems considered in this paper, border and pre-entry control would remain the responsibility of Home Office agencies. Even in cases where the Scottish Government had powers to select immigrants to enter via a points-based system, we would assume that applicants would be vetted and issued visas by Home Office agencies, as is the case with the Quebec Skilled Migrants Programme, the Canadian Provincial Nominee Programme, and the Australian State Specific and Regional Migration (SSRM) programmes.

Of more relevance for assessing the viability of differentiated systems are the various measures in place for in-country controls. Of these measures, the most important tool for enforcing rules on labour migration is the system of sponsorship. Employers and educational establishments seeking to bring people in from outside the EEA are required to have sponsorship status and need to demonstrate they have adequate checks in place to retain their sponsor status. The sponsorship requirements apply to employers bringing in workers under Tiers 2 and 5 and education establishments bringing in students and pupils under Tier 4. This effectively outsources immigration monitoring to employers and educational organisations, hugely widening the reach of Home Office agencies. Alongside this, powers to tackle illegal working have expanded.

Immigration Acts in 2014 and 2016 increased the ability of the Home Office to tackle illegal working by providing new powers and penalties for enforcement and removal, including more stringent sanctions for employers or illegal immigrants. The increased capacity to keep track of immigrants in employment or education provides an opportunity to differentiate the immigration system by tying particular migrants to certain regions.

The UK's outsourcing of in-country immigration controls is not limited to education and employment. It has also become a feature of controlling access to services and is now being expanded into the private sector with access to banking and private sector renting becoming subject to immigration checks. Immigration checks have also been embedded into licensing for the sale of alcohol, and late night refreshment vendors as well as the taxi and private hire vehicle services where self-employment of illegal working is believed to be concentrated. The workability of such measures remains in doubt and some – such as the requirements on landlords – have not yet been implemented in Scotland, Wales and Northern Ireland. However, even without implementing such regimes in Scotland these measures provide greater scope for UK authorities to ensure migrants to Scotland are not relocating to rUK. Moreover, the prominence of such schemes may act as a deterrent to relocation of Scotland-specific immigrants even if they are not consistently enforced in practice.

In addition, the introduction of biometric residence permits under the 2007 UK Borders Act means that an increasing proportion of the UK immigrant population are now issued with identity documents providing details of their rights to stay, work, study and entitlements to public services. Such permits could also include restrictions to regions of the UK to enforce a differentiated immigration system. In sum, there has been a significant expansion in the capacity of the UK state to monitor immigrants. While these innovations raise concerns regarding potential discriminatory impacts, they also greatly increase the immigration system's capacity to monitor the UK's population and make the enforcement of a regionalised immigration system a realistic possibility.

#### *Employer-led and occupational shortage schemes*

Differentiated schemes for employer-led and occupational shortage programmes do not raise serious challenges for the UK's immigration control regime. In both cases, we assume that immigrants would be employed by organisations with sponsorship status. In the case of employer-led systems, admission would be contingent on the employer meeting a number of conditions linked to the labour market and the terms of the job. For occupational shortages, conditions linked to the qualifications and experience of the candidate and the type and conditions of the job would need to be met. In both cases, the procedures and the scope for infringement would be similar to those under the current system. Moreover, we would not expect major concerns about onward movement to rUK to arise, given that admission and stay would be tightly coupled with a specified job, and employers would be UKVI certified sponsors and concerned to retain their sponsor status.

Enforcement challenges may potentially arise in the event that a differentiated scheme admitted large numbers of low-skilled immigrants employed in more casual types of work. For example, a regional occupational shortage scheme similar to the Spanish Catalogue of Hard-to-Fill jobs might imply recruiting immigrants to work in low or unskilled jobs in construction, hospitality or domestic services, which are associated with more casual contracts (shorter term, with higher turnover). Moreover, some sectors with a concentration of lower-skilled labour are more likely to employ immigrants on an irregular basis.



This might create enforcement problems around over-stay (staying on after the termination of the job contract/visa); or onward movement to rUK (relocating and taking up a job outwith Scotland, outside the terms of the permit).

However, over the past 5 years the Home Office has increased its ability to make in-country checks on immigration status and entitlements by co-opting other public and private service providers into controlling migration, creating what is termed a 'hostile environment' for illegal immigrants (Cherti 2014).

### *Human capital systems*

Human capital based systems raise a distinct set of issues for immigration control, as they would allow immigrants to enter Scotland/the UK without a specific job offer. We briefly consider each in turn.

*Points-based systems.* Human capital points-based systems imply that admission is effectively decoupled from either study or a job offer. This would imply that entrants under such a scheme would not be covered under the sponsor system. However, it can be argued that sponsorship is in any case less relevant for those entering through this route. As points-based systems involve a careful selection system prior to entry, immigrants admitted under such routes have already been screened on a range of criteria. So some aspects of enforcement have already occurred pre-arrival. Moreover, where such schemes grant immediate access to permanent residency, immigrants have full access to a range of rights and services once granted entry to the host country. Such schemes do not typically include restrictions on the type of employment taken on by the person admitted. Thus there is limited scope for infringing the conditions of stay, and most aspects of in-country enforcement do not apply (for example, enforcing specific employment or residency requirements, or preventing take-up of services to which immigrants are not entitled). The exception would be if a residency requirement were imposed, as with the Australian SSRM programmes, which require entrants to live and work in a particular state/territory for the first two years. However, the issues in enforcing such a requirement are not materially different from those involved in enforcing the Fresh Talent scheme. Employers would be responsible for checking the immigrant status of applicants, including their right to work in rUK. We assume that immigrants under the scheme would therefore have limited incentives for entrants to move to rUK over this period.

However, the extensive nature of the rights of immigrants entering under human capital PBS might in itself raise challenges. Two aspects of this deserve consideration. One is the question of entitlement to access welfare benefits. If immigrants are granted permanent residence, we assume that they would be entitled to claim such benefits from the outset, and without time restriction. Such unconditional access may be politically sensitive in the UK, especially given recent debates about the access of EEA nationals to such support.

A second issue is the question of onward movement at the end of any restricted period. The Canadian system does not require immigrants entering under the human capital PBS to reside in a particular province, and the Australian system allows onward movement after 2 years. As we saw in Part Two, programmes trying to promote settlement to more remote or less economically prosperous regions can face problems in trying to retain immigrants in the longer term. For this reason, regional PBS have built in measures to encourage the permanent settlement of immigrants in the host region, through giving additional weight to existing ties with the region (e.g. previous study or work experience, family), and through promoting their integration.

However, were Scotland to admit substantial numbers of immigrants through its own human capital PBS, this would doubtless generate similar concerns about onward movement to rUK. Again, such concerns are likely to be more serious where a PBS admits large numbers of low-skilled workers.

However, these two issues – the question of access to welfare and public services, and onwards movement – are not enforcement issues in the strict sense. Rather, they are issues about what constitutes a fair distribution of resources, and what sorts of rights should be offered to long-term residents. As such, they are essentially political questions, and will be discussed further in Part Four.

*Post-study work schemes.* When the Fresh Talent scheme was in operation, Scottish employers were responsible for carrying out checks on potential non-EEA employees, and did not need to be registered as sponsors with UKVI. Since then, employers of non-EEA nationals entering under Tier 2 need to be UKVI certified sponsors. If this requirement were applied to a Scottish post-study work programme, it is likely that some (smaller) employers would be deterred from recruiting post-graduates under such a scheme, because of concerns about the bureaucratic procedures and responsibilities associated with sponsor status. The problem was recognised by the post-study work working group set up by the Scottish Government, which suggested that students could be sponsored by HEIs and their stay regulated under Tier 4 (2016b). Under these proposals, graduates would only be permitted to take up employment in Scotland for the 2 years duration of the permit, and this would create incentives to stay in Scotland for that period.

## Summary of 2<sup>nd</sup> Criterion: Implementation and Enforcement

### *Post-study work schemes:*

- If no income or skills threshold is imposed, this scheme would be straightforward to administer; in the case of such thresholds, more administrative capacity would be required to verify job offers.
- Some additional investment would be required to support graduates in finding suitable jobs.
- Options for sponsorship create different challenges. Employer sponsorship may deter potential employers, while HEI sponsorship may be overly complex to administer.

### *Points-based system:*

- Scottish Government and the Home Office would require additional resources to calibrate, monitor and administer a human capital PBS; parts of this role could potentially be delegated to a specialist advisory board.
- Some additional investment would be required to support new entrants in finding suitable jobs, accommodation, and wider aspects of integration.
- Assuming a human capital PBS offers permanent residency from the outset, there are limited enforcement issues associated with such schemes although there is the need to ensure immigrants to particular regions do not relocate infringing the conditions of their stay.
- Human capital points based schemes in Australia and Canada provide generous rights and access to benefits from the outset. This could be (politically sensitive in the UK – see Part Four).

*Employer-led system:*

- Admissions and checks would continue to be the responsibility of Home Office agencies, although the Scottish administration or a delegated body may have an enhanced role in verifying labour market tests and job offers.
- If such a scheme involves a set quota for Scotland, the Scottish Government would require some additional resources to carry out the required labour market analysis.
- A differentiated employer-led system would not create substantial additional challenges for enforcement given the current sponsorship system.

*Occupational shortage list:*

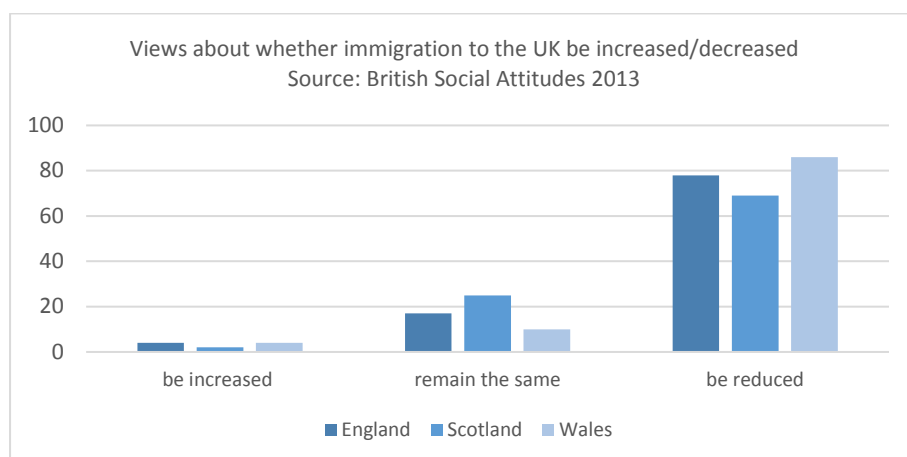
- The Scottish Government or a delegated body (a 'Scottish MAC') would require additional resources to compile lists of shortages.
- Admissions and checks would continue to be the responsibility of Home Office agencies, although the Scottish administration or a delegated body may have an enhanced role in verifying that applicants and job offers meet the required conditions.
- If such a scheme incorporated lower-skilled occupations than those covered in the UK-wide scheme, it may raise additional challenges for enforcement, especially in sectors associated with casual contracts, high turnover, and irregular work.

The table below rates each of the models, according to ease of implementation and enforcement. Three stars implies very limited challenges, two stars moderate, one star more significant challenges. We should note that we consider all four schemes to be viable in terms of implementation and enforcement.

Scheme	Ease of implementation (max ***)	Ease of enforcement (max ***)	Total Score (max 6)
<i>Points-based system</i>	*	***	4
<i>Post-study work visa</i>	***	*	4
<i>Employer-led/labour market test</i>	**	**	4
<i>Occupational shortage list (skilled)</i>	**	**	4

## Part Four - Political Context

Developing a differentiated immigration policy for Scotland/the UK will clearly need to be sensitive to the political context. Immigration is one of the most salient issues in UK politics, and the current UK Government is committed to a target of reducing net migration. Following the June 2016 referendum, the UK Government also clearly signalled that it would prioritise the goal of limiting free movement of workers from the EU over retaining membership of the Single Market. Indeed a substantial proportion of UK voters consistently express a preference for a reduction in current levels of immigration. This is the case in Scotland as well as rUK, although surveys suggest the Scottish public is relatively less opposed to immigration than the average for rUK (Bell, Findlay McCollum and Wright 2014; McCollum, Novak and Tindall 2014). For example, the 2013 British Social Attitudes Survey broke down attitudes to immigration by region, and found that 69% of Scottish respondents believed that immigration should be reduced, compared to 78% in England and 86% in Wales.<sup>15</sup> A 2014 survey by the Oxford Migration Observatory reported a sharper divergence in views. The survey found that while a majority (58%) of people in Scotland support reductions to immigration, this level is significantly lower than England and Wales, where support for reductions stands at 75% (Blinder 2014).



In this section, we briefly map the sorts of political issues that might arise from adopting each of the main models explored in the last two sections. We want to introduce two important caveats to the analysis. First, public opinion and party political positions on immigration are not fixed. Political parties may adjust their positions to respond to what they understand to be public concerns about migration control, or to perceived political opportunities arising from the claims or positions of rival parties. And public attitudes may evolve in relation to changed conditions or be shaped and channelled through party political discourse and mobilisation. We therefore need to be very cautious in projecting future political dynamics on immigration.

The second caveat is that immigration policy is likely to be reformed over the next few years, as the UK leaves the EU and free movement provisions cease to apply. The UK Government has already indicated it may introduce measures to ensure labour shortages are met in key sectors such as agriculture and health. A differentiated immigration system could potentially be introduced as part of a wider set of measures to offset acute shortages generated by reduced EEA immigration. Thus the policy context is very much in flux.

<sup>15</sup> British Social Attitudes 2013.

We also note the difficulties in anticipating which aspects of immigration reform are likely to gain political attention. In general, the technical details of the different recruitment schemes are unlikely to attract substantial coverage in the media. However, any changes to immigration targets or caps, or changes in immigration and net migration flows, may well generate publicity. Similarly, issues around immigration enforcement and the impact of reforms on access to welfare or services may well attract scrutiny.

Finally, a general point to make at the outset is that any scheme that implies a substantial increase in net migration will directly undermine the current UK Government's net migration target. As such, it would generate considerable political risks for the UK Government. This implies the importance of more disaggregated data on immigration to Scotland. Currently, the International Passenger Survey does not provide sufficiently robust data on inflows and outflows to allow reliable figures for Scotland to be separated out. A differentiated labour migration scheme would be able to track the number of permits or visas issued to entrants, but it would not necessarily be able to track outflows or relocation to other parts of the UK. Better data would help justify a differentiated approach in relation to the net migration target (assuming this is retained). Meanwhile, better data on stocks and flows between different parts of the UK would also help improve monitoring of onward movement.

#### *Points-based system*

In Part Two, we assessed human capital points-based systems as the most appealing approach given Scotland's demographic needs, and Part Three argued that such a scheme would be feasible to implement. However, this model may be the most politically sensitive of the options.

- Since such schemes are not premised on specific labour market shortages, they may be more difficult to justify to sections of the public. Admission based on population targets and projected demographic trends may be more politically controversial than admission based on tangible and immediate economic needs. Such schemes have the capacity to become especially controversial if high-skilled immigrants take up jobs in lower-skilled sectors (deskilling).
- Such schemes support permanent settlement, implying immediate access to a range of benefits and public services. Granting such generous conditions may be politically sensitive, given recent debates about the perceived costs of immigration to welfare systems and public services.
- A human capital PBS would imply entrants have a right to live and work in other parts of the UK (possibly after a 2-year period). This would raise concerns about Scotland becoming a 'back door' for immigration to rUK, and is likely to be especially sensitive given the current UK Government's pledge to 'take back control' of UK borders.

More generally, it is worth noting that human capital PBS were developed in 'settlement' countries (notably Canada and Australia), which have traditionally adopted more pro-active state policies for growing their populations through immigration. By contrast, European countries, including the UK, have tended to treat labour migration as a means of meeting short- or medium-term labour market shortages (Chaloff and Lemaitre 2009: 31). These divergent views of immigration may be difficult to modify.

For these reasons, a human capital PBS for Scotland would require strong support and political leadership from both the Scottish and the UK Government. The Scottish Government would need to convince voters that such a system was clearly in Scotland's economic and social interests.

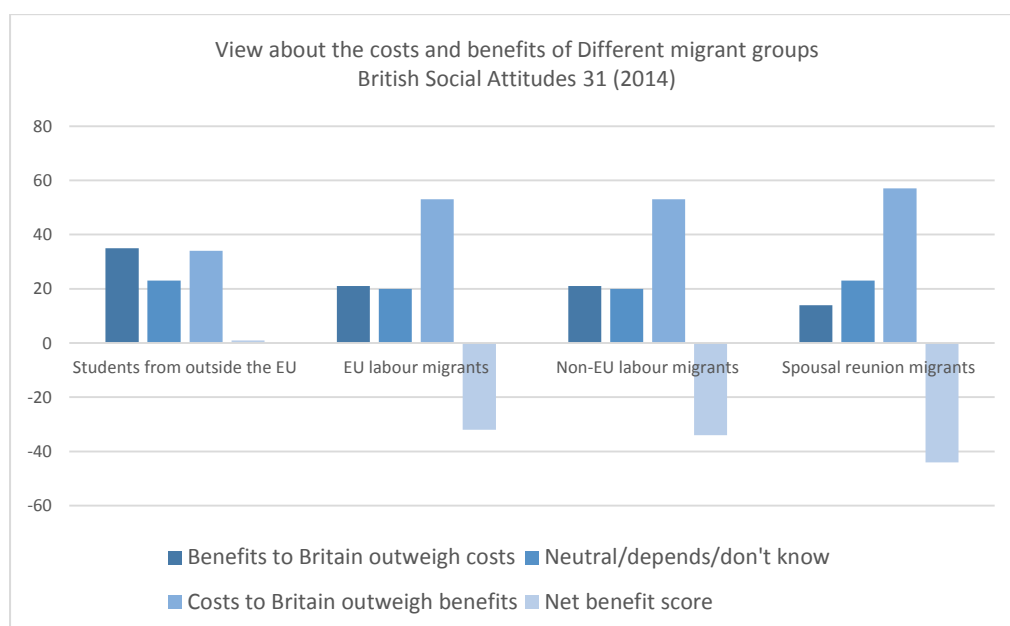
We consider this may be viable, especially if all main Scottish parties support the approaches. More serious challenges lie at the UK level. The UK Government would need to persuade UK voters that it was a response to a distinct set of challenges in Scotland, and that it would not lead to higher levels of immigration in rUK or imply a loss of UK control over immigration. It is difficult to envisage such an approach being endorsed by the current UK Government.

The political viability of such a scheme would also depend on how selective it was. If the scheme were restricted to high-skilled migrants, or even just those with particular types of qualifications, it would be easier to justify politically. However, it may prove difficult to recruit sufficient levels of immigrants if the skills threshold is set high. A more expansive scheme incorporating lower-skilled immigrants would be more viable in terms of attracting immigrants, but would be more challenging to win support for.

### Post-study work schemes

Polls suggest that the public is less concerned about student immigration than other types of inflow, and a 2-year post-study scheme could be understood as an extension of the study route. The Fresh Talent programme was not seen as politically controversial in Scotland, and won the support of all the main political parties.

- Possible political opposition may focus on issues of de-skilling, and the potential for displacing lower-skilled workers. It may therefore be politically expedient to introduce income or skills thresholds as conditions of employment, to send out a clear signal that employment is in high-skilled occupations. However, setting such conditions would in turn create increased implementation costs (see Part Three).
- Enforcement issues (for example relating to overstay or onward movement to rUK) are likely to be less controversial if a sponsor system is introduced, as proposed by the Scottish Government (2015). However, as noted in Part Three there are also costs associated with employer or higher education sponsorship of graduates.



It should be noted that there may be interest in a more expansive post-study work scheme across the UK, especially given HEI concerns about loss of foreign students after Brexit.

If such a scheme were to be rolled out across the UK, Scotland would of course be covered but would lose its comparative advantage.

In general, we consider that while a post-study scheme would raise political challenges, such schemes would be less politically controversial as a human capital PBS.

### *Employer-led system*

A differentiated employer-led system could largely build on existing streams under Tier 2. As such, it would involve relatively minor adjustments to existing programmes, such as lowering the skills or salary threshold for Scottish employers, or waiving some parts of the labour market test. The political acceptability of such adjustments would depend to an extent on how they were presented.

If such a scheme involved setting a Scottish quota (similar to the Swiss cantonal system), this would be likely to attract more attention and would need to be carefully justified, especially given the UK Government's commitment to controlling immigration. It is possible that, as with the Swiss system, the UK Government could make a virtue of a quota system, using it to signal pro-active management and control, tailored to specific labour market conditions in different parts of the UK. Thus the quota would underscore a commitment to controlling immigration, rather than a target for expanding it

Such a scheme is likely to be less controversial if it grants a set of entitlements similar to those currently existing under Tier 2. Thus unlike the more generous programmes which entitle entrants to permanent residency (such as the Alberta employer led schemes discussed earlier), it would typically involve between 1-5 years, with a possibility of applying for permanent residency only after 5 years. It would also be less controversial if restricted to small numbers of skilled migrants. If it involved larger volumes of immigration, it would contradict the UK Government's commitment to reducing immigration, and thus be less viable from the perspective of the UK Government.

### *Occupational shortage list*

A reworked and expanded occupational shortage list for Scotland would imply only incremental adjustments to current arrangements, and thus may not be politically controversial.

The establishment of a regional body to compile shortage lists may potentially be seen by the UK Government as a reduction in its capacity to control inflows. However, if combined with a quota, it may also be a means of signalling that the UK and Scottish Governments are controlling immigration in a planned way, aligned to local economic conditions.

As with other schemes, this approach is likely to be more controversial if it involves admitting substantial numbers of immigrants, and especially those with lower skills level. Thus if an occupational shortage list covers less skilled occupations (as with the Spanish catalogue), it may be seen as potentially displacing domestic workers.

## Summary of 3<sup>rd</sup> Criterion: Political Viability

### *Human capital points-based system:*

- Likely to raise political concerns about immediate access to extensive rights and permanent settlement
- Could raise concerns about retention and onward movement to rUK (Scotland as a ‘back door’)
- Decoupling of entrants from specific jobs may be more difficult to justify (compared to recruitment to fill identified vacancies or meet skills/occupational shortages)

### *Post-study work scheme:*

- May be less controversial because of Fresh Talent precedent
- May raise concerns about deskilling and displacement of domestic workers

### *Employer-led system:*

- May be less controversial if building on existing Tier 2 provisions
- Scotland quota could be object of political attention, but could be used to signal control
- Would be more controversial if involves lower skills/salary threshold

### *Occupational shortage list:*

- May be less controversial if building on existing Scotland occupational shortage list
- Scotland quota could be used to signal control (as above)
- However, a ‘Scottish MAC’ could imply Home Office ceding control
- Would be more controversial if covering lower-skilled occupations

The table below rates each of the models, according to their expected political viability. Three stars implies the scheme does not raise political challenges, two stars implies moderate challenges, and 1 star more substantial challenges. Even more than the two previous criteria, this rating comes with a substantial caveat: it is impossible to accurately predict the political viability of different models, given the potential for flux in both public opinion, and the positions adopted by Scottish/UK Governments and political parties.

Scheme	Political viability (max ***)
<i>Human capital PBS</i>	*
<i>Post-study work scheme</i>	**
<i>Employer-led</i>	**
<i>Occupational shortage list</i>	**



## Summary Assessment

In this paper, we have intentionally resisted recommending one particular model. We felt that each approach has distinct pros and cons; and that setting these out clearly, across different criteria, would help clarify the economic, social, administrative and political issues at stake. We also wanted to set out the issues from the perspective of Scotland’s immigration needs, while also taking into account potential issues for the UK Government in terms of implementation, enforcement, and political viability.

The table below rates each of the options across the criteria. Our weighting awards a maximum of 12 points to the first criterion of meeting Scottish needs, and this score is based on the aggregate score (not the weighted one) calculated on page 40. We give a maximum of 6 points to implementation and enforcement (see page 48). We have also given a maximum of 6 points to political viability, with the score is derived from doubling the score calculated on page 53. As before, we caveat this exercise with a health warning about the scores we have given each system across the criteria. Our grading of the systems reflects our interpretation based on the analysis above. Different readers of the document might give diverging scores across the criteria. Moreover, the criteria also might be weighted differently according to one’s perspective, for example attaching more or less importance to the third criterion of political viability.

	Overall assessment			
Recruitment model	Meets Scottish needs (max 12)	Implementation/enforcement (max 6)	Political viability (max 6)	Score
<i>Points-based system</i>	11	4	2	17
<i>Post-study work visa</i>	9	4	4	17
<i>Employer-led</i>	8	4	4	16
<i>Occupational shortage</i>	9	4	4	17

As shown in the table, our summary assessment allocates the same score to the human capital PBS, post-study work visas and occupational shortage approaches, but arrives at these scores on different grounds. The human capital PBS model is clearly the best suited for addressing Scotland’s demographic needs, but it is the least politically viable. The post-study work visa and occupational shortage approaches may be less strong in terms of meeting demographic needs, but they are more politically viable, building on existing or previous schemes.

### Combining Approaches

As noted earlier, different approaches can be combined. The current UK PBS includes a range of different programmes, including elements of human capital, employer-led and occupational shortage approaches. The Australian and Canadian systems likewise involve a variety of different programmes, designed for distinct purposes. Some combination of schemes would probably be best suited to Scotland’s needs. We suggest three possible combinations.

1. A human capital PBS could be weighted to address various criteria – for example giving particular credit to graduates of Scottish universities or those with skills in occupations facing shortages. Thus a human capital PBS can incorporate various rationales, linked to all of the considerations set out in Part 1 of this paper (demographic, labour market, diversity, and socio-cultural goals).

The Australian and Canadian regional systems discussed in Part 2 both provide good models for such an approach.

2. If a human capital PBS proves unfeasible, a future regionalised system could involve a regional quota that combines elements of employer-led and occupational shortage criteria. These schemes, which already exist under Tier 2, could be differentiated to allow lower thresholds for Scottish employers, for example setting lower skills or salary thresholds than for rUK, or waiving elements of labour market tests.
3. A third option is that Scotland could combine a post-study work scheme with a differentiated occupational shortage list and/or employer-led approach. Under such a system, graduates of Scottish HEIs would have an initial leave to stay and work for 2 years following their study, and then have the possibility of switching to an expanded Tier 2 (Scottish) route, as per point 2. above. This would mean not only that Scottish employers benefited from less stringent criteria for recruiting immigrants, but also that there was a wider pool of available skilled migrants already living in Scotland.

Finally, any scheme will need to address labour shortages in lower and unskilled occupations. There are various options for achieving this: Tier 2 skills thresholds could be relaxed; Tier 3 (which has not yet been used but was designed to cover low-skilled workers) could be activated, under conditions similar to current Tier 2 occupational shortage lists; and/or a seasonal worker scheme will be re-introduced to address shortages across some sectors. The experience of such schemes across Europe and other immigration countries is that the conditions and rights of immigrants recruited for lower-skilled jobs tend to be less favourable. Scotland will have an interest in ensuring such provisions are as generous as possible, encouraging integration and permanent settlement of workers filling jobs that would otherwise face shortages.

## Final considerations

Key to addressing demographic problems are the pathways offered to permanent settlement. This is one of the most difficult challenges facing the design of a future system, given public concerns about the impacts of immigration and access to welfare and public services. A differentiated system incorporating permanent settlement rights is also likely to raise concerns about retention and onward movement to rUK. However, the advantage of human capital PBS is that they build in expectations about permanent settlement from the outset. Selection is effectively front-loaded into the system: a substantial amount of resource is invested in selecting, vetting and recruiting those who are most likely to integrate and settle, and contribute positively to the host society and economy. And once they have moved, they have a generous set of rights and conditions that facilitate settlement and integration. Arguably, this is a far more foresighted approach to recruitment than the more reactive and short-term focus on addressing labour market gaps, which characterises most European immigration policies.

However, when analysing lessons from traditional 'settler' countries such as Australia and Canada we need to bear in mind the very different history of immigration, and distinct public philosophies of identity and belonging. Lessons from these settler countries therefore cannot be straightforwardly transferred to the Scottish/UK case. If Scotland wants to adopt such a model, political leaders will need to think carefully about how to make a convincing case for embracing such an expansive approach to membership of its political community.

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## Annex 1

### **The UK immigration system points based system**

The points based system covers those entering the UK from outside the EEA. It has 5 tiers:

- Tier 1: High Value Migrants: this category allows entry for entrepreneurs, graduate entrepreneurs, investors and migrants with exceptional talent. Some of these subcategories are subject to quotas: 1,000 visa allocations are permitted per year for those with exceptional talent, and 2,000 for graduate entrepreneurs. Applicants for these visas must be endorsed by specific organisations that are recognised competent bodies.
- Tier 2: Sponsored skilled workers: this category allows entry for general skilled workers, ministers of religion, sportspeople and intra-company transfers. General skilled workers must have a job offer in the UK to apply under tier 2. Applications must be sponsored by an employer holding a sponsorship licence. Job offers are subject to a resident labour market test unless the job is on the shortage occupation list. The number of certificates for sponsorship allowing employers to sponsor a tier 2 general skilled worker is currently capped at 20,700. However only some applicants count towards this total including Croatian nationals, people applying for jobs paying less than £155,300 and visa switchers from the tier 4 (dependents) category.
- Tier 3: Lower skilled workers: this category has not been used since the points based system was developed as need for workers in lower skilled occupations has been met by workers from inside the EEA.
- Tier 4: Students: this category allows entry for child students (aged 4-16) and adult students (aged 17 or over). Applicants must have a place at a registered UK educational establishment before they can apply.
- Tier 5: Temporary workers: this allows five categories of temporary worker entry to the UK. The categories include creative, sporting, charity and religious workers, and young people coming to the UK on youth mobility visas from countries with which the UK has reciprocal arrangements. Youth mobility visas are capped at 55,000 a year.

## Annex 2 - Abbreviations and Acronyms

A-8	Eight Central and Eastern European countries that joined the European Union in 2004
AINP	Alberta Immigration Nominee Programme
BC	British Columbia
Brexit	British exist from the European Union
BSMQ	Business and Skilled Migration Queensland
CSQ	Quebec Selection Certificate
EEA	European Economic Area
EU	European Union
EU-15	European Union from the 1995 enlargement to the 2004 enlargement
EU-28	European Union since the 2013 enlargement (before Brexit)
HEI	Higher Education Institution
ICT	Information and Communications Technology
ILR	Indefinite leave to remain
IMDB	Longitudinal Migration Database Statistics Canada
IPPR	Institute for Public Policy Research
IRCC	Immigration, Refugees and Citizenship Canada
LMIA	Labour Market Impact Assessment
LTSSL	Long Term Skills Shortage List
MAC	Migration Advisory Committee
NQF	National Qualifications Frameworks
NRS	National Records of Scotland
ONS	Office of National Statistics
OECD	Organisation for Economic Co-operation and Development
PBS	Points-based system
PNP	Provincial Nominee Programme
rUK	Rest of the United Kingdom (excluding Scotland)
SAWS	Seasonal Agricultural Workers Scheme
SNP	Scottish National Party
SPICe	Scottish Parliament Information Centre
SSRM	State-specific and regional migration
STEM	Science, technology, engineering and mathematics
UK	United Kingdom
UKIV	UK Visa and Immigration
UN	United Nations
US	United States